FARGO CITY COMMISSION AGENDA
Monday, January 24, 2022 - 5:00 p.m.

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

A. Pledge of Allegiance.

B. Roll Call.

C. Approve Order of Agenda.

D. Minutes (Regular Meeting, January 10, 2022).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Receive and file the following Ordinances:
   a. Relating to Hotel and Rooming-House Registers.
   b. Relating to Driving while License Suspended or Revoked – Impoundment of License Plates.
   c. Relating to the Human Relations Commission.

2. 2nd reading and final adoption of an Ordinance Rezoning Certain Parcels of Land Lying in Urban Plains by Brandt Second Addition.

3. Amendment (First) to Memorandum of Understanding Regarding Airport Officers.

4. Applications for Games of Chance:
   a. Nativity Elementary School PTO for a raffle board on 2/4/22.
   b. NDSU Saddle and Sirloin Club for a raffle on 2/12/22.
   c. Muskie's Inc. F-M Chapter for a raffle on 2/10/22.
   d. North Central Turfgrass Association for a raffle on 2/23/22.

5. Pledged securities as of 12/31/21.

6. Negative Final Balancing Change Order No. 3 in the amount of -$222,507.53 for Project No. FM-15-J2.

7. Bid advertisement for Project No. PR-22-A.

8. State Water Commission request for cost reimbursement for the FM Metropolitan Area Flood Risk Management Project in the amount of $4,927,025.23.

9. Transfer of Tax Increment Financing District No. 2015-01 from 710 Lofts, LLC to 710 Holdings, LLC.

10. Agreement for Services with Sara Mwagura.

11. Agreement for Services with Tenezee Steele, David Hoffmann, Chad Simmons, Crystal Amundson and Amanda Marinucci.

12. Agreement for Services with Danek Vega, Brady Jochim, Marilyn Ouart, Julia Ressler and Braden Knudtson.

13. Notice of Grant Award from the ND Department of Health and Human Services for Childhood Obesity Prevention (CFDA #93.994).

14. Notice of Grant Award Amendment from the ND Department of Health and Human Services for Title X Family Planning Program (CFDA #93.217).

15. Agreement for Services with Kayla Dahlquist.

16. Notice of Grant Award from the ND Department of Health for increasing TB infection identification and treatment (CFDA #93.116).

17. Fourth Amendment to Lease Agreement with Dakota UPREIT Limited Partnership/First Center South, LLC.

18. Master Services Agreement with Phreesia, Inc.

19. Bid award for junked vehicle removal contract for 2022.

20. Variance Acknowledgement and Liability Waiver with Huynh Kha Property, LLC for the property located at 1425 Main Avenue.

21. Catalog of art to be located on City Infrastructure and implementation of the utility box wrap program throughout the City.

22. Allocation for the 2022 Public Art Program and to proceed with seeking proposals from the community on behalf of the Fargo Arts and Culture Commission.

23. Subrecipient Agreement with Churches United for the Homeless.

24. Bid award for the purchase of fuel in the 3rd and 4th quarters of 2022 (RFV22001).

25. Piggyback Contract with EnviroTech Services for the purchase of AMP salt brine additive for the winter of 2022 (PBC116354).

26. Extension of the Services Agreement Landscape Maintenance Services with All Terrain Grounds Maintenance for one year (RFP21032).

27. Change Orders for Project No. SW20-01:
    a. No. G-004 in the amount of $1,278.92 (general contract).
    b. No. E-003 in the amount of $4,684.17 (electrical contract).

28. FEMA Building Resilient Infrastructure in Communities grant application for improvements associated with the West Side Interceptor (Project No. WW1905).

29. Master Utility Agreement with the Metro Flood Diversion Authority (Project No. WW2201).

30. Bills.

31. Cost Participation, Construction and Maintenance Agreement with the ND Department of Transportation for reconstruction of 32nd Avenue South from 32nd Street to 22nd Street (Improvement District No. BR-22-A1).

32. Negative Final Balancing Change Order No. 3 in the amount of -$22,476.90 for Improvement District No. NN-19-A1.

33. Bid award for Improvement District No. BN-22-B1.

34. Create the following Improvement Districts:
    a. No. PR-22-E.
    b. No. PR-22-G.

REGULAR AGENDA:

35. **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).**

36. ***Public Input Opportunity* - PUBLIC HEARINGS - 5:15 pm:**
    a. Application for a Class "F" Alcoholic Beverage License for BPC Fargo LLC d/b/a Boss' Pizza and Chicken to be located at 228 Broadway North; continued from the 1/10/22 Regular Meeting.

    b. EOLA Addition (4410, 4415, 4448, 4470, 4471 and 4474 24th Avenue South, and 4417 and 4477 26th Avenue South); approval recommended by the Planning Commission on 1/4/22:
        1. Zoning Change from GC, General Commercial with a PUD, Planned Unit Development Overlay to GC, General Commercial with an amended PUD, Planned Unit Development.
        2. 1st reading of rezoning Ordinance.

37. 2nd reading and final adoption of an Ordinance Relating to Ordinances – Procedure.

38. Recommendation to direct the City Attorney to rewrite Section 18-09 – Excavation Code.

39. Update on the audit of the Municipal Airport Authority.

40. Update on Police Department Personnel.

41. Discuss the formation of a Fargo Police Department Performance Action Plan.

42. Applications for Property Tax Exemptions for Improvements Made to Buildings:
    a. Donald and Susan Morton, 4328 Timberline Drive South (3 year).
    b. Nicole and Kelan Oster, 2127 Rose Creek Drive South (3 year).
    c. Jade and Laney Witty, 1529 Broadway North (5 year).
    d. Kevin and Kristina Lau, 1118 9th Street South (5 year).
    e. Melissa and Aaron Rohrich, 1212 7th Street South (5 year).

43. Appointment to the Renaissance Zone Authority.

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.

THE CITY OF Fargo FAR MORE

OFFICE OF THE CITY ATTORNEY

CITY ATTORNEY
Nancy J. Morris

SERKLAND LAW FIRM
10 Roberts Street North
P.O. Box 6017
Fargo, ND 58108
Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

1a

January 19, 2022

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

RE: Ordinance amendment - Hotel Registries

Dear Mayor Mahoney and Commissioners,

I am enclosing for your consideration, amendments to Fargo Municipal Code § 25-2201, relating to hotel and rooming-house registers.

The current "Hotel and Registers" law requires Fargo hotels to keep information regarding their customers for three years. The law also requires the hotel to allow the police to inspect the registry "at all times." In 2015, the United States Supreme Court determined in City of Los Angeles v. Patel that it was unconstitutional to criminalize a hotel's refusal to turn over a guest registry to police, unless there was a "review process" utilized first (like a search warrant).

The Hotel Registry section should be amended to omit language about the registry being "open at all times" to the officer. The hotels will still be required to obtain information from their customers and keep it for three years. Failure to obtain and keep this information will still be punishable by an infraction. The hotels may voluntarily turn over the registry to the police, but it would not be a crime if a hotel refuses to disclose registry information. This ordinance amendment would not impact the police's ability to obtain a search warrant and any repercussions the Hotel may incur for failing to abide by a search warrant.

Chief Zibolski is aware of the proposed amendment and supports it.

Suggested Motion: I move to receive and file the following ordinance amending Fargo Municipal Code section 25-2201 of Article 25-22 of Chapter 25, relating to Hotel and Rooming-House Registers, and to place the ordinance on for first reading at the next regularly-scheduled City of Fargo Commission meeting.

Sincerely,

William Wischer

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-2201 OF ARTICLE 25-22 OF CHAPTER 25, OF THE FARGO MUNICIPAL CODE
RELATING TO HOTEL AND ROOMING-HOUSE REGISTERS

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.

Section 25-2201 of Article 25-22 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

25-2201.– Registers to be kept.

Every person, corporation, co-partnership, or association conducting, keeping, or managing or operating, as owner, lessee, agent, or in any other capacity, any hotel, rooming house or lodginghouse within the corporate limits of the city shall at all times keep and maintain a standard hotel register in form satisfactory to the chief of police, in which shall be inscribed the names and permanent residences of all guests or persons renting or

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

occupying rooms in such hotel, rooming house or lodginghouse, which register shall be signed by the person renting a room or rooms, or by someone under his direction. Before any person shall be permitted to occupy such room or rooms, the manager of the hotel, rooming house, or lodginghouse, or his agent, shall write in such register the number of the room or rooms which such guest or person is to occupy, together with the time when such room is rented. Such register shall be preserved for a period of not less than three years from the date of the renting of such room ~~and shall be at all times open to inspection by any police officer of the city~~.

Section 2. Effective Date.

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

Section 3. Penalty.
Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed $1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof, as provided in Section 1-0301(B) of the Fargo Municipal Code.

_____
Dr. Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

THE CITY OF Fargo FAR MORE

OFFICE OF THE CITY ATTORNEY

CITY ATTORNEY
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ASSISTANT CITY ATTORNEYS
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

(16)

January 19, 2022

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

RE: Ordinance Amendment - Driving Under Suspension

Dear Mayor Mahoney and Commissioners,

I am enclosing for your consideration amendments to Fargo Municipal Code § 8-0309, relating to Driving while License Suspended or Revoked (DUS).

Almost all traffic offenses in the municipal code are crimes, regardless if the vehicle is driven on public or private property, as long as the public has a right of access to the area. For example, the DUI and Reckless ordinances apply to "any public or private parking lot or area within the City of Fargo." The DUS statute in the North Dakota Century Code also applies to private areas: "public or private areas to which the public has a right of access..." The current DUS ordinance does not include private property that the public has access to (ex: business parking lots). This proposed amendment will update the City of Fargo DUS ordinance to conform to other city driving offenses and the state equivalent for DUS by clarifying that it is illegal to drive a vehicle with a suspended license on private property the public has access to.

Chief Zibolski is aware of the proposed amendment and supports it.

The City Ordinances for DUI (8-0310) and Reckless Driving (8-0314), as well as the North Dakota Century Code version of DUS (NDCC § 39-06-42) are included for reference.

SUGGESTED MOTION: I move to receive and file the following ordinance amending Fargo Municipal Code § 8-0309 of Article 8-03 of Chapter 8, relating to Driving while License Suspended or Revoked (DUS), and to place the ordinance on for first reading at the next regularly-scheduled City of Fargo Commission meeting.

Sincerely,

William Wischer

Enclosures

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 8-0309 OF ARTICLE 8-03 OF CHAPTER 8, OF THE FARGO MUNICIPAL CODE RELATING TO DRIVING WHILE LICENSE SUSPENDED OR REVOKED – IMPOUNDMENT OF LICENSE PLATES

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.

Section 8-0309 of Article 8-03 of Chapter 8 of the Fargo Municipal Code is hereby amended to read as follows:

8-0309. - Driving while license suspended or revoked—Impoundment of license plates.

It shall be unlawful for any person to drive a vehicle on any ~~public way, street, alley or other public way~~ public or private way, street, alley, parking lot, or area to which the public has a right of access for vehicular use, within the city, at a time when his privilege to do so is suspended or revoked in any jurisdiction. If the suspension or revocation was imposed

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

for violation of § 39-08-01 of the North Dakota Century Code or equivalent statute or ordinance or was governed by § 39-06-31 or chapter 39-20 of the North Dakota Century Code, the sentence must be at least four consecutive days' imprisonment and such fine as the court deems proper. Upon conviction for violation of this ordinance, the court may, in addition to the imposition of the penalty, order the motor vehicle number plates of the motor vehicle owned by the offender at the time of the offense to be impounded by the chief law enforcement officer of the city for the duration of the period of suspension of the offender's driver's license or driving privileges by the licensing authority. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the registrar of motor vehicles.

Section 2. Effective Date.

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

Section 3. Penalty.

Every person, firm, or corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a fine not to exceed $1,500.00, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to revoke the suspension thereof, per Section 1-0301(A) and 1-0305(A)(1) of the Fargo Municipal Code.

_____
Dr. Timothy J. Mahoney, Mayor

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

8-0310. - Persons under the influence of intoxicating liquor or controlled substances not to operate vehicle—Declaring what constitutes being under the influence of intoxicating liquor—Impoundment of license plates.

A. No person shall drive, or be in actual physical control of, any vehicle upon any street, highway, public or private parking lot, or other public or private property in this city if said person is under the influence of intoxicating liquor or controlled substances. Being under the influence of intoxicating liquor or controlled substances shall be as defined by chapter 39-08 of the North Dakota Century Code including any amendments hereafter adopted. All other relevant and applicable statutes of the state of North Dakota relating to driving under the influence of intoxicating liquor or controlled substances are also incorporated herein by reference and made a part hereof.

B. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test or tests required under chapter 39-08 of the North Dakota Century code including any amendments hereafter adopted is guilty of an offense under this section.

Source: 1952 Rev. Ord. 1119 (1962), 1198 (1965), 1965 Rev. Ord. 8-0310, 1855 (1978), 2050 (1982), 2103 (1983), 2341 (1987), 4862 (2013).

8-0314. - Reckless driving.

Any person who drives any vehicle upon a street, highway, public or private parking lot, or other public or private property in this city recklessly in disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

Source: 1952 Rev. Ord. 1119 (1962), 1198 (1965), 4775 (2011).

b. To lend that individual's operator's license or nondriver photo identification card to any other individual or knowingly permit the use of that individual's operator's license or nondriver photo identification card by another individual;
c. To display or represent as an individual's own any operator's license or nondriver photo identification card not issued to that individual;
d. To fail or refuse to surrender to the director upon demand any operator's license or nondriver photo identification card that has been suspended, revoked, or canceled;
e. To permit any unlawful use of an operator's license or nondriver photo identification card issued to that individual; or
f. To use a false or fictitious name in any application for an operator's license or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.

2. Within five days of receiving a record of conviction or other satisfactory evidence of the violation of this section, the director shall revoke the individual's operator's license or nondriver photo identification card. The director may set the period of revocation, not to exceed six months.

39-06-40.1. Reproducing operator's license - Penalty.

1. It is unlawful for an individual to print, photograph, photostat, duplicate, alter, or in any way reproduce any operator's license, nondriver photo identification card, or facsimile of an operator's license or card, or to print, photograph, photostat, duplicate, alter, or in any way reproduce any document used in the production of any operator's license or card or facsimile of an operator's license or card, in a manner that it would be mistaken for a valid license or document containing valid information, or to display or have in possession any print, photograph, photostat, duplicate, reproduction, or facsimile unless authorized by law.
2. It is unlawful for an individual to alter in any manner any operator's license or nondriver photo identification card or to display or have in possession an altered operator's license or nondriver photo identification card.
3. An individual violating this section is guilty of a class B misdemeanor.
4. Within five days of receiving a record of conviction or other satisfactory evidence of the violation of this section, the director shall revoke the operator's license or cancel the nondriver photo identification card of the individual. The director may set the period of revocation, not to exceed six months.

39-06-41. Making false affidavit perjury.

Repealed by omission from this code.

39-06-42. Penalty for driving while license suspended or revoked - Impoundment of vehicle number plates - Authority of cities.

1. Except as provided in section 39-06.1-11, an individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while an individual's operator's license is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second, or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.
2. If the suspension or revocation was imposed for violation of section 39-08-01 or equivalent ordinance or was governed by section 39-06-31 or chapter 39-20, the sentence must be at least four consecutive days' imprisonment and a fine as the court deems proper. The execution of sentence may not be suspended or the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.

3. A court may dismiss a charge under this section upon motion by the defendant if the defendant's operator's license is reinstated within sixty days of the date of the offense and the defendant provides to the court satisfactory evidence of the reinstatement.
4. In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be destroyed by the sheriff. If a period of suspension has been extended under subsection 6 of section 39-06-17, the court may order the number plates to be destroyed under this subsection. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the sheriff and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation.
5. A city may authorize, by ordinance, its municipal judge to order destruction of motor vehicle number plates by the office of the police officer that made the arrest in the manner provided in subsection 4.

39-06-43. Extension of license suspension or revocation.

1. The director upon receiving a record of the conviction of an individual upon a charge of driving a vehicle while the operator's license of the individual was suspended shall extend the period of that suspension for an additional:
   a. Like period not to exceed ninety days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the individual's operator's license or privilege has not been suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance;
   b. One hundred eighty days if the operator's record for the three years preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the individual's operator's license or privilege has been once suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance; or
   c. One year if the operator's record for the three-year period preceding the most recent violation of section 39-06-42 or equivalent ordinance shows the individual's operator's license or privilege has been at least twice suspended, revoked, or denied for a prior violation of section 39-06-42 or equivalent ordinance.
2. If the original suspension was imposed for violation of section 39-08-01 or equivalent ordinance, the director shall extend the period of that suspension for at least six months. If the suspension of the operator's license resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there may be no additional period of suspension. Suspension periods for failure to appear or to post and forfeit bond on noncriminal traffic violations may be for an indefinite duration. If the conviction was upon a charge of driving while an operator's license was revoked, the director may not issue a new operator's license for an additional period of one year from and after the date the individual would otherwise have been entitled to apply for a new license. Upon a conviction of an individual for violating a restricted license issued under section 39-06.1-11 and in which the underlying suspension was imposed for violating section 39-08-01 or equivalent ordinance or is governed by chapter 39-20, the director shall extend the period of the underlying suspension in accordance with subsection 6 of section 39-06-17.

39-06-44. Permitting unauthorized minor to drive.

An individual may not cause or knowingly permit the individual's minor child or ward to operate a motor vehicle upon any highway if the minor is not authorized under this chapter or in violation of this chapter.

THE CITY OF Fargo FAR MORE

OFFICE OF THE CITY ATTORNEY

CITY ATTORNEY
Nancy J. Morris

SERKLAND LAW FIRM
10 Roberts Street North
P.O. Box 6017
Fargo, ND 58108
Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

(10)

January 20, 2022

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

RE: An Ordinance Amending Article 15-02 Relating to the Human Relations Commission

Dear Commissioners,

Enclosed for your approval is an Ordinance amending Article 15-02 pertaining to the Human Relations Commission. At its December 27, 2021 meeting, the Board of City Commissioners directed the City Attorney's Office to work with staff to revise the ordinance in order to change the name of the Commission from "Human *Relations* Commission" to "Human *Rights* Commission."

As a result, I am remitting to you for your approval an Ordinance amending Article 15-02 of Chapter 15 the Fargo Municipal Code.

Suggested Motion: I move to receive and file an Ordinance amending Article 15-02 of Chapter 15 of the Fargo Municipal Code Relating to the Human Relations Commission and to place the Ordinance on for first reading at the next regularly-scheduled city commission meeting.

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

Sincerely,

Alissa R. Farol
Assistant City Attorney

Enc.
cc: Dr. Terry Hogan, Director of Diversity, Equity and Inclusion

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 15-02 OF CHAPTER 15
OF THE FARGO MUNICIPAL CODE
RELATING TO THE HUMAN RELATIONS COMMISSION

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.

Article 15-02 of Chapter 15 of the Fargo Municipal Code is hereby amended to read as follows:

ARTICLE 15-02
HUMAN ~~RELATIONS~~ RIGHTS COMMISSION

Section

15-0201	Creation of Human ~~Relations~~ Rights Commission.
15-0202	Number of members--Term of members--Appointment of members--Filling vacancies.
15-0203	President of commission--Meetings--Record to be kept.
15-0204	Goals of the Human ~~Relations~~ Rights Commission

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

15-0205 Powers and duties of commission.
15-0206 Commission advisory in nature.

15-0201. Creation of Human ~~Relations~~ Rights Commission.--There is hereby created and established a body to be known as the Human ~~Relations~~ Rights Commission, whose purpose is to promote the acceptance and respect for diversity through educational programs and activities and to discourage all forms of discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, participation in lawful activity off the employer's premise during nonworking hours which is not in direct conflict with the essential business-related interests of the employer or sexual orientation.

15-0202. Number of Members--Term of Members--Appointment of Members--Filling Vacancies. --The Human ~~Relations~~ Rights Commission shall consist of eleven members, who shall be appointed by the president of the board of city commissioners, subject to confirmation by the Board of City Commissioners. The terms of office of such commissioners shall be as follows, to wit: three members who shall serve until July 1, 2021; four members who shall serve until July 1, 2022; and four members who shall serve until July 1, 2023. At the expiration of the terms of the members as aforesaid, members shall be appointed for three-year terms. If a vacancy occurs otherwise then by expiration of a term, it shall be filled by appointment for the unexpired portion of the term. Notwithstanding the expiration of a member's term, such member may serve until his or her successor has been appointed and qualified.

15-0203. President of commission--Meetings--Record to be kept. --The Human ~~Relations~~ Rights Commission shall elect its president for a term of one year from among the appointed members and shall hold regular monthly meetings. The commission shall keep a record of its resolutions, findings and the determinations and such record shall be a public record. The commission may appoint such subcommittees from among the appointed members as it may be necessary for its work.

15-0204. Goals of the Human ~~Relations~~ Rights Commission. --The goals of the Human ~~Relations~~ Rights Commission are:

A. To provide leadership in the areas of civil rights.
B. To encourage and educate the public in the promotion of civil rights.
C. To identify issues of principal concern to members of the community in the area of civil rights and to recommend priorities and objectives to the board of city commissioners.
D. To encourage adherence to federal and state laws regarding civil rights, including Chapter 14-02.4 of the North Dakota Century Code, through education, conciliation and mediation.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

15-0205. Powers and Duties of Commission. --The Human ~~Relations~~ Rights Commission shall:

A. Recommend to the board of city commissioners, from time to time, action and programs in furtherance of the purpose of the Human ~~Relations~~ Rights Commission as described in this article.

B. Consult and advise with public officials and agencies and with private individuals and organizations to provide education regarding civil rights. The commission may, in its discretion, assist aggrieved individuals, but such assistance shall consist of information, guidance and, in its discretion, conciliation and mediation services.

15-0206. Commission advisory in nature. --The Human ~~Relations~~ Rights Commission shall be advisory in nature and shall submit all reports and determinations to the board of city commissioners of the city of Fargo. Final authority shall be in the board of city commissioners.

Section 2. Effective Date.

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

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

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

2

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND LYING IN URBAN PLAINS BY BRANDT SECOND ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Urban Plains by Brandt Second Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on December 7, 2021; and,

WHEREAS, the rezoning changes were approved by the City Commission on January 10, 2022,

NOW, THEREFORE,

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

Section 1. The following described property:

Lot Two (2), Block Two (2) of Urban Plains by Brandt Second Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "LC", Limited Commercial, District, with a "C-O", Conditional Overlay, District, as established by Fargo Municipal Ordinance No. 5103, to "MR-3", Multi-Residential, District, repealing and replacing the "C-O", Conditional Overlay, District, as follows:

1. Description.

This C-O, Conditional Overlay district is primarily intended to encourage high-quality, durable, and long-lasting investments in order to enhance the quality of life and discourage blight. To that end, it is intended that all properties be designed to a human scale and that buildings should have architectural interest and variety through the use of articulated façades. In order to avoid the effect of a single, long, or massive wall with no relation to human scale, it is intended that articulated façades should

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

include elements such as setbacks, change in materials, roof pitch or height variability.

2. Building orientation, form, and style.

2.1 Building Orientation.

a) The apartment buildings shall include pedestrian orientation to 51st Street South.

b) The building shall be designed to have all exterior walls with equal design consideration, to include materials, color, articulation and general aesthetics for the purpose of access and appreciation by the general public.

2.2 All building elevations/façades greater than 150 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least two (2) feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of twenty (20) percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal feet. First level (ground floor) façade facing away from 51st Street South shall be excluded from the requirements of this section.

2.3 Ground floor non-parking façades that face public right-of-way shall have arcades, windows, entry areas, awnings, or other such features along no less than sixty (60) percent of its horizontal length.

2.4 Ground floor parking façades that face public right-of-way other than 51st Street South shall have window, faux-window treatments or landscape amenities to aid in creating and promoting pedestrian activity.

2.5 Principle Materials – Unless otherwise deemed acceptable by the Zoning Administrator, all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units or systems, exterior insulation finishing systems (EIFS), fiber cement, integrated insulated metal panels curtain walls, or glass. All materials shall be commercial grade, durable, and have a multi-generational life span. Horizontal metal lap siding and vertical metal batten shall be allowed on residential structures but should not exceed 75 percent of the building elevation.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2.6 Accent Materials – In conjunction with the principal materials listed above, finished wood and vinyl may also be used to construct or clad exterior walls. Accent materials shall be applied to no greater than ten (10) percent of each building façade.

2.7 Dumpsters, refuse containers, and outdoor storage areas shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way by walls or fencing. Dumpsters and refuse containers shall contain walls or fencing on at least three (3) sides with the service opening not directly facing any public right-of-way or residentially zoned property. The fourth side shall incorporate a gate to visually screen the dumpsters or refuse containers.

3. Site Design.

3.1 Building must be situated towards the east along 51st Street South so that it is placed no further back than the required setback.

3.2 Accessory garages are prohibited, with the exception of the western 120 feet of the property, provided that the accessory garages are not visible from 51st Street South and are screened with site amenities from the other rights-of-way.

3.3 Visibility from public right-of-way shall be designed for the appreciation by the general public with the use of landscaping enhancements along the public right-of-way in order to encourage pedestrian activity on the public sidewalks and amongst adjacent sites.

3.4 Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be provided between building entrances and the following:

i. Parking lots or parking structures;
ii. Any public sidewalk or multi-use path along the perimeter of the lot;
iii. Entrances of other buildings on the site;
iv. Any public sidewalk system along the perimeter streets adjacent to the development; and
v. Adjacent pedestrian origins and destinations—including but not limited to transit stops, residential development, office buildings, and retail shopping buildings— where deemed practical and appropriate by the Zoning Administrator.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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

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

(SEAL)

Attest:

_____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

THE CITY OF Fargo FAR MORE

OFFICE OF THE CITY ATTORNEY

CITY ATTORNEY
Nancy J. Morris

SERKLAND LAW FIRM
10 Roberts Street North
P.O. Box 6017
Fargo, ND 58108
Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS
Ian R. McLean ▪ Alissa R. Farol ▪ William B. Wischer

(3)

January 20, 2022

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

RE: Amendment to Airport Memorandum of Understanding Regarding Airport Officers

Dear Mayor and Commissioners,

Presented for your consideration and approval is an Amendment to the existing agreement which provides for the required Police support at the Fargo Municipal Airport. Such sworn Police Support is required by the Transportation Security Administration and the cost is reimbursed 100% by the Airport. The amendment presented to you today amends the number of hours the officer is assigned to the Airport and the Police Sergeant oversight, training and assistance provided to the Airport. The amendment further clarifies that the Airport shall reimburse directly all other costs associated with the Police Officers provided to the Airport, including uniform, vehicle and all other such expenses. The breakdown of the annual cost for the Fargo Police Officer, Sergeant and other associated costs is identified in the attached Exhibit B, representing a total cost of $652,733.48. Cost of living adjustments have been accounted for as well, with the understanding that the total cost will be adjusted as appropriate.

Suggested Motion: I move to approve the Amendment (First) to the Memorandum of Understanding Regarding Airport Officers and authorize the Mayor to sign the same.

Please feel free to contact me or Chief Zibolski if you have any questions, comments or concerns.

Regards,

Nancy J. Morris

NJM/lmw

Enclosure

AMENDMENT (FIRST) TO MEMORANDUM OF UNDERSTANDING REGARDING AIRPORT OFFICERS

This Amendment (First) Amends that Memorandum of Understanding Regarding Airport Officer ("MOU"), entered into by and between the city of Fargo Police Department (the "Department") and Municipal Airport Authority of the City of Fargo (the "Airport") dated January 17, 2017, a copy of which is attached hereto as Exhibit "A."

WHEREAS, the parties to the MOU agree that additional Airport Officer hours are necessary to safely conduct airport operations; and

WHEREAS, the parties understand and agree that the costs associated with the Department's provision of Airport Officers must be adjusted to properly account for the expenses incurred by the Department; and

WHEREAS, the parties hereto understand and agree that the MOU shall remain in full force and effect, except as modified herein by agreement of the parties.

Now therefore, for good and valuable consideration hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 6 shall be amended as follows:

The Airport shall reimburse the Department one hundred percent of the total annual cost of each Airport Officer assigned to the Airport, and twenty-five percent (25%) of the total annual cost of a Police Sergeant providing oversight, training and assistance to the Airport Officers. Other costs to be reimbursed by the Airport to the Department include Uniform and Equipment (First Year Cost and Uniform Allowance), Annual Training Costs for all Airport Officers and twenty-five (25%) percent of additional training for the Police Sergeant assigned to the Airport Officer, if any, all necessary and appropriate vehicle costs, and such other expenses as appropriate. All salaries to be adjusted when a COLA is approved by the board of City Commissioners. The total annual cost as of the time of this Amendment is described in Exhibit "B" attached hereto and made a part hereof. The Department shall provide the Airport with a monthly invoice in accordance with TSA guidelines. The Airport shall provide payment to Department within thirty (30) days of receipt of the invoice.

2. Paragraph 7 shall be amended as follows:

If to the Department:

Chief of Police

Fargo Police Department

25th St N.
105 ~~1st Avenue North~~ 02
Fargo, ND 58102
dzibolski@FargoND.gov

With a copy to:
City of Fargo
Director of Finance
225 4th Street North
Fargo, ND 58102

3. All other terms and conditions of the MOU shall remain in full force and effect.

Date this ____ day of _____, 2021.

City of Fargo, a North Dakota municipal corporation

_____

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

Attest:

_____

Steven Sprague, City Auditor

Dated this 28th day of December 2021.

Fargo Police Department

David Zibolski, Chief

Dated this 28th day of December 2021.

Fargo Municipal Airport Authority, a public body, corporate and politic

Shawn A. Dobberstein, AAE

Shawn A. Dobberstein, AAE

Executive Director

Exhibit "A"

MEMORANDUM OF UNDERSTANDING
REGARDING AIRPORT OFFICERS

This Memorandum of Understanding (MOU) is entered into by and between the City of Fargo Police Department (hereinafter "Department") and the Municipal Airport Authority of the City of Fargo, North Dakota, a public body, corporate and politic, for itself, its successors and assigns, (hereinafter "Airport"), and supersedes any previous or prior MOU between the Department and the Airport relative to Airport Officers.

WHEREAS, the Department provides police services within the City of Fargo, North Dakota; and

WHEREAS, the Airport provides aeronautical services within the City of Fargo, North Dakota; and

WHEREAS, the Airport is required by the Transportation Security Administration ("TSA") to locate police officers at the security checkpoint within the Airport Passenger Terminal.

NOW THEREFORE, for good and valuable consideration, the sufficiency which is hereby acknowledged, the parties hereto agree as follows:

1. The Department will assign a Fargo Police Department Officer (hereinafter "Airport Officers") to the Airport. Any Airport Officer shall be a licensed Peace Officer employed by the Fargo Police Department.

2. The Airport Officers assigned to the Airport will remain employees of the Department, and will not be employees of the Airport. The officers assigned to the Airport will provide general law enforcement services within and adjacent to the Airport Passenger Terminal as determined by the TSA in cooperation with the Department and the Airport. The Airport Officers assigned to the Airport shall possess all of the qualifications of a Law Enforcement Officer as set forth in 49 CFR 1542, while on duty at the Airport as required by the TSA.

3. Airport shall ensure the Airport Officer has unlimited access to all secure areas of the Airport, including the Security Identification Display Area (SIDA) and the Sterile area of the passenger terminal.

4. The Department shall provide Airport Officers at the locations and times requested by the Airport, and as required by the TSA at all times that screening operations take place at the security checkpoint.

5. The cost of the Airport Officers as agreed upon by the Department and the Airport until such time as either party determines a need to adjust such cost, is outlined and described within "Appendix A".

6. The Airport shall reimburse the Department one hundred percent (100%) of the total annual cost of each officer assigned to the Airport. The total annual cost of each officer assigned

Exhibit "A"

to the Airport is described within "Appendix A". The Department shall provide the Airport with a monthly invoice in accordance with TSA guidelines. The Airport shall provide payment within 30 days of the invoice.

7. The terms of this MOU shall remain in effect until either party notifies the other in writing of its intent to terminate the MOU. This MOU can be terminated by either party for any reason, or no reason. Such notice shall be given at least one hundred and twenty (120) days prior to the effective date of the termination and shall be deemed given when mailed by certified mail, postage prepaid, addressed to the recipient thereof at the address set forth below or at such other address as may subsequently designated in writing by either party:

If to the Airport:

Shawn A. Dobberstein, AAE
Executive Director
P.O. Box 2845
Fargo, ND 58108-2845

If to the Department:

Chief of Police
Fargo Police Department
222 4thStreet North
Fargo, ND 58102

With a copy to:

City of Fargo
Director of Finance
200 3rd Street North
Fargo, ND 58102

8. The Airport shall indemnify, defend, and hold harmless the Department, its officers and its employees from and against all claims, losses, costs, damages and expenses (including reasonable attorney's fees and costs) which result from or arise in connection with any action, negligence or omission of the Airport and its employees. The indemnification provided herein shall survive the termination of this MOU.

9. No waiver by either party of any term or provision of this MOU shall be deemed to be a waiver of any other term or provision.

10. Any term or provision of this MOU which now or hereafter is determined to be invalid or unenforceable shall not impair the validly of the remainder of this MOU.

11. This MOU is not assignable by either party without the prior written consent of the other party.

12. This MOU may not be amended or modified orally at any time, but only by the written agreement of the parties hereto.

Exhibit "A"

THE CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Dated: 1/17/17

By: Dr. Timothy J. Mahoney
Its: Mayor

ATTEST:

Steve Sprague, City Auditor

Fargo Police Department

Dated: 01/19/17

By: David Todd
Its: Chief of Police

Fargo Municipal Airport Authority

Dated: 01/27/17

Shawn A. Dobberstein, AAE

By: Shawn A. Dobberstein, AAE
Its: Executive Director

Exhibit "A"

Appendix A

Staffing Analysis for L.E. at Hector International Airport

Total Hours Required

18 hours per day x 365 day per year	=	6,570 hours

Officers required

6,570 hours divided by 2080 hours per officer	=	3.15 officers
3.15 officers x 1.8 shift relief factor*	=	5.67 officers
Rounded up – total officers required staffing	=	6 officers required

*Shift Relief Factor

137 regular days off
15 days of vacation
10 city holidays
3 sick days
165 average days off per officer per year

365 (days per year) x 9 (hour shift per day)	=	3285 hours
- 165 (days) x 9 (hrs)	=	1485 hours
3285 – 1485	=	1800 hours
3285 divided by 1800	=	1.8 shift relief factor

Police Officer Salary and Benefits

Position Title - Police Officer-Grade P12 Step 6	
Annual Pay	$58,635
Health Insurance-Family	$12,137.76
Dental Insurance	$468.00
Disability Insurance	$138.38
Medicare Tax (1.45%)	$850.21
Police Pension (14.2%)	$8,326
Annual Leave (120 hours)	$3,383
Total cost of salary & benefits*	**$83,938.32**

$83,938.32 per year per officer x 6 officers = **$503,629.92** officer cost

-continued-

Exhibit "A"

Supervisory Costs

Position Title - Police Sergeant-Grade 15 Step 5	
Annual Pay	$71,947
Health Insurance-Family	$12,137.76
Dental Insurance	$468.00
Disability Insurance	$169.79
Medicare Tax (1.45%)	$1,043.23
Police Pension (14.2%)	$10,216
Annual Leave (120 hours)	$4,151
Total cost of salary & benefits*	**$100,133.06**

* Supervision will be a 50% shared cost at this point = **$50,066.53**

Additional Costs

Uniform/Equipment – First Year Cost = $5,000 (x6)
$30,000 total

Uniform Allowance – following years = $400 (x6)
- Not included in this calculation **$2,400**

Annual Training Costs = $3,000 (x6)
$18,000 total

Total Personnel, Uniform, Equipment and Training = $601,696.45

Exhibit "B"

Annual Cost of a Fargo Police Officer (2021):

- salary $72,134
- health insurance (city share of Family Plan) $13,341
- dental insurance (city share of Employee Plan) $500.40
- disability insurance (.002%) $144.27
- annual leave (96 hrs x $34.68/hr) $3,329
- Medicare tax (1.45%) $1,045
- pension (14.2%) $10,243

Total cost of salary and benefits: $100,736.67

uniforms and equipment $1,000 police
vehicle $1,000 annual in-
service training $1,000

Total annual cost per officer: **$103,736.67** **x 6 = $622,420.02**

Annual Cost of a Fargo Police Sergeant (2021):

- salary $86,674
- health insurance (city share of Family Plan) $13,341
- dental insurance (city share of Employee Plan) $500.40
- disability insurance (.002%) $173.35
- annual leave (96 hrs x $41.67/hr) $4,000.32
- Medicare tax (1.45%) $1,256.77
- pension (14.2%) $12,308

Total cost of salary and benefits: $118,253.84

uniforms and equipment $1,000 police
vehicle $1,000 annual in-
service training $1,000

Total annual cost per sergeant: $121,253.84

- 25% of sergeant salary paid by the airport: $30,313.46

Total annual cost per sergeant: **$30,313.46**

$652,733.48

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (04-2020)

✓ 6602
1/10/22

(4a)

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

Games to be Conducted
☐ 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.*

Name of Organization or Group of People permit is issued to: Nativity Elementary School PTO	Dates of Activity: February 4th, 2022	If raffle, provide drawing date: February 4th, 2022	
Organization or Group Contact Person: Jennifer Youngerman	Title or Position: PTO Fundraising	Telephone Number: 218-849-9581	
Business Address: 1825 11th St. South	City: Fargo	State: ND	ZIP Code: 58103
Mailing Address *(if different)*: 1825 11th St. South	City: Fargo	State: ND	ZIP Code: 58103
Site Name *(where gaming will be conducted)*: Nativity Elementary School			
Site Address: 1825 11th St. South	City: Fargo	ZIP Code: 58103	County: CASS

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle Board	Blackstone Grill	$500.00

Total *(limit $40,000 per year)*	

Intended Uses of Gaming Proceeds
School enrichment and improvements funded by PTO.

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: $1500.00 (This amount is part of the total prize limit of $40,000 per year)

Organization or Group Contact Person

Name: Jennifer Youngerman	Title: Nativity School PTO Fundraising	Telephone Number: 218-849-9581	E-mail Address: Jenyoungerman@gmail.com
Signature of Organization or Group's Top Official: Christy L. Dahm		Title: Principal Nativity School	Date: 10 JAN 2022

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (04-2020)

✓ 12207
1/13/22
(46)

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

Games to be Conducted
☐ 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.*

Name of Organization or Group of People permit is issued to: NDSU Saddle & Sirloin Club	Dates of Activity	If raffle, provide drawing date: 02/12/2022	
Organization or Group Contact Person: Joy Dahlen	Title or Position	Telephone Number: 701-620-9415	
Business Address: Hultz Hall 100 Dept #7630 PO Box 6050	City: Fargo	State: ND	ZIP Code: 58108
Mailing Address *(if different)*	City	State	ZIP Code
Site Name *(where gaming will be conducted)*: Shepperd arena			
Site Address: 1350 Albrecht Blvd	City: Fargo	ZIP Code: ND	County: 58105

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	1 prize	$600

Total *(limit $40,000 per year)*	

Intended Uses of Gaming Proceeds
Half of the 50/50 raffle would go the winer & half would go to the club

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)

Organization or Group Contact Person

Name: Joy Dahlen	Title: chair	Telephone Number: 701-620-9415	E-mail Address: joy.dahlen
Signature of Organization or Group's Top Official: Joy R. Dahlen		Title	Date: 1/13/2022

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (04-2020)

$25.00 ✓ 1146 1-19-22

(40)

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

Games to be Conducted
☐ 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.*

Name of Organization or Group of People permit is issued to: Muskie's Inc. Fm chapter	Dates of Activity: 2-10-2022	If raffle, provide drawing date: 2-10-2022	
Organization or Group Contact Person: Richard A. Eagleson	Title or Position: club treasur.	Telephone Number: 701-237-4801	
Business Address: 909 page Dr	City: Fargo	State: ND	ZIP Code: 58103
Mailing Address *(if different)*: Same	City: —	State: —	ZIP Code: —
Site Name *(where gaming will be conducted)*: Ramada Fargo			
Site Address: 3333 13th Ave So.	City: Fargo	ZIP Code: 58103	County: Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	See Back sheet	$ 9126.00

Add Row | Delete Row

Total *(limit $40,000 per year)* $ 9126.00

Intended Uses of Gaming Proceeds
to promote muskie Reasurch, fish Stocking, Sportsmanship, Youth Fishing, Donations

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: 1,000.00 (This amount is part of the total prize limit of $40,000 per year)

Organization or Group Contact Person

Name	Title	Telephone Number	E-mail Address
Rick Eagleson	club treasur.	701-237-4801	REagle2481@Aol.com

Signature of Organization or Group's Top Official	Title	Date
[signature]	club treasur.	1-17-2022

CC 1/19/22

APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9338 (04-2020)

4d

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

Games to be Conducted
☐ 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.*

Name of Organization or Group of People permit is issued to North Central Turfgrass Association	Dates of Activity	If raffle, provide drawing date 2/23/22	
Organization or Group Contact Person Sam Bauer	Title or Position Executive Director	Telephone Number 612-205-4428	
Business Address P.O Box 10823	City Fargo	State ND	ZIP Code 58106
Mailing Address *(if different)*	City	State	ZIP Code
Site Name *(where gaming will be conducted)* Holiday Inn			
Site Address 3803 13th Avenue South	City Fargo	ZIP Code 58106	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash	$300.00
Raffle	Cash	$100.00
Raffle	Cash	$50.00

Add Row | Delete Row

Total *(limit $40,000 per year)*	$450.00

Intended Uses of Gaming Proceeds Student Scholarships

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)

Organization or Group Contact Person

Name Sam Bauer	Title Executive Director	Telephone Number 612-205-4428	E-mail Address info.nctga@gmail.com
Signature of Organization or Group's Top Official		Title Executive Director	Date 1/19/21

Signature: samuel j bauer
samuel j bauer (Jan 19, 2022 11:14 CST)

Email: info.nctga@gmail.com

THE CITY OF Fargo FAR MORE

(5)

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

MEMORANDUM

TO: **Board of City Commissioners**

FROM: **Steven Sprague, City Auditor**

SUBJECT: **Approval of Pledged Securities**

DATE: **January 12, 2022**

North Dakota Century Code section 21-04-11 requires the approval of securities pledged as collateral for City funds deposited in various financial institutions if the deposited funds exceed the FDIC insurance limit of $250,000. NDCC calls for re-approval on a semi-annual basis.

At this time, I would request City Commission approval of securities pledged as collateral. Amounts are summarized by financial institution as follows:

First International Bank & Trust	$ 8,845,297
Wells Fargo BNY Mellon	$ 27,246,775
US Bank (Letter of Credit)	$ 5,000,000
Total Pledged Collateral	$ 41,092,072

Detailed pledge security reports are attached for your review.

If you have any questions, please call me at 241-1301

Recommended Motion:

Approve the listing of pledged securities as of December 31, 2021.

Pledged By Location

FIRST INTL. BANK & TRUST - FARGO, ND

FROM 12/01/2021 TO 12/31/2021

01/12/2022
7:42:06AM

Code Receipt#	FAS 115	CUSIP Trade #	Description Maturity	Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged Original Face	Pledged Par Value	Pledged Book Value	Pledged Market Value
CITY OF FARGO AIRPORT AUTH (CTFG)											
BND	SALE	115158DU8 100015	BROWERVILLE MINN INDPT SCH 02/01/2029		3.000		620,000.00 100.00%	620,000.00	620,000.00	625,078.63	669,730.20
BND	SALE	3128MEBL4 466	FGCI G15243 3.000 11/01/27 11/01/2027		3.000		5,000,000.00 100.00%	5,000,000.00	734,570.70	752,933.76	769,352.62
BND	SALE	3138E7TW4 1023	FNCI AK3264 3.000 02/01/27 02/01/2027		3.000		7,100,000.00 100.00%	7,100,000.00	608,478.57	615,022.36	638,257.51
BND	SALE	527860FY1 1930	LEWIS CNTY WASH SCH DIST NO 30 12/01/2037		4.500		1,000,000.00 100.00%	1,000,000.00	1,000,000.00	1,062,196.32	1,169,040.00
BND	SALE	59333FRZ5 101858	MIAMI-DADE CNTY FLA 07/01/2042		4.000		1,000,000.00 100.00%	1,000,000.00	1,000,000.00	1,097,490.00	1,108,910.00
BND	SALE	60412ALA9 101512	MINNESOTA ST 10/01/2025		5.000		1,500,000.00 100.00%	1,500,000.00	1,500,000.00	1,633,380.00	1,750,560.00
BND	SALE	610100VV8 2084	MONONA WIS 10/01/2023		2.000		600,000.00 100.00%	600,000.00	600,000.00	601,687.20	606,768.00
BND	SALE	820123UM7 100137	SHARYLAND TEX INDPT SCH DIST 02/15/2031		4.500		500,000.00 100.00%	500,000.00	500,000.00	547,785.84	589,345.00
BND	SALE	864165BS3 2722	STUTSMAN CNTY N D 10/01/2033		3.750		395,000.00 100.00%	395,000.00	395,000.00	405,911.11	426,690.85
BND	SALE	942170KW0 2930	WATERTOWN S D SCH DIST NO 14-4 08/01/2026		4.000		960,000.00 100.00%	960,000.00	960,000.00	1,050,296.00	1,116,643.20
	TOTAL CITY OF FARGO AIRPORT AUTH (CTFG)							18,675,000.00	7,918,049.27	8,391,781.22	8,845,297.38

Mortgage-backed securities display the expected maturity date (stated maturity date + days delay).
The information contained herein, while believed to be reliable, is not guaranteed.

C:\Users\slm02\AppData\Roaming\PrintViewEXP 2005\Reports\Pledged by Location.rpt 3.9

BNY MELLON

Broker/Dealer Services
101 Barclay Street, 4th Floor East
New York, NY 10286

Date: 12/31/21

001190 XBGSCD81
ATTN: STEVEN SPRAGUE
CITY OF FARGO
225 4TH STREET NORTH
FARGO ND 58012-4817

Account Id: WUB366 Tax Id Number: 456002069

This advice is supplied as part of the Tri-Party Collateral agreement among the Customer, Wells Fargo Bank, N.A. and The Bank of New York Mellon. Any questions should be directed to Vinnette Frater, Senior Associate, BDS/Tri-Party Services, (973)569-2411.

As agent we confirm the following collateralized deposit information received from Wells Fargo Bank, N.A. as of close of business the last business day of the month.

Date: 12/31/21
The collateral segregated on your behalf on 12/31/21 is as follows:

CUSIP	DESCRIPTION	QUANTITY	MARKET VALUE
36179WTY4	GNMA G2SF 2.500% 12/20/51	26,555,189.00	27,246,774.64
		TOTAL MKT VALUE	27,246,774.64

BNY MELLON

BROKER DEALER SERVICES DIVISION
PRICING, INDICATIVE DATA AND OTHER DISCLOSURES

The prices of financial assets and indicative data reported or reflected in reports furnished by the Broker Dealer Services Division (BDS) of The Bank of New York Mellon (BNYM) generally are provided by data providers and ratings agencies ("vendors") used by BDS in the ordinary course of business. Trust receipts will be valued based on the face amount of the underlying financial assets, as set forth therein. Prices and indicative data are not independently verified, and may contain errors or omissions.

With respect to certain newly issued financial assets, if vendors do not provide prices, such financial assets will be valued at par or the new issue price for up to three business days. Thereafter, such financial assets will be valued at zero.

With respect to certain financial assets other than new issues, vendors may not provide prices and may not update prices previously provided on a regular basis. If vendors do not provide prices or update previously reported prices within three business days, such financial assets will be valued at zero, unless other arrangements are agreed in writing.

Notwithstanding the foregoing, certain hard-to-price, thinly traded or illiquid financial assets are valued monthly with no adjustment during the interim period (details are available upon request by contacting BDS).

Although BNYM will not utilize prices obtained from brokers or dealers in providing services, BNYM may obtain from any broker or dealer prices and other information and data such as offering memoranda, observable and non-observable information and assumptions in order to assist BNYM's vendors in determining prices of particular financial assets.

With respect to certain financial assets that are not widely held or regularly traded, vendors may report prices based on valuation models which reflect underlying non-observable assumptions that may not be accurate or complete and such models and/or prices may not be regularly adjusted.

The prices reported by BDS may differ from the prices reported or used by other divisions of BNYM or its subsidiaries or affiliates, and such differences may or may not be material. Margin values reported in connection with triparty transactions may differ from margin values used by BNYM for its own account or for the account of its subsidiaries, affiliates or other clients.

Unless otherwise agreed in writing, financial assets held as collateral may include financial assets in default, provided that the prices of such financial assets are made available to BNYM by a vendor which BNYM uses generally for valuing such financial assets.

BNY MELLON

Unless otherwise agreed in writing, financial assets held as collateral may include financial assets issued by your transaction counterparty or its subsidiaries or affiliates.

Average Traded Volume data is obtained from primary or secondary securities exchanges.

Market data, which is subject to availability, may or may not be current.

The information reported or reflected herein is proprietary to its suppliers and is for your internal use only. It may not be copied, reproduced, published, posted, transmitted, displayed, stored, modified, sublicensed, transferred, disclosed or distributed or used for any purpose without BNYM's express written permission or that of its vendors or other third parties, as applicable.

REPORTED PRICES, WHETHER PROVIDED BY VENDORS OR OTHERWISE OBTAINED AS DESCRIBED HEREIN, MAY NOT REFLECT THE ACTUAL AMOUNT THAT CAN BE REALIZED UPON THE SALE OF PARTICULAR FINANCIAL ASSETS.

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FHLB
CINCINNATI

Issue Date: November 1, 2021 LOC No.: 555912

Beneficiary: City of Fargo
225 4th St. N
Fargo, ND 58102-4817

Ladies and Gentlemen:

For the account of U.S. Bank National Association, CINCINNATI, OH, we hereby authorize you to draw on us at sight up to an amount of $5,000,000.00.

This letter of credit is irrevocable, unconditional and nontransferable.

Drafts drawn under this letter of credit must be accompanied by the original letter of credit and be presented in substantially the form attached as Exhibit A, at the office identified below by an authorized officer of the beneficiary no later than 2:00 P.M., Cincinnati time, on Monday, May 02, 2022.

This letter of credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We engage with you that multiple drafts drawn under and in compliance with the terms of this letter of credit will be duly honored at the Credit Department of the Federal Home Loan Bank of Cincinnati, 221 East Fourth Street, Cincinnati, Ohio 45202.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication 600.

Sincerely,

Lisa Wishart
Vice President

Sharon Sanders
Assistant Vice President

c: Patricia Finnemore
U.S. Bank National Association

(6)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-15-J2 Type: Negative Final Balancing Change Order #3

Location: Belmont Area Date of Hearing: 1/18/2022

Routing	Date
City Commission	1/24/2022
PWPEC File	X
Project File	Jody Bertrand

The Committee reviewed the accompanying correspondence from Division Engineer, Jody Bertrand, for Negative Final Balancing Change Order #3 in the amount of $-222,507.53, 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 #3 in the amount of $-222,507.53, bringing the total contract amount to $2,099,720.32.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #3 to Industrial Builders.

RECOMMENDED MOTION
Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #3 in the amount of $-222,507.53, bringing the total contract amount to $2,099,720.32 to Industrial Builders.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: Sales Tax

	Yes	No
Developer meets City policy for payment of delinquent specials	N/A	
Agreement for payment of specials required of developer	N/A	
Letter of Credit required (per policy approved 5-28-13)	N/A	

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☐	☐	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☑	☑	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

Engineering Department
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

Memorandum

To: PWPEC

From: Rob Hasey, Civil Engineer I, Storm Sewer Utility

Cc: Jody Bertrand, Division Engineer

Date: January 3, 2022

Re: Project No. FM-15-J2 – Final Balancing Change Order #3

Background:

Project No. FM-15-J2 is for the construction of an earthen levee and concrete floodwall at the east end of the Belmont neighborhood near Lindenwood Drive and 3rd Street South.

Attached to this memorandum is the negative Final Balancing Change Order (FBCO) in the amount of $-222,507.53. Please refer to the attached FBCO which reconciles the measured quantities with those estimated for the contract.

Original Contract:	$ 2,306,969.18
Change Order #1	$ 0 (Modify construction phasing)
Change Order #2	$ 15,258.67
FBCO #3	$ -222,507.53
Liquidated Damages	$ -5,250.00
Final Project Cost:	**$ 2,094,470.32**

Recommended Motion:

Approve FBCO #3 in the amount of $-222,507.53 to Industrial Builders.

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Project No	FM-15-J2	**Change Order No**	3
Project Name	Belmont Flood Risk Management Project Phase 2		
Date Entered	12/17/2021	**For**	Industrial Builders 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: Final Balancing

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

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	2	Temp Pumping	LS	1.00	0.00	1.00	-1.00	0.00	14,931.00	-14,931.00
	5	Temp Fence - Safety	LF	530.00	0.00	530.00	-530.00	0.00	3.00	-1,590.00
									Miscellaneous Sub Total ($)	-16,521.00
Removals	6	Remove Pavement All Thicknesses All Types	SY	2,081.00	0.00	2,081.00	-431.00	1,650.00	15.00	-6,465.00
	10	Remove Tree	EA	16.00	0.00	16.00	1.00	17.00	600.00	600.00
	15	Remove Curb & Gutter	LF	342.00	0.00	342.00	-3.00	339.00	8.00	-24.00
	20	Inspection Trench	CY	1,168.00	0.00	1,168.00	-215.60	952.40	10.00	-2,156.00
	21	F&I Retaining Wall	SF	549.00	0.00	549.00	-549.00	0.00	90.00	-49,410.00
									Removals Sub Total ($)	-57,455.00
Storm Sewer	22	F&I Pipe 12" Dia PVC	LF	720.00	0.00	720.00	-72.00	648.00	38.00	-2,736.00
	23	F&I Pipe 15" Dia Reinf Conc	LF	43.00	0.00	43.00	-9.00	34.00	53.00	-477.00
	24	F&I Pipe 18" Dia Reinf Conc	LF	86.00	0.00	86.00	15.00	101.00	72.00	1,080.00
	25	F&I Pipe w/GB SDR 35 - 12" Dia PVC	LF	53.00	0.00	53.00	-53.00	0.00	53.00	-2,809.00
	26	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	200.00	0.00	200.00	-200.00	0.00	11.00	-2,200.00
	30	F&I Inlet - Round (RDI) Reinf Conc	EA	3.00	0.00	3.00	-1.00	2.00	2,100.00	-2,100.00
	31	F&I Inlet - Single Box (SBI) Reinf Conc	EA	3.00	0.00	3.00	-1.00	2.00	2,520.00	-2,520.00
	34	F&I Controlled Density Fill	CY	3.00	0.00	3.00	12.00	15.00	400.00	4,800.00

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Storm Sewer	35	F&I Rip Rap Precast Conc	SY	60.00	0.00	60.00	-60.00	0.00	100.00	-6,000.00
								Storm Sewer Sub Total ($)		-12,962.00
Flood Mitigation	37	F&I Floodwall Reinf Bars - Epoxy Coated Steel	LB	37,172.00	0.00	37,172.00	15,166.00	52,338.00	2.20	33,365.20
	38	F&I Floodwall Reinf Bars - Steel	LB	51,087.00	0.00	51,087.00	11,426.00	62,513.00	1.80	20,566.80
	39	F&I Floodwall - Structural Conc	CY	368.00	0.00	368.00	20.40	388.40	500.00	10,200.00
	41	Fill - Impervious	CY	15,192.21	0.00	15,192.21	-4,675.21	10,517.00	17.00	-79,478.57
	42	Embankment	CY	8,687.74	0.00	8,687.74	-954.74	7,733.00	8.00	-7,637.92
	43	Excavation	CY	23,600.00	0.00	23,600.00	-6,300.00	17,300.00	9.50	-59,850.00
	45	Topsoil - Spread	CY	1,365.24	0.00	1,365.24	1,224.18	2,589.42	10.00	12,241.80
	46	Topsoil - Strip	CY	2,925.66	0.00	2,925.66	2,254.16	5,179.82	5.50	12,397.88
	47	Topsoil - Import	CY	200.00	0.00	200.00	-200.00	0.00	24.00	-4,800.00
								Flood Mitigation Sub Total ($)		-62,994.81
Erosion And Sediment Control	48	Sediment Control Log 6" to 8" Dia	LF	882.00	0.00	882.00	-282.00	600.00	2.10	-592.20
	50	Inlet Protection - New Inlet	EA	12.00	0.00	12.00	-3.00	9.00	160.00	-480.00
	52	Temp Construction Entrance	EA	3.00	0.00	3.00	-2.00	1.00	3,200.00	-6,400.00
	54	Silt Fence - Heavy Duty	LF	2,239.00	0.00	2,239.00	-21.00	2,218.00	2.10	-44.10
	55	F&I Erosion Control Blanket Type 3	SY	8,245.00	0.00	8,245.00	-1,572.00	6,673.00	1.05	-1,650.60
								Erosion And Sediment Control Sub Total ($)		-9,166.90
Paving	56	Subgrade Preparation	SY	6,212.00	0.00	6,212.00	-383.36	5,828.64	2.00	-766.72
	57	Subcut	CY	375.00	0.00	375.00	-38.20	336.80	16.00	-611.20
	58	F&I Woven Geotextile	SY	6,212.00	0.00	6,212.00	-383.36	5,828.64	2.00	-766.72
	59	F&I Aggregate for Asph Pavement FAA 43	TON	954.00	0.00	954.00	-204.00	750.00	61.00	-12,444.00
	60	F&I Asphalt Cement PG 58-34	GAL	13,661.00	0.00	13,661.00	-2,916.70	10,744.30	3.00	-8,750.10
	61	F&I Pavement 8" Thick Reinf Conc	SY	311.00	0.00	311.00	-311.00	0.00	100.00	-31,100.00
	62	F&I Curb & Gutter Standard (Type II)	LF	1,128.00	0.00	1,128.00	-78.00	1,050.00	26.25	-2,047.50
	64	F&I Sidewalk 4" Thick Reinf Conc	SY	6.00	0.00	6.00	-2.00	4.00	126.00	-252.00
	65	F&I Driveway 7" Thick Reinf Conc	SY	15.00	0.00	15.00	-2.00	13.00	130.00	-260.00

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Paving	66	F&I Class 5 Agg - 8" Thick	SY	6,212.00	0.00	6,212.00	-294.00	5,918.00	10.00	-2,940.00
									Paving Sub Total ($)	-59,938.24
Site Restoration	68	Mulching Type 1 - Hydro	SY	17,963.00	0.00	17,963.00	-3,367.50	14,595.50	0.32	-1,077.60
	69	Seeding Type B	SY	17,963.00	0.00	17,963.00	-10,195.00	7,768.00	0.17	-1,733.15
	70	Overseeding	SY	17,963.00	0.00	17,963.00	-12,230.50	5,732.50	0.11	-1,345.36
	71	Weed Control Type B	SY	17,963.00	0.00	17,963.00	-17,963.00	0.00	0.02	-359.26
	78	* Spray roundup on grass in native grass planting area. Audubon Society to replant native grass in 2022.	LS	0.00	0.00	0.00	1.00	1.00	825.00	825.00
									Site Restoration Sub Total ($)	-3,690.37
Signing	72	F&I Sign Assembly & Anchor	EA	7.00	0.00	7.00	1.00	8.00	116.00	116.00
	73	F&I Diamond Grade Cubed	SF	21.50	0.00	21.50	4.99	26.49	21.00	104.79
									Signing Sub Total ($)	220.79
	* NC Items								**Grand Total ($)**	**-222,507.53**

Summary

Source Of Funding	
Net Amount Change Order # 3 ($)	-222,507.53
Previous Change Orders ($)	15,258.67
Original Contract Amount ($)	2,306,969.18
Total Contract Amount ($)	2,099,720.33

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/31/2020	09/30/2020	0.00	0.00	08/31/2020	09/30/2020

Description

APPROVED TROY R. ERICKSON **APPROVED DATE**

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor	Industrial Builders, Inc.	Department Head	1/19/22
Title	Vice President Engineering	Mayor	
		Attest	

COVER SHEET
CITY OF FARGO PROJECTS

(7)

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 Project as it will appear in the Contract:

Street Rehabilitation & Incidentals

Project No. PR-22-A

Call For Bids	January 24	, 2022
Advertise	February 2, 9 & 16	, 2022
Bid Opening Date	March 2	, 2022
Substantial Completion Date	June 4	, 2022
Completion Date	July 4	, 2022

N/A PWPEC Report (Attach Copy) **Part of 2022 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

N/A Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Hoogland

Phone No. (701) 241-1545

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:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT

STREET REHABILITATION & INCIDENTALS

PROJECT NO. PR-22-A

Nature & Scope

This project is for routine joint sealing on various roadways throughout the City.

Purpose

To seal the joints which have opened up in the roadways due to freeze/thaw conditions. This has proven to be a very cost effective process. Sealing the joints at this time, prior to roadway deterioration, helps preserve the ride as well as extend the life of the streets.

Feasibility

The total construction cost is estimated to be $85,000.00. The project will paid for by Street Sales Tax Fund. The cost breakdown is as follows:

Estimated Construction Cost:	**$ 85,000.00**
Engineering Fees (10%):	$ 8,500.00
Administration Fees (4%):	$ 3,400.00
Legal Fees (3%):	$ 2,550.00
Interest Fees (4%):	$ 3,400.00
Contingency (5%):	$ 4,250.00
Total Cost (Street Sales Tax Fund):	**$ 107,100.00**

We believe this project to be cost effective.

REGISTERED PROFESSIONAL ENGINEER
TOM KNAKMUHS
PE 10059
DATE: 1/19/22
NORTH DAKOTA

Tom Knakmuhs, P.E.
Assistant City Engineer

THE CITY OF Fargo FAR MORE

(8)

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

TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE

RE: STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL

DATE: January 13, 2022

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

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

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling $4,927,025.23.

THE CITY OF Fargo FAR MORE

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

January 13, 2022

Andrea J. Travnicek, PHD.
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Dear Andrea,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #121 pursuant to the terms and conditions of House Bill 1020 for costs incurred from December 1, 2021 - December 31, 2021 on the Fargo-Moorhead Metropolitan Area Flood Risk Management Project. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is $4,927,025.23.

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
$ 354,500,000.00	$ 328,323,066.95	$ 9,854,050.46	50%	$ 4,927,025.23	$ 21,249,907.82

Project Narrative, this request:

Project Number	Project Description
V01701	Residential and commercial relocation assistance for homeowners and businesses located in the project area. Also includes land purchases for homeowners living in various areas of the diversion project.
V04201	Gravel Wild Rice inlet road – Cass County Highway Department
V05003	Utility Relocation - Agreement WP50F
V05407	Pay App #5 – Riverwood Flood Risk Management Project – General
V05410	Pay App #4 – Elm Circle Flood Mitigation, digital sign, and recording fees
V05411	Pay App #5 – Oak Grove Flood Risk Management Project
V05419	Pay App #15 – Storm Lift Station #24
V05422	Pay App #10 – North Side Flood Risk Management Levee

Engineering, Legal, and Admin Expense Summary, this request:

Expense Type	Amount
Engineering Services	695,142.29
Construction Management	1,350,275.05
Legal Services	181,026.40
Financial Advisor	48,277.40
Appraisal Services	21,500.00
Consulting Services	56,713.41
Property Holding Costs	1,942.95
Trustee Fees	16,000.00
Total Eligible Expense	2,370,877.50

We certify that $101,279,533 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of SB 2020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

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

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

Sincerely,

Kent Costin

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

Required Local Approvals:

City of Fargo

Cass County Commission

Cass County Joint Water Resource Dist.

FM Metropolitan Area Flood Risk Management Project
Summary of Monthly Expense
December 2021

Account_Number		CheckDate	Invoice_Number	Check_Number	Vendor_Number	Vendor_Name	Transaction_Amount	Expense_Description	Project_Number	Project_Description
790-7915-429.33-05	33-05	12/16/2021	2213	316308	21007	HOUSTON-MOORE GROUP LLC	93,446.83	MISC EXPENSES	V01634	H&H MTIG. & PERMIT SUPPO
790-7915-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	72,271.95	MISC EXPENSES	V01633	DESIGN & CONST. SUPPORT
790-7920-429.33-05	33-05	12/16/2021	2213	316308	21007	HOUSTON-MOORE GROUP LLC	29,478.00	MISC EXPENSES	V01634	H&H MTIG. & PERMIT SUPPO
790-7920-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	24,457.87	MISC EXPENSES	V01633	DESIGN & CONST. SUPPORT
790-7930-429.33-05	33-05	12/16/2021	2213	316308	21007	HOUSTON-MOORE GROUP LLC	44,747.61	MISC EXPENSES	V01634	H&H MTIG. & PERMIT SUPPO
790-7930-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	14,011.70	MISC EXPENSES	V01633	DESIGN & CONST. SUPPORT
790-7950-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	12,280.03	MISC EXPENSES	V01633	DESIGN & CONST. SUPPORT
790-7952-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	7,764.87	MISC EXPENSES	V01633	DESIGN & CONST. SUPPORT
790-7955-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	27,803.85	MISC EXPENSES	V02827	IN TOWN LEVY MAINTENANCE
790-7990-429.33-05	33-05	12/16/2021	2212	316308	21007	HOUSTON-MOORE GROUP LLC	176.00	MISC EXPENSES	V01633	DESIGN & CONST. SUPPORT
790-7930-429.33-05	33-05	12/23/2021	1300386053	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	31,920.76	HDR ENGINEERING INC	V01201	Cass Joint Water ROE
790-7930-429.33-05	33-05	12/23/2021	11783.00-18	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	63,457.11	SRF CONSULTING GROUP INC	V01201	Cass Joint Water ROE
790-7930-429.33-05	33-05	12/30/2021	77790	316642	11604	ADVANCED ENGINEERING INC	129,111.07	FM AREA DIVERSION	V00302	PROGRAM MGMT SERVICES
790-7950-429.33-05	33-05	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	27,154.94	MOORE ENGINEERING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429.33-05	33-05	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	17,109.70	MOORE ENGINEERING INC	V05422	FLOOD MIT - NORTH SIDE
						Total Engineering	695,142.29			
790-7990-429.33-25	33-25	12/16/2021	600002103	316212	23319	ASHURST LLP	77,861.30	LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
790-7990-429.33-25	33-25	12/16/2021	600002245	316212	23319	ASHURST LLP	3,331.00	LEGAL COUNSEL	V03001	P3 LEGAL COUNSEL-ASHURST
790-7990-429.33-25	33-25	12/16/2021	10-Dec-21	316215	109	BANK OF NORTH DAKOTA	211.37	FEES-TRUSTEE COUNSEL	V08501	LEGAL REVIEW FEES
790-7950-429.33-25	33-25	12/16/2021	178784	316394	25474	RUSH RIVER WATER RESOURCE DISTRICT	126.00	REIMB OHNSTAD TWICHELL	V08801	RUSH RIVER DRAIN EXPENSE
790-7930-429.33-25	33-25	12/23/2021	178819	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	357.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178820	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	17,869.72	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178821	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	3,074.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178822	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,522.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178823	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	850.50	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178824	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,398.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178825	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	4,356.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178827	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	6,157.34	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178828	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	544.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178829	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	9,859.50	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178907	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	3,217.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178908	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	540.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178909	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	138.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178910	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	420.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178911	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	180.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178912	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	120.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178913	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,470.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178914	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,634.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178915	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,740.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178916	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	48.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178917	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	3,458.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178918	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,430.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178919	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	218.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178920	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	480.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178921	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	3,240.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178922	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	360.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178923	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,283.67	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178924	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	797.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178925	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,227.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178926	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,891.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	178927	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,059.00	OHNSTAD TWICHELL, P.C.	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795803	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,731.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795804	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	7,900.00	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795805	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	276.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795806	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	434.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795807	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	3,989.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795808	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,619.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795809	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	1,065.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795810	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	632.00	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795811	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	79.00	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7930-429.33-25	33-25	12/23/2021	795812	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	118.50	LARKIN HOFFMAN ATTORNEYS	V01201	Cass Joint Water ROE
790-7950-429.33-25	33-25	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	1,650.00	ERIK R JOHNSON & ASSOCIAT	V05418	FLOOD ACQUISITIONS
790-7950-429.33-25	33-25	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	3,461.50	P CARD BMO	V05418	FLOOD ACQUISITIONS
						Total Engineering Fees	181,026.40			
790-7930-429.33-32	33-32	12/23/2021	4592	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	21,500.00	CRON APPRAISALS, INC.	V01201	Cass Joint Water ROE
						Total Appraisal Services	21,500.00			
790-7990-429.33-47	33-47	12/9/2021	23	316154	24991	PROGRAM ADVISOR SERVICES, LLC	27,088.41	PROGRAM CONSULTING SERVIC	V05801	CONSULTING SERVICES
790-7990-429.33-47	33-47	12/16/2021	24	316381	24991	PROGRAM ADVISOR SERVICES, LLC	29,625.00	PROGRAM CONSULTING	V05801	CONSULTING SERVICES
						Total Consulting Services	56,713.41			
790-7920-429.33-79	33-79	12/30/2021	648414CH040	316664	20663	CH2M HILL ENGINEERS INC	581,744.41	PROGRAM MGMT & SERVICES	V00211	CH2M HILL-6/2019-12/2021

FM Metropolitan Area Flood Risk Management Project
Summary of Monthly Expense
December 2021

Account_Number		CheckDate	Invoice_Number	Check_Number	Vendor_Number	Vendor_Name	Transaction_Amount	Expense_Description	Project_Number	Project_Description
790-7920-429.33-79	33-79	12/30/2021	688414CH040	316664	20663	CH2M HILL ENGINEERS INC	734,008.41	SUPPORT SERVICES	V00212	P3 PROCUREMENT SUPPORT
790-7930-429.33-79	33-79	12/30/2021	688414CH040	316664	20663	CH2M HILL ENGINEERS INC	34,522.23	PROPERY ACQUISITION MGMT	V00210	CH2M HILL-LAND ACQUISITON
						Total Construction Mgmt Services	**1,350,275.05**			
790-7990-429.34-55	34-55	12/16/2021	US09U040001466	316273	23046	ERNST & YOUNG INFASTRUCTURE	48,277.40	FINANCIAL ADVISORY SERVIC	V03301	PPP FINANCL ADVISORY SVCS
						Total Financial Advisor	**48,277.40**			
790-7990-429.34-57	34-57	12/27/2021	0031463.9292	31463	16770	CITY OF FARGO AUDITORS OFFICE	16,000.00	BND TRUSTEE FEE 12/21	V08502	MONTHLY TRUSTEE FEE
						Total FMDA Trustee Fees BND	**16,000.00**			
790-7950-429.38-99	38-99	12/30/2021	WR# 5158	316659	201	CASS COUNTY FINANCE	2,835.00	GRAVEL WILD RICE INLET	V04201	DUST/TRAFFIC CONTRL-INLET
790-7950-429.38-99	38-99	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	23.00	SIMPLIFILE LC	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429.38-99	38-99	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	75.94	SIGN SOLUTIONS USA	V05410	FLOOD MIT-ELM CIRCLE AREA
						Total Other Services	**2,933.94**			
790-7930-429.41-05	41-05	12/23/2021	17374	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	26.73	CASS RURAL WATER USERS219	V01701	ND LAND PURCH-OUT OF TOWN
790-7950-429.62-50	62-50	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	30.60	XCEL ENERGY	V05418	FLOOD ACQUISITIONS
790-7950-429.62-51	62-51	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	136.48	XCEL ENERGY	V05418	FLOOD ACQUISITIONS
790-7930-429.62-51	62-51	12/23/2021	1108711	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	46.45	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.62-51	62-51	12/23/2021	1132169	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	37.29	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.62-51	62-51	12/23/2021	1160310	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	62.25	CASS COUNTY ELECTRIC COOP	V01701	ND LAND PURCH-OUT OF TOWN
790-7950-429.38-99	38-99	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	35.15	XCEL ENERGY	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429.38-99	38-99	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	1,568.00	P CARD BMO	V05413	FLOOD MIT-52ND AVE/UNV DR
						Total Property Holding Costs	**1,942.95**			
790-7930-429.67-11	67-11	12/23/2021	OIN 2185	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	365.00	DUANE & DONNA SIEBEL	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-11	67-11	12/23/2021	OIN 9401	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	27,740.67	MICHAEL & CHERYL POST	V01701	ND LAND PURCH-OUT OF TOWN
						Total Relocation Assistance - Residential	**28,105.67**			
790-7930-429.67-12	67-12	12/23/2021	OIN 1202	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	17,346.00	DAVE'S MACHINE SHOP	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-12	67-12	12/23/2021	OIN 1202	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	16,427.00	STATIC ELECTRIC CONSTRUCT	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-12	67-12	12/23/2021	OIN 1202	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	5,397.28	GLACIER ENTERPRISES	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.67-12	67-12	12/23/2021	OIN220	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	183,594.00	PRAIRIE SCALE	V01701	ND LAND PURCH-OUT OF TOWN
						Total Relocation Assistance - Commercial	**222,764.28**			
790-7930-429.71-30	71-30	12/23/2021	OIN 837	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	216,248.85	Dennis & Mary Hanson	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.71-30	71-30	12/23/2021	OIN5004,5009-	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	2,467,752.98	David Gemanson	V01701	ND LAND PURCH-OUT OF TOWN
790-7930-429.71-30	71-30	12/23/2021	OIN809	316494	19734	CASS COUNTY JOINT WATER RESOURCE DI	485,550.00	Karen Offutt	V01701	ND LAND PURCH-OUT OF TOWN
						Total Land Purchases	**3,169,591.83**			
790-7950-429.73-52	73-52	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	1,515,671.80	KEY CONTRACTING INC	V05422	FLOOD MIT - NORTH SIDE
790-7950-429.73-52	73-52	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	859,477.36	SELLIN BROS INC	V05407	FLOOD MIT-RIVERWOOD ADDTN
790-7950-429.73-52	73-52	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	65,332.45	KEY CONTRACTING INC	V05410	FLOOD MIT-ELM CIRCLE AREA
790-7950-429.73-52	73-52	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	1,484,289.26	MEYER CONTRACTING INC	V05411	FLOOD MIT-OAK GROVE AREA
						Total Flood Control	**3,924,770.87**			
790-7950-429.73-58	73-58	12/28/2021	ES12210015-9308	ES12210015	16770	CITY OF FARGO AUDITORS OFFICE	128,846.37	City of Fargo	V05419	STORM LIFT STATION #24
						Total Storm Sewer Systems	**128,846.37**			
790-7930-429.73-70	73-70	12/30/2021	10/5/2021	316660	9242	CASS RURAL WATER USERS DIST	1,540.00	UTILITY RELOCATION	V05003	SERVICE LINE ABONDONMENTS
790-7930-429.73-70	73-70	12/30/2021	10/5/2021	316660	9242	CASS RURAL WATER USERS DIST	1,540.00	UTILITY RELOCATION	V05003	SERVICE LINE ABONDONMENTS
790-7930-429.73-70	73-70	12/30/2021	10/5/2021	316660	9242	CASS RURAL WATER USERS DIST	1,540.00	UTILITY RELOCATION	V05003	SERVICE LINE ABONDONMENTS
790-7930-429.73-70	73-70	12/30/2021	11/5/2021	316660	9242	CASS RURAL WATER USERS DIST	1,540.00	UTILITY RELOCATION	V05003	SERVICE LINE ABONDONMENTS
						Total Utilities	**6,160.00**			
							9,854,050.46			

THE CITY OF Fargo FAR MORE

(9)

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

TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE KAC

RE: TRANSFER 710 LOFTS, LLC TAX INCREMENT FINANCING NOTE TO 710 HOLDINGS, LLC

DATE: JANUARY 18, 2022

The Developer for 710 Lofts, LLC is selling his property in February, 2022. This property has a tax increment financing revenue note executed June 8, 2015 that is currently outstanding. The original development agreement allows for the transfer of the TIF note to a subsequent owner. The owner desires to transfer the remaining balance of the TIF note to the purchaser.

The City Attorney reviewed this request including the Certificate of Organization for 710 Holdings, LLC and the purchase agreement.

Your approval is requested to transfer the TIF note payment obligation from 710 Lofts, LLC to 710 Holdings, LLC.

Suggested Motion:

Approve a transfer of the existing tax increment financing note from 710 Lofts, LLC to 710 Holdings, LLC.

710 Lofts, LLC

505 N. Broadway • Fargo, North Dakota • 58102
Phone: (701) 271-1551 Fax: (701) 235-5435

January 5, 2022

City of Fargo
225 4th Street North
Fargo, ND 58102

RE: Tax Increment Revenue Note of 2015
(District 2015-01)

To Whom It May Concern:

710 Lofts, LLC, as the Registered Owner of the above referenced Revenue Note, hereby requests that said Revenue Note be transferred to 710 Holdings, LLC as part of a sale of the Property scheduled to close on February 1, 2022, pursuant to a Purchase Agreement dated October 13, 2021, a copy of which is attached with this letter.

