

FARGO CITY COMMISSION AGENDA  
Monday, October 2, 2023 - 5:00 p.m.

Executive Session at 4:30 p.m.

Roll Call.

**PLEASE NOTE:** The City Commission will convene at 4:30 p.m. and retire into Executive Session in the Red River Room with respect to the proposed agreement between the City and T&K Property Management LLC, the City Commission will meet in Executive Session to consult with the City's attorneys and the City's negotiators as well because there is a reasonable likelihood that civil litigation will occur relating to the project that is the subject of the proposed agreement and public discussion would have an adverse fiscal effect on the City's litigation and or bargaining position, this Executive Session is authorized by North Dakota Century Code 44-04-19.1 subsection 9.

Regular Meeting at 5:00 P.M.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at [www.FargoND.gov/Streaming](http://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](http://www.FargoND.gov/CityCommission).

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, September 18, 2023).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Letter of Support for The Wave Water Park project to the ND Opportunity Fund.
- 2. 2nd reading and final adoption of an Ordinance Amending Section 8-1321 of Article 8-13 of Chapter 8 of the Fargo Municipal Code Relating to Use of Safety Belts Required in Certain Motor Vehicles.
- 3. Waive 2nd reading of an Ordinance Enacting Article 3-24 of Chapter 3 of the Fargo Municipal Code Relating to a Lodging Tax for Fargodome Including Conference Center; and to place the Ordinance on the agenda for the Regular Meeting of the City Commission on December 26, 2023, for possible final passage and enactment.
- 4. Waive 2nd reading of an Ordinance Enacting Article 3-25 of Chapter 3 of the Fargo Municipal Code Relating to a Sales Tax for Fargodome Including Conference Center; and to place the Ordinance on the agenda for the Regular Meeting of the City Commission on December 26, 2023, for possible final passage and enactment.
- 5. Applications for Games of Chance:
  - a. Delta Delta Delta for a raffle on 10/13/23.
  - b. Eagles Elementary PTA for bingo on 10/27/23 and 2/12/24.
  - c. St. John Paul II Catholic Schools for a calendar raffle from 10/13/23 through 10/24/23.
  - d. Eventide for a raffle and raffle board on 10/13/23.

- e. River Keepers for a raffle on 10/19/23.
  - f. Red River Children's Advocacy Center for a raffle and raffle board on 10/27/23.
  - g. Homeward Animal Shelter for a raffle on 10/27/23.
6. Direct the City Attorney to Amend Fargo Municipal Code 25-1508 (F) adding three additional alcoholic beverage licenses to the Class "C" and Class "W" Classifications.
  7. Extension of a Class "FA" Alcoholic Beverage License for Prairie Pasta, Inc. d/b/a Johnny Carino's until 3/31/24.
  8. 2024 City Commission meeting dates.
  9. Contract and bond for Project No. BP-23-0.
  10. ND Department of Transportation Cost Participation, Construction and Maintenance Agreement for LPA Federal Aid Project (Project No. QR-24-A1).
  11. Consent to Construction Agreement with 9th & Main, LLC at 1387 55th Street North.
  12. Change Order No. 1 in the amount of \$65,450.00 and associated 35-day time extension to the substantial and final completion dates of 10/27/23 and 11/13/23 for Project No. SR-23-A1.
  13. Final Balancing Change Order No. 6 in the amount of \$0.00 for Project No. MP-20-A2.
  14. Negative Final Balancing Change Order No. 1 in the amount of -\$4,706.72 for Project No. PR-23-A1.
  15. Contract Amendment No. 2 with Apex Engineering in the amount of \$94,559.00 for Improvement District No. BR-23-G0.
  16. Create Improvement District No. BR-24-A (Paving and Utility Rehab/Reconstruction).
  17. Memorandum of Offer to Landowner for an Easement (Temporary Construction Easement) with Easter Seals Good Will ND, Inc. (Improvement District No. BR-23-G2).
  18. Easement (Temporary Construction Easement) with FM Property Pros II, LLC (Improvement District No. BR-24-A1).
  19. Notice of Grant Award from the ND Department of Emergency Services for FY2023 Emergency Management Performance Grant (CFDA #97.042 EMPG).
  20. Extension of the Agreement with R.L. Engebretson Architects Fargo LLC for Phase 2 of Architectural Services at the FARGODOME (RFQ18084).
  21. Change Order No. 4 in the amount of \$5,880.00 for Fire Station No. 8 construction.
  22. Direct the City Attorney to review Articles 13-10, 13-14 and 13-18.
  23. Notice of Grant Award from the ND Department of Health and Human Services for the Community Grant Program (CFDA #93.991).
  24. Notice of Grant Award from the ND Department of Health and Human Services for maternal and child health programs (CFDA #93.994).

25. Notice of Grant Award from the ND Department of Health and Human Services for the Women, Infant and Children program (CFDA #10.557).
26. Master Clinical Affiliation Agreement with the University of North Dakota.
27