Please contact me with any questions or concerns.

Sincerely,

Kevin J. Bartram
President / Managing Partner
710 Lofts, LLC

State of North Dakota
SECRETARY OF STATE

Certificate of Organization
of
710 Holdings LLC

The undersigned, as Secretary of State of the state of North Dakota, hereby certifies that Articles of Organization for

710 Holdings LLC

duly signed and executed pursuant to the provisions governing a North Dakota limited liability company, have been received in this office and are found to conform to law.

ACCORDINGLY, the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Organization to

710 Holdings LLC

Effective date: November 30, 2021

Filed date: November 30, 2021

Alvin A. Jaeger
Secretary of State

PURCHASE AGREEMENT
AND
EARNEST MONEY CONTRACT

THIS PURCHASE AGREEMENT AND EARNEST MONEY CONTRACT ("Agreement") is made and entered into this Effective Date, by and between 710 Lofts LLC, whose post office address is 505 Broadway Fargo (hereinafter called Seller, whether one or more) and 710 Holdings LLC, and/or its assigns, whose post office address is 1351 PAGE DR STE 108 FARGO, ND (hereinafter called Buyer, whether one of more).

RECITALS

A. Seller is the owner in fee simple of real property located in the City of Fargo, County of Cass, State of North Dakota as more particularly described on attached Exhibit A ("Property").

B. Buyer desires to purchase the Property and the improvements thereon from Seller under the terms and conditions stated herein.

Section 1. Purchase Price. The purchase price for the Property is payable as follows:

(a) $____1,000.00_____ upon execution of this Agreement as earnest money, which will be deposited with a title company suitable to Buyer (the "Title Company"), held in escrow as required by this Agreement, credited against the purchase price, and subject to refund as set forth in this Agreement.

(b) The balance, subject to adjustments set out in this Agreement, at the closing by wire transfer, or other immediately collectible funds.

Section 2. Default. If all conditions under this Agreement are satisfied, should Buyer default in completing the terms and conditions of this Agreement, the earnest money paid by Buyer shall be forfeited as liquidated damages, and not as a penalty, as Seller's sole remedy. In establishing the amount of earnest money paid hereunder and in designating such as liquidated damages, both Seller and Buyer specifically acknowledge that actual damages resulting from Buyer's breach are impractical or extremely difficult to ascertain. A reasonable endeavor was made by Seller and Buyer to fix a fair and reasonable compensation for Buyer's breach and the amount thus established is acknowledged by both Seller and Buyer to bear a reasonable relation to probable damages and is not disproportionate to any damages that could reasonably be anticipated. Should Seller default in completing the terms and conditions of this Agreement, Buyer, as its sole remedy, may terminate this Agreement and receive a refund of the earnest money paid hereunder.

Section 3. State of Title. The Property is sold subject to the following existing as of closing (collectively the "Permitted Exceptions"):

(a) Building and zoning regulations, and ordinances which are not violated by existing structures.

(b) All easements of record.

(c) All covenants and restrictions of record.

(d) Real estate taxes and installments of special assessments not yet due and payable.

(e) Mineral interest reservations of record.

(f) Any other matters not objected to by Buyer in accordance with Section 7 below.

Section 4. Representations and Warranties.

(a) Seller is the sole owner of the Property, and has full power, authority and right to execute, deliver and perform this Agreement.

(b) Seller is not bound by any other contract for the sale of the Property, nor, to the best of Seller's knowledge, are there any rights of first refusal or options to the purchase of the Property or any other rights of others that might prevent the consummation of this Agreement.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) Intentionally Deleted.

(f) No person has provided labor or material for the Property at the request or on behalf of Seller within 90 days prior to closing whose claim for such labor or material has not been fully paid.

(g) Intentionally Deleted.

(h) No litigation is pending or to the best of Seller's knowledge, proposed, threatened, or anticipated with respect to any matters affecting the property or the operation thereof.

The above warranties and representations shall survive the closing for a period of six (6) months.

Section 5. Inspection Period: Rights of Cancellation. For a period of 120 days after the Effective Date (the "Due Diligence Period"), Buyer shall have the right to inspect the Property for the purpose of performing, or causing to be performed, any inspections of the Property as Buyer shall consider appropriate. Provided Buyer has not cancelled or terminated this Agreement as of the end of the Due Diligence Period, all earnest money shall become non-refundable and shall be applied to the purchase price at closing. Buyer may terminate and cancel this Agreement during the Due Diligence Period in Buyer's sole discretion, by giving Seller written notice to terminate and cancel this Agreement prior to the expiration of the Due Diligence Period, whereupon the earnest money shall be released to Buyer.

During the Due Diligence Period, Buyer shall have the right to enter upon the Property at all reasonable times and upon reasonable notice to the Seller for the purpose of performing or causing to be performed non-destructive, non-invasive investigatory work as Buyer shall consider appropriate. During any such entry, Buyer shall not unreasonably interfere with Seller's use and/or occupancy of the Property. With respect to such inspections and investigations, Buyer shall indemnify, defend, and hold Seller harmless from and against all claims, damages, or losses incurred to the Property or anyone on the Property as a result of the action taken by Buyer, or any of its agents, representatives, or contractors. Buyer shall repair and restore any damage to the Property caused by Buyer's investigation or testing at Buyer's expense.

Within five (5) days after the Effective Date, Seller shall furnish to Buyer the following (to the extent the items exist and are in Seller's possession) at Seller's sole cost and expense (collectively, the "Property Data"):

(a) A list and copies of all written contracts, service agreements, leases, licenses, registrations relating to the Property.

(b) Copies of any and all environmental, asbestos, ADA, engineering, mechanical, electrical, structural, blueprints and site plans, soils, or other similar reports covering all or any portion of the Property as Seller has in its possession.

(c) Inspection reports with respect to the Property from government entities.

(d) Copy of any prior title commitment.

(e) Copy of any survey in the Seller's possession.

(f) Copy TIF

In the event that Buyer terminates and cancels this Agreement, all Property Data including any copies thereof made by Buyer shall be immediately returned to Seller. Buyer agrees to maintain strict confidentiality with respect to all Property Data.

Section 6. Closing of Title. Closing and possession of the Property shall occur on or before 2/1/2022, subject to any extension of time in the event title to the Property should be found unmarketable, and subject to change by mutual agreement of Seller and Buyer.

Section 7. Conveyance of, and Examination of Title. Seller shall convey the Property to Buyer by Warranty Deed, subject to Permitted Exceptions. Within a reasonable time after the acceptance of this Agreement, Seller shall furnish Buyer with a commitment (the "Commitment") for an ALTA 2006 owner's policy of title insurance issued by the Title Company, committing the Title Company to insure good and marketable title to the Property, free of liens, mortgages, charges and encumbrances, subject only to the Permitted Exceptions, together with copies of any documents listed in Schedule B of the Commitment. Buyer may obtain a survey of the Property (the "Survey"). Buyer shall have ten (10) business days after receipt of the Commitment (and the Survey, if one is obtained) to provide Seller with a copy of the Commitment and the Survey, and written objections (the "Objections"). Buyer shall be deemed to have waived any Objection not made within the ten (10) day period.

If any Objections are made, Seller shall be allowed up to thirty (30) days (during which time the closing date shall be postponed if necessary) in which to attempt to cure (through reasonable and customary means) the Objections if Seller elects to do so (in Seller's sole and absolute discretion), provided, however, the closing date shall not be extended more than 30 days from the date of delivery of the Objections, and provided further, and notwithstanding anything to the contrary contained in this Agreement, Seller shall have no obligation to remove, satisfy or correct any Objections whatsoever. If Seller elects not to cure any one or more Objections, which election shall be by written notice to Buyer given at any time following receipt of the Objections ("No Cure Notice"), or if any Objections Seller elects to cure in writing are not corrected within thirty (30) days following Seller's receipt of the Objections for any reason, then in either such case, Buyer may, at its option and as its sole remedy, terminate this Agreement by written notice to Seller delivered not later than 5 days following the earlier of (a) the date on which Buyer receives a No Cure Notice from Seller, or (b) the 30th day following Seller's receipt of the Objections (as applicable, the "Title Deadline"), and upon such termination made prior to the Title Deadline all earnest money shall be promptly refunded to Buyer and neither party hereto shall have any further obligations to the other party hereunder except for those obligations that are expressly stated to survive termination of this Agreement. If Buyer does not terminate this Agreement pursuant to this paragraph by written notice delivered to Buyer not later than the Title Deadline, then Buyer shall be deemed to have waived any remaining Objections and shall be obligated to proceed to Closing, in which event Seller shall have no further liability for any such Objections, all of which shall be deemed Permitted Exceptions.

Section 8. Express Conditions. In addition to the express condition in Section 5 above, it shall be a condition to Buyer's obligation to close title that:

(a) The representations and warranties of Seller set forth herein shall be true as of the closing date.

(b) The covenants of Seller set forth herein shall have been complied with as of the closing date.

(c) Title shall be in the condition required by Section 7.

(d) Seller shall deliver possession of the Property to Buyer on the closing date in the condition required by this Agreement and in accordance with the terms, covenants, and conditions of this Agreement.

(e) On or before expiration of the Due Diligence Period, Buyer shall obtain financing acceptable to Buyer. Buyer agrees to furnish Seller with a written loan commitment within the Due Diligence Period.

In the event that any of the aforesaid conditions are not true or have not been complied with on the closing date or such other date as is specified, Buyer shall be entitled to terminate this Agreement by written notice to Seller, and all earnest money shall be immediately returned to Buyer.

Section 9. Environmental Compliance. Seller represents and warrants to Buyer that, to the best of Seller's knowledge:

(a) There is no pending claim, lawsuit, proceeding or other legal, quasi-legal, or administrative challenge concerning the Property or the operation thereof or any condition thereon, and no such claim, lawsuit, proceeding, or challenge is threatened by any person or entity.

(b) Intentionally Deleted.

(c) Seller has not installed in the Property any electrical transformers, fluorescent light fixtures or other electrical equipment containing PCBs.

(d) Seller has received no notice from any governmental authority claiming any violation of any statute, ordinance or regulation or noting any need for repair, construction, alteration, or installation with respect to the Property or requiring any change in the means or methods of those conducting operation thereon.

(e) There are no hazardous wastes, substances, underground tanks, or contaminants on, in, under or about the subject Property except as disclosed in the Property Data. Further, Seller has not disposed of any hazardous substances in, on or above the Property, nor has Seller or Seller's affiliates ever used the property for the storage, manufacture, disposal, handling, transportation or use of any hazardous substances or wastes. For the purposes of this paragraph, the term ""hazardous substances" shall mean and refer to asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear

fuels or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products and any pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or a contaminant in, or the release or disposal of which is regulated by any environmental law.

(f) All underground storage tanks located on the property, if any, have been properly registered with all appropriate regulatory and governmental bodies and are otherwise in compliance with all Federal, State, and local statutes, regulations, ordinances, and other regulatory requirements.

(g) There are no wells located on the Property.

(h) The Property has not been used for the production of methamphetamines.

Section 10. Personal Property. No personal property is included in the sale transaction described in this Agreement.

Section 11. Buyer and Seller General Indemnifications. Subject to the express provisions of this Agreement, Buyer agrees to indemnify, to defend, and to hold Seller harmless from all claims, demands, actions, causes of action and suits of any nature whatsoever arising out of or relating to its ownership and/or operation of the Property on and after the closing, and any and all activities relating thereto.

Subject to the express provisions of this Agreement, Seller agrees to indemnify, to defend, and to hold Buyer harmless from all claims, demands, actions, causes of action and suits of any nature whatsoever arising out of or relating to its ownership and/or operation of the Property prior to closing, and any and all activities relating thereto.

Section 12. Prorations.

(a) **General.** For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which the closing occurs. All prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed prior to the closing date.

(b) **Intentionally Deleted.**

(c) **Taxes and Special Assessments**. The parties shall prorate all taxes due and payable in the closing year, on a calendar year basis, utilizing actual final tax bills if available at closing. If final tax bills are not available, the parties shall prorate taxes on the basis of the projected taxes if a projection is available from the applicable taxing authority or, if a projection is not available, on the basis of the most

recent final tax bills. Seller shall pay all taxes for years prior to the closing year. If after closing either party receives a refund of any taxes that were prorated pursuant to this Agreement, then the parties shall equitably share the refund. Regarding special assessments, it is the intent of the parties to prorate any installments of special assessments that are due and payable in the closing year, and that Buyer shall be solely responsible for all remaining future installments of any such special assessments.

(d) **Operating Expenses and Service Contracts.** All operating expenses shall be prorated to the date of closing. If actual invoices for operating expenses are not available in advance of closing, then the proration shall be calculated based on Seller's and Buyer's good faith estimates thereof. Buyer shall coordinate the transfer of all such utilities to Buyer effective on expiration of the Lease.

(e) **Intentionally Deleted.**

(f) **Post-Closing Reconciliation.** As soon as reasonably possible after closing, but in no event more than 90 days after closing, the parties shall work in good faith to complete a reconciliation of all prorations ("Reconciliation"). If there is an error on the proration statement used at closing or, if after the actual figures are available as to any items that were estimated on the proration statement, then the proration or apportionment shall be adjusted based on the actual figures. Either party owing the other party a sum of money based on the Reconciliation shall pay said sum to the other party within five (5) business days of the completion of the Reconciliation. This subsection shall survive the closing.

Section 13. Section 1031 Exchange. The parties agree to cooperate with each other if either or both of them elect to consummate the transaction contemplated by this Agreement in a manner intended to qualify as a like-kind exchange of property pursuant to Section 1031 of the Internal Revenue Code of 1986 as amended, including, without limitation, so-called "reverse exchanges", which cooperation shall include executing documents in connection with the exchange.

Section 14. Seller's Closing Deliveries. Seller shall obtain and deliver to Buyer at the closing the following documents (all of which shall be duly executed and, if required for recording, acknowledged, which documents Buyer agrees to execute and acknowledge where required):

(a) A Warranty Deed, conveying to Buyer all of Seller's right, title, and interest in and to the Property, subject only to the Permitted Exceptions.

(b) A Non-Foreign Certificate.

(c) The Lease described in Section 17.

(d) Such further documents as Buyer or the Title Company may reasonably request to carry out the provisions of this Agreement.

Section 15. Buyer's Closing Deliveries. Buyer shall deliver to Seller at closing:

(a) The consideration, as prorated and allocated pursuant to this Agreement.

(b) The Lease.

(c) Such further documents as Seller or the Title Company may reasonably request to carry out the provisions of this Agreement.

Section 16. Closing Costs. Closing costs shall be allocated as follows:

To Seller:

(a) Real estate commission.

(b) Fees for preparation of the Commitment.

(c) Preparation of Warranty Deed.

(d) Preparation of and recording expense of all Releases, Satisfactions, and corrective documents.

(e) One-half of the fees charged for closing by a closing company.

(f) Cost of own attorney.

To Buyer:

(a) Preparation of the Survey, if any.

(b) Recording of Warranty Deed.

(c) Title insurance premium (if any).

(d) One-half of the fees charged for closing by a closing company.

(e) Cost of own attorney.

Any closing costs not specifically listed shall be the responsibility of the party ordering such item or contracting therefore.

Section 17. Lease Back. Intentionally Deleted.

Section 18. Intentionally Deleted.

Section 19. Attorney's Fees to Prevailing Party. In the event of any litigation between the parties hereto under any of the provisions of this Agreement, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in such litigation. The parties agree that the court presiding over the litigation shall determine whether a party is a "prevailing party," and shall determine the reasonable amount of attorney's fees and costs recoverable. The parties agree that the amount of attorney's fees and costs which may be awarded must bear a reasonable relationship to, and must be limited by the court to a reasonable amount in view of, the amount recovered by the prevailing party in such matter.

Section 20. Damage or Destruction. Seller shall bear all risk of loss to the Property until the closing date. If, between the Effective Date and the closing date, all or any portion of the Property is damaged or destroyed by fire or other casualty and the cost to repair and restore the Property is more than fifty percent (50%) of the purchase price, then either party at its sole discretion may elect to terminate this Agreement without cost, obligation, or liability on such party's part, in which event all rights and obligations of the parties hereunder shall cease and the earnest money will be returned to Buyer. If either this Agreement is not terminable in accordance with the foregoing, or is terminable but is not terminated, then Seller shall, upon closing, assign to Buyer all of Seller's right, title, and interest in and to any insurance proceeds, including without limitation any rent loss insurance proceeds (except for proceeds for rent losses prior to closing), payable as a result of such damage or destruction, plus Seller shall pay to Buyer the amount of any deductible losses under such insurance policies and at closing shall have no further repair or restoration obligations. Seller shall fully advise Buyer regarding the insurance policies covering such damage or destruction and the probable amount of any insurance proceeds payable as a result of such damage or destruction. Buyer shall notify Seller within fifteen (15) days after receipt of written notice from Seller of such damage or destruction of its election. If Buyer fails to notify Seller of its election within said 15-day period, such failure shall constitute an election to terminate this Agreement as aforesaid. The closing date shall be adjusted, if necessary, to allow for such election.

Section 21. Miscellaneous.

(a) Time is of the essence in the Agreement.

(b) This Agreement may not be altered, amended, changed, waived, or modified in any respect or particular unless the same shall be in writing signed by Seller and Buyer.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

(d) Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

(e) This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed to be an original for all purposes and all such counterparts shall, collectively, constitute one agreement. The parties agree that the electronic signature of any party on any document related to this transaction constitutes a valid and binding signature.

(f) Buyer may assign its rights under this Agreement to any entity controlling, controlled by or under common control with Buyer; provided, however, no assignment shall relieve Buyer of its obligations under this Agreement.

(g) All notices or other communications required under this Agreement shall be in writing and shall be deemed duly given and received when delivered in person (with receipt therefor), on the next business day after deposit with a recognized overnight delivery service, or on the second day after being sent by certified or registered mail, return receipt requested, postage prepaid, to the following addresses:

If to Landlord:

_____
_____
_____
_____

If to Tenant:

_____
_____
_____
_____

Either party may change its address for the giving of notices by written notice given in accordance with this Section.

[Remainder of this page intentionally left blank; signatures to follow]

IN WITNESS WHEREOF Seller and Buyer have duly executed this Agreement on the date first above written.

SELLER

710 Lofts, LLC

By: [illegible]

Its: Pres. Date: 10-13-21

BUYER

710 Hoomes LLC

By: [illegible]

Its: President Date: 10-13-21

EXHIBIT A

Legal Description of Property

Lots 17 and 18 and the North 40 feet of Lots 1 and 2, except the North 20 feet of the East 20 feet of Lot 2, in Block 4, Harwood's First Addition to the City of Fargo, Cass County, North Dakota.

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

(10)

Fargo Cass Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 14, 2022

RE0: AGREEMENT FOR SERVICES WITH SARA MWAGURA FOR CHILD CARE PHYSICAL ACTIVITY HEALTH CODE TRAINING FOR $600

The attached Agreement for Services with Sara Mwagura is for a maximum of $600 for assistance administration and instruction of Child Care Physical Activity Health Code training and provide data on the numbers attending.

No budget adjustment is required for this contract.

Suggested Motion: Move to approve the Agreement for Services with Sara Mwagura.

DF/lls
Enclosure

AGREEMENT FOR SERVICES

THIS AGREEMENT, effective the 1st day of February, 2022, by and between Fargo Cass Public Health ("FCPH"); and Sara Mwagura, (Independent Contracting Educator).

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 February 1, 2022, through October 31, 2022.

B. **Services to be provided by independent contractor:** Administration and instruction of Child Care Physical Activity Health Code training, and provide data on the numbers attending.

C. **Reimbursement:** The contracting consultant shall be reimbursed $150.00 per hour and submit an invoice, not to exceed 4 hours or $600.00

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The 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 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.

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_____

CONSULTANT

By Sara Mwagura

Sara Mwagura, Independent Contractor

Date 1/7/2022

By_____

Timothy J. Mahoney, Mayor, City of Fargo

Date_____

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

(11)

Fargo Cass Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 14, 2022

RE: AGREEMENTS FOR INDEPENDENT CONTRACTORS TO SERVE AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT TESTING SITE

The attached agreements for services are for the below listed independent contractors to serve as the Logistics and Operations Support for the COVID-19 Testing Site. The pay is for $23.00 an hour, overtime at the rate of $34.50 an hour, if an individual is doing swabbing they will be compensated at $30.00 an hour, overtime rate of $45.00. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost per individual will not exceed a total of $9,900.

Independent Contractors:

Tenezee Steele	David Hoffmann	Chad Simmons
Crystal Amundson	Amanda Marinucci	

No Budget Adjustments

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

Suggested Motion: Move to approve the agreements with the above listed independent contractors.

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 3rd day of January, by and between Fargo Cass Public Health ("FCPH"); and Tenezee Steele.

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 3, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. They will be responsible for services including all testing event supplies and logistics support.

C. **Reimbursement:** Tenezee Steele shall be reimbursed for the above services rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50, not to exceed a total of $9,900 for total project detailed.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming
Director of Public Health

Date 1/18/2022

INDEPENDENT CONTRACTOR

Tenezee Steele
Independent Contractor

Date 01-11-22

Timothy J. Mahoney
Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 13th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and David Hoffmann

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 13, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** David Hoffmann shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50, for swabbing $30.00 an hour with any hours swabbing worked over 40 hours per week being reimbursed at $45.00 an hour, not to exceed a total of $9,900 for total project detailed.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming
Director of Public Health

Date 1/18/2022

INDEPENDENT CONTRACTOR

David Hoffmann
Independent Contractor

Date 1-13-2022

Timothy J. Mahoney
Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health Prevent. Promote. Protect.

THIS AGREEMENT, effective the 3rd day of January, by and between Fargo Cass Public Health ("FCPH"); and Chad Simmons.

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 3, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. They will be responsible for services including all testing event supplies and logistics support.

C. **Reimbursement:** Chad Simmons shall be reimbursed for the above services rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50, not to exceed a total of $9,900 for total project detailed.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming
Director of Public Health

Date 1/18/2022

INDEPENDENT CONTRACTOR

Chad Simmons
Independent Contractor

Date 1/5/2022

Timothy J. Mahoney
Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health Prevent. Promote. Protect.

THIS AGREEMENT, effective the 1st of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Crystal Amundson

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 1, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** Crystal Amundson shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50, for swabbing $30.00 an hour with any hours swabbing worked over 40 hours per week being reimbursed at $45.00 an hour, not to exceed a total of $9,900 for total project detailed.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming
Director of Public Health

Date 1/18/2022

INDEPENDENT CONTRACTOR

Crystal Amundson

Crystal Amundson
Independent Contractor

Date 1-4-2021

Timothy J. Mahoney
Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 3rd day of January, by and between Fargo Cass Public Health ("FCPH"); and Amanda Marinucci.

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 3, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. They will be responsible for services including all testing event supplies and logistics support.

C. **Reimbursement:** Amanda Marinucci shall be reimbursed for the above services rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50, not to exceed a total of $9,900 for total project detailed.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming
Director of Public Health

Date 1/18/2022

INDEPENDENT CONTRACTOR

Amanda Marinucci

Amanda Marinucci
Independent Contractor

Date 1/5/2022

Timothy J. Mahoney
Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

(12)

Fargo Cass Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 19, 2022

RE: AGREEMENTS FOR INDEPENDENT CONTRACTORS TO SERVE AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT TESTING SITE

The attached agreements for services are for the below listed independent contractors to serve as the Logistics and Operations Support for the COVID-19 Testing Site. The pay is for $23.00 an hour, overtime at the rate of $34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost per individual will not exceed a total of $9,900.

Independent Contractors:

Danek Vega	Brady Jochim	Marilyn Ouart
Julia Ressler	Braden Knudtson	

No Budget Adjustments

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

Suggested Motion: Move to approve the agreements with the above listed independent contractors.

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 18th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Danek Vega

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 18, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** Danek Vega shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming, Director of Public Health

Date 1/19/2022

Timothy J. Mahoney, Mayor, City of Fargo

Date_____

INDEPENDENT CONTRACTOR

Danek Vega

Danek Vega
Independent Contractor

Date 1/18/22

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health Prevent. Promote. Protect.

THIS AGREEMENT, effective the 18th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Brady Jochim

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 18, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** Brady Jochim shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming, Director of Public Health

Date 1/19/2022

Timothy J. Mahoney, Mayor, City of Fargo

Date

INDEPENDENT CONTRACTOR

Brady Jochim

Brady Jochim
Independent Contractor

Date 1/18/22

AGREEMENT FOR SERVICES

THIS AGREEMENT, effective the 18th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Marilyn Ouart

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 18, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** Marilyn Ouart shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming, Director of Public Health

Date 1/19/2022

INDEPENDENT CONTRACTOR

Marilyn Ouart

Marilyn Ouart
Independent Contractor

Date 1/18/22

Timothy J. Mahoney, Mayor, City of Fargo

Date

AGREEMENT FOR SERVICES

THIS AGREEMENT, effective the 18th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Julia Ressler

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 18, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** Julia Ressler shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming, Director of Public Health

Date 1/19/2022

INDEPENDENT CONTRACTOR

Julia Ressler

Julia Ressler
Independent Contractor

Date 1/18/2022

Timothy J. Mahoney, Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 18th of January, 2022, by and between Fargo Cass Public Health ("FCPH"); and Braden Knudtson

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 18, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. The independent contractor will be responsible for services for testing site support such as demographics. Contractor will also provide swabbing services at a different hourly rate.

C. **Reimbursement:** Braden Knudtson shall be reimbursed for the above services (demographics) rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming, Director of Public Health

Date 1/19/2022

Timothy J. Mahoney, Mayor, City of Fargo

Date

INDEPENDENT CONTRACTOR

Braden Knudtson

Braden Knudtson
Independent Contractor

Date 1/18/2022

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

13

Fargo Cass Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 18, 2022

RE: NOTICE OF GRANT AWARD FROM NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR CHILDHOOD OBESITY PREVENTION $15,000. GRANT NUMBER G21.605 CFDA 93.994

The following Notice of Grant Award for $15,000 from the North Dakota Department of Health and Human Services is for the grantee to carry out the childhood obesity prevention program in accordance with the work plan that was approved.

No budget adjustment

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

Suggested Motion: Move to approve the award from North Dakota Department of Health and Human Services

DF/lls
Enclosure

NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53771 (01-2020)

Grant Number G21.605	CFDA Name Maternal and Child Health Block Grant to the States		CFDA Number 93.994
FAIN Number B0440153	Grant Type (Check One) ☒ Program ☐ R&D	Grant Start Date 2/1/2022	Grant End Date 9/30/2022
Federal Award Date 10/29/2020	Federal Awarding Agency Department of Health and Human Services		

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 Childhood Obesity Prevention	North Dakota Department of Health (NDDoH) Project Code 4551 HLH 5131 05
Grantee Name Fargo Cass Public Health	Project Director Mikaela Schlosser
Address 1240 25th Street South	Address 600 East Boulevard Ave., Dept. 301
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0200
Contact Name Larry Anenson	Contact Name Mikaela Schlosser
Telephone Number 701-241-8575	Telephone Number 701-328-4529
Email Address LAnenson@FargoND.gov	Email Address mlschlosser@nd.gov

	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	$15,000	$11,250	$26,250
Previous Funds Awarded	$0	$0	$0
Total Funds Awarded	$15,000	$11,250	$26,250
Indirect Rate (Check One)	☒ Subrecipient waived indirect costs	☐ De minimus rate of 10%	☐ Negotiated/Approved rate of ____%

Scope of Service

Grantee agrees to carry out the childhood obesity prevention program in accordance with the activities stated in the work plan submitted by Grantee and as approved by the Department.

Reporting Requirements

Reimbursement will be processed upon Department approval of expenditure, progress and data reports.
Reporting Requirements are further defined in Attachment A.

Special Conditions

Special Conditions are defined in Attachment B.

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 NDDoH as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Fiscal Services Use Only: ☒ Requirements Received; ☒ Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 1/18/2022	Signature Desi Fleming	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Director, Division of Family Health and 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., Chief of Staff	

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
G21.605
ATTACHMENT B

Special Conditions

- The Title V Maternal and Child Health (MCH) funds will be used primarily for preventive services such as those related to the identified state priorities. Title V MCH prohibits exclusion from participation, denial of benefits, or discrimination in any program or activity funded in whole or in part with Title V MCH monies on the basis of race, color or national origin, sex, age, religion or handicapping conditions.
- Grantee has 25 percent budget flexibly for approved line items. Anything over 25 percent must be approved by Project Director.
- Grantee is required to use the following language (italicized below) when issuing statements, press releases, requests for proposals, bid solicitations, and other Health Resources and Services Administration (HRSA) supported publications and forums describing projects or programs funded in whole or in part with HRSA funding, including websites. Examples of HRSA-supported publications include, but are not limited to, manuals, toolkits, resource guides, case studies and issues briefs.

This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) grant, Maternal and Child Health Services. This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

(14)

Fargo Cass Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 14, 2022

RE: NOTICE OF GRANT AWARD AMENDMENT FROM THE NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR TITLE X FAMILY PLANNING PROGRAM G19.1240A CFDA NO. 93.217, ADDITIONAL $7,500

This is a request to approve the additional funds being received from the ND Department of Health and Human Services to support the Title X Family Planning Program at Fargo Cass Public Health. The funding amount is $7,500.

2022 Revenue		
Family Planning	**101-0000-331-12-03**	**$2500**
2022 Expense		
General Supplies	**101-6040-451-61-40**	**$2500**

If you have questions, please contact Desi Fleming at 241.1380.

Suggested Motion: Move to approve the additional grant funds from the North Dakota Department of Health and Human Service for Title X Family Planning funds.

DF/lls
Enclosure

NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53771 (01-2020)

Grant Number G19.1240A	CFDA Name Family Planning – Services		CFDA Number 93.217
FAIN Number FPHPA006472	Grant Type (Check One) ☒ Program ☐ R&D	Grant Start Date 4/1/2021	Grant End Date 3/31/2022
Federal Award Date 03/26/2021	Federal Awarding Agency Department of Health and Human Services		

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 Title X Family Planning Program	North Dakota Department of Health (NDDoH) Project Code 4551 HLH 5112 01
Grantee Name Fargo Cass Public Health	Project Director Cora Rabenberg
Address 1240 25th Street S	Address 600 E. Boulevard Ave., Dept. 301
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0200
Contact Name Desi Fleming	Contact Name Cora Rabenberg
Telephone Number 701-241-1360	Telephone Number 701-328-4535
Email Address dfleming@fargond.gov	Email Address crabenberg@nd.gov

	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	$7,500	$0	$7,500
Previous Funds Awarded	$214,888	$0	$214,888
Total Funds Awarded	$222,388	$0	$222,388
Indirect Rate (Check One)	☒ Subrecipient waived indirect costs	☐ De minimus rate of 10%	☐ Negotiated/Approved rate of %

Scope of Service
This amendment provides additional funding of $2,500 to support the expanding provision of Title X family planning services and $5,000 to support the FPAR 2.0 transition. All other scope of service requirements of the original agreement remain the same.

Reporting Requirements
All reporting requirements of the original agreement remain the same.

Special Conditions
Not applicable.

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 NDDoH as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Fiscal Services Use Only: ☒ Requirements Received; ☒ Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 1/18/2022	Signature Desi Fleming	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Director, Division of Family Health and Wellness	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Brenda M. Weisz, Chief Financial Officer	

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.

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

(15)

Fargo Cass Public Health
Prevent. Promote. Protect.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 19, 2022

RE: AGREEMENT FOR INDEPENDENT CONTRACTORS TO SERVE AS LOGISTICS AND OPERATIONS SUPPORT FOR THE COVID-19 INCIDENT TESTING SITE

The attached agreement for services are for the below listed independent contractors to serve as the Logistics and Operations Support for the COVID-19 Testing Site. The pay is for $23.00 an hour, overtime at the rate of $34.50 an hour. The cost of this contract will be covered by Local Public Health COVID-19 funding. The cost per individual will not exceed a total of $9,900.

Independent Contractors:
Kayla Dahlquist

No Budget Adjustments

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

Suggested Motion: Move to approve the agreements with the above listed independent contractors.

DF/lls
Enclosure

THE CITY OF Fargo FAR MORE

AGREEMENT FOR SERVICES

Fargo Cass Public Health
Prevent. Promote. Protect.

THIS AGREEMENT, effective the 3rd day of January, by and between Fargo Cass Public Health ("FCPH"); and Kayla Dalquist.

NOW, THEREFORE, it is hereby agreed by and between the parties here to as follows:

A. **Term of Agreement:** The parties entered into a written agreement for the period of January 3, 2022 through December 31, 2022.

B. **Services to be provided by independent contractor:** Independent contractor will serve as the Logistics and Operations Support for the COVID-19 Incident Command. They will be responsible for services including all testing event supplies and logistics support.

C. **Reimbursement:** Kayla Dalquist shall be reimbursed for the above services rendered, at $23.00 per hour, hours worked over 40 hours per week will be reimbursed at $34.50, not to exceed a total of $9,900 for total project detailed.

D. **Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.

E. **Confidentiality:** The Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any protected health information (PHI) or any other confidential information to any person or entity without consent unless disclosure relates to the performance of their job duties. This information may be in any form, written, electronic, oral, overheard or observed. Confidential information is only accessed on a need-to-know basis as required for assigned job duties. Violation of confidentiality may result in immediate termination and be subject to criminal or civil penalties.

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 an employee of Fargo Cass Public Health for any other purpose.

B. The laws of the State of North Dakota shall govern this service agreement. 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.

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

Desi Fleming

Desi Fleming, Director of Public Health
Director of Public Health

Date 1/19/2022

INDEPENDENT CONTRACTOR

Kayla Dalquist

Kayla Dalquist
Independent Contractor

Date 19 Jan 22

Timothy J. Mahoney, Mayor, City of Fargo

Date

THE CITY OF Fargo FAR MORE

Fargo Cass Public Health
1240 25th Street South
Fargo, ND 58103-2367
Phone: 701.241.1360 | Fax: 701.298.6929
www.FargoCassPublicHealth.com

(16)

Fargo Cass Public Health
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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 19, 2022

RE: ND DEPARTMENT OF HEALTH FOR INCREASING TB INFECTION IDENTIFICATION AND TREATMENT FOR $27,820. GRANT NUMBER G21.585 NO. 93.116

The attached grant from North Dakota Department of Health is for the targeted testing for TB infection identification and treatment.

2022 Revenue

TB	**101-0000-331-12-07**	**$10,820**

If you have any questions please contact me at 241.1380.

Suggested Motion: Move to approve the TB Infection Identification and Treatment grant

DF/lls
Enclosure

NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53771 (01-2020)

Grant Number G21.585	CFDA Name Project Grants and Cooperative Agreements for Tuberculosis Control Programs		CFDA Number 93.116
FAIN Number NU52PS910216	Grant Type (Check One) ☒ Program ☐ R&D	Grant Start Date 1/17/2022	Grant End Date 12/31/2022
Federal Award Date 12/16/2021	Federal Awarding Agency Centers for Disease Control and Prevention		

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 Increasing TB Infection Identification and Treatment	North Dakota Department of Health (NDDoH) Project Code 2201 HLH3392-01 $17,820 ; 2201 HL1243-04 $10,000
Grantee Name Fargo Cass Public Health	Project Director Lindsey VanderBusch
Address 1240 25th St S	Address 600 E Boulevard Ave Dept 301
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505
Contact Name Desi Fleming	Contact Name Lindsey VanderBusch
Telephone Number 701.241.1380	Telephone Number 701.328.4555
Email Address dfleming@fargond.gov	Email Address lvanderbusch@nd.gov

	NDDoH Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	$27,820	$0	$27,820
Previous Funds Awarded	$0	$0	$0
Total Funds Awarded	$27,820	$0	$27,820
Indirect Rate (Check One)	☐ Subrecipient waived indirect costs	☒ De minimus rate of 10%	☐ Negotiated/Approved rate of ____%

Scope of Service

Grantee agrees to: 1) direct TB screening activities ONLY to populations determined at high-risk* for TB within their jurisdiction; 2) provide appropriate referral and follow-up for persons identified with latent TB infection; 3) assure that at least 90% of persons identified with TB infection at the agency initiate and complete treatment; 4) conduct all activities in accordance with the Centers for Disease Control and Prevention (CDC) and the ND Department of Health's recommendations and guidelines; 5) conduct all activities with the involvement of health care professionals trained and/or with experience with TB screening procedures; and 6) submit request for reimbursement on a quarterly basis no later than 15 days after the end of each quarter and other documentation as requested by the TB program via the PRS system.

Reporting Requirements

Quarterly expenditure and progress reports are due 15 days after the end of each quarter. Reimbursement will be processed upon Department approval of expenditure and progress reports. Expenditure report for the period ending June 30, 2022 must be received by July 15, 2022. The final expenditure report ending December 31, 2022 must be received by February 15, 2023.

Special Conditions

Funding for this Grant is restricted to 25% of the total award until such time as the Federal Award is received and processed by the Department. During this restriction, Grantee expenditures will be limited to salaries and fringe, routine in-state travel, standard utilities, and rent. Financial obligation of the Department is contingent upon funds being made available by the Centers for Disease Control and Prevention. The Department will send notification to the Grantee when the restriction has been lifted. This notification serves as official documentation and should be filed with the Purchase of Service Agreement for documentation.

*High-risk populations: refugees, migrants, or recent arrivals from high incidence countries high-risk racial/ethnic populations within the jurisdiction the homeless; injection drug users; recent contacts of an active TB case. Residents of high-risk congregate settings (i.e. jail/prison populations, nursing homes (not employees) and other long-term care facilities for the elderly hospitals (not employees) and other health-care facilities (not employees), residential facilities and homeless shelters) and persons with clinical conditions that place them at high-risk (i.e. people living with HIV/AIDS, other immunosuppressive conditions, or persons with abnormal chest x-rays, etc.). Expenses incurred related to the scope of service of this agreement will be reimbursed as early as 1/1/2022.

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 NDDoH as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Fiscal Services Use Only: ☒ Requirements Received; ☒ Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDoH Acceptance	
Date 1/19/2022	Signature Desi Fleming	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Lindsey VanderBusch, Director, Division of Sexually Transmitted and Bloodborne Diseases	
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., Chief of Staff	

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.

THE CITY OF Fargo FAR MORE

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 14, 2022

RE: CONTRACT AMENDMENT WITH FIRST CENTER SOUTH, LLC/DAKOTA UPREIT LIMITED PARTNERSHIP FOR ADDITIONAL SPACE FOR COVID-19 TESTING

The attached contract amendment is for the use of a property at 3051 25th St S, Suite K, in Fargo. This site will be used by Fargo Cass Public Health to administer COVID-19 testing. The contract is with Dakota UPREIT Limited Partnership (First Center South, LLC). The amendment continues to be on a month by month basis. The amendment is for an additional premises that will add approximately 3,130 square feet to the original premises (suite J1). The additional cost is $650.00 a month.

There are no budget adjustments for this contract.

Suggested Motion:
Move to approve amendment with First Center South, LLC/Dakota UPREIT Limited Partnership.

DF/lls
Enclosures

FOURTH AMENDMENT TO LEASE AGREEMENT

This Amendment to Lease Agreement (the "Amendment") is made January _14th__, 2022 by and between **Dakota UPREIT Limited Partnership,** existing under the laws of the State of North Dakota, hereinafter called the **Landlord,** and **Fargo Cass Public Health** hereinafter called the **Tenant.**

WHEREAS, on March 10, 2021, First Center South, LLC ("Landlord") entered into a Lease Agreement (hereinafter called the "Original Lease") with Tenant whereby Landlord demised and let to Tenant certain premises located in the County of Cass and State of North Dakota, more particularly described as comprising of approximately 3,650 square feet located at 3051 25th St S., Suite K, Fargo, ND 58103;

WHEREAS, on May 17, 2021, both parties entered into a First Amendment to extend Lease and other terms;

WHEREAS, on August 23, 2021, both parties entered into a Second Amendment to extend Lease and other terms;

WHEREAS, on September 30, 2021, both parties entered into a Third Amendment to extend Lease and other terms;

AND WHEREAS, the Landlord and the Tenant wish to amend the Lease in accordance with the terms and conditions hereof.

NOW THEREFORE in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The parties agree that the recitals above are true and correct in all material respects.
2. The parties agree that the Lease is hereby modified and amended as follows:
   A. Expansion of Demised Premises – Tenant hereby leases from Landlord, and Landlord herby leases to Tenant the Original Premises and such additional space comprising of approximately 3,130 square feet located immediately adjacent to the Original Premises in Suite J1.
   B. Both parties agree to a Month-to-Month Lease agreement with a 30-day written notice from either party to terminate.
   C. Rental rate for the Month-to-Month agreement for Suite J1 shall be $650.00 per month and shall be combined with current rental rate for Suite K. Total due monthly for both suites combined shall be $6,650.00.
   D. Upon the expiration or sooner termination of this Lease, Tenant shall peaceably and quietly leave, yield up and surrender the Leased Premises to Landlord in the same condition in which the Leased Premises were received from Landlord as of the Commencement Date.
   E. Rent shall be prorated for the month of January and shall be $314.55.
3. The parties hereby confirm that all other terms and conditions of the Lease are in full force and effect except as expressly provided in this Amendment.
4. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be and original and such counterparts together shall constitute one and the same instrument. Facsimile signatures and scanned and e-mailed signatures on this Amendment shall be deemed to be original signatures for all purposes.

IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto as of the date first above written.

LANDLORD: Dakota UPREIT Limited Partnership

By:_____
Its: _____
Date: _____

TENANT: Cass Public Health

By: Desi Fleming
Its: Desi Fleming, Director of Public Health
Date: 1/18/2022

By:_____
Its: Timothy J. Mahoney, Mayor, City of Fargo
Date: _____

THE CITY OF Fargo FAR MORE

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING
DIRECTOR OF PUBLIC HEALTH

DATE: JANUARY 14, 2022

RE: CONTRACT WITH PHREESIA FOR WEB BASED PUBLIC INTERFACE FOR CLINIC FOR $12,890.00

The attached contract with Phreesia is for the Phase 2 Enterprise Bundle which will provide the clinic with patient chat, self-scheduling, and track social determinants of health.

No Budget Adjustments

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

Suggested Motion: Move to approve the agreements with the above listed independent contractors.

DF/lls
Enclosure

Product and Service Order Form

Phreesia Consultant: Dustin Robinson	Void if not Signed By Customer: 1/31/2022	Bill Start Date: 2/1/2022	Initial Term (in months): 17

Legal Name & Billing Address: Fargo Cass Public Health 1240 25th Street South Fargo, ND 58103 United States	**Email Address:** dfleming@fargond.gov

# of Provider Licenses: 9	# of PhreesiaPads: 2	# of Locations: 1	# of Arrival Stations: 0

Services

The Customer is contracting for and will be billed the following:

Enterprise

Phase 1

Product Name	Unit of Measure	Qty	Start Date	Unit Cost	Extended Cost
Enterprise Bundle	Annual	1.00	2/1/2022	$0.00	$0.00
Base Package - Full Time Provider	Annual	9.00	2/1/2022	$0.00	Included
Patient Question Insights - up to 10 Questions	Annual	1.00	2/1/2022	$0.00	Included
Patient Chat	Annual	9.00	2/1/2022	$0.00	Included
Self Scheduling	Annual	9.00	2/1/2022	$0.00	Included
Social Determinants of Health	Annual	9.00	2/1/2022	$0.00	Included
Enhanced Mobile	Annual	9.00	2/1/2022	$0.00	Included

Phase 2

Product Name	Unit of Measure	Qty	Start Date	Unit Cost	Extended Cost
Enterprise Bundle	Annual	1.00	7/1/2022	$12,700.00	$12,700.00
Base Package - Full Time Provider	Annual	9.00	7/1/2022	$0.00	Included
Patient Question Insights - up to 10 Questions	Annual	1.00	7/1/2022	$0.00	Included
Patient Chat	Annual	9.00	7/1/2022	$0.00	Included
Self Scheduling	Annual	9.00	7/1/2022	$0.00	Included
Social Determinants of Health	Annual	9.00	7/1/2022	$0.00	Included
Enhanced Mobile	Annual	9.00	7/1/2022	$0.00	Included

Enterprise Bundle Notes -

1

Social Determinants of Health Details:
In the event Customer contracts for any Product containing the Safe Environment for Every Kid (SEEK), Customer consents to the following: (1) Phreesia shall collect and aggregate Customer's patients' responses to the SEEK; and (2) Phreesia shall, on a quarterly basis, share with The SEEK Project, LLC the aggregated responses of Customer's patients, Customer's specialty, and the state(s) in which Customer's location(s) is/are located.

Intake Modalities

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Phase 1

Product Name	Unit of Measure	Qty	Start Date	Unit Cost	Extended Cost
PhreesiaPad 6 - Rental	Per Pad Per Month	2.00	2/1/2022	$55.00	$110.00
E2EE Magtek DynaPAD Card Reader with Keypad	Per Reader One Time	3.00	2/1/2022	$0.00	$0.00

Phase 2

Product Name	Unit of Measure	Qty	Start Date	Unit Cost	Extended Cost
PhreesiaPad 6 - Rental	Per Pad Per Month	2.00	7/1/2022	$55.00	$110.00
E2EE Magtek DynaPAD Card Reader with Keypad	Per Reader One Time	2.00	7/1/2022	$95.00	$190.00
E2EE Magtek DynaPAD Card Reader with Keypad	Per Reader One Time	1.00	7/1/2022	$0.00	$0.00

Intake Modalities Notes - The Parties shall determine the amount of PhreesiaPads, Arrivals Stations, or other Hardware provided to Customer based on the number of Customer patients, patient demographics, physical layout of the medical practice, and patient utilization of the PhreesiaPads. If Customer purchases or licenses Hardware, Customer will be charged an additional purchase fee or monthly subscription fee respectively in the amounts set forth in the Order From. Customer may return up to twenty-five (25%) of the PhreesiaPads listed in the Order Form upon fifteen (15) days prior written notice to Phreesia (rounded down to the nearest whole number). Commencing with the first month after such PhreesiaPads are returned to Phreesia, the aggregate Hardware monthly subscription fees shall be proportionately reduced. Additional Card Readers will be billed at a one-time fee of $95 per unit.

Digital Patient Engagement

Phase 1

Product Name	Unit of Measure	Qty	Start Date	Unit Cost	Extended Cost
Digital Patient Engagement (Phreesia + Third-Party)	Annual	9.00	2/1/2022	$0.00	$0.00

Phase 2

Product Name	Unit of Measure	Qty	Start Date	Unit Cost	Extended Cost
Digital Patient Engagement (Phreesia + Third-Party)	Annual	9.00	7/1/2022	$0.00	$0.00

Card Processing

Phase 1

Product Name	Start Date	Monthly Cost
Card Processing - Card Present	2/1/2022	1.99%
Card Processing - Card Not Present	2/1/2022	1.99%
Card Processing - Transaction Fee	2/1/2022	$.25 Per Transaction

Product Name	Start Date	Monthly Cost
Chargeback Fee	2/1/2022	$25.00 Per Chargeback Transaction
PCI Non-Compliance-Fee	See Payment Processing Term	$50.00 Per MID
Chargeback	2/1/2022	100%

Phase 2

Product Name	Start Date	Monthly Cost
Card Processing - Card Present	7/1/2022	1.99%
Card Processing - Card Not Present	7/1/2022	1.99%
Card Processing - Transaction Fee	7/1/2022	$.25 Per Transaction
Chargeback Fee	7/1/2022	$25.00 Per Chargeback Transaction
PCI Non-Compliance-Fee	See Payment Processing Term	$50.00 Per MID
Chargeback	7/1/2022	100%

Subject to additional terms below.

Phase 1 Total Monthly Services	**$110.00**
Phase 1 Total Annual Services	**$0.00**
Phase 2 Total Monthly Services	**$110.00**
Phase 2 Total Annual Services	**$12,700.00**
Total One-Time Cost	**$190.00**

Integration/Installation

Phase 1

Product Name	List Price	Discount %	One Time Unit Cost
Product Installation Fee	$5,000.00	100.000	$0.00
PM Integration Fee	$750.00	100.000	$0.00

Other

Database Fees

Database Fee Notes - The Setup Fee covers standard installation and configuration for one PM database and one EHR database. Each additional database is $750.

Restocking Fee

Restocking Fee Notes - If the Customer elects to return PhreesiaPads, the Customer will be billed a one-time restocking fee of $75 per PhreesiaPad. If the Customer elects to return Arrivals Stations, the Customer will be billed a one-time restocking fee of $1,000 per Arrivals Station.

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Professional Services Package

Professional Services Notes - Should the Customer require On-Site Training Days in the future, the Customer will be billed the following: $1,250 per person per day + Actual T&E up to $750 per person per day.

Billing & Renewals

Billing for the Products shall commence on the date set forth above. Setup fees and fees for Implementation Services are due upon execution of the Order Form. Customer will be charged shipping and handling fees for hardware that Phreesia ships to Customer. All setup fees, shipping and handling fees, fees for Implementation Services and fees for Arrivals Stations listed in the Order Form are non-refundable. If Customer adds Providers or resources to the Practice Management Appointment Schedule, Customer will be charged an additional monthly subscription fee at the rates in the Order Form. During the Initial Term, or once at least 60 days prior to the end of each Renewal Term, Customer may remove Providers from the Practice Management Appointment Schedule (i.e. reduce the number of Provider Licenses subscribed for) and request a reduction in the fees paid for Subscription Services, but in no event will the fees for Subscription Services to be paid by Customer ever be decreased below 90% of the amount listed in the Order Form (even if the number of Providers is further reduced). If Customer decreases the number of Provider Licenses, any contractual discount based on number of licenses will be eliminated and pricing will revert to Phreesia's then-applicable list price.

After the Initial Term, the Contract will automatically renew for additional twelve (12) month terms, unless and until terminated in accordance with Section 7 of the Product and Services Agreement. Phreesia will increase its software subscription fees every twelve (12) months this Contract is in place. The agreed-upon annual increase (%) is: 5.00

Termination

Notwithstanding anything to the contrary in the MSA, the Customer can terminate the Agreement without any penalty by providing notice to Phreesia at any point on or before 6/30/2022.

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MASTER SERVICES AGREEMENT

1 This Master Services Agreement (the "Agreement"), effective as of the last date of the last Party's signature (the "Effective Date"), is made by and between Phreesia, Inc., a Delaware corporation with a principal place of business at 434 Fayetteville Street, Suite 1400, Raleigh, NC 27601 ("Phreesia"), and the customer executing this Agreement below ("Customer"). Phreesia and Customer shall herein be referred to each as a "Party" and collectively as the "Parties." This Agreement governs the terms and conditions upon which the Customer has agreed to engage Phreesia to provide certain products and services from time to time pursuant to one or more Order Forms. Each Order Form will be governed by and incorporated into this Agreement. In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1 DEFINITIONS

1.1 *Affiliates* means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.

1.2 *Arrivals Stations* are kiosk devices designed by Phreesia for in office patient registration.

1.3 *Business Associate Agreement* or *BAA* means the HIPAA Business Associate Agreement attached hereto or referenced herein as Exhibit A.

1.4 *Confidential Information* has the meaning given to it in Section 4.1.

1.5 *Custom Content* means a patient-reported outcome (PRO) and/or screening tool that: (a) is not available in Phreesia's library and not otherwise offered as part of any existing Product or Service, (b) has been authored and/or copywritten by a source other than Customer or Phreesia, and (c) is or will be administered and/or deployed through Phreesia Products.

1.6 *Customer Data* means all Data made available by Customer or its Users to Phreesia or otherwise provided by Customer or its Users in connection with the Products.

1.7 *Dashboard* means Phreesia's secure hosted solution allowing designated Users to access, manage and store certain patient records made available in connection with the Subscription Service.

1.8 *Data* means text, images, documents, materials and all other forms of data or communication.

1.9 *DDA* means Customer's designated demand deposit account.

1.10 *Documentation* means the documentation for the Products generally supplied by Phreesia to assist its customers in the use of the Products.

1.11 *Hardware* is the equipment provided by Phreesia to Customer for use in connection with the Subscription Service. Hardware shall be listed on the applicable Order Form and may include PhreesiaPads and Arrival Stations.

1.12 *Implementation Services* means the configuration and implementation of the Products set forth and described on an Order Form.

1.13 *Integration Addendum* means a schedule or addendum to an Order Form that describes the process by which the Subscription Service will be integrated for use by Customer with Customer's third party electronic medical record and/or practice management system.

1.14 *Location(s)* means the specific customer facility or facilities, listed on the Order Form, where the Products will be used.

1.15 *Order Form* means each Phreesia ordering document signed or electronically accepted by duly authorized representatives of both Parties which references this Agreement, identifies the specific Products ordered by Customer from Phreesia, sets forth the prices for the Products and contains other applicable terms and conditions.

1.16 *Payments Gateway* means the tool used by Phreesia to facilitate a payment transaction by transferring information between a payment portal and the Customer's bank.

1.17 *Phreesia Data* means all Data made available by Phreesia to Customer in connection with the Customer's use of the Services.

1.18 *PhreesiaPads* are purpose-built tablets designed by Phreesia for in office patient registration.

1.19 *Practice-Developed Content* means content that: (a) has been created by Customer, and (b) Customer has requested Phreesia to include in the Products.

1.20 *Practice Management Appointment Schedule* is a tool used by staff to schedule appointments or visits for patients.

1.21 *Products* means the Software, Hardware and Services, as the case may be.

1.22 *Professional Services* means consulting and/or custom services to be provided by Phreesia. All Professional Services will be set forth and described in a SOW.

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1.23 *Provider* shall mean any individual Customer clinician or authorized resource that has scheduled appointments. Each Provider will have a unique schedule in the Dashboard.

1.24 *Provider License* is a license to use the Subscription Service granted for one Provider as described herein.

1.25 *Service Level Agreement* or *SLA* means Phreesia's service level commitment as set forth and described on Exhibit B attached hereto for both the Subscription Service and the Hardware.

1.26 *Services* means the Subscription Service, Implementation Services and any Professional Services provided by Phreesia.

1.27 *Software* means any software provided by Phreesia to Customer including via its use of the Subscription Service or embedded in any Hardware.

1.28 *SOW* means a Statement of Work referencing this Agreement and entered into by both Parties from time to time that describes the Professional Services to be provided by Phreesia, sets forth the prices for the Professional Services and contains certain other related terms as agreed between the Parties.

1.29 *Subscription Service* means Phreesia's proprietary subscription-based patient intake management solutions set forth on the applicable Order Form.

1.30 *Users* mean individuals who are authorized by the Customer to use the Subscription Service. Users consist of any employee of the Customer or its Affiliates and any independent contractor of the Customer or its Affiliates.

1.31 *Work Product* means any deliverables, content, reports, analyses or documentation developed by Phreesia on behalf of Customer and delivered to the Customer in the performance of any Professional Services.

2 SERVICES

2.1 *Products*. Phreesia shall provide the Customer with the specific Products specified on an Order Form or SOW, as the case may be. Any conflict between the terms and conditions set forth in this Agreement and any Order Form or SOW shall be resolved in favor of this Agreement unless the Order Form or SOW specifically references the conflicting provision of this Agreement that it is to supersede in which case such conflict will be resolved in favor of such Order Form or SOW (but only for such Order Form or SOW). The Customer agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Phreesia regarding future functionality or features.

2.2 *License Grant*. Subject to the terms and conditions of this Agreement, and in consideration for the payment of fees set forth on the applicable Order Form, Phreesia hereby grants to Customer, solely during the term of the applicable Order Form, a non-exclusive, nontransferable (except as set forth in Section 12.2) license to access and use the Products solely for the Customer's internal business purposes and solely at the applicable Locations. This license is restricted to use by Customer and its Users and does not include the right to use the Subscription Service on behalf of any third party. The Customer is responsible for procuring and maintaining the network connections that connect the Customer to the Subscription Service. The Customer agrees: (a) that only authorized Users are permitted to use the Products; (b) that it is responsible for its authorized Users' actions or failures to act in connection with activities contemplated under this Agreement, and (c) to otherwise take all commercially reasonable steps to protect the Products from unauthorized use and/or access and from any loss or damage. Unless otherwise set forth on the Order Form, upon termination of the applicable Order Form, Customer shall return the Products to Phreesia in good working condition (reasonable wear and tear excepted). Customer shall immediately notify Phreesia in the event that any Products have been stolen, lost or damaged.

2.3 *Affiliates*. Subject to the terms of the Order Form, the Customer may make use of the Products available to its Affiliates provided that all licensing restrictions are complied with in each instance by each such Affiliate and that the Customer shall be liable for any breach of the terms and conditions of this Agreement by any of its Affiliates. Any license restrictions set forth on an Order Form shall be deemed to apply to both the Customer and its Affiliates. In addition, Customer's Affiliates may acquire Products subject to the terms and conditions of this Agreement by executing Order Forms or SOWs hereunder directly with Phreesia. Each Order Form or SOW executed by an Affiliate hereunder shall incorporate the terms of this Agreement by reference and be deemed to be a two party agreement between Phreesia and such Affiliate. Each Affiliate executing an Order Form or SOW shall be responsible for its obligations pursuant to such Order Form and SOW as well as for the obligations to be performed pursuant to this Agreement.

2.4 *Data Storage*. Customer is solely responsible for maintaining its own system of record. Phreesia and Customer acknowledges and agrees that Phreesia is not Customer's system of record and is not responsible for retaining any Customer Data except as necessary to perform under this Agreement and comply with applicable law. To the extent Phreesia retains Customer Data, Phreesia and Customer acknowledge and agree that all Customer Data entered into the Products by Customer or its employees, contractors or patients will be securely stored by Phreesia at designated data centers in accordance with HIPAA and all other applicable laws. Phreesia agrees to use industry standard physical and technical security measures to protect Customer Data.

2.5 *Installation*. Phreesia or its designated subcontractors shall assist Customer with the installation of the Products and Customer shall promptly schedule the installation, integration and implementation of the Products with Phreesia upon receipt of the Products.

2.6 *BAA*. The Parties each agree to comply with the terms and conditions set forth in the Business Associate Agreement. Notwithstanding anything in the Business Associate Agreement to the contrary, Customer shall be responsible for the unauthorized use or disclosure of any protected health information (PHI) or security incident as a result of Customer's acts or omissions (including misusing or misconfiguring the Products).

3 FEES; PAYMENT TERMS

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3.1 *Fees*. The Customer agrees to pay Phreesia for the Products provided and expenses incurred on the basis and at the rates specified in each Order Form or SOW. Unless otherwise set forth on the Order Form or SOW, payment shall be due within thirty (30) days after receipt of Phreesia's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and one-half percent (1.5%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. In addition to paying the applicable fees, Customer shall also pay all reasonable travel and outof-pocket expenses incurred by Phreesia in connection with any Services rendered provided Customer pre-approves such expenses in advance in writing. Customer authorizes Phreesia to deposit funds and initiate debit entries to the DDA. Customer authorizes Phreesia to debit the DDA monthly for any fees and expenses associated with the Order Form. If Customer pays for any fees by check or payment card, and Customer does not remit such fees within thirty (30) days of Customer's receipt of an invoice, Customer agrees that Phreesia will levy an automatic deposit fund hold, and hold merchant payments until such fees are paid in full. Customers paying for Products via Automated Clearing House (ACH) payment will not be assigned an automatic deposit fund hold unless Customer has not paid fees for ninety (90) days or more. If Customer's payment is unable to be debited because of insufficient funds, Customer agrees to pay a $25 NSF fee per incident. Customer must notify Phreesia ten (10) days in advance if it changes or closes its DDA.

3.2 *Disputed Charges*. If the Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the Parties, the Customer shall pay the amounts due under this Agreement less the disputed amount, and the Parties shall proceed in good faith to promptly resolve such disputed amount. An amount will be considered disputed in good faith if (i) the Customer delivers a written statement to Phreesia on or before the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by the Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from the Customer that are not in dispute have been paid as and when required under this Agreement.

3.3 *Taxes*. Fees are exclusive of taxes. The Customer shall be responsible for the payment of all sales, use and similar taxes arising from or relating to the Products rendered hereunder, except for taxes related to the net income of Phreesia and any taxes or obligations imposed upon Phreesia under federal, state and local wage laws.

3.4 *Payment Processing*. If Customer is using merchant processing services in connection with the Products then Customer must complete an application and separate Merchant Services Agreement ("MSA") provided by Phreesia with its third party payment processor, commit to payment processing exclusively with Phreesia and must obtain and provide a Payment Card Industry Data Security Standards ("PCI DSS") compliance certificate ("PCI Certificate") within six (6) months of the date of the Order Form, and annually thereafter, as required by PCIDSS. Phreesia can support Customer's PCI Certification upon request. Failure to submit the PCI Certificate on time may result in the assessment of non-compliance fees contained in the Order Form. All merchant processing services are provided by Phreesia on an "as is" basis without any warranty of any kind and Customer shall look solely to the third party payment processor with respect to any liability, losses, claims or damages suffered or incurred in connection with such merchant processing services. If Customer is using Payments Gateway, Phreesia will provide Customer access to payment card processing through the Payments Gateway. Any payments processed will be collected through the Products and routed to Customer's merchant processor. Phreesia is responsible for the security of cardholder data that it possesses or otherwise stores, processes, or transmits on behalf of Customer on Phreesia's networks and systems.

4 CONFIDENTIALITY

4.1 *Confidential Information*. During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party's business and the industry in which it operates, is of a confidential or proprietary nature. For the avoidance of doubt all Customer Data shall be deemed Customer's Confidential Information. The receiving Party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity except to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving Party and who are bound by a duty of confidentiality no less protective of the disclosing Party's Confidential Information than this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information and the Customer further agrees that it shall not use the Products for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Products and will not publicly post any analysis or reviews of the Products without Phreesia's prior written approval. A receiving Party shall promptly notify the disclosing Party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

4.2 *Exclusions*. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

4.3 *Injunctive Relief*. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which the disclosing Party may be entitled hereunder, at law or equity, the disclosing Party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

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5 **WARRANTIES**

5.1 *Subscription Service Warranty*. Phreesia warrants that during the term of any Order Form for the Subscription Service, the Subscription Service will conform, in all material respects, with the Documentation. Phreesia does not warrant that it will be able to correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. Phreesia makes no warranty regarding features or services provided by third parties. Customer acknowledges and agrees that the Subscription Service will be subject to limitations inherent in the use of the internet, that Phreesia does not control the transfer of data over the internet, and that Phreesia is not responsible for any delays, delivery failures or other damage resulting from such problems, including any problems or damages of any kind that arise from any of Customer's or its Users' acts or omissions. For any breach of the above warranty, Phreesia will, at no additional cost to Customer, provide remedial services necessary to enable the Subscription Service to conform to the warranty. The Customer will provide Phreesia with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Except for any additional remedies set forth in the Service Level Agreement, the remedies set out in this subsection are the Customer's sole remedies for breach of the above warranty. Such warranty shall only apply if the Subscription Service has been utilized by the Customer in accordance with the Order Form, the Documentation and this Agreement.

5.2 *Hardware Warranty*. Phreesia warrants that during the term of any Order Form, the Hardware will conform, in all material respects, with the Documentation. Phreesia does not warrant that it will be able to correct all reported defects or that use of the Hardware will be uninterrupted or error free. As described in the SLA and the PhreesiaCare terms set forth in Exhibit B and C, as Customer's sole and exclusive remedy for any breach of the foregoing warranty, Phreesia will repair or replace, at its election, Hardware discovered to be defective and returned by the Customer in accordance with Phreesia's then current return policy. This warranty does not cover repair or replacement of any Hardware that malfunctions because of or is otherwise damaged as a result of (a) Customer's failure to comply with the provisions and instructions contained in the Documentation; (b) the failure of anyone (other than Phreesia or its authorized service or supply contractors) to comply with the written instructions or recommendations contained in the Documentation; (c) any alteration or improper storage, handling, transporting, use or maintenance of any part of the Hardware by anyone other than Phreesia or its authorized service or supply contractors; or (d) any external force or unusual stress such as building structural deficiency, power surge, fluctuation or failure, or climate control failure.

5.3 *Professional Services Warranty*. Phreesia warrants that any Professional Services provided hereunder shall be provided in a competent manner and in accordance with any specifications set forth in the SOW in all material respects. Phreesia further warrants that any Work Product provided pursuant to any Professional Services engagement shall comply, in all material respects, with the specifications set forth in the applicable SOW. If the Services are not performed as warranted or the Work Product does not so comply, then, upon the Customer's written request, Phreesia shall promptly re-perform, or cause to be re-performed, such Professional Services, at no additional charge to the Customer. Such warranties and other obligations shall survive for thirty (30) days following the completion of the Professional Services or the delivery of each applicable portion of the Work Product, as the case may be. Such re-performance shall be the Customer's exclusive remedy and Phreesia's sole liability for any such nonperformance. If, however, after repeated efforts, Phreesia is unable to remedy such defect in any Work Product, then the Customer's sole remedy and Phreesia's entire liability shall be to refund to the Customer any amounts previously paid by the Customer for the particular deficient Professional Services or Work Product, as the case may be.

5.4 *No Additional Warranty*

5.4.1 THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY PHREESIA. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE PRODUCTS ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

5.4.2 Customer acknowledges that from time to time Phreesia may make available optional third party products ("Third Party Products") for use with the Products. These Third Party Products are provided by Phreesia as a "pass through" to Customer and such Third Party Products may be covered by a warranty offered by the third party vendor, not Phreesia. Any such Third Party Products shall be identified as such on the Order Form. Any Third Party Products which are supplied with a separate agreement are subject to the terms of such separate agreement and are not subject to any warranties or indemnification rights contained herein. Where such Third Party Products are supplied with a separate agreement Customer acknowledges and agrees that Phreesia makes no warranty of any kind with respect to such Third Party Products, and agrees to look solely to the applicable vendor for warranty support for such Third Party Product. Any Third Party Products which are not supplied with a separate agreement are instead subject to the terms of this Agreement as "Products" hereunder.

5.5 *Medical Decisions*. Notwithstanding anything in this Agreement to the contrary, Customer acknowledges and agrees that Phreesia is not engaged in the practice of medicine, and is not determining appropriate medical use of any of its Products that are, or may be, offered pursuant to this Agreement or results from any advertisements or content displayed on the Products. Medical treatment and diagnostic decisions are solely the responsibility of Customer and its professional healthcare providers.

6 **LIMITATION OF LIABILITY**

6.1 Neither Party will be liable to the other or any third party for loss of profits or for any special, indirect, incidental, consequential or exemplary damages (including without limitation, damages for loss of business profits, loss of goodwill, business interruption, reputational harm, punitive damages, loss of business information and/or data) in connection with the Products, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages. The total cumulative liability of Phreesia to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the fees paid by Customer to Phreesia under the Order Form or SOW for the Products which form the subject of the claim during the twelve (12) month period immediately preceding the event giving rise to the claim.

7 **TERM**

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7.1 *Term*. This Agreement will commence on the Effective Date and will continue in effect unless and until otherwise terminated in accordance with Sections 7.2 or 7.3 below. The initial term of each Order Form (the "Initial Term") will be set forth in the applicable Order Form. Thereafter the Order Form will automatically renew for additional terms of one (1) year each (each a "Renewal Term(s)" and along with the Initial Term the "Term")) unless either Party notifies the other Party at least sixty (60) days prior to the expiration of the Initial Term or any Renewal Term that it has elected not to renew the Order Form. For the avoidance of doubt, the term of this Agreement and the BAA shall continue in effect for so long as any Order Form is in effect.

7.2 *Termination for Cause*. Notwithstanding the foregoing, either Party may terminate this Agreement or any Order Form or SOW (i) immediately in the event of a material breach of this Agreement or any such Order Form or SOW by the other Party that is not cured within thirty (30) days of written notice to the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing or (iii) immediately in the event that Customer violates Section 2.2. Termination or expiration of an Order Form or SOW shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Order Forms and SOWs.

7.3 *Termination as a result of PM/EHR Change*. In the event that Customer has changed its existing PM/EHR software solution to a PM/EHR software solution that has not been integrated with the Products, Customer may terminate the Order Form upon no less than sixty (60) days prior written notice to Phreesia; provided, however, that such termination may only occur during a Renewal Term and not during the Initial Term of the Order Form. Customer shall provide documentation reasonably requested by Phreesia to validate that it has changed its existing PM/EHR software solution to a PM/EHR software solution that has not been integrated with the Products.

7.4 *Effect of Termination*. Upon any termination or expiration of this Agreement or an Order Form for any reason (i) all applicable licenses are revoked, (ii) each Party shall promptly return or destroy the other Party's Confidential Information and Customer shall, unless otherwise expressly set forth on the Order Form immediately cease use of the applicable Products and (iii) unless otherwise set forth on the Order Form, within ten (10) days of termination Customer shall return the Products to Phreesia in good working condition (reasonable wear and tear excepted). If an Order Form was terminated during its Initial Term as a result of Customer's uncured breach then Customer will be billed a restocking fee for any returned Product and a fee for the value of any unreturned Products. Customer shall have the right during the forty-five (45) day period immediately following the termination of this Agreement or an Order Form to access the Dashboard for the sole purpose of copying and downloading all of its Customer Data and records stored in connection with the Dashboard. Termination of this Agreement shall not limit either Party from pursuing any remedies available to it, including injunctive relief, or relieve Customer of its obligation to pay all fees that have accrued, have been paid, or have become payable by Customer hereunder. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination, such as e.g., confidentiality and limitation of liability, will survive termination or expiration of this Agreement and each Order Form.

8 OWNERSHIP; USE OF CONTENT; OBLIGATIONS

8.1 *Subscription Service/Products*. Except in the event where the Order Form expressly states that Customer is purchasing the Hardware, all Products are owned by Phreesia and are licensed (and not sold) to Customer, as set forth in Section 2.2. All right, title and interest to the Products, Phreesia Data and all intellectual property rights in and to the Products, Phreesia Data, all of Phreesia's proprietary technology, including, without limitation, all software, products, processes, algorithms, user interfaces, know-how, techniques, designs, suggestions, ideas, enhancement requests, feedback, or recommendations and other tangible or intangible technical material or information made available to the Customer by Phreesia in providing the Subscription Service and all updates, enhancements, improvements, modifications, configurations and derivative works thereto are retained by Phreesia. Customer shall not allow any lien, security interest or other encumbrance to attach to Products owned by Phreesia. Purchased Hardware is non-refundable. The Phreesia name, all Phreesia logos, and the product names associated with the Products are trademarks of Phreesia or third parties, and no right or license is granted to use them.

8.2 *Customer Data*. The Customer retains ownership of all right, title and interest in and to all Customer Data. During the term of this Agreement, the Customer hereby grants to Phreesia a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 12.2), royalty-free right to use, display, transmit, and distribute the Customer Data solely as necessary to provide the Products to the Customer. Customer is solely responsible for all Customer Data. Phreesia does not guarantee the accuracy, integrity or quality of such Customer Data. Neither the Customer nor its Users shall use the Products to: (a) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any applicable law or regulation. Phreesia shall have the right to collect, use and distribute aggregated information, analysis, statistics, related benchmarking algorithms and other data generated by the Products (or derived from the Customer's use of the Products) provided, however, that Phreesia shall not disclose any such data unless such data is in an aggregated form that would not permit a third party to identify the data as associated with the Customer or any of its Users ("Aggregated Data"). All Aggregated Data shall be owned by Phreesia. For the avoidance of doubt, the Aggregated Data shall not include PHI.

8.3 *Customer Obligations*. The Customer is responsible for (i) all activities conducted under its User logins and for its Users' compliance with this Agreement, (ii) compliance with all applicable laws and regulations that govern its business, and (iii) obtaining all authorization's, consents and licenses necessary to use Customer Data. Unauthorized use, resale or commercial exploitation of the Products in any way is expressly prohibited. Without Phreesia's express prior written consent in each instance, the Customer shall not (and shall not allow any third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Products or access the Products in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Products. Except as expressly permitted in this Agreement, the Customer shall not copy, license, sell, transfer, make available, lease, time-share or distribute the Products to any third party. Customer and its personnel are responsible for maintaining and safeguarding the security of their accounts, passwords and files and Customer shall ensure that its personnel do not share their account information or passwords with any other person or allow any other person to access the Dashboard under their account. Customer shall terminate access to the Dashboard for any personnel whose employment or consulting relationship with Customer has ended.

8.4 *Work Product*. Except as otherwise set forth on a SOW, Customer will have a non-exclusive, non-transferable (except as set forth in Section 12.2) license to use any Work Product developed by Phreesia in the performance of the Professional Services and delivered to Customer,

upon Customer's payment in full of all amounts due hereunder, solely for Customer's internal use in connection with its use of the Products. Phreesia retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and, except as otherwise set forth on a SOW, all Work Product compiled or developed by Phreesia in the performance of this Agreement.

8.5 *Custom Content/Practice-Developed Content.*

To the extent that Customer has requested Phreesia to include Custom Content or Practice-Developed Content in the Products that is not part of Phreesia content library, Customer understands and agrees to the requirements set forth in subparagraphs (1) through (5) below.

(1) The deployment of any Custom Content is subject to Phreesia's technical capabilities and limitations. By way of example, Phreesia may be able to display the text of the questions from the Custom Content yet not display the associated illustrations or images; Phreesia may be able to deploy the screening questions of the Custom Content yet not be able to automate its scoring, etc.

(2) Customer represents and warrants that it has all proper right, title and interest in or possesses valid license rights to the Custom Content and/or Practice-Developed Content and can legally authorize Phreesia to: (1) reproduce, display and administer the Custom Content and/or Practice-Developed Content through the Products, (2) collect, aggregate, analyze, and store patient responses from such Custom Content and/or Practice-Developed Content, and (3) carry out other permitted activities, as set forth in this Agreement.

(3) For each instance of Custom Content that Customer utilizes through the Product, Customer agrees to purchase a Clinical Expansion Package - Custom Content. The pricing for such purchase shall be set forth on an Order Form or addendum thereto. This subparagraph (4) shall not apply to any Practice-Developed Content.

(4) Phreesia reserves the right, in its sole discretion, to remove the Custom Content and/or Practice-Developed Content from the Products without prior notice to Customer if Phreesia is notified that such content violates any intellectual property rights and/or any other applicable law, rule, regulation, or policy.

(5) As between the Parties, Customer assumes any and all liability that directly or indirectly results from Customer's use of or Phreesia's utilization of any Custom Content and/or Practice-Developed Content (including any patient reported outcome or screening tool therein).

8.6 Digital Patient Engagement
Phreesia shall deliver Digital Patient Engagement ("DPE") to Customer through one of the options set forth on the attached Exhibit, as selected by Customer and set forth in an Order Form. Details around how patients will view the selected DPE content are set forth in the attached Exhibit. Customer acknowledges and agrees that: (i) Customer grants to Phreesia a non-exclusive, royalty-free, right and license to use Customer's logo and trademarks on any DPE content sent to Customer's patients, and (ii) in the event that Customer Content (as defined in the attached Exhibit) is sent to Customer's patients through the Product, then Customer shall be solely responsible for such Customer Content. Customer may change its DPE election at any time and for any reason upon sixty (60) days prior notice to Phreesia. Customer's DPE selection shall not affect any other Products or Services then being provided to Customer.

8.7 External Files. When accessing, downloading, or opening any file through the Phreesia Dashboard, and without limiting Phreesia's obligations under this Agreement, including the BAA, Customer agrees to: (1) exercise reasonable caution with respect to any files submitted by external parties through the Phreesia Dashboard; (2) accept the security and privacy risks associated with such files, including the risk of malicious software such as viruses or ransomware; (3) hold Phreesia harmless for any security or privacy incident resulting from Customer's download, use, or access of such files; and (4) ensure that Customer employs industry security measures when accessing or otherwise using the Phreesia Dashboard to protect the privacy and security of Customer's data and systems.

9 **INDEMNIFICATION**

9.1 *Phreesia Indemnification*. Subject to Section 9.3 below, Phreesia will indemnify, defend and hold the Customer and its Affiliates harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against the Customer or any of its Affiliates alleging that the use of the Products as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Products in violation of this Agreement or applicable law, (b) use of the Products after Phreesia notifies the Customer to discontinue use because of an infringement claim, (c) any claim relating to any optional third party products or services (where Customer separately contracts for the use of such third party products or services with the third party or otherwise agrees to such third party's terms) or Customer provided content, Data or materials, (d) modifications to the Products made other than by Phreesia (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Products with software, materials or equipment which was not provided by Phreesia, to the extent that the Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Phreesia with the Customer's custom requirements or specifications if and to the extent such compliance with the Customer's custom requirements or specifications resulted in the infringement. If the Products are held to infringe, Phreesia will, at its own expense, in its sole discretion use commercially reasonable efforts either (i) to procure a license that will protect the Customer against such claim without cost to the Customer; (ii) to replace the Products with non-infringing Products; or (iii) if (i) and (ii) are not commercially feasible, terminate the Agreement or the applicable Order Form or SOW and refund to the Customer any prepaid unused fees paid to Phreesia for the infringing Products. The rights and remedies granted the Customer under this Section 9.1 state Phreesia's entire liability, and the Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

9.2 *Customer Indemnification*. Subject to Section 9.3 below, the Customer shall indemnify, defend, and hold Phreesia and its Affiliates harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Phreesia or any of its Affiliates that arises out of or results from (i) a claim arising out of Customer's breach of Section 8, (ii) a claim alleging that any Customer provided content, Data or materials or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party, or (iii) any claim of malpractice, misdiagnosis, or any other medical treatment matter in connection with the use by Customer, Customer personnel,

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patients, or any third parties, of any Products or in the reliance on any content or advertising shown thereon; provided that such claims do not result from any willful misconduct or gross negligent action or omission of Phreesia or its agents.

9.3 *Indemnification Procedure*. The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim without the indemnified Party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

10 INSURANCE

10.1 Phreesia shall maintain in full force and effect during the term of any Order Form and SOW the following insurance: (a) Workers' compensation and employers' liability insurance with limits to conform with amounts required by applicable law; (b) Commercial general liability insurance with limits not less than two million dollars ($2,000,000) per occurrence for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and products and completed operations coverage; and (c) Professional liability (Errors and Omissions) and Cyber Insurance each with limits not less than five million dollars ($5,000,000) annual aggregate for all claims each policy year. As evidence of insurance coverage, upon request Phreesia shall deliver a schedule of insurance issued by Phreesia' insurance carrier showing such policies in force during the term of this Agreement.

11 TECHNICAL SUPPORT

11.1 During the term of the applicable Order Form, Phreesia will provide Customer with technical support services, Client Success and Support, which consist of: (i) assistance related to questions about the installation and operational use of the Products including the Dashboard; (ii) assistance in identifying and verifying the causes of suspected errors in any Product; and (iii) providing workarounds for identified Product errors or malfunctions, where reasonably available to Phreesia. Unless otherwise agreed to by the parties, all technical support is provided remotely (virtually). Customer shall designate a reasonable number of Customer employees to act as support liaisons to utilize the technical support services and will ensure that such persons will be properly trained in the operation and usage of the Products. Customer agrees to provide reasonable access to all necessary personnel to answer questions about any problems reported by Customer regarding the Product. Customer agrees to promptly implement all updates and error corrections provided by Phreesia under this Agreement. Designated Customer employees may contact Phreesia support directly from 4:00 a.m. to 12:00 a.m., EST, seven days a week. Customer may request additional support outside of these hours of operation. Support also includes access to Phreesia University, which provides a learning platform to train staff to use the Phreesia Products.

12 GENERAL

12.1 *Entire Agreement*. This Agreement, including the BAA, all other Exhibits hereto and all Order Forms and SOWs, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the Parties relating thereto and is binding upon the Parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement and is duly signed by the authorized representatives of both Parties may amend this Agreement. Amendments to the Order Form or SOW may also be made via a change order or change notification sent by Phreesia. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by the Customer shall be of no force or effect, even if the order is accepted by Phreesia. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

12.2 *Assignment*. This Agreement shall be binding upon and for the benefit of Phreesia, the Customer and their permitted successors and assigns. Neither Party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation without such consent will be void. Notwithstanding the foregoing, either Party may assign this Agreement and all Order Forms and SOWs as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets or business to which this Agreement relates. Phreesia may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Phreesia shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation.

12.3 *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of law provisions and without regard to the United Nations Convention on the International Sale of Goods.

12.4 *Disputes*. Any disputes between the Parties arising out of this Agreement shall be resolved as follows: Members of the senior management of both Parties shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within fifteen (15) days, either Party may make a written demand for mediation. Within fifteen (15) days after such written notification, the Parties shall meet for one day with an impartial mediator. The costs and expenses of the mediator shall be shared equally by the Parties. If the dispute is not resolved by mediation, then the dispute shall be resolved in the federal and state courts sitting in New York, New York which shall have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either Party may seek injunctive relief in any court of competent jurisdiction.

12.5 *Headings*. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

12.6 *Relationship of the Parties*. Phreesia and the Customer are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of partners, employer and employee, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

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12.7 *Force Majeure*. Except for the obligation to make payments, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

12.8 *Notices*. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing (including email) and shall be deemed to have been delivered and given for all purposes one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or, in the case of email, by confirmation that such email has been received, to the address or email address of the receiving Party set forth on the applicable Order Form. A copy of any notices to be sent to Phreesia shall be sent to legal@phreesia.com and to 434 Fayetteville Street, Suite 1400, Raleigh, NC 27601 to the attention of "Legal Department". Either Party may change its address by giving written notice of such change to the other Party. For avoidance of doubt, Phreesia shall send invoices to Customer's designated email address set forth on the Order or to Customer's designated representative set forth on the Order.

12.9 *Publicity*. The Customer hereby grants Phreesia a nonexclusive license solely during the term of this Agreement to list Customer's name and display the Customer's logo in the customer section of Phreesia's website and to use Customer's name and logo in Phreesia's customer lists. Any other use by Phreesia of the Customer's name, logo or trademark requires the Customer's prior written consent.

12.10 *No Third Party Beneficiaries*. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person.

12.11 *Counterparts*. The Parties hereby agree that: (i) this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement; (ii) this Agreement may be reproduced by any Party by photographic, computer imaging or similar process; (iii) any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence); (iii) any signature upon or within this Agreement that is electronically generated or transmitted (whether in or as a scanned document or digital image, including, without limitation, in or as any ".pdf", ".jpg", ".tiff" or any other digital format) shall be deemed a valid and legally binding signature with the same effect as if such signature were a manually signed original signature; and (iv) any such electronically generated or transmitted signatures upon or within this Agreement may be exchanged and/or delivered between or among the undersigned Parties.

12.12 *Waiver and Severability*. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

Bank Information

Phreesia may request a copy of a void check or bank letter to verify the banking information provided below.

Bank Name

Routing Number

Account Number

Signatures

Accepted By Phreesia:

Name:

Signature:

Title: Date:

Accepted by Fargo Cass Public Health:

Name:

Signature:

Title: Date:

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Exhibit A: HIPAA Business Associate Agreement

This Business Associate Agreement ("BAA") is entered into by and between Customer ("Covered Entity") and Phreesia, Inc. ("Phreesia" or "Business Associate") (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS Customer is a "Covered Entity" and Phreesia is a "Business Associate," each subject to the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented by the Health Information Technology for Economic and Clinical Health Act, and the regulations promulgated thereunder (all such laws and regulations shall collectively be referred to herein as "HIPAA").

WHEREAS Phreesia is a "Business Associate" and provides products and services to Customer as set forth in the Parties' Product and Services Agreement ("Agreement") to which this BAA is attached as Exhibit A.

WHEREAS, in the course of providing such products and services to Customer, Phreesia may come into contact with Protected Health Information of Customer's patients.

WHEREAS, this BAA shall remain in effect during the entire period the Agreement is in effect. In addition, portions of this BAA shall remain in effect subsequent to the termination of the Agreement, as provided in this BAA.

NOW THEREFORE, the Parties agree as follows:

1. Definitions

Capitalized terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in HIPAA. Protected Health Information ("PHI") and Electronic Protected Health Information ("ePHI") shall have the same meanings as those terms in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

2. Obligations and Activities of Business Associate

a. Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement, BAA, or as permitted or Required by Law.

b. Business Associate agrees to use appropriate safeguards to prevent the unauthorized use or disclosure of PHI consistent with the HIPAA Security Rule (45 C.F.R. Part 160 and Subpart C of 45 C.F.R. Part 164), including appropriate administrative, physical, and technical safeguards. Business Associate will follow generally accepted system security principles.

c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this BAA or HIPAA.

d. Business Associate agrees to report to Customer any use or disclosure of PHI not provided for by this BAA of which Business Associate becomes aware, including breaches of unsecured PHI and Security Incidents ("Notifying Event"). Such report must be provided to Customer within ten (10) business days of Business Associate's discovery of such Notifying Event. Business Associate shall cooperate and coordinate with Customer to determine additional actions that may be required of Business Associate for mitigation of a Notifying Event. Business Associate otherwise agrees to comply with all applicable requirements concerning breach notification as required by HIPAA.

e. Notwithstanding the foregoing, the Parties agree to the following reporting procedure for Security Incidents that do not result in unauthorized access, use, disclosure, modification, destruction of ePHI, or interference with system operations ("Unsuccessful Security Incidents"). For Unsuccessful Security Incidents, the Parties agree that this paragraph constitutes notice of such Unsuccessful Security Incidents. By way of example, the Parties consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in actual unauthorized access, use, disclosure, modification, destruction of ePHI, or interference with system operations: (i) pings on firewall; (ii) port scans; (iii) attempts to log on to a system or enter a database with an invalid password or username; (iv) denial-of-service attacks that do not result in a server being taken off-line; and (v) malware (worms, viruses, etc.).

f. Business Associate agrees to ensure that any Subcontractor to whom it provides PHI received from, or created or received by Business Associate on behalf of Customer, agrees to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.

g. Business Associate agrees to provide access, at the request of Customer, and in a reasonable time and manner, to PHI in a Designated Record Set, to Customer or, as directed by Customer, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. To the extent that such PHI is maintained in an Electronic Health Record, Business Associate agrees to produce a copy of such PHI in electronic format upon Customer's or a patient's request in accordance with HIPAA.

h. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Customer directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Customer or an Individual, and in a reasonable time and manner.

i. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Customer available to the Secretary for purposes of the Secretary determining Customer's compliance with HIPAA.

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j. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an accounting of disclosures and to provide Customer or an Individual, in a reasonable time and manner, information collected in accordance with this BAA, to permit Customer to respond to a request by an Individual for an accounting and disclosures of PHI in accordance with 45 C.F.R. § 164.528.

k. Business Associate agrees to use or disclose the minimum necessary PHI pursuant to HIPAA.

l. Business Associate agrees to comply with the prohibition on the sale of PHI without an Individual's authorization in accordance with HIPAA.

m. Business Associate agrees to comply with the restrictions on marketing set forth in HIPAA.

n. To the extent that Business Associate is to carry out Customer's obligation under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Customer in the performance of such obligation.

3. Permitted Uses and Disclosures by Business Associate

a. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Customer as permitted under the Agreement or this BAA, provided that such use or disclosure would not violate the HIPAA if done by Customer.

b. Except as otherwise limited in this BAA, Business Associate may present an Authorization to an Individual for signature in accordance with HIPAA as permitted by, and consistent with, 45 C.F.R. § 164.508.

c. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

d. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

e. Except as otherwise limited in this BAA, Business Associate may use PHI to provide data aggregation services as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

f. Except as otherwise expressly set forth in this BAA, Business Associate may, on behalf of Customer, use PHI to create de-identified data and limited data sets, each as defined under HIPAA for the express purpose of improving Business Associate's Products, Services and Dashboard (each as defined in the Agreement) and conducting research that studies how use of the Products promotes public health, improves physician efficiency, improves health outcomes, and decreases errors in collecting patient intake information. Business Associate may further use and disclose such limited data sets for the same purpose, provided Business Associate, as an agent for Customer, enters into a data use agreement that satisfies HIPAA requirements concerning limited data sets with each recipient of a limited data set.

4. Obligations of Customer

a. Customer represents and warrants that it will comply with HIPAA as amended.

b. Customer shall notify Business Associate of any limitations in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

c. Customer shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

d. Customer shall notify Business Associate of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

e. Customer shall provide Business Associate with a copy of its current Notice of Privacy Practices as required by 45 C.F.R. § 164.520 and will provide revised copies of the Notice should the Notice be amended in any way.

5. Permissible Requests by Customer

Customer shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Customer, except that Business Associate may use or disclose PHI for data aggregation services, management and administrative activities, and legal responsibilities.

6. Term and Termination

a. The Term of this BAA shall be co-terminus with the Agreement. In addition, upon either Party's ("Terminating Party") knowledge of a material breach by the other Party, the Terminating Party may immediately terminate this BAA, provided cure is not possible.

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b. Continued Safeguard of Information. Customer and Business Associate have mutually determined and agreed that return or destruction of the PHI created or received by Business Associate, its agents and Subcontractors, on behalf of Customer (including but not limited to that PHI contained in Business Associate's and its agents' and Subcontractors' data processing, data storage, and other computer systems): (i) is not feasible; and (ii) Business Associate, its agents and Subcontractors shall not be obligated to return or destroy such PHI. Notwithstanding the termination of this BAA, Business Associate hereby agrees to extend the protections of this BAA to such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. This provision shall survive termination of this BAA and the Agreement.

7. Miscellaneous

a. Regulatory References. A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended, and for which compliance is required.

b. Amendment. The Parties agree to take such action necessary to implement the standards and requirements of HIPAA or any other applicable federal or state privacy law or regulation relating to the security or privacy of information, or the exchange of health information by electronic means. Upon the effective date of any final regulation or amendment to HIPAA and any applicable federal or state privacy law or regulation, this BAA will automatically be amended such that the obligations they impose (or require Customer to impose) on Business Associate will be included in this BAA without further action of the Parties, effective as of the required compliance date of such regulation or amendment.

c. Interpretation. Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Customer and Business Associate to comply with the Privacy and/or Security Rule.

d. Privacy and Security Responsibility. Customer shall be solely responsible for any HIPAA Privacy Rule or Security Rule requirements, including those comprising physical, technical, or administrative safeguards, that Customer chooses not to elect Phreesia to implement on its behalf. Customer shall indemnify Phreesia to the maximum extent permitted by applicable law for the unauthorized use or disclosure of any PHI or Security Incident as a result of Customer's acts or omissions.

e. No Third-Party Beneficiary Rights. Nothing express or implied in this BAA is intended to give, nor shall anything herein give any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

f. Choice of Law. This BAA shall be construed, and the Parties' rights shall be determined in accordance with, the laws of New York (without giving effect to principles of conflicts of law) and applicable federal law.

g. Any notice required or permitted hereunder shall be addressed in accordance with the Parties' email or physical addresses listed above.

h. Entire BAA. This BAA sets forth the entire BAA and understanding between the Parties as to the subject matter hereof and supersedes all prior discussions, agreements and understandings relating to such subject matter. This BAA is hereby incorporated into and made a part of the Agreement as an addendum thereto.

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Exhibit B: SERVICE LEVEL AGREEMENT

During the term of the applicable Order Form, Phreesia will use commercially reasonable efforts to ensure that the Monthly Uptime Percentage for the Dashboard is operational and available to Customer at least 99% of the eligible time in any calendar month (the "Uptime Guarantee"). The Dashboard will be considered operational and available to Customer if Users can successfully login to the Dashboard and patients can successfully complete patient intake through mobile modality. If Phreesia does not meet the Uptime Guarantee ("Service Level Default"), and if Customer meets its obligations under this SLA, Customer will be eligible to receive the Service Credits described below. This SLA states Customer's sole and exclusive remedy for any failure by Phreesia to meet the Uptime Guarantee.

Any Service Credit shall be applied to Customer's next monthly subscription payment coming due (or refunded if there are no forthcoming invoices or payments due).

Customer Obligations. In order for the Customer to receive any of the Service Credits described above, Customer must do the following:

- The Customer will conduct business in a courteous and professional manner with Phreesia.
- The Customer must notify Phreesia and request the Service Credit within thirty days (30) from the time the Customer becomes eligible to receive the Service Credit.
- Service Credit is only available to Customers who are active, paying customers.
- Failure to comply with these responsibilities will forfeit Customer's right to receive a Service Credit.

Maximum Service Credit. The aggregate maximum number of Service Credits to be issued to Customer for all Downtime that occurs in a single calendar month shall not exceed 50% of the Customer's monthly Subscription Services fee (excluding applicable taxes and implementation fees) in the month of the Service Level Default (and shall be in the form of a monetary credit to a monthly-billing Customer's account). Service Credits may not be exchanged for, or converted to, monetary amounts.

Exclusions. This SLA (and accordingly, the Uptime Guarantee) does not apply to any Products other than the Dashboard or any performance issues or Downtime: (i) caused by factors outside of Phreesia's reasonable primary control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Phreesia employees), or Internet service provider failures or delays, or (ii) that resulted from Customer's equipment or third party equipment or services, or both (not within the primary control of Phreesia).

DEFINITIONS

The following definitions shall apply to the SLA:

"Downtime" means the aggregate number of Eligible Minutes in a calendar month that the Dashboard is not available for successful login by Customer or that all patients are unable to successfully complete patient intake through either mobile, Arrival Stations or PhreesiaPads.

"Eligible Minutes" means the time between 6:01 a.m. and 11:59 p.m. EST each day, less any additional unavailability caused by circumstances described under the heading Exclusions above and any Scheduled Downtime and Emergency Maintenance.

"Emergency Maintenance" is unscheduled maintenance that is necessary, in Phreesia's reasonable judgment, to address a recently discovered issue in the Products that could, if left unresolved, materially threaten the security or usability of the Products, Customer Data, or Customer's systems. Emergency Maintenance is not considered Downtime for purposes of this SLA and will not be counted towards any Downtime. In the event of Emergency Maintenance, Phreesia will notify Customer as soon as practical if the Products are expected not to be available. All notices referenced herein will be provided to Customer.

"Monthly Uptime Percentage" means the total number of Eligible Minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of Eligible Minutes in a calendar month.

"Scheduled Downtime" means those times where Phreesia notifies Customer of periods of Downtime at least twenty-four hours prior to the commencement of such Downtime. Scheduled Downtime is not considered Downtime for purposes of this SLA and will not be counted towards any Downtime. Notwithstanding anything to the contrary, in no event shall the total amount of Scheduled Downtime in a month exceed one (1) hour. Any amount of Scheduled Downtime in a month above one (1) hour shall count as Eligible Minutes.

"Service Credit" means the following:

Monthly Uptime Percentage	Service Credit
97% - 99%	5%
94% - 96.99%	10%
90% - 93.99	25%
Below 90%	50%

Phreesia reserves the right to modify this SLA at any time by providing such updated terms to Customer.

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Exhibit C: PhreesiaCare

1. PhreesiaCare. To the extent applicable, this Section B governs the hardware services and technical support provided to Customer by Phreesia under the PhreesiaCare Plan (referred to herein as the "Plan") for the PhreesiaPads contained in its original packaging, or Arrivals Stations, in its original packaging (collectively, for purposes of this Section B, the PhreesiaPads and Arrivals Stations are referred to herein as the "CoveredEquipment").

2. Start of Phreesia Care Coverage. The Coverage Period begins on the date Phreesia first is authorized to bill Customer for the Covered Equipment and ends on the date of termination or expiration of the applicable Order Form.

3. What is Covered?

3.1. Hardware Service - If during the Coverage Period, Customer submits a valid claim by notifying Phreesia of a material defect in the Covered Equipment, Phreesia will either (a) repair the defect at no charge, using new or refurbished parts that are equivalent to new in performance and reliability, or (b) exchange the Covered Equipment with a replacement that is new or equivalent to new in performance and reliability, and is at least functionally equivalent to the original product.

3.2. Technical Support - During the Coverage Period, Phreesia will provide Customer with access to telephone and/or web-based technical support resources. Technical support may include assistance with installation, launch, configuration, troubleshooting, and recovery, including storing, retrieving, and managing files; interpreting system error messages; and determining when Covered Equipment service is required. For any Software included in the Covered Equipment, Phreesia will provide support for the then-current version of the supported software, and the prior software release. For purposes of this section, a "release" means a significant version of software that is commercially released by Phreesia and which is not in beta or pre-release form.

3.3. Scope of Technical Support - Phreesia will provide technical support for the Covered Equipment, and Phreesia's Software included therein.

4. What is not Covered?

4.1. Hardware Service. The Plan does not apply to:
I. Removal or disposal of the Covered Equipment, or the provision of equipment while the Covered Equipment is being serviced;
II. Damage caused to the Covered Equipment because of: (a) operating the Covered Equipment outside the permitted or intended uses described by the manufacturer, or (b) service (including upgrades and expansions) performed by anyone who is not an authorized representative of Phreesia or a Phreesia authorized service provider;
III. Cosmetic damage to the Covered Equipment including but not limited to scratches, dents and broken plastic;
IV. Consumable parts, such as batteries unless failure has occurred due to a defect in materials and workmanship;
V. Preventative maintenance on the Covered Equipment;
VI. Lost or stolen Covered Equipment; or
VII. Defects caused by normal wear and tear or otherwise due to normal aging of the Covered Equipment.

4.2. Technical Support. The Plan does not include:
I. Issues that could be resolved by upgrading Software to the then current version; and
II. Customer's use of or modification to the Covered Equipment in a manner for which the Covered Equipment is not intended to be used or modified.

5. How to Obtain Service and Support
Customer may obtain Covered Equipment services and technical support by accessing the Phreesia website (www.Phreesia.com) or calling the telephone number listed below. Customer may be requested to provide the applicable PhreesiaPad serial number or Arrival Station serial number in order to receive assistance.

6. Hardware Service Options

6.1. Phreesia or one of its third party contractors will provide Covered Equipment services through the following options:
I. Mail-in service. Direct mail-in service is available for PhreesiaPads and shipping is available for service of Arrival Stations. If Phreesia determines that the Covered Equipment is eligible for mail-in service, Customer will ship the PhreesiaPad to a designated location in accordance with Phreesia's instructions. Once service is complete, Phreesia will return the PhreesiaPad to Customer unless Phreesia previously supplied a replacement.
II. Arrival Station Repairs on-site. Repairs to Arrival Stations at Customer's location may be available in certain circumstances. Please check to see about availability from Phreesia customer support. There could be additional charges for repairs on-site.

6.2. Phreesia reserves the right to change the method by which Phreesia may provide repair or replacement service to Customer, and Customer's PhreesiaPad's or Arrival Station's eligibility to receive a particular method of service.

7. Customer Responsibilities

To receive service or support under the Plan, Customer agrees to comply with the following:
I. Provide its sales information, if requested;

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II. Provide information about the symptoms and causes of the issues with the Covered Equipment;
III. Respond to requests for information, including but not limited to the Covered Equipment serial number, model, any error messages displayed, actions taken before the Covered Equipment experienced the issue and steps taken to resolve the issue and allowing Phreesia's technical support personnel to remote into the Covered Equipment;
IV. Follow instructions Phreesia gives Customer, including but not limited to refraining from sending Phreesia products that are not subject to repair or replacement service and packing the Covered Equipment in accordance with shipping instructions;
V. Update Software to currently published releases prior to seeking service; and
VI. Customer must keep the PhreesiaPads or Arrival Stations clean.

8. Cancellation
If Customer purchased the Covered Equipment from Phreesia (i.e. where title to the Covered Equipment passes to Customer), Customer may cancel this Plan at any time for any reason. If title to the Covered Equipment remains with Phreesia, Customer cannot cancel this Plan during the term of the Order Form.

9. General
Phreesia may, at its discretion, record part or all calls between Customer and Phreesia for quality assurance purposes.

Telephone Number: 888-534-6099
Seven days a week/24 hours per day

Telephone number and hours of operation may vary and are subject to change. Customer can visit http://www.phreesia.com m for current contact information.

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1 **Exhibit D: Digital Patient Engagement ("DPE")**

Phreesia shall deliver to Customer one of the below three options selected by Customer, as set forth in the Order. As used herein, "You" and "Your" shall refer to Customer.

(I) Digital Patient Engagement - Phreesia + Third Party: Phreesia presents sponsored or non-sponsored content to patients that is compiled uniquely for them based on information in their Phreesia record ("Unique Content").

a. Additional Monthly Cost: None. This option is included in Phreesia Base Package Subscription Fees
b. Unique Content may be presented to patients after they check in through the Phreesia Platform. No content is provided by your organization.
c. Patients electronically sign an authorization permitting Phreesia to deliver Unique Content; other general content not specific to the patient does not require authorization. Patients may decline to sign or opt out of (i.e., revoke) their authorization at any time.
d. After patients check in and sign an authorization, patients will be presented with the following, in chronological order: (1) screen informing patients that the information they are about to view may be sponsored or non-sponsored content, and (2) Unique Content.

(II) Digital Patient Engagement - Hybrid Third Party + Practice: Phreesia presents to patients Unique Content and content developed by the Customer ("Customer Content").

a. Additional Monthly Cost: $30 per Customer Content message Per Provider Per Month (PPPM) entitles Customer to 1 Customer Content message per quarter. You may update the Customer Content message no more than once per quarter.
b. Phreesia will work with your organization to design and configure Customer Content. By way of example, Customer Content can include messages that promote your organization's services and updates.
c. Your organization will provide quality assurance checks and final approval for Customer Content.
d. At your request, Phreesia will deliver Customer Content messages based on unique patient attributes.
e. Patients electronically sign an authorization permitting Phreesia to deliver Unique Content; other general content not specific to the patient does not require authorization. Patients may decline to sign or opt out of (i.e., revoke) their authorization at any time.
f. After patients check in and sign an authorization, patients will be presented with the following, in chronological order: (1) Customer Content, (2) a screen informing patients that the information they are about to view may be sponsored or non-sponsored content, and (3) Unique Content.

(III) Digital Patient Engagement - Practice Only: Phreesia presents to patients solely Customer Content.

a. Additional Monthly Cost: $120 PPPM for 4 Customer Content messages, subject to subparagraph e. below. You may update each Customer Content message no more than once per quarter.
b. Customer Content is presented to patients after they check in through the Phreesia Platform. Examples of Customer Content include messages regarding your organization's value-added services and office updates.
c. Phreesia will work with your organization to design and configure Customer Content.
d. At your request, Phreesia will deliver Customer Content messages based on unique patient attributes
e. Phreesia will deploy 4 Customer Content messages PPPM on the PhreesiaPad or Mobile using Phreesia's health content template. If Customer elects to deploy less than 4 Customer Content messages PPPM, Customer will nonetheless be charged for 4 messages PPPM.
f. Your organization will provide quality assurance checks and final approval for Customer Content.

By way of example, below is a chart illustrating the pricing for the above three options for a 5-provider practice:

DPE Options

		Practice Message Volume (#)	Message Cost ($)		Example: 5-Provider Practice	
		Per Year	Per Message, per Provider per Month (PPPM)	Subtotal, per Provider per Month (PPPM)	Example Provider Volume (#)	Cost per Month ($)
Option (I)	Digital Patient Engagement – Phreesia + Third Party	0	$0	$0	5	$0
Option (II)	Digital Patient Engagement – Hybrid Third-Party + System	1	$30	$30	5	$150
Option (III)	Digital Patient Engagement – Practice Only	4	$30	$120	5	$600

Please Sign Here:

Greenway Intergy Integration Addendum

Phreesia supports a real-time, bi-directional integration with Greenway Intergy version 11 or newer (hereinafter, the "Integration"). Customer must upgrade to a supported version of Greenway Intergy in order to use the Phreesia's products in connection with the Integration.

To ensure a successful deployment of the Integration, Phreesia and Customer acknowledge and agree to the responsibilities outlined below:

Phreesia Responsibilities

- A Phreesia integration specialist will be assigned to the implementation project and ensure proper responsiveness and assistance towards deployment of the Integration.
- Phreesia will work in good faith to ensure any network-wide upgrades do not affect the Integration between Phreesia and Customer's PMS/EMR.
- Phreesia will use appropriate safeguards to prevent use or disclosure of any PHI (Protected Health Information) received by Customer during the Integration development process, per the regulations required by HIPAA and the Business Associate Agreement entered into between Phreesia and Customer.

Customer Responsibilities

- Customer agrees to fully support Phreesia's effort to build an integration with Greenway Intergy.
- Customer will provide technical, operational and application experts for pre-implementation scoping, development work testing, post-go live trouble shooting and support.
- In many cases, Greenway Intergy vendor representatives may need to assist with Integration efforts. Customer understands that it is Customer's responsibility to ensure that the Greenway Intergy vendor is available to support Phreesia systems Integration, where necessary.

The data fields included in the current version of the Integration are listed below (subject to change with future upgrades and dependent on configuration within customer's Greenway Intergy instance). Not all fields are available as discrete data elements; but all data collected by Phreesia can be exported as a PDF.

Greenway Intergy → Phreesia

Appointment
Appointment Duration
Provider/Resource
Appointment Date
Appointment Location
Appointment Reason

Demographics
Name (first, middle, last)
Home Address Line 1
Home Address Line 2
City, State, Zip
Email
Home Phone
Cell Phone
Work Phone
Preferred Phone
Preferred Contact Method
Race
Ethnicity
Language
Date of Birth
Gender
Social Security Number

Clinical
Past Medical History
Past Surgical History
Family Medical History (with relationships)
Active Drug Allergies (with reaction)

Insurance
Primary Insurance Company
Primary Policy Number
Primary Group Number
Primary Subscriber Name
Secondary Insurance Company
Secondary Policy Number
Secondary Group Number
Secondary Subscriber Name

Financial
Itemized Patient Balance[1]

Phreesia → Greenway Intergy

Demographics
Name (first, middle, last)
Home Address Line 1
Home Address Line 2
City, State, Zip
Email
Home Phone
Cell Phone
Work Phone
Preferred Phone
Preferred Contact Method
Race
Ethnicity
Language
Date of Birth
Gender
Social Security Number

Automatic Patient Event Updates
Patient Events update in Intergy when a PhreesiaPad session starts and ends

Financial
Copay Payments
Itemized Patient Balance[1]

Clinical*
Past Medical History
Past Surgical History
Family Medical History (with relationships)
Active Drug Allergies (with reaction)

Social History
Tobacco Use (number of packs per day)
Alcohol Use (with frequency)
Recreational Drug Use
Education
Employment

Review of Systems
Constitutional
Eyes
Ears, Nose, Throat
Cardiovascular
Respiratory
Gastrointestinal
Genitourinary (male and female)
Musculoskeletal
Integumentary
Neurological
Psychiatric
Endocrine

Export as PDF or TIFF
Agreement Forms
Demographics Printout
Clinical Printout
HIPAA Agreement Forms
Patient Self-Assessment Evaluations
Practice Privacy Policy

The following integration capabilities are additionally supported for Phreesia's Patient Access products:

Appointments Hub and Self-Scheduling

- Search for established patients
- Schedule established patients

Product Descriptions

Base Package:

- A web-based Dashboard allows staff to complete all the patient registration actions and review related alerts and notifications. Phreesia's insurance verification solution enables staff to review the status of a patient's insurance coverage:
    - Verifications are run in batch a few days ahead of the appointment, or in real time, as insurance changes are updated
    - The verification tool is built into the Dashboard and provides the following information: eligibility status, plan details, benefit information (copay, co-insurance, deductible, outof-pocket stop loss) and coverage alerts (primary/secondary alert, PCP on file, restrictions)
    - Ability to calculate the patient's copay based on the appointment context (PCP, Specialist or Urgent Care copays)
- Payments are included as part of the Phreesia platform o Process real-time credit card transactions or track cash and check payments o Point-of-service payment support with encrypted swipe and key-in device for secure credit card handling
    - Virtual credit card terminal to collect card-not-present transactions and manage existing transactions (void, refunds, etc.)
    - End-of-day batch reconciliation report and other product reports to provide visibility into payment details and collection performance
- Advanced payment features are available, including:
    - Card on file: ability to capture patient card on file and consent of use. Cards on file can be accessed by patients in later visits or by the staff based on signed financial policies
    - Patients or staff can set up payment plans: Phreesia will store the patient's card and automatically deduct the agreed-upon payment amount every month. Payment plan offers can be customized based on client's rules and financial policies.
    - Online payments are offered through an online payment link that can be embedded into any website: Online payments are co-branded and make it convenient for patients to pay online
    - Point-to-Point Encryption (P2PE) available
- Underlying Phreesia's Mobile, PhreesiaPad or Arrivals kiosk technology is a complex interview platform that ensures that the right information is captured from patients every time.
    - Interviews are supported by a library of more than 10,000 questions, and specialty- and appointment-specific templates
    - Interviews support a robust, logic-driven framework to ask the right questions at the right time, based on patient characteristics, location visited, attending provider, reason for visit or any number of other factors
    - Consent management is built into the interview structure to ensure that the right consents for the right appointment are collected every time. Consents allow for patient digital signature capture and can be displayed with the logic capabilities described above.

- Our COVID-19 Screening Module, which is consistently updated to align with CDC guidelines, allows practices to screen patients for COVID-19 risk factors in advance of their visit and to reduce exposure in the office.

- Phreesia's patient intake platform is supported by a bi-directional discrete data integration feed to many of our clients' practice management (PM) or electronic health record systems (EHR). Full integration capabilities and details are listed in the attached integration appendix.
- Administrators have access to Phreesia's robust analytics to understand platform usage by patients and staff, benchmarking with peers and key performance insights to drive registration efficiency.
- User management and permissions o Client-controlled user management with customizable roles and permissions o Ensure that users have the appropriate access levels to locations and features o Configurable timeout and password rules; SSO available
- Phreesia's registration, payments and eligibility solutions are supported by a robust and reliable SaaS platform. This platform ensures timely system updates, reliability and accessibility. The platform is managed with best-in-class security and privacy standards.

Mobile

- Web-based mobile application for patients to complete registration on their own smart phone, tablet or home computer. Patients access a link via email or SMS and authenticate using multifactor authentication – no username and password required.

Features include:

- Appointment Confirmations – Remind patients of upcoming appointments via text or email and allow them to confirm, cancel or reschedule
- Patient Pre-Registration – Trigger individualized check-in forms to patients in their preferred language and allow them to complete those forms on their own device before they arrive for their appointment
- Multi-language Capability – Allow patients to choose from up to 21 supported languages when completing intake questions
- In-Office Registration – Send registration forms via text or email to patients while they are in the office for them to complete on their own device.
- Mobile API – access to Phreesia's Mobile API to embed mobile registration within a 3rd party application, such as a web portal or mobile app, or communication tool.
- Intake for Telehealth – Set patient expectations for telehealth visits during pre-visit. Automatically check patients in and complete seamless handoff to virtual waiting room at the time of appointment.
- Image Capture – Prompt patients to take a photo of themselves, their primary/secondary insurance cards and their driver's license
- Prepayment – Allow patients to prepay their copays to further streamline the check-in process and increase collections
- Co-branding – Customize colors and logos to provide a consistent branding experience

PhreesiaPad

PhreesiaPads are purpose-built tablets designed for patients to complete full intake registration in the office. They include an integrated, PTS-certified card swipe. Staff initiates a session from the Phreesia Dashboard by entering a six-digit PIN. Patients enter their DOB to start registration and run logic-driven workflows. Patients can:

- Enter and review demographics, insurance, social, family and medical history
- Review and sign policies
- Capture patient, ID and insurance card photos
- View and pay balances, visit charges and copays
- Set up payments plans and card on file

Arrivals Kiosks

Phreesia Arrivals kiosks are purpose-built devices designed to streamline patient intake, direct patient traffic and provide self-service check-in workflow. Floor-standing and table-top versions available. Features include:

- Patient Wayfinding
- Insurance & Patient ID image capturing
- Push-to-Patient Functionality
- Push mobile in-office interviews directly to the patient's phone to enable them to conveniently complete lengthier interviews
- Check-in blockers o Prevent patients who need additional attention during intake from checking in on an Arrivals kiosk (ex. Inactive insurance)
- Wayfinding o Guide patients to their exam room or appointment facility, further streamlining the intake process
- SMS Authentication o Enable patients to complete strong authentication with SMS authentication sent directly to their mobile devices

COVID-19 Vaccination Management Solution

Our Vaccine Management Solution is an end-to-end set of outreach, intake, reminder and recall tools to increase vaccine uptake. Clients use this solution to:

- Communicate with patients about vaccine availability
- Manage their waitlist
- Automate data-collection during vaccine visits • Screen patients for vaccine hesitancy.

Patient Chat

Communicate with patients via SMS regarding important logistical details or updates for their appointments, including arrival instructions. Patient chat is initiated by staff and is "open" for patient response from the time of initiation to the end of the day of the appointment.

- Staff send messages to individual patients – either templated or free text (access configurable by permission) – directly from the Phreesia Dashboard
- Patients can respond to staff via SMS and those responses are visible in the Dashboard.

- Use Broadcast Messaging for easier communication with a group of patients at once (to either start several conversations simultaneously, or to send notifications to several patients)
- Chat with patients that have been added to the Appointments Hub via Appointment Requests or Appointment Confirmations.

Health Campaigns

- Messaging platform embedded in the check-in interview used to prompt patients to schedule specific types of appointments, immunizations, preventive screenings and more
- Patient Outreach Manager page located on the Phreesia Dashboard where you can create your own campaigns (email/text/both), upload a list of patients to message between visits, and manage patient responses
- Ability to configure sending medium (text/email/both) and sending speed (send immediately or choose to spread out over a couple hours) at the individual campaign level
- Access to Phreesia's library of pre-built campaigns (both email and text templates available) as well as ability to create custom content
- Access to Phreesia's professional services to develop custom registration campaigns
- Appointments Hub in the Phreesia Dashboard to track and manage all appointment requests
- Analytics reports with practice-level and individual-level details on responses to Health Campaigns, including appointment requests and self-scheduled appointments

Self-Scheduling

- Tool for patients to self-schedule appointments via Phreesia directly into your practice management system
- Self-scheduling can be embedded in a Health Campaign during an intake interview or initiated from an email sent to patients between visits
- This tool can be linked to on your website or social media pages for patients to self-schedule appointments
- Self-scheduled appointments are automatically recorded in the PM system
- The self-scheduling platform includes the Appointments Hub in the Phreesia Dashboard to track all appointment requests or self-scheduled appointments in one central location
- Analytics reports with practice level and individual level details for appointments scheduled through Phreesia

Referrals

- Tool for specialty practices to increase the number of incoming referrals from PCPs
- Online hub allows PCP practices to send direct referrals to specialty clinics with an online form
- This hub enables staff to chat, share documents and receive status updates in real time
- Centralized Appointments Hub for specialty clinics to work and track all incoming referrals and appointment requests o Eligibility and benefits checks o Notes for internal staff
  - o Follow-up status configurable by practice o
    Robust analytics report

Patient Satisfaction Surveys

- Send automated satisfaction surveys to patients following their visit
- Capture patient feedback about their visit while ensuring your practice is in line with CAHPS metrics
- Robust analytics suite to analyze patient responses o Staff and provider performance metrics

  o Benchmarking tools for within your practice and across other Phreesia groups o Insight into operational improvements and priorities

  o Identify strengths and competitive advantage to use with marketing efforts

Payment Assurance

- Card on File: Patients can securely save a card on file and agree to be automatically charged for any outstanding balances post-visit
- Import patient balances to collect payment post-claim adjudication by either:

  o Scheduling payments to be collected automatically from the patient's card on file o Email or text patients a payment reminder with a link to pay securely through the Online Payment page

Patient Access

- Appointment Accelerator: Automatically fill cancelled appointments with waiting patients—all without managing a time-consuming waitlist. With Appointment Accelerator, practices can increase patient volume, prevent future no-shows and save staff valuable time, while getting patients in for their appointment weeks earlier.

Care Pathways for Cardiology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Cardiology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Dermatology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Dermatology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Endocrinology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Endocrinology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for ENT

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Otolaryngology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Gastroenterology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Gastroenterology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for General Surgery

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of General Surgery available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Geriatric Medicine

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Geriatric Medicine available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.

- Additional practice licensing for use of certain content may apply

Care Pathways for Nephrology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Nephrology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Neuro, Pain and Spine

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialties of Neurology, Neurosurgery, Pain Management, Physiatry and Orthopedic Spine Surgery available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Ophthalmology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Ophthalmology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Orthopedics

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Orthopedics available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- AAOE Empower Compatible Export: An export of PRO data is available for members of AAOE's data warehouse. Leverage PQI to upload PRO responses to the AAOE Empower registry for quality and benchmarking initiatives.
- Additional practice licensing for use of certain content may apply

Care Pathways for Pulmonology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Pulmonology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Rheumatology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Rheumatology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Care Pathways for Urology

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Urology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Enterprise Care Pathways

- Automated delivery, scoring (when available) and PDF output of all patient-reported outcomes (PROs) and other screening tools from Phreesia's generally available (GA) PRO Library. Choose from Phreesia's GA PRO Library for content applicable across specialties.
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply
- Phreesia's GA PRO Library is subject to change and content may added or removed over time

Healthy Child for Pediatrics

- Automated delivery, scoring (when available) and PDF output of screening tools related to Pediatrics available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.

- Additional practice licensing for use of certain content may apply

Wellness for Primary Care

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to Primary Care available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Wellness Express for Primary Care

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to Depression, Anxiety, and Substance Abuse. Unless otherwise specified in this contract through Clinical Expansion Package add-ons, includes PHQ2/9, GAD-7, AUDIT-C, DAST-10, and ORT.
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Women's Wellness for OB/GYN

- Automated delivery, scoring (when available) and PDF output of patient-reported outcomes (PROs) and other screening tools related to the specialty of Obstetrics and Gynecology available from Phreesia's library
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Clinical Expansion Package

- Automated delivery, scoring (when available) and PDF output of a single patient-reported outcome (PRO) or other screening tool available from Phreesia's generally available (GA) PRO Library. The PRO or screening tool will be defined within this contract.
- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of most PROs and screening tools over time. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Clinical Expansion Package - Custom Content

- Automated delivery, scoring (when available) and PDF output of a single patient-reported outcome (PRO) or other screening tool *not* available from Phreesia's generally available (GA) PRO Library. The PRO or screening tool will be defined within this contract.

- Patient Question Insights: Supporting self-service analytics through the Phreesia Dashboard showing patient responses and results of this individual PRO/screening tool over time can be activated upon request. Analytics for content outside of this offering requires separate contracting.
- Additional practice licensing for use of certain content may apply

Social Determinants of Health

- Automated delivery of one or more validated SDOH screening tools during the check-in process
- Real-time alerts for providers when patients are identified with unmet social needs
- Customizable patient-facing resource guide automatically generated based on patients' identified needs
- Patient's screening results stored in a PDF in the patient's chart
- Analytics report with population- and patient-level results

Patient Question Insights

- Analytics report designed to provide flexible reporting for groups of non-integrated questions asked within Phreesia interviews

Data Extracts

- Subscription service for functional area data delivered as .csv documents via SFTP data extraction

Service Promotions

- Practice-sponsored messages delivered after the check-in interview, informing patients of new service offerings, public health announcements and more
- Targeted messages are triggered for patients based on their health information, which is only used with their consent

Connect

Connect Lite:

- Appointments Hub functionality in the Dashboard to:
  - Track all incoming referrals from sending providers
  - View and manage a work queue in the Dashboard by Customer's stakeholders, including Customer's call center, scheduling team, and/or referral coordinators
  - Send appointment notifications to patients via email or text
  - Chat with sending providers who have the Connect Hub enabled
  - Access and view reporting and related analytics relating to referred patients
- Connect Hub for Customer's sending providers and their staff to:
  - Send patient referrals to Customer
  - Attach applicable documents to a patient's referral request
  - Chat with Customer's staff
  - Check the referral status and appointment status of each patient referred to Customer
- Network Liaison Service whereby Phreesia:
  - Provides sending providers set-up, training, and ongoing support of Connect Hub and workflow

Connect Core:

- Includes all Connect Lite functionality
- Basic Fax Integration Service to enter Customer's faxed referrals into the Appointments Hub
  - Upload functionality into Appointments Hub
  - Phreesia team processes documents within 24 hours
- Eligibility and benefits verification before the patient is scheduled for an appointment with Customer
- Scheduling integration from Appointments Hub directly into Customer's PM system (available for select PM systems)

Connect Plus:

- Includes Connect Lite and Connect Core functionality
- Premium Fax Integration Service to enter Customer's faxed referrals into the Appointments Hub
  - Upload functionality into Appointments Hub
  - Phreesia team processes documents within specified SLA
- Patient Chat: two-way real-time chat with patients from the Appointments Hub or Dashboard
- Self-Scheduling: see description above (available for select PM systems)
- Direct Scheduling for sending providers: Tool for your sending providers to schedule appointments directly into your PM system on behalf of patients from the Connect Hub (available for select PM systems)

At Phreesia's sole discretion, the Product Descriptions in Exhibit F may be modified at any time. The Customer may find additional information in Product Release Notes.

(19)

CITY OF Fargo

Inspections Division

200 Third Street North
Fargo ND 58102
phone 701-241-1561
fax 701-476-6779

Memorandum

DATE: January 13, 2022

TO: Mayor Mahoney and Board of City Commissioners

FROM: Shawn Ouradnik, Inspections Director

SUBJECT: Vendor for junk vehicle removal contract for 2022

Attached are the bids received by the Inspections Department for the provision of junked vehicle removal services for the colander year of 2022. The bids received were from the present provider, Ed's Towing Service, Inc., Moorhead MN, Northland Towing otherwise known as Fargo Moorhead Towing, and MTW Towing.

This process is routine and annual. The cost for a vehicle owner to retrieve their vehicle is lower using the services Ed's Towing provides. Ed's towing has provided reliable service in the past and has worked well with the Inspections team when it comes to nuisance abatement in relation to the towing of vehicles. I respectfully request that you approve a motion to accept this proposal and award the contract for 2022 Junked Vehicle Removal to Ed's Towing Service, Inc. in Moorhead MN.

AGREEMENT

This agreement, made and entered into this 24th day of January 2022, by and between the City of Fargo, a municipal corporation ("City"); and Ed's Towing Service Inc. of Moorhead, Minnesota ("Contractor").

PREMISES:

A. City has solicited proposals for the removal, impound and disposition of junk cars.

B. Contractor has submitted a proposal for such removal, impound and disposition.

C. City has determined that the proposal submitted by contractor is the most advantageous to the City.

D. The parties entered into a contract on January 24th 2022.

E. The parties mutually agree that certain amendments to that contract are necessary.

F. The parties wish to reduce their supplemental agreement to writing.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. Contractor agrees to provide prompt wrecker services to the City of Fargo for the removal of junk cars, as may be designated by the City; in the event the contractor is unable, for any reason, to furnish prompt wrecker services, they will be required to hire another firm to remove junk cars, at its expense.

2. Contractor will provide a suitably fenced storage area and will retain all vehicles picked up for a minimum period of ninety days.

3. During the ninety-day holding period, the owner of such vehicle may take possession thereof by paying to the Contractor an impound fee of $95 Light Duty/$125 Medium Duty/$175 Heavy Duty and a per day storage charge of $25 Light Duty/$35 Medium Duty/$50 Heavy Duty. An administrative fee of $25 may apply, and, if needed, dollies/skates/go jacks may be used, in which, a $35 fee will apply. If snow removal is necessary, a $15 fee per 15 minutes of shoveling shall apply. No vehicle may be removed by the owner which does not have a current automobile registration tag.

4. Any vehicles which are not claimed by the owner within the ninety-day period shall be retained by Contractor for salvage purposes.

	Eds	Northland	MTW
Impound LD	$95.00	$150.00	**$60.00**
Impound MD	$125.00	$200.00	**$100.00**
impound HD	$175.00	$250.00	**$150.00**
Dollie	$35.00	**$30.00**	$35.00
Mileage- In City Limits	**$0.00**	**$0.00**	$5.00
Mileage- Outside City Limits	**$3.50**	$4.75	$5.00
Admin fee	**$25.00**	**$25.00**	$75.00
Daily storage LD	**$25.00**	$30.00	$35.00
Daily storage MD	**$35.00**	$50.00	$50.00
Daily storage HD	**$50.00**	**$50.00**	$75.00
extra labor	$70.00	$65.00	**$60.00**
winching	$70.00	$65.00	$125.00
Sum of the Totals	$708.50	$919.75	$775.00
Trailers	**$110**		$150
Campers	$300		**$150**

*Moving Vehicles out of way to get to impound vehicle $45.00
* Vehicles that are full of garbage will be an additional charge.
* Trucks and Trailers with Garbage will be an additional charge.

Most likely a LD or MD tow. Don't know about winching so added like Northland said 1/5 hr. Really close

Building Inspections Department
Housing Inspections
225 4th Street North
Fargo, ND 58102
(701) 476-6708

December 1, 2021

MTW Towing
112 6th Ave NW
West Fargo ND 58078

RE: 2022 Towing Bid Comparison

Dear MTW Towing:

The City of Fargo Inspections Department is requesting your proposal for the provision of junked vehicle removal services for the calendar year: 2022.

You must submit your proposal to the Inspections Director, Shawn Ouradnik, by no later than, Monday, December 21, 2021 at 4;30pm.

Thank you for your interest in this program. Enclosed is the City of Fargo ordinance regarding junked vehicles along with a request of required costs per service.

If you have any questions, please feel free to contact us at your convenience.

Sincerely,

Kristi Stoffel
City of Fargo Inspections Department
225 4 Street, N, Ste W118G
Fargo, ND 58102

Eds Towing Service

THE CITY OF Fargo FAR MORE

Inspections 2022 Towing Bids

		Bid amount
Impound Light Duty (LD)	-	95.00
Impound Medium Duty (MD)	-	125.00
Impound Heavy Duty (HD)	-	175.00
Dollie charges	-	35.00
Mileage	-	3.50 per mile
Admin fee	-	25.00
Daily Storage Light Duty (LD)	-	25.00
Daily Storage Medium Duty (MD)	-	35.00
Daily Storage Heavy Duty (HD)	-	50.00
Extra labor/hr	-	45.00
Winching		70.00
Additional charge Trailers	-	110.00
Additional charge Campers 10 feet or More		300.00

Notes-

- Moving cars out of the way to get to the car being Impounded 45.00.
- Vehicles that are full of garbage will be an additional charge.
- Trucks and Trailers with Garbage will be an additional Charge.

Provide bids for all categories.
If any other charges please explain.

(20)

CITY OF Fargo

Inspections Division

200 Third Street North
Fargo ND 58102
phone 701-241-1561
fax 701-476-6779

Memorandum

DATE: January 24, 2022

TO: City Commission

FROM: Shawn Ouradnik, Floodplain Administrator

SUBJECT: Variance Acknowledgement and Liability Waiver

Background:

The City was contacted about the proposed construction of a new building at 1425 Main Avenue. The proposed structure would encroach into the required rear setback in the GC, General Commercial zoning district by 5 feet. In addition to the variance to the setback, the proposed structure would have a lowest opening (finished floor) below the requirements of the City's Floodproofing Code. The property and proposed structure are within the 41-foot water surface elevation inundation area (WSEIA). At this location, the FEMA base floodplain elevation (BFE) is 901.2 feet and the 41-foot WSEIA is at an elevation of 904.5 feet with additive. The lowest opening of the proposed structure would be at an elevation of 903.2 feet, which meets the requirement for the lowest opening elevation. Additionally, the fill adjacent to the building would be at an elevation of approximately 903.0 feet, which is 1 foot higher than required. The fill within 15 feet of the building would be above 901.2 feet, which meets the elevation requirement. Accordingly, the applicant is requesting a variance in order to construct the finished floor of the building below the 41' inundation area elevation requirement of 904.5.Upon review of the specific site constraints, City staff recommended approval to the Board of Adjustments. Approval was obtained at the October 26, 2021 BOA meeting. The specific criteria that need to be met for this project is outlined in the variance waiver documents.

The Variance Acknowledgement and Liability Waiver and City Staff report is attached for your review.

Recommended Motion:

To authorize the City of Fargo Mayor to sign the Variance Acknowledgement and Liability Waiver for the property located at 1425 Main Avenue.

SO/jmg
Attachments

VARIANCE ACKNOWLEDGEMENT AND LIABILITY WAIVER

This Agreement, made by and between Huynh Kha Property, LLC, a Minnesota limited liability company ("Huynh Kha Property" or "Owner") and the city of Fargo, a North Dakota municipal corporation ("City") is for the purpose of granting Owner a variance to the City Floodproofing Code and Waiver of Liability.

WHEREAS, Owner requested a waiver of the elevation requirements of the City Floodproofing Construction Requirements, which establishes requirements for building elevations for the issuance of a building permit for the proposed construction located at:

Lot 1, Block 1, Huynh Kha Addition to the city of Fargo, County of Cass, State of North Dakota

(street address: 1425 Main Avenue, Fargo, ND 58102).

The City Floodproofing Construction Requirements are found here:

http://download.cityoffargo.com/0/floodproof_construction_requirements_-_revised_april_2015.pdf

WHEREAS, On October 21, 2021, the Fargo Board of Adjustment approved the elevation variance request contingent upon certain construction requirements; and

WHEREAS, As a condition of the elevation variance, Huynh Kha Property shall waive any liability against City; and

WHEREAS, As further and additional conditions, Huynh Kha Property agrees that the building will be constructed to a minimum finish floor elevation of 2 feet above the FEMA BFE

which also meets the state's requirement of BFE plus 1 foot, as recommended by City Engineering Staff to ensure the structure is reasonably safe from flooding.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Huynh Kha Property is granted a variance from the City of Fargo Floodproof Construction Requirements, revised April 2015, for the 41' minimum finish floor elevation so long as the following conditions of construction are met:

   (a) All new electrical and mechanical equipment shall be placed above the FEMA 1% chance base flood elevation plus 2 feet; and

   (b) The structure will be constructed without a basement.

2. Huynh Kha Property hereby waives any and all liability against City, and agrees to indemnify and hold City harmless from any all claims asserted as a result of the waiver granted herein. Huynh Kha Property understands and agrees that City shall not be liable for, and City does not accept any liability for the proposed structure along with any other features constructed and/or installed within this property.

3. Owner accepts all liability with respect to the improvements completed on this property, for itself, its successors and assigns.

(Signatures on Following Pages)

Dated this 01 day of 13, 2022.

Huynh Kha Property, LLC, a Minnesota limited liability company

By: John H

Its

JOHN HUYNH PRESIDENT

Printed Name

STATE OF ND)
) ss.
COUNTY OF Cass)

On this 13th day of Jan, 2022, before me, a notary public in and for said county and state, personally appeared John Huynh, to me known to be the President of Huynh Kha Property, LLC, a Minnesota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)

KIM NICHOLS
Notary Public
State of North Dakota
My Commission Expires Feb. 18, 2023

Kim Nichols
Notary Public
Cass County, ND

Dated this _____ day of _____, 2022.

CITY OF FARGO, a NORTH DAKOTA municipal corporation

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

ATTEST:

_____
Steven Sprague, City Auditor

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

On this ____ day of _____, 2022, before me, a notary public in and for said county and state, personally appeared DR. TIMOTHY J. MAHONEY, M.D., and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

_____
Notary Public
Cass County, North Dakota
My Commission expires:

CITY OF FARGO - Board of Adjustment
Variance Staff Report

Item No: 2.a	**Date:** October 21, 2021
Address: 1425 Main Avenue	
Legal Description: Lot 1, Block 1, Huynh Kha Addition	

Owner(s)/Applicants: Huynh Kha Property LLC, John & Sarah Huynh/Representative Elissa Novotny (Dovetail Development LLC)

Reason For Request: To construct a new building that would result in a reduced rearyard setback as required by the Land Development Code, and the lowest opening/finish floor at a lower elevation than as required by the City's Floodproofing Code.

Zoning District: GC: General Commercial

Status: Board of Adjustment Public Hearing: October 26, 2021

GC Dimensional Standards		Proposed Structure	
Setbacks:		**Setbacks:**	
Front (south):	20'	**Front (south):**	20'
Interior-Side (east):	5'	**Interior-Side (east):**	44'-8"
Interior-Side (west):	5'	**Interior-Side (west):**	225'-6"
Rear (north):	15'	**Rear (north):**	**10'**

Floodproofing Code Standards		Proposed Structure	
Elevations:		**Elevations:**	
Lowest opening:	FEMA BFE plus 2'	**Lowest opening: 903.2**	**Meets** (FEMA BFE 901.2 plus 2.0')
Adjacent fill:	FEMA BFE plus 0.7'	**Adjacent fill: 901.9**	**Meets** (FEMA BFE 901.2 plus 0.7')
Fill within 15':	At or above FEMA BFE	**Fill within 15': 901.2**	**Meets** (FEMA BFE 901.2)
41' WSEIA Elevation:	41' plus 1.2'	**Finish Floor: 904.5**	**FF 1.3' low** (41' WSEIA 903.3 plus 1.2')

Background:
The applicant has proposed to construct a new building and is requesting two variances: to reduce the rearyard setback and for the lowest opening (finished floor) to be below the floodproofing construction requirement.

Up until recently, existing buildings stood on the subject property. With the redevelopment project, there was confusion in the communication during the entitlement and permit processes as to which buildings would stay and whether an addition would be built, or if a new building entirely was proposed. Due to the confusion, existing buildings were demolished in order for a new building to be proposed, as such the City received the applications for variances.

The proposed building would encroach into the required rear setback in the GC, General Commercial zoning district. Section 20-0502 of the Land Development Code requires primary structures to be located at least 15 feet from the rear property line. The proposed plan is to construct a 19,530 square foot grocery store. Accordingly, the applicant is requesting a variance to allow the new building to encroach into the required rear setback in the GC zoning district by 5 feet.

In addition to the variance to the setback, the proposed building would have a lowest opening (finished floor) below the requirements of the City's Floodproofing Code. The property and proposed building are within the

41-foot water surface elevation inundation area (WSEIA). At this location, the FEMA base floodplain elevation (BFE) is 901.2 feet and the 41-foot WSEIA is at an elevation of 904.5 feet with additive. The 41' WSEIA was developed for totally new construction and is not used for additions to existing structures. This proposed building must meet the Floodproofing Code requirements are as follows:

1. The lowest opening in a building is required to be at or above an elevation that is 2 feet above the FEMA BFE elevation. (901.2-foot FEMA BFE elevation plus 2 feet = 903.2')
2. The fill adjacent to the building is required to be at or above an elevation that is 0.7 feet above the FEMA BFE elevation. (901.2-foot FEMA BFE elevation plus 0.7 feet = 901.9')
3. The fill within 15 feet of the building must be at or above the FEMA BFE (901.2')
4. The finish floor elevation for the 41' WSEIA is 903.3 plus 1.2' = 904.5'

The lowest opening of the proposed structure would be at an elevation of 903.2 feet, which meets the requirement for the lowest opening elevation (BFE+2'). Additionally, the fill adjacent to the building would be at an elevation of approximately 903.0 feet, which is 1 foot higher than required. The fill within 15 feet of the building would be above 901.2 feet, which meets the elevation requirement. Accordingly, the applicant is requesting a variance in order to construct the finished floor of the building below the 41' inundation area elevation requirement of 904.5.

According to the applicant, the proposed variance is necessary to construct the building to the FEMA elevation requirements but below the 41' WSEIA area elevation. Additional details are provided by the applicant within the attached application materials.

Floodproofing Codes Background:
The rationale behind the development of the City's 41-foot WSEIA is in anticipation for future increases to the FEMA Special Flood Hazard Area (1% annual chance/100-year flood plain). While mapping flood elevations as part of the FM Diversion Feasibility Study, it was found by the Army Corps of Engineers that the hydrology used by FEMA to establish the Special Flood Hazard Area was obsolete. It was based on a study that did not include the period of record for the Red River events after 1979. It is the practice of FEMA to review communities every 5 years to determine if a new map is warranted. Based on information contained in the FM Diversion Feasibility Study of Fargo which accounts for recent flood events, including the flood of record in 2009, the updated hydrology and hydraulics is readily available and FEMA will have cause to remap Fargo. When this update occurs, it is anticipated FEMA will raise the elevation of the Special Flood Hazard Area, resulting in additional areas of the City being located within this flood plain and subject to additional flood insurance requirements or increases. As such, the purpose of the 41-foot WSEIA is to prevent non-floodproof construction within areas that will potentially be located within Special Flood Hazard Area in the future. It should also be noted that the state rules require elevation on fill to the BFE +1 foot. In an attempt to keep **new** construction compliant with this state requirement into the future, we are requiring the additional 1.2 feet.

The determination was made during the development of the 41' WSEIA that additions to existing structures would only be required to adhere to the FEMA elevation requirements if the existing structure and/or the proposed addition is within the FEMA 1% chance flood zone. If the structure and addition are only identified in the 41' WESIA area, the addition may match the finished floor elevation of the original structure.

Another caveat of floodproofing and protection has to do with localized flooding versus flooding from the Red River. Many areas of the City are at risk of flooding due to the stormwater infrastructure not being able to handle significant rainfall events. In this aspect the City's floodproofing requirements and policies are

intended for emergency protection from both the Red River and from overland flooding or storm sewer overflows.

Criteria for Approval:
§20-0914.E.1 of the LDC states that, "A variance may be granted by the Board of Adjustment upon an affirmative finding that all of the following conditions exist."

a. *The requested variance arises from conditions that are unique to the subject property not ordinarily found in the same zoning district and are not a result of the owner's intentional action;*
b. *The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;*
c. *The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;*
d. *The variance desired will not adversely affect the public health, safety or general welfare;*
e. *The variance is the minimum variance that will overcome the hardship;*

The Floodproofing Code was enacted by reference within Article 21-06 (Flood Plain Management) of the Fargo Municipal Code. Appeals from Article 21-06 are heard and decided upon by the Board of Adjustment as outlined within Section 21-0603 of the Municipal Code.

§21-0603.G.5 of the Municipal Code states that, *In determining appeals or requests for variances, the board of adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:*

a. *The danger that materials may be swept onto other lands to the injury of others;*
b. *The danger to life and property due to flooding or erosion damage;*
c. *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;*
d. *The importance of the services provided by the proposed facility to the community;*
e. *The necessity to the facility of a waterfront location, where applicable;*
f. *The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;*
g. *The compatibility of the proposed use with the existing and anticipated development;*
h. *The relationship of the proposed use to the comprehensive plan and floodplain management program or that area;*
i. *The safety of access to the property in times of flood for ordinary and emergency vehicles;*
j. *The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,*
k. *The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.*

§21-0603.H.1 of the Municipal Code includes additional considerations for variances:

1. *Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, providing items (a-k) in subsection (G)(5) above have been fully considered. As the lot size increases beyond the one-half acre, the technical justifications required for issuing the variance increases.*

2. *Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or any state or local inventory or register of historic places without regard to the procedures set forth in the remainder of this section.*
3. *Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.*
4. *Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
5. *Variances shall be issued only upon:*
    a. *A showing of good and sufficient cause;*
    b. *A determination that failure to grant the variance would result in exceptional hardship to the applicant; and*
    c. *A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*
6. *Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation.*

§20-0914.E.1 of the LDC:

a. The requested variance arises from conditions that are unique to the subject property not ordinarily found in the same zoning district and are not a result of the owner's intentional action;

The subject property is legally described as Lot 1, Block 1, Huynh Kha Addition. The property was platted for the first time in January of 2021 and is approximately 53,550 square feet in area. At the time of platting, 5 feet was dedicated as right-of-way for the future reconstruction of Main Avenue. Approximately 450 feet along the rear of the property contains a retaining wall, which is part of the BNSF Railroad property to the north. The retaining wall distance varies and is up to 10 feet from the rear property line.

b. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

Staff has no data that would identify an adverse impact to adjacent neighbors with this variance. In accordance with the notification requirements of the LDC, neighboring property owners were provided notice of the variance request. To date, staff has not received any inquiries on this application.

c. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

The variance is being requested in order for the applicant to construct a new building to be used as a grocery store, which is permitted by right in the GC zoning district. Ultimately, staff suggests that the strict application of the applicable standards should not constitute an unnecessary physical hardship because the subject property can be used for an allowed use without conflict with the LDC.

d. The variance desired will not adversely affect the public health, safety or general welfare;

Staff has no data that would identify an adverse effect on public health, safety, or general welfare. No public health, safety, or general welfare issues have been identified.

e. The variance is the minimum variance that will overcome the hardship;

As mentioned above, staff suggests that there is no hardship to overcome due to the fact that the property can be used for an allowed use without coming into conflict with applicable site development standards. However, if a hardship were found to exist as part of the public hearing due to the unique site constraints and permitting confusion, the requested variance from the applicant would be the maximum setback needed for the applicant to construct the addition as proposed.

As an additional note separate from Section 20-0914.E.1 of the LDC, due to the placement of the loading dock being within the front 20 foot setback, staff anticipates that the four-foot landscaping buffer, which is required by the LDC for vehicular circulation within the front setback, will be damaged due to truck circulation turning radius needs. The property owner must maintain the parking lot buffer, including width and plantings, to be in compliance with the LDC. Staff brings this up in order to bring clarity to property owner expectations of the built environment if the variance is granted.

§21-0603.G.5 of the Municipal Code:
The danger that materials may be swept onto other lands to the injury of others;
Minimal probability

a. **The danger to life and property due to flooding or erosion damage;**
Minimal probability

b. **The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;**
Minimal probability

c. **The importance of the services provided by the proposed facility to the community;**
The facility provides grocery services to the community. In a flood situation, it would not be important to the critical stability of the city infrastructure.

d. **The necessity to the facility of a waterfront location, where applicable;**
Not applicable. The proposed improvement is not in the MDZS or the LDZS river setback zones.

e. **The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;**
There are vacant properties outside of the 41-foot WSEIA and 100-year floodplain within this lot's identified zoning district within city limits.

f. **The compatibility of the proposed use with the existing and anticipated development;**
The use is compatible with existing and anticipated development at this location with some access constraints being on an arterial.

g. **The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;**
No inconsistencies have been identified in relation to the comprehensive plan. Floodplain management is related to the City's floodproofing policies as part of the FEMA BFE and the 41' WSEIA elevation requirements.

h. **The safety of access to the property in times of flood for ordinary and emergency vehicles;**

Access may be questionable as servicing roadways may become inundated during storm sewer overflows or heavy rainfall events. The applicant will need to understand this potential risk as staff has no data to suggest that the requested variance would result in an increased or decreased safety of access.

i. **The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,**
Staff has no data to confirm the effects of flooding as a result of overland flooding or storm sewer overflows.

j. **The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets and bridges.**
Costs associated with government services during or after flood conditions will not change due to this variance.

Since this is a variance request to the adopted flood proofing construction elevation requirements, the Zoning Administrator defers to the Building Official/Flood Plain Administrator as well as the City Engineer for current and future floodplain management. This application was reviewed by the City's Planning and Development, Engineering, and Building Inspections Departments ("staff"), whose comments are included in this report.

Staff finds that the proposed flood proofing variance is unique in that the proposed variance would violate elevation standards established by the City of Fargo, specifically the 41' inundation elevation requirement. Staff feels that this variance will not affect the City of Fargo's basement exemption due to the higher elevation standards required by the city for the 41' inundation area. Due to the lot location and property dimensions, this lot is restricted by Main Avenue and the BNSF Railroad, limiting developable area with the elevation constraints. An approved variance will also allow for greater engineering design flexibility for the reconstruction of Main Avenue as it occurs in the next few years, by allowing elevation modifications to be utilized in our roadway design.

Ultimately, staff is in support of this requested flood proofing variance. Engineering finds that with the elevating of the proposed building above the FEMA BFE and meeting the state requirement of BFE plus 1 foot, the structure is reasonably safe from flooding.

Staff recommends that any granting of a flood proofing variance be conditioned upon the applicant agreeing to a waiver of liability against the City. Engineering staff would work with the City Attorney's Office to draft an acknowledgment form that would outline the owner's decision to not follow the City's floodproof construction requirements. The purpose of this document would be to provide additional protection to the City from unforeseen issues that may arise as a result of the variance.

The staff recommendation below is in reference to the variance request of the City's Floodproofing Code. Staff does not have a recommendation for the variance request for the rear setback as application and permit processes caused communication issues between applicant, owner and staff.

Staff Recommendation: "To accept the findings of staff and hereby approve the requested flood proof variance on the basis that the review considerations of Section 21-0603 have been satisfied, with the condition that the applicant sign and submit a waiver of liability against the City."

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APPLICATION FOR VARIANCE

The Board of Adjustment is authorized to grant variances from the zoning district dimensional standards and off-street parking and loading standards of the Land Development Code (LDC) that will not be contrary to the public interest or the spirit of the LDC, where owing to special conditions, a literal enforcement of the provisions of this LDC would result in **unnecessary physical (not economic) hardship** to the property owner.

Property Owner Information:	**Representation Information:** *(if applicable)*
Name (printed): Huynh Kha Property, LLC	Name (printed): Elissa Novotny
Address:	Dovetail Development, LLC
Primary Phone	Address:
Alternative Phone:	Primary Phone:
Fax:	Alternative Phone:
Email:	Fax:
	Email:

Location of property requesting a variance:

Address: 1425 Main Avenue

Zoning District: General Commercial

Legal Description: Lot 1 Block 1 Huynh Kha Addition

Proposed Variance Information:

What Land Development Code Standard are you seeking a variance? (e.g. setback, lot coverage, height)

Rear yard building setback and finished floor WSEIA elevation requirement.

Please describe difference between the standard and the proposed (e.g. the standard is 10 ft. and my project would propose a 7' setback).

See project explanation below:

Please explain your project, describing why you are requesting a variance and why you believe a variance is justified. Along with your project description, please include a site plan/diagram with dimensions. (Attach additional pages, if needed.)

*Reduce rear yard setback along railroad track from 15' to 10' to construct a new 60' deep building further back from Main Avenue, replacing the existing 60' deep building that had a portion of the building that was 2.4' from the new right of way. This will allow us to provide a new building front yard setback of 20' from the new Main Avenue right of way to further buffer pedestrians from truck movements on site.
*Reduce the finished floor elevation to 903.2' that is 2' above the base flood elevation of 901.2, but .1' less than the 41' WSEIA of 903.3' in lieu of the 904.5' elevation required to be 1.2' above the 41' WSEIA. This will allow for a more subtle transition from the existing Main Ave curb elevation that is at ~901'. See attached 'Preliminary Plat_Building Exhibit' provided during the platting process for reference of existing building setbacks and also proposed redevelopment site layout for the new grocery store building.

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Criteria for Approval:

Please explain how your requested variance meets the following five criteria for approval, pursuant to Section 20-0914 of the Land Development Code: (Attach additional pages, if needed.)

1. The requested variance arises from conditions that are unique to the subject property, that are not ordinarily found in the same zoning district and that are not a result of the owner's intentional action;

*The property was platted providing a 5' ROW for Main Avenue anticipating the future Main Ave redevelopment project currently under design that reduced the existing lot depth from 94.74' to 89.74' depth that in a General Commercial zoning provides only a 54.74' depth buildable depth on a 595' long linear site while still needing to provide accessible parking, pedestrian access, minimum finished floor elevation of approximately 48" above the existing Main Ave curb elevation to meet WSEIA elevation requirement and parking and delivery to serve the intended use. The previous existing warehouse building met the minimum floor elevation requirement, but had existing enclosed dock receiving area that required trucks to cross opposing traffic directions that is not allowed on Main Avenue for a new use and the building encroached into the required building setbacks on the north by 11.5' and south side of the building by 17.6'. The railroad property to the north is elevated and defined by a high retaining wall that eliminates option to acquire additional land to deepen the lot.

2. The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;

*Granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents as it will provide for a more accessible site by giving a greater distance between the street curb and building and lowering the grades for a more accessible gradual slope up to the finish floor elevation in a site that does not offer a typical depth to easily make the elevation transition.

3. The strict application of the applicable standards will constitute an unnecessary physical hardship (not economic hardship) because the property cannot be used for an otherwise allowed use without coming into conflict with applicable site development standards;

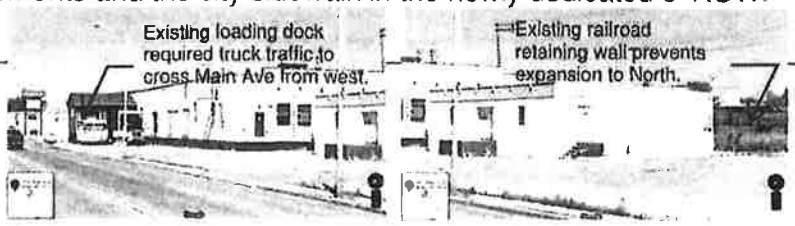
*The strict application of the applicable standards constitutes an unnecessary physical hardship because the buildable property depth of 89.74' and a length of 595' is challenging for redeveloping distressed sites where General Commercial zoned sites have common depths from 140'-180' and often greater that dimensionally. The railroad property to the north is elevated and defined by a high retaining wall that eliminates option to acquire additional land to deepen the lot. Sites with greater depth gives more latitude to transition required finish floor elevation requirements and site planning requirements meeting accessible site access, open space landscaping, and parking and loading requirements, although this site is restricted to the north by the railroad and to the South by Main Avenue.

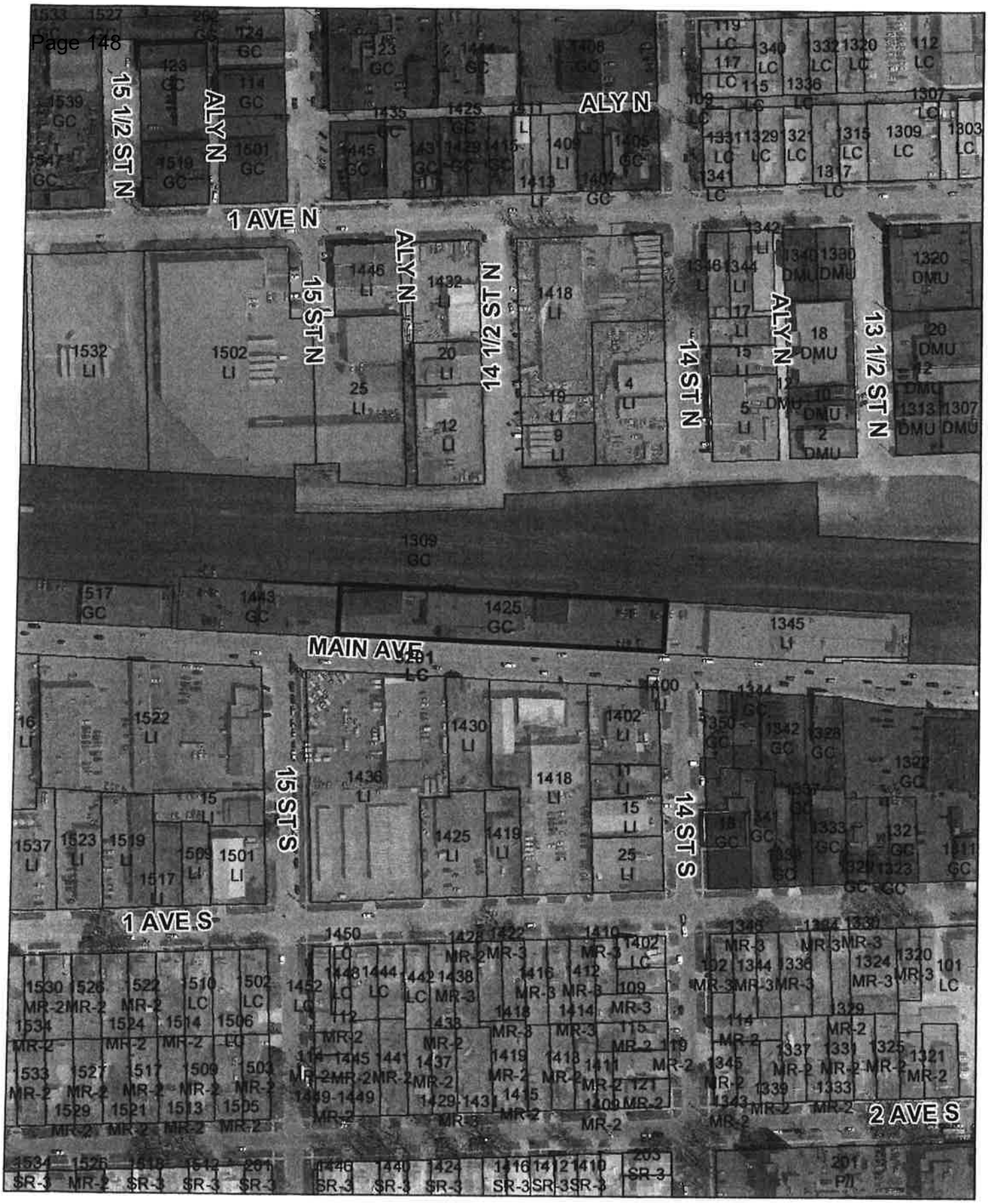
4. The variance desired will not adversely affect the public health, safety, or general welfare; and

*Granting of the permit for the variance will not adversely affect the the public health, safety, or general welfare, but increases safety by moving the truck movements further away from the pedestrian sidewalk along Main Avenue.

5. The variance is the minimum variance that will overcome the hardship.

*The variance is the minimum variance that will overcome the hardship with reducing floor elevation just enough to make the site more accessible and still maintaining a high enough elevation for positive site drainage as well allowing enough setback for a planting buffer between truck movements and the city sidewalk in the newly dedicated 5' ROW.





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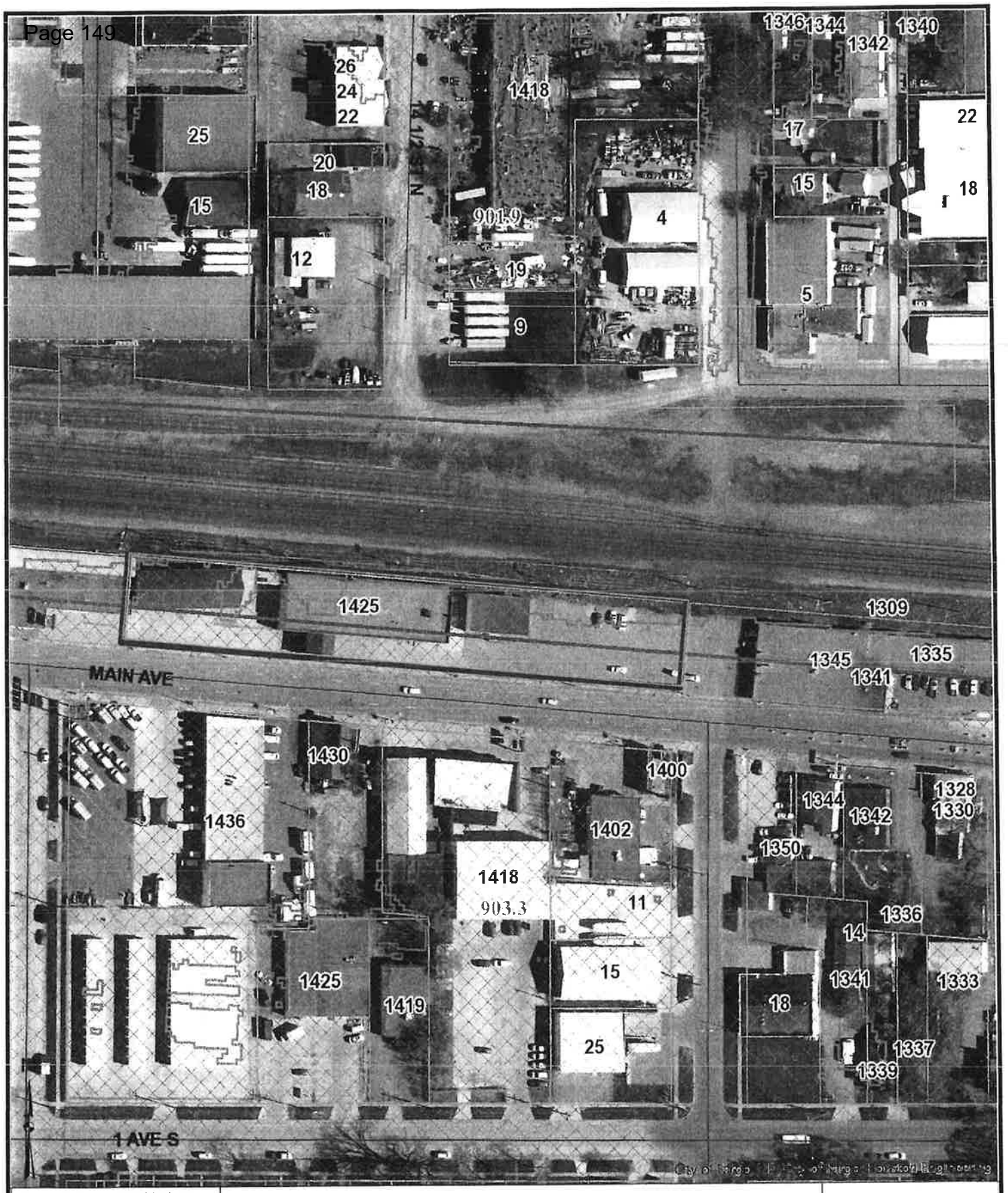
AG, DMU, GC, GI, GO, LC, LI, MR-1, MR-2, MR-3, MHP, NCI, NO, P/I, UMU, SR-1, SR-2, SR-3, SR-4, SR-5

1425 Main Avenue

0 130 260 Feet

N



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

41' WSEIA

1:2,257

10/18/2021 12:57 PM

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

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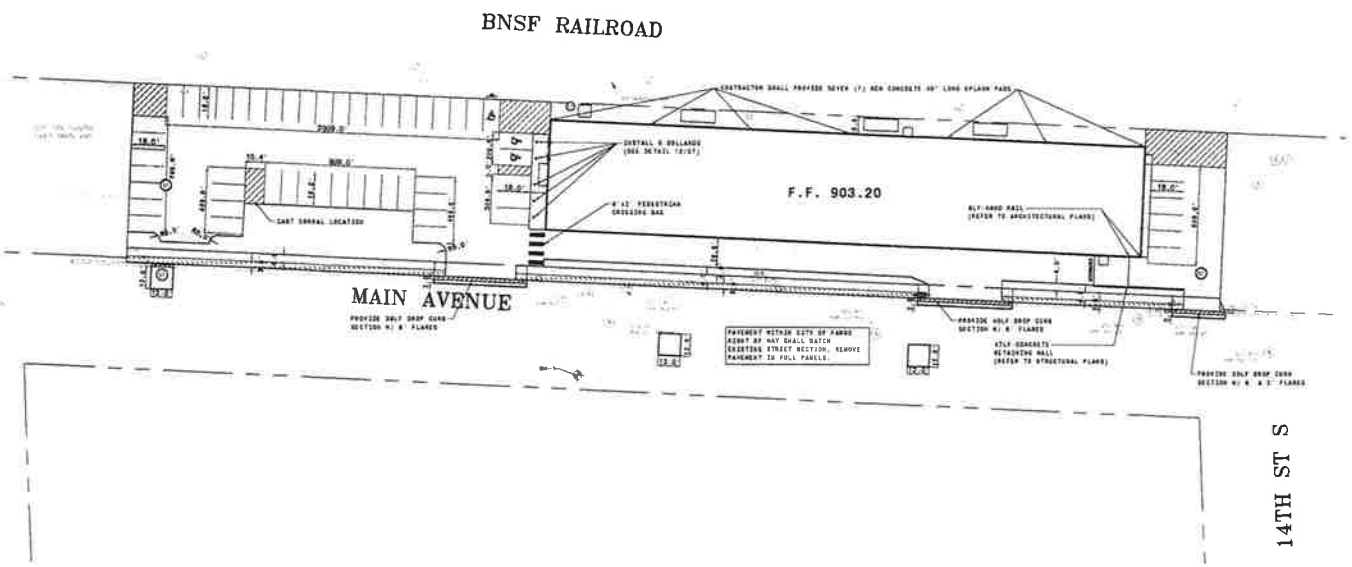
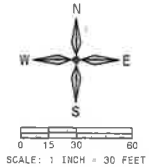




SYMBOL LEGEND:

- EXISTING PROPERTY LINE
- EXISTING POWER POLE
- EXISTING LIGHT POLE
- EXISTING GAS METER
- EXISTING SANITARY MANHOLE
- EXISTING STORM MANHOLE
- EXISTING CATCH BASIN
- EXISTING TELEPHONE PEDESTAL
- EXISTING TELEPHONE VAULT
- EXISTING GAS GATE VALVE
- EXISTING WATER CURB STOP
- EXISTING ELECTRICAL MANHOLE
- EXISTING CONTROL POINT
- EXISTING BOLLARD
- EXISTING HYDRANT/BENCHMARK
- EXISTING DECIDUOUS TREE
- NEW PVC STORM INLET
- NEW STORM MANHOLE
- NEW 4" REINFORCED CONCRETE SIDEWALK
- NEW 4" REINFORCED CONCRETE BOULEVARD
- NEW 8" REINFORCED CONCRETE PAVEMENT
- MATCH EXISTING ASPHALT PAVEMENT SECTION
- NEW TYPE 1 STANDARD CONCRETE CURB & GUTTER
- NEW SIGN

PLAN NOTES:

1. ALL WORK SHALL COMPLY WITH THE MOST RECENT CITY OF FARGO STANDARD SPECIFICATIONS FOR CONSTRUCTION OF PUBLIC UTILITIES.
2. CONTRACTOR SHALL NOTIFY UTILITY COMPANIES FOR UNDERGROUND LOCATIONS 48 HOURS PRIOR TO BEGINNING CONSTRUCTION. NORTH DAKOTA ONE CALL PHONE NUMBER: 1-800-795-0555.
3. CONTRACTOR SHALL PROTECT ALL PROPERTY PINS. PROPERTY PINS DESTROYED OR DISTURBED SHALL BE REPLACED AT CONTRACTORS EXPENSE.
4. IF THE LAND BOUNDARY DENOTED ON THE PLANS ENCOMPASSES MORE THAN ONE (1) ACRE OR IS LESS THAN ONE (1) ACRE, BUT IS PART OF A LARGER DEVELOPMENT PLAN, A NOTICE OF INTENT TO OBTAIN A STORM WATER POLLUTION PERMIT SHALL BE ACQUIRED BY THE CONTRACTOR AND OWNER FROM THE NORTH DAKOTA STATE HEALTH DEPARTMENT SEVEN (7) DAYS PRIOR TO CONSTRUCTION.
5. CONTRACTOR SHALL MAINTAIN TEMPORARY EROSION CONTROL UNTIL PERMANENT EROSION CONTROL IS ESTABLISHED.
6. CONTRACTOR SHALL ACQUIRE AN EROSION SEDIMENT CONTROL (ESC) PERMIT FROM THE CITY OF FARGO PRIOR TO START OF CONSTRUCTION.
7. ALL PAVEMENT MARKED FOR DEMOLITION SHALL BE FULL DEPTH SAW CUT PRIOR TO REMOVAL.
8. CONTRACTOR SHALL COORDINATE TAPPING OF THE EXISTING WATERMAIN WITH THE CITY OF FARGO MAINS AND HYDRANTS DEPARTMENT. CALL (701)241-1453
9. ALL GRASSED AREAS DISTURBED BY CONSTRUCTION SHALL BE TOPSOILED (6" DEPTH), GRADED, SEEDED, AND HYDRO-MULCHED.
10. EXCAVATION OR OTHER WORK IN THE RIGHT-OF-WAY SHALL REQUIRE A TRAFFIC CONTROL PLAN THAT MEETS ALL MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) REQUIREMENTS. THIS PLAN IS REQUIRED BEFORE ANY PERMITS TO WORK IN THE RIGHT-OF-WAY WILL BE ISSUED.
11. THE CITY OF FARGO INSPECTIONS DEPARTMENT MUST BE NOTIFIED TO INSPECT THE CONNECTION OF THE SITE STORMWATER SYSTEM TO THE CITY STORMWATER SYSTEM. ENSURE THE EXCAVATION IS KEPT OPEN FOR THIS INSPECTION.

BENCHMARKS:

BM-1: TOP NUT OF HYDRANT LOCATED APPROXIMATELY 340 FEET EAST OF INTERSECTION OF 15TH STREET AND MAIN AVENUE ON SOUTH SIDE OF MAIN.
ELEVATION = 905.13

PAVING PLAN

MBN ENGINEERING
MECHANICAL * ELECTRICAL * CIVIL
503 7TH ST. N., SUITE 200
FARGO, ND 58102
PHONE: 701.478.8336
FAX: 701.478.8346

REVISIONS

NO	DATE	DESCRIPTION
1	5/18/21	CITY REVISIONS

DOVETAIL DEVELOPMENT

ASIAN MARKET

1425 MAIN AVE,
FARGO, NORTH DAKOTA

MBN JOB #: 20-158 DATE: 04-08-21

C4

THE CITY OF Fargo FAR MORE

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

(21)

MEMORANDUM

TO: CITY COMMISSION

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR NC

DATE: JANUARY 20, 2022

RE: FARGO SCHOOL DISTRICT UTILITY BOX PROJECT

The Arts and Culture Commission Neighborhood subcommittee and staff has been working with Sharon Eide, Visual Arts Curriculum Facilitator for the Fargo School District over the last several months to implement a utility box wrap program. Sharon worked with faculty and students who created art to wrap utility boxes, which are attached to the packet. Planning staff will work closely with the Engineering Department on implementation of the wraps, which is anticipated this summer.

In early summer of 2021, the City Commission gave their approval to expand the wrap utility boxes beyond downtown and allow the wraps throughout the City. With the work of the Downtown Community Partnership, the Business Improvement District and the Arts Partnership, the Arts and Culture Commission and City Commission approved the catalog of art to be located on City infrastructure. Similarly, the artwork of the students within the Fargo School District will need to be approved prior to installation.

The Arts and Culture Commission reviewed the art at their January 19th, 2022 regular meeting and recommended approval to the City Commission.

Recommended Motion: Approve the art and authorize the city staff to execute the wrap program on neighborhood utility boxes.

EQUAL HOUSING OPPORTUNITY

FARGO NORTH FAMILY

SOUTH FARGO STRIVE FOR EXCELLENCE TM

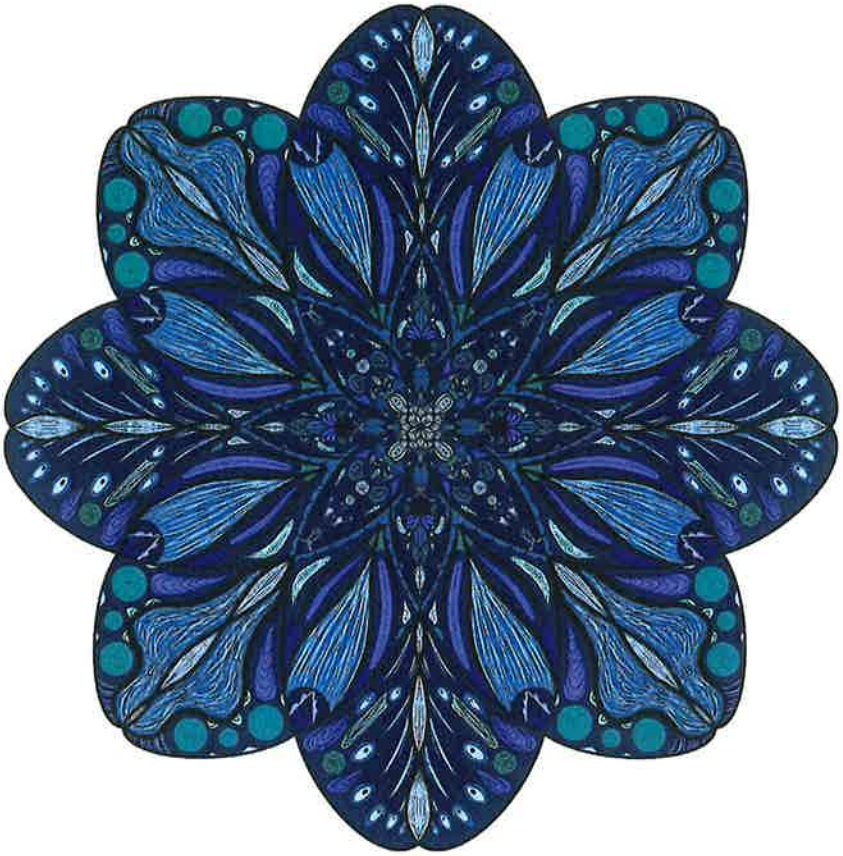
TM

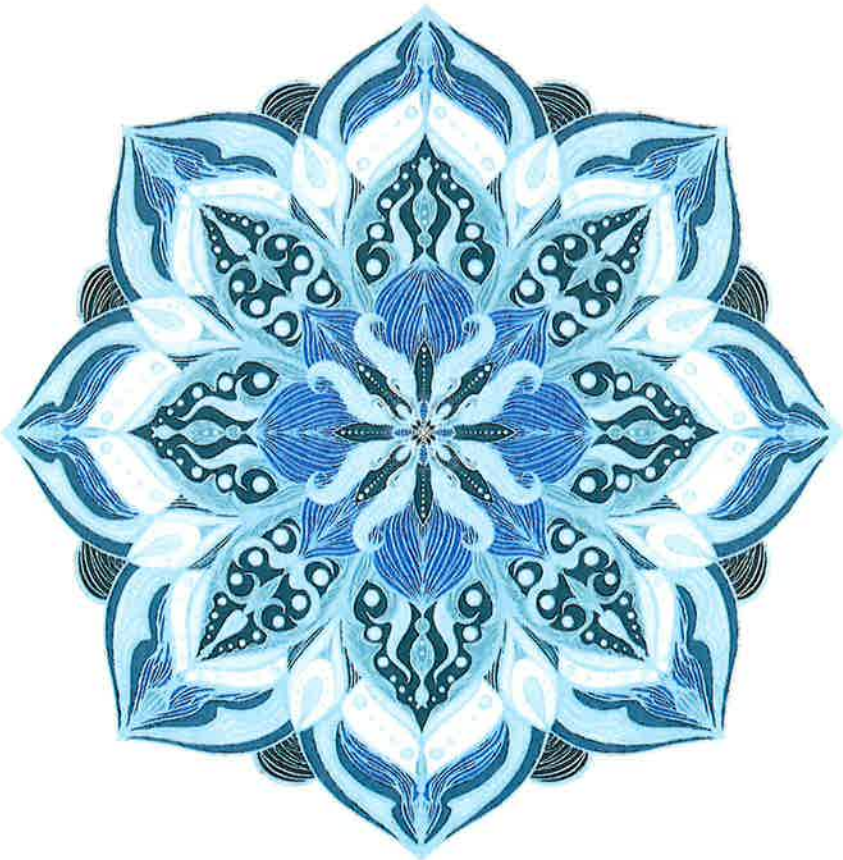
Ed Clapp EXPLORERS TM

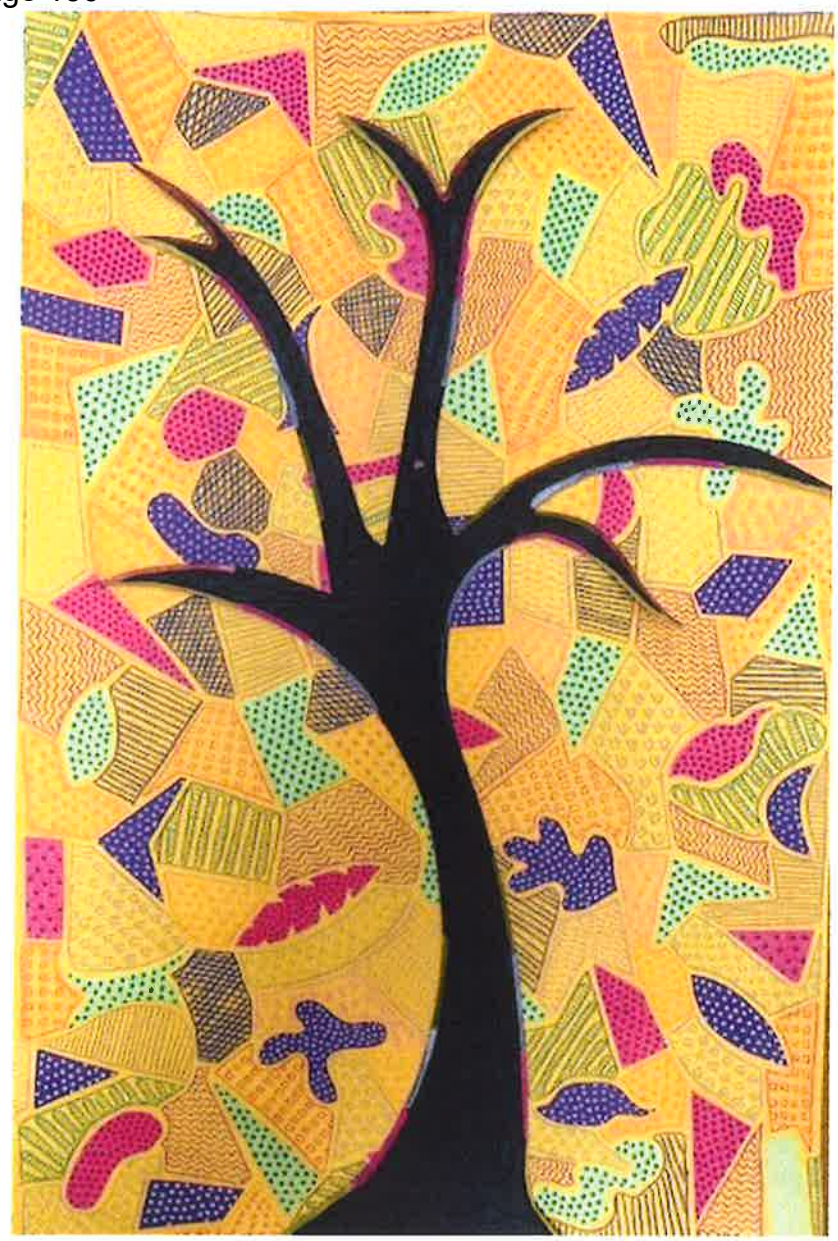
longfellow LIONS

66075207133__AA1C9A20-C4CF-4267-AF5E-8943E1CA31ED.heic

Morgan Ruber







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22

MEMORANDUM

TO: CITY COMMISSION

FROM: NICOLE CRUTCHFIELD, PLANNING DIRECTOR NC

DATE: JANUARY 20, 2022

RE: REVIEW OF CALL FOR PUBLIC ART PROJECTS APPLICATION

Since 2015, the Arts and Culture Commission (ACC) has allocated a portion of their $60,000 budget for public art projects which were solicited through a public call for artists' application and selection process. The program was on hold during 2020 and 2021. For 2022, the ACC is seeking to allocate $45,000 of their $60,000 2022 budget for public art projects to be solicited through a call for public arts public process. To launch the program, within the next few weeks, staff would publish the attached final draft of the Call for Public Art Projects. Specific allocations and project selection will come back to the Fargo Arts and Culture Commission as a recommendation from a public member selection committee, tentatively in April. Selected projects and artists would have specific contracts that would come back to City Commission upon awards of selected projects, depending on the scope of the project.

ACC and staff are seeking your support to launch the program for 2022. The ACC recommended approval for the 2022 public art project program and budget recommendation at their January 19, 2022 meeting.

Requested Action: Approve allocation of $45,000 for the 2022 public art project program and to proceed with seeking proposals from the community on behalf of the Fargo Arts and Culture Commission.

EQUAL HOUSING OPPORTUNITY

DRAFT

City of Fargo
2022 CALL FOR PUBLIC ART PROJECTS
Context

Three aspects to this 2022 call make it quite different from previous calls made by the ACC.

This year, the ACC is making a call for *projects* and is inviting the community members propose a project free and accessible to the community - visual or performance-based, permanent or temporary and within the public realm. Also new to the process, the ACC includes culture bearers and traditional artists, community members and even city departments in the invitation. As an optional take on the proposal, the ACC invites people to consider the Madison/Unicorn 2021 Core Neighborhood Plan in development of a project.

Why a call for Projects vs a call for Artists?

ACC doesn't have a project defined and wants to invite the community to imagine possible projects. Generally, a Call for Artists is used to seek artists to participate in a specific or defined project.

Why include individuals or collaborative teams of residents, business owners, community organizers, artists, and culture bearers, community-based organizations and City of Fargo departments?

The ACC appreciates that everyone is creative and can contribute to culture, thus ideas for possibilities can come from anywhere, including traditional artists, culture bearers, and folk artists. By including, rather than excluding people, the ACC hopes to invite more collaborations.

Why include the Madison/Unicorn 2021 Core Neighborhood Plan?

Connecting the CFP with the core nationhood plans highlights the local issues and opportunities and encourages the community to shape their solutions.

City of Fargo
CALL FOR PUBLIC ART PROJECTS

About the Arts & Culture Commission

Arts and Culture Commission Vision The City of Fargo envisions a livable community where integrating public art into City initiatives, neighborhood revitalization efforts and private developments is a norm; where every citizen, worker and visitor in Fargo has the opportunity to freely experience quality art and creative expression as part of their daily lives.

Arts and Culture Commission Mission Implement the Public Art Master Plan, ensure the City's ongoing commitment to encourage and support the growth of diverse, high-quality and meaningful public art throughout the City of Fargo.

For additional context, find 10 program goals and guiding principles within the City of Fargo Public Art Master Plan (PAMP) pages 11 to 13 or 22 to 25 as printed, the results of a community survey, and additional information at www.FargoArtsandCulture.com.

GENERAL APPLICATION INFORMATION

The Arts and Culture Commission (ACC) is committed to increasing the City of Fargo's access to the creation of public art and works to facilitate arts development, provide opportunities for local and emerging artists and promote and increase capacity of arts, both visual and performance-based, permanent and temporary, in the public realm.

2022 Call for Public Art Projects Purpose

The purpose for the Call for Public Art Projects is to produce public art city-wide for the City of Fargo. It is an opportunity to describe a project that uses arts and culture strategies to improve city infrastructure, build social cohesion and advance community cultural life. The ACC seeks artist involvement in projects that enhance the community, neighborhood or site. Projects are encouraged to build community support, including the community's arts and cultural influences.

SPECIAL FOCUS (OPTIONAL): *While applications will be considered for projects city-wide, the ACC reviewing subcommittee will make special consideration of projects that include some aspect from the findings of the 2021 Madison/Unicorn Core Neighborhood Plan. It is up to the applicant to identify how they envision making connections and meaning of this special focus.*

Who Can Apply

Applicants must be 18 years of age or older and may be individuals or collaborative teams of residents, business owners, community organizers, artists, and culture bearers, community-based organizations and City of Fargo departments. Applicant must reside, work or be a student within the Fargo area.

2022 Available Funding

In 2022, the ACC has $45,000 in $5,000 - $15,000 increments to allocate toward successful applications. It is highly unlikely any one application will receive $45,000. *Projects focused on the Madison/Unicorn Neighborhood may have additional funding opportunities.*

How to Submit

City of Fargo
CALL FOR PUBLIC ART PROJECTS

Complete the application questions, adhering to character limits and include any supporting attachments. Submit applications to Planning@FargoND.Gov or drop a printed copy (one-sided, no staples) to the Planning Department on the 2nd floor of City Hall.

Questions
Please email questions to the Fargo Planning Department at Planning@FargoND.Gov or call 701-241-1474.

2022 Call for Public Art Projects Timeline
Application opens ..... January 2022
Question & Answer Informational Session/s ..... Month Day Year
Application period closes ..... February 25, 2022
Review process ..... 6-10 weeks
Approved project implementation and completion ..... December 2022

Review Process
- Selection Committee reviews all Call for Public Art Projects applications
- Committee makes initial selections
- Select applicants are invited to present to the selection committee
- Selection Committee makes recommendations to the Arts and Culture Commission
- Selection Committee and applicant seek additional approvals pending scope of work

Please Note
- A submitted application is not an agreement for funding for the project.
- Applicants are expected to lead project processes, develop and implement the project, and work independently.
- Should funds be received, the Arts and Culture Commission must be listed as a sponsor on all print or digital publications communicating or publicizing the project.
- In the event funds are committed and the project is deemed incomplete, funds must be returned to the Arts and Culture Commission.

City of Fargo
CALL FOR PUBLIC ART PROJECTS

Successful Application

Successful applicants focus their project within Fargo city limits. The ACC or selection committee will use the following Review Criteria to evaluate applications:

Review Criteria	
Overview	Applicant's process or project expresses creativity, innovation & originality. Proposal describes the source of inspiration and how the artwork, event or performance is uniquely "Fargo." **Special Focus (Optional):** Special consideration for projects that include some aspect from the findings of the *2021 Madison/Unicorn Core Neighborhood Plan*. Applicant identifies how they make connections and meaning of this special focus.
Public Art	The artwork, event or performance encourages public participation or function, or complements, enhances or modifies a public space. Considers style, scale, material, form, durability and public safety and liability. Considers structural and surface integrity, permanence and protection as appropriate.
Outcomes	Applicant identifies outcomes which may be physical, social, emotional, relational for one or many people and identifies the stakeholders who may have influence, be affected, or have an interest in the project. Conveys a clear and appropriate message or meaning for public display or performance. Does not contain advertisement for commercial, political, or established organizations. Does not encourage, promote, support, or passively allow racism, discrimination, stereotypes or cultural appropriation.
Communication	Outlines any necessary plan/s for communications necessary to invite or gain awareness about the project; identifies communication channels like press releases, social media, posters, paid advertising or public relations activities, etc.
Budget	Outlines the total income and expenses including materials, permits, labor, marketing, etc. to produce or fabricate the artifact; includes stipends or payment for the work rendered by artists, organizers or culture bearers, etc.
Timeline	Outlines the project's key milestone activities and dates including project kick-off and completion.
Experience, Fabrication or Production	Applicant demonstrates their or the team's capability to lead, curate or implement projects and especially innovative arts, cultural and creative projects. Demonstrates the ability to meet the specific criteria established in the proposal. Includes maintenance plan, insurance considerations, material choices.
Artistic or Cultural Practice and Integrity	Applicant honors relationships to a cultural community; Observes protocols, practices and traditions; Actively opposes discrimination, stereotypes, and cultural appropriation; Demonstrates quality of craftsmanship and mastery of skills and techniques; Considers principles of art and design.

City of Fargo
CALL FOR PUBLIC ART PROJECTS

Definitions

Even in art it's very difficult to avoid jargon, so the following list of definitions may help decipher what the reviewers are asking of applicants.

Artist	Anyone with a creative practice of any discipline or form, of any experience or background [1]
Community Artist	Artists who regularly work with community use a number of terms to describe themselves, including: artist organizer, community artist, cultural worker, culture bearer, social practice artist, civic practice artist, participatory artist, socially engaged artist, etc.[2]
Culture Bearer or Traditional Artist	Culture bearers practice intergenerational lifeways and living, evolving cultural art practices that educate, exchange, and share in order to preserve life tradition and knowledge. Art forms and cultural traditions can include: healers, storytellers (oral and written), dancers (ancestral to hip hop), makers (instruments, print, textiles, mixed media), language, drummers, etc.[3]
Project	The resulting art which may be sculptural, visual or performance based, lasting or temporary.
Public Art	Public Art is art in public spaces; it may interpret the history of the place, its people, or addresses a social or environmental issue. It may be temporary or permanent. Public art can include murals, sculpture, memorials, integrated architectural or landscape architectural work, community art, digital new media and even performances and festivals.[4]

[1] Springboard for the Arts Handbook for Artists Working in Community pg 12

[2] Springboard for the Arts Handbook for Artists Working in Community pg 13

[3] McKnight Foundation

[4] Americans for the Arts

City of Fargo
CALL FOR PUBLIC ART PROJECTS

Project Considerations

The following are items to consider as you plan and write the Call for Public Art Projects application. This section is intended to be a guide and is not all inclusive of all aspects related to a project.

Stakeholders

- Impact: Consider the impact (potentially positive or negative) the project may have on neighbors.
- Permissions: If the location is on private property, what permissions are needed?

Location/s

- Public and right-of-way: what ordinances and requirements pertain to the right-of-way.

Approvals

- Permits: Does the project require any permits from the City of Fargo, such as building, electrical, plumbing, erosion control, allowances in the right-of-way, etc.?
- Potential approvals needed: Neighborhood Associations, City Departments (Engineering, Planning and Development, etc.), Fargo Police and Fire Departments, Fargo Park District, Department of Transportation, State and Federal Jurisdictions, Utility Providers, ND One Call

Site Conditions & Public Safety

- Lighting: Consider location of electricity; if electrical permit is required; include all associated costs.
- Water: Consider location of available water and feasibility of getting water to project; consider the impact of storm and rain water on the project.
- Weather: Consider the unique weather of our area, such as temperature, humidity, wind, precipitation and other environmental conditions.
- River/Storm Basins: Consider the unique water conditions of our area, such as river flooding and basins.

Production/Installation

- Does the project need to be secured to the site or ground; are soil excavation or footings needed; are those costs included in the budget?
- Professional Designer: Does the project require a professional, such as structural engineer or other; are those costs included in the budget?

Durability

- Durability: What is the lifespan of the project; is the project susceptible to vandalism?

Maintenance

- Insurance: Does the project need insurance coverage?
- Maintenance: What is the maintenance for the project; who will maintain it and how will it be maintained; what is the expected cost of maintenance; are those costs included in the project budget?

City of Fargo
CALL FOR PUBLIC ART PROJECTS

Sample Budget

Sample Budget

Income	
City of Fargo	$5,000
Source	$4,000
Total Income	**$9,000**
Expenses	
Artist Fees	$3,000
Materials	$2,000
Labor	$1,000
Permits	$0
Marketing: Social, Posters, Photos	$500
Installation	$2,500
Total Expenses	**$9,000**

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City of Fargo
CALL FOR PUBLIC ART PROJECTS

APPLICATION

Project Information

Project Title

Amount Requested	Submission Date

Applicant Contact Information

Applicant (Individual or Organization)	Legal Structure, if applicable:

		( )	
Contact First Last Name	Address	Phone	Email

APPLICATION QUESTIONS

Project Overview (up to 300 words) *Describe the project, the source of inspiration and how the artwork, event or performance is uniquely "Fargo". (Optional): Describe what, if any, connection to the Madison/Unicorn Core Neighborhood Plan.*

Purpose Statement (up to 150 words) *Describe the purpose of the artwork, event or performance.*

Public Art (up to 200 words) *Describe how the artwork, event or performance encourages public participation or function, or complements, enhances or modifies a public space.*

Outcomes (up to 300 words) *Identify the stakeholders who have interest in the project. Describe any anticipated outcomes; consider the physical, social, emotional, relational outcomes.*

Communication (up to 250 words) *Outline a plan for communications necessary to invite or gain awareness about the project. For example, the timing and frequency of press releases, social media, posters, paid advertising, or public relations activities, etc.*

Timeline (up to 150 words) *Outline key milestone activities and dates including project kick-off and completion.*

Budget (up to 150 words) *Outline the total income and expenses including materials, permits, labor, marketing, etc. to produce or fabricate.*

Experience (up to 400 words) *Describe or list your experience leading or curating and implementing projects and how the specific criteria established will be met.*

Artistic or Cultural Practice and Integrity (up to 300 words) *Describe your art or cultural practice.*

Supporting Attachments *List the supporting images or links to media files.*

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City of Fargo
2022 CALL FOR PUBLIC ART PROJECTS
Communication Plan

Communication Plan Outline
Project: ACC's 2022 Call for Public Art Projects

Key Strategies

- Expand the invitation to artists to include culture bearers, traditional artists, organizers, artists, culture-bearers, traditional artists, organizers, associations, coalitions, non-profits organizations, individuals, businesses, city departments.
- Urge city departments and agencies to imagine possible projects city-wide and especially encourage applications benefiting 2021 Madison/Unicorn Park Core Neighborhood Plan.
- Encourage those working and living within the Madison/Unicorn Park Neighborhood to imagine a project to benefit their neighborhood and apply for funding.

Key Message Topics

- Application details: opens [date], closes [date], where to find it, funding amounts available: $5,000-15,000 total $40,000 (additional funds may be available for Mad/Unicorn neighborhood projects), Questions? Email Planning@FargoND.Gov.
- Why focus to Core Neighborhood Plan?
- Expand the application to artists, culture-bearers, traditional artists, organizers, associations, coalitions, non-profits organizations, individuals, businesses, city departments.
- What is Public Art, culture, infuse the act of invitation, open and shake up traditional way of looking at art, that people feel included, cultural lifeways
- Aspect/s of the review criteria
- ACC boilerplate statement

Tactics
Website

- ACC pages: Host the 2022 Call for Public Art Projects instructions, application form and downloadable PDFs
- Bid Doc: Links and downloadable application PDF

Traditional

- Press Releases
- Direct Email (Contacts, FMVA, NDSU, MSUM, compare with TAP)
- Direct reach to HPR
- Possible advertising (HPR, Forum, FB, Next Door, MPR, Prairie Public)
- Water bill notifications flyer (email, snail mail)

Social Media Tactics

- CoF Facebook, Twitter, Instagram, Next Door posts
- Linked-In – feature mid-level city staff

Community Partners Tactics

- The Arts Partnership – newsletter, social media, website
- Plains Art Museum, Rourke, FMVA, Red River Watercolor Society – social media, newsletter
- ACC member outreach to their networks and circles of influence
- Madison/Unicorn Park: CNP participants, businesses, churches, Park District, Madison Elementary

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City of Fargo
2022 CALL FOR PUBLIC ART PROJECTS
Communication Plan

- Draft sample recruitment emails, newsletter blurb, community calendars
- Direct requests to the Park District, Fargo Public Schools, West Fargo Public Schools

City Department Partners

- Cabinet
- Mayor messages/announcements
- Commissions, committees, and boards
- E-board announcements
- Direct Email

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THE CITY OF Fargo FAR MORE

(23)

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MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

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

DATE: JANUARY 20, 2022

RE: 2021 GAP FUNDING FOR CHURCHES UNITED OVERFLOW SHELER FOR SERVICES PERFORMED IN 2021

In 2020, funding allocations for Churches United and New Life Center aided in the creation and operation of two overflow shelters for men and women in order to provide relief to the City's shelter (Gladys Ray) and to prevent the spread of COVID. In April 2021, Finance Committee approved continuing to support both New Life Center and Churches United through 2021 since evidence of pandemic and economic hardship in our community was continuing. On June 14, 2021, The City Commission approved $354,784 to support New Life Center's overflow operations through year-end. Today, staff recommends retroactively approving similar funding support for Churches United's 2021 overflow operations in the amount of $337,000.

Both of these overflow operations leveraged previous investments the City made using Red River Valley Task Force funds and other pandemic relief funds to retrofit sites for temporary overflow shelter, including 1015 30th Ave South Moorhead for Churches United. It was fit up to serve up to 25 unaccompanied women each night, and it was at capacity nearly every night in the second half of 2021.

Planning staff are seeking $337,000 in funds for Churches United's overflow site to retroactively support their operations from May to December 2021. Finance has identified an overage in Public Safety Cares funding available to be used for this purpose. (Of note, both shelters are doing their own fundraising and run several concurrent programs to prevent and to end homelessness, such as rapid re-housing and a relapse prevention program; overflow sheltering is an additional, but critical, layer to their programs.)

Recommendation:
Based on the recommendation from the Finance Committee on April 22, approve executing attached agreement between the City of Fargo and Churches United for $337,000 for operations through December 31, 2021.

EQUAL HOUSING OPPORTUNITY

Subrecipient Agreement
Between the City of Fargo & Churches United for the Homeless

Table of Contents

I. SCOPE OF SERVICES 2
- A. Program Delivery 2
  - 1. Criteria for Households Served 2
  - 2. Levels of Accomplishment – Goals & Performance Measures 2
  - 3. Performance Monitoring 3

II. BUDGET & USE OF FUNDS 3

III. PAYMENT 3
- A. General Payment Terms 3
  - 1. Maximum Amount 3
  - 2. Requests for Payment 4
  - 3. Payment 4
- B. Duplication of Benefits 4

IV. GENERAL CONDITIONS 4
- A. Indemnification & Hold Harmless 5
- B. Insurance & Bonding 5
- C. Conflict of Interest 5

V. ADMINISTRATIVE REQUIREMENTS 6
- A. Final Report 6
- B. Procurement/Purchasing Requirements 6
  - 1. Compliance 6
  - 2. Assurances 6
  - The Subrecipient agrees to use grant funds for the purposes 6

VI. ENTIRE AGREEMENT 6

VII. EXHIBIT B – Requirements & Subrecipient Assurances Agreement 8

Subrecipient Agreement
Between the City of Fargo & Churches United for the Homeless

THIS AGREEMENT is entered into this 1st day of May, 2021 (the "Commencement Date") by and between the City of Fargo (the "City"), a North Dakota municipal corporation, and Churches United for the Homeless, a North Dakota non-profit organization (the "Subrecipient").

WHEREAS, the City is willing to make available up to **$337,000** from various sources, including Social Service funds or any COVID-19 CARES grant funds, for the purposes outlined herein, in particular to shelter low income and vulnerable populations; and

WHEREAS, the City wishes to engage the non-profit Subrecipient to respond to COVID-19, including addressing impacts of COVID-19, including funding staff and other operational costs (e.g., utilities, rent, security) necessary to operate the emergency overflow shelter.

NOW, THEREFORE, for and in consideration of the monies to be received, covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Program Delivery

As a condition of receiving this sub-award, the Subrecipient will administer funds in response to, preparation for, and in the prevention of the spread of COVID-19 as it relates to needs associated with emergency overflow shelter for people who are homeless during the pandemic. The work performed shall be in a manner satisfactory to the City and consistent with the terms and conditions of this Agreement. The Program will include the following activities:

- **Activity One:** Hire staff to manage additional shelter space.
- **Activity Two:** Cover other operational costs including security, rent, and utilities.

1. Criteria for Households Served

All beneficiaries must be homeless or without safe shelter.

2. Levels of Accomplishment – Goals & Performance Measures

Activity One: Employ additional staff to meet demand through 12/31/21.

Activity Two: Cover additional operational expenses to meet demand through 12/31/21.

In addition, Churches United will continue to accept referrals and participate with metro-wide shelter coordination strategies to support emergency quarantine, overflow, and decompression-related sheltering needs.

3. **Performance Monitoring**
The City will monitor the performance of the Subrecipient against the requirements of this Agreement, including timeframes, goals, and performance standards. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period after notification by the City, suspension or termination procedures will be initiated. If at any time the actual performance outcomes vary greatly from the goals, an amendment to either the goals or funding amount may be performed.

4. **Term of Performance**
The terms of this agreement shall be for eight months, beginning on the Commencement Date. The terms of this Agreement shall remain in effect during any period the Subrecipient has control over funds.

II. BUDGET & USE OF FUNDS

The funds shall be used according to the budget submitted by the Subrecipient. The Subrecipient may revise its City funds up to 10% of the total grant amount per category. Anything more will require approval from City staff, in writing.

Churches United May-December 2021 Budget

Item	Total
Labor	$247,000
Security	$7,272
Rent	$31,728
Other Facility Expenses (utilities, supplies etc.)	$51,000

III. PAYMENT

A. General Payment Terms

1. **Maximum Amount**
The total amount to be paid by the City under this Agreement shall not exceed $337,000. Indirect costs and travel expenses are not billable expenses for this project.

2. **Requests for Payment**
The Subrecipient will submit to the City requests for payments of activities under this Agreement and consistent with the approved budget. Requests for payment will be by reimbursement only. Categories will be outlined in the request or invoice. Requests for payment must include documentation for each expense payment is requested (e.g. receipts, invoices). See Exhibit A for invoice sample.

3. **Payment**
The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the Subrecipient not to exceed the actual cash requirements. Payment requests for eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with applicable performance criteria. The Subrecipient must submit an invoice to the City of Fargo for reimbursement of expenses within 90 days of expense. Payments will be made within 14 days of the City accepting an invoice. If the City requests any additional items or information regarding an invoice, payment may be delayed. The City reserves the right to liquidate funds available under this agreement for costs incurred by the City on behalf of the Subrecipient.

4. **Term of Performance**
The terms of this agreement shall be for eight months, beginning May 1, 2021. The terms of this Agreement shall remain in effect during any period the Subrecipient has control over funds.

B. Duplication of Benefits

In consideration of Subrecipient's funds from the City, the Subrecipient hereby assigns to the City all of its future rights to reimbursement and all payments received from any grant, subsidized loan, or insurance policies of any type or coverage or under any reimbursement or relief program related to or administered by the Federal Emergency Management Agency or the Small Business Administration or other program to the extent of proceeds paid to Subrecipient under this Agreement and that are determined in the sole discretion of the City to be a duplication of benefits ("DOB"). This shall be defined as financial assistance, available to the Subrecipient, which can be used to pay for the costs described under Section III. Budget & Use of Funds for the scope of work described in this agreement that are to be paid for by this grant.

Upon receiving any proceeds from other relief programs or loan programs for this scope of work, that were not already described in the grant application, Subrecipient agrees to immediately notify the City. If some or all of the proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the City forthwith.

IV. GENERAL CONDITIONS

A. Indemnification & Hold Harmless

The Subrecipient agrees to indemnify and hold harmless the City and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property resulting solely from the negligent acts or omissions of the Subrecipient, or the Subrecipient's contractors, successors, or assigns in connection with the work on the property, and the Subrecipient will, at the Subrecipient's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be joined with other parties upon any such matter or claim(s). This Agreement to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including any reasonable attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof. This indemnification provision will survive the termination of this Agreement and any subsequent agreements of the parties contemplated herein. Notwithstanding anything to the contrary contained herein, the Subrecipient's obligation hereunder shall not apply to the extent such liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person(s) or property, are a result of the acts or omissions of the City.

B. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Subrecipient shall include the City as an additional insured on any insurance policy issued to comply with the requirements of this provision.

C. Conflict of Interest

The Subrecipient agrees to the following:

- The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts.
- No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract if a conflict of interest, real or apparent, would be involved.
- No covered persons who exercise or have exercised any functions or responsibilities with respect to City-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the City-assisted activity, or with respect to the proceeds from the City-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer or elected or appointed official of the City, the Subrecipient, or any designated public agency.

V. ADMINISTRATIVE REQUIREMENTS

A. Final Report

The Subrecipient shall submit a final report within 90 days of project completion, to include the number of beneficiaries served through December 31, 2021 and the number of new jobs created.

B. Procurement/Purchasing Requirements

Should the Subrecipient need to make any purchases with any portion of the City funds received under this Agreement, the following must be used.

1. Compliance

Per the City Purchase Policy's Emergency Purchase provision, the Subrecipient shall obtain at least one fair and reasonable quote for all purchases under $150,000

2. Assurances

The Subrecipient agrees to use grant funds for the purposes authorized by the City of Fargo. The Subrecipient further agrees to comply with the assurances, attached as Exhibit "B", and made a part of this agreement, which are required by the North Dakota Department of Health for all grants.

VI. ENTIRE AGREEMENT

The provisions as set forth in items I-VII, and all attachments of this agreement constitute the entire agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants, and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

Subrecipient

SIGNED THE _13__ DAY OF
___January_____, 2022___.

Churches United for the Homeless

By:_____
Pastor Susan J. Peterson-Koesterman
Its: Chief Executive Officer

Federal ID #: 41-1594892
DUNS #: 364422857

City of Fargo

SIGNED THE ___ DAY OF
_____, 20___.

CITY OF FARGO, a North Dakota municipal corporation

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

ATTEST:

_____

VII. EXHIBIT B – Requirements & Subrecipient Assurances Agreement

Please complete and sign.

REQUIREMENTS AND SUBRECIPENT ASSURANCES AGREEMENT BETWEEN CITY OF FARGO ACTING THROUGH ITS NORTH DAKOTA DEPARTMENT OF HEALTH (Grantor) NOTICE OF GRANT AWARD AND SUBRECIPIENT
FOR THE PERIOD MAY 1, 2021 THROUGH DECEMBER 31, 2021

SECTION ONE: REQUIREMENTS

1. SUBRECIPENT'S UNDERSTANDING OF TERM OF FUNDING

Subrecipient understands that this grant is a one-time grant, and acknowledges that it has received no assurances that this grant may be extended beyond its expiration date.

2. AUTHORITY TO CONTRACT

Subrecipient may not assign or otherwise transfer or delegate any right or duty without Grantors express written consent. Subrecipient may not enter into subcontracts. Subrecipient does not have authority to contract for or incur obligations on behalf of Grantor.

3. INDEPENDENT ENTITY

Subrecipient is an independent entity under this grant and is not a Grantor employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. Subrecipient retains sole and absolute discretion in the manner and means of carrying out Subrecipient's activities and responsibilities under this Grant.

4. STATE AUDIT REQUIREMENTS

All records, regardless of physical form and the accounting practices and procedures of Subrecipient relevant to this Agreement are subject to examination by the North Dakota Department of Health, the North Dakota State Auditor, the Auditor's designee. or Federal auditors, if required. Subrecipient shall maintain all of these records for at least three (3) years following completion of this Grant and be able to provide them upon reasonable notice. Grantor, State Auditor. or Auditor's designee shall provide reasonable notice to Subrecipient prior to conducting examination.

5. RETENTION OF RECORDS

Subrecipient agrees to retain financial records for three years from the date of submission of the final expenditure report or if subject to audit, from the date the audit is completed and closed, whichever occurs later. Subrecipient must provide Grantor, the federal government, and their duly authorized representatives access to the books, documents, papers, and records of Subrecipient that are pertinent to the services provided under this agreement. Program Records must be maintained for a period of six years or until an audit is completed and closed, whichever comes first.

6. TERMINATION

a) **Termination by Mutual Agreement**
   This Grant may be terminated by mutual consent of both parties executed in writing.

b) Early Termination in the Public Interest

Grantor is entering into this Agreement for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly and Courts. If this Agreement ceases to further the public policy of the State of North Dakota, Grantor, in its sole discretion, by written notice to SUBRECIPIENT, may terminate this Agreement in whole or in part. 2020 Notice of Grant Award Requirements Addendum and Subrecipient Assurances

c) Termination for Lack of Funding or Authority

Grantor by written notice to Subrecipient may terminate the whole or any part of this Agreement under any of the following conditions:

1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Agreement under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d) Termination for Cause

Grantor may terminate this Agreement effective upon delivery of written notice to Subrecipient, or any later date stated in the notice:

1) If Subrecipient fails to provide services required by this Agreement within the time specified or any extension agreed to by Grantor; or
2) If Subrecipient fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of Grantor provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by *law* or under this Agreement.

7. CONTINGENT LIABILITY

During the term of this agreement, and for three years after this agreement expires or is terminated, Subrecipient agrees to reimburse Grantor for any claims submitted by Grantor for federal financial participation in the cost of this grant to the extent those claims are disallowed by any federal agency for failure on the part of Subrecipient to comply with this grant or any federal or state statutory or regulatory provisions which govern the source of funding. Grantor agrees to give Subrecipient prompt written notice of any disallowed claims subject to reimbursement by Subrecipient. Any amount disallowed as described is a debt owing to Grantor. Action may be brought by Grantor as allowed by law.

8. DELAY OR DEFAULT FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the Party's reasonable control and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

9. NOTICE

All notice or other communication required under this grant must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

GRANTOR	SUBRECIPIENT
Nicole Crutchfield, Director of Planning	Pastor Susan J. Peterson-Koesterman
City of Fargo	Churches United for the Homeless
225 4th Street North	1901 First Avenue North
Fargo, ND 58102	Moorhead, MN 56560

NOTE: This section is to be completed by the Subrecipient prior to returning to the Grantor.

Notice provided under this provision does not meet the notice requirements for monetary claims against the Grantor found at North Dakota Century Code § 32-12.2-04.

10. INTEGRATION, MODIFICATION, AND SEVERABILITY

This agreement constitutes the entire agreement between the Subrecipient and Grantor. There are no understandings, agreements, or representations, oral or written, not specified within this grant. No alteration, amendment, or modification of this grant is effective unless it is reduced to writing, signed by the parties, and attached to the grant. If any term of this grant is declared to be illegal or unenforceable by a court having competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this grant did not contain that term.

11. COLLATERAL CONTRACTS

If any inconsistency exists between this agreement and other provisions of collateral contractual agreements that are made a part of this agreement by reference or otherwise, the provisions of this agreement control.

12. WORKS FOR HIRE

Subrecipient acknowledges that all work(s) under this Agreement is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to Grantor all rights and interests Subrecipient may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by Subrecipient in performance of this Agreement for Grantor shall be the sole property of Grantor, and Subrecipient hereby assigns and transfers all its right, title, and interest therein to Grantor. Subrecipient shall execute all necessary documents to enable Grantor to protect Grantor's intellectual property rights under this section.

13. WORK PRODUCT

All work product or materials created for Subrecipient or purchased by Subrecipient under this Grant belong to Subrecipient and must be immediately delivered to Subrecipient at Subrecipient's request upon termination of this Grant.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Subrecipient understands that, in accordance with this agreement's Confidentiality clause, Grantor must disclose to the public upon request any records it receives from Subrecipient. Subrecipient further understands that any records obtained or generated by Subrecipient under this agreement may, under certain circumstances, be open to the public upon request under the North Dakota public records law.

Subrecipient agrees to contact Grantor promptly upon receiving a request for information under the public records law and to comply with Grantor's instructions on how to respond to the request.

15. CONFIDENTIALITY

Subrecipient agrees not to use or disclose any information it receives from Grantor under this agreement that Grantor has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this grant, or as authorized by state or federal laws, or as authorized in advance by Grantor. Grantor agrees not to disclose any information it receives from Subrecipient that Subrecipient has previously identified as confidential and that Grantor determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. Any protected health information subject to N.D.C.C. § 23-01.3 or personal health information subject to federal HIPAA regulations may only be released as authorized by those laws. The duty of Subrecipient and Grantor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

Subrecipient and Grantor are both independently responsible under the North Dakota open records law. Except for information that is confidential under state or federal law or otherwise exempt from the North Dakota open records law. N,D.C.C. oh, 44-04, Subrecipient and Grantor must disclose to the public upon request any records received from each other. Subrecipient and Grantor agree to contact the other immediately upon receiving a request for such information under state or federal *law*. The duty of Grantor and Subrecipient to maintain confidentiality of information under this section continues beyond the Term of this grant.

16. ATTORNEY FEES

If a lawsuit is filed by Grantor to obtain performance due under this grant, and Grantor is the prevailing party, Subrecipient shall pay Grantor's reasonable attorney fees and costs in connection with the lawsuit, except **when** prohibited by N.D.C.C. § 28-26-04 or when Subrecipient is a governmental entity.

17. ALTERNATIVE DISPUTE RESOLUTION —JURY TRIAL

By this award, Grantor does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce their rights and remedies in judicial proceedings. Grantor does not waive any right to a jury trial.

18. APPLICABLE LAW AND VENUE

This agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Cass County, North Dakota. Each party consents to the exclusive jurisdiction of such court **and** waives any claim of lack of jurisdiction or forum non conveniens.

19. SPECIAL CONDITIONS

Funding will be provided on a reimbursement basis up to the amount awarded in the agreement based on allowable expenditures as identified in section601 (d) of the Social Security Act, as added by section 5001 of the CARES Act. Expenditures incurred related to the Scope of Service for this agreement will be covered as early as May 1, 2021.

20. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Subrecipient agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights (See N.D.C.C. Title 34 - Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women). Subrecipient agrees to timely file all required reports, make required payroll deductions, and timely pay all **taxes** and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. Subrecipient shall have and keep current at all times during the Term of this agreement all licenses and permits required by law. Subrecipient's failure to comply with this section may be deemed a

This agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Cass County, North Dakota. Each party consents to the exclusive jurisdiction of such court **and** waives any claim of lack of jurisdiction or forum non conveniens.

21. LIMITATIONS ON APPROPRIATIONS AND SPENDING AUTHORITY

Continuation of this agreement beyond June 30 of any odd numbered year is contingent on continued legislative appropriation of funds for the purposes of this grant. If those appropriations are not forthcoming, Grantor will notify Subrecipient as soon as possible and the agreement will terminate on June 30 of that year. Grantor will neither be penalized nor incur any liability because of termination of the agreement as provided above.

22. SPOLIATION-NOTICE OF POTENTIAL CLAIMS

Subrecipient shall promptly notify Grantor of all potential claims that arise or result from this agreement. Subrecipient shall also take all reasonable steps to preserve all physical evidence and information under its control that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Grantor the opportunity to review and inspect such evidence, including the scene of the accident

23. EVALUATION

Grantor shall, throughout the effective dates on the agreement, conduct an ongoing evaluation of Subrecipient's performance in carrying out the Scope of Service in the award. Compliance with Contract Requirements and Assurances will also be monitored. Such evaluation may include periodic site visits by Grantor representatives to review progress made by Subrecipient in accomplishing stated goals and objectives.

SECTION TWO: SUBRECIPIENT ASSURANCES

24. ASSURANCES

In connection with furnishing supplies or performing work under this grant, persons who contract with or receive funds to provide services to Grantor are obligated and agree to comply with all local, state, and federal laws, regulations and executive orders related to the performance of this grant including the following:

a) Fair Labor Standards Act. Equal Pay Act of 1963,
b) Titles VI and VII of the Civil Rights Act of 1964.
c) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency,
d) Age Discrimination Employment Act of 1967.
e) Age Discrimination Act of 1975,
f) Drug-free Workplace Act of 1988,

g) Americans with Disabilities Act of 1990,
h) Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving.
i) Section 504 of the Rehabilitation Act of 1973.
j) Executive Order 13043, Increasing Seat Belt Use in the United States, k) Hatch Act (5 U.S.C. 1501-1508 and 7324-7328),
l) Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104(g))

25. APPLICABLE COSTS
Unless otherwise authorized by federal law, the charges to be made by Subrecipient do not include costs financed by federal monies other than those generated by this agreement.

26. DEBARMENT/SUSPENSION
By signing this agreement, Subrecipient certifies that neither Subrecipient, nor their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with State or Federal Government by any Department or Agency of the State or Federal Government.

27. APPROVED VENDOR
If not a governmental agency or political subdivision of the State of North Dakota, Subrecipient must be an approved vendor with the Office of Management and Budget within the State of North Dakota as required by N.D.C.C. § 54-44.4-09.

28. RESTRICTIONS FOR LOBBYING
Subrecipient assures that:

a) No federal funds from this agreement will be paid by for on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, 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 of any cooperative agreement: or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any grant funds other than federal 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, Subrecipient agrees to complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

b) Public Law No. 104-208, Section 503 expressly prohibits the use of appropriated funds for indirect or grassroots lobbying efforts that are designed to support or defeat legislation pending before state legislatures. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress or any state legislative body itself.

Governmental entities are prohibited by law from lobbying. Activities designed to influence action in regard to a particular piece of pending state or federal legislation are considered lobbying. That includes lobbying for or against pending legislation, as well as indirect or grass roots' lobbying efforts that are directed at inducing the public to contact their elected representatives to urge support of, or opposition to, pending legislation.

The North Dakota attorney general has determined that governmental entities may provide the public with neutral factual information but may not, without express legislative authority, expend public funds for the purpose of influencing the result of an election issue, including initiated measures.

No part of any funding may be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence election issues or pending legislation.

29. SMOKE FREE

Any Subrecipient that conducts business in North Dakota will abide by N.D.C.C, § 23-12-09 through N.D.C.C. § 2312-11. Further, if Subrecipient is not in North Dakota. Subrecipient will provide a smoke- free workplace and promote the nonuse of tobacco products in areas including office space, conference or meeting rooms, corridors, stairways, lobbies, rest rooms, cafeterias and other public space.

30. ENERGY AND ENVIRONMENTAL CONSERVATION

Subrecipient must give preference, to the extent practicable and economically feasible, to products and services that conserve natural resources and protect the environment and are energy efficient. (40CFR 30.44(a)).

31. RESOURCE CONSERVATION AND RECOVERY ACT

Section 6002 of the Resource Conservation and Recovery Act requires preference be given in procurement programs to the purchase of specific products containing recycled materials pursuant to the Environmental Protection Agency guidelines (40CFR Parts 247).

32. EQUIPMENT

Subject to the obligations and conditions set forth in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D. §200.313, title to equipment acquired under a grant will vest upon acquisition in the Subrecipient.

33. FEDERAL AUDIT REQUIREMENTS

Subrecipient agrees to keep financial records necessary to fully disclose the complete financial status of the grant. Subrecipient must submit documentation supporting request for reimbursement for review by Grantor or its agents, upon request. Subrecipient agrees to meet all audit requirements as specified in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Additionally, Subrecipient agrees to spend all federal assistance received from Grantor in accordance with applicable laws and regulations such as but not limited to 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is made a part of this grant by reference.

SUBRECIPIENT CERTIFICATIONS FOR REQUIREMENTS (SECTION ONE) AND SUBRECIPIENT ASSURANCES (SECTION TWO) FOR ALL NOTICE OF GRANT AWARDS FOR THE PERIOD MAY 1, 2021 THROUGH DECEMBER 31, 2021

I hereby certify that our organization/agency has agreed upon the conditions of the Requirements Addendum and Subrecipient Assurances applicable to funding received through all grants issued by the Grantor and will ensure all program managers are aware of and will comply with the requirements.

I certify that if my organization/agency receives $750000 or more in total Federal dollars from all sources during the fiscal year, the audit requirements specified in 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards will be met and a copy of the Single Audit upon its completion will be submitted to the State.

I certify that the person(s) responsible for authorizing, expending or accounting for grant funds will be provided access to the circulars and grant requirements as specified in Section 33 of the Subrecipient Assurances.

If my organization/agency has grant(s) in place that extend past June 30, 2021, I agree that this Requirements Addendum and Subrecipient Assurances will become a part of the grant(s).

Agency/Organization (Subrecipient) Churches United for the Homeless		
Name and Title: Pastor Susan J. Peterson-Koesterman, Chief Executive Officer		
Address: 1901 First Avenue North		
City: Moorhead	State: MN	9 Digit Zip Code: 56560
DUNS Number: 364422857	Federal Taxpayer Identification Number: 41-1594892	
Signature:		Date:01/13/2022

CITY OF Fargo

PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry, Streets & Sewers, Watermeters, Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

24

January 10, 2022

The Honorable Board of City Commissioners
City of Fargo
225 Fourth Street N
Fargo, ND 58102

RE: Fuel Purchase for 3rd and 4th Quarters of 2022 RFV22001

Commissioners:

The Fuel Procurement Committee, comprised of the Finance Director, the Director of Operations and the Fleet Services Manager, monitors the City of Fargo's current and projected fuel use and the fuel market to determine when conditions are favorable to lock in fuel prices for 80% of the city's projected fuel uses.

On Jan 7, 2022, the Fuel Procurement Committee received bids for 240,000 gallons of #2 Diesel and 150,000 Gallons of Unleaded Gasoline. The award was made to Northdale Oil I with a submitted low bid of $917,850.00 without tax. (RFV22001).

Attached for your review is the Bid Tab from Jan 7, 2022 and the Fuel Contract.

RECOMMENDED MOTION: I/we hereby move to authorize and execute the Forward Fuel Contract (RFV22001) for the 3rd and 4th Quarters of 2022.

Respectfully Submitted,

Allan Erickson
Fleet Services Manager

FUEL BID TAB

		Northdale		Hartland		Farstad Oil Inc.		Mansfield	
3rd Quarter (July 1 - Sept. 31)									
#2 Diesel Fuel	120,000	$2.4950		$2.5371		$2.6700		$2.5982	
No-Lead 10% Ethonal 87 Octane	75,000	$2.1700		$2.3355		$2.8100		$2.4453	
4th Quarter (Oct 1 - Dec 31)									
#2 Diesel Fuel	120,000	$2.4850		$2.5459		$2.6700		$2.5645	
No-Lead 10% Ethonal 87 Octane	75,000	$2.1000		$2.1719		$2.8100		$2.2783	
		Avg $/Gal		Avg $/Gal		Avg $/Gal		Avg $/Gal	
Total Gallons #2	240,000	$2.4900	$ 597,600.00	$2.5415	$ 609,960.00	$2.6700	$ 640,800.00	$2.5814	$ 619,524.00
Total Gallons No-Lead	150,000	$2.1350	$ 320,250.00	$2.2537	$ 338,055.00	$2.8100	$ 421,500.00	$2.3618	$ 354,270.00
2022 Q3/Q4 Fuel Bid			$ 917,850.00		$ 948,015.00		$ 1,062,300.00		$ 973,794.00

City of Fargo

FORWARD CONTRACT

Contractor: Northdale Oil
203 14th St NE
East Grand Forks, MN 56721

Buyer: City of Fargo
225 4th ST. N
Fargo, ND 58102

	Delivery Period	Quantity	Product	Price/Gallon
	2022			
3rd Quarter				
1	July 1 – Sept 30	120,000	#2 Diesel Fuel	2.495
2	July 1 – Sept 30	55,000	No-lead Ethanol 87 Octane	2.17
4th Quarter				
3	Oct 1 – Dec 31	120,000	#2 Diesel Fuel	2.485
4	Oct 1 – Dec 31	55,000	No-lead Ethanol 87 Octane	2.10

Price: Quoted price is per gallon and inclusive of:

- Any local freight/delivery charges.
- The Federal LUST (Leaking Underground Storage Tank) fee.(one-tenth of one cent per gallon)
- North Dakota State Inspection fee.(one-fortieth of one cent per gallon)
- Federal Oil Spill Recovery Fee

Demurrage Charge: $ 60 per hour commencing with the second (2nd) hour.

Measurement: Terminal Meter Tickets (Gross Gallons)

Terms: Net 10 Days from Invoice Date

Sales Representative: Scott Reck
Northdale Oil

Buyer Representative: Allan Erickson
City of Fargo

Credit: Credit shall be approved and within the established line.

City of Fargo Fuel Bid for 3rd and 4th Quarter of 2022
Due by 9:00 AM Central Time, Jan 7, 2022
Please list below your prices on a quarterly basis.

$ Per Gallon will **INCLUDE**
Any local freight/delivery charges.
The Federal LUST (Leaking Underground Storage Tank) fee. (One tenth of one cent per gallon)
North Dakota State Inspection fee. (One-fortieth of one cent per gallon)
Federal Oil Spill Recovery Fee

3rd Quarter (July 1 – Sep 30)	Gallons	Cost/Gallon
#2 Diesel Fuel	120,000	2.495
No-Lead Ethanol 87 Octane	75,000	2.17
4th Quarter (Oct 1 – Dec 31)		
#2 Diesel Fuel	120,000	2.485
No-Lead Ethanol 87 Octane	75,000	2.10

Total Gallons #2	240,000		$ 597,600
Total Gallons No-Lead	150,000		$ 320,250
	390,000		
		TOTAL	$917,850

Demurrage Charge per hour **after** the first hour $60

Vendor: Northdale Oil

Signature: Scott Paul

Title: President

Date: 1/7/22

Time: 8.50

Accepted 1/7/22 9:05 AM

Allan
Fleet manager

Definitions:

The terms City of Fargo, City, Buyer and Grantee are synonymous and mean the City of Fargo

The terms "Bidder, Contractor, Offerer, Proposer, Contractor, Firm, Company" are synonymous and mean the offerer or Contractor.

Efficiency Payments:

In the event Buyer does not take delivery of the contracted quantity for the delivery period, Contractor can sell the volume not lifted in the open market the last 2 days of the quarter contract or the first 5 days of the following quarter contract.

If the open market price is less than the fixed forward pricing above, the Buyer will pay Contractor the amount equal to the volume not lifted times the difference between the open market price and the fixed forward price.

If the open market price is more than the fixed forward pricing above, the Contractor will pay Buyer the amount equal to the volume not lifted times the difference between the open market price and the fixed forward price.

Delivery of Fuel

Delivery of fuel will be to all City of Fargo's three (3) fueling sites located at:

402 23rd Street North	Public Works (3 Underground tanks)
650 23rd Street North	Metro Transit Garage (2 underground tanks)
4501 7th Avenue North	Landfill (1 above ground tank)

Delivery of fuel to the fueling site at Public Works will require a vent hose to be connected between tanker and tank.

Additional Products and Fuel Additives

The Buyer uses various mixtures of fuel depending on the time of year. For winter use, diesel is a blend of #1 and #2 with a cold weather additive. Bio diesel may also be used during the summer months. Additional products purchased outside of the contracted amount will be current rack price at the time of purchase. Splash blending for products like bio-diesel will be acceptable.

Failure to Perform:

If, during any month of the delivery period, Contractor fails to deliver the contracted volume, and such failure is not excused as provided herein, and the Replacement Price (cost incurred by Buyer to secure the contracted for volume) is greater than the Contract

Price, then Contractor shall be liable for and shall pay Buyer the amount equal to the volume not delivered times the difference between the Replacement Price and the Contract Price.

Excused Performance:

Except with regard to a Party's obligation to make payments due under this Contract, in the event either Buyer or Contractor is rendered unable, wholly or in part, by unforeseeable causes to carry out its obligations, then upon notification by telephone with a subsequent written notice setting forth the specifics within a reasonable time, but not in excess of six (6) days after the commencement of the failure to perform due to unforeseeable causes, the obligations of the Party giving such notice, insofar as they are affected by such causes, from its inception, shall be excused during the entire period of any inability so caused but for no longer period.

Excused performance, as employed in this Contract will mean any event that prevents delivery or receipt of Product, including acts of God, strikes, lockouts, or industrial disputes or
disturbances, civil disturbances, interruptions by government or court orders, necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction, acts of the public
enemy, events affecting facilities or services of non-affiliated third parties, or any other cause of like kind not reasonably within the control of the non-performing
Party and which by the exercise of due diligence such Party could not have prevented or is unable to overcome.

Contractor Warrants:

Contractor warrants that all royalties, taxes and other sums due on
production and transportation of the Fuel to the Delivery Point(s) are paid, and that it will have the right to convey and will transfer good and merchantable title to all Fuel sold hereunder and delivered by it to Buyer, free and clear of any and all liens, encumbrances and claims. All Fuel delivered will meet the ASTM standard for that product.

Contractor shall pay all taxes lawfully levied on Contractor applicable to the Fuel delivered to Buyer. Buyer shall pay all taxes lawfully levied on Buyer after delivery to Buyer. If Buyer is exempt from any taxes, Buyer shall furnish Contractor with proper documentation.

If in the event of a product shortage at the local pipeline and a tanker must be sent to another pipeline outside of the metro area, the additional freight charge must be agreed upon between buyer and Contractor at the time of order.

Notices:

All billings, payments, statements, notices and communications made pursuant to this Contract shall be made as follows:

Contractor:	Buyer:
Northdale Oil Inc.	City of Fargo
203 14th St NE	225 4th St N
East Grand Forks, MN 56721	Fargo, ND 58102

Transfer or Assignment:

This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this contract, in whole or in part, will be made without the prior written consent of the non-assigning party, which consent will not be unreasonably withhold or delayed provided, Upon any transfer and assumption, the transferor shall not be relieved of or discharged from any obligations hereunder unless such assumption is made in the transfer/assumption agreement.

Severability:

If any term, provision, covenant, or condition of this Contract or the application thereof, to any party or circumstance, shall be held to be invalid or unenforceable (in whole or in part) for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Contract had been executed with the invalid or unenforceable portion eliminated.

Applicable Law:

The Contract shall be governed in accordance with the laws of the State of North Dakota.

Consequential and Incidental Damages:

In no event will either party be liable under this Contract, whether in contract, tort (including negligence and strict liability) or otherwise, for incidental, consequential, special or punitive damages.

Applicable Federal Clauses

Only to the extent any of the following sections are applicable to a contract of the nature herein contemplated, the following shall apply:

No Government Obligation to Third Parties:

The Buyer 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 Buyer, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud & False or Fraudulent Statements & Related Acts:

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 cause 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.

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.

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.

Access to Records and Reports:

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.

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.

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.

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.

Federal Changes:

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Buyer and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Civil Rights and Equal Opportunity:

The City of Fargo is an Equal Opportunity Employer. As such, the City of Fargo agrees to comply with all applicable Federal civil rights laws and implementing regulations.
Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Fargo 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.

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.

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.

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.

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.

Termination Provisions:

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.

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.

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.

Disadvantaged and Small Business Enterprise:

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).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days 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).

In connection with the performance of this service, the Contractor will cooperate with the City of Fargo 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 insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure 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 City of Fargo for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the City of Fargo 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 City of Fargo 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 City of Fargo.

Fostering Small Business Participation. The City of Fargo 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 City of Fargo. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

Incorporation of FTA Terms:

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 City of Fargo requests which would cause City of Fargo to be in violation of the FTA terms and conditions.

Debarment, Suspension, Ineligibility and Voluntary Exclusion:

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 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

Breach of Contract and Dispute Resolution:

Disputes: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City, the City Administrator. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Fargo City Commission, 225 4th St N, Fargo, ND 58102. A hearing will be scheduled with the Fargo City Commission at the next regularly scheduled meeting. 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 said hearing. The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute: Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims of Damages: Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies: Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City 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 State of North Dakota.

Rights and Remedies: The duties and obligations imposed by this Agreement/Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Lobbying Restrictions:

The Proposer certifies that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, 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.

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.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31,

U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure

Clean Air and Federal Water Pollution Control Act:

The Contractor agrees:
It will not use any violating facilities;
It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
It will report violations of use of prohibited facilities to FTA; and

It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Contract Work Hours & Safety Standards Act:

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.

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.

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.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Substance Abuse Requirements: Drug and Alcohol Testing:

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 or the City of Fargo, 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 the start of the contract period and to submit the Management Information System (MIS) reports before the start of the contract to the City of Fargo Fleet Manager. 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.

Energy Conservation:

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).

Safe Operation of Motor Vehicles:

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 Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Entire Agreement:

THE TERMS CONTAINED IN THIS CONTRACT CONSTITUTE THE ENTIRE CONTRACT OF THE PARTIES, AND THERE ARE NO CONTRACTS, UNDERSTANDINGS, OBLIGATIONS, PROMISES, ASSURANCES OR CONDITIONS, PRECEDENT OR OTHERWISE, EXCEPT THOSE EXPRESSLY SET OUT HEREIN.

DESTINATION IS CITY OF FARGO FUELING STATIONS

Dated this ____ day of _____, 2022.

CONTRACTOR	BUYER
By: _____	_____
	Dr. Tim Mahoney Mayor
It: _____	

(Both Parties are Signatories)

CITY OF Fargo

PUBLIC WORKS
OPERATIONS

Fleet Management, Forestry,
Streets & Sewers,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

25

January 18, 2022

The Honorable Board of City Commissioners
City of Fargo
225 4th Street
Fargo, ND 58102

RE: PBC116354; Contract Piggyback for the Purchase of AMP Salt Brine Additive

Commissioners:

The Public Works department utilizes an anti-icing salt brine as a part of the winter maintenance plan. An additive can be placed in the salt brine to lower the effective working temperature allowing the product to be more effective in cold weather situations.

Public Works staff has compared different products for the salt brine additive. AMP, developed by EnviroTech Services, was compared with a product derived by a sugar beet production byproduct. The AMP additive was found to perform better and is the preferred product. The City of Fargo has used AMP for 5 years and it has performed very well in our cold winter climate.

AMP is a proprietary salt brine additive and is distributed by EnvrioTech Services. Staff is requesting authorization to piggyback off the Minnesota State Contract for the purchase of AMP at a cost of $2.76 a gallon (Minnesota State Contract #116354).

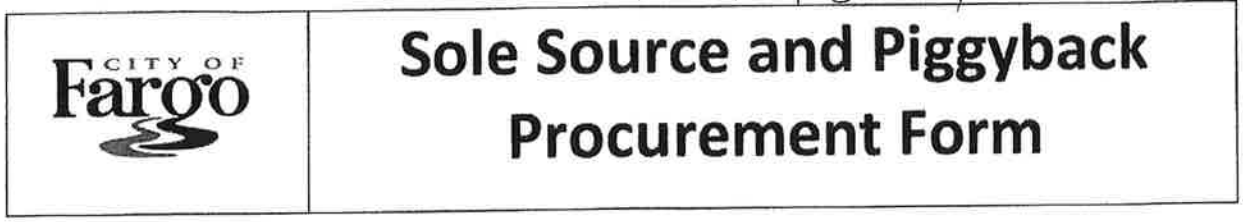
Finance Committee reviewed and approved Contract PBC116354 on 10/25/2021.

RECOMMENDED MOTION: Using contract piggybacking (PBC116354), as provided for in the City of Fargo Purchasing Policy, I/we hereby move to authorize the purchase of AMP salt brine additive from EnviroTech Services at a price of $2.76 per gallon for the 2022 winter.

Respectfully submitted,

Paul Fiechtner
Services Manager
Fargo Public Works

PBC116354



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:

Envirotech Services

Estimated Dollar Amount of Purchase:

$35,000

Is this procurement funded by a federal grant?

No

If yes, you must attach a document from the grant agency approving this procurement as a sole source.

The project/service is required to:

Salt brine additive used in winter anti-icing operations.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

AMP is a proprietary, patented product developed by EnviroTech Services. EnviroTech Services is the sole distributor of the product.

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. **)

Public Works staff has compared different products for the salt brine additive and tested them in the field for performance. The AMP additive was found to perform better and is the preferred product. The City of Fargo has used AMP for 5 years and it has performed very well in our cold winter climate.

****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)

Public Works staff has compared different products for the salt brine additive. AMP, developed by EnviroTech Services, was compared with a product derived by a sugar beet production byproduct. The AMP additive was found to perform better and is the preferred product. The City of Fargo has used AMP for 5 years and it has performed very well in our cold winter climate.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

MNDOT Contract #116354 attached.

Signature: _____
(Requestor)

Printed Name: Paul Fiechtner

Department: Public Works

Title: Services Manager

Date: 10/20/2021

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.

PMF **(Requestor initials)**

Admin Minnesota

Office of State Procurement

Room 112 Administration Bldg., 50 Sherburne Ave., St. Paul, MN 55155; Phone: 651.296.2600, Fax: 651.297.3996
Persons with a hearing or speech disability can contact us through the Minnesota Relay Service by dialing 711 or 1.800.627.3529.

CONTRACT RELEASE: D-156(5)

DATE: NOVEMBER 1, 2020

PRODUCT/SERVICE: DEICERS: ALTERNATIVE CHEMICAL DEICERS

CONTRACT PERIOD: SEE BELOW UNDER EACH CONTRACT VENDOR

EXTENSION OPTIONS: NONE

ACQUISITION MANAGEMENT SPECIALIST (AMS): ROBB MIMBACH

PHONE: 651.201.2432 **E-MAIL:** robb.mimbach@state.mn.us **WEB SITE:** www.mmd.admin.state.mn.us

CONTRACT VENDOR	CONTRACT NO.	TERMS	DELIVERY ARO
CRYOTECH DEICING TECH 6103 ORTHOWAY FORT MADISON, IA 52627	**116353**	**NET 30**	**3 DAYS METRO** **5 DAYS OTHER**

VENDOR NO: 0000202854-001

JEANNE SEAGER
OFFICE: 800.346.7237 | **FAX:** 319.372.2662
EMAIL: ORDERS@CRYOTECH.COM

CONTRACT PERIOD: NOVEMBER 1, 2016, THROUGH OCTOBER 31, 2021

ENVIROTECH SERVICES, INC. PO BOX 5512 DENVER, CO 80217	**116354**	**NET 30**	**3 TO 5 DAYS**

VENDOR NO: 0000225197-001

DARLA DOCKTER
OFFICE: 952.679.3570
EMAIL: DDOCKTER@ENVIROTECHSERVICES.COM

CONTRACT PERIOD: NOVEMBER 1, 2016, THROUGH OCTOBER 31, 2021

Contract Release: D-156(5)

CONTRACT VENDOR	CONTRACT NO.	TERMS	DELIVERY ARO
K TECH SPECIALTY, INC. PO BOX 428 ASHLEY, IN 46705	**146210**	**NET 30**	**1 TO 2 DAYS METRO** **1 TO 3 DAYS OTHER**

VENDOR NO: 0000985053

KYLE KANNENBERG
SALES
OFFICE: 260.615.5751
EMAIL: KKANNENBERG@KTECHCOATINGS.COM

CONTRACT PERIOD: AUGUST 21, 2018, THROUGH OCTOBER 31, 2021

SALT SOURCE, LLC 1170 EAGAN INDUSTRIAL RD. EAGAN, MN 55121	**125471**	**NET 30**	**3 DAYS METRO** **5 DAYS OTHER**

VENDOR NO: 0000979108-001

MATT FRIEDRICH OR MARIA
OFFICE: 612.481.8731
EMAIL: MATT@USSALT.COM OR MARIA@USSALT.COM

CONTRACT PERIOD: NOVEMBER 1, 2016, THROUGH OCTOBER 31, 2021

SCOTWOOD INDUSTRIES, INC. – CONTRACT NOT YET FULLY EXECUTED

SMITH FERTILIZER & GRAIN CO., INC. 1650 QUEBEC ST. KNOXVILLE, IA 50138	**116358**	**NET 30**	**3 DAYS**

VENDOR NO: 0000877417-001

STEPHEN LEADS
OFFICE: 641.828.8508; 641.891.2441; 641.828.8500 | **FAX:** 641.828.8501
EMAIL: STEVEL@SFGIOWA.COM

CONTRACT PERIOD: NOVEMBER 1, 2016, THROUGH OCTOBER 31, 2021

Contract Release: D-156(5)

CONTRACT VENDOR	CONTRACT NO.	TERMS	DELIVERY ARO
SNI SOLUTIONS, INC. 205 N. STEWERT ST. GENESEO, IL 61254	**116359**	**NET 30**	**3 TO 5 DAYS**

VENDOR NO: 0000303186-001

JENNIFER STABLER
OFFICE: 888.840.5564 | **FAX:** 309.944.4620
EMAIL: MIKE@SNISOLUTIONS.COM

CONTRACT PERIOD: NOVEMBER 1, 2016, THROUGH OCTOBER 31, 2021

CONTRACT USERS. This Contract is available to the following entities as indicated by the checked boxes below

- ☒ State agencies
- ☒ Cooperative Purchasing Venture (CPV) members

STATE AGENCY CONTRACT USE. This Contract must be used by State agencies unless a specific exception is granted in writing by the AMS listed above.

STATE AGENCY ORDERING INSTRUCTIONS. Orders are to be placed directly with the Contract Vendor. State agencies should use a Contract release order (CRO) or a blanket purchase order (BPC). The person ordering should include his or her name and phone number. Orders may be submitted via fax.

CONTRACT FEEDBACK. If these commodities or service can be better structured to help you with your business needs, let us know. We solicit your comments and suggestions to improve all of our contracts so that they may better serve your business needs. If you have a need for which no contract currently exists, or you would like to be able to use an existing state contract that is not available to your entity, whether a state agency or CPV, please contact us. If you have specific comments or suggestions about an individual contract you can submit those via the Contract Feedback Form.

SERVICE CERTIFICATION FORM REQUIREMENTS.
Pursuant to Minn. Stat. § 16C.09, agencies must complete a "Service Contract Certification Form" prior to issuing an order for services offered from this Contract.

SPECIAL TERMS AND CONDITIONS

SCOPE. The purpose of this contract is to provide Deicers: Alternative Chemical Deicers, to be purchased on an as needed basis, by the Minnesota Department of Transportation (Mn/DOT), other Minnesota State agencies, and Cooperative Purchasing Venture members (CPV).

Only products that are included on the Mn/DOT Approved Products List (APL) can be added to this Contract.

ORDER PROCESSING. The Contract Vendor shall have one designated individual available for placing orders and expediting deliveries, who has the authority to act on behalf of the Contract Vendor in any matter relating to delivery questions and material quality issues. Upon contract award, the State will provide a list of Mn/DOT personnel contacts for chemical orders. Contacts for deliveries, if different than the person ordering, will be provided with the order. The Contract Vendor must provide order confirmation to the State contact or its designee.

Within the next business day of receipt of an order from a Mn/DOT District or CPV member, the Contract Vendor must provide a firm delivery date. If the delivery date requested from the purchaser is within the delivery lead time requirements of the Contract, the Contract Vendor must meet those delivery dates. If the Contract Vendor cannot meet the delivery date, the purchaser reserves the right to cancel the order and purchase on the open market from another source. The Contract Vendor must pay the difference in cost between the Contract price and the cost of the second vendor, if it is higher than the Contract price. This cost may be deducted from any unpaid invoice that the purchaser has with the Contract Vendor.

If blanket orders are issued by the purchaser, the Contract Vendor must offer the contract prices on the total quantity as ordered, not as released.

NOTICE OF DELIVERY. The Contract Vendor must give a minimum of 24 hours notice of the time of delivery to the purchaser. Deliveries must be accomplished Monday through Friday, between 8:00 a.m. and 3:30 p.m. unless otherwise authorized by the purchaser. The Contract Vendor must confirm delivery time and locations with the ordering agency.

DELIVERY REQUIREMENTS. The Contract Vendor must deliver the product within three (3) working days after receipt of order for deliveries within the Metropolitan nine county areas. The nine counties are: Ramsey, Hennepin, Washington, Anoka, Carver, Dakota, Wright, Chisago, and Scott. Deliveries to agencies located outside of the Metropolitan nine county areas must be received within five (5) days after receipt of order. Unless otherwise mutually agreed by the Customer and the Contract Vendor. Alternative delivery dates were mutually agreed as shown on pages 1 and 2.

The purchaser reserves the right to inspect and analyze the material at the point of delivery. For acceptance at the delivery point, the active ingredient concentration will be measured using the deicer solution specific gravity test. No precipitate or flocculation in the liquid product will be allowed in excess of the specification limits. Materials displaying these or other uncharacteristic traits when delivered may be immediately rejected at the delivery location. Materials with active ingredient content below the specified limits may be immediately rejected at the delivery location. All expenses to the Contract Vendor resulting from rejection of a delivery, including but not limited to product and delivery charges, will be the Contract Vendor's responsibility.

The purchaser reserves the right to obtain a sample of the product during the unloading process for acceptance. This sample will be used for testing to ensure product quality. All samples will be no charge to the purchaser.

An anti-foaming agent will be available from the Contract Vendor for use as needed at the point of delivery to control foaming during unloading of the liquid product, at no additional charge to the purchaser. The Contract Vendor will be responsible for all necessary equipment to transfer liquid product to the purchaser's storage tanks.

WEIGH SCALE TICKETS. All chemicals delivered under this Contract shall be weighed by the Contract Vendor on an approved scale that meets all applicable specifications, tolerances and other requirements of Minnesota Rules Chapter 7601. No Contract Vendor will be allowed to use a publicly owned scale or to substitute boxcar or barge weights for this requirement. The State reserves the right to have the loads re-weighed for verification of weight, at a certified scale. The site for re-weighing shall be determined by the State. Any actual costs associated with re-weighing will be borne by the Contract Vendor. Weigh slips must be provided at the time of delivery.

MATERIAL SAFETY DATA SHEETS. The Contract Vendor must provide a material safety data sheet with each delivery, as ordered. The purchaser reserves the right to refuse the shipment if MSDS information is not included with the delivery and all costs incurred to return the product will be borne by the Contract Vendor. Note: SNI Solutions, Inc. material safety data sheet has been labeled trade secret. Any Customers in possession of this, shall keep it confidential.

LOAD SIZES. The Contract Vendor is advised that the legal weight limit allowed on State highways will be strictly enforced. In the event a load is shipped to a delivery point which exceeds the legal load limits, the State may notify the appropriate law enforcement personnel of the overweight load.

CARRIER. The Contract Vendor must use a carrier that meets all federal and State laws as required by the appropriate interstate transportation authority.

BILL OF LADING. Included on the Bill of Lading will be the lot and batch number for each shipment delivered.

ADDITIONS OF PRODUCTS. If new products are submitted and added to the Mn/DOT Approved Products List during the Contract term, the State reserves the right to add the product to the Contract if the price, terms and conditions are mutually agreed.

SPECIFICATIONS. The solicitation specifications are specific to products that are on the Mn/DOT Winter Chemical Approved Product List. **No substitutes will be allowed.** No other products may be offered.

All deliveries made by the Contract Vendor of products that are on the Approved Products List must meet the product specifications of the product type that was approved. No alterations in the product formula or product characteristics will be accepted.

Contract Release: D-156(5)

Mn/DOT ALTERNATIVE CHEMICAL DEICER SPECIFICATIONS - REVISED MARCH 23, 2018.

A. Product General Specifications

Only Mn/DOT Approved Alternative Chemicals shall be permitted for use. The prescreening process and requirements for winter chemicals can be found at:
http://www.dot.state.mn.us/maintenance/pdf/research/ChemicalCertificationProcess.pdf

B. Liquid Corrosion Inhibitor / Salt Brine Additive Specification

Active ingredient in the product offered will be tested by Evaporation Method according to Test Method on file with the Mn/DOT Chemical Laboratory. Test results shall be within 5.0% of the concentration listed on the manufacturer's product data sheet.

The resulting salt brine, when treated according to manufacturer's recommendation, shall be at least 70% less corrosive then Sodium Chloride. The corrosion tests will use the National Association of Corrosion Engineers (NACE) Standard TM-01-69 (1995 rev.) modified to use 30mL of a 3% chemical product solution per square inch of coupon surface area.

C. Liquid Corrosion Inhibited Sodium Chloride Solution Specification

Active ingredient in the product offered will be tested by Silver Nitrate Titration according to Test Method on file with Mn/DOT Chemical Laboratory. Test result for sodium chloride content shall be within 2.0% of the concentration listed on the manufacturer's product data sheet.

The product offered shall be at least 70% less corrosive then Sodium Chloride. The corrosion tests will use the National Association of Corrosion Engineers (NACE) Standard TM-01-69 (1995 rev.) modified to use 30mL of a 3% chemical product solution per square inch of coupon surface area.

D. Liquid Corrosion Inhibited Magnesium Chloride - Rock Salt Pre-Treating Solution Specification

The product offered will contain corrosion control inhibitor in quantities not less than those indicated by the responder. The finished deicing product, including corrosion inhibitors, must be completely formulated at the original manufacturing plant location. **Post adding of corrosion inhibitors or any other ingredients, other than anti-foaming agents, is unacceptable after the product has left the original manufacturing plant.**

The responder **must submit test data** that indicates the percent concentration of Magnesium Chloride in the deicer solution is a minimum of 24.0%. The test method to determine magnesium chloride is Mn/DOT EDTA Titration Method. Test method is on file with Mn/DOT Chemical Laboratory.

The product offered will not contain greater than 1% (v/v) insoluble solids and will have 99% of the solids passing through a No. 10 Sieve after being stored at 0^0F (-17.8 ^{0}C)+/- 2^0F (1^0C) for 168 hours (seven days).

The product shall have a minimum storage life of one year without degradation or addition of stabilizers or inhibitors

E. Liquid Corrosion Inhibited Potassium Acetate Solution Specification

The product offered will contain corrosion control inhibitor in quantities not less than those indicated by the responder. The finished deicing product, including corrosion inhibitors, must be completely formulated at the original manufacturing plant location. **Post adding of corrosion inhibitors or any other ingredients, other than anti-foaming agents, is unacceptable after the product has left the original manufacturing plant.**

The responder **must submit test data** that indicates that the percent concentration of Potassium Acetate in the deicer solution is 48.0-52.0%. The test method used to determine the percent potassium acetate shall be by Evaporation Method. Test method is on file with the Mn/DOT Chemical Laboratory.

The product offered will not contain greater than 1% (v/v) insoluble solids and will have 99% of the solids passing through a No. 10 Sieve after being stored at 0^0F (-17.8 ^{0}C)+/- 2^0F (1^0C) for 168 hours (seven days).

The product shall have a minimum storage life of one year without degradation or addition of stabilizers or inhibitors.

F. Solid Corrosion Inhibited Sodium Acetate Pellet Specification

The product offered will contain corrosion control inhibitor in quantities not less than those indicated by the responder. The finished deicing product, including corrosion inhibitors, must be completely formulated at the original manufacturing plant location. **Post adding of corrosion inhibitors or any other ingredients is unacceptable after the product has left the original manufacturing plant.**

The responder **must submit test data** that indicates that the percent concentration of Sodium Acetate in the deicer is a minimum of 95%. The test method used to determine the percent sodium acetate shall be by difference from the Insoluble Material. Test method is on file with Mn/DOT Chemical Laboratory.

The product shall have a minimum storage life of one year without degradation or addition of stabilizers or inhibitors.

G. Liquid Corrosion Inhibited Magnesium Chloride Solution Specification

The product offered will contain corrosion control inhibitor in quantities not less than those indicated by the responder. The finished deicing product, including corrosion inhibitors, must be completely formulated at the original manufacturing plant location. **Post adding of corrosion inhibitors or any other ingredients, other than anti-foaming agents, is unacceptable after the product has left the original manufacturing plant.**

The responder **must submit test data** that indicates the percent concentration of Magnesium Chloride in the deicer solution is 26.0 – 30.0%. The test method to determine magnesium chloride is Mn/DOT EDTA Titration Method. Test method is on file with Mn/DOT Chemical Laboratory.

The product offered will not contain greater than 1% (v/v) insoluble solids and will have 99% of the solids passing through a No. 10 Sieve after being stored at -0^{0}F (-17.8 ^{0}C)+/- 2^{0}F (1^{0}C) for 168 hours (seven days).

The product shall have a minimum storage life of one year without degradation or addition of stabilizers or inhibitors.

H. Liquid Corrosion Inhibited Calcium Chloride Solution Specification

The product offered will contain corrosion control inhibitor in quantities not less than those indicated by the responder. The finished deicing product, including corrosion inhibitors, must be completely formulated at the original manufacturing plant location. **Post adding of corrosion inhibitors or any other ingredients, other than anti-foaming agents, is unacceptable after the product has left the original manufacturing plant.**
The responder **must submit test data** that indicates the percent concentration of Calcium Chloride in the deicer solution is 30.0 – 34.0%. The test method to determine calcium chloride is Mn/DOT EDTA Titration Method. Test method is on file with Mn/DOT Chemical Laboratory.

The product offered will not contain greater than 1% (v/v) insoluble solids and will have 99% of the solids passing through a No. 10 Sieve after being stored at -20^{0}F (-29^{0}C) +/- 2^{0}F (1^{0}C) for 168 hours (seven days).

The product shall have a minimum storage life of one year without degradation or addition of stabilizers or inhibitors.

I. Liquid Corrosion Inhibited Blended Deicer Solution Specification

The product offered will contain corrosion control inhibitor in quantities not less than those indicated by the responder. The finished deicing product, including corrosion inhibitors, must be completely formulated at the original manufacturing plant location. **Post adding of corrosion inhibitors or any other ingredients, other than anti-foaming agents, is unacceptable after the product has left the original manufacturing plant.**

The responder **must submit test data** that indicates the percent concentration of active ingredient(s), solids concentration and specific gravity. The percent concentrations and specific gravity must be within 1% +/- of the formulation submitted and approved for the MnDOT Winter Chemicals Approved Products List.

Initial product compliance screening at receiving points will be at the purchasers discretion and the product specific gravity will be tested using a Hydrometer.

Contract Release: D-156(5)

The product offered will not contain greater than 1% (v/v) insoluble solids and will have 99% of the solids passing through a No. 10 Sieve after being stored at -0°F (-17.8 °C)+/- 2°F (1°C) for 168 hours (seven days).

The product shall have a minimum storage life of one year without degradation or addition of stabilizers or inhibitors and stay in suspension with minimal agitation.

SERVICE AREAS. Service Areas are listed by city/town and provide a rough area. The Contract Vendor and Customer will mutually agree on a Service Area if there is a question.

ITEMS OFFERED AS NEW. All products, material, and supplies offered and furnished must be new and of current manufacturer production.

SAMPLES. If requested by the State, the Contract Vendor must submit three (3), eight (8) ounce samples of the product(s) offered. The samples will be used for testing and evaluation and to compare with product that is delivered during the Contract term. There will be no charge to the State for the required samples.

PRICES. Prices are firm through the initial period of the contract. After that period, prices may increase once a year. Price increases are not effective until they are approved by the AMS. **NOTE:** At no time should the ordering entity pay more than the Contract price. Agencies must contact the AMS immediately and fill out a Vendor Performance Report if there is a discrepancy between the price on the invoice and the Contract price.

FREIGHT (FOB). Orders shall be shipped FOB Destination, prepaid and added. The Vendor pays the freight and adds the freight charges as a separate line item on the Price Schedules and the invoices.

The Customer may choose to pick up the deicer product at the Contract Vendors designated location and only pay the product cost.

INVOICES. The Contract Vendor will be required to invoice a separate price for the product and a separate price for the delivery cost. If the invoices do not separate the delivery cost from the product cost, they will be sent back to the Contract Vendor to correct. In no event, including a change in transportation charges, will the total price submitted on an invoice for payment exceed the Contract price.

TAXES. The State of Minnesota holds Direct Pay Authorization Letter and State agencies pay all required tax directly to the Department of Revenue. Contract Vendors should verify State Tax requirements on all orders with CPV members and charge sales tax as directed by the purchaser.

FUEL SURCHARGES. Fuel surcharges will only be allowed if the price per gallon of diesel fuel increases more than 25 percent from the diesel fuel prices posted on the day the SOLICITATION is due. The index used for the Contract will be the Weekly On-Highway Diesel Prices for the Midwest Region as posted each Monday by the U.S. Energy Information Administration at: http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r20_w.htm . Surcharges may not be assessed once the posted diesel fuel prices fall below the 25 percent over threshold established based on the posted prices on the day the Solicitation opened. Surcharges may only be applied to the delivery portion of the cost as provided in the Contract Vendor's offer. No surcharges may be applied to the product costs.

All requests for fuel surcharges must be submitted and approved by the Acquisition Management Specialist of the Materials Management Division (Department of Administration) before they are put into effect. A copy of the rate schedule will be submitted with the request to add the fuel surcharge. The exact amount of the surcharge and the length of time the surcharge may be added, if any, will be governed by the validity of the documentary evidence submitted. No price increase will be effective until approved by the Acquisition Management Specialist. If fuel surcharges are authorized by the AMS, it must be indicated as a separate line item on the invoice.

If diesel fuel costs decrease more than 25% of the posted prices on the day the Solicitation opens, using the same fuel index referenced above, the Contract Vendor must decrease the cost of delivery. The exact amount of the delivery cost decrease and the length of time the decrease will be provided will be mutually agreed by the State and the Contract Vendor.

LIQUID PRODUCT REJECTION AND PRICE ADJUSTMENT. Products which fail to meet any of the specification requirements, other than active ingredient concentration, will result in a 50% price reduction adjustment or total rejection at the purchaser's discretion. Within 72 hours after notification of rejection, the Contract Vendor will be required to replace all rejected material plus any other materials contaminated from the rejected material. Any product that is rejected will be removed by the Contract Vendor and replaced with product that meets the material specifications. The Contract Vendor will be solely responsible for all costs associated with the removal and cleanup of the contaminated material and the replacement of approved material. These costs will include, but are not limited to, the cost of the replacement product, all labor, handling and transportation charges, cleaning out tank(s), and all costs of disposal. The Contract Vendor will be responsible for any environmental cleanup charges incurred as a result of the contamination or rejected materials. Removal includes the removal of all material contaminated by the non-compliant material. The purchaser's personnel will establish the amount of material contaminated.

If two or more shipments per Contract year of any product are found by the purchaser to be beyond any acceptable range it may result in Contract termination.

All price adjustments will be based on the testing procedures as outlined in the above liquid product specifications and associated price as offered by the Contract Vendor.

PRICE ADJUSTMENT FOR CONCENTRATION. Field samples taken of the delivered liquid chemical products will be tested for the appropriate concentration of magnesium chloride, calcium chloride and potassium acetate when applicable. For example, if a magnesium chloride product is offered, credit will be given for the magnesium chloride content only. No credit will be given for trace materials such as calcium chloride, sodium chloride, etc. Products in the Blended Deicer category will be tested and credit given for the components with required concentrations and deductions based on the aggregate concentration of similar materials (chlorides, sugars, etc.). Products which fail to meet the active ingredient concentration will result in the adjustments listed below or total rejection at the purchaser's discretion. The timelines and conditions for replacement are the same as outlined above.

Price adjustment for non-compliance of material:

0.1-2% outside concentration range	20%
2.1-5% outside concentration range	50%
More than 5% outside concentration range	100%

Note: In the event of a winter storm or other climatic events, the purchaser reserves the right to accept and use any concentration of product delivered and will apply price deductions as defined.

LIQUIDATED DAMAGES. If the Contract Vendor is unable to make delivery within the schedule, the State may assess liquidated damages on the undelivered quantities of the order.

For the purpose of determining day one of a purchase order, the following rule will apply:

> **Purchase orders received on a specific day, the following day will be considered as the first working day of that order.** This does not include weekends and State holidays.

If the Contract Vendor fails to deliver the order according to the schedule, the following charge will be accessed:

LIQUIDS - $0.50 per gallon, per day, on the undelivered portion of the order

SOLIDS - $2.50 per ton, per day, on the undelivered portion of the order

If the Contract Vendor has failed to deliver any portion of the order after seven calendar days of liquidated damage assessments, the State reserves the right to remedy the failure of the Contract Vendor's performance, with written notification to the Contract Vendor. This may include termination of the order and purchase of chemicals from other sources, or to take action consistent with public safety as needed to continue business. Any or all additional actual costs may be collected from the original Contract Vendor, in additional to any liquidated damages. Any charges to the Contract Vendor will be deducted from payments due. If there is an outstanding balance due and there are no open invoices available to make deductions from, the Contract Vendor will issue a check to the customer for the balance.

The additional cost will not be treated as a penalty, but as liquidated damages to the State by reason of interference with business, added cost, administrative and testing expense.

The Contract Vendor may be ineligible to receive awards on any future bids or solicitations until reimbursement and reconciliation has been completed for liquidated damages or other costs incurred by the State due to the Contract Vendor's non-performance.

TRAINING. If requested by the purchaser, the Contract Vendor must be capable to provide at least two hours of product use classroom training per delivery location, per product offered. The trainer must be familiar with anti-icing/de-icing techniques and application rates, handling and mixing issues for the contracted product. The Contract Vendor will provide all labor, materials and equipment to perform the training. The ordering agency will provide the facility for the training. The training will be requested and coordinated by an ordering agency Maintenance Superintendent or their designee.

The Contract Vendor may charge an hourly rate to provide the training, see the Price Schedules. The time billed starts when the onsite training class starts and ends when the onsite class ends. The time billed does not include travel time. All costs should be included in the hourly rate.

TECHNICAL SUPPORT. The Contract Vendor will have technical staff available for phone support during business hours (8:00am to 4:30pm Central) from October 1st to April 30th of each Contract year. There is no cost for this service.

The Contract Vendor may be required to attend an annual Winter Kickoff Meeting for Mn/DOT Maintenance operators and supervisors. Any expense to attend the meeting will be borne by the Contract Vendor.

REVISIONS.

11/01/20	All contracts extended, except Scotwood Industries, Inc. through October 31, 2021 at the same prices, terms, and conditions, except Salt Source decreased there pricing on Road Guard 8 and updated there pick up address.
09/23/19	All contract extended through October 31, 2020 at the same prices, terms, and conditions.
09/06/18	All contract extended through October 31, 2019, at the same prices, terms, and conditions.
08/21/18	K Tech Specialty Coating, Inc. added as a Contract Vendor.
11/01/17	Rivertop Renewables, Inc. is allowed to lapse. All other contracts extended through October 31, 2018, at the same prices, terms, and conditions, except Smith Fertilizer & Grain Company which was extended with a price increase.
06/01/17	Assignment Agreement - Green Touch, LLC merged with new assigned vendor Salt Source, LLC.
02/21/17	Updated contact information for Smith Fertilizer & Grain Co., Inc.
01/25/17	Specialty Turf & Ag., Inc. contract has been cancelled, due to the vendor not being able provide the goods and services required.

SWIFT LINE #	PRODUCT OR SERVICE	UNIT OF MEASURE	UNSPSC CODE
1.	Alternative Chemical Deicers	GA, PA, & TN	46161506
2.	Classroom Training	HR	86130000

Contract Release: D-156(5)

VERIFYING THE CONTRACT PRICES.
The following information explains the method(s) for calculating and/or confirming the contract prices.

The Contract(s) was executed with FIXED PRICING. The pricing offered must match or be lower than that detailed herein.

The Contract(s) includes HOURLY RATES. Confirm that the correct rate has been utilized by the Contract Vendor and that the number of hours are properly calculated/subtotaled. Review the number of hours quoted against the scope of your project.

Only accept contract vendor quotes that provide itemized contract pricing (lump sum price quotes must be rejected and reworked by the Contract Vendor to show itemized State contract pricing).

Prior to accepting an order and/or issuing payment on an invoice, inspect the goods and/or deliverables to ensure they match both the terms and pricing of the contract.

Contact the AMS/Buyer detailed herein to report any pricing discrepancies or for assistance in confirming/calculating contract pricing.

PRICE SCHEDULE

http://www.mmd.admin.state.mn.us/xls/D-156(5)PriceSchedule.xlsx

PRODUCT CATEGORY: CORROSION INHIBITORS - SALT BRINE ADDITIVES
APPROVED PRODUCT: AMP
MANUFACTURER: ENVIROTECH SERVICES
RESPONDER/CONTRACT VENDOR: Envirotech Services, Inc

SERVICE AREA LOCATION	PRICE PER GALLON FOR PRODUCT				PRICE PER GALLON FOR FREIGHT				PRICE PER GALLON FOR PRODUCT & FREIGHT			
Gallon Purchases From	*0*	*5001*	*10,001*	*20,001*	*0*	*5001*	*10,001*	*20,001*	*0*	*5001*	*10,001*	*20,001*
Gallon Purchases To	*5000*	*10000*	*20000*	*50000*	*5000*	*10000*	*20000*	*50000*	*5000*	*10000*	*20000*	*50000*
DISTRICT 1A	$2.4677	$2.4677	$2.4677	$2.4677	$0.1200	$0.1200	$0.1200	$0.1200	$2.5877	$2.5877	$2.5877	$2.5877
DISTRICT 1B	$2.4677	$2.4677	$2.4677	$2.4677	$0.0956	$0.0956	$0.0956	$0.0956	$2.5633	$2.5633	$2.5633	$2.5633
DISTRICT 2A	$2.4677	$2.4677	$2.4677	$2.4677	$0.2062	$0.2062	$0.2062	$0.2062	$2.6739	$2.6739	$2.6739	$2.6739
DISTRICT 2B	$2.4677	$2.4677	$2.4677	$2.4677	$0.3531	$0.3531	$0.3531	$0.3531	$2.8208	$2.8208	$2.8208	$2.8208
DISTRICT 3A	$2.2000	$2.2000	$2.2000	$2.2000	$0.2774	$0.2774	$0.2774	$0.2774	$2.4774	$2.4774	$2.4774	$2.4774
DISTRICT 3B	$2.2000	$2.2000	$2.2000	$2.2000	$0.1876	$0.1876	$0.1876	$0.1876	$2.3876	$2.3876	$2.3876	$2.3876
DISTRICT 4A	$2.4677	$2.4677	$2.4677	$2.4677	$0.2960	$0.2960	$0.2960	$0.2960	$2.7637	$2.7637	$2.7637	$2.7637
DISTRICT 4B	$2.2000	$2.2000	$2.2000	$2.2000	$0.2937	$0.2937	$0.2937	$0.2937	$2.4937	$2.4937	$2.4937	$2.4937
DISTRICT 6A	$2.2000	$2.2000	$2.2000	$2.2000	$0.1177	$0.1177	$0.1177	$0.1177	$2.3177	$2.3177	$2.3177	$2.3177
DISTRICT 6B	$2.2000	$2.2000	$2.2000	$2.2000	$0.0933	$0.0933	$0.0933	$0.0933	$2.2933	$2.2933	$2.2933	$2.2933
DISTRICT 7A	$2.2000	$2.2000	$2.2000	$2.2000	$0.1177	$0.1177	$0.1177	$0.1177	$2.3177	$2.3177	$2.3177	$2.3177
DISTRICT 7B	$2.2000	$2.2000	$2.2000	$2.2000	$0.2855	$0.2855	$0.2855	$0.2855	$2.4855	$2.4855	$2.4855	$2.4855
DISTRICT 8	$2.2000	$2.2000	$2.2000	$2.2000	$0.2203	$0.2203	$0.2203	$0.2203	$2.4203	$2.4203	$2.4203	$2.4203
METRO 1	$2.2000	$2.2000	$2.2000	$2.2000	$0.0933	$0.0933	$0.0933	$0.0933	$2.2933	$2.2933	$2.2933	$2.2933
METRO 2	$2.2000	$2.2000	$2.2000	$2.2000	$0.0933	$0.0933	$0.0933	$0.0933	$2.2933	$2.2933	$2.2933	$2.2933
METRO 3	$2.2000	$2.2000	$2.2000	$2.2000	$0.0933	$0.0933	$0.0933	$0.0933	$2.2933	$2.2933	$2.2933	$2.2933
METRO 4	$2.2000	$2.2000	$2.2000	$2.2000	$0.0933	$0.0933	$0.0933	$0.0933	$2.2933	$2.2933	$2.2933	$2.2933

WHAT IS THE ADDITIONAL COST PER GALLON IF THE TRUCKLOAD IS SPLIT AND DELIVERED TO MORE THAN ONE CUSTOMER LOCATION WITHIN SERVICE AREA LOCATION? $0.04

IF THE CUSTOMER WANTS TO PICK UP THE PRODUCT AND NOT PAY FREIGHT. WHAT IS THE PICK UP ADDRESS? 4676 284th Street East Randolph MN 55065.

WHAT IS THE MINIMUM ORDER QUANTITY IN GALLONS? 4,200

WHAT IS THE ESTIMATED NUMBER OF GALLONS PER TRUCKLOAD? 4,500

WHAT IS THE COST PER HOUR FOR TRAINING AND TECHNICAL SUPPORT? $0.00

ENVIROTECH SERVICES, INC.
PO Box 5512 · Denver, CO 80217
For Inquiries:
West Region · 509-936-7102
Rocky Mtn Region · 800-577-5346
Midwest Region · 800-881-5848
ESI East · 877-664-3401

Quotation

Quotation Date:	Date Printed:	Expiration Date:
8/24/21	8/24/21	10/31/22
Quotation Number:	Revision No:	Customer Number:
S2713	2	11992
Your Reference:		Our Reference:
Paul Fiechtner		John Johansen

Delivery Address:
City of Fargo
PO Box 2083
225 4th Street North
Fargo ND 58107

Document Address:
City of Fargo
PO Box 2083
225 4th Street North
Fargo ND 58107

Product Application
Length in Feet:
Width in Feet:
Rate in Gallons:

Wanted Delivery Date:

Payment Terms:
30 Days Net
Label Note:
Full Trucks to Fargo

Water Application
EnviroTech:
Rate:
Gallons Required:

Pos Del	Part No Description	Sale Qty Price Qty	Unit Unit	Price	Net Amount USD
1	**3101**	4,400	gal	2.7600	12,144.00
1	AMP	4,400	gal		

Sub Total:	**12,144.00**
TOTAL:	**12,144.00**
Gross Total	**12,144.00**

Name on Card
Credit Card Number
Billing Address from CC Statement
Exp Date
3 Digit Code

Disclaimer: No warranty is conveyed concerning this product, be it expressed or implied. This includes but is not limited to a warranty of merchantability or fitness for a particular purpose. Product performance may vary depending on road conditions, traffic counts, weather and other related factors.

CITY OF Fargo

PUBLIC WORKS
OPERATIONS

Fleet Management, Forestry,
Streets & Sewers,
Watermains & Hydrants
402 23rd STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: (701) 241-1453
FAX: (701) 241-8100

26

January 12, 2022

The Honorable Board of City Commissioners
City of Fargo
Fargo, ND 58102

RE: Authorization to Extend 2021 Main Avenue Landscape Services Contract with All Terrain Grounds Maintenance for One Year (RFP# 21032).

Commissioners:

In February of 2021, Public Works issued a Request for Proposal (RFP) for "Main Avenue Landscape Maintenance Services". Upon the closing of the RFP a total of three (3) sealed responses were received. Based on the stated criteria and staff review, All Terrain Grounds Maintenance was awarded the Main Avenue Landscape Maintenance Services contract for 2021. As part of the 2021 RFP, language was included that allows for two (2) one (1) year extensions. Public Works staff has visited with All Terrain Grounds Maintenance, and at this time, we are requesting authorization to extend the contract for one year under the terms of the initial 2021 RFP (RFP# 21032).

RECOMMENDED MOTION: I/we hereby move based on the request for proposal (RFP# 21032) to extend the 2021 Main Avenue Landscape Services Contract with All Terrain Grounds for one year.

Respectfully submitted,

Ben Dow
Public Works Director

SERVICES AGREEMENT

LANDSCAPE MAINTENANCE SERVICES

I. Agreement

This agreement is between the City of Fargo (City) and All Terrain Grounds Maintenance (Contractor) to provide Main Avenue landscape maintenance services for the City. This agreement shall commence upon signing by both parties and expire on October 31, 2022. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional one (1) year extension.

II. Scope of Services

The contractor will perform the landscape maintenance services as set forth within this agreement and as represented in "Exhibit A" attached hereto. It will be up to the individual contractor's discretion to perform the services as weather conditions permit.

Main Avenue - Landscape Maintenance

- Maintain planting beds and mulch areas free of weeds.
- Attempt to remove persistent perennial weeds by methods that will completely and permanently eliminate the weed. Contractor may utilize herbicides that are approved for and appropriate for use in the landscape setting. Take extreme care in the application of herbicides not to damage adjacent plant materials including trees, shrubs, perennials and lawn. Hand weeding may be necessary/justified at time.
- Police planting bed(s) for trash, debris, and all material shall be hauled from site and properly disposed of.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor for services render per activity as shown in the attached Exhibit B. All final invoices shall be submitted no later than December 1 of the contract year.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract.

All insurance (Worker's Compensation, Comprehensive General Liability, and/or Automobile) shall be maintained at the expense of the contractor during the term of this contract.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 1/13/2022

All Terrain Grounds Maintenance

Matt Langemo

By: Matt Langemo

Its: CRM

Date:_____

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

_____

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

ATTEST:

_____

Steve Sprague, City Auditor

Landscape Maintenance Services

Initial Clean-up will include cutting previous year's perennials to the ground.

Site	Location
1	Main Ave/2nd St
2	Main Ave/4th St
3	Main Ave/Broadway
4	Main Ave/7th and 8th Street
5	Main Ave/9th and 10th Street
6	NP Ave/North University Dr

Routine maintenance will include maintaining planting beds and mulch areas free of weeds. Planting bed(s) to be policed for trash, debris, and all material shall be hauled from the site and properly disposed of.

Site	Location
1	Main Ave/2nd St
2	Main Ave/4th St
3	Main Ave/Broadway
4	Main Ave/7th and 8th Street
5	Main Ave/9th and 10th Street
6	NP Ave/North University Dr

Site 1 – Main Ave/2nd St

Site 2 – Main Ave/4th St

Site 3 – Main Ave/Broadway

Site 4 – Main Ave/7th and 8th Street

Site 5 – Main Ave/9th and 10th Streets

Site 6 – NP Ave/North University Dr

EXHIBIT B

Location		All Terrain
MAIN AVE/2ND ST Initial	$	240
MAIN AVE/4TH ST Initial	$	90
MAIN AVE/BROADWAY Initial	$	195
MAIN AVE/7TH & 8TH ST Initial	$	135
MAIN AVE/9TH & 10TH ST Initial	$	150
NP AVE/ NUD Initial	$	75
Initial Total	**$**	**885**
MAIN AVE/2ND ST Weekly	$	80
MAIN AVE/4TH ST Weekly	$	30
MAIN AVE/BROADWAY Weekly	$	65
MAIN AVE/7TH & 8TH ST Weekly	$	45
MAIN AVE/9TH & 10TH ST Weekly	$	50
NP AVE/ NUD Weekly	$	25
Weekly	**$**	**295**
Total	**$**	**7,670**
Season Total	**$**	**8,555**

27a-b

REPORT OF ACTION

UTILITY COMMITTEE

Project No. SW 20-01 Type: Change Orders

Location: Solid Waste Division - Landfill

Date of Hearing: 1/20/22

Routing	Date
City Commission	1/24/21
Project File	SW 20-01

Scott Olson, Solid Waste Utility Engineer, presented the attached Change Orders for SW 20-01 Landfill Scale and Maintenance Facility.

On September 17, 2020, the Commission approved the award of Project SW 20-01 in a Multiple Prime Contractor format. The project was awarded to Excavating Inc., Roers' Construction, Manning Mechanical and Superior Electric. Construction on the project began in April, 2021 and is scheduled for completion and startup in April, 2022. Awarded contract bid prices, change orders, and adjusted contract prices are as follows:

Contractor	Contractor Role	Approved Contract Price w/ Previous Change Order	Current Change Orders	Adjusted Contract Price
Excavating Inc.	Civil Construction (CG)	$1,753,350.00	$ -	$1,753,350.00
Roers' Construction	General Contractor (GC)	$805,075.72	$1,278.92	$806,354.64
Manning Mechanical	Mechanical Contractor (MC)	$195,598.00	$ -	$195,598.00
Superior Electric	Electrical Contractor (EC)	$225,782.45	$4,684.17	$230,466.62
		$2,979,806.17	**$5,963.09**	**$2,985,769.26**

A detailed summary of each contractor recommended change order has been included in the memorandum to the Utility Committee for your review.

MOTION:

On a motion by Kent Constin, seconded by Troy Hall, the Utility Committee voted to approve the attached Change Orders for SW 20-01 Landfill Scale and Maintenance Facility.

COMMITTEE:	Present	Yes	No	Unanimous
Anthony Gehrig, City Commissioner				X
Bruce Grubb, City Administrator	X	X		
Brenda Derrig, City Engineer	X	X		(Tom Knaukmuhs)
Kent Costin, Director of Finance	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Scott Liudahl, City Forester	X	X		
Terry Ludlum, Solid Waste Utility Director				
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director	X	X		
Scott Olson, Solid Waste Utility Engineer	X	X		
Daniel Portlock, Water Utility Engineer	X	X		

ATTEST:

Scott Olson

Scott Olson
Solid Waste Utility Engineer for;
Terry Ludlum
Solid Waste Utility Director

C: Tim Mahoney, Mayor
Commissioner Preston
Commissioner Piepkorn
Commissioner Strand

CITY OF Fargo

Division of Solid Waste
2301 8th Avenue North
Fargo, North Dakota 58102
Phone: 701-241-1449
Fax: 701-241-8109

To: Utility Committee

From: Terry Ludlum, Solid Waste Utility Director
Scott Olson, Solid Waste Utility Engineer (SO)

Date: January 13, 2022

Subject: Project SW 20-01 – Landfill Scales and Maintenance Facility Change Orders

---

On September 17, 2020, the Commission approved the award of Project SW 20-01 in a Multiple Prime Contractor format. The project was awarded to Excavating Inc., Roers' Construction, Manning Mechanical and Superior Electric as shown below. Funding for construction of Project SW 20-01 has been provided for in the 2020-2021 Solid Waste Division budget.

Contract	Contractor	Substantial Completion Date*	Bid Amount
Civil Construction (CC)	Excavating Inc.	October 9, 2021	$1,667,745.40
General Construction (GC)	Roers' Construction	October 9, 2021	$810,000.00
Mechanical Construction (MC)	Manning Mechanical	October 9, 2021	$198,000.00
Electrical Construction (EC)	Superior Electric	October 9, 2021	$224,059.00
		Total	$2,899,804.40

With previous Change Order approval, the current contract amounts and substantial completion dates are as follows:

Contract	Contractor	Current Substantial Completion Date	Current Contract Amount
Civil Construction (CC)	Excavating Inc.	December 31, 2021	$1,753,350.00
General Construction (GC)	Roers' Construction	December 15, 2021	$805,075.72
Mechanical Construction (MC)	Manning Mechanical	December 15, 2021	$195,598.00
Electrical Construction (EC)	Superior Electric	December 15, 2021	$225,782.45
		Total	$2,979,806.17

The following table shows the cost for the proposed change orders and associated change in the substantial completion date during this approval period (monthly):

Change Order	Contractor	Change in Sub. Completion Date	Change Order Amount
GC – No 4	Roers' Construction	0 Days	$1,278.92
EC – No 3	Superior Electric	0 Days	$4,684.17
		Total	**$5,963.09**

With Change Order approval, the updated contract amounts and completion dates would be:

Contract	Contractor	New Substantial Completion Date	New Contract Amount
Civil Construction (CC)	Excavating Inc.	December 31, 2021	$1,753,350.00
General Construction (GC)	Roers' Construction	December 15, 2021	$806,354.64
Mechanical Construction (MC)	Manning Mechanical	December 15, 2021	$195,598.00
Electrical Construction (EC)	Superior Electric	December 15, 2021	$230,466.62
		Total	**$2,985,769.26**

Detailed Summary of Change Orders

The project cost and time impacts to the **General Contractor** recommend changes as follows:

GC – 4

Trim pieces needed for the exhaust louver located on the west wall of the maintenance building were not included on the architectural plan set. The cost to supply and install these trim pieces is $414.00.

Each walk in door at the maintenance building is fitted for electronic entry with card-readers. For the doors to function properly electric strikes needed to be installed as the original architectural plan set called for non-electric strikes. The cost to furnish and install electric strikes for the four walk-in doors is $864.92.

Cost: $1,278.92

Reason: Additional Items Required

To project cost and time impacts to the **Electrical Contractor** recommend changes as follows:

EC-3

The original electrical plan set had called for an electric card reader to be installed at the visitor bathroom door of the scale house as well as a push-button unlock for the door inside the scale house. Solid Waste staff determined this was not necessary and could be removed from the plans. This change results in a price deduct of $548.37.

Following installation of the autonomous scale driver kiosks it was determined that the power and data cables need to be separated and each to have a separate conduit from the scale pit to the kiosk box. The Electrical Contractor provided a ¾" conduit to each kiosk and ran the data and power cables as necessary. The cost to supply and install the conduits and run the necessary data and power cables is $5,232.54.

Cost: $4,684.17

Reason: City Requested

To date, change orders have totaled 2.96% of total construction costs.

Process for Amending the Contract Documents; Changes in the Work

As provided in the specifications, and to avoid substantial construction schedule delays, Work Change Directives (WCD) were issued for the additional work described above. Acceptance of WCD's by Solid Waste (City) staff are provided after review and negotiation following Contractor proposal requests and submittal. WCD's are incorporated in subsequent Change Orders through formal Utility Committee and City Commission approval on this project.

SUGGESTED MOTION:

Approve the contract Change Orders as described above for project SW20-01.

Attachment

cc: Steve Sprague, City Auditor
Randy Hanson, Stantec
Marcia Pulczinski, Stone Group Architects
Scott Anderson, Landfill Supervisor

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Change Order

PROJECT: *(Name and address)*	CONTRACT INFORMATION:	CHANGE ORDER INFORMATION:
Landfill Scale and Maintenance Facility Fargo, North Dakota	Contract For: General Construction Date: September 29, 2020	Change Order Number: G-004 Date: 1/10/2022
OWNER: *(Name and address)*	**ARCHITECT:** *(Name and address)*	**CONTRACTOR:** *(Name and address)*
City of Fargo 225 Fourth Street North Fargo, ND 58102	Stone Group Architects, Inc. 600 East 7th Street Sioux Falls, SD 57103	Roers Construction LLC 200 45th Street South Fargo, ND 58103

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Add louver trim at west wall of maintenance building; add $414.00
Add four (4) electric strikes at exterior doors at maintenance building; add $864.92

The original Contract Sum was	$	810,000.00
The net change by previously authorized Change Orders	$	-4,924.28
The Contract Sum prior to this Change Order was	$	805,075.72
The Contract Sum will be increased by this Change Order in the amount of	$	1,278.92
The new Contract Sum including this Change Order will be	$	806,354.64

The Contract Time will be unchanged by Zero (0) days.
The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Stone Group Architects, Inc. ARCHITECT *(Firm name)*	Roers Construction LLC CONTRACTOR *(Firm name)*	City of Fargo OWNER *(Firm name)*
Marcia Pulczinski SIGNATURE	SIGNATURE	SIGNATURE
Marcia Pulczinski, Architect PRINTED NAME AND TITLE	David Wood, Construction Executive PRINTED NAME AND TITLE	Timothy J. Mahoney, Mayor PRINTED NAME AND TITLE
11/12/2022 DATE	11/11/2022 DATE	DATE

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User Notes: (3B9ADA41)

ROERS
Building success.

200 S 45th St
FARGO, ND 58103
Ph : (701)356-5050

Change Request

To: Marcia Pulczinski (Stone Group
Stone Group

Number: 4
Date: 10/22/21
Job: 20-007 Fargo Landfill Maint & Scale
Phone:

Description: Added Louver

We are pleased to offer the following specifications and pricing to make the following changes:

Adding a louver opening for louver not shown on architectural plans.
Included labor and material to cut opening, frame opening, and trim opening.

Labor - $360

Description	Labor	Material	Equipment	Subcontract	Other	Price
METAL BUILDING ACCESSORIES	$360.00					$360.00
					Subtotal:	$360.00
			Overhead	$360.00	10.00%	$36.00
			Profit	$360.00	5.00%	$18.00
					Total:	**$414.00**

If you have any questions, please contact me at 701-356-5050.

Submitted by: Tyler Miller
Roers Construction Company

Approved by: _____
Date: _____

ROERS
Building success.

200 S 45th St
FARGO, ND 58103
Ph : (701)356-5050

Change Request

To: Marcia Pulczinski (Stone Group
Stone Group

Number: 6
Date: 12/17/21
Job: 20-007 Fargo Landfill Maint & Scale
Phone:

Description: Adding 4 electric locks

We are pleased to offer the following specifications and pricing to make the following changes:

Adding 4 electric strikes to the exterior doors at the Maintenance Building.

8000 Series Electric Strikes
-Material: $147.00 each + tax (x4) = $588 + tax TOTAL= $632.10
-Labor to just remove and replace the strikes $120

TOTAL: $752.1 + OHP = $864.91

Description	Labor	Material	Equipment	Subcontract	Other	Price
DOOR/FRAME/HARDWARE SUPPLIER	$120.00	$588.00				$708.00
					Subtotal:	$708.00
			Tax	$588.00	7.50%	$44.10
			Overhead	$752.10	10.00%	$75.21
			Profit	$752.10	5.00%	$37.61
					Total:	**$864.92**

If you have any questions, please contact me at .

Submitted by:

Approved by: _____
Date: _____

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Change Order

PROJECT: *(Name and address)*	CONTRACT INFORMATION:	CHANGE ORDER INFORMATION:
Landfill Scale and Maintenance Facility Fargo, North Dakota	Contract For: Electrical Construction Date: September 29, 2021	Change Order Number: E-003 Date: 1/10/2022
OWNER: *(Name and address)*	**ARCHITECT:** *(Name and address)*	**CONTRACTOR:** *(Name and address)*
City of Fargo 225 Fourth Street North Fargo, ND 58102	Stone Group Architects, Inc. 600 East 7th Street Sioux Falls, SD 57103	Superior Electric of Fargo LLC 1533 Tenth Street North Fargo, ND 58102

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Delete card reader rough-in at Scale House Door D001; Deduct $548.37
Provide and install 3/4" conduit and scale kiosk wiring at Scale House; Add $5,232.54

The original Contract Sum was	$	224,059.00
The net change by previously authorized Change Orders	$	1,723.45
The Contract Sum prior to this Change Order was	$	225,782.45
The Contract Sum will be increased by this Change Order in the amount of	$	4,684.17
The new Contract Sum including this Change Order will be	$	230,466.62

The Contract Time will be unchanged by Zero (0) days.
The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Stone Group Architects, Inc. ARCHITECT *(Firm name)*	Superior Electric of Fargo LLC CONTRACTOR *(Firm name)*	City of Fargo OWNER *(Firm name)*
SIGNATURE	SIGNATURE	SIGNATURE
Marcia Pulczinski, Architect PRINTED NAME AND TITLE	Marc Erbes, President PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
1/13/2022 DATE	1/12/22 DATE	DATE

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User Notes: (3B9ADA47)

403 Center Avenue / Suite 300 / Moorhead, Minnesota 56560

FORMALLY DBA IMAGE group ARCHITECTURE & INTERIORS

Architect's Supplemental Instructions ASI-E1

PROJECT/: City of Fargo ARCHITECT'S PROJECT NUMBER: 1711
OWNER Landfill Scale & Maintenance Facility
Fargo, North Dakota

TO: Superior Electric of Fargo, LLC CONTRACT FOR: Electrical Construction
1533 10th St. N.
Fargo, ND 58102 DATE: February 18, 2021

The work shall be carried out in accordance with the following supplemental instructions issued in accordance with the Contract Documents. Proceeding with the Work in accordance with these instructions indicates your acknowledgment that there will be no change in the Contract Sum or Contract Time.

DESCRIPTION:

1. **Sheet E-200, Plan 6/E-200**
   a. **Delete the card reader rough-in on the exterior Visitor Toilet, Door D001.**
   b. **Delete the pushbutton in Scale Room 101 for control of the exterior Visitor Toilet 001 Door 001.**

2. **Sheet E-200, Plan 5/E-200**
   a. **Delete the power connection to the door hardware for Door D001 at Visitor Toilet 001.**

DEDUCT $548.37

ATTACHMENTS:

ISSUED BY:

Marcia Puczynski

Stone Group Architects/Formally DBA IMAGE Group Architecture & Interiors

	Description	Quantity	Total Material	Total Hours
1	1/2" CONDUIT - EMT	35	27.79	0.97
2	3/4" CONDUIT - EMT	10	14.02	0.32
3	1/2" CONN SS STL - EMT	4	0.84	0.32
4	3/4" CONN SS STL - EMT	1	0.34	0.10
5	1/2" COUPLING SS STL - EMT	1	0.25	0.03
6	3/4" COUPLING SS STL - EMT	1	0.37	0.04
7	1/2" INSULATING BUSHING - EMT	2	0.13	0.06
8	3/4" INSULATING BUSHING - EMT	2	0.21	0.08
9	1/2" 1-H STRAP - EMT - STEEL	2	0.15	0.10
10	1/2 OR 3/4" SNAP CLOSE CLIP - SIDE MNT TO MTL STUD SUPP	2	4.33	0.14
11	#12 THHN BLACK	40	8.02	0.21
12	#18/2C CL2 JKT T-STAT CBL	49	7.46	0.25
13	4x 2 1/8" SQ BOX COMB KO	2	2.13	0.46
14	4" SQ 1G PLSTR RING 5/8" RISE	1	0.71	0.03
15	4" SQ BLANK COVER	1	0.43	0.03
16	1G 2"D DC ALUM BOX W/ LUGS & 3x 1/2" HUBS GRY	1	3.02	0.30
17	1G ALUM BLANK WP BOX MNT COVER GRY	1	2.95	0.07
18	#10x 1 WOOD SCREW	4	0.00	0.12
19	#8x 1/2 WAFER HEAD SHEET MTL SCREW	4	0.16	0.06
20	1-P/B STATION BOX - NEMA 1	1	45.00	0.40
	Totals	164	118.31	4.08

$70/HR

	Final Pricing	Value ($)	Pct (%)
	Database Material (Extension)	73.31	
	Quoted Material (Extension)	45.00	
	Quoted Material		
	Material Tax	8.87	7.500
	Material Total	127.18	
	Direct Labor	285.60	
	Labor Total	285.60	
	Subcontractors		
	General Expenses	62.00	
	Total Cost	474.78	
	Database Material Overhead	7.88	10.000
	Quoted Material Overhead	4.84	10.000

Bonding and permit

	Final Pricing	Value ($)	Pct (%)
	Labor Overhead	28.56	10.000
	General Expenses Overhead	6.20	10.000
	Total Overhead	47.48	10.000
	Database Material Markup	4.33	5.000
	Quoted Material Markup	2.66	5.000
	Labor Markup	15.71	5.000
	General Expenses Markup	3.41	5.000
	Total Markup	26.11	4.999
	Selling Price	548.37	

	Final Price	548.37	

Total Deduct

	Description	Quantity	Total Material	Total Hours
1	3/4" COUPLING - RMC - GALV	2	5.14	0.10
2	3/4x 6" NIPPLE - RMC - GALV	4	16.62	0.98
3	3/4" LOCKNUT - STEEL	2	0.32	0.06
4	3/4" 2-PC CONDUIT STRUT CLAMP	4	7.32	0.26
5	3/4" FLEX - LIQUIDTIGHT METALLIC - GRAY	8	18.05	0.50
6	3/4" CONN STRAIGHT - LIQUIDTIGHT DIECAST	2	15.06	0.42
7	3/4" CONN 90 DEG - LIQUIDTIGHT DIECAST	2	27.42	0.42
8	3/4" CONDUIT - PVC40	385	455.76	17.32
9	3/4" ELBOW 90 DEG - PVC40	20	17.41	4.75
10	3/4" COUPLING - PVC	40	8.13	2.00
11	3/4" ADAPTER MALE - PVC	2	0.96	0.25
12	3/4" ADAPTER FEM - PVC	18	9.81	2.25
13	#12 THHN BLACK	227	46.56	1.46
14	#12 THHN WHITE	227	46.51	1.46
15	#12 THHN GREEN	227	46.56	1.46
16	1 5/8x 1 5/8x 12G STRUT GRN	2	12.08	0.25
17	1/4-20x 2 1/4 WEDGE ANCHOR - 1 1/8" MIN DEPTH	4	1.32	0.40
	Totals	1,176	735.03	34.34

$70/HR

	Final Pricing	Value ($)	Pct (%)
	Database Material (Extension)	733.71	
	Quoted Material (Extension)	1.32	
	Material Tax	55.13	7.500
	Material Total	790.16	
	Direct Labor	2,403.80	
	Labor Total	2,403.80	
	Subcontractors	1,067.00	
	General Expenses	232.00	
	Equipment	134.38	
	Total Cost	4,627.34	
	Database Material Overhead	78.87	10.000
	Quoted Material Overhead	0.14	10.000
	Labor Overhead	240.38	10.000
	General Expenses Overhead	23.20	10.000
	Equipment Overhead	13.44	10.001

Added Bonding and Permit

Trencher Rental

	Final Pricing	Value ($)	Pct (%)
	Total Overhead	356.03	7.694
	Database Material Markup	43.38	5.000
	Quoted Material Markup	0.08	5.000
	Labor Markup	132.21	5.000
	Subcontractors Markup	53.35	5.000
	General Expenses Markup	12.76	5.000
	Equipment Markup	7.39	4.999
	Total Markup	249.17	5.000
	Selling Price	5,232.54	

	Final Price	5,232.54	

Grand Total

Data Technologies Inc.
Fargo: 705 Main Avenue Suite D · West Fargo, North Dakota 58078
(701) 282-7847 · FAX (701) 282-7623
Bismarck: 3355 Saratoga Avenue #4 · Bismarck, North Dakota 58503
Phone/Fax : (701) 223-2228

COMMERCIAL INSTALLATION, SALES AND SECURITY AGREEMENT AND PROMISSORY NOTE

Purchaser
Superior Electric
Address
[Click **here** and type address]
City/State/Zip
[Click **here** and type address]

Project
Landfill Scale and Maintenance Facility
Additional Scale Cabling - Kiosks

Contact
Marc Erbes

Phone
701-219-1404

Consultant
Mark Vernon

Scope:

Data Technologies received a change order request with the following:

- Install four (4) Category 5e OSP cables to the two (2) kiosks.
- Terminate cables into Category 5e Jacks on both ends.
- Cables to route to communications cabinet in scale house building via conduit to be installed by others.

All cables shall be terminated and tested per EIA/TIA specifications.

	Total
Materials	$366.00
Labor	$701.00
Total	$1,067.00

Electrical contractor responsible for all conduit, boxes, plywood, grounding bus bar, cable tray, fire rated penetrations.

TERMS: 30 days; 1.5% per month; 18% annual on past due balances. This quote is good for 30 days from date. Purchaser agrees to pay all collection costs if account balance is not paid in a timely manner. All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to a standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. NOTE: Will not work or be responsible for any cost involving asbestos.

ABT Data Technologies, Inc.

By: _____

Date: December 28, 2021

Superior Electric

By: _____

Date: _____

REPORT OF ACTION

28

UTILITY COMMITTEE

Project: WW1905

Type: FEMA Building Resilient Infrastructure in Communities (BRIC) Grant Application

Location: West Side Interceptor Improvements

Date of Hearing: 1-20-2022

Routing	Date
City Commission	1-24-2022
Project File	

Jim Hausauer Water Reclamation Utility Director, presented attached memo requesting approval of a FEMA Building Resilient Infrastructure in Communities (BRIC) grant application for improvements associated with the West Side Interceptor (WSI). The WSI is one of three major interceptors that convey wastewater to the Fargo/Regional Water Reclamation Facility (WRF). The WSI was constructed in the 1970's and is a critical component of the Fargo wastewater collection system. It generally follows the 42nd Street corridor and serves areas throughout Fargo spanning as far south as the Davies neighborhood, & as far north as Hector Airport. The WSI is responsible for collecting and conveying approximately 30% of the City's total wastewater to the WWTF. In recent years, the City has had to make costly emergency repairs to the WSI due to multiple structural pipe failures, with some repairs running as high as $275,000. As this interceptor is close to 50 years old, it is likely that these pipe failures will continue, thus a plan to fund, rehabilitate and improve the WSI is needed. A hydraulic modeling evaluation also identified that a portion of the system is undersized for both current and future conditions. As such, improvements are being proposed to replace pipe in areas of known poor condition and locations where the pipe is undersized.

The Water Reclamation Utility has previously performed assessments to: 1) identify and prioritize improvements on the West Side Interceptor (WSI) System and 2) a plan to pursue funding for eligible improvements through FEMA's Building Resilient Infrastructure in Communities (BRIC) funding program which funds projects at a 75 percent federal share and a 25 percent local share. This program was formerly known as the Pre-Disaster Mitigation (PDM) program, which the City of Fargo had been previously successful in obtaining funding for its Red River Pump Station and Wastewater Treatment Plant Flood Protection projects. This funding is allocated each year and is nationally competitive. Based on current and future anticipated construction costs, this multi-year project has an initial cost estimate of $21,898,000. If funding is received through the program, the 25% local cost share of the improvements is estimated to be $5,475,000. The initial period of performance is 42 months, but time extensions are looked upon favorably.

Note: The local share will be funded with Wastewater Infrastructure Sales Tax Fund 455 and is included in the Water Reclamation Capital Improvement Plan (CIP).

On a motion by Ben Dow, seconded by Tom Knakmuhs, the Utility Committee voted to approve a FEMA Building Resilient Infrastructure in Communities (BRIC) grant application for improvements associated with the West Side Interceptor.

RECOMMENDED MOTION:

Concur with the recommendation of the Utility Committee and approve a FEMA Building Resilient Infrastructure in Communities (BRIC) grant application for improvements associated with the West Side Interceptor.

COMMITTEE:	Present	Yes	No	Unanimous
				X
				Proxy
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	X	X		
Brian Ward, Water Plant Superintendent	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Bruce Grubb, City Administrator	X	X		
Scott Liudahl, City Forester	X	X		
Terry Ludlum, Solid Waste Utility Director				
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 Proxy- T. Knakmuhs		
Jason Halsne, Enterprise I/C Coordinator				
Scott Olson, Solid Waste Utility Engineer	X	X		
Dan Portlock Water Utility Engineer	X	X		

ATTEST:

Jim Hausauer
Water Reclamation Utility Director

C: Tim Mahoney, Mayor
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston

THE CITY OF Fargo FAR MORE

REGIONAL WATER RECLAMATION FACILITY
3400 North Broadway
Fargo, ND 58102
Phone: 701.241.1454 | Fax: 701.241.8159
www.FargoND.gov

MEMORANDUM

January 20, 2022

TO: Utility Committee
FROM: Jim Hausauer, Water Reclamation Utility Director
RE: FEMA Building Resilient Infrastructure in Communities (BRIC) Funding Application
Project WW 1905--West Side Interceptor Improvements

Background

The West Side Interceptor (WSI) is one of three major interceptors that convey wastewater to the Fargo/Regional Water Reclamation Facility (WRF). The WSI was constructed in the 1970's and is a critical component of the Fargo wastewater collection system. It generally follows the 42nd Street corridor and serves areas throughout Fargo spanning as far south as the Davies neighborhood, as far north as Hector Airport. The WSI is responsible for collecting and conveying approximately 30% of the City's total wastewater to the WWTF. In recent years, the City has had to make costly emergency repairs to the WSI due to multiple structural pipe failures, with some repairs running as high as $275,000. As this interceptor is close to 50 years old, it is likely that these pipe failures will continue, thus a plan to rehabilitate and improve the WSI is needed. Additionally, a hydraulic modeling evaluation identified that a portion of the system is undersized for both current and future conditions. As such, improvements are being proposed to replace pipe in areas of known poor condition and locations where the pipe is undersized.

FEMA BRIC Application

The Water Reclamation Utility has previously executed task orders with its consultant to perform a condition assessment on the WSI to prioritize segments for rehabilitation and/or replacement. The assessments included: 1) identify and prioritize improvements on the West Side Interceptor (WSI) System and 2) a plan to pursue funding for any eligible improvements through FEMA's Building Resilient Infrastructure and Communities (BRIC) funding program which funds projects at a 75 percent federal share and a 25 percent local share. This program was formerly known as the Pre-Disaster Mitigation (PDM) program, which the City of Fargo had been previously successful in obtaining funding through for its Red River Pump Station and Wastewater Treatment Plant Flood Protection projects. The BRIC program has received a dramatic increase in funding from its predecessor program and is tied to six (6) percent of the previous year's federal disaster claim. This funding is allocated each year and is nationally competitive. Each state can only submit one project, but the ND Department of Emergency Services (NDDES) is optimistic that this project will be a good candidate for selection.

Based on current and future anticipated construction costs, this multi-year project has an initial cost estimate of $21,898,000. A BRIC application and supporting documentation has been prepared and

submitted to the North Dakota Department of Emergency Service for their review and comment. If successful and funding is received through the program, the 25% local cost share of the improvements is estimated to be $5,475,000. The initial period of performance is 42 months, but time extensions are looked upon favorably.

A summary of the improvements includes:

- Upsizing gravity reinforced concrete pipe (RCP) from 36-inch to 48-inch from approximately Main Avenue to 19th Avenue North.
- Replace 36-inch pipe from 13th Avenue South along 42nd Street South up to Lift Station 22.

Note: The local share will be funded with Wastewater Infrastructure Sales Tax Fund 455 and is included in the Water Reclamation Capital Improvement Plan (CIP)

Recommended Motion

Approve the attached FEMA Building Resilient Infrastructure in Communities (BRIC) Grant application for improvements associated with the West Side Interceptor.

www.ae2s.com

January 13, 2022

Mr. Jim Hausauer
Water Reclamation Utility Director
3400 N Broadway
Fargo, ND 58102

BRIC Grant Application for WSI Improvements

Dear Jim:

A task order was executed with AE2S in June 2021 to 1) identify and prioritize improvements on the West Side Interceptor (WSI) System and 2) pursue funding for any potentially eligible improvements through FEMA's Building Resilient Infrastructure and Communities (BRIC) funding program, which funds projects at a 75 percent federal share and a 25 percent local share. This program was formerly known as the Pre-Disaster Mitigation (PDM) program, which the City of Fargo had been previously successful in obtaining funding through for its Red River Pump Station and Wastewater Treatment Plant Flood Protection projects. The BRIC program has received a dramatic increase in funding from its predecessor program and is tied to six (6) percent of the previous year's federal disaster claim.

In recent years, the City has had to make costly emergency repairs to the WSI due to multiple structural pipe failures, with some repairs running as high as $275,000. A condition assessment of the system completed in 2019, confirmed that several segments of the WSI system are in very poor condition. Additionally, a recent hydraulic modeling evaluation identified that a portion of the system is undersized for both current and future conditions. As such, improvements are being proposed to replace pipe in areas of known poor condition and locations where the pipe is undersized. A summary of the primary improvements that are being included in the BRIC application include the following:

- Upsizing gravity reinforced concrete pipe (RCP) from 36-inch to 48-inch from approximately Main Avenue to 19th Avenue North.
- Replace 36-inch pipe from 13th Avenue South along 42nd Street South up to Lift Station 22.

Based on current and future anticipated construction costs, this project has an initial cost estimate of $21,898,000 and a preliminary benefit-cost ratio of 1.05 utilizing FEMA's Benefit Cost Analysis tool. A BRIC application and supporting documentation has been prepared and submitted to the North Dakota Department of Emergency Service for their review and comment. The deadline for the State to submit the application to FEMA is January 24th. If successful and funding is received through the program, the 25 percent local cost share of the improvements is estimated to be approximately $5,475,000.

It is important to note that submittal of the grant application is in no way an obligation or commitment by the City of Fargo to fund the local cost share. Additionally, the local cost share of the grant is eligible to be funded through the Clean Water State Revolving Fund program. As such, it is recommended that the City proceeds with submitting the current BRIC application for the WSI Improvements to FEMA.

Thank you for the opportunity to assist the City of Fargo in pursuing funding for this important water service reclamation project. Any questions or requests for additional information regarding the grant application or improvements that are included within the application can be directed to ryan.grubb@ae2s.com or by phone at (701) 532-2356.

Submitted in Service,

Ryan Grubb, PE
Operations Manager

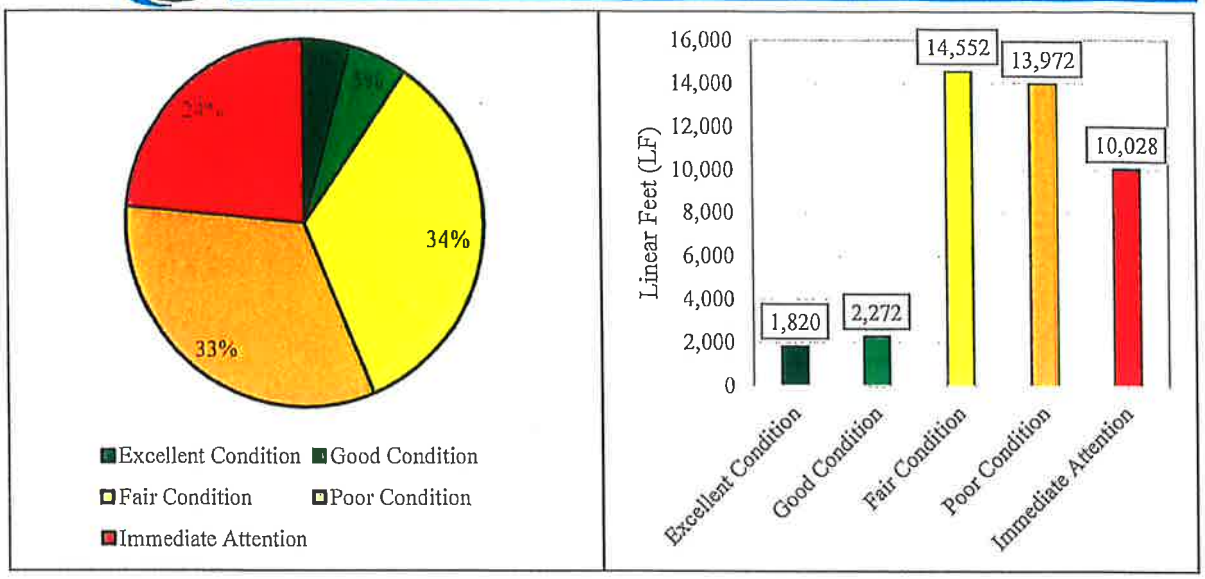

Figure 2.2 Condition Assessment Results Distribution

A map of each WSI pipe segment, showing the condition grade from the condition assessment is provided in Figure 2.3.

THE CITY OF Fargo FAR MORE

REGIONAL WATER RECLAMATION FACILITY
3400 North Broadway
Fargo, ND 58102
Phone: 701.241.1454 | Fax: 701.241.8159
www.FargoND.gov

December 29, 2021

North Dakota Department of Emergency Services
Attn: Mr. Todd Joersz
State Hazard Mitigation Officer
PO Box 5511
Bismarck, ND 58504

Re: Resiliency Improvements and Hazard Mitigation for the West Side Interceptor

Dear Mr. Joersz:

The City of Fargo operates a wastewater collection and treatment system that provides service to the cities of Fargo, West Fargo, and Horace with an estimated combined population of 166,531 people (per the 2020 U.S. Census). The City of Fargo's Wastewater Treatment Plant (WWTP) utilizes three large diameter pipes to collect and convey all the wastewater from the City. These three pipes are referred to as the 45th Street Interceptor, Broadway Interceptor, and the West Side Interceptor.

The West Side Interceptor (WSI) is responsible for approximately 30 percent of the City of Fargo's total wastewater conveyance. The service area for the WSI reaches as far south as Davies high school and as far north as the Hector International Airport in north Fargo. The WSI also provides wastewater service for some of Fargo's outside users, such as the City of Oxbow. After completing reconstruction on the Broadway Interceptor in 2019, the Fargo WSI became the oldest interceptor in the city, with most of its piping installed in the mid 1970's. In the last several years, the City has been required to invest in costly emergency repairs on portions of the WSI due to infrastructure failure. Additionally, there have been many instances historically where the City has needed to perform emergency bypass pumping from the WSI to the storm drain system to avoid sanitary sewer overflows and potential sewer backups to customers. To help mitigate these events and avoid extended loss of service to the customers who rely on the WSI for their wastewater collection and removal, a project is being proposed to replace the pipe where emergency repairs have been required and upsize pipe (where applicable) to mitigate surcharging and sanitary sewer overflows during wet weather events.

The intent of this letter is to provide information on the loss of service duration for the WSI during wet-weather and emergency repair events, the effect that the proposed project will have on the maintenance costs, and the level protection that will be provided by the project.

1) Loss of Service Duration

The WSI becomes increasingly susceptible to infiltration and inflow due to several areas of very poor pipe condition. A ten-year storm event was evaluated within a calibrated hydraulic model of the system and significant surcharging and sanitary sewer overflows occur in the pipe between Main Avenue and 19th Avenue North. While the City has been successful in implementing emergency bypass pumping operations in the past, this event would have potential impacts to the approximately 30,000 users located upstream from where the surcharging and sanitary sewer overflows occur. This event could also cause more damage to the piping which could lead to pipe failure. There have already been pipe failures the last few years,

causing sinkholes to form in the middle of roads and close to railways. These emergency repairs have cost an average of nearly $250,000 per event. Events that cause damage to streets and surrounding areas are also major hazards for the local population.

Historically, the City has performed emergency bypass pumping to the storm drain system during heavy rain events or infrastructure failures. For heavy rain events resembling a 10-year recurrence interval, bypass pumping is estimated to have occurred anywhere from 2-3 days. During pipe failures and emergency repairs, it took construction crews between 2-5 days to make the repair, in which bypass pumping was required over the duration of the repair. **As such, a loss of service of two (2) days is being used for the FEMA benefit-cost analysis methodology to provide a lower bound analysis for both the 10-year rain event and infrastructure failure event.**

2) Opinion of Total Probable Maintenance Costs

The proposed project is expected to result in a decrease in the annual operation and maintenance (O&M) costs. The City has invested approximately $100,000 from 2018 to today (average of $25,000 annually) in coating rehabilitation for the WSI (primarily in manholes). While this type of coating maintenance will need to continue after completion of the proposed project, the frequency is expected to significantly decrease due to removal and replacement of segments that are in the worst condition. As such, annual coating maintenance is expected to be reduced by 50%, resulting in total annual maintenance costs of $12,500.

Additionally, in recent years the city has seen multiple emergency repairs on the WSI. Each of these repairs required a significant amount of bypass pumping while the repair was made. Upon completion of this project, the likelihood of an emergency repair on the WSI would be greatly reduced which would eliminate the need for costly bypass pumping.

3) Level of Protection After Mitigation

The proposed project includes the removal of pipe that is in very poor condition, which will lessen the impact that infiltration and inflow currently has on the system and greatly reduce the potential for infrastructure failure and subsequent emergency repairs. This project also includes upsizing (36-inch to 48-inch) the segment of pipe between Main Avenue and 19th Avenue North, which is currently shown to surcharge and overflow at several manholes during a 10-year storm event. After completion of the project, the system will be able to operate normally during a 10-year storm event without surcharging, sanitary sewer overflows, or the need for costly and environmentally hazardous emergency bypass pumping to the storm drainage system.

The identified loss of service durations, maintenance costs, and level of protection after mitigation are further documented in the City of Fargo WSI Improvements FEMA BCA.

Sincerely,

Jim Hausauer
Utility Director
Division of Water Reclamation

THE CITY OF Fargo FAR MORE

REGIONAL WATER RECLAMATION FACILITY
3400 North Broadway
Fargo, ND 58102
Phone: 701.241.1454 | Fax: 701.241.8159
www.FargoND.gov

January 24, 2022

Justin Messner, Disaster Recovery Chief
North Dakota Department of Emergency Services
PO Box 5511
Bismarck, ND 58504

RE: West Side Interceptor Improvements Local Match Letter

Dear Mr. Messner:

As part of the Building Resilient Infrastructure and Communities (BRIC) Program, a local funding match is required. This letter serves as the City of Fargo's commitment to meet the local matching fund requirements for the West Side Interceptor Improvements project.

The proposed project is included in the City's Capital Improvements Plan (CIP) and a portion of the anticipated project cost is included in the approved 2022 budget. Should the City be successful in obtaining funding through the BRIC Program, the local matching fund requirement will be twenty-five percent (25%), which will be provided as cash and/or in-kind contributions and paid upon receipt of all bills.

Further, all matching requirements set forth in 2 CFR Part 200.306 will be followed.

Sincerely,

Jim Hausauer
Water Reclamation Utility Director
City of Fargo

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Subapplicant information

Name of federal agency
FEMA

Type of submission
Application

EMERGENCY SERVICES, NORTH DAKOTA

FRAINE BARRACKS LN BLDG 35
BISMARCK, ND 58504 United States

State	UEI-EFT	DUNS #	EIN #
ND	FPQQJ1B2T1K1	098144905	450309764

Subapplicant type
Local Government

Is the subapplicant subject to review by Executive Order 12372 Process?

- ○ Yes - This Pre-application/application was made available to the Executive Order 12372 Process for review on:
- ◉ No, Program is not covered by E.O. 12372.
- ○ No, Program has not been selected by state for review.

Is the subapplicant delinquent on any federal debt?

- ○ Yes
- ◉ No

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Contact information

Subrecipient Authorized Representative (SAR)

Jamie Bullock jbullock@fargond.gov	**Primary phone**	**Mailing address**	Delete

Add a SAR

Point(s) of contact

Jim Hausauer Utility Director jhausauer@fargond.gov	**Primary phone** 7014766692 Work **Fax** 7012418159	**Additional phones** 7017932085 Mobile	**Mailing address** 3400 North Broadway Fargo ND 58102	Edit

Add a point of contact

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Community

Please provide the following information. If the Congressional district number for your community does not display correctly, please contact your State NFIP coordinator.

Add Communities

Please find the community(ies) that will benefit from this mitigation activity by clicking on the Find communities button. If needed, modify the Congressional District number for each community by entering the updated number under the U.S. Congressional District column for that community. When finished, click the Continue button. NOTE: You should also notify your State NFIP coordinator so that the updated U.S. Congressional District number can be updated in the Community Information System (CIS) database.

Find communities

Community name	County code	CID number	CRS community	CRS rating	U.S. Congressional District	
FARGO, CITY OF	017	385364	Y	5	1,2	Delete

Please provide any additional comments below (optional).

Attachments

Attach a document

Maximum file size: 1 GB

Filename	Date uploaded	Uploaded by	File size	Description	Action

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Mitigation plan

Please provide your plan information below.

Is the entity that will benefit from the proposed activity covered by the current FEMA approved multi-hazard mitigation plan in compliance with 44 CFR Part 201?

◉ Yes

Please provide plan detail

Plan name	Plan type	Plan approval date	
Cass County Multi-Jurisdictional Multi-Hazard Mitigation Plan	Local Multijurisdictional Multi-Hazard Mitigation Plan	10/07/2019	Edit

Proposed activity description

Mitigation Action 53: Effluent Force Main Improvements (Page 174 of 249)

○ No

Please provide any additional comments below (optional).

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Scope of work

The project Scope of Work (SOW) identifies the eligible activity, describes what will be accomplished and explains how the mitigation activity will be implemented. The mitigation activity must be described in sufficient detail to verify the cost estimate. All activities for which funding is requested must be identified in the SOW prior to the close of the application period. FEMA has different requirements for project, planning and management cost SOWs.

Subapplication title (include type of activity and location)

West Side Interceptor Improvements - Fargo, ND

Activities

Primary activity type

Utility and infrastructure protection

Primary sub-activity type

Wastewater and/or sanitary sewer system

Secondary activity type (Optional)

Select

Geographic areas description

The City of Fargo is located in the eastern edge of North Dakota in Cass County adjacent to the Red River on the border of North Dakota and Minnesota. The City is bordered to the west by the City of West Fargo, North Dakota, to the east by the City of Moorhead, Minnesota, and is approximately 60 miles north of the North Dakota/South Dakota border.

Community lifelines

Primary community lifeline

Food, water, shelter

Primary sub-community lifeline

Water

Secondary community lifeline (Optional)

Select

Hazard sources

Primary hazard source

Infrastructure failure

Secondary hazard source (optional)

Select

Is this a phased project?

- ○ Yes
- ● No

Are you doing construction in this project?

- ● Yes
- ○ No

Population affected

22.3 %

Detail/description of stated percentage

This is the percentage of the City of Fargo's population that would be without sanitary service in the event of West Side Interceptor failure. This includes all of the population located upstream from where the interceptor would be out of service.

Provide a clear and detailed description of your proposed activity

The proposed project involves removing and replacing the 36-inch gravity RCP in WS-6 from 13th Avenue South to Lift Station 22 with 36-inch RCP. It also involves upsizing the entire WS-4 segment of 36-inch RCP with 48-inch RCP. See the attachment "Scope of Work" for a detailed description of the proposed activity.

How will the mitigation activity be implemented?

The project has two areas of reconstruction but the replacements are anticipated to be completed by a single contractor over a 28 month period.

Describe how the project is technically feasible and will be effective in reducing the risk by reducing or eliminating damage to property and/or loss of life in the project area. Please include engineering design parameters and references to the following: preliminary schematic or engineering drawings/design; applicable building codes; engineering practices and/or best practices; level of protection (e.g., life safety, 100-yr flood protection with freeboard, 100-yr wind design, etc.):

Based on a hydraulic model evaluation, upsizing of the WSI from Main to 19th Ave north from 36" to 48" is necessary to mitigate surcharging, sanitary sewer overflows, and potential sewer backups during a 10-year wet weather event if the act of emergency bypass pumping to the storm drain is discontinued. It is technically feasible because the City has completed a very similar project to mitigate the same problems

Who will manage and complete the mitigation activity?

The City of Fargo's Water Reclamation Utility and Engineering Department staff in conjunction with the project engineer (AE2S) and potential other outside engineering consultants.

Will the project address the hazards identified and what risks will remain from all hazards after project implementation (residual risk)?

The project is addressing aging infrastructure and inadequate pipe sizing. There will still be risks from much larger storm events. However, infiltration and inflow into the system will be greatly reduced due to the replacement of deteriorated pipe and manholes.

When will the mitigation activity take place?

The proposed mitigation activity will commence as soon as the application is awarded and grant funds are secured. The entire project duration (design through construction) is anticipated to be 42 months.

Explain why this project is the best alternative. What alternatives were considered to address the risk and why was the proposed activity considered the best alternative?

Two alternatives have been developed and evaluated for providing the needed improvements to the WSI: (1) Direct Replacement, or (2) Upsize and Replacement. The best alternative is the Upsize and Replacement option. This involves upsizing the current 36-inch gravity RCP between Main Avenue and 19th Avenue North to 48-inch gravity RCP. This also involves direct replacement of 36-inch gravity RCP

Please identify the entity that will perform any long-term maintenance and provide a maintenance, schedule and cost information. The subapplicant or owner of the area to be mitigated is responsible for maintenance (including costs of long-term care) after the project is completed?

City of Fargo will perform long-term maintenance. Annual maintenance costs are estimated at $12,500 to add protective coatings to the pipe in order to keep the pipe high quality for a longer time than if no maintenance was performed.

Additional comments *(optional)*

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Schedule

Specify the work schedule for the mitigation activities.

Add tasks to the schedule

Please include all tasks necessary to implement this mitigation activity; include descriptions and estimated time frames.

Task Name	Start Month	Task Duration (in Months)	
Project Engineering, Design, and Permitting	1	8 months	Edit / Delete
	Task Description: Text		
Project Bidding, Award, and Contractor Negotiations	8	3 months	Edit / Delete
	Task Description: Text		
Direct Replacement from 13th Ave. S to Lift Station 22	11	8 months	Edit / Delete
	Task Description: Text		
Upsizing from Main Ave. to 19th Ave. N	19	10 months	Edit / Delete
	Task Description: Text		
Task Name	Start Month	Task Duration	

Project Closeout and Commissioning	29	**(in Months)** 3 months	Edit ✖ Delete
	Task Description Text		

+ Add a task

Estimate the total duration of your proposed activities (in months).

32

Proposed project start and end dates

Start Date (MM/DD/YYYY)

08/15/2022

End Date (MM/DD/YYYY)

04/01/2025

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Budget

Budget cost estimate should directly link to your scope of work and work schedule. You must add at least one item(s) greater than 0 for your cost estimate. As necessary, please adjust your federal/non-federal cost shares, and add the non-federal funding source(s) you are planning to use this project. Once you have completed this section, please click the Continue button at the bottom of this page to navigate to the next section.

Add budget cost types and item(s)

First, click the Add cost type button below to add cost type cost estimate and then click the Add item(s) button to add the item(s) for the cost estimate.

+ Add cost type

Grand total: $21,897,994.60

Budget type: Construction

Cost type: Cost estimate $21,897,994.60

✖ Delete this cost type

Cost estimate is the line item(s) budget to support the scope of work for the execution and completion of the project. Be sure to include the cost associated with revisions/formal adoption. To add a line item, Please click on the Add an item button. Click anywhere within each row or the arrow to edit or delete the line item(s)

+ Add an item

Cost Items

Item: Project Management	$880,000.00
Item: Contingency	$880,000.00

Item: Sanitary Sewer (36 in. RCP)	$1,280,500.00
Item: Cased Bores	$3,425,094.60
Item: Railroad Utility Permit	$38,400.00
Item: Removals	$3,218,500.00
Item: Sanitary Bypassing Pumping	$512,000.00
Item: Manholes	$1,844,000.00
Item: Restoration and Seeding (Type C)	$300,000.00
Item: Engineering, Legal, and Administration	$2,553,000.00
Item: Sanitary Sewer (48 in. RCP)	$5,890,000.00
Item: Mobilization	$268,800.00
Item: Stormwater Pollution Prevention Plan	$6,400.00
Item: Traffic Control - Type 2	$151,000.00

Program income (optional)

$

Cost share

Cost share or matching means the portion of project costs not paid by federal funds.

Proposed federal vs. non-federal funding shares

Hazard mitigation assistance (HMA) funds may be used to pay up to 75% federal share of the eligible activity costs. Building Resilient Infrastructure and Communities (BRIC) and small impoverished communities may be eligible for up to 90% federal share. Flood Mitigation Assistance (FMA) and severe repetitive loss (SRL) properties may be eligible for up to 100% federal share. Repetitive loss (RL) properties may be eligible for up to 90% federal share.

Is this a small impoverished community?

This determines your federal/non-federal share ratio.

- ○ Yes
- ◉ No

	% Percentage	$ Dollar amount
Proposed federal share	75.00	$16,423,49
Proposed non-federal share	25.00	$5,474,498

Based on total budget cost: $21,897,994.60

Non-federal funding sources here

That portion of the total costs of the program provided by the non-federal entity in the form of in-kind donations or cash match received from third parties or contributed by the agency. In-kind contributions must be provided and cash expended during the project period along with federal funds to satisfy the matching requirements.

+ Add funding source

Funding source	Funding amount	% Non-federal share by source
Funding source: Clean Water State Revolving Fund	$5,474,498.65	100.00%

Please provide any additional comments below (optional).

The local match for the proposed project will be funded by the North Dakota Clean Water SRF program. The project is listed on the current Intended Use Plan and is eligible to apply for loan commitment at any time. The IUP is attached below with Fargo's project highlighted on page 3.

Attachments

Attach a document

Maximum file size: 1 GB

Filename	Date uploaded	Uploaded by	File size	Description	Action
2021 CWSRF IUP.pdf	12/23/2021	abby.ritz@ae2s.com	598 KB		✖ Delete

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Cost-effectiveness

How was cost-effectiveness determined for this project?

- [x] BCA completed in FEMA's BCA toolkit

  Subapplicant must attach supporting documentation.

- [ ] Pre-calculated benefits
- [ ] Substantial Damage in Special Flood Hazard Area
- [ ] Other BCA methodology approved by FEMA in writing
- [ ] Not applicable

What are the total project benefits? ($)

$23,161,710

What is the total project cost? ($)

$22,070,509

What is the benefit-cost ratio (BCR) for the entire project?

1.04

Was sea level rise incorporated into the flood elevations in the BCA?

- ○ Yes
- ● No

Were environmental benefits added to the project benefits?

- ○ Yes
- ● No

Were social benefits added to the project benefits?

- ● Yes
- ○ No

Does the mitigation measure incorporate nature-based solutions?

- ○ Yes
- ◉ No

Please provide any additional comments below (optional).

Attachments

Attach a document

Maximum file size: 1 GB

Filename	Date uploaded	Uploaded by	File size	Description	Action
BCA Report 12.29.21.pdf	12/29/2021	abby.ritz@ae2s.com	815 KB		Delete
Fargo WSI BCA Overall Documentation 12.30.21 Reduced Size.pdf	12/30/2021	abby.ritz@ae2s.com	4 MB		Delete

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Environmental/Historic Preservation (EHP) Review Information

Introduction

An environmental/historic preservation review is required for all activities for which FEMA funds are being requested. FEMA will complete this review with the assistance of both the state or tribal government and the local applicant. It is important that you provide accurate information. If you are having problems completing this section, please contact your application point of contact.

A. National Historic Preservation Act - Historic Buildings and Structures

1. Does your project affect or is it in close proximity to any buildings or structures 50 years or more in age?

- ○ Yes
- ● No
- ○ Not known

B. National Historic Preservation Act - Archeological Resources

Does your project involve disturbance of ground?

- ● Yes

Please confirm that you have provided the information listed below by selecting each check box. (If you have not provided these documents in any other section of the application, please attach the required documents below.)

- [x] A description of the ground disturbance by giving the dimensions (area, volume, depth, etc.) and location.
- [x] The past use of the area to be disturbed, noting the extent of previously disturbed ground.
- [x] A USGS 1:24,000 scale or other site map showing the location and extent of ground disturbance.

To help FEMA evaluate the impact of the project, please indicate below any other information you are providing. *(optional)*

- [ ] Any information about potential historic properties, including archeological sites, in the project area. Sources of this information may include SHPO/THPO, and/or the Tribe's cultural resources contact if no THPO is designated. Include, if possible, a map showing the relation of any identified historic properties to the project area.

Attached materials or additional comments.

Please provide an explanation and any information about this project that could assist FEMA in its review. (optional)

No

Not known

Attachments

Attach a document

Maximum file size: 1 GB

Filename	Date uploaded	Uploaded by	File size	Description	Action
Figure 6 - Improvement Recommendations.pdf	12/29/2021	abby.ritz@ae2s.com	1 MB		Delete
National Historic Preservation Act-Archeological Resources Information.docx	12/29/2021	abby.ritz@ae2s.com	13 KB		Delete

C. Endangered Species Act and Fish and Wildlife Coordination Act

1. Are federally listed threatened or endangered species or their critical habitat present in the area affected by the project?

Yes

No

Not known

2. Does your project remove or affect vegetation?

Yes

No

- ○ Not known

3. Is your project in, near (within 200 feet), or likely to affect any type of waterway or body of water?

- ○ Yes
- ● No
- ○ Not known

D. Clean Water Act, Rivers and Harbors Act, and Executive Order 11990 (Protection of Wetlands)

1. Will the project involve dredging or disposal of dredged material, excavation, adding fill material or result in any modification to water bodies or wetlands designated as 'waters of the U.S' as identified by the US Army Corps of Engineers or on the National Wetland Inventory?

- ○ Yes
- ● No
- ○ Not known

E. Executive Order 11988 (Floodplain Management)

1. Does a Flood Insurance Rate Map (FIRM), Flood Hazard Boundary Map (FHBM), hydrologic study, or some other source indicate that the project is located in or will affect a 100 year floodplain, a 500 year floodplain if a critical facility, an identified regulatory floodway, or an area prone to flooding?

- ○ Yes
- ● No
- ○ Not known

2. Does the project alter a watercourse, water flow patterns, or a drainage way, regardless of its floodplain designation?

- ○ Yes
- ● No
- ○ Not known

F. Coastal Zone Management Act

1. Is the project located in the state's designated coastal zone?

- ○ Yes
- ● No

- ○ Not known

G. Farmland Protection Policy Act

1. Will the project convert more than 5 acres of prime or unique farmland outside city limits to a non-agricultural use?

- ○ Yes
- ● No
- ○ Not known

H. Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (Hazardous and Toxic Materials)

1. Is there a reason to suspect there are contaminants from a current or past use on the property associated with the proposed project?

- ○ Yes
- ● No
- ○ Not known

2. Are there any studies, investigations, or enforcement actions related to the property associated with the proposed project?

- ○ Yes
- ● No
- ○ Not known

3. Does any project construction or operation activities involve the use of hazardous or toxic materials?

- ○ Yes
- ● No
- ○ Not known

4. Do you know if any of the current or past land-uses of the property affected by the proposed project or of the adjacent properties are associated with hazardous or toxic materials?

- ○ Yes
- ● No
- ○ Not known

I. Executive Order 12898, Environmental Justice for Low Income and Minority Populations

1. Are there low income or minority populations in the project's area of effect or adjacent to the project area?

- ○ Yes
- ◉ No
- ○ Not known

J. Other Environmental/Historic Preservation Laws or Issues

1. Are there other environmental/historic preservation requirements associated with this project that you are aware of?

- ○ Yes
- ◉ No

2. Are there controversial issues associated with this project?

- ○ Yes
- ◉ No
- ○ Not known

3. Have you conducted any public meeting or solicited public input or comments on your specific proposed mitigation project?

- ○ Yes
- ◉ No

K. Summary and Cost of Potential Impacts

Having answered the questions in parts A. through J., have you identified any aspects of your proposed project that have the potential to impact environmental resources or historic properties?

- ○ Yes
- ◉ No

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Evaluation

Is the applicant participating in the Community Rating System (CRS)?

- (●) Yes
- ( ) No

Select rating.

2

Is the applicant a Cooperating Technical Partner (CTP)?

- (●) Yes
- ( ) No

Was this created from a previous FEMA HMA Advance assistance / Project scoping award?

- (●) Yes
- ( ) No

Please provide project identifier.

Scoping grant application was submitted and accepted for this project but still has not a

Has the applicant adopted building codes consistent with the international codes?

- (●) Yes
- ( ) No

Year of building code

2018

Please provide the building code.

International Building Code

Have the applicant's building codes been assessed on the Building Code Effectiveness Grading Schedule (BCEGS)?

- (●) Yes
- ( ) No

Select rating.

3

Describe involvement of partners to enhance the mitigation activity outcome.

The City's Water Reclamation Utility and Engineering Department will work hand in hand with the project engineer (AE2S), other outside engineering consultants (if any) and the construction contractor to provide for a successful project. Regular meetings and correspondence will be held throughout the project construction to ensure all parties have the opportunity to provide input and collaborate on constructing the

Discuss how anticipated future conditions are addressed by this project.

Upsizing the pipe will allow for the system to accommodate peak wastewater flows under the influence of a 10-year wet-weather storm event without the need for emergency bypass pumping to the storm drain system. Additionally, replacement of the deteriorated pipe will greatly reduce the potential for infrastructure failure that has been experienced in recent years.

Additional comments (optional)

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Comments & attachments

Community	0 comment, 1 attachments
Mitigation plan	0 comment, 1 attachments
Scope of work	0 comment, 1 attachments
Budget	1 comment, 1 attachments
Cost-effectiveness	0 comment, 2 attachments
Evaluation	0 comment, 3 attachments
Environmental/Historic Preservation (EHP)	0 comment, 2 attachments
Location	0 comment, 3 attachments

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Introduction

Project location

Provide a detailed description of the proposed project's location.

The WSI system is responsible for collecting and conveying approximately 30 percent of the City's total wastewater flow to the Wastewater Treatment Plant (WWTP). The WSI service area reaches as far south as the Davies neighborhood in south Fargo and as far north as the Hector International Airport in north Fargo. Additionally, the WSI provides service to the City of Oxbow.

Latitude

46.861938

Longitude

-096.851000

Project benefiting area

Provide a detailed description of the proposed project's benefiting area.

The City of Fargo operates three main sanitary sewer interceptor systems: the Broadway Interceptor, the 45th Street Interceptor, and the West Side Interceptor (WSI). The WSI system is responsible for collecting and conveying approximately 30 percent of the City's total wastewater flow to the Wastewater Treatment Plant (WWTP). The WSI service area reaches as far south as the Davies neighborhood

Project impact area

Provide a detailed description of the proposed project's impact area.

The projects impact area includes the area surrounding 42st Street N from 19th Avenue N to Main Street and 42nd Street S from 13th Avenue S to Lift Station 22.

Project site inventory

Does this project subapplication propose to mitigate a property/structure(s)? (Examples: residential home, commercial building, bridge, fire station, levee, pumping station, wastewater treatment plant, telephone pole, electric line, etc.)

- ○ Yes
- ◉ No

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Assurances and certifications

Certifications regarding lobbying; Debarment, Suspension and other responsibility matters; and Drug-free workplace requirements

OMB number: 1660-0083, Expiration date: 10/31/2021 View burden statement

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 44 CFR Part 18, "New Restrictions on Lobbying" and 28 CFR Part 17, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Federal Emergency Management Agency (FEMA) determines to award the transaction, grant, or cooperative agreement.

1. LOBBYING
As required by section 1352, Title 31 of the U.S. Code, and implemented at 44 CFR Part 18, for persons entering into a grant or cooperating agreement over $ 100,000, as defined at 44 CFR Part 18, the applicant certifies 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
(b) If any other funds than Federal appropriated funds have been paid or will be paid to any other person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or an employee of Congress, or employee of a member of Congress in connection with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Stand Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

☐ Standard Form-LLL "Disclosure of Lobbying Activities" attached (This form must be attached to certification if nonappropriated funds are to be used to influence activities.)

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT) As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 67, for prospective participants in primary covered transactions, as defined at 44 CFR Part 17, Section 17.510-A.

A. The applicant certifies that it and its principals:
(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a

denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of a or had a civilian judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public 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 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 had one or more public transactions (Federal, State, or local) terminated for cause of default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEE OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 44 CFR Part 17, Subpart F, for grantees,as defined at 44 CFR Part 17.615 and 17.620-

A. The applicant certifies that it will continue to 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 an on-going 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; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant to be given a copy of the statement required by paragraph (a);

(d) 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 term of the statement; and

(2) Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring ion the workplace no later than five calendar days after such convictions;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position, title, to the applicable FEMA awarding office, i.e., regional office or FEMA office.

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to anyemployee who is convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation act of 1973, as amended; or

(2) Requiring such an 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;

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, City, County, State, Zip code) *Optional*

☐ There are workplaces on file that are not identified

Sections 17.630 of the regulations provide that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for FEMA funding. States and State agencies may elect to use a state wide certification.

Continue

West Side Interceptor Improvements - Fargo, ND

Status: Pending submission

OMB number: 1660-0072, Expiration date: 10/31/2021 View burden statement

Review subapplication

Submit for signature

Please select any of the following links to view or edit a particular section of your application. You may submit your application for signature once your application is complete and without any errors.

This application is ready to submit for signature
Submit this application for final signature to complete the application submission process.

Subapplicant information	View/edit
Contact information	View/edit
Community	View/edit
Mitigation plan	View/edit
Scope of work	View/edit
Schedule	View/edit
Budget	View/edit
Cost-effectiveness	View/edit
EHP Section	
A. National Historic Preservation Act - Historic Buildings and Structures	View/edit
B. National Historic Preservation Act - Archeological Resources	View/edit
C. Endangered Species Act and Fish and Wildlife Coordination Act	View/edit
D. Clean Water Act, Rivers and Harbors Act, and Executive Order 11990 (Protection of	View/edit

Wetlands)

✓	E. Executive Order 11988 (Floodplain Management)	View/edit
✓	F. Coastal Zone Management Act	View/edit
✓	G. Farmland Protection Policy Act	View/edit
✓	H. Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (Hazardous and Toxic Materials)	View/edit
✓	I. Executive Order 12898, Environmental Justice for Low Income and Minority Populations	View/edit
✓	J. Other Environmental/Historic Preservation Laws or Issues	View/edit
✓	K. Summary and Cost of Potential Impacts	View/edit
✓	Evaluation	View/edit
✓	Comments & attachments	View/edit
✓	Location	
✓	Project location	View/edit
✓	Project benefiting area	View/edit
✓	Project impact area	View/edit
✓	Project site inventory	View/edit
✓	Assurances and certifications	View/edit

THE CITY OF Fargo FAR MORE

DR. TIMOTHY J. MAHONEY, MAYOR
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1310 | Fax: 701.476.4136
www.FargoND.gov

January 24, 2022

Justin Messner, Disaster Recovery Chief
North Dakota Department of Emergency Services
PO Box 5511
Bismarck, ND 58504

RE: West Side Interceptor Improvements Local Match Letter

Dear Mr. Messner:

As part of the Building Resilient Infrastructure and Communities (BRIC) Program, a local funding match is required. This letter serves as the City of Fargo's commitment to meet the local matching fund requirements for the West Side Interceptor Improvements project.

The proposed project is included in the City's Capital Improvements Plan (CIP) and a portion of the anticipated project cost is included in the approved 2022 budget. Should the City be successful in obtaining funding through the BRIC Program, the local matching fund requirement will be twenty-five percent (25%), which will be provided as cash and/or in-kind contributions and paid upon receipt of all bills.

Further, all matching requirements set forth in 2 CFR Part 200.306 will be followed.

Sincerely,

Dr. Timothy J. Mahoney

Mayor of Fargo

THE CITY OF Fargo FAR MORE

DR. TIMOTHY J. MAHONEY, MAYOR
Fargo City Hall
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1310 | Fax: 701.476.4136
www.FargoND.gov

January 24, 2022

Justin Messner, Disaster Recovery Chief
North Dakota Department of Emergency Services
PO Box 5511
Bismarck, ND 58504

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Further, all matching requirements set forth in 2 CFR Part 200.306 will be followed.

Sincerely,

Dr. Timothy J. Mahoney

Mayor of Fargo

REPORT OF ACTION

UTILITY COMMITTEE

29

Project: WW2201

Type: Utility Relocation Agreement
Diversion Authority

Location: Oxbow Sanitary Sewer Force Main

Date of Hearing: 12-16-2021

Routing	Date
City Commission	1-24-2022
Project File	

Jim Hausauer Water Reclamation Utility Director, presented attached memo requesting approval of a draft utility relocation agreement with the Metro Flood Diversion Authority and the City of Fargo. The construction of the locally preferred Fargo Moorhead (FM) Diversion, included a plan for relocating numerous existing utilities. The relocation agreement is called a Master Utility Relocation Agreement or MURA. The purpose of the agreement is to ensure a coordinated, time efficient, and cost effective process for completing the utility relocation project, coordinating operations & maintenance activities after relocation. The MURA will spell out responsibilities for costs, design, performance and construction for utility relocation in the Southern Embankment/Upstream Mitigation Area for the Fargo-Moorhead Metropolitan Flood Management Project. The draft agreement has received legal review (Erik Johnson) and include recommended comments.

The specific utility to be relocated is the City of Fargo 6" & 8" PVC sanitary sewer force mains that serve the community of Oxbow. The force mains will be required to be relocated and reconstructed as a result of the impacts related to the F-M Diversion project. The DA has indicated that the three options will be open cut, go under the levee system or to go up and over the levee system. This realignment will result in impacts to the existing sanitary lift station #56 that serves the City of Oxbow. The Water Reclamation Utility is asking HDR Engineering to provide a basis of design that will outline the three realignment alternatives (open cut, up and over or lowering of the force mains) as well as identify the improvements that may be required as a result of each alternative. The basis of design will provide the Water Reclamation Utility a recommendation with the required improvements to accommodate the construction of the tie back levees associated with the F-M Diversion Project. Note: Any engineering or improvement costs incurred by the City of Fargo will be reimbursed by the Diversion Authority and spelled out in the MURA.

On a motion by Troy Hall, seconded by Terry Ludlum, the Utility Committee voted to approve the draft Master Utility Relocation Agreement (MURA) between the Metro Flood Diversion Authority and the City of Fargo for the coordinated relocation of the sanitary sewer force mains that serve the City of Oxbow.

RECOMMENDED MOTION:

Concur with the recommendation of the Utility Committee and approve the Master Utility Relocation Agreement (MURA) between the Metro Flood Diversion Authority and the City of Fargo for the coordinated relocation of the sanitary sewer force mains that serve the City of Oxbow.

COMMITTEE:	Present	Yes	No	Unanimous
				X
				Proxy
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	X	X		
Brian Ward, Water Plant Superintendent	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Bruce Grubb, 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		
Jason Halsne, Enterprise I/C Coordinator				
Scott Olson, Solid Waste Utility Engineer	X	X		
Dan Portlock Water Utility Engineer	X	X		

ATTEST:

Jim Hausauer
Water Reclamation Utility Director

C: Tim Mahoney, Mayor
Commissioner Strand
Commissioner Piepkorn
Commissioner Preston

THE CITY OF Fargo FAR MORE

REGIONAL WATER RECLAMATION FACILITY
3400 North Broadway
Fargo, ND 58102
Phone: 701.241.1454 | Fax: 701.241.8159
www.FargoND.gov

MEMORANDUM

To: Utility Committee
From: Jim Hausauer, Water Reclamation Utility Director JA
Date: December 16th, 2021
Re: Master Utility Relocation Agreement (MURA)
Metro Flood Diversion Authority & City of Fargo

Background

The construction of the locally preferred plan for the Fargo Moorhead (FM) Diversion included a plan for relocating numerous existing utilities. The relocation agreement is called a Master Utility Relocation Agreement or MURA. The purpose of the agreement is to ensure a coordinated, time efficient, and cost effective process for the completing the utility relocation project, coordinating operations and maintenance activities after relocation . The Diversion Authority (DA) and Utility engineers will collaborate cooperatively to facilitate the relocation. The MURA will spell out responsibilities for costs, design, performance and construction for utility relocation and associated infrastructure in the Southern Embankment/Upstream Mitigation Area for the Fargo-Moorhead Metropolitan Flood Management Project. The draft agreement has received legal review and include recommended comments.

Oxbow Force Main Relocation

The specific utility to be relocated is the City of Fargo 6" & 8" PVC sanitary sewer force mains that serve the community of Oxbow. The force mains will be required to be relocated and reconstructed as a result of the impacts related to the F-M Diversion project. The DA has indicated that the three options will be open cut, go under the levee system or to go up and over the levee system. This realignment will result in impacts to the existing sanitary lift station #56 that serves the City of Oxbow. The Water Reclamation Utility is asking HDR Engineering to provide a basis of design that will outline the three realignment alternatives (open cut, up and over or lowering of the force mains) as well as identify the improvements that may be required as a result of each alternative. The basis of design will provide the Water Reclamation Utility a recommendation with the required improvements to accommodate the construction of the tie back levees associated with the F-M Diversion Project.

Note: Any engineering or improvement costs incurred by the City of Fargo will be reimbursed by the Diversion Authority and spelled out in the MURA.

Recommended Motion

Approve the attached draft Master Utility Relocation Agreement between the Metro Flood Diversion Authority and the City of Fargo for the coordinated relocation of the sanitary sewer force mains that serve the City of Oxbow.

FINAL

MASTER UTILITY RELOCATION AGREEMENT

By and Between

METRO FLOOD DIVERSION AUTHORITY

and

THE CITY OF FARGO, NORTH DAKOTA

Dated as of January__, 2022

Relating to:

Utility Relocation in the Southern Embankment and Associated Infrastructure and the Upstream Mitigation Area for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project

This instrument was drafted by:
Ohnstad Twichell, P.C.
John T. Shockley
P.O. Box 458
West Fargo, North Dakota 58078

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS AND INTERPRETATION 2

SECTION 1.01 DEFINITIONS 2
SECTION 1.02 TERMS GENERALLY 6
SECTION 1.03 SURVIVAL OF TERMS 7

ARTICLE II. PURPOSE OF MASTER UTILITY RELOCATION AGREEMENT 7

SECTION 2.01 PURPOSE 7
SECTION 2.02 COORDINATION BETWEEN ENGINEERS 7
SECTION 2.03 COORDINATION WITH USACE 7

ARTICLE III. REAL PROPERTY INTERESTS 7

SECTION 3.01 INTENT 7
SECTION 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS 7
SECTION 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS 8
SECTION 3.04 DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS 8
SECTION 3.05 COOPERATION IN PLATTING 8

ARTICLE IV. RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS 8

SECTION 4.01 UTILITY RESPONSIBILITY 8
SECTION 4.02 REQUESTS FOR RELIEF 8

ARTICLE V. RIGHT OF SITE ACCESS 9

SECTION 5.01 RIGHT OF SITE ACCESS 9
SECTION 5.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY 9
SECTION 5.03 NOTICE REQUIRED 9
SECTION 5.04 DELAY FOR SAFETY PURPOSES 9
SECTION 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION 9

ARTICLE VI. REQUIRED REPORTS 9

SECTION 6.01 REQUIRED REPORTS 9
SECTION 6.02 DEADLINES 9
SECTION 6.03 FAILURE TO TIMELY PRODUCE 9

ARTICLE VII. PERFORMANCE AND CONSTRUCTION 10

SECTION 7.01 UTILITY ADJUSTMENT DESIGN WORK 10
SECTION 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK 10
SECTION 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT 10
SECTION 7.04 TECHNICAL SPECIFICATIONS 11
SECTION 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA 11
SECTION 7.06 PROPOSALS AND PLANS 11
SECTION 7.07 REQUIREMENT OF APPROVAL 12
SECTION 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS 12
SECTION 7.09 ADJUSTMENTS TO THE PROJECT 13
SECTION 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK 13
SECTION 7.11 INSPECTION 13
SECTION 7.12 UTILITY COMPLETION 13

SECTION 7.13 THIRD PARTY CONTRACTORS 13
SECTION 7.14 INVOICING REQUIREMENTS 13

ARTICLE VIII. PAYMENT OF COSTS 13

SECTION 8.01 NECESSITY TO KEEP COSTS LOW 13
SECTION 8.02 GENERALLY 14
SECTION 8.03 REPORTING OF COSTS 14
SECTION 8.04 REJECTION OF COSTS 14
SECTION 8.05 APPEAL OF A DECISION TO REJECT COSTS 14
SECTION 8.06 PAYMENT OF ACCEPTED COSTS 14
SECTION 8.07 BETTERMENTS 14

ARTICLE IX. FUTURE RIGHTS AND RESPONSIBILITIES 14

SECTION 9.01 RIGHT OF WAY 14
SECTION 9.02 USE OF EXISTING EASEMENT 15
SECTION 9.03 RECORD KEEPING 15
SECTION 9.04 FUTURE PERMITS 16

ARTICLE X. DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES 16

SECTION 10.01 COORDINATION 16

ARTICLE XI. DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY 16

SECTION 11.01 INTENT AND PROCEDURE 16
SECTION 11.02 PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS 16
SECTION 11.03 TIME TO CORRECT 16
SECTION 11.04 MEDIATION 17
SECTION 11.05 ARBITRATION 17
SECTION 11.06 RIGHT OF SETOFF 17
SECTION 11.07 LITIGATION IF DISPUTE NOT RESOLVED 17
SECTION 11.08 LEGAL FEES 17
SECTION 11.09 WAIVER OF JURY TRIAL 17

ARTICLE XII. USE OF EMINENT DOMAIN 18

SECTION 12.01 EMINENT DOMAIN 18
SECTION 12.02 NULLIFICATION BY EMINENT DOMAIN 18
SECTION 12.03 NULLIFICATION AFTER COSTS INCURRED 18

ARTICLE XIII. MISCELLANEOUS 18

SECTION 13.01 NOTICE 18
SECTION 13.02 ASSIGNMENT 19
SECTION 13.03 WORKERS' COMPENSATION 19
SECTION 13.04 INSURANCE 19
SECTION 13.05 RELATIONSHIPS CREATED 20
SECTION 13.06 GOVERNING LAW 20
SECTION 13.07 CONFLICT 20
SECTION 13.08 SEVERABILITY 20
SECTION 13.09 MODIFICATIONS 20
SECTION 13.10 BINDING EFFECT 20

SECTION 13.11 REPRESENTATION 20
SECTION 13.12 HEADINGS 20
SECTION 13.13 COUNTERPARTS 20
SECTION 13.14 REPRESENTATION OF AUTHORITY 20
SECTION 13.15 ELECTRONIC SIGNATURES 20
SECTION 13.16 FEDERAL LOBBYING RESTRICTIONS 21
SECTION 13.17 DEBARMENT AND SUSPENSION 21
SECTION 13.18 DAVIS-BACON ACT AND OTHER LABOR LAWS 21
SECTION 13.19 CIVIL RIGHTS OBLIGATIONS 21
SECTION 13.20 CERTIFICATION 22
SECTION 13.21 TERMINATION 22

SIGNATURE PAGE **S-1**

EXHIBIT A - PRIOR PROPERTY INTERESTS
EXHIBIT B - MAP OF UPSTREAM MITIGATION AREA
EXHIBIT C - MFR-023
EXHIBIT D - FEDERAL CERTIFICATIONS
EXHIBIT E - AUTHORITY INVOICING REQUIREMENTS

MASTER UTILITY RELOCATION AGREEMENT

THIS MASTER UTILITY RELOCATION AGREEMENT (the "Agreement") is made and entered into this __ day of January, 2022 (hereinafter referred to as the "Effective Date"), by and between the Metro Flood Diversion Authority, a North Dakota political subdivision, whose post office address is 207 4th St. N., Suite A, Fargo, ND 58102 (the "Authority"), and the City of Fargo, North Dakota, a North Dakota home rule city and political subdivision of the State of North Dakota, whose principal address is 225 4th St. N., Fargo, ND 58102 (the "Utility") (collectively, the Authority and the Utility are referred to as the "Parties").

RECITALS

WHEREAS, construction of the locally preferred plan for the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the "Comprehensive Project") in the Fargo, North Dakota, and Moorhead, Minnesota, Metropolitan Area was authorized by Section 7002(2) of the Water Resources Reform and Development Act of 2014, Public Law 113-121; and

WHEREAS, the Authority, the City of Fargo, North Dakota, and the City of Moorhead, Minnesota, are the Non-Federal Sponsors ("NFS") for the Comprehensive Project and have entered into a Project Partnership Agreement ("PPA") on July 11, 2016, and amended as of March 19, 2019, with the United States Army Corps of Engineers ("USACE") for the construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the PPA sets forth a split delivery method for the Comprehensive Project, establishing the respective responsibilities of both the NFS and the USACE; and

WHEREAS, the Authority was created to undertake and fulfill the Non-Federal Sponsors' obligations under the PPA; and

WHEREAS, pursuant to the PPA, the NFS will be responsible for completing the Upstream Mitigation Area ("UMA"), the area where the Authority is required to obtain property rights for the temporary storage of floodwaters during Comprehensive Project operations; and all mitigation features that are not the responsibility of the USACE; and

WHEREAS, pursuant to Article II of the PPA, the NFS shall be responsible for all real property interests and relocations required for construction, operation, and maintenance of the Comprehensive Project; and

WHEREAS, the Utility has real property interests (hereinafter referred to as "Prior Property Interests") within the area generally described in Article III of this Agreement and further described in **Exhibit A**; and

WHEREAS, it will be necessary for the Prior Property Interests to be relocated, protected, removed, or adjusted (hereinafter referred to as the "Utility Relocation Project") by either the Authority or Utility in coordination with construction of the Comprehensive Project; and

WHEREAS, the Authority and the Utility desire to set forth in writing their mutual understandings and to define the terms and conditions and each Party's rights and obligations in connection with the Utility Relocation Project; and

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby state as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized and bolded terms used and not otherwise defined herein shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

"Age Discrimination Act of 1975" means the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-6107).

"Agreement" means this Master Utility Relocation Agreement.

"Authority" means the Metro Flood Diversion Authority, a North Dakota political subdivision created by the Joint Powers Agreement dated June 1, 2016.

"Basis for Design Analysis" means the work completed by the **Utility** as set forth in a **Task Order** to provide the **Authority** with a mutually preferred alternative to complete the design and construction for the **Utility Adjustment Work**.

"Best Efforts" means acting in **Good Faith** and in accordance with generally accepted commercial practices and using reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with applicable federal and state laws, regulations, and rules; however, the obligation to use **Best Efforts** does not mean a duty to take action that would be in violation of applicable federal or state law.

"Business Day(s)" means any day that is not a Saturday, a Sunday, or a public holiday under the laws of North Dakota.

"Cass County" means Cass County, North Dakota.

"CFR" means the Code of Federal Regulations.

"Civil Rights Act of 1964" means the Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241, enacted July 2, 1964).

"Clay County" means Clay County, Minnesota.

"Comprehensive Project" means the Fargo-Moorhead Metropolitan Area Flood Risk Management Project authorized by Section 7002(2) of the Water Resources Reform and

Development Act of 2014, as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo Moorhead Metropolitan Area Flood Risk Management, dated July 2011 and approved in accordance with the Chief's Report, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the U.S. Army Engineer, St. Paul, on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, ND and MN, Modifications Through February 2019.

"Comprehensive Project Substantial Completion Date" means the date upon which the Authority's Engineer issues a certificate that Substantial Completion of the Comprehensive Project has occurred.

"Congress" means the Congress of the United States of America.

"Contract Work Hours and Safety Standards Act" means the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.).

"Copeland (Anti-Kickback) Act" means the Copeland Act (18 U.S.C. 874 and 40 U.S.C. 3145).

"**Costs**" means all costs, expenses, and fees of whatever nature and kind, excluding internal costs that would have been incurred by the Utility regardless of the existence of the Comprehensive Project.

"Davis-Bacon Act" means the Davis-Bacon Act of 1931 (40 U.S.C. 3141 et seq.).

"Effective Date" means the date on which both Parties have executed this Agreement.

"Executive Director" means the Chief Administrative Officer of the Metro Flood Diversion Authority.

"Executive Order No. 11246" means Executive Order No. 11246, dated September 24, 1965.

"Fargo-Moorhead Metropolitan Area" means Fargo, ND, Moorhead, MN, and surrounding communities; it is further defined by the United States Census Bureau as comprising all of Cass County, North Dakota, and Clay County, Minnesota, which includes the cities of Dilworth, MN, West Fargo, ND, and numerous other towns and developments from which commuters travel daily for work, education, and regular activities.

"Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References" or **"MFR-023"** means the Fargo-Moorhead Metropolitan Area Southern Embankment – MFR-023, Utility Guidelines and References drafted by the USACE for the relocation of components in the **SEAI**.

"Federal Water Pollution Control Act Amendments of 1972" means the Federal Water Pollution Control Act Amendments of 1972 (Pub.L. 92-500, 86 Stat. 816, enacted October 18, 1972).

"Final Design Submittal" means the design submittal described in Article VII of this Agreement.

"Good Faith" means observance of reasonable commercial standards of fair dealing in a given trade of business.

"JPA" and/or **"Joint Powers Agreement"** means the **Joint Powers Agreement** dated as of June 1, 2016, by and between the **Member Entities**, as amended from time to time, which created and continued the **Authority**.

"Master Utility Relocation Agreement" means this Master Utility Relocation Agreement by and between the **Authority** and **Utility**.

"Member Entities" shall mean the City of Moorhead, the City of Fargo, Clay County, Cass County, and CCJWRD.

"Metro Flood Diversion Authority" has the same definition as "Authority."

"Minnesota" means the State of Minnesota.

"Non-Federal Project Costs" means the local cost share of the total cost of the Comprehensive Project not provided by the US Government.

"Non-Federal Sponsors" or **"NFS"** means the entities providing the **Non-Federal Project Costs** for the **Comprehensive Project**, which include the City of Fargo, the City of Moorhead, and the Authority created pursuant to the **JPA.**

"North Dakota" means the State of North Dakota.

"Parties" means the entities to this Agreement, specifically the **Authority** and the **Utility**.

"Post Construction Submittal" means the design submittal described in Article VII of this Agreement.

"PPA" means the Project Partnership Agreement executed by and between the Department of the Army and the City of Fargo, North Dakota, the City of Moorhead, Minnesota and the Metro Flood Diversion Authority for construction of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 11, 2016.

"Preliminary Design Submittal" means the design submittal described in Section 7.05(a) of this Agreement.

"Prior Property Interest(s)" means any property interest(s) owned by the Utility that the **Authority** deems necessary to **Relocate**.

"Project" means the design, construction, finance, operations, and maintenance of the **SEAI** and the **UMA**.

"Project Footprint" means the physical area within which the **SEAI** and the **UMA** will be contained.

"Project Property" means real property acquired for the **Project**, including, but not limited to, land, rights-of-way, easements, licenses, and leases.

"Rehabilitation Act of 1973" means the Rehabilitation Act of 1973 (Pub.L. 93-112, 87 Stat. 355, enacted September 26, 1973).

"Relocate" means providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad (excluding railroad bridges and approaches thereto required for construction of the **Comprehensive Project**), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a **Relocation** in the authorizing legislation for the **Project** or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, rising, or replacement and attendant demolition of the affected facility or part thereof.

"Shop Drawings and Samples" means shop drawings, laying drawings, erection drawings, fabrication drawings, product information, catalog information, samples, mock-ups, plans, test procedures and results, descriptions of services, descriptions of specific means and methods and related documentation.

"Site" means the physical location at which any **Utility Adjustment Construction Work** is being done, has been done, or will be done as part of the **Utility Relocation Project**.

"Southern Embankment and Associated Infrastructure" or **"SEAI"** consisting of the **Diversion Inlet, Wild Rice** and **Red River Control Structure**, associated road raises, and earthen dam embankment reaches.

"Supplemental Plan" means a plan submitted for approval pursuant to Article III, in the event that **Undisclosed Prior Property Interests** are identified after one or more plans have already been approved pursuant to Article III.

"SWDCAI" means the approximately thirty (30) mile, 20,000 cubic feet per second (cfs) channel and associated features, including the outlet, river and drain inlets, road bridges, railroad bridges, aqueducts, and recreational features, to be constructed as part of the Comprehensive Project.

"Task Order" means a document executed by the **Authority** and **Utility**, including any amendments, stating the scope of services, times for performance of services, compensation, and any other relevant information for a specific project.

"Undisclosed Prior Property Interests" mean **Prior Property Interests** not disclosed in Section 3.02 of this Agreement.

"United States Army Corps of Engineers" or **"USACE"** means the United States Army Corps of Engineers.

"Upstream Mitigation Area" or **"UMA"** means the area where the Metro Flood Diversion Authority is required to obtain property rights as mitigation for the temporary storage of floodwaters during Comprehensive Project operations, as shown in **Exhibit B**.

"U.S. EPA" means the United States Environmental Protection Agency.

"Utility" means the City of Fargo, North Dakota, with respect to any utility owned by the City of Fargo, North Dakota.

"Utility Adjustment" means each **Relocation** (temporary or permanent), abandonment, protection in place, removal (of previously abandoned utilities as well as of newly abandoned utilities), replacement, reinstallation, or modification of existing utilities necessary to accommodate construction, operation, maintenance or use of the **Project**. The **Utility Adjustment Work** for each crossing of the **Project** right-of-way by a utility that crosses the **Project** right-of-way more than once will be considered a separate **Utility Adjustment**. For any utility installed longitudinally within the **Project** right-of-way, the **Utility Adjustment Work** for each continuous segment of that utility located within the **Project** right-of-way will be considered a separate **Utility Adjustment**.

"Utility Adjustment Completion" means that the **Utility Adjustment Construction Work** for a **Utility Adjustment** is sufficiently complete in the opinion of the **Authority** and the **Utility**.

"Utility Adjustment Construction Work" means all **Utility Adjustment Work** related to construction.

"Utility Adjustment Work" means all efforts and **Costs** necessary to accomplish the required **Utility Adjustments**, including all coordination, **Utility Adjustment Design Work**, design review, permitting, **Utility Adjustment Construction Work**, inspection and maintenance of records, whether provided by **Metro Flood Diversion Authority** or by the **Utility**.

"Utility Relocation Project" means the process of acquiring **Project Property**, **Relocating** any **Prior Property Interests**, and all other steps necessary, as determined by the **Authority**, to prepare the **Project Property** for construction of the **Project**.

"Work Package" means an executable deliverable that defines in detail a specific scope of work related to the **Comprehensive Project**.

Section 1.02 TERMS GENERALLY. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include,"

"includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications set forth herein), (b) any reference herein to any person shall be construed to include any person's permitted successors and assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this **Agreement** in its entirety and not to any particular provision hereof, and (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this **Agreement**.

Section 1.03 SURVIVAL OF TERMS. The terms of this **Agreement** shall survive through **Comprehensive Project Substantial Completion** and for successive ten-year terms until one of the **Parties** hereto terminates this **Agreement** as provided for herein.

ARTICLE II.
PURPOSE OF MASTER UTILITY RELOCATION AGREEMENT

Section 2.01 PURPOSE. The purpose of this **Agreement** is to ensure a coordinated, time-efficient, and cost-effective process for completing the **Utility Relocation Project**, for coordinating operations and maintenance activities after completion of the **Utility Relocation Project**, and for the development of individual **Task Orders** issued in conjunction with, and subject to, the terms and conditions of this **Agreement**.

Section 2.02 COORDINATION BETWEEN ENGINEERS. The **Authority** and **Utility** are likely to employ the use of professional engineers in the analysis, design, and completion of designs, plans, and completion of work. Engineers employed by the **Parties** shall maintain open lines of communication, coordinate, and collaborate with engineers employed by other parties described herein.

Section 2.03 COORDINATION WITH USACE. **Utility** shall not communicate directly with the **USACE** regarding any aspect of the **Comprehensive Project** or any other subject-matter referenced in, related to, or arising from this **Agreement**, without the prior written authorization of the **Authority**, except as required by Section 9.01 (a) of this **Agreement**.

ARTICLE III.
REAL PROPERTY INTERESTS

Section 3.01 INTENT. It is the intent of the **Parties** hereto that all **Prior Property Interests** shall be identified herein. Specifically, **Prior Property Interests** shall be detailed in the table contained in Section 3.02 and further documented in **Exhibit A** to this **Agreement**.

Section 3.02 ACQUISITION OF PRIOR PROPERTY INTERESTS. The **Prior Property Interests** to be **Relocated** pursuant to the terms and conditions of this **Agreement** include, but are not limited to, the **Prior Property Interests** documented in **Exhibit A** and described in the table below:

Location (Section – Township – Range)	Location	Exiting Crossing Type/ Info	State
SW ¼ of 6-137-48	SE-3	Along the east side of County Highway 81	ND

Section 3.03 UNDISCLOSED PRIOR PROPERTY INTERESTS. If the **Authority**, for any reason, determines **Undisclosed Prior Property Interests** should be **Relocated**, such **Relocation** shall occur pursuant to the terms of this **Agreement**.

Section 3.04 DISCOVERY OF UNDISCLOSED PRIOR PROPERTY INTERESTS. **Undisclosed Prior Property Interests** identified for **Relocation** prior to request for submission of the first submittal required by Article VII shall be **Relocated** through the same process as if the **Undisclosed Prior Property Interests** were disclosed herein. A separate accounting and recording of costs shall be maintained for **Undisclosed Prior Property Interests** and **Prior Property Interests** disclosed herein. Should **Undisclosed Prior Property Interests** be identified after the submission of one or more submittals pursuant to Article VII the **Utility** shall, within sixty (60) days of written notification of identifying **Undisclosed Prior Property Interests** to be **Relocated**, submit a **Supplemental Plan** meeting the requirements of Article VII, for the **Relocation** of **Undisclosed Prior Property Interests**. Each **Party** shall have the same rights and responsibilities as they would have if the **Supplemental Plan** were included in previously approved plans, as detailed in Article VII, unless explicitly provided otherwise herein. The **Utility** shall endeavor to submit a **Supplemental Plan** for approval within sixty (60) days. Should **Utility** fail to submit a **Supplemental Plan** by the applicable deadline, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall follow the dispute resolution process pursuant to Section XI of this **Agreement**.

Section 3.05 COOPERATION IN PLATTING. The **Authority** intends to plat right-of-way acquired for **Project** purposes. **Utility** shall reasonably cooperate with said platting efforts if requested to do so by the **Authority**.

ARTICLE IV.
RESPONSIBILITY FOR UNDISCLOSED PRIOR PROPERTY INTERESTS

Section 4.01 UTILITY RESPONSIBILITY. The **Utility** shall bear the costs of **Relocating** all **Undisclosed Prior Property Interests**.

Section 4.02 REQUESTS FOR RELIEF. Within thirty (30) calendar days of **Utility Adjustment Completion**, the **Utility** may file a written request for relief with the **Authority** to request payment or partial payment for costs of the **Relocating Undisclosed Property Interests**. This request for relief shall be a separate document from the reports required by Article VII but shall be submitted to the **Authority** in conjunction with the reports required by Article VII. All requests for relief shall include an itemized list of costs, the total amount requested, and justification for **Utility's** failure to identify the **Undisclosed Prior Property Interest**. Requests for relief may be approved, approved in part and denied in part, or denied.

ARTICLE V.
RIGHT OF SITE ACCESS

Section 5.01 RIGHT OF SITE ACCESS. To ensure the **Authority** is able to proceed with construction of the **Project** in a timely and efficient manner, as well as to properly monitor and ensure completion of the **Utility Relocation Project**, the **Authority** shall have a right-of-way in, on, over, and across any and all **Sites** as well as the right to access, enter, and inspect any **Site**.

Section 5.02 NON-REVOCABLE RIGHT OF THE METRO FLOOD DIVERSION AUTHORITY. Nothing herein shall be construed as limiting or providing for the termination of the rights described herein as it pertains to the **Authority**.

Section 5.03 NOTICE REQUIRED. Reasonable notice shall be required for the **Authority** to exercise the rights described in this Article.

Section 5.04 DELAY FOR SAFETY PURPOSES. If the **Authority** attempts to exercise the rights described in this Article, but doing so would pose a safety hazard, the **Party** shall be kept from accessing, entering, or inspecting the **Site** in question only for as long as is reasonably required to make the **Site** safety for access, entry, and inspection, as determined by the **Party** desiring to access, enter, and inspect the **Site**.

Section 5.05 FAILURE TO ALLOW ACCESS, ENTRY, AND INSPECTION. Should any **Party** having authority to access, enter, and inspect a **Site** be denied access for more than twenty-four (24) hours, other than when the same **Party** deems such a delay appropriate under Section 5.04, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall resolve the dispute by following the dispute resolution process pursuant to Section XI of this **Agreement**.

ARTICLE VI.
REQUIRED REPORTS

Section 6.01 REQUIRED REPORTS. The **Utility** or the **Authority** shall prepare any reports, analysis, plans, cost estimates, or other information and materials as set forth within a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**.

Section 6.02 DEADLINES. All reports, analysis, plans, cost estimates, and other information and materials requested by the **Authority** shall be provided before the expiration of a reasonable deadline mutually determined by and between the **Utility** and the **Authority** and/or identified in a **Task Order** pertaining to the utility infrastructure, the **Utility Relocation Project**, or the **Project**.

Section 6.03 FAILURE TO TIMELY PRODUCE. Should the **Utility** or **Authority** fail to produce any reports, analysis, plans, cost estimates, or other information and materials requested of them, and such failure results in the unreasonable delay of **Utility Adjustment Construction Work**, the **Parties** shall resolve the dispute by following the dispute resolution process pursuant to Section XI of this **Agreement**.

ARTICLE VII.
PERFORMANCE AND CONSTRUCTION

Section 7.01 UTILITY ADJUSTMENT DESIGN WORK. The **Utility** shall engage a consulting engineer to develop a **Basis for Design Analysis** as agreed upon in a **Task Order**. The **Authority** shall reimburse the **Utility** for the cost of the consulting engineer to complete the **Basis for Design Analysis**, in accordance with Article VIII of this **Agreement**. The **Utility** shall ensure the consulting engineer completes all work prior to a reasonable deadline identified in a **Task Order**. The **Authority** will undertake the design of the **Utility Adjustment Work**, based on the results of the **Basis for Design Analysis**.

Section 7.02 UTILITY ADJUSTMENT CONSTRUCTION WORK. The **Utility Adjustment Construction Work** shall be as follows:

a. The **Authority** shall be responsible for the completion of all **Utility Adjustment Construction Work**. The **Authority** shall complete all **Utility Adjustment Construction Work** prior to a reasonable deadline mutually agreed to by and between the **Utility** and the **Authority**.

b. If a portion of the **Utility Adjustment Construction Work** is outside of the **Project Property**, the **Authority** shall be responsible for that portion of the **Utility Adjustment Construction Work**. **Utility** shall meet the requirements of federal law in regard to any **Work** contracted out to third parties, for which the **Authority** will reimburse the **Utility**.

c. If it is determined that a portion of the **Utility Adjustment Construction Work** shall be completed by the **Utility**, it must be previously agreed upon in a **Task Order**, and the **Authority** shall be responsible for reimbursing the **Utility** per the **Task Order**, and in accordance with Article VIII of this **Agreement**.

Section 7.03 ADDITIONAL RIGHT-OF-WAY OUTSIDE THE PROJECT FOOTPRINT. Should additional right-of-way be needed to complete the **Utility Relocation Project**, the **Authority** shall use its **Best Efforts** to acquire the necessary right-of-way. In the event that the Authority lacks the authority to acquire for the Utility Relocation Project for any reason, the **Authority** shall notify the **Utility** of said needs as soon as reasonably possible after discovering the need. The **Utility** shall thereafter use its **Best Efforts** to acquire the necessary right-of-way but shall not be responsible for any damages related to time delays associated with the acquisition of additional right-of-way needed to accommodate betterments. In the event the **Utility Relocation Project** directly or indirectly causes the **Utility** to acquire additional property interests, the **Utility** shall consult with the **Authority** prior to determining the price at which they will offer to purchase said property interests. The **Utility** will only offer to purchase additional property interests at a price consented to by the **Authority**. The **Utility** is not responsible for any damages related to time delays associated with the acquisition of additional right-of-way needed which was directly or indirectly caused by the **Utility Relocation Project**, so long as the **Utility** is reasonably diligent in pursuing acquisition of said necessary rights-of-way.

Section 7.04 TECHNICAL SPECIFICATIONS. The **Utility Relocation Project** must be designed in accordance with the **Fargo-Moorhead Metropolitan ("FMM") Area Southern Embankment – MFR-023, Utility Guidelines for the Southern Embankment and References ("MFR-023")** which is hereby incorporated by reference and attached as **Exhibit C** to this **Agreement**. The requirements set forth in **MFR-023** shall only apply to **Utility Adjustment Work** within the **SEAI**. All **Utility Adjustment Work** in the **UMA** shall be conducted in accordance with Section 7.05 of this **Agreement**.

Section 7.05 COORDINATION FOR UTILITY ADJUSTMENT IN THE UMA. All **Utility Adjustment Work** in the **UMA** shall be designed, constructed, and completed in accordance with federal, state, and local regulations and guidelines. In the event **Utility Adjustment Work** shall be completed in the **UMA**, the **Utility** will work in conjunction with the **Authority**, in **Good Faith**, to design and submit a **Utility Adjustment** plan for the **Authority** to review, comment and approve.

Section 7.06 PROPOSALS AND PLANS. Anytime following execution of this **Agreement**, the **Authority** may submit to the **Utility**, for each **Utility Adjustment**, a **Preliminary Design Submittal**, a **Final Design Submittal**, and a **Post Construction Submittal** for review, comment, and approval by the **Utility** as defined and in accordance with the timelines specified in **MFR-023**. Pursuant to Section 7.01, the **Parties** may also mutually agree that the **Authority** shall be responsible for **Utility Adjustment Design Work**. In the event the **Utility** is responsible for **Utility Adjustment Design Work**, such work shall be set forth in a **Task Order** and conducted in accordance with **MFR-023**.

(a) Preliminary Design Submittal. The **Authority** shall complete a **Preliminary Design Submittal** to a minimum of approximately thirty-five percent (35%) level of design completion and define the basis of design for all aspects of each **Utility Adjustment** of the **Utility Relocation Project**. The **Preliminary Design Submittal** shall include calculations demonstrating that the proposed configuration meets and satisfies the technical requirements contained herein. The **Preliminary Design Submittal** shall also provide sufficient detail to demonstrate compliance with all design and construction requirements as described in **MFR-023**. The **Preliminary Design Submittal** shall include, at a minimum, sketches and/or relocation plans, text defining the general proposed plan, and a scoping estimate of construction costs.

(b) Final Design Submittal. The **Authority** shall complete a **Final Design Submittal** including, but not limited to, fully developed design and relocation plan, drawings, specifications, and all other supporting information, design documentation, etc. The **Final Design Submittal** shall also contain complete applicable technical specifications. In addition to the aforementioned information, the **Final Design Submittal** shall include fully developed design and relocation plans, drawings, specifications, design documentation including calculations for the expected volume of grout needed to fill the annular spaces and all other supporting information, design documentation, and a final estimate of construction costs. The **Final Design Submittal** shall be utilized to develop a **Work Package** for

consideration and approval by the **Utility** prior to completion of the **Utility Adjustment Work**.

(c) Post Construction Submittal. The **Authority** shall complete and provide a **Post Construction Submittal**. The **Authority** acknowledges and agrees that **Post Construction Submittals** shall be conducted in accordance with the **MFR-023**. The **Post Construction Submittal** shall include the following requirements, if applicable to the **Utility Relocation Project**:

1. Acceptance testing documentation and inspection records, including standard proctor and field moisture density results.

2. Pipe inspection schedule and maintenance plan for future recurring inspections.

3. Design documentation that includes calculations for the expected volume of grout needed to fill the annular space.

4. Post-Construction Report that includes the amount that the expected amount of grout was used for filling the annular space.

5. As-Built Drawings: Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.

6. As-Built Surveys

(d) Review. The **Utility** shall complete a full review of each submittal and provide comments and/or approval. The **Utility** shall complete a full review and provide comments on submittals within a reasonable timeframe of the date on which the **Utility** receives a full and complete submittal. In the event the **Utility** does not provide comments within a reasonable timeframe, the **Authority** shall provide written notice of the failure to respond. Upon receiving the written notice, the **Utility** shall coordinate with the **Authority** regarding the status of comments and/or approval of the submittals.

Section 7.07 REQUIREMENT OF APPROVAL. No **Utility Adjustment Construction Work** may begin until the **Parties** approve the **Final Design Submittal**.

Section 7.08 SHOP DRAWING AND SAMPLE SUBMITTALS. The **Authority** shall submit **Shop Drawings and Samples** that detail the **Utility Adjustment Construction Work** to be performed by the **Authority** on the **Utility Relocation Project** within the **Project Footprint**. The **Utility** shall review the **Shop Drawings and Samples** in accordance with the procedure and timelines in Section 7.06 for the review of Submittals.

Section 7.09 ADJUSTMENTS TO THE PROJECT. Should the planned route of the **SEAI** change in a material manner, the **Utility** and the **Authority** shall immediately interface to adjust plans for the **Utility Relocation Project** as necessary.

Section 7.10 ADJUSTMENTS TO THE UTILITY ADJUSTMENT WORK. Any changes or modifications to the **Final Design Submittal** during construction that materially affect the performance or construction of the **Utility Adjustment Work** will be subject to written approval by the **Parties**. The **Authority** will submit the proposed changes or modifications to the **Utility** for review and approval. The **Utility** shall review the submittals in accordance with procedure and timelines in Section 7.06. **Utility** lines not required to be moved prior to the adjustment of **Post Construction Submittal**, which need to be **Relocated** after changes are made to **Post Construction Submittal** shall not be treated as **Undisclosed Prior Property Interests** for purposes of assigning responsibility for costs.

Section 7.11 INSPECTION. The **Authority** shall be responsible for inspection of all **Utility Adjustment Construction Work**.

Section 7.12 UTILITY COMPLETION. Within ten (10) **Business Days** of the anticipated date for **Utility Adjustment Completion**, the **Utility** and the **Authority** will schedule a final inspection, whereby the **Authority** shall be responsible for holding an inspection of the **Utility Adjustment Construction Work** to determine whether the **Utility Adjustment** meets the **Post Construction Submittal** and any material changes or modifications made per Section 7.09 and 7.10. If either **Party** finds the construction is not in conformance with the **Post Construction Submittal** or any approved material changes or modifications, the **Authority** will correct such nonconformance in the construction work and re-notify for inspection. Once the **Parties** mutually agree the **Utility Adjustment** has reached **Utility Adjustment Completion**, both Parties shall sign a document certifying that they are in mutual agreement of the **Utility Adjustment Completion**.

Section 7.13 THIRD PARTY CONTRACTORS. Should the **Utility** engage any third-party contractor to fulfill, contribute to, or otherwise act in regard to an obligation assigned to **Utility** in this **Agreement**, the **Utility** shall abide by all restrictions and requirements provided for in Section 13 and as provided in the federal lobbying restrictions which is attached as **Exhibit D** to this **Agreement**.

Section 7.14 INVOICING REQUIREMENTS. All invoices provided to the **Authority** pursuant to or arising from this **Agreement** shall comply with invoicing requirements provided in the **Authority** invoicing requirements which is as attached as **Exhibit E** to this **Agreement**.

ARTICLE VIII.
PAYMENT OF COSTS

Section 8.01 NECESSITY TO KEEP COSTS LOW. The **Utility** and the **Authority** each recognize the need to minimize the cost of the **Utility Relocation Project**, while seeking to maintain the same quality of service to the **Utility's** customer. The **Utility** and the **Authority** shall be diligent in keeping costs as low as reasonably possible.

Section 8.02 GENERALLY. The **Authority** shall pay all reasonable costs of the **Utility Relocation Project** approved under Section VII and actually incurred or as mutually agreed upon in a **Task Order**, whether those costs are incurred by the **Utility** or the **Authority**, excluding the **Utility's** internal costs.

Section 8.03 REPORTING OF COSTS. Upon completion of the **Utility Relocation Project**, the **Utility** shall submit a detailed, itemized report of the costs and expenses of the **Utility Relocation Project** that were completed by the **Utility** to the **Authority** for review.

Section 8.04 REJECTION OF COSTS. The **Authority** may reject reported costs and expenses to the extent that it deems any specific costs or expenses are unreasonable. Notice of rejection of any costs or expenses must be provided to the **Utility** in writing prior to approval under Section VII.

Section 8.05 APPEAL OF A DECISION TO REJECT COSTS. The **Utility** may appeal a decision rejecting any cost by providing the **Authority** written notice of the appeal and justification for its expenses within twenty (20) days of its receipt of the rejection notice.

Section 8.06 PAYMENT OF ACCEPTED COSTS. Within thirty (30) days of the determination of the **Authority's** full liability to the **Utility**, the **Authority** shall issue a single, full payment of the amount owed to the **Utility**.

Section 8.07 BETTERMENTS. In no situation shall any **Party** other than the **Utility** be responsible for costs and expenses of betterments installed during the **Utility Relocation Project**.

ARTICLE IX.
FUTURE RIGHTS AND RESPONSIBILITIES

Section 9.01 RIGHT OF WAY. Should the **Authority** deem it necessary for the purpose of the **Utility Relocation Project**, the **Authority** shall grant the **Utility** a right-of-way below, above, and across the **Project Footprint** so the **Utility** can properly maintain its facilities in the right-of-way, subject to the following restrictions and obligations:

a. Coordination with USACE. In the event the **Utility** deems it necessary to perform **Utility Adjustment Work**, within the right-of-way, beyond operation and maintenance for the **Utility Relocation Project**, the **Authority** and **Utility** shall be responsible for coordination with the **USACE** to obtain appropriate review and approval.

b. Maintenance of Utility Property. Following completion of the **Utility Relocation Project**, the **Utility** shall be responsible for all maintenance of **Utility** property and associated infrastructure. In the event the **Utility** is responsible for future maintenance of **Utility** property and associated infrastructure within the **Project Footprint** that results in increased maintenance costs as a result of the presence of the **Project** and/or **Project Footprint**, the **Utility** may submit written justification of the increased maintenance costs to the **Authority.** Both **Parties** agree to work

in **Good Faith** to determine a cost share for the increased maintenance costs, which will be included in a future **Task Order**. The **Utility** shall be responsible for preparing a maintenance and abandonment plan for all utilities located within the work limits of the **SEAI** and/or **UMA**. The **Utility** acknowledges and agrees that all maintenance of the **Utility** property and associated infrastructure shall be conducted in accordance with **MFR-023**.

c. Post Construction Access. Following completion of the **Utility Relocation Project**, the **Utility** shall provide the **Authority** with seven (7) days' written notice of any maintenance it intends to do within the **Project Footprint**. If the **Utility** deems access to the **Project Footprint** to be an emergency, it will use its **Best Efforts** to provide notice as soon as reasonably practicable.

d. Approval for Ground Disturbing Maintenance or Repairs. The **Utility** must submit and obtain approval, except in cases of **Utility** deemed emergency, for any and all plans for maintenance or repair that requires the ground within the **Project Footprint** to be disturbed, from the **Authority**.

e. Clean Up. The **Utility** shall ensure that after any maintenance or repairs to the **Utility** infrastructure, the ground within the **Project Footprint** is returned to the state in which it existed prior to the maintenance or repair that caused the ground within the **Project Footprint** to be disturbed.

f. Access. The **Authority** shall have unrestricted access, aside from the existence of **Utility** infrastructure, in, over, and across the right-of-way.

g. Damage to the SEAI or UMA. Should **Utility** property malfunction, deconstruct, or otherwise cause damage to the **SEAI** and/or the **UMA**, the **Utility** shall take immediate action to stop on-going damage to the **SEAI** and/or the **UMA** and will consult with the **Authority** on how to repair all damage that occurs.

Section 9.02 USE OF EXISTING EASEMENT. In the event **Utility** property is **Relocated** within the **Utility's** currently existing easement or right-of-way, the **Utility** shall be bound to exercise its rights under said easement, subject to the requirements and obligations contained in this Article, excepting any abandonment requirements set forth in Section 9.01. The requirements of this Article shall survive so long as the **Utility** has property located within the **Project Footprint**.

Section 9.03 RECORD KEEPING. The **Utility** shall maintain or cause to be maintained (by way of contract and enforcement of such contract) a complete set of records detailing all costs it incurs in the **Utility Relocation Project**, in accordance with the recordkeeping and audit requirements of this **Agreement** and the laws of **North Dakota**.

Section 9.04 FUTURE PERMITS. Should the **Utility** file a formal permit application with the **Authority**, pertaining to the **Utility** line **Relocated** pursuant to this **Agreement**, with the **Authority** after the **Effective Date**, the **Authority** shall grant, at no cost to the **Utility**, the permit application so long as the permit application meets all reasonable requirements listed in the instructions to said permit application and the proposed crossing would not unreasonably risk harm to the **SEAI** or the **UMA** or interfere with other facilities already contained within the **Project Footprint**, as determined by the **Authority**. In addition to the permit application granted by the **Authority**, **Utility** shall be responsible for obtaining all other permits necessary and required by the **USACE**. Should an existing **Utility** line be modified in the future, the **Authority**, in its sole discretion, shall determine whether the modification is allowable under a previously existing permit or whether the modification is significant enough in its nature or effect to require the **Utility** to apply for a new permit.

ARTICLE X.
DISPUTES WITH CONTRACTORS AND OTHER THIRD PARTIES

Section 10.01 COORDINATION. The **Parties** shall coordinate with respect to any dispute with third parties. Such coordination shall include any potential or ongoing litigation.

ARTICLE XI.
DISPUTES AMONG THE UTILITY AND THE METRO FLOOD DIVERSION AUTHORITY

Section 11.01 INTENT AND PROCEDURE. The **Utility** and the **Authority** shall use their **Best Efforts** to ensure that the provisions of this **Agreement** are fulfilled. The **Parties** agree to act in **Good Faith** to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this **Agreement**. If disputes cannot be resolved informally by the **Parties** or under other, situation-specific dispute resolution mechanisms contained herein, the following procedure shall be used.

Section 11.02 PROCEDURE TO COMMENCE DISPUTE RESOLUTION PROCESS. The **Parties** agree that in the event of an alleged breach of any of the terms of this **Agreement**, the **Parties** making such allegation shall, except as provided in Section 13.01 (Notices) of this **Agreement**, provide thirty (30) days written notice to the other **Party** of the alleged breach. The written notice shall contain reasonable description of the underlying facts and an explanation of why the **Party** providing notice believe those facts constitute a breach. Following transmittal of the notice, the **Party** alleged to have caused the breach shall be given a reasonable time (as provided in Section 12.03 of this **Agreement**), not less than ten (10) days to correct or remedy the alleged breach, to meet and confer with the other **Party**, and/or to participate in mediation with the other **Party** prior to initiating any litigation, arbitration, or any administrative proceeding, unless the alleged breach has the potential to cause immediate and irreparable harm, in which case the **Party** alleging the harm may initiate litigation prior to complying with the provisions of this Section 11.02 while, at the same time, following the procedures set forth in Sections 11.01, 11.02, and 13.01 of this **Agreement** as applicable.

Section 11.03 TIME TO CORRECT. The reasonableness of the time afforded to the **Party** alleged to have breached this **Agreement** pursuant to Section 11.02 of this **Agreement** to cure the

alleged breach and engage in dispute resolution processes shall be determined by considering the circumstances, including the potential harm, injury, or damages that are or may result from the alleged breach and the extent to which the harm, injury, or damages may worsen with the passage of time.

Section 11.04 MEDIATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to mediate the dispute. The **Parties** shall agree upon a single mediator or, if they cannot agree, shall obtain a list of court-appointed mediators from the Cass County District Court Administrator, and select a mediator by alternately striking names until one remains. The **Authority** shall strike the first name, followed by the **Utility**, in that recurring order until one name remains.

Section 11.05 ARBITRATION. If there is a failure between the **Parties** to resolve a dispute on their own, the **Parties** shall first attempt to arbitrate the dispute. The **Parties** shall agree upon a single arbitrator, that is mutually agreeable to the **Parties**. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Section 11.06 RIGHT OF SETOFF. If there is a failure between the **Parties** to resolve a dispute on their own, and the **Parties** have attempted to utilize the dispute resolution process pursuant to Section 11 of this **Agreement**, and such dispute, including but not limited to those identified in Sections 3.04, 5.05, and 6.03, results in the unreasonable delay of the **Utility Relocation Project**, the **Authority** is hereby authorized, to the fullest extent permitted by law to setoff, and may apply any and all deposits at any time held and owing to or for the credit of any **Party** to this **Agreement** against any and all obligations existing under this **Agreement**.

Section 11.07 LITIGATION IF DISPUTE NOT RESOLVED. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the **Parties** may litigate the matter.

Section 11.08 LEGAL FEES. Each **Party** will be responsible for their own attorney's fees in connection with a dispute under this Article.

Section 11.09 WAIVER OF JURY TRIAL. THE **PARTIES** HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS **AGREEMENT**, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS **AGREEMENT**, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS **AGREEMENT**. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL **MEMBER ENTITIES** ENTERING INTO THIS **AGREEMENT**. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE **UTILITY** AND THE **AUTHORITY** ARISING OUT OF OR RELATED TO THIS **AGREEMENT** AND DOES NOT APPLY TO THIRD-PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE **PARTIES** FOR **PROJECT PROPERTY** ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.

ARTICLE XII.
USE OF EMINENT DOMAIN

Section 12.01 EMINENT DOMAIN. Nothing in this **Agreement** shall be construed as limiting the **Authority**, or its **Member Entities'**, ability to exercise its powers of eminent domain.

Section 12.02 NULLIFICATION BY EMINENT DOMAIN. Should the **Authority** initiate eminent domain proceedings to accomplish the goals of the **Utility Relocation Project**, the terms of the **Agreement** shall be null and void at the option of the **Authority**.

Section 12.03 NULLIFICATION AFTER COSTS INCURRED. Should the terms of this **Agreement** be nullified under Section 12.02 or terminated under Section 13.22 ("Termination"), after the Utility has begun work for which it would otherwise be entitled to reimbursement under this Agreement, the **Utility** shall, within thirty (30) days of being served with notice of the nullification or termination, submit a report of its costs to the **Authority** in the same manner it would have submitted a report of costs pursuant to Article VII had the **Agreement** not been nullified or terminated. In the event of nullification or termination, the **Utility** and the **Authority** shall have all the rights and obligations created by Article VIII of this **Agreement**.

ARTICLE XIII.
MISCELLANEOUS

Section 13.01 NOTICE. All notices under the **Agreement** will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with deliver receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

a. All notices to the **Authority**, including **Project** correspondence, submittals, and samples, will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Authority's** authorized representative:

   Jacobs Engineering Group, Inc.
   64 4th Street North, Suite 300
   Fargo, North Dakota 58102
   and

b. All legal notices to the **Authority**, in addition to being provided to the **Authority's** representative as provided above, will also be provided to the **Executive Director** at the following address or as otherwise directed by the **Authority's** representative:

   Metro Flood Diversion Authority
   Attention: Executive Director
   207 4th Street North, Suite A
   Fargo, North Dakota 58102

And

APInvoicesFMDiv@jacobs.com
PaulsenJ@FMDiversion.gov

c. All notices to the **Utility** will be marked as regarding the **Project** and will be delivered to the following address or as otherwise directed by the **Utility's** authorized representative:

City of Fargo, North Dakota
Attn: James Hausauer, Water Reclamation Utility Director
3400 Broadway N
Fargo, North Dakota 58102
jhausauer@fargond.gov

d. Notices will be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Central Time and all other notices received after 5:00 p.m. Central Time will be deemed received on the first **Business Day** following delivery.

Section 13.02 ASSIGNMENT. Neither **Party** may transfer or assign this **Agreement**, nor any rights or obligations under this **Agreement**, without the express written consent of the other **Party**. Each **Party** shall only be permitted to transfer or assign rights or obligations under this **Agreement** by giving thirty (30) days' written notice pursuant to Section 13.01 to the other **Party** of its intent to transfer or assign.

Section 13.03 WORKERS' COMPENSATION. Each **Party** shall be responsible for injuries or deaths of its own personnel. Each **Party** will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this **Agreement**. Notwithstanding any other provision of this **Agreement**, each **Party** waives the right to pursue a legal action against one of the other **Parties** for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries are caused wholly or partially by the negligence of any other **Party** or its officers, employees, or volunteers.

Section 13.04 INSURANCE. The **Utility** shall list the **Authority** as additional insureds on any insurance policy obtained in connection with the **Utility Relocation Project**. No **Utility Adjustment Work** may be done until a certificate of insurance listing the aforementioned entities as additional insureds is produced. An additional insured shall be given notice at least thirty (30) days before an insurance policy on which it is an additional insured is canceled or allowed to expire. In the event that the policy is terminated for any reason and notice has not been previously given to the additional insureds, the formerly insured shall give notice to the additional insureds as soon as is reasonably possible.

Section 13.05 RELATIONSHIPS CREATED. The **Parties** agree this **Agreement** does not create any agency, partnership, joint venture, or any other relationship between the **Parties** and that the **Utility** is solely responsible for its own actions or omissions.

Section 13.06 GOVERNING LAW. This **Agreement** shall be controlled by the laws of the **State of North Dakota**. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this **Agreement** shall be venued in **Cass County** in the **State of North Dakota**, and the **Parties** waive any objection to personal jurisdiction.

Section 13.07 CONFLICT. In the event of a conflict between the **Parties** pertaining to the terms and conditions of this **Agreement**, this **Agreement** shall control and govern the relocation of **Utility** infrastructure, lines, and property for purposes of the **SEAI** and the **UMA**, but not the relocation of **Utility** infrastructure, lines, and property for purposes of the **SWDCAI**.

Section 13.08 SEVERABILITY. 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 shall not affect the validity of the remainder of this **Agreement**.

Section 13.09 MODIFICATIONS. Any modifications or amendments to this **Agreement** must be in writing and signed by both **Parties** to this **Agreement**.

Section 13.10 BINDING EFFECT. This **Agreement** shall be binding upon and inure to the benefit of the **Parties** hereto and their respective personal representatives, successors, and assigns.

Section 13.11 REPRESENTATION. The **Parties**, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this **Agreement**, and agree they have not been influenced by any representations or statements made by any other parties.

Section 13.12 HEADINGS. Headings in this **Agreement** are for convenience only and will not be used to interpret or construe its provisions.

Section 13.13 COUNTERPARTS. This **Agreement** may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the **Parties** and delivered to the other **Party**.

Section 13.14 REPRESENTATION OF AUTHORITY. Each **Party** signing this **Agreement** represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this **Agreement** and that the **Agreement** is a valid and legal agreement binding on such **Party** and enforceable in accordance with its terms.

Section 13.15 ELECTRONIC SIGNATURES. The **Parties** acknowledge and agree that this **Agreement** may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

Section 13.16 FEDERAL LOBBYING RESTRICTIONS. Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, member of **Congress**, an officer or employee of **Congress**, or any employee of a member of **Congress** with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for **U.S. EPA** in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this contract, **Utility** shall complete and submit to the **Authority** the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34, which are attached as **Exhibit D** to this **Agreement**. **Utility** shall also require all subcontractors and suppliers of any tier awarded a subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

Section 13.17 DEBARMENT AND SUSPENSION. **Utility** certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 40 CFR Part 32 to participate in the **Project**. Suspension and debarment information can be accessed at http://www.sam.gov. **Utility** represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this **Agreement**. Upon award of this contract, **Utility** shall complete and submit to the **Authority**, the federal certification form regarding debarment and suspension, which is attached as **Exhibit D** to this **Agreement**.

Section 13.18 DAVIS-BACON ACT AND OTHER LABOR LAWS. **Utility** shall comply with the following federal labor requirements:

a. **Davis-Bacon Act**, which requires the payment of prevailing wage rates to all laborers and mechanics on construction projects in excess of $2,000. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall apply if **the Authority** is performing **Utility Adjustment Construction Work**. **Utility** and the **Authority** acknowledge and agree that the **Davis-Bacon Act** shall not apply if any party other than the **Authority** is performing **Utility Adjustment Construction Work**.

b. The **Contract Work Hours and Safety Standards Act**, which requires time and one-half pay for overtime hours worked in excess of forty hours in any workweek.

c. The **Copeland Act** (Anti-Kickback Act), which prohibits employers from inducing an employee to give up any part of compensation to which he or she is entitled.

Section 13.19 CIVIL RIGHTS OBLIGATIONS. Utility shall comply with the following, federal non-discrimination requirements:

a. Title VI of the **Civil Rights Act of 1964**, which prohibits discrimination based on race, color, and national origin, including Limited English Proficiency ("LEP").

b. Section 504 of the **Rehabilitation Act of 1973**, which prohibits discrimination against persons with disabilities.

c. The **Age Discrimination Act of 1975**, which prohibits age discrimination.

d. Section 13 of the **Federal Water Pollution Control Act Amendments of 1972**, which prohibits discrimination on the basis of sex.

e. 40 CFR Part 7, as it relates to the foregoing.

f. **Executive Order No. 11246**.

Section 13.20 CERTIFICATION. **Utility** shall complete and submit to the **Authority**, the federal certification form regarding civil rights, which is attached as **Exhibit D** to this **Agreement**.

Section 13.21 TERMINATION. This **Agreement** may be terminated by mutual agreement of the **Parties** or as otherwise provided herein. If this **Agreement** is terminated, Section 12.03 ("Nullification After Costs Incurred") applies to allow the **Utility** the right to recover its costs.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the **Parties** executed this **Agreement** on the date first written above.

AUTHORITY:

Metro Flood Diversion Authority

_____
Joel Paulsen, Executive Director

_____
Chad Peterson, Chair

ATTEST:

_____
Dawn Lindblom, Executive Assistant

UTILITY:

City of Fargo, North Dakota

By: _____

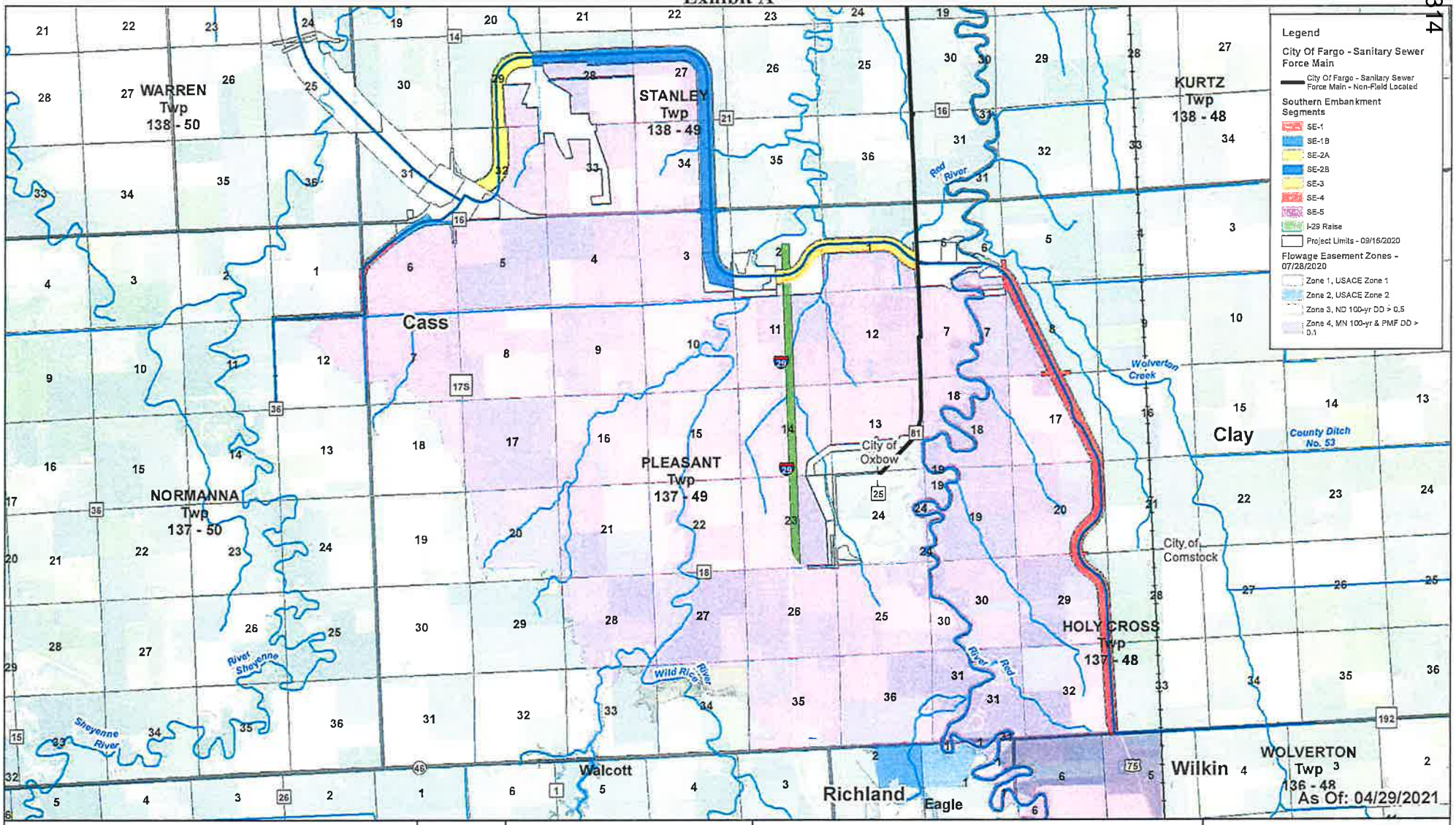
Its: _____

ATTEST:

By: _____

Its: _____

Exhibit A



CITY OF FARGO - SANITARY SEWER FORCE MAIN
FLOWAGE EASEMENT AREA
FM AREA DIVERSION PROJECT

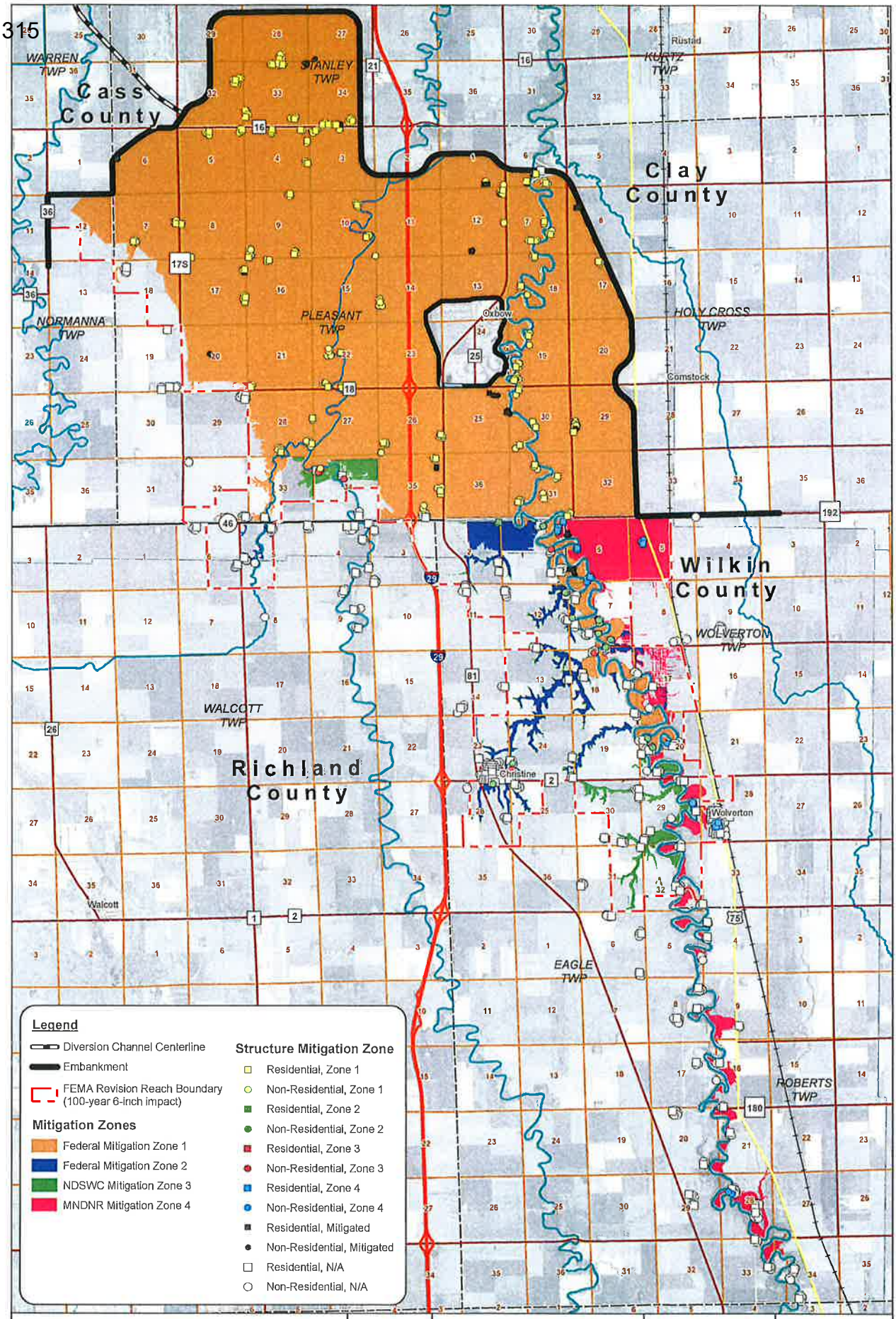
N W E S

0 0.5 1 2 Miles
1 in = 1 miles

Data Collection & Field Locates
Diversion Channel – 2016 & Prior
ND Southern Embankment – 2019
MN Southern Embankment – Not Field Located
I-29 Corridor - 2016 & Prior

FM AREA DIVERSION PROJECT

Exhibit B



FM AREA DIVERSION PROJECT
UPSTREAM MITIGATION AREA & MITIGATION ZONES

Exhibit C

MEMORANDUM FOR RECORD

SUBJECT:
Fargo-Moorhead Metropolitan (FMM) Area Southern Embankment - MFR-023, Utility Guidelines for the Southern Embankment

1. REFERENCES

a. USACE. Engineering Manual 1110-2-2902 *Conduits, Culverts and Pipes*. 22 May 2020.

b. USACE. Engineering Pamphlet No. 1110-2-18, *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures*. 1 May 2019.

c. ANSI/IEEE C2 – National Electric Safety Code.

2. PURPOSE

Requirements for pipelines[1] and other utility lines crossing the dam are primarily defined in References under paragraph 1. As noted in Chapter 2 of Reference 1a, internal erosion accounts for nearly half of all embankment dam failures with many of those failures occurring along pipelines. These potential failure modes are also discussed at length in Chapter 2 of Ref 1a. Understanding how these failures occur and the risks associated with these failures is key in designing the proposed utility crossings and was the basis of this MFR to minimize risks to the dam and allow the dam to perform as intended.

Ideally, all utilities would be relocated around the Fargo-Moorhead Metropolitan Area (FMM) Southern Embankment (SE) Project and would not cross the dam embankment or be placed within the Project work limits. However, given the length of the Project, (21 miles of dam), utilities will need to cross the line of the protection. Therefore, these guidelines will aid impacted utility owners and the Non-Federal Sponsor (NFS) in developing an approved utility relocation plan. These guidelines are general; each proposed utility relocation within the SE Project work limits shall be reviewed by the United States Army Corps of Engineers (USACE) on a case-by-case basis.

3. PROJECT DESCRIPTION

The FMM SE Project is a "dry dam" consisting of a 21-mile long earthen dam embankment and three gated structures. The SE Project will be constructed to meet USACE dam safety criteria and is to be built under several contracts spanning multiple years. The three gated structures are located at the inlet to the diversion channel near the intersection of Cass County Road 16 (CR

[1] Conduits, pipes, and culverts that convey fluids or gases, or serve as encasements for utility lines, or intercept seepage.

16) and Cass County Road 17 (CR 17) south of Horace, North Dakota; at the Wild Rice River; and at the Red River of the North. These three structures are referred to as the Diversion Inlet Structure (DIS), Wild Rice River Structure (WRRS), and Red River Structure (RRS), respectively.

4. EXISTING UTILITY REMOVAL AND ABANDONMENT

In general, existing utilities within the SE Project work limits and/or that cross the proposed dam embankment alignment shall be removed and or abandoned prior to the USACE issuing a notice to proceed for an awarded construction contract.

Existing utility lines may remain in place until the relocated utility becomes operational or may be temporarily relocated provided its design is coordinated in line with the USACE design and construction schedule. Temporary utility relocations shall be coordinated with the USACE prior to the SE Project 65% plans and specifications and may be placed within the SE Project work limits.

4.1. Overhead Utilities

In general, overhead utility lines and poles shall be removed from the SE Project work limits by the responsible utility owner prior to construction. Above ground appurtenances, utility pedestals and boxes, or any other utility related infrastructure shall also be removed by the utility owner prior to award of the USACE construction contract. Existing overhead power may be allowed to stay in place based upon approval from the USACE.

4.2. Underground Utilities

Responsible utility companies shall disconnect, cap, and abandon existing underground utility lines located within the SE Project work limits. Abandoned underground utility lines will be removed as necessary by the USACE construction contractor.

Any remaining abandoned underground utility lines, abandoned above ground utility lines, and any related utility infrastructure within the SE Project work limits shall be described and listed with enough detail to include as part of the SE Project 65% plans and specifications ahead of contract award.

5. PROPOSED UTILITY CROSSINGS OF THE DAM EMBANKMENT

The paragraphs below provide the general guidance for utilities crossing the FMM SE Project.

5.1. Alignment and Utility Corridor

Utility owners shall develop a plan for relocation of utilities (electric, water, sewer, communication, gas, etc.) that cross or lie within the SE Project work limits. Utility companies shall submit proposed utility relocation plans to the NFS and USACE for review and comment

prior to utility relocation construction. The number of utility crossing locations shall be minimized and the use of utility corridors where multiple utilities cross in the same general location is preferred. Final crossing location and orientation relative to the SE Project alignment shall be approved by the NFS and USACE during SE Project design stages.

Wherever possible, the utilities shall be rerouted to one of the nearest seven proposed utility corridors provided in Table 1 and Figure 1 below.

Table 1: List of Utility Corridors.

ID	Location	Description
1	Diversion Inlet Structure	Shoulder of County Road 16
2	45th Street S	Shoulder of 45th Street S
3	County Road 16	Shoulder of County Road 16
4	Wild Rice River Structure	173rd Ave SE access ramp to Dam
5	Red River Structure	Roadway shoulder of County Road 81
6	Comstock, MN	Roadway shoulder of 160th Ave S (County Road 2)
7	HWY 75 & 100th Street Intersection	Roadway shoulder of U.S. Highway (HWY 75)

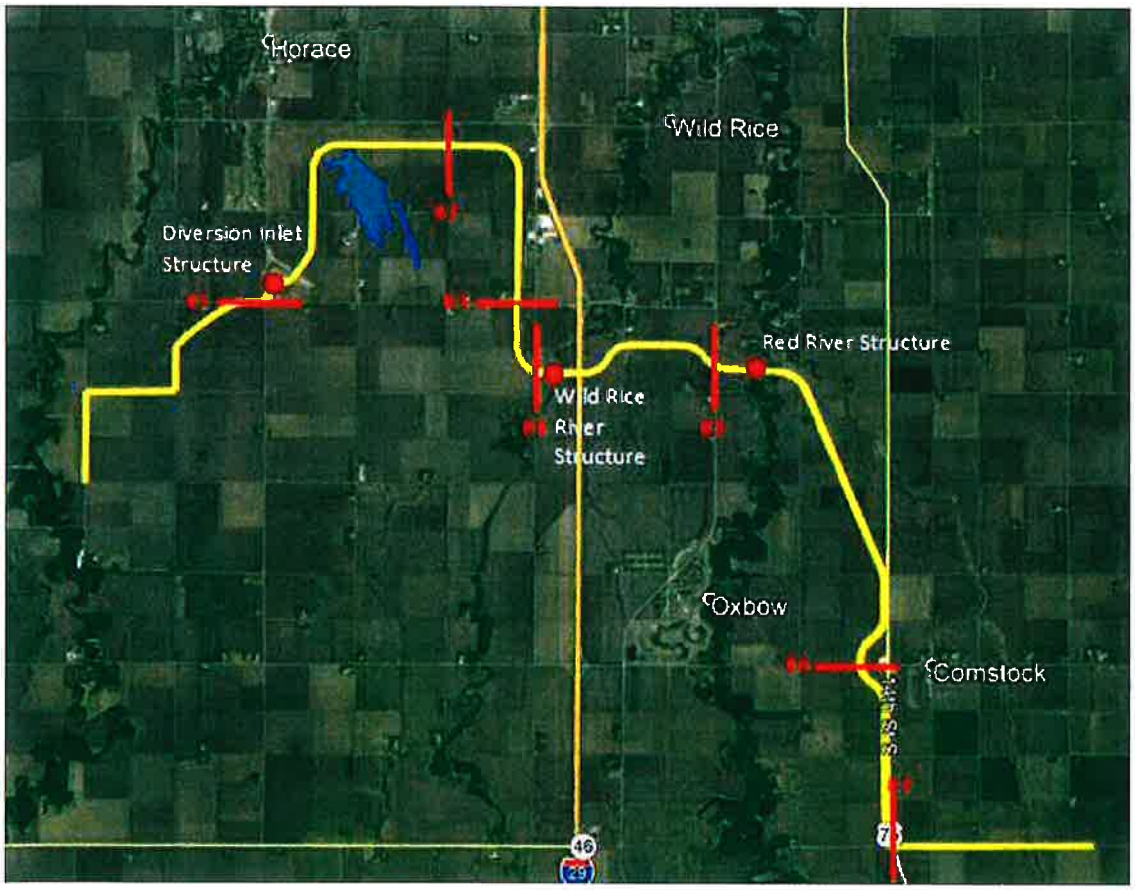


Figure 1: Locations of the utility corridors along the FMM Southern Embankment Project

5.2. Overhead Utilities

Poles, guy wires, and anchors shall be located 25 feet beyond the daylight of the SE Project borrow and local drainage ditches. Overhead work clearance requirements for dam construction shall be determined by Table 232-1 of Ref 1c, and dam embankments shall be considered "road, streets, and other areas subject to truck traffic," as the dam will be regularly traversed for operation, maintenance, repair, rehabilitation, and emergency operations. Clearance distances shall be selected per voltage levels and the type of cable, conductor, or wire. Section 23 and sections C and D of Ref 1c have methods for calculating the required clearances for routing electrical lines with voltages exceeding 22 kV.

5.3. In-Ground Utilities Crossing the Dam Embankment

Utilities crossing the dam embankment shall be designed according to Ref 1a, as well as the guidance provided below. These guidelines apply to the portion of the utility located within the dam embankment footprint and within the SE Project work limits.

5.3.1. Up and Over Dam Embankment Crossing

Proposed utility crossings above the allowable crossing elevation of 925 feet (NAVD88) will be evaluated on a case by case basis, and drawings/calculations shall be submitted to fully document the design. The following are provided as guidelines:

(1) Proposed utility crossings shall be aligned to cross as close to perpendicular as possible to the dam embankment centerline at the approved utility corridor crossing. Variations to the crossing angle may be dictated by field conditions and the location of connecting utilities. If possible, crossings shall be located where the existing ground is at its highest elevation. Final crossing location and orientation relative to the dam embankment alignment shall be approved by the NFS and USACE during SE Project design stages.

(2) In general, non-pipeline utilities (Cable TV, Telecommunications and Underground Power lines) shall cross up and over the top of the dam embankment at an elevation above 925 feet (NAVD88). This elevation includes the 1.5 feet of expected settlement for most of the dam embankment reaches. Calculations are required to show that each utility line has adequate strength/flexibility to withstand the expected loading and settlement.

(3) For pipelines that need to be protected from freezing (e.g. water lines and sanitary sewer force mains), additional dam embankment fill will be required to meet local requirements for 10 feet minimum cover. Earthen fill is the preferred alternative for frost protection, as it is more reliable than insulation.

(4) Selecting the most appropriate pipe material for a specific environment is an essential step in reducing the risk associated with the long-term performance of a pipe. A list of applicable pipe materials by function along with potential concerns for each pipe function, is provided in Table 3-2 in Ref 1a.

(5) Controlled Low-Strength Material (CLSM) backfill must be used to encapsulate pipes through its horizontal alignment when trenched within/through the crest of the dam to reduce the chance of seepage along or into the pipe. See Figure 5-40 of Ref 1a.

For pressurized utilities, the following guidelines also apply:

(6) Pipeline material and joints shall be pressure rated to withstand all fluid pressures that may be encountered. Recommended viable pipe materials by pipe function are listed in Table 3-2 of Ref 1a.

(7) Pipelines shall be evaluated for the need for air-release, air vacuum and combination valves at the crest of the dam embankment. If needed, the valves shall be adequately protected from frost.

(8) Pipe bends shall have appropriately designed thrust restraints. See Section 5.5.13 of Ref 1a.

(9) Calculations are required to show that each utility line has adequate strength and flexibility to withstand the expected loading and settlement.

(10) If manholes are required for access to rapid closure valves and testing access points, watertight sealed manholes shall be located a minimum of 25 feet outside the upstream and downstream dam embankment toes.

5.3.2. Under Dam Embankment Crossing

Utilities crossing under the dam embankment shall be designed according to Ref 1a, as well as the guidance provided below. These crossings will also be evaluated on a case by case basis, and calculations shall be submitted to fully document the design. There are additional factors that must be considered and addressed in a site-specific engineering evaluation before any such crossing would be approved. Chapter 5 of Ref 1a discusses these factors and concerns. Pressure pipelines are of particular concern because of the damage that can occur to the dam embankment if a line fails in the foundation of the dam embankment. The guidelines in Paragraph 5.3.1 above will apply to crossings under the dam embankment as well as the following additional guidelines.

(1) If open-cut methods are utilized, the crown of the pipeline must be at least 3 feet

below the bottom of the dam inspection trench and bottom of borrow/drainage ditches associated with the SE Project. This guideline serves to reduce the chance of damaging the utility during construction and/or during future maintenance activities. Utilities susceptible to freezing shall be located a minimum of 10 feet below the ditches or as required by local code.

(2) If open cut is utilized, the trench shall extend under and 20 feet beyond the proposed dam embankment prism toes. Topsoil shall be stripped from the trench area and set aside separate from the excavated trench material. The utility pipeline will be required to be encased in CLSM (specification attached). The new pipeline shall be placed on supports to allow the CLSM to flow beneath the pipe and completely fill the pipe haunches. See Sections 5.5.7 and 5.5.18.1. of Ref 1a. Supports shall be placed from L/4 to L/5 from the pipe ends, where L is the pipe segment length. See Section 5.5 in Ref 1a for further detail. CLSM shall be placed in the trench to 1 foot above the crown of the pipe. The remaining trench shall be backfilled with compacted impervious fill from material excavated from the trench, excluding topsoil. Fill shall not be placed on any subgrade that is wet, muddy, frozen, containing frost, or covered with snow. Trenches shall be backfilled in maximum 12-inch (uncompacted) layers and compacted to a density of at least 95-percent of the maximum density obtained by standard proctor (ASTM D698). Fill shall be within the limits of 3 percentage points above the optimum and 1 percentage point below the optimum moisture content of the standard proctor as determined by field moisture density tests. Field moisture density tests shall be either by nuclear method (ASTM D6938) or the rubber balloon method (ASTM D2167). Testing frequency shall be at least one test per 250 lineal foot, for each lift.

(3) If horizontal directional drilling is utilized, it shall be accomplished pursuant to Section 5.6 of Ref 1a and the attached "Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling", June 2002, and the St. Paul District's "Guidance Pertaining to Horizontal Directional Drilling Under a Flood Barrier/Channel." The pipe entry and exit locations (pits) must be located so that they are a distance of at least 20 times the embankment height or 300 feet (whichever is greater) from the embankment centerline.

(4) Utility relocation design shall include watertight sealed manholes on both sides of the dam embankment for access to rapid closure valves (see Section 5.5 below), regular operation and maintenance activities, and to facilitate recurring inspections of pressurized utilities passing under the dam embankment. Watertight sealed manholes shall be located a minimum of 25 feet outside the upstream and downstream embankment toes.

5.4. Casing for Utility Lines

(1) All pressurized utility lines (sewer, water, and gas) crossing under the dam embankment shall be cased. The use of casing pipe should also be considered for other utility crossings.

(2) USACE recommends the use of HDPE or steel pipe for casing pipe material. All casing specifications shall be submitted to USACE for review and comment prior to installation.

(3) In general, if horizontal directional drilling is utilized casing pipe material shall be limited to one that can be joined together continuously, while maintaining sufficient strength to resist the high tensile stresses imposed during the pullback operation.

(4) Casing shall extend a minimum of 20 feet beyond the proposed dam embankment prism toes if open cut method is utilized. If horizontal directional drilling is utilized casing pipe will extend from entry to exit pit.

(5) The annular space between the casing and the carrier pipe must be grouted and sealed under the dam embankment prism and extend a minimum of 20 feet beyond the dam embankment prism toes to reduce the likelihood of future seepage or settlement related issues. The design documentation for the grouting must include calculations for the expected volume of grout needed to fill the annular space.

5.5. Rapid Closure Valves

All pressurized pipelines crossing above or below the dam embankment shall have positive shut-off valves installed on either side of the dam embankment. The purpose of the valves is to provide pipeline isolation in the event of leakage, rupture, repairs, or relocation. All pressurized pipes crossing the dam must be designed in a way that allows rapid closure in the event of a rupture to prevent gas or fluid from escaping within or beneath the dam embankment causing internal erosion; and to prevent backflow of floodwater into the benefitted area. The rapid closure valves shall be located a minimum of 25 feet beyond the toes of the dam embankment. If a utility company wants to relocate valves outside of SE Project limits, the utility company must submit a detailed plan with justification to USACE. USACE will review the plan and provide its decision on whether or not to grant a variance. Final valve type used shall be determined on a case by case basis.

5.6. Non-Pipeline Utility Crossings

Cable TV, Telecommunications and Underground Power lines are typically trenched into the ground at depths ranging from 3 to 4 feet below the ground surface. For non-pipeline utilities that will be relocated up and over the dam embankment, the utilities shall be relocated in the dam embankment above the allowable crossing elevation of 925 feet (NAVD 88).

When crossing underneath the dam embankment, the non-pipeline utility may be horizontally directionally drilled pursuant to Paragraph 5.3.2 (3). Any open annular space in the casing pipe must be grouted or filled, as noted in paragraph 5.4 (5) above.

6. UTILITY RELOCATIONS NOT CROSSING THE DAM EMBANKMENT BUT WITHIN PROJECT WORK LIMTIS

Utility relocations within the SE Project work limits, but not crossing within the dam embankment or located underneath the dam embankment prism, shall be designed to meet all federal, state, and local requirements. Relocations shall be designed to withstand heavy loading from construction equipment and shall meet minimum frost protection depths as required. Consideration shall be given to prevent excavation of the dam embankment if the utility is required to be replaced or repaired. Utilities running parallel to the SE Project alignment must be located a minimum of 25 feet beyond the daylight of the SE Project borrow and local drainage ditches.

Existing utilities running parallel to the SE Project alignment and located within 25 feet of the daylight of the SE Project borrow and local drainage ditches will be evaluated on a case-by-case basis. The NFS and USACE will make a determination if the utility may remain in place.

7. INSPECTIONS

7.1. Acceptance Testing and Inspection

Pipelines crossing the dam embankment will require acceptance testing as described in Section 5.8 of Ref 1a following standards and guidance for pipe testing per Table 5-4 of Ref 1a. USACE requires that each joint be tested hydrostatically to determine whether it exceeds the maximum joint leakage specified by the pipe's applicable ASTM. Utility companies must submit a plan that outlines their proposed testing. Specifications shall be written to require testing after installation.

7.2. Post-Construction Inspection

A post-construction inspection of pipes within the inspection limits of the dam as determined in Section 6.3 of Ref 1a must be performed no sooner than 30 days after completion of the project to assess backfilling, grading, paving, placement of concrete structures, etc. See Section 5.8.3 of Ref 1a.

7.3. Recurring Inspections

Pipes must be inspected, and their conditions assessed on a recurring basis so that any potential impact to the integrity of a USACE dam can be evaluated regularly. Water distribution and sewer force main testing must include in-line inspection, hydrostatic pressure testing, direct assessment or other technology that is demonstrated to provide an equivalent understanding of the condition

of the pipe. Natural gas testing must include internal inspection tools, pressure tests, or direct assessment to address threats of external corrosion, internal corrosion and stress corrosion cracking; or other inspection technology that is demonstrated to provide an equivalent understanding of the condition of the pipe. Description of inspection methods and design of pipeline to accommodate recurring inspections shall be included in the design documentation.

Some third-party pipes/conduits serve as casings for utilities (e.g., electric, fiber optic) and will cross the dam within a larger casing pipe. Neither the utility conduit nor its larger casing pipe will require regular inspections provided these are designed in accordance with Sections 5.4 (4), 5.4 (5) and 5.6 above.

8. RESPONSIBILITIES

Per the Project Partnership Agreement (PPA), the NFS is required to perform relocations, which includes utilities. The NFS is thus responsible for:

(1) Coordination with utility owners impacted by the proposed SE Project.
(2) Development of a schedule to implement the relocations which includes at a minimum design, review, and construction.
(3) Hold coordination meetings as needed during the design of relocations.
(4) Development of draft and final demolition and relocation plans and design documentation that will be submitted to the USACE for review and comment, and inclusion into plans and specifications.
(5) Evaluate USACE comments and coordinate with USACE reviewers to close out comments.
(6) Depending on the type and location of proposed utilities within the Project work limits, some relocations may need to be constructed prior to dam embankment construction. For utility relocations that will need to be completed prior to the dam embankment construction, final approved relocation plans must be submitted to the appropriate USACE design team no later than 30 days prior to the 65% dam embankment design package submittal date.
(7) Utility relocation plans shall be transmitted to the USACE Technical Lead.
(8) Provide construction oversight of utility relocations and abandonments within the Southern Embankment Project footprint. Construction oversight shall be administered by a professional engineer. Construction reporting and documentation shall be in accordance with Section 5.9 of Ref 1a.
(9) Facilitating recurring inspections of pipelines that are within the SE Project work limits. Schedule for recurring inspections must be coordinated with the Utility companies and USACE. All inspection reports shall be submitted to USACE.
(10) Future utility relocations and coordination of new utilities after SE Project completion shall be in accordance with the SE Operations and Maintenance manual and pursuant

to CFR 33 USC 408.

The USACE shall be responsible for:

(1) Participation in coordination meetings.
(2) Incorporating demolition and relocation plans into the dam embankment design packages, if applicable.
(3) Timely review of draft and final demolition and relocation plans during the 65% and 95% dam embankment design packages. These will be reviewed with the dam embankment design packages in accordance with the FMM SE Project review plan.
(4) For utilities to be relocated under the dam embankment prior to its construction, the USACE shall have 14 days to review the utility relocation documents per submittal. All comments shall be submitted in writing to the NFS and be routed through the USACE Technical Lead. Final utility relocation plans will require written approval from the USACE Design Branch chief prior to construction.
(5) Utilize construction reporting and documentation for all utilities in the dam foundation for creation of the foundation report for the Southern Embankment.
(6) Evaluate inspection reports from the NFS to assess the threat the pipe may represent to the structural integrity or operational adequacy of the SE Project, and ensure any recommended actions are communicated to the utility owner through the NFS.

9. DOCUMENTATION REQUIREMENTS

The section below contains the documentation requirements for utilities that are within the SE Project work limits.

9.1. DESIGN SUBMITTAL REQUIREMENTS

The NFS is required to provide submittals of their design documentation, plans, specifications, and all other supporting information for all utility relocations to the USACE for review and acceptance. At a minimum, two submittals shall be provided to the USACE for review. The first review will be a draft submittal that includes, at a minimum, sketches or relocation plans and text defining the general proposed plan. This review will be submitted to the USACE after the dam embankment's 35% project review but prior to the 65% review. The final utility submittal will include the fully developed design and relocation plan, drawings, specifications, design documentation including recurring inspection methods and access points as well as calculations for the expected volume of grout needed to fill the annular spaces, and all other supporting information, etc. This will be submitted to the USACE for approval after the SE Project's 95% review, but prior to the SE Project's final sign off. However, for utilities that will be relocated under the dam embankment prior to its construction, NFS and USACE approval must be obtained before the final ROW drawings are completed for the SE Project to ensure

adequate lands are acquired for the project. Coordinate with the Technical Lead to determine the final ROW submittal date.

9.2. MAINTENANCE AND ABANDONMENT PLAN

The NFS and the utility owners shall prepare an operation and maintenance agreement that at a minimum describes the roles and responsibility of each party. Responsible utility owners shall also prepare a maintenance and abandonment plan for all utilities located within the work limits of the SE Project. The plan shall address applicable facility maintenance, periodic valve testing, leakage, repair (if applicable), and abandonment.

9.3. POST CONSTRUCTION SUBMITTAL REQUIREMENTS

The NFS in coordination with the utility owners is required to provide construction reporting to the USACE in accordance with Section 5.9 of Ref 1a and the following:

(1) Acceptance testing documentation and inspection records as described in Section 5.8 of Ref 1a, including standard proctor and field moisture density results.
(2) Pipe inspection schedule and maintenance plan for future recurring inspections.
(3) Design documentation that includes calculations for the expected volume of grout needed to fill the annular space.
(4) Post-Construction Report that shows the actual volume of grout used for filling the annular space. This will include documentation that is quantifiable and verifies that the annular space in the pipe has been filled.
(5) As-Built Drawings: Submit As-Built drawings for the complete utility line relocation showing complete detail, including trench dimensions, pipe profile, pipe alignment, valve locations, connection box locations, manholes and all other pertinent as-built information.
(6) As-Built Surveys (see requirements listed in AS-BUILT REQUIREMENTS paragraph).

10. UTILITY MARKERS

Crossing identification and markings will be required for each utility that is within the SE Project work limits. Color coded fiberglass service line marker posts shall be provided for all underground utilities at each crossing point on both sides of the embankment. Markers (Length 72 in; width 1 in.) shall identify service lines, valves, and underground property. Marker posts shall be located 50 feet from the toe of the dam embankment.

Additionally, all piping shall be provided with tracer wire or other applicable passive marking system to facilitate utility location by field personnel for future maintenance and repair. For trenched pipe, the tracer wire shall be installed in the trench at a bury depth recommended by the

manufacturer. For directionally drilled pipes, tracer wire shall be installed along the as-built pipe alignment at a bury depth recommended by the manufacturer.

Above-ground signing shall be included at each crossing with information including project stationing at pipe crossing, top of pipe elevation (including datum), pipe diameter, products that are carried in the pipe, and pipe owner and/or emergency contact.

11. AS BUILT REQUIREMENTS

As-Built plans and As-Built survey data is required for all relocations within the work limits of the SE Project. As-Built drawings shall be submitted in electronic format (drawing set in PDF format and CAD files in a format compatible with Bentley MicroStation). Survey point data (X, Y, Z, description) shall be submitted in ASCII text format. FGDC-compliant metadata files shall be submitted which describes, in general, when the as-built survey was conducted, who conducted the survey, how it was conducted, and the accuracy of the survey data. As-Built drawings and surveys shall be done in the project spatial reference system:

NAD83 (2011), North Dakota State Plane Coordinate System, South Zone
NAVD 88 (GEOID18)
US Survey Feet

12. CONTACT

Any questions concerning this MFR should be directed to Renee McGarvey, PLA, FMM Technical Lead, St. Paul District.

13. SIGNATURES

CSAJKO.WILLIAM.L.1228659599 Digitally signed by CSAJKO.WILLIAM.L.1228659599 Date: 2021.02.17 08:05:14 -06'00'

Terry Williams
Program Manager
Project Management Branch

Kris Bakkegard, P.E.
Director of Engineering
Metro Flood Diversion Authority

SULLY.THOMAS.B.1231345864 Digitally signed by SULLY.THOMAS.B.1231345864 Date: 2021.02.16 17:06:52 -06'00'

Tom Sully, P.E.
Branch Chief
Design Branch

Chris Behling, P.E.
Branch Chief
Geology and Geotech Branch

Digitally signed by Michael J. Bart, PE
Date: 2021.02.24 07:09:19 -06'00'

Michael Bart, P.E.
Chief of Engineering and Construction
Engineering and Construction Division

ATTACHMENTS

1. Guidance Pertaining to Horizontal Directional Drilling Under a Flood Barrier/Channel
2. Draft Controlled Low-Strength Material (CLSM) Specification
3. Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling.

ATTACHMENT 1

Guidance Pertaining to Horizontal Directional Drilling Under a Flood Barrier/Channel

GUIDANCE
Pertaining to
Horizontal Directional Drilling Under a Flood Barrier/Channel

The following information and guidance pertains to horizontal directional drilling (HDD) under an engineered flood barrier (i.e floodwall, levee embankment, diversion channel).

The two primary concerns with horizontal directional drilling (HDD) beneath a levee or floodwall are:

1. Hydrofracturing (drilling fluid pressure exceeding the tensile strength of the soil) the foundation soils beneath the flood barrier during drilling operations.

2. Development of a preferential seepage path along the pipeline/utility after installation.

Generally, the COE would require the following information in the permit application for any utilities installed by HDD that pass beneath a flood barrier.

1. Proposed drill path alignment (both plan and profile views).

2. Location of entry and exit points.

3. Proposed depth of cover.

4. Diameter of the borehole, diameter of pipe and type of pipe to be installed, if used, or diameter of utility.

5. Proposed method to fill annulus.

6. Location, elevations, and clearances of all utility crossings and structures.

Based on our recent experience, we feel comfortable with the following recommendations/guidelines:

- Allow the Contractor to proceed without actively monitoring the drill pressures. Suggest that only fresh drilling mud be used. It may not be necessary to insist on this provision depending on the length of flood barrier to be traversed, however it will be easier to maintain a proper viscosity if clean mud is used.

- If "mud motor" HDD technology is used, hold the density of the drilling fluid as close as possible to 8.4 lbs/gallon (or 45seconds/quart in a Marsh Funnel).

- Bentonite can be used to fill the annulus.

- Generally, depth of burial should be at least 10 feet below grade where the utility passes under the flood barrier.

- Fluid jetting methods should not be used as a means of cutting beneath a flood protection project.

- The Contractor will be responsible for repairing any soil fracturing, drilling fluid reaching the surface, etc. as well as any slope failure resulting from the drilling process. The Contractor should note any spots where fluid loss occurs, and the COE should get a record of the amount of fluid loss as well as the location.

- Prior to commencing, the Contractor should explain their method for maintaining directional control during drilling operations. In other words, how will he/she verify where the bit is horizontally and vertically so that it does not accidentally wander beneath the levee foundation any more than absolutely necessary?

- The Contractor should provide an "as-built" drawing upon completion of the directional drilling and installation of the line. This drawing should include alignment & profile data.

- It should be plainly stated that any foundation or flood barrier damage resulting from the directional drilling will be repaired by the Contractor to City/Gov't. specifications at Contractor expense.

- The Contractor should be informed that the suspension of the requirement to actively monitor downhole pressures does not relieve them of the ultimate responsibility of leaving the flood barrier foundation in the same condition, as it was before the horizontal drilling procedure was undertaken.

ATTACHMENT 2

Draft Controlled Low-Strength Material (CLSM) Specification

SECTION TABLE OF CONTENTS

DIVISION 03 - CONCRETE

SECTION 03 22 70.01 13

CONTROLLED LOW-STRENGTH MATERIAL (CLSM)

04/12

PART 1 GENERAL

1.1 REFERENCES
1.2 DESIGN REQUIREMENTS
1.3 SUBMITTALS

PART 2 PRODUCTS

2.1 MATERIALS
2.1.1 Ready-Mixed Concrete
2.1.1.1 Volumetric Batching and Continuous Mixing
2.1.1.2 On-Site Batching and Mixing
2.1.2 Portland Cement
2.1.3 Pozzolan
2.1.4 Sand
2.1.5 Fluidifier
2.1.6 Water
2.2 MIXING AND TRANSPORTING

PART 3 EXECUTION

3.1 TRENCH PREPARATION
3.2 PLACEMENT
3.2.1 General
3.2.2 Consolidation
3.3 TESTS
3.3.1 General
3.3.2 Inspection Details and Frequency of Testing
3.3.2.1 Flow Consistency
3.3.2.2 Compressive-Strength Specimens
3.3.3 Density
3.3.4 Reports

-- End of Section Table of Contents --

SECTION 03 22 70.01 13

CONTROLLED LOW-STRENGTH MATERIAL (CLSM)
04/12

PART 1 GENERAL

1.1 REFERENCES

All publications referenced shall be the most current version, edition, standard, latest revision, or reapproval unless otherwise stated. The following publications and standards listed below will be referred to only by the basic designation thereafter, and shall form a part of this specification to the extent indicated by the references thereto:

ASTM INTERNATIONAL (ASTM)

ASTM C 33/C 33M	(2011a) Standard Specification for Concrete Aggregates
ASTM C 94	(2011b) Ready-Mixed Concrete
ASTM C 150	(2011) Standard Specification for Portland Cement
ASTM C 220	(1991; R 2009) Standard Specification for Flat Asbestos-Cement Sheets
ASTM C 618	(2008) Coal Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Portland Cement Concrete
ASTM C 685	(2010) Concrete Made by Volumetric Batching and Continuous Mixing
ASTM C 940	(2010a) Expansion and Bleeding of Freshly Mixed Grouts for Preplaced-Aggregate Concrete in the Laboratory
ASTM D 4832	(2010) Preparation and Testing of Controlled Low Strength Material (CLSM) Test Cylinders
ASTM D 5971	(2007) Standard Practice for Sampling Freshly Mixed Controlled Low-Strength Material
ASTM D 6023	(2007) Standard Test Method for Density (Unit Weight), Yield, Cement Content, and Air Content (Gravimetric) of Controlled Low-Strength Material (CLSM)
ASTM D 6103	(2004) Standard Test Method for Flow Consistency of Controlled Low Strength Material (CLSM)

1.2 DESIGN REQUIREMENTS

Controlled Low-Strength Material (CLSM) mixture proportion shall consist of 100 pounds or less of portland cement plus fly ash per cubic yard; pozzolan; sand; water; and a fluidifier, if required to obtain the required slump. The CLSM fill mixture proportion shall have a flow consistency of more than 8 inches. The flow consistency shall be determined in accordance with ASTM D 6103. CLSM fill shall have a compressive strength of 100 psi at 28 days. The compressive strength of the CLSM shall be determined in accordance with ASTM D 4832 after being made and cured in accordance with ASTM D 4832. The mixture proportions shall be reported in accordance with ASTM C 94. If the CLSM is to be placed using a concrete pump, the mixture proportions shall be designed so that it will not segregate in the pump line under pressure or when there is an interruption in flow.

1.3 SUBMITTALS

Government approval is required for submittals with a "G" designation; submittals not having a "G" designation are for information only. When used, a designation following the "G" designation identifies the office that will review the submittal for the Government. Submit the following in accordance with Section 01 33 00 SUBMITTAL PROCEDURES:

SD-01 Data

On-Site Batching and Mixing

Water Reducing

Concrete Mixture Proportions

The Contractor shall submit manufacturer's literature from suppliers which demonstrates compliance with applicable specifications for all equipment and materials.

SD-07 Schedules

Placing

The methods and equipment for transporting, handling, and depositing the CLSM backfill and CLSM fill shall be submitted to the Contracting Officer prior to the first placement.

SD-08 Statements

Concrete Mixture Proportions

CLSM mixture proportions shall be the responsibility of the Contractor and shall be designed in accordance with the criteria in paragraph DESIGN REQUIREMENTS. Ten days prior to placement of CLSM, the Contractor shall submit to the Contracting Officer the mixture proportions that will produce CLSM of the qualities required. Mixture proportions shall include the dry weights of cementitious material(s); and saturated surface-dry weights of the fine aggregate; the quantities, types, and names of admixtures; and quantity of water per cubic yard of concrete. All materials included in the mixture proportions shall be of the same type and from the same source as will be used on the project.

SD-09 Reports

CLSM Mixture Proportions Tests

Applicable test reports shall be submitted to verify that the CLSM mixture proportions selected will produce CLSM of the quality specified. The results of all tests and inspections conducted at the project site shall be reported informally at the end of each shift and in writing weekly and shall be delivered to the Contracting Officer within 3 days after the end of each weekly reporting period.

SD-13 Certificates

Cement

Cementitious Material will be accepted on the basis of a manufacturer's certificate of compliance.

Aggregates

Aggregates will be accepted on the basis of certificate of compliance that the aggregates meet the requirements of the specifications under which it is furnished.

PART 2 PRODUCTS

2.1 MATERIALS

2.1.1 Ready-Mixed Concrete

Ready-mixed concrete shall conform to ASTM C 94, except as otherwise specified.

2.1.1.1 Volumetric Batching and Continuous Mixing

Volumetric batching and continuous mixing shall conform to ASTM C 685.

2.1.1.2 On-Site Batching and Mixing

The Contractor shall have the option of using an on-site batching and mixing facility. The method of measuring materials, batching operation, and mixer shall be submitted for review by the Contracting Officer. On-site plant shall conform to the requirements of either ASTM C 94 or ASTM C 685.

2.1.2 Portland Cement

Portland Cement shall conform to ASTM C 150, Type I or II, low alkali.

2.1.3 Pozzolan

Pozzolan shall be Class F or C fly ash conforming to ASTM C 618.

2.1.4 Sand

Sand shall meet the requirements of fine aggregate of ASTM C 33/C 33M.

2.1.5 Fluidifier

The fluidifier shall give the CLSM fill the following salient characteristics:

a. must have less than 1 percent bleed water in accordance with ASTM C 940

b. have an initial set time of more than 5 hours in accordance with ASTM C 220 modified by using a Ferioli apparatus

c. have a flow consistency equal to or more than 8 inches in accordance with ASTM D 6103

d. have a compressive strength of 100 psi at 28 days in accordance with ASTM D 4832

e. maintain a homogeneous mixture during pumping

1. Quantity of admixture(s) required in the mixture proportion is governed by the salient characteristics specified.

2. The admixture shall be added as directed by the manufacturer, in most cases it added to the CLSM at the job site and mixed for a minimum of 5 minutes at mixing speed.

2.1.6 Water

Water shall be potable water that is fresh, clean, and free from sewage, oil, acid, alkali, salts, or organic matter.

2.2 MIXING AND TRANSPORTING

The CLSM shall be mixed and transported in accordance with ASTM C 94.

PART 3 EXECUTION

3.1 TRENCH PREPARATION

Once the trench has been dug it shall be cleaned of all loose material and debris to the satisfaction of the Contracting Officer before any CLMS fill is placed. The new utility pipeline shall be placed on firm ground at the bottom of the trench and a minimum of 1 foot of CLSM fill shall be placed above the top of the pipeline. The pipeline shall be securely anchored to maintain its position and prevent it from any movement during placement of the CLSM.

3.2 PLACEMENT

3.2.1 General

CLSM placement shall not be permitted when, in the opinion of the Contracting Officer, weather conditions prevent proper placement. When CLSM is mixed and/or transported by a truck mixer, the CLSM shall be delivered to the site of the work and discharge shall be completed within 1-1/2 hours (or 45 minutes when the placing temperature is 85 degrees F or greater unless a retarding admixture is used). The fluidifier shall not be added to the Ready Mix trucks until they have arrived onsite. The fluidifier shall be added to each truck at the proper dosage rate and mixed

for 5 minutes and no more than 15 minutes before it is placed. CLSM shall be conveyed from the mixer to point of placement as rapidly as practicable by methods which prevent segregation or loss of ingredients.

3.2.2 Consolidation

Consolidation of the CLSM will not be required.

3.3 TESTS

3.3.1 General

The individuals who sample and test CLSM as required in this specification shall have demonstrated a knowledge and ability to perform the necessary test procedures equivalent to ACI minimum guidelines for certification of concrete Field Testing Technicians, Grade I.

3.3.2 Inspection Details and Frequency of Testing

3.3.2.1 Flow Consistency

Flow consistency shall be checked once during each shift that CLSM is produced for each class of concrete required. Samples shall be obtained in accordance with ASTM D 5971 and tested in accordance with ASTM D 6103. Whenever a test result is outside the specifications limits, the CLSM shall not be delivered to the placement and an adjustment should be made in the batch weights of water and fine aggregate. The adjustments are to be made so that the water-cement ratio does not exceed that specified in the submitted CLSM mixture proportion.

3.3.2.2 Compressive-Strength Specimens

At least one set of test specimens shall be made each day on CLSM placed during the day or every 10 cubic yards placed. Additional sets of test cylinders shall be made, as directed by the Contracting Officer, when the mixture proportions are changed or when low strengths are detected. A random sampling plan shall be developed by the Contractor and approved by the Contracting Officer prior to the start of construction. The plan shall assure that sampling is accomplished in a completely random and unbiased manner. A set of test specimens for concrete with strength as specified in paragraph DESIGN REQUIREMENTS shall consist of six cylinders, one tested at 7 days, one tested at 14 days, and two tested at 28 days. Two cylinders shall be tested as directed. Test specimens shall be molded and cured in accordance with ASTM D 4832 and tested in accordance with ASTM D 4832. All compressive strength tests shall be reported immediately to the Contracting Officer.

3.3.3 Density

At least one set of test specimens shall be made each day on CLSM placed during the day or every 20 cubic yards placed. A random sampling plan shall be developed by the Contractor and approved by the Contracting Officer prior to the start of construction. The plan shall assure that sampling is accomplished in a completely random and unbiased manner. Test procedures and calculations shall be in accordance with ASTM D 6023.

3.3.4 Reports

The Contractor shall prepare reports of all tests and inspections conducted

at the project site.

-- End of Section --

ATTACHMENT 3

Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling

ERDC/GSL TR-02-9

Geotechnical and Structures Laboratory

US Army Corps of Engineers®
Engineer Research and Development Center

Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling

Carlos A. Latorre, Lillian D. Wakeley, and Patrick J. Conroy

June 2002

Approved for public release; distribution is unlimited.

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June 2002

Guidelines for Installation of Utilities Beneath Corps of Engineers Levees Using Horizontal Directional Drilling

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Contents

Preface iv

1—Introduction 1

Background 1
Horizontal Directional Drilling Method 1
Problem Identification 3
Objectives 3
Potential Benefits 3
Potential Problem 4

2—HDD Guidelines and Specifications 5

Permit Application Submittal 5
Soil Investigations 6
Soil analysis 6
Determination of soil investigations 7
Preconstruction and Site Evaluation 8
Installation Requirements 10
Considerations 11
Permittee/contractor responsibilities 11
Additional Requirements 15
Additional permits 15
Bonding and certification requirements 15
Drilling Operations 16
Equipment setup and site layout 17
Drilling and back-reaming 17
Drilling Fluid - Collection and Disposal Practices 18
Tie-Ins and Connections 19
Alignment and Minimum Separation 19
Break-Away Pulling Head 20
Protective Coatings 21
Site Restoration and Postconstruction Evaluation 21

References 22

Appendix A: Recommended Guidelines for Installation of Pipelines Beneath Levees Using Horizontal Directional Drilling A1

SF 298

Preface

The work documented in this report was performed during May through October 2001 as part of the technology transfer component of the Geotechnical Engineering Research Program (GTERP), specifically in the work unit entitled Applications of Trenchless Technology to Civil Works. Funding for preparation and publication of this report was provided by the U.S. Army Corps of Engineers as part of its ongoing support of civil works research. Mr. Carlos Latorre, U.S. Army Engineer Research and Development Center (ERDC), Geotechnical and Structures Laboratory (GSL), is principal investigator for this work unit. The research team also includes Dr. Lillian D. Wakeley, GTERP Manager (ERDC, GSL), Mr. Patrick J. Conroy, U.S. Army Engineer District (USAED), St. Louis (MVS), and Mrs. Nalini Torres (ERDC, GSL). Mr. Jim Chang, CECW, is GTERP Technical Monitor.

The guidelines and specifications provided in this report are based on work completed previously by Dr. R. David Bennett, formerly GSL, ERDC; and Mr. Joseph M. Morones, State of California, Department of Transportation; and modified with their cooperation by Mr. Latorre. This report was prepared by Messrs. Latorre and Conroy and Dr. Wakeley. The authors gratefully acknowledge technical review of this document by Mr. George Sills, USAED, Vicksburg, Mr. Pete Cali, USAED, New Orleans; and Mr. John Wise, USAED, Fort Worth.

This report was completed at ERDC under the general supervision of Dr. Wakeley, Chief, Engineering Geology and Geophysics Branch, Dr. Robert L. Hall, Chief, Geosciences and Structures Division, GSL, and Dr. Michael J. O'Connor, Director, GSL.

At the time of publication of this report, Dr. James R. Houston was Director of ERDC, and COL John W. Morris III, EN, was Commander and Executive Director.

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1 Introduction

Background

Early methods of installing pipelines and utilities across rivers and streams involved excavation of trenches. After the placement of the pipeline, the trenches were backfilled to protect the pipeline from hazards. These early dredged crossings were generally sited at the channel crossing of the thalweg between bends of the river. Here the river is generally a wide, shallow rectangle. This location is chosen because of its hydraulic stability and the economic limitation of the dredging equipment.

In and across the U.S. Army Engineer Division, Mississippi Valley (MVD), lies the heart of the pipeline transmission network of the United States. Hundreds of individual pipelines traverse from Texas and out of the Gulf of Mexico across the numerous rivers, bayous, and wetlands of Louisiana to service the northeast population centers on the Atlantic coast. Along the leveed banks of the lower Mississippi River, pipeline crossings exist between almost every bendway. The crossings of these earthen flood control structures present a difficult and expensive construction problem resulting from concerns about the integrity of the levee which may be subjected to sliding, piping, and erosion failures.

Horizontal Directional Drilling Method

In the early 1970s, a new process was introduced to install pipelines by use of horizontal directional drilling (HDD) techniques acquired from the oil and gas industry. The method has steadily grown to achieve worldwide acceptance and has been used in over 3,000 installations totaling over 1,288 km (800 miles) of pipelines. Today pipeline installations increasingly rely upon HDD technology as the primary method for crossings of watercourses, wetlands, utility corridors, roads, railroads, shorelines, environmental areas, and urban areas.

The placement of pipelines by the HDD method requires the drilling of a guided pilot bore, generally using a 7.3- to 11.43-cm- (2-7/8- to 4-1/2-in.-) diam drill pipe. At the lead, or downhole, end of the pilot string is a fluid powered cutting tool. The cutting tool is either a drill motor to which a bit is connected or a jet bit with nozzles. Drilling fluid is pumped through the string, and fluid causes the motor to rotate which turns the bit to cut the hole. With jet bits, the velocity from the jet nozzle erodes the hole in front of the drill pipe. Located

behind the drill head is a section of the drill pipe with a small bend or angular deviation. This section, known as a bent sub or bent housing, allows the motor or jet nozzle to be directed. A steering tool is latched onto a locking tool on the drill pipe. In this steering tool are a magnetometer and other devices to determine the azimuth, inclination, and orientation of the tool or tool face. Position determinations are made, and the data from the steering tool are plotted in the field to determine the profile and alignment of the bore. Analysis of this position plot is then used to determine drilling progress and path. At a desired location, the pilot drill pipe exits the ground. The pilot bore is then enlarged by pulling reaming tools back through the bore. Once this operation is completed, the pipeline or conduit is attached to the drill pipe and pulled back through the predrilled bore. This is accomplished as the drill pipe is removed, joint by joint, from the drilled path until the pipeline reaches the ground surface at the entry end of the bore.

One of the primary parameters in horizontal directional drilling is the drilling fluid or mud. The drilling mud is usually comprised of a bentonite and water mixture with the main function to power the downhole cutting tool used to open the bore. Secondary functions of the drilling mud are to serve as a lubricant for the pipeline during installation and, in cases of rock or hard ground bores, to remove cuttings from the bore.

The use of HDD has been restricted, in part, by major misunderstandings of how the HDD process actually functions. It is assumed by many that it is similar to well drilling or tunneling in that an open bore is required. This is true only in hard geologic materials such as rock. The majority of HDD pipeline crossings installed to date have been performed in soft ground comprised chiefly of alluvial deposits of silts, sand, and clay. In these types of soils, the process begins with a small pilot bore from which various cutters are inserted to loosen the soil as it is mixed into a slurry by injection of the drilling mud. Once this slurry pathway has been made large enough, generally 25.4 to 30.5 cm (10 to 12 in.) greater than the diameter of the pipeline, the installation of the pipeline commences by pulling the pipeline back through the soft slurry pathway. Some of the in situ soil and fluid are then compressed into the formation, and the remainder of the soil is actually pumped out of the path.

The information in this report represents some of the experiences of the Corps of Engineer (CE) Districts involving HDD for installation of utilities under levees. The experience of the U.S. Army Engineer District (USAED), St. Louis, in dealing with installation of communications systems was identified as having wide applicability to the Corps. Engineering documentation from two St. Louis District projects, the set of guidelines presented in "Installation of Pipelines Beneath Levees Using Horizontal Directional Drilling" (Staheli et al. 1998), Engineer Manual (EM) 1110-2-1913 (Headquarters, Department of the Army (HQDOA) 2000), and the State of California Department of Transportation (CalTrans) Encroachment Permits, "Guidelines and Specifications for Horizontal Directional Drilling Installations" (Morones 2000), provided the basis for this report. A paper on the subject was presented at the Corps Infrastructure Systems Conference in August 2001.

Problem Identification

Although horizontal directional drilling could offer cost-effective, safe alternatives to installing pipelines with open trenching, the CE has no standard guidelines allowing the installation of pipelines with this construction method. As a result, permitting policies are extremely varied and some districts strictly prohibit the use of this technique. While recommended guidelines for pipeline installation using HDD were developed for use by the CE Districts through this work unit back in 1998, as part of a lengthy and detailed EM, the guidelines were not readily recognized by permitting offices as applicable to the questions they face. Also, there is growing pressure on Corps offices particularly by communications companies to install cables under levees.

Objectives

The objectives are to provide and distribute this information to targeted potential users like the CE District permitting offices and engineers that receive applications from utility companies to install utilities under levees. This report addresses those questions and helps CE offices with the growing pressure they are receiving from private companies to allow them to install cables/pipelines under levees. These guidelines are presented in a quick and organized manner that will provide criteria by which to evaluate proposals (e.g., application review, approving, disapproving, and/or making recommendations) for levee crossings, beneath rivers, and within levee rights-of-way using HDD techniques without endangering the levees; and the use of HDD for pipeline installation in areas where the installation technique might be applicable and capable of providing a tremendous cost savings to the Corps of Engineers and the pipeline industry. These guidelines will also help to demonstrate that, very often, these techniques offer substantial economic and operational advantages over current practices. Last but not least, these guidelines will help us stay involved in the development of this fast and fairly new emerging technology.

Potential Benefits

The pipeline industry would realize a tremendous benefit from the use of HDD in crossing of flood control levees. This benefit would include significant cost reduction in construction and maintenance presently required for levees and adjacent road crossings such as bridges, concrete boxes, earthen cover, and ramps. The use of the technique could also benefit the Corps of Engineers by: (a) eliminating blockage of levee crown from buried pipelines, pipeline bridges, or conduit boxes, (b) eliminating differential settlement imposed on levees by the construction of buried pipelines, pipeline bridges, or conduit boxes, (c) improving the operation and safety of grass cutting and other maintenance equipment on the levees, and (d) reducing risk of rupture of pipelines located above or near ground surface on levee slopes, (e) reducing disruption in urban areas, and (f) providing better public acceptance and increasing environmental consciousness.

Potential Problem

While considering any alteration request, the District's prime objective is to protect the integrity of the flood protection systems. In the case of HDD, designers must be aware and take into account during the design stage the following:

a. Hydrofracture during installation.

b. Preferred seepage path after construction.

To allow third parties to utilize HDD techniques, the District needed methods and processes to prevent these problems from occurring.

2 HDD Guidelines and Specifications

Permit Application Submittal

The permit application package should contain the following information in support of the permit application.

a. Location of entry and exit point.

b. Equipment and pipe layout areas.

c. Proposed drill path alignment (both plan and profile view).

d. Location, elevations, and proposed clearances of all utility crossings and structures.

e. Proposed depth of cover.

f. Soil analysis.

g. Product material (HDPE/steel), length, diameter-wall thickness, reamer diameter.

h. Detailed pipe calculations, confirming ability of product pipe to withstand installation loads, and long-term operational loads.

i. Proposed composition of drilling fluid (based on soil analysis) viscosity and density.

j. Drilling fluid pumping capacity, pressures, and flow rates proposed.

k. State right-of-way lines, property, and other utility right-of-way or easement lines.

l. Elevations.

m. Type of tracking method/system.

n. Survey grid establishment for monitoring ground surface movement (settlement or heave) because of the drilling operation.

o. Contractor's work plan (see page 11 in this document).

All additional permit conditions shall be set forth in the special provisions of the permit.

Table 1 outlines recommended depths for various pipe diameters:

Table 1
Recommended Minimum Depth of Cover[1]

Diameter	Depth of Cover
50 mm (2 in.) to 150 mm (6 in.)	1.2 m (4 ft)
200 mm (8 in.) to 350 mm (14 in.)	1.8 m (6 ft)
375 mm (15 in.) to 600 mm (24 in.)	3.0 m (10 ft)
625 mm (25 in.) to 1,200 mm (48 in.)	4.5 m (15 ft)

[1] These depths do not apply for crossing under flood protection projects.
(Permission to reprint granted by California Department of Transportation, Office of Encroachment Permits, January 10, 2001).

The permittee/contractor shall, prior to and upon completion of the directional drill, establish a Survey Grid Line and provide monitoring.

Upon completion of the work, the permittee shall provide an accurate as-built drawing of the installed pipe.

Soil Investigations

A soil investigation should be undertaken. This investigation must be suitable for the proposed complexity of the installation to confirm ground conditions.

Soil analysis

Common sense must be utilized when requiring the extensiveness of the soil analysis. A soil analysis is required in order to obtain information on the ground conditions that the contractor will encounter during the HDD operation.

If the contractor can go to the project site and complete an excavation with a backhoe to 0.03 m (1 ft) below the proposed depth of the bore, that is a soil investigation. In all cases when an excavation is made in creating an entrance and exit pit for an HDD project, that is also an example of a soil investigation. The HDD process is in itself a continual and extensive soil analysis as the pilot bore is made. As the varying soils and formations are encountered, the drilling slurry will change colors, therefore providing the contractor with continual additional information.

The purpose and intent of the soil analysis is to assist the contractor in developing the proper drilling fluid mixture and to ensure the CE and the Levee Board that the contractor is aware of the conditions that do exist in the area of the proposed project. This prepares the contractor in the event they should encounter a zone of pretectonics and that they would need additives or preventive measures in dealing with inadvertent returns (hydrofractures).

The discretion on the extensiveness of the soil analysis is left to each individual CE District permitting office and/or Levee Board, respectfully, for their respective areas. The HDD inspector/geotechnical engineer plays a large role in assisting the District Permitting Office and Levee Board in making decisions on the extensiveness. Each individual HDD inspector/geotechnical engineer has a general knowledge of the soil conditions in their area of responsibility.

In many circumstances, the soil information has already been prepared, either by the CE District, Levee Board, or by City and County Entities. This information, if available, should be provided to the requesting permittee.

Determination of soil investigations

The CE District Geotechnical Engineer (DGE) should determine the extensiveness of the Soil Investigation to be performed based on the complexity of the HDD operation. DGE may recommend, according to the guidelines listed below, a combination of or modification to the guideline to fit the following respective areas:

a. Projects less than 152 mm (500 ft) in length, where the product or casing is 20 cm (8 in.) or less in diameter.[1]

(1) A field soil sampling investigation to a depth of 0.3 m (1 ft) below the proposed drilling.

(2) Subsurface strata, fill, debris, and material.

b. Projects less than 244 m (800 ft) in length, where the product or casing is 36 cm (14 in.) or less in diameter.[1]

(1) A field soil sampling investigation to a depth of 0.3 m (1 ft) below the proposed drilling.

(2) Subsurface strata, fill, debris, and material.

(3) Particle size distribution (particularly, percent gravel and cobble).

c. Projects where the product or casing is 41 cm (16 in.) or greater in diameter. A geotechnical evaluation by a qualified soil engineer is necessary to determine the following:[1]

---

[1] Does not apply when crossing a flood protection project.

(1) Subsurface strata, fill, debris, and material.

(2) Particle size distribution (particularly percent gravel and cobble).

(3) Cohesion index, internal angle of friction, and soil classification.

(4) Plastic and liquid limits (clays), expansion index (clays), soil density.

(5) Water table levels and soil permeability.

d. Projects where the product or casing is 61 cm (24 in.) or greater in diameter, or when project crosses flood control projects. A geotechnical evaluation by a qualified soil engineer is required to determine the following:

(1) Subsurface strata, fill, debris, and material.

(2) Particle size distribution (particularly, percent gravel and cobble).

(3) Cohesion index, internal angle of friction, and soil classification.

(4) Plastic and liquid limits (clays), expansion index (clays), soil density, and standard penetration tests.

(5) Rock strength, rock joint fracture and orientation, water table levels, and soil permeability.

(6) Areas of suspected and known contamination should also be noted and characterized.

Boreholes or test pits should be undertaken at approximately 75- to 125-m (250- to 410-ft) intervals where a proposed installations greater than 305 m (1,000 ft) in length and parallel to an existing road. Additional boreholes or test pits should be considered if substantial variations in soil conditions are encountered.

Should the soil investigation determine the presence of gravel, cobble, and/or boulders, care should be exercised in the selection of drilling equipment and drilling fluids. In such ground conditions, the use of casing pipes or washover pipes may be required or specialized drilling fluids utilized. Fluid jetting methods used as a means of cutting **should only be considered** where soils have a high cohesion such as stiff clays. Jetting should not be allowed when crossing under a flood protection project.

Preconstruction and Site Evaluation

The following steps should be undertaken by the permittee/contractor in order to ensure safe and efficient construction with minimum interruption of normal, everyday activities at the site:

a. Notify owners of subsurface utilities along and on either side of the proposed drill path of the impending work through USA alert (the one-call program). All utilities along and on either side of the proposed drill path are to be located.

b. Obtain all necessary permits or authorizations to carry construction activities near or across all such buried obstructions.

c. Expose all utility crossings using a hydroexcavation, hand excavation, or other approved method (potholing) to confirm depth.

d. Arrange construction schedule to minimize disruption (e.g., drilling under major highways and/or river crossings).

e. Determine and document the proposed drill path, including horizontal and vertical alignments and location of buried utilities and substructures along the path.

The size of excavations for entrance and exit pits should be of sufficient size to avoid a sudden radius change of the pipe and consequent excessive deformation at these locations. Sizing the pits is a function of the pipe depth, diameter, and material. All pits, over 1.52 m (5 ft) in depth must abide by Occupational, Safety, and Health Administration (OSHA) regulations.

Prior to commencement of the project, the area should be physically walked over and visually inspected by District Geotechnical Engineer, the driller, and members of the Levee Board for potential entry/exit sites. The following should be addressed:

a. When on CE/Levee Board property, it should be established whether or not there is sufficient room at the site for: entrance and exit pits; HDD equipment and its safe unimpeded operation; support vehicles; fusion machines; aligning the pipe to be pulled back in a single continuous operation.

b. Suitability of soil conditions should be established for HDD operations. (The HDD method is ideally suited for soft subsoils such as clays and compacted sands. Subgrade soils consisting of large grain materials like gravel, cobble, and boulders make HDD difficult to use and may contribute to pipe damage.)

c. The site should be checked for evidence of substructures, such as manhole covers, valve box covers, meter boxes, electrical transformers, conduits or drop lines from utility poles, and pavement patches. HDD may be a suitable method in areas where the substructure density is relatively high.

Installation Requirements

The permittee shall ensure that appropriate equipment is provided to facilitate the installation: in particular, the drill rig shall have sufficient pulling capacity to meet the required installation loads determined by the detailed pipe calculations. The drill rig should have the ability to provide pull loads, push loads, torque, and the permittee shall ensure that they are monitored during the drilling operation. The permittee shall ensure the drill rod can meet the bend radii required for the proposed installation (a general rule of thumb is 100 times, in feet, the diameter of the installed pipe in inches).

During construction, continuous monitoring and plotting of pilot drill progress shall be undertaken. This is necessary to ensure compliance with the proposed installation alignment and allow for the undertaking of appropriate course corrections that would minimize "dog legs," should the bore begin to deviate from the intended bore path. The actual path of the pilot hole should be plotted against the design drill path.

Monitoring shall be accomplished by manual plotting based on location and depth readings provided by the onboard locating/tracking system or by hand-held walkover tracking systems. These readings map the bore path based on information provided by the locating/tracking system. Readings or plot points shall be undertaken on every drill rod.

For installations where tight control of alignment and grade is required, readings shall be undertaken every 1.0 to 1.5 m (3 to 5 ft). At the completion of the bore, an as-built drawing shall be provided. Prior to commencement of a directional drilling operation, proper calibration of the sonde equipment shall be undertaken.

Monitoring of the drilling fluids such as the pumping rate, pressures at the drill rig and pressures in the annular space behind the drill bit (when drilling under flood control projects), viscosity, and density during the pilot bore, back reaming, and/or pipe installation stages shall be undertaken to ensure adequate removal of soil cuttings and the stability of the borehole is maintained. Excess drilling fluids shall be contained at entry and exit points until recycled or removed from the site. Entry and exit pits should be of sufficient size to contain the expected return of drilling fluids and soil cuttings.

The permittee shall ensure that all drilling fluids are disposed of in a manner acceptable to the appropriate local, state, or federal regulatory agencies. When drilling in contaminated ground, the drilling fluid shall be tested for contamination and disposed of appropriately. Restoration of damage to a levee caused by hydrofracture or any other aspect of the directional drilling operation shall be the responsibility of the permittee. Plans for all restoration or repair work shall be submitted for approval by the Levee District or Corps of Engineers District.

To minimize heaving during pullback, the pullback rate shall be determined by which maximizes the removal of soil cuttings and which minimizes compaction of the ground surrounding the borehole. The pullback rate shall also

minimize overcutting of the borehole during the back reaming operation to ensure that excessive voids are not created and result in postinstallation settlement.

The permittee shall, prior to and upon completion of the directional drill, establish a Survey Grid Line and provide monitoring as outlined in their submitted detailed monitoring plan. Subsurface monitoring points shall be established along the HDD centerline and along any flood protection project that the HDD crosses under to provide early indications of settlement, since large voids may not materialize during drilling as a result of pavement bridging.

Should settlement occur, all repairs would be the responsibility of the permittee. To prevent future settlement should the drilling operation be unsuccessful, the permittee shall ensure the backfill of any void(s) with grout or backfilled by other means. Plans for all restoration or repair work shall be submitted for approval.

Considerations

The following considerations must be taken into account.

a. *Different ground conditions:* The availability of adequate geotechnical information is invaluable in underground construction; it acts to reduce the risk born by the permittee/contractor. However, even in the presence of good geotechnical data, unexpected ground conditions may be encountered. The Contractor's plan should describe the response to different ground conditions.

b. *Turbidity of water and inadvertent returns:* During construction, events like drill bit lockup or being off the design drill path may lead to work stoppage. The permittee/contractor should offer a mechanism to mutually address and mitigate these problems if and when they should arise. For example, contingency plans for containment and disposal of inadvertent returns or hydrofractures.

Permittee/contractor responsibilities

The permittee/contractor should provide the following items: construction plan, site layout plan, project schedule, communication plan, safety procedures, emergency procedures, company experience record, contingencies plan, and drilling fluid management plan.

Construction plan requirements. The permittee shall identify in the construction plan:

a. Location of entry and exit pits.

b. Working areas and their approximate size.

c. Proposed pipe fabrication and layout areas.

d. State right-of-way lines, property lines.

e. Other utility right-of way and easement lines.

f. Pipe material and wall thickness.

g. Location of test pits or boreholes undertaken during the soil investigation.

h. Identify the proposed drilling alignment (both plan and profile view) from entry to exit.

i. Identify all grades and curvature radii.

j. All utilities (both horizontal and vertical).

k. Structures with their clearances from the proposed drill alignment.

l. Confirm the minimum clearance requirements of affected utilities and structures.

m. Required minimum clearances from existing utilities and structures.

n. Diameter of pilot hole, and number and size of prereams/backreams.

o. Access requirements to site (if required).

p. Crew experience.

q. Type of tracking equipment.

Locating and tracking. The permittee shall describe the method of locating and tracking the drillhead during the pilot bore. Systems include walkover, wire-line, or wireline with wire surface grid. The locating and tracking system shall be capable of ensuring the proposed installation can be installed as intended.

Typical walkover sondes have an effective range of 10 to 15 m, depending on the Electro-magnetic properties of the soil and the extent of local magnetic interference. Depending on the profile of the borehole, the driller may lose contact with the sondes over certain sections of the alignment. As much as practically possible, the sonde should maintain contact with the drill bit. If the "blind" section is expected to be too long or in the vicinity of a buried object, the project engineer may specify the use of a wire-line system or a magnetic navigation tool.

The locating and tracking system shall provide the following information:

a. Clock and pitch information.

b. Depth.

c. Beacon temperature.

d. Battery status.

e. Position (x,y).

f. Azimuth: Where direct overhead readings (walkover) are not possible.

Figure 1 shows a universal housing that will work with any drill-string on all HDD rigs. The placement of the sonde should be before the backreamer. This housing can be utilized in the initial pilot bore. After exiting, the cutting head can be removed and the reamer installed. This housing chamber can utilize any of the sonde batteries manufactured, regardless of manufacturer. There is also a 6-cm (2.5 in.) mini-sonde combination available for smaller rigs.

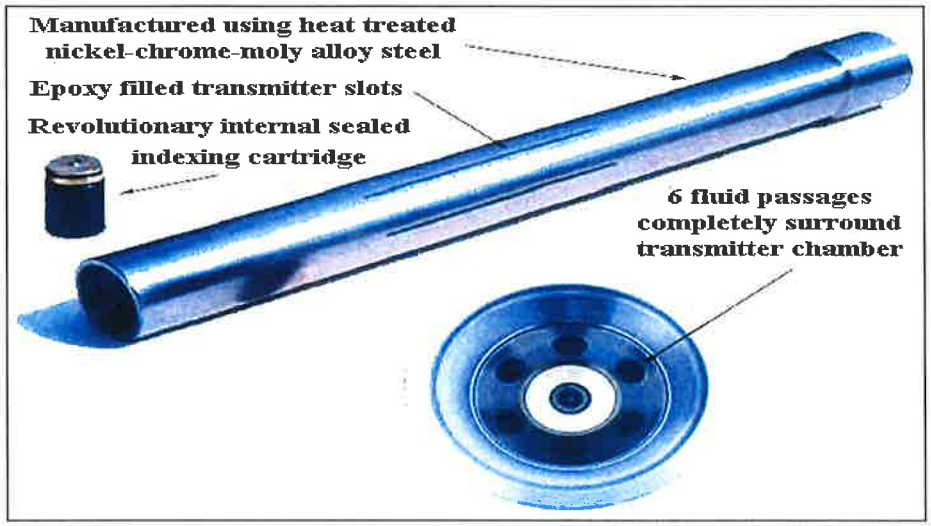

Figure 1. Universal housing for drill-string on HDD rigs (Permission to reprint granted by California Department of Transportation, Office of Encroachment Permits, January 10, 2001)

Drilling fluids management plan. The following information should be provided as part of the drilling fluid management plan. The proposed viscosities for soil transportation to the entry and exit pits are:

a. Pumping capacity and pressures must be estimated.

b. Source of fresh water for mixing the drilling mud must be identified. (Necessary approvals and permits are required for sources such as streams, rivers, ponds, or fire hydrants.)

c. Method of slurry containment must be described and detailed.

d. Method of recycling drilling fluid and spoils (if applicable) must be explained.

e. Method of transporting drilling fluids and spoils offsite must be described.

Drilling fluid pressures in the borehole should not exceed that which can be supported by the foundation soils. Calculation of maximum allowable pressures shall be done for all points along the drill path, taking into account the shear strength of the foundation soils, the depth of the drill path, the bore diameter, and the elevation of the groundwater table. Drilling fluids serve the following functions:

a. Remove cuttings from the bottom of the hole and transport them to the surface.

b. Hold cuttings in suspension when circulation is interrupted.

c. Release cuttings at the surface.

d. Stabilize the hole with an impermeable cake.

e. Cool and lubricate the drill bit and drill string.

f. Control subsurface pressures.

g. Transmit hydraulic horsepower.

h. Cool the locating transmitter sonde preventing burnout.

Previous experience. The permittee's contractor should provide a list of projects completed by his company, location, project environment (e.g., urban work, river crossing), product diameter, and length of installation. The permittee's contractor should also provide a list of key personnel.

Safety. The drilling unit should be equipped with an electrical strike safety package. The package should include warning sound alarm, grounding mats (if required), and protective gear. The permittee/contractor should have a copy of the company safety manual that includes:

a. Operating procedures that comply with applicable regulations, including shoring of pits and excavations when required.

b. Emergency procedures for inadvertently boring into a natural gas line, live power cable, water main, sewer lines, or a fiber-optic cable, which comply with applicable regulations.

c. Emergency evacuation plan in case of an injury.

Contingency plans. The Contingency plan should address the following:

a. Inadvertent return, spill (e.g., drilling fluids, and hydraulic fluids), including measures to contain, clean, and repair the affected area.

b. Cleanup of surface seepage of drilling fluids and spoils (i.e., hydrofracture).

Communication plan. The communication plan should address the following:

a. The phone numbers for communication with owner or his representative on the site.

b. Identification of key person(s) who will be responsible for ensuring that the communications plan is followed.

c. Issues to be communicated including safety, progress, and unexpected technical difficulties.

Traffic control.

a. When required, the permittee/contractor is responsible for supplying and placing warning signs, barricades, safety lights, and flags or flagmen, as required for the protection of pedestrians and vehicle traffic.

b. Obstruction of the roadway, on major road, should be limited to off-peak hours.

Additional Requirements

Information that may be required, include other permits, bonding, and certification as listed in the following sections.

Additional permits

a. Obtaining water (i.e., hydrants, streams, etc.)

b. Storage, piling, and disposal of material.

c. Water/bentonite disposal.

d. Any other permits required carrying out the work.

Bonding and certification requirements

a. Payment bond (if required).

b. Performance bond (if required).

c. Certificate of insurance.

d. WCB certificate letter.

e. ACSA certificate of recognition.

Drilling Operations

The following points provide general remarks and rules of thumb related to the directional boring method.

a. Only operators who have "Proof of Training" by the North American Society of Trenchless Technology (NASTT) should be permitted to operate the drilling equipment in CE/Levee Board property.

b. Drilling mud pressure in the borehole should not exceed that which can be supported by the foundation soils to prevent heaving or a hydraulic fracturing of the soil (i.e., hydrofracture). Allowing for a sufficient cover depth does not necessarily guarantee against hydrofracture. Sound, cautious drilling practice minimizes the chance of hydrofracture occurrence. Also, measuring mud pressures in the annular space behind the drill bit and comparing these mud pressures with the calculated maximum allowable pressures help minimize the occurrence of hydrofracture. Typical bore depth of 0.75 to 1.0 m gives pipes with an Outside Diameter (O.D.) of 50-200 mm a minimum cover of 0.65 m. While circumstances may dictate greater depths, shallower depths are not recommended.

c. The drill path alignment should be as straight as possible to minimize the fractional resistance during pullback and to maximize the length of the pipe that can be installed during a single pull.

d. It is preferable that straight tangent sections be drilled before the introduction of a long radius curve. Under all circumstances, a minimum of one complete length of drill rod should be utilized before starting to level out the borehole path.

e. The radius of curvature is determined by the bending characteristics of the product line, and it is increasing with diameter.

f. Entrance angle of the drill string should be between 8 and 20 deg, with 12 deg being considered optimal. Shallower angles may reduce the penetrating capabilities of the drilling rig, while steeper angles may result in steering difficulties, particularly in soft soils. A recommended value for the exit angle of the drill string is within the range of 5 to 10 deg.

g. Whenever possible, HDD installation should be planned so that back reaming and pulling for a leg can be completed on the same day. If necessary, it is permissible to drill the pilot hole and preream one day, and complete both the final ream and the pullback on the following day.

h. If a drill hole beneath a levee must be abandoned, the hole should be backfilled with grout or bentonite to prevent future subsidence.

i. Pipe installation should be performed in a manner that minimizes the over-stressing and straining of the pipe. This is of particular importance in the case of a polyethylene pipe.

Equipment setup and site layout

a. Sufficient space is required on the rig side to safely set up and operate the equipment. The workspace required depends on the type of rig to be used. A small rig may require as little as 3- by 3-m working space, while a large river crossing unit requires a minimum of 30- by 50-m working area. A working space of similar dimensions to that on the rig side should be allocated on the pipe side, in case there is a need to move the rig and attempt drilling from this end of the crossing.

b. If at all possible, the crossing should be planned to ensure that drilling proceed downhill, allowing the drilling mud to remain in the hole, minimizing inadvertent return.

c. Sufficient space should be allocated to fabricate the product pipeline into one string, thus enabling the pullback to be conducted in a single continuous operation. Tie-ins of successive strings during pullback may considerably increase the risk of an unsuccessful installation.

Drilling and back-reaming

a. Drilling mud should be used during drilling and back reaming operations. Using water exclusively may cause collapse of the borehole in unconsolidated soils. While in clays, the use of water may cause swelling and subsequent jamming of the product.

b. Heaving may occur when attempting to back-ream a hole that is too large. This can be avoided by using several prereams to gradually enlarge the hole to the desired diameter.

c. A swivel should be included between the reamer and the product pipe to prevent the transfer of rotational torque to the pipe during pullback.

d. In order to prevent over stressing of the product during pullback, a weak link, or break-away pulling head, may be used between the swivel and the leading end of the pipe. More details regarding breakaway pulling heads can be found in paragraph entitled "Break-away Pulling Head."

e. The pilot hole must be back-reamed to accommodate and permit free sliding of the product inside the borehole. A rule of thumb is to have a borehole 1.5 times the outer diameter of the product. This rule of thumb should be observed particularly with the larger diameter installations (≥ 250-mm O.D.). Some recommended values for final preream diameter

as a function of the product O.D. are given in Table 2. These values should be increased by 25 percent if excessive swelling of the soil is expected to occur or the presence of boulders/cobbles is suspected.

f. The conduit must be sealed at either end with a cap or a plug to prevent water, drilling fluids, and other foreign materials from entering the pipe as it is being pulled back.

g. Pipe rollers, skates, or other protective devices should be used to prevent damage to the pipe from the edges of the pit during pullback, eliminate ground drag, or reduce pulling force and subsequently reduce the stress on the product.

h. The drilling mud in the annular region should not be removed after installation but permitted to solidify and provide support for the pipe and neighboring soil.

Table 2
Recommended Back-Ream Hole Diameter (after Popelar et al. 1997)

Nominal Pipe Diameter, mm	Back-Ream Hole Diameter, mm
50	75 to 100
75	100 to 150
100	150 to 200
150	250 to 300
200	300 to 350
250	350 to 400
≥300	At least 1.5 times product OD

Drilling Fluid - Collection and Disposal Practices

The collection and handling of drilling fluids and inadvertent returns, along with the need to keep drilling fluids out of streams, streets, and municipal sewer lines, have been among the most debated topics. These points include:

a. Drilling mud and additives to be used on a particular job should be identified in the permit package, and their Material Safety Data Sheets (MSDS) should be provided to the Permit Office.

b. Excess drilling mud slurry shall be contained in a lined pit or containment pound at exit and entry points, until recycled or removed from the site. Entrance and exit pits should be of sufficient size to contain the expected return of drilling mud and spoils.

c. Methods to be used in the collections, transportation, and disposal of drilling fluids, spoils, and excess drilling fluids should be in compliance with local ordinances, regulations, and environmentally sound practices in an approved disposal site.

d. The slurry should be tested for contamination and disposed of in a manner which meets government requirements when working in an area of contaminated ground.

e. Precautions should be taken to keep drilling fluids out of the streets, manholes, sanitary and storm sewers, and other drainage systems, including streams and rivers.

f. Recycling drilling fluids is an acceptable alternative to disposal.

g. All diligent efforts should be made by contractor to minimize the amount of drilling fluids and cuttings spilled during the drilling operation, and complete cleanup of all drilling mud overflows or spills shall be provided.

There are legitimate concerns associated with the fluid pressures used for excavation during the horizontal directional drilling process and the risk of hydraulic fracturing. Reasonable limits must be placed on maximum fluid pressures in the annular space of the bore to prevent inadvertent drilling fluid returns to the ground surface. However, it is equally important that drilling pressures remain sufficiently high to maintain borehole stability, since the ease in which the pipe will be inserted into the borehole is dependent upon borehole stability. Limiting borehole pressures are a function of pore pressure, the pressure required to counterbalance the effective normal stresses acting around the bore (depth), and the undrained shear strength of the soil.

Tie-Ins and Connections

Trenching may be used to join sections of conduits installed by the directional boring method. An additional pipe length, sufficient for joining to the next segment, should be pulled into the entrance pit. This length of the pipe should not be damaged or interfere with the subsequent drilling of the next leg. The contractor should leave a minimum of 1 m of conduit above the ground on both sides of the borehole.

Alignment and Minimum Separation

The product should be installed to the alignment and elevations shown on the drawings within the prespecified tolerances (tolerance values are application dependent, for example, in a major river crossing, a tolerance of ±4 m from the exit location along the drill path center line may be an acceptable value). This tolerance is not acceptable when installing a product line between manholes. Similarly, grade requirements for a water forcemain are significantly different from those on a gravity sewer project.

When a product line is installed in a crowded right-of-way, the issue of safe minimum separation distance arises. Many utility companies have established regulations for minimum separation distances between various utilities. These

distances needed to be adjusted to account for possible minor deviation when a line product is installed using HDD technology. As a rule of thumb, if the separation distance between the proposed alignment and the existing line is 5 m or more, normal installation procedures can be followed. If the separation is 1.5 m or less, special measures, such as observation boreholes are required. The range between 1.5 and 5 m is a "gray" area, typically subject to engineering judgment (a natural gas transmission line is likely to be treated more cautiously than a storm water drainage line).

Break-Away Pulling Head

Recent reports from several natural gas utility companies reveal concerns regarding failure experienced on HDPE pipes installed by horizontal directional drilling. These failures were attributed to deformation of the pipe due to the use of excessive pulling force during installation. A mitigation measure adopted by some gas companies involves the use of break-away swivels to limit the amount of force used when pulling HDPE products. Some details regarding these devices and their applications are given below.

a. The weak link used can be either a small diameter pipe (but same SDR) or specially manufactured break-away link. The latter consists of a breaking pin with a defined tensile strength incorporated in a swivel. When the strength of the pin is exceeded it will break, causing the swivel to separate. A summary of pulling head specifications is given in Table 3 (all products are SDR 11). Note that the values provided in Table 3 could be considered conservative.

Table 3
Pulling Head Specifications

Pipe Diameter (in.)[1]	Diameter of Break-Away Swivel (in.)	Maximum Allowable Pulling Force (lb)[2]
1-1/4	7/8	850
2	1-1/4	1,500
4	1 3/8	5,500
6	2-1/2	12,000
8	3	18,500

[1]To convert inches to centimeters, multiply by 2.54.
[2]To convert pounds to kilograms, multiply by 0.4535.

b. The use of break-away swivels is particularly warranted when installing small diameter HDPE pipes (up to 10-cm (4 in.) O.D.). Application of such devices in the installation of larger diameter products is not currently a common practice.

c. If the drilling equipment-rated pulling capacity is less than the safe load, the use of a weak link may not be required.

d. Exceeding the product elastic limit can be avoided simply by following good drilling practices, namely: regulating pulling force; regulating pulling speed; proper ream sizing; and using appropriate amounts of drilling slurry fluid.

Protective Coatings

In an HDD installation, the product may be exposed to extra abrasion during pullback. When installing a steel pipe, a form of coating which provides a corrosion barrier as well as an abrasion barrier is recommended during the operation, the coating should be well bonded and have a hard smooth surface to resist soil stresses and reduce friction, respectively. A recommended type of coating for steel pipes is mill applied Fusion Bonded Epoxy.

Site Restoration and Postconstruction Evaluation

All surfaces affected by the work shall be restored to their preconstruction conditions. Performance criteria for restoration work will be similar to those employed in traditional open excavation work. If required, the permittee/contractor shall provide a set of as-built drawings including both alignment and profile. Drawings should be constructed from actual field readings. Raw data should be available for submission at any time upon request. As part of the "As-Built" document, the contractor shall specify the tracking equipment used, including method or confirmatory procedure used to ensure the data were captured.

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14. ABSTRACT

Applications for permits to drill beneath levees are increasing in permitting offices of the U.S. Army Corps of Engineer Districts. This report provides a basis for consistent and science-based consideration of these permit applications. It describes methods of horizontal directional drilling (HDD) beneath levees and lists the types of geotechnical and other data that are essential to judging the safety of proposed drilling for infrastructure modifications and installation of utilities. Critical considerations include setback distances, levee toe stability, thickness and integrity of the top stratum, and other geotechnical parameters. Data provided for vertical and horizontal permeabilities, top stratum thickness, hydraulic gradient at levee toe, and other parameters are based on experience in the U.S. Army Engineer Districts, Vicksburg and St. Louis, and the California Department of Transportation. In appropriate geotechnical settings with appropriate operational care, utilities can be installed beneath flood-control levees using HDD without compromising the integrity and function of the levee.

15. SUBJECT TERMS
Annular space
Directional drilling
Fiber-optic cables
Geotechnical engineering
HDD
Hydrofracture
Residual pressure
Trenchless technology

16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
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Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std. 239.18

Exhibit D

FEDERAL CERTIFICATION FORMS
CERTIFICATION REGARDING FEDERAL LOBBYING

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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 any award documents for any of its subcontractors at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors 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 a contract with the Authority. By executing this certificate the undersigned agrees and acknowledges that he/she has been duly authorized to execute this certificate.

Company/
Entity Name: _____

Signed: _____

Its: _____

Date: _____

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON PAGE 2)

(1) The official representative of the party contracting with the Metro Flood Diversion Authority certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application 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 had one or more public transactions, including contracts (Federal, State, or local) terminated for cause or default.

(e) Are not presently debarred, suspended, declared ineligible or voluntarily excluded from performing work for the State of North Dakota, the State of Minnesota, the Metro Flood Diversion Authority or any of its Member Entities.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

(3) The Official signing this certificate has been and is duly authorized to sign this certificate on behalf of the entity or entities which intend to enter into a contract with the Metro Flood Diversion Authority.

Official Business Name _____

Date: _____

By: _____
Name and Title of Authorized Representative

_____
Signature of Authorized Representative

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this certification, the prospective contracting party is providing the certification set out below.

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 contracting party 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 Metro Flood Diversion Authority's (the "Authority") determination whether to enter into this transaction. However, failure of the prospective contracting party to furnish a certification or an explanation shall disqualify such person from entering into contracts with the Authority.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Authority determined to enter into a contract with the prospective contracting party. In order to qualify for participation in the U.S. EPA WIFIA program the Authority is required to obtain this certification. If it is later determined that the prospective contracting party knowingly rendered an erroneous certification, in addition to other remedies available to both the Authority and the Federal Government, the Authority may terminate this transaction for cause or default.

4. The prospective contracting party shall provide immediate written notice to the Authority to which this Certificate is submitted if at any time the prospective contracting party learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Authority for assistance in obtaining a copy of those regulations (13 CFR Part 145).

6. The prospective contracting party agrees by submitting this certification 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 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Authority.

7. The prospective contracting party further agrees by submitting this certification that it will require a "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," from all sub-contractors without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A contracting party in a covered transaction may rely upon a certification of a prospective

participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A contracting party may decide the method and frequency by which it determines the ineligibility of its principals.

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 contracting party 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 contracting party in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Authority may terminate this transaction for cause or default.

ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, THE AGE DISCRIMINATION ACT OF 1975, SECTION 13 OF THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972, 40 CFR PART 7, AND EXECUTIVE ORDER NO. 11246

The undersigned provides this assurance for the purpose of entering into a contract with the Metro Flood Diversion Authority (Authority) related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (Project), which is receiving federal financial assistance. Specifically, the US EPA WIFIA Program requires this assurance of all contractors and subcontractors providing services for the Project.

The undersigned assures that it will comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin including limited English proficiency (LEP);
2. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against persons with disabilities;
3. The Age Discrimination Act of 1975, as amended, which prohibits age discrimination;
4. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex;
5. 40 CFR Part 7, as it relates to the foregoing; and
6. Executive Order No. 11246.

The undersigned understands that this Assurance is binding on the undersigned, its successors, transferees, and assignees at any time during which federal financial assistance is provided to the Project. The undersigned will ensure that all contractors, subcontractors, or others with whom it arranges to provide services or benefits are not discriminating in violation of items 1-6. Otherwise, the contracts for services can be terminated for cause and the undersigned can be declared ineligible to contract for the Project.

By signing this form, the undersigned is agreeing to the above provisions and that he/she is duly authorized to execute this form.

Signature of Authorized Official	Title
Print Name	Name of Institution or Agency
Date	Street

City, State, Zip Code

Office Email Address

PLEASE RETURN TO:
Metro Flood Diversion Authority
P.O. Box 2806
Fargo, ND 58108-2806

Exhibit E

AUTHORITY INVOICING REQUIREMENTS

Utility will submit copies of the invoice to:

Bakkegardk@FMDiversion.gov and APInvoicesFMDiv@jacobs.com

Utility's invoices must be detailed and precise. Utility's invoices must clearly indicate fees and expenses for the current billing period month and include at least the following information:

i. Utility's name and address;

ii. Utility's federal employer identification number;

iii. Unique invoice number;

iv. Billing period;

v. Description of each activity performed for each day in which services were performed;

vi. Work order number associated with each activity;

vii. Name, billing rate, and hours worked by each person involved in each activity;

viii. Total amount of fees and costs "billed to date," including the preceding months;

ix. Preferred remittance address, if different from the address on the invoice's coversheet; and

x. All of the work performed during that billing period.

After the Authority receives Utility's invoice, the Authority will either process the invoice for payment or give Utility specific reasons, in writing within fifteen (15) business days, why part of all of the Authority's payment is being withheld and what actions Utility must take to receive the withheld amount. In the event of disputed billing, only the disputed portion will be withheld from payment and the Authority shall pay the undisputed portion. Payment does not imply acceptance of services or that the invoice is accurate. In the event an error is identified following the receipt of payment, Utility must credit any payment in error from any payment that is due or that may become due to Utility under this Agreement or return the overpayment to the Authority within thirty (30) calendar days of the identification of the error.

And any other information referenced within this Agreement.

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

31

Improvement District No. BR-22-A1
NDDOT Project #SU-CVD-8-984(168)

Type: CPM Agreement with NDDOT

Location: 32nd Ave S, 32nd St to 22nd St

Date of Hearing: 1/18/2022

Routing	Date
City Commission	1/24/2022
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed a communication from Transportation Division Engineer, Jeremy Gorden, regarding approval of the Cost Participation and Maintenance (CPM) Agreement with NDDOT for reconstruction of 32nd Avenue South from 32nd Street to 22nd Street.

This project will upgrade the existing infrastructure by replacing the existing concrete roadway, curb and gutter, and intersection crossings improvements. Portions of the existing water distribution, sidewalk and storm sewer system will be replaced or rehabilitated. A new parallel storm sewer will be added to increase the system's capacity and reduce street flooding. Additionally, a sanitary sewer liner will be installed to increase its usable lifespan. The project is necessary due to the corridor's infrastructure deterioration and/or inadequacy for the current use.

The estimated construction cost is approximately $11,591,851. Funding for the project will consist of Federal Highway Funds from the NDDOT's Urban Roads Program (Federal), Street Sales Tax, Waste Water Utility, Water Replacement, and Special Assessments. The project is set to bid in Bismarck by the NDDOT on Friday, February 11 and scheduled to have a substantial completion date of November 8, 2022.

Staff is recommending approval of the Cost Participation and Maintenance Agreement with NDDOT.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of the Cost Participation and Maintenance Agreement.

RECOMMENDED MOTION
Concur with the recommendations of PWPEC and approve the Cost Participation and Maintenance Agreement with the NDDOT for reconstruction of 32nd Avenue South from 32nd Street to 22nd Street.

PROJECT FINANCING INFORMATION:
Recommended source of funding for project: NDDOT Urban Roads Program (Federal), Sales Tax, Waste Water Utility Funds, Water Replacement Funds, & Special Assessments

	Yes	No
Developer meets City policy for payment of delinquent specials	N/A	
Agreement for payment of specials required of developer	N/A	
Letter of Credit required (per policy approved 5-28-13)	N/A	

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☑	☑	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☑	☑	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

Engineering Department
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

Memorandum

To: Members of PWPEC

From: Jeremy M. Gorden, PE, PTOE
Division Engineer - Transportation

Date: January 10, 2022

Re: Approval of Cost, Participation and Maintenance (CPM) Agreement with NDDOT for 32nd Avenue South Construction Project – 32nd Street to 22nd Street
City Improvement District No. BR-22-A
NDDOT Project No. SU-CVD-8-984(168)

I have attached a CPM Agreement from the Local Government Division of the NDDOT for this project on 32nd Avenue South. This project is for the reconstruction of 32nd Avenue South from 32nd Street to 22nd Street. This project will upgrade the existing infrastructure by replacing the existing concrete roadway, curb and gutter, intersection crossings improvements, sidewalk and incidentals. Portions of the existing water distribution system and storm sewer system will be replaced or rehabilitated. A new storm sewer mainline will be added adjacent to the existing system to increase the system's capacity and reduce street flooding. Additionally, a liner will be installed inside the sanitary sewer mainline to increase its usable lifespan.

32nd Avenue South is functionally classified as a major arterial roadway. This project is necessary because the existing corridor's infrastructure is deteriorating and/or inadequate for current use. This project will repair, replace, and install necessary infrastructure along the corridor to better serve the operations of the City. The finished product will update portions of the water distribution network, will increase the storm drainage capacity to reduce flooding events, will repair the existing sanitary sewer that has deteriorated to a substandard level, will provide new roadway and pedestrian facilities for continued use, and improve overall safety and functionality of the corridor.

The estimated construction cost is approximately $11,591,851. Funding for the project will consist of Federal Highway Funds from the NDDOT's Urban Roads Program (Federal), Street Sales Tax Funds, Waste Water Utility Funds, Water Replacement Funds, and Special Assessment Funds.

This project is set to bid in Bismarck by the NDDOT on Friday, February 11 and the project is scheduled to have a substantial completion date of November 8, 2022.

Recommended Motion:
I recommend approval of the CPM Agreement.

Attachments

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MEMO TO: Jen Turnbow
Deputy Director for Planning

FROM: Marohl, Sengaroun H., 328-4449
Local Government Division

DATE: 01/04/2022

SUBJECT: Cost Participation, Construction and Maintenance Agreement for Project SU-CVD-8-984(168) PCN 22826

This contract is a Cost Participation, Construction and Maintenance (CPM) agreement with City of Fargo on 32nd Ave NE S (32nd St S - 22nd St S) project.

Contract # 38220032

- The type of work is Grading, Salvaged Base, PCC Pavement, Storm Sewer, Watermain, Traffic Signal, Lighting, Shared Use Path.
- The CVD Federal Funds for this project is limited to $ 808,620 and SU federal funds is limited to $4,700,000.
- 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

DocuSign Envelope ID: 0EB4C744-A8E4-4FA8-B7ED-0E4533881265

NDDOT Contract No. 38220032

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-CVD-8-984(168) **LPA: CITY OF FARGO**
Location: FARGO 32ND AVE S FROM 32ND ST S TO 22ND ST S
Type of Improvement: GRADING, SALVAGED BASE, PCC PAVEMENT, STORM SEWER, WATERMAIN, TRAFFIC SIGNALS, LIGHTING, SHARED USE PATH **Length: 0.685 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 $4,700,000 and $808,620 (100% CVD funds). The balance of the project is the obligation of the LPA.

Additional Funding Clause
None

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.

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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:

Erik Johnson
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:

Paul Benning
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

DS
SH

DocuSigned by:
Paul Benning
SIGNATURE
A411F817506247A...

1/4/2022
DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

DS
SS
SIGNATURE

DATE

*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)
L.D. Approved 4-12-93; 9-19

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Project SU-CVD-8-984(168)

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.

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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).

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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 **$250,000 per person** and **$500,000 per occurrence**. The minimum limits of liability required of the State are **$250,000 per person** and **$1,000,000 per occurrence**.
2) **Workers compensation** insurance meeting all statutory limits.
3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, 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 $250,000 per person and $1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual,* section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 11-19

NDDOT
North Dakota
Department of Transportation

DocuSign Envelope ID: 0EB4C744-A8E4-4FA8-B7ED-0E4533881265

DESIGN DATA			
TRAFFIC: 32ND ST S TO 22ND ST S	AVERAGE DAILY		
CURRENT 2020	PASS: 18,750	TRUCKS: 500	TOTAL: 19,250
FORECAST 2045	PASS: 22,890	TRUCKS: 610	TOTAL: 23,500
CLEAR ZONE DISTANCE: 16'	DESIGN SPEED: 35 MPH		
MINIMUM SIGHT DIST. FOR STOPPING: 250'	BRIDGES: N/A		
SIGHT DIST. FOR NO PASSING ZONE: N/A			
PAVEMENT DESIGN LIFE: 30 (YEARS)			
DESIGN ACCUMULATED ONE-WAY FLEXIBLE ESALS: N/A			

PCN #22826

CITY OF FARGO, NORTH DAKOTA

ND PROJECT NO. SU-CVD-8-984(168)
CITY OF FARGO IMPROVEMENT DISTRICT NO. BR-22-A1
CASS COUNTY
32ND AVENUE SOUTH
32ND ST S TO 22ND ST S

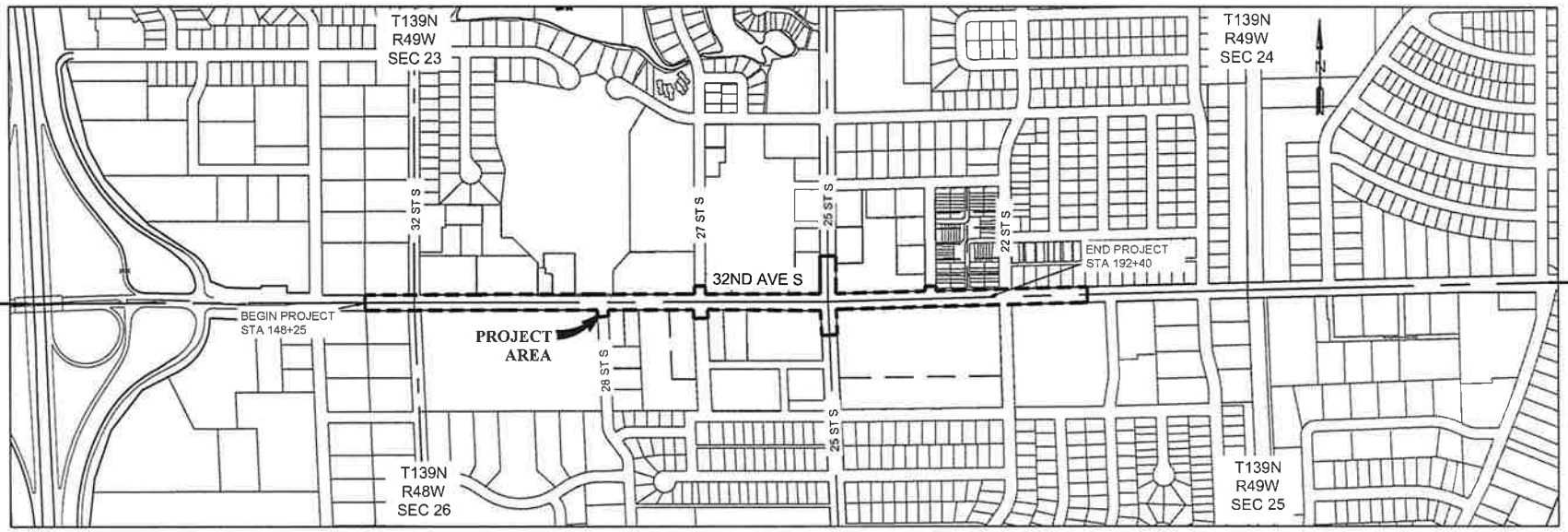
GRADING, SALVAGED BASE, PCC PAVEMENT, STORM SEWER, WATERMAIN, TRAFFIC SIGNAL, LIGHTING, SHARED USE PATH

Apex Engineering Group

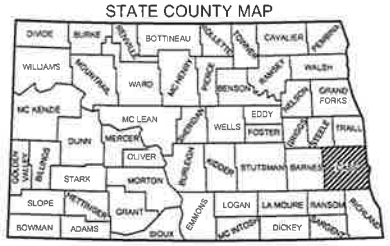
STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	SU-CVD-8-984(168)	22826	1	1

GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	10/1/2020
Supplemental Specifications	NONE

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
SU-CVD-8-984(168) \ RECONSTRUCTION	0.685	0.685



STATE COUNTY MAP



DESIGNER	James Mickelson
DESIGNER	Mike Johnson
DESIGNER	Chelsea Nible
DESIGNER	Levi Heller
DESIGNER	Wes Gullicks
DESIGNER	Brent Muscha

CITY OF FARGO
CITY ENGINEER
2021.12.13 12:34:56-06'00'

REGISTERED PROFESSIONAL ENGINEER
JOSHUA C. OLSON
PE - 5593
DATE 2021.12.10 14:20:37 -05'00'
NORTH DAKOTA

DocuSign

Certificate Of Completion

Envelope Id: 0EB4C744A8E44FA8B7ED0E4533881265
Status: Sent
Subject: Contract #38220032: Please DocuSign: CPM Agreement for Fargo 32nd Ave project
Contract Number: 38220032
PCN: 22826
Source Envelope:
Document Pages: 12
Signatures: 1
Initials: 2
Certificate Pages: 3
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Sengaroun Marohl
608 E Boulevard Ave
Bismarck, ND 58505
smarohl@nd.gov
IP Address: 165.234.92.5

Record Tracking

Status: Original
1/4/2022 3:37:27 PM
Security Appliance Status: Connected
Storage Appliance Status: Connected

Holder: Sengaroun Marohl
smarohl@nd.gov
Pool: StateLocal
Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD

Location: DocuSign
Location: DocuSign

Signer Events	Signature	Timestamp
Stacey Hanson smhanson@nd.gov Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None), Authentication	DS SH Signature Adoption: Pre-selected Style Using IP Address: 165.234.253.12	Sent: 1/4/2022 4:21:28 PM Viewed: 1/4/2022 4:22:28 PM Signed: 1/4/2022 4:22:59 PM

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Result: passed
Vendor ID: TeleSign
Type: SMSAuth
Performed: 1/4/2022 4:22:16 PM
Phone: +1 701-527-8879

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Paul Benning pbenning@nd.gov Security Level: Email, Account Authentication (None), Authentication	DocuSigned by: Paul Benning A411F817506247A... Signature Adoption: Pre-selected Style Using IP Address: 165.234.253.12	Sent: 1/4/2022 4:23:03 PM Viewed: 1/4/2022 4:28:50 PM Signed: 1/4/2022 4:28:55 PM

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Type: SMSAuth
Performed: 1/4/2022 4:28:41 PM
Phone: +1 701-214-2502

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Signer Events	Signature	Timestamp
Shannon Sauer ssauer@nd.gov Security Level: Email, Account Authentication (None), Authentication	DS SS Signature Adoption: Pre-selected Style Using IP Address: 165.234.253.12	Sent: 1/4/2022 4:28:59 PM Viewed: 1/4/2022 4:29:48 PM Signed: 1/4/2022 4:29:56 PM

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Vendor ID: TeleSign
Type: SMSAuth
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Phone: +1 701-426-9825

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication (None)

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Not Offered via DocuSign

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

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Electronic Record and Signature Disclosure:
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Electronic Record and Signature Disclosure:
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Jennifer Turnbow
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Security Level: Email, Account Authentication (None), Authentication

Signer Events	Signature	Timestamp
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Stacey Hanson smhanson@nd.gov Security Level: Email, Account Authentication (None), Authentication **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp
Sengaroun Marohl smarohl@nd.gov Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	VIEWED Using IP Address:	Sent: 1/4/2022 3:37:43 PM Completed: 1/4/2022 4:21:27 PM

Agent Delivery Events	Status	Timestamp
Jeremy Gorden JGorden@FargoND.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		Sent: 1/4/2022 4:29:59 PM Viewed: 1/5/2022 12:38:16 PM

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		
Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign		

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/4/2022 3:37:43 PM

Payment Events	Status	Timestamps

(32)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. NN-19-A1 Type: Negative Final Balancing Change Order #3

Location: 64th Ave S, west of Cass Cty Drain 53 Date of Hearing: 1/18/2022

Routing	Date
City Commission	1/24/2022
PWPEC File	X
Project File	Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, for Negative Final Balancing Change Order #3 in the amount of $-22,476.90, 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 #3 in the amount of $-22,476.90, bringing the total contract amount to $1,210,048.70.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of Negative Final Balancing Change Order #3 to Key Contracting.

RECOMMENDED MOTION
Concur with recommendations of PWPEC and approve Negative Final Balancing Change Order #3 in the amount of $-22,476.90, bringing the total contract amount to $1,210,048.70 to Key Contracting.

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

	Yes	No
Developer meets City policy for payment of delinquent specials	N/A	
Agreement for payment of specials required of developer	N/A	
Letter of Credit required (per policy approved 5-28-13)	N/A	

COMMITTEE	Present	Yes	No	Unanimous
				☑
Tim Mahoney, Mayor	☐	☐	☐	
Nicole Crutchfield, Director of Planning	☐	☐	☐	
Steve Dirksen, Fire Chief	☑	☑	☐	
Bruce Grubb, City Administrator	☑	☑	☐	
Ben Dow, Director of Operations	☑	☑	☐	
Steve Sprague, City Auditor	☑	☑	☐	
Brenda Derrig, City Engineer	☑	☑	☐	
Kent Costin, Finance Director	☑	☑	☐	

ATTEST:

Brenda E. Derrig, P.E.
City Engineer

C: Kristi Olson

THE CITY OF Fargo FAR MORE

Engineering Department
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

Memorandum

To: PWPEC

From: Rob Hasey, Civil Engineer I, Storm Sewer Utility

Cc: Jody Bertrand, Division Engineer

Date: January 3, 2022

Re: Improvement District No. NN-19-A1 – Final Balancing Change Order #3

Background:

Improvement District No. NN-19-A1 is for the installation of a new storm sewer lift station in the Selkirk Addition south of 67th Avenue South and west of Cass County Drain 53.

Attached to this memorandum is the negative Final Balancing Change Order (FBCO) in the amount of $-22,476.90. Please refer to the attached FBCO which reconciles the measured quantities with those estimated for the contract.

Original Contract:	$ 1,232,525.60
Change Order #1	$ 0 (Time Extension)
Change Order #2	$ 0 (Time Extension)
FBCO #3:	$ -22,476.90
Final Project Cost:	**$ 1,210,048.70**

Recommended Motion:

Approve FBCO #3 in the amount of $-22,476.90 to Key Contracting.

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Improvement District No	NN-19-A1	**Change Order No**	3
Project Name	Storm Sewer Lift Station, Retention Pond and Incidentals		
Date Entered	12/16/2021	**For**	Key Contracting 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: Final Balancing

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

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	4	Sediment Control Log 6" to 8" Dia	LF	1,307.00	0.00	1,307.00	-738.00	569.00	2.30	-1,697.40
	5	Silt Fence - Heavy Duty	LF	720.00	0.00	720.00	-55.00	665.00	3.00	-165.00
	12	Seeding Type A	SY	26,500.00	0.00	26,500.00	-13,132.00	13,368.00	0.20	-2,626.40
	13	Mulching Type 1 - Hydro	SY	16,250.00	0.00	16,250.00	3,171.00	19,421.00	0.40	1,268.40
	14	F&I Erosion Control Blanket Type 3	SY	10,250.00	0.00	10,250.00	-3,550.00	6,700.00	1.95	-6,922.50
	15	Weed Control Type B	SY	26,500.00	0.00	26,500.00	-26,500.00	0.00	0.08	-2,120.00
									Miscellaneous Sub Total ($)	-12,262.90
Storm Sewer	26	F&I Rip Rap Rock	CY	65.00	0.00	65.00	-9.00	56.00	95.00	-855.00
	27	F&I Rip Rap Precast Conc	SY	65.00	0.00	65.00	8.00	73.00	130.00	1,040.00
	30	F&I Pipe 12" Dia Corr Steel	LF	43.00	0.00	43.00	-43.00	0.00	75.00	-3,225.00
	35	* Add CDF under pipes in levee footprint	LS	0.00	0.00	0.00	1.00	1.00	14,892.00	14,892.00
									Storm Sewer Sub Total ($)	11,852.00
Paving	31	Subgrade Preparation	SY	3,094.00	0.00	3,094.00	-1,222.00	1,872.00	4.00	-4,888.00
	32	F&I Woven Geotextile	SY	3,094.00	0.00	3,094.00	-1,222.00	1,872.00	3.00	-3,666.00
	33	F&I Pavement 8" Thick Reinf Conc	SY	435.00	0.00	435.00	16.00	451.00	72.00	1,152.00
	34	F&I Crushed Conc - 8" Thick	SY	3,094.00	0.00	3,094.00	-1,222.00	1,872.00	12.00	-14,664.00
									Paving Sub Total ($)	-22,066.00
	* NC Items								**Grand Total ($)**	**-22,476.90**

THE CITY OF Fargo FAR MORE

CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Summary

Source Of Funding	
Net Amount Change Order # 3 ($)	-22,476.90
Previous Change Orders ($)	0.00
Original Contract Amount ($)	1,232,525.60
Total Contract Amount ($)	1,210,048.70

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

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
06/30/2021		0.00	0.00	06/30/2021	

Description

APPROVED		**APPROVED DATE**	
For Contractor Thomas P. Martin		Department Head	1/19/22
Title President		Mayor	
		Attest	

THE CITY OF Fargo FAR MORE

Engineering Department
225 4th Street North
Fargo, ND 58102
Phone: 701.241.1545 | Fax: 701.241.8101
Email feng@FargoND.gov
www.FargoND.gov

(33)

January 19, 2022

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. BN-22-B1

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, January 19, 2022, for New Paving and Utility Construction, Improvement District No. BN-22-B1, located on 69th Avenue South from 15th Street South to Meadow View Drive South, Meadow View Drive South from 70th Avenue South to 68th Avenue South, 68th Avenue South from Meadow View Drive South to 14th Street South and 14th Street South from 70th Avenue South to 68th Avenue South.

The bids were as follows:

Dirt Dynamics	$	1,299,597.84
Northern Improvement Co.	$	1,309,460.65
Ryan Contracting	$	1,371,438.65
Dakota Underground Co.	$	1,432,616.04
KPH, Inc.	$	1,452,405.05
Border States Paving, Inc.	$	1,453,317.16
Sellin Brothers	$	1,518,874.25
Engineer's Estimate	$	1,329,180.75

The special assessment escrow is not required.

This office recommends award of the contract to Dirt Dynamics in the amount of $1,299,597.84 as the lowest and best bid. No protests have been received.

Sincerely,

Tom Knakmuhs
Assistant City Engineer

TAK/klb

THE CITY OF Fargo FAR MORE

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BN-22-B1

New Paving and Utility Construction

69th Ave S from 15th St S to Meadow View Dr S, Meadow View Dr S from 70th Ave S to 68th Ave S, 68th Ave S from Meadow View Dr S to 14th St S, and 14th St S from 70th Ave S to 68th Ave S

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

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

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

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

New Paving and Utility Construction Improvement District # BN-22-B1 of the City of Fargo, North Dakota.

Line	Description	Unit	Quantity	Unit Price ($)	Amount ($)
Miscellaneous					
1	Topsoil - Strip & Spread	LS	1.00	17,000.00	17,000.00
2	Mulching Type 1 - Hydro	SY	9,107.00	0.44	4,007.08
3	Mulching Type 2 - Straw	SY	37,645.00	0.08	3,011.60
4	Seeding Type C	SY	3,714.00	0.61	2,265.54
5	Stormwater Management	LS	1.00	2,000.00	2,000.00
6	Temp Construction Entrance	EA	2.00	1,500.00	3,000.00
7	Inlet Protection - Existing Inlet	EA	6.00	184.00	1,104.00
8	Inlet Protection - New Inlet	EA	16.00	184.00	2,944.00
9	Traffic Control - Type 1	LS	1.00	2,573.00	2,573.00
				Miscellaneous Total	37,905.22
Sanitary Sewer					
10	F&I 1-1/4" Trench Found Rock 4" thru 12" Dia	LF	1,950.00	0.01	19.50
11	F&I Manhole 4' Dia Reinf Conc	EA	6.00	5,450.00	32,700.00
12	Connect Pipe to Exist Pipe	EA	2.00	458.00	916.00
13	F&I Pipe SDR 26 - 6" Dia PVC	LF	2,600.00	26.00	67,600.00
14	F&I Pipe SDR 26 - 8" Dia PVC	LF	1,390.00	40.00	55,600.00
15	F&I Pipe SDR 35 - 10" Dia PVC	LF	246.00	45.00	11,070.00
16	F&I Pipe SDR 35 - 12" Dia PVC	LF	314.00	75.00	23,550.00
17	Connect Sewer Service	EA	52.00	420.00	21,840.00
				Sanitary Sewer Total	213,295.50
Cass Rural Water Main					
18	F&I Fittings C153 Ductile Iron	LB	493.00	8.50	4,190.50
19	F&I Hydrant	EA	3.00	4,900.00	14,700.00
20	Connect Pipe to Exist Pipe	EA	1.00	1,050.00	1,050.00
21	Bore Pipe C900 DR 18 - 8" Dia PVC	LF	199.00	79.00	15,721.00
22	F&I Pipe C900 DR 18 - 6" Dia PVC	LF	21.50	30.00	645.00
23	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	1,995.00	41.00	81,795.00
24	F&I Tapping Sleeve & Valve 12"x8"	EA	2.00	4,250.00	8,500.00
25	F&I Gate Valve 6" Dia	EA	3.00	1,700.00	5,100.00
26	F&I Gate Valve 8" Dia	EA	5.00	2,300.00	11,500.00
27	F&I Pipe 1" Dia Water Service	LF	2,410.00	14.50	34,945.00
28	F&I CS & Box 1" Dia	EA	52.00	560.00	29,120.00
29	Connect Water Service	EA	52.00	380.00	19,760.00

THE CITY OF Fargo FAR MORE

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BN-22-B1

New Paving and Utility Construction

			Cass Rural Water Main Total	227,026.50
Storm Sewer				
30 F&I Manhole 4' Dia Reinf Conc	EA	9.00	3,460.00	31,140.00
31 F&I Inlet - Single Box (SBI) Reinf Conc	EA	11.00	3,380.00	37,180.00
32 F&I Inlet - Round (RDI) Reinf Conc	EA	5.00	1,700.00	8,500.00
33 Connect Pipe to Exist Pipe	EA	1.00	450.00	450.00
34 Connect Pipe to Exist Structure	EA	2.00	1,700.00	3,400.00
35 F&I Pipe 12" Dia	LF	725.00	31.50	22,837.50
36 F&I Pipe 15" Dia	LF	55.00	46.00	2,530.00
37 F&I Pipe 18" Dia	LF	279.00	51.00	14,229.00
38 F&I Pipe 21" Dia	LF	260.00	60.00	15,600.00
39 F&I Pipe 24" Dia	LF	346.00	66.00	22,836.00
40 F&I Pipe 18" Dia Reinf Conc	LF	252.00	58.00	14,616.00
41 F&I Pipe 24" Dia Reinf Conc	LF	142.00	71.00	10,082.00
42 F&I Pipe w/GB 15" Dia Reinf Conc	LF	166.00	67.00	11,122.00
43 F&I Pipe w/GB 18" Dia Reinf Conc	LF	46.00	74.00	3,404.00
			Storm Sewer Total	197,926.50
Paving				
44 Fill - Contractor Supply	CY	858.00	7.00	6,006.00
45 Excavation	CY	1,069.00	5.00	5,345.00
46 Subcut	CY	500.00	3.00	1,500.00
47 Subgrade Preparation	SY	7,826.00	1.50	11,739.00
48 F&I Woven Geotextile	SY	7,826.00	1.20	9,391.20
49 F&I Class 5 Agg - 8" Thick	SY	7,826.00	9.85	77,086.10
50 F&I Edge Drain 4" Dia PVC	LF	3,803.00	13.70	52,101.10
51 F&I Curb & Gutter Mountable (Type I)	LF	3,628.00	17.25	62,583.00
52 F&I Curb & Gutter Standard (Type II)	LF	175.00	38.00	6,650.00
53 Remove Curb & Gutter	LF	169.00	20.00	3,380.00
54 F&I Pavement 9" Thick Doweled Conc	SY	250.00	131.00	32,750.00
55 Rem & Repl Pavement 9" Thick Doweled Conc	SY	20.00	131.00	2,620.00
56 F&I Sidewalk 4" Thick Reinf Conc	SY	560.00	61.40	34,384.00
57 F&I Sidewalk 6" Thick Reinf Conc	SY	63.00	71.00	4,473.00
58 Remove Sidewalk 4" Thick Conc	SY	5.00	24.00	120.00
59 F&I Det Warn Panels Cast Iron	SF	144.00	44.00	6,336.00
60 F&I Asphalt Pavement FAA 43 w/ PG58H-34	TON	2,085.00	78.00	162,630.00
61 Casting to Grade - Blvd	EA	10.00	350.00	3,500.00
62 Casting to Grade - no Conc	EA	6.00	400.00	2,400.00
63 GV Box to Grade - Blvd	EA	7.00	150.00	1,050.00
64 GV Box to Grade - no Conc	EA	3.00	150.00	450.00
			Paving Total	486,494.40
Street Lighting				
65 F&I Base 5' Deep Reinf Conc	EA	11.00	525.00	5,775.00
66 F&I Conductor #6 USE Cu	LF	5,343.00	1.84	9,831.12
67 F&I Innerduct 1.5" Dia	LF	1,945.00	5.25	10,211.25
68 F&I Luminaire Type A	EA	11.00	1,575.00	17,325.00

THE CITY OF Fargo FAR MORE

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # BN-22-B1

New Paving and Utility Construction

69 F&I Light Standard Type A	EA	11.00	2,625.00	28,875.00
			Street Lighting Total	72,017.37
Signing				
70 F&I Sign Assembly	EA	1.00	79.00	79.00
71 F&I Sign Assembly & Anchor	EA	10.00	105.00	1,050.00
72 F&I Diamond Grade Cubed	SF	66.30	26.50	1,756.95
73 F&I Barricade Type III	EA	3.00	620.00	1,860.00
			Signing Total	4,745.95
70th AVE SIDEWALK				
74 Boulevard Grading	SY	2,200.00	1.50	3,300.00
75 F&I Curb & Gutter Standard (Type II)	LF	24.00	38.00	912.00
76 Remove Curb & Gutter	LF	24.00	20.00	480.00
77 F&I Sidewalk 4" Thick Reinf Conc	SY	401.00	61.40	24,621.40
78 F&I Sidewalk 6" Thick Reinf Conc	SY	14.00	71.00	994.00
79 F&I Shared Use Path 5" Thick Reinf Conc	SY	414.00	63.00	26,082.00
80 F&I Shared Use Path 6" Thick Reinf Conc	SY	11.00	71.00	781.00
81 Remove Shared Use Path 5" Thick Conc	SY	10.00	20.00	200.00
82 F&I Det Warn Panels Cast Iron	SF	64.00	44.00	2,816.00
			70th AVE SIDEWALK Total	60,186.40
			Total Construction in $	**1,299,597.84**
		Engineering	10.00 %	129,959.78
		Legal & Misc	3.00 %	38,987.94
		Contingencies	5.00 %	64,979.89
		Administration	4.00 %	51,983.91
		Interest	4.00 %	51,983.91
			Total Estimated Costs	**1,637,493.28**
			Cass Rural WUD Funds	286,053.39
			Special Assessments	1,351,439.89
			Unfunded Costs	**0.00**

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

Date: 01/19/2022

Tom Knakmuhs

Assistant City Engineer

REGISTERED PROFESSIONAL ENGINEER
TOM KNAKMUHS
PE-10059
DATE: 1/19/22
NORTH DAKOTA

COVER SHEET
CITY OF FARGO PROJECTS

3Aa

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:

Seal Coat

Improvement District No. PR-22-E

Call For Bids	January 24	, 2022
Advertise Dates	February 2 & 9	, 2022
Bid Opening Date	March 2	, 2022
Substantial Completion Date	July 30	, 2022
Final Completion Date	August 30	, 2022

N/A PWPEC Report (Attach Copy) (**Part of 2022 CIP**)

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Hoogland

Phone No. (701) 241-1545

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

SEAL COAT

IMPROVEMENT DISTRICT NO. PR-22-E

Nature & Scope

This project involves installing a seal coat on the asphalt surfaced streets in several sections of the City as follows:

Section 1:

- On Elm Street North from 12th Avenue North to Kandi Lane North.
- On Elm Circle North.
- On Woodland Drive North.
- On Plumtree Road North.
- On Oak Street North from 16 ½ Avenue North to 17 ½ Avenue North.
- On 1st Street North from 16th Avenue North to 18th Avenue North.
- On 2nd Street North from 15th Avenue North to 18th Avenue North.
- On 2nd Street North from 20th Avenue North to 21st Avenue North.
- On 2nd Street North from 24th Avenue North to 28th Avenue North.
- On 3rd Street North from 19th Avenue North to 28th Avenue North.
- On 16th Avenue North from Elm Street North to 2nd Street North.
- On 16 ½ Avenue North from Elm Street North to Oak Street North.
- On 17th Avenue North from Elm Street North to 3rd Street North.
- On 17 ½ Avenue North from Elm Street North to Oak Street North.
- On 18th Avenue North from Elm Street North to 3rd Street North.
- On 20th Avenue North from 2nd Street North to Broadway North.
- On 21st Avenue North from Elm Street North to Broadway North.
- On 22nd Avenue North from 2nd Street North to Broadway North.
- On 23rd Avenue North from 2nd Street North to Broadway North.
- On 24th Avenue North from 2nd Street North to Broadway North.
- On Woodcrest Drive North from Evergreen Road North to Elm Street North.
- On 25th Avenue North from Elm Street North to Broadway North.
- On Meadowlark Lane North from Evergreen Road North to Elm Street North.
- On 26th Avenue North from Elm Street North to 241' west of 3rd Street North.
- On 27th Avenue North from Elm Street North to 241' west of 3rd Street North.
- Alley west of 3rd Street North between 26th Avenue North to 27th Avenue North.

Section 2:

- On 11th Street South from 5th Avenue South to 13th Avenue South.
- On 7th Avenue South from 10th Street South to University Drive South.
- On 8th Avenue South from 10th Street South to University Drive South.
- On 9th Avenue South from 10th Street South to University Drive South.
- On 10th Avenue South from 10th Street South to University Drive South.
- On 11th Avenue South from 10th Street South to University Drive South.
- On 12th Avenue South from 10th Street South to University Drive South.

Section 3:

- On Page Drive South from West Gateway Circle South to 13th Avenue South.
- On Gateway Drive South from East Gateway Circle South to 13th Avenue South.
- On Villa Drive South from East Gateway Circle South to Gateway Drive South.
- On East Gateway Circle South from 17th Avenue South to West Gateway Circle South.
- On Eastgate Drive South.
- On Westgate Drive South.
- On West Gateway Circle South from East Gateway Circle South to 17th Avenue South.
- On Southgate Drive South.
- On Sungate Drive South.
- On Cobblestone Court South.

Section 4:

- On 25th Avenue South from 124' east of 14th Street South to 18th Street South.
- On 17th Street South from 21st Avenue South to 25th Avenue South.

Section 5:

- On Agassiz Xing South north of 23rd Avenue South.

Section 6:

- On 35th Avenue South from Harrison Street South to Lincoln Street South.
- On 36th Avenue South from 42nd Street South to 45th Street South.
- On 37th Avenue South from 42nd Street South to 145' west of Norman Court South.
- On 38th Avenue South from Harrison Street South to Fillmore Street South.
- On Harrison Street South from 35th Avenue South to 38th Avenue South.
- On Polk Street South from 35th Avenue South to 38th Avenue South.
- On Taylor Street South from 35th Avenue South to 38th Avenue South.
- On Fillmore Street South from 35th Avenue South to 38th Avenue South.
- On 43rd Street South from 34th Avenue South to 35th Avenue South.
- On Pierce Street South from 35th Avenue South to 37th Avenue South.
- On Buchanan Street South from 35th Avenue South to 36th Avenue South.
- On Lincoln Street South from 35th Avenue South to 37th Avenue South.
- On Norman Court South.
- On Dorothea Court South.

Section 7:

- On Kirsten Lane South.
- On Ruth Drive South.
- On 33rd Avenue South from 25th Street South to 27th Street South.
- On 33 ½ Avenue South from 27th Street South to 28th Street South.
- On 34th Avenue South from 25th Street South to 32nd Street South.
- On Dakota Park Circle South.
- On 35th Avenue South from 25th Street South to 32nd Street South.
- On 35 ½ Avenue South from 28th Street South to 32nd Street South.
- On 35 ½ Court Avenue South from 28th Street South to 32nd Street South.
- On 27th Street South from 32nd Avenue South to 34th Avenue South.
- On 28th Street South from 32nd Avenue South to 36th Avenue South.
- On 29th Street South from 35th Avenue South to 35 ½ Avenue South.
- On 30th Street South from 35 ½ Avenue South north to the end of cul-de-sac.
- On 31st Street South from 35th Avenue South to 35 ½ Avenue South.

Section 8:

- On 14th Street South from address 6052 to 6128.
- On 18th Street South from 61st Avenue South to 63rd Avenue South.
- On 62nd Avenue South from 18th Street South to 170' east and 134' west of the intersection.
- On 63rd Avenue South from 18th Street South to the west 132'.
- On 15th Street South from 64th Avenue South to the end of cul-de-sac.

Section 9:

- On 14th Street South from 70th Avenue South to 75th Avenue South.
- On 15th Street South from 70th Avenue South to 75th Avenue South.
- On 71st Avenue South from 72nd Avenue South to 15th Street South.
- On 72nd Avenue South from 71st Avenue South to 15th Street South.
- On 73rd Avenue South from 15th Street South to 25th Street South.
- On Shawnas Place South west of 14th Street South.
- On 75th Avenue South from 14th Street South to Eagle Pointe Drive South.

Section 10:

- On 56th Avenue South from 63rd Street South to 67th Street South.
- On 57th Avenue South from 62nd Street South to Deer Creek Parkway.
- On 58th Avenue South from 58th Street South to Deer Creek Parkway.
- On 59th Avenue South from 58th Street South to Deer Creek Parkway.
- On 60th Avenue South from 58th Street South to Deer Creek Parkway.
- On 61th Avenue South from 59th Street South to Deer Creek Parkway.
- On 63rd Avenue South from 58th Street South to Deer Creek Parkway.
- On 58th Street South from ½ way between 57th Avenue South and 58th Avenue South to 63rd Avenue South.
- On 58th Street South from 58th Avenue South to 61st Avenue South.
- On 61st Street South from ½ way between 57th Avenue South and 58th Avenue South to 63rd Avenue South.
- On 62nd Street South from 57th Avenue South to 58th Avenue South.
- On 62nd Street South from 63rd Avenue South to 138' south of 63rd Avenue South.
- On 63rd Street South/Deer Creek Parkway from 52nd Avenue South to 63rd Avenue South.
- On 67th Street South from 56th Avenue South to 140' north of 56th Avenue South.

Purpose

Installation of a seal coat at this time will extend the life of these roadways considerably.

Feasibility

The total construction cost is estimated to be $881,012.90 and will be paid by Street Sales Tax Funds & Special Assessments. The cost breakdown is as follows:

Sections 1 – 4, 6 & 7:

Estimated Construction Cost:	**$**	**678,190.00**
Plus Engineering Fees (10%):	$	67,819.00
Plus Administration Fees (4%):	$	27,127.60
Plus Legal/Misc Fees (3%):	$	20,345.70
Plus Interest (4%):	$	27,127.60
Plus Contingency (5%):	$	33,909.50
Total City Cost (Street Sales Tax Funds):	**$**	**854,519.40**

Sections 5, 8, 9, 10:

Estimated Construction Cost:	**$**	**202,823.00**
Plus Engineering Fees (10%):	$	20,282.30
Plus Administration Fees (4%):	$	8,112.92
Plus Legal/Misc Fees (3%):	$	6,084.69
Plus Interest (4%):	$	8,112.92
Plus Contingency (5%):	$	10,141.15
Total Assessed Cost (Special Assessments):	**$**	**255,556.98**

We believe this to be cost effective.

REGISTERED PROFESSIONAL ENGINEER
TOM KNAKMUHS
PE-10059
DATE: 1/19/22
NORTH DAKOTA

Tom Knakmuhs, P.E.
Assistant City Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

SEAL COAT

IMPROVEMENT DISTRICT NO. PR-22-E

LOCATION (Section 5):

On Agassiz Xing South north of 23rd Avenue South.

LOCATION (Section 8):

On 14th Street South from address 6052 to 6128.
On 18th Street South from 61st Avenue South to 63rd Avenue South.
On 62nd Avenue South from 18th Street South to 170' east and 134' west of the intersection.
On 63rd Avenue South from 18th Street South to the west 132'.
On 15th Street South from 64th Avenue South to the end of cul-de-sac.

LOCATION (Section 9):

On 14th Street South from 70th Avenue South to 75th Avenue South.
On 15th Street South from 70th Avenue South to 75th Avenue South.
On 71st Avenue South from 72nd Avenue South to 15th Street South.
On 72nd Avenue South from 71st Avenue South to 15th Street South.
On 73rd Avenue South from 15th Street South to 25th Street South.
On Shawnas Place South west of 14th Street South.
On 75th Avenue South from 14th Street South to Eagle Pointe Drive South.

LOCATION (Section 10):

On 56th Avenue South from 63rd Street South to 67th Street South.
On 57th Avenue South from 62nd Street South to Deer Creek Parkway.
On 58th Avenue South from 58th Street South to Deer Creek Parkway.
On 59th Avenue South from 58th Street South to Deer Creek Parkway.
On 60th Avenue South from 58th Street South to Deer Creek Parkway.
On 61th Avenue South from 59th Street South to Deer Creek Parkway.
On 63rd Avenue South from 58th Street South to Deer Creek Parkway.
On 58th Street South from ½ way between 57th Avenue South and 58th Avenue South to 63rd Avenue South.
On 58th Street South from 58th Avenue South to 61st Avenue South.
On 61st Street South from ½ way between 57th Avenue South and 58th Avenue South to 63rd Avenue South.
On 62nd Street South from 57th Avenue South to 58th Avenue South.
On 62nd Street South from 63rd Avenue South to 138' south of 63rd Avenue South.
On 63rd Street South/Deer Creek Parkway from 52nd Avenue South to 63rd Avenue South.
On 67th Street South from 56th Avenue South to 140' north of 56th Avenue South.

COMPRISING (Section 5):

Bound on the north by I – 94.

Bound on the east by the edge of Lot 1, Block 1 Hom 1st Addition. Then west along the south edge of Lot 1, Block 1 Hom 1st Addition. To the east edge of Lot 1, Block 1, Hom 2nd Addition.

Bound on the south by 23rd Avenue South.

Bound on the west by 51st Street South.

COMPRISING (Section 8):

Lots 1 through 9, Block 1.
Lots 1 through 3, Block 2.
All in Winchester Square.

Lots 1 through 5, Block 1.
Lots 1 through 9, Block 2.
Lots 21 through 33, Block 11.
Lots 1 through 22, Block 12.
All in Legacy I Fourth Addition.

Lots 1 through 4, Block 1, Glen Van Enk Subdivision.

A portion of the unplatted land in NE ¼ of SEC 12, TWP 138 N, RGE 49 W lying 164' west of the west ROW line of 15th Street South thence easterly to 140' east of the east ROW line of 15th Street South.

COMPRISING (Section 9):

Bound on the north by 70th Avenue South.

Bound on the east by the east edge of Lots 1 through 5, Block 3, MGB 2nd Addition. Continuing along the east edge of Lots 1 through 10, Block 1 and Lots 1 through 12, Block 2, Eagle Pointe 1st Addition. Continuing along the east edge of Lot 1, Block 1, Walsh's 1st Subdivision.

Bound on the south by 76th Avenue South.

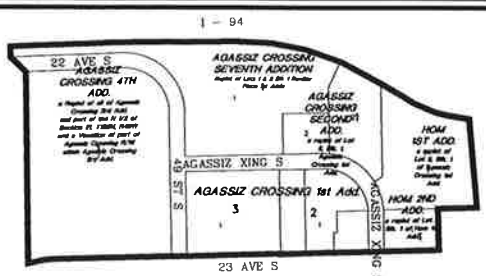
Bound on the west by 25th Street South.

COMPRISING (Section 10):

All of Richard Subdivision.
All of Richard 2nd Subdivision.
All of Richard 3rd Subdivision.
All of Currier Trust Subdivision.
All of Ken's Subdivision.
All of Dittmer Subdivision.
All of GSR Addition.
All of Deer Creek Addition.
All of Deer Creek 2nd Addition.
All of Deer Creek 3rd Addition.
All of Ashwood 4th Addition.
All of Grayland First Addition.

A portion of unplatted land in NW ¼ Section 5, TWP 138 N, RGE 49 W lying 1494' west of the west ROW line of 63rd Street South.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.



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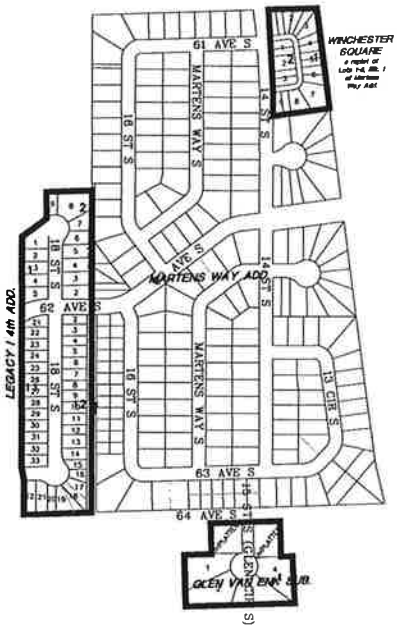

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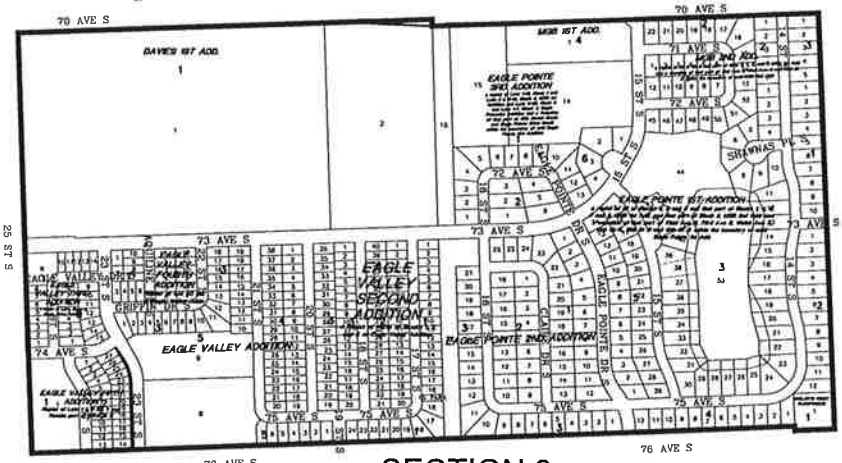

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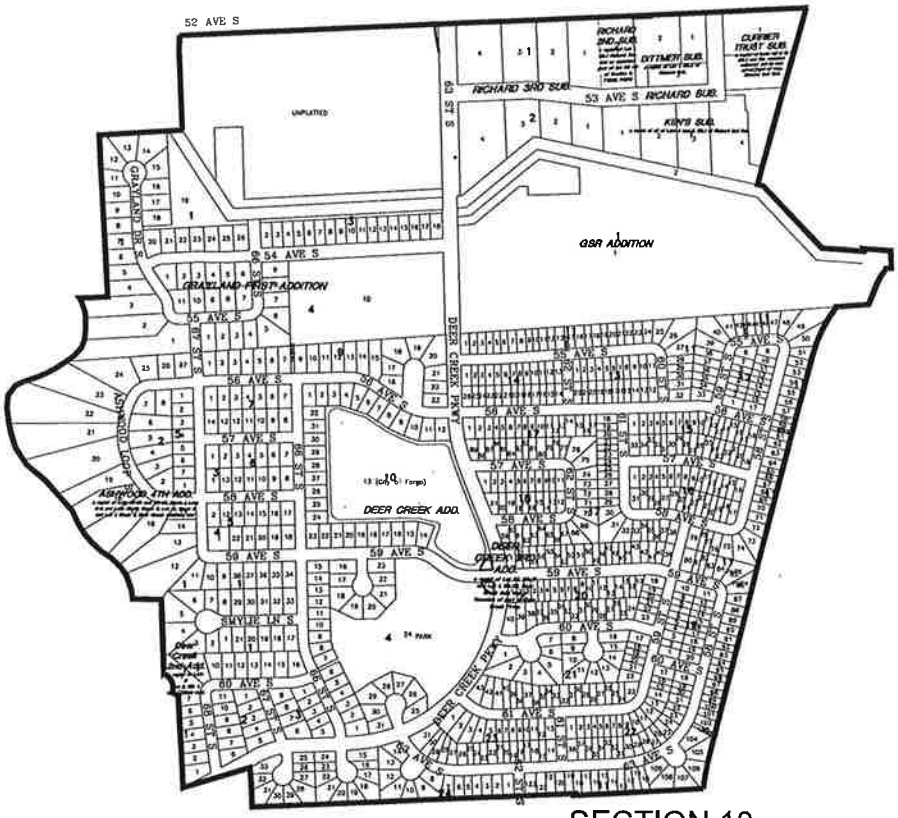


SECTION 10

CITY OF FARGO ENGINEERING DEPARTMENT

LOCATION & ASSESSMENT AREA

SEAL COAT

IMPROVEMENT DISTRICT NO. PR-22-E

COVER SHEET
CITY OF FARGO PROJECTS

346

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:

ASPHALT PAVING REHAB/RECONSTRUCTION

Improvement District No. PR-22-G

Call For Bids	January 24	, 2022
Advertise Dates	February 2 & 9	, 2022
Bid Opening Date	March 2	, 2022
Substantial Completion Date	September 2	, 2022
Final Completion Date	October 1	, 2022

N/A PWPEC Report **(Part of 2022 CIP)**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Aaron Edgar

Phone No. (701) 476-4108

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

ASPHALT PAVING REHAB/RECONSTRUCTION

IMPROVEMENT DISTRICT NO. PR-22-G

Nature & Scope

The proposed project will include a full street reconstruction and incidentals.

The project will be on 18th Avenue South from 42nd Street to 39th Street and on 40th Street South from 19th Avenue to 17th Avenue.

Purpose

The street reconstruction is necessary because the existing asphalt street section has deteriorated significantly and has exceeded its life expectancy. Reconstruction will include asphalt street paving, gravel base, drain tile, curb and gutter, and ADA ramps.

Special Assessments and Street Sales Tax will pay for this project. Special Assessments will be applied per City policy.

Feasibility

The estimated cost of construction is $1,400,000 and will be paid by Street Sales Tax and Special Assessments. The cost breakdown is as follows:

Paving Costs	$	1,400,000
Plus 10% Engineering Fee:	$	140,000
Plus 4% Administration Fee:	$	56,000
Plus 3% Legal Fee:	$	42,000
Plus 4% Interest Fee:	$	56,000
Plus 5% Contingency:	$	70,000
Total Estimated Paving Cost:	**$**	**1,764,000**
Paving Amount Special Assessed:	$	1, 272,174
Paving Amount City Funded:	$	491,826

Project Funding Summary			
Street Sales Tax	27.88%	$	491,825.82
Special Assessments	72.12%	$	1,272,174.18
Total Estimated Project Cost		**$**	**1,764,000.00**

The cost to property owners will be per City policy.

We believe this project to be cost effective.

REGISTERED PROFESSIONAL ENGINEER
TOM KNAKMUHS
PE-10059
DATE: 1/11/22
NORTH DAKOTA

Tom Knakmuhs, P.E.
Assistant City Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

ASPHALT PAVING REHAB/RECONSTRUCTION

IMPROVEMENT DISTRICT NO. PR-22-G

LOCATION:

On 18th Avenue South from 42nd Street to 39th Street and on 40th Street South from 19th Avenue to 17th Avenue.

COMPRISING:

Lot 4, Block A.
All in Dakota View Estates 2nd Addition.

Lots 3 through 7, Block 1.
All in Dakota View Estates.

Lots 1 and 2, Block 1.
All in Ekman Dakota View Addition. A replat of Lots 1 and 2, Block 2, Dakota View Estates and Lot 1, Block 1, Ekman Addition.

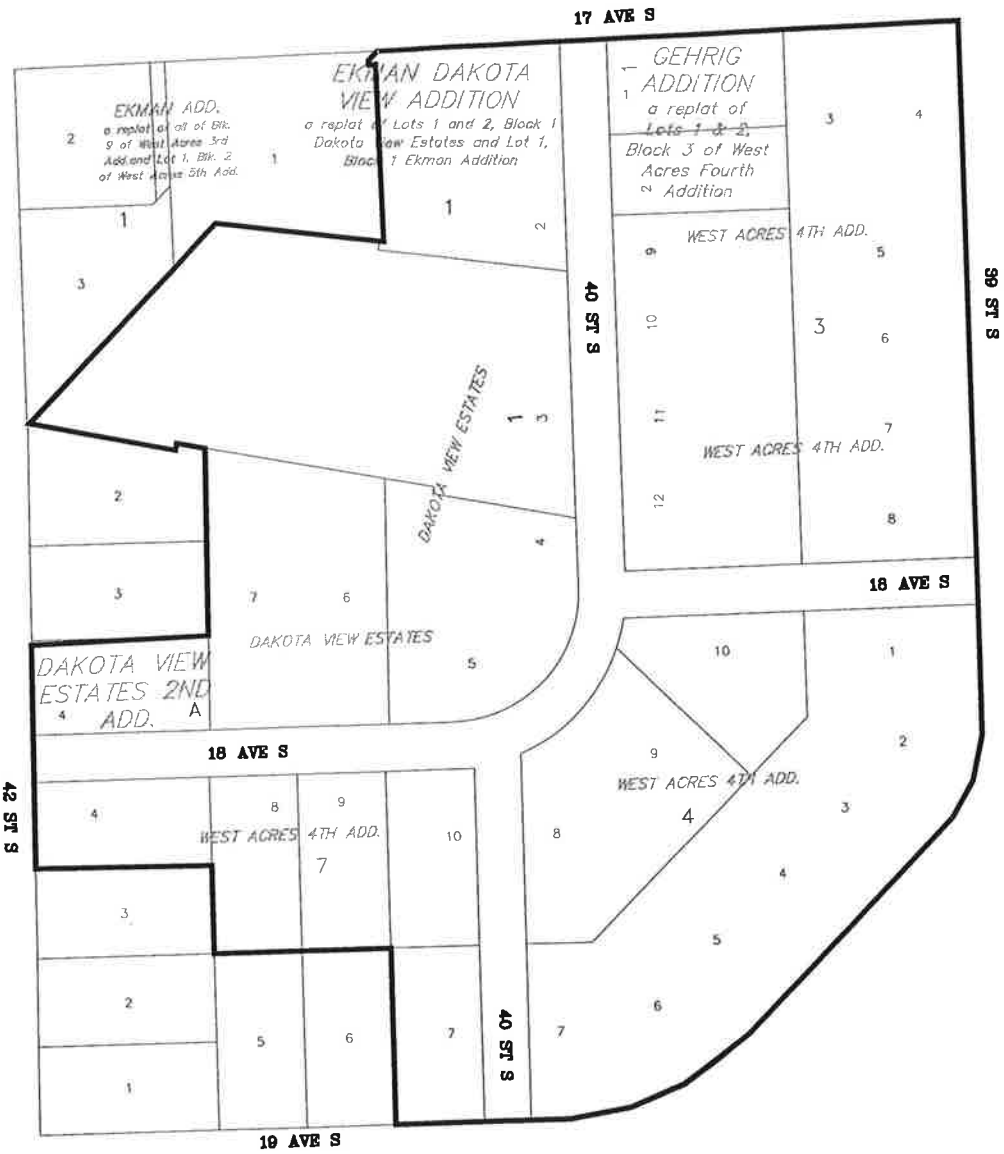
Lots 4, 7, 8, 9, and 10, Block 7.
All in West Acres 4th Addition.

Lots 1 and 2, Block 1.
All in Gehrig Addition. A replat of Lots 1 & 2, Block 3 of West Acres fourth Addition.

Lots 3 through 12, Block 3.
All in West Acres 4th Addition.

Lots 1 through 10, Block 4.
All in West Acres 4th Addition.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO
ENGINEERING DEPARTMENT
LOCATION & ASSESSMENT AREA
ASPHALT PAVING
REHAB/RECONSTRUCTION

IMPROVEMENT DISTRICT NO. PR-22-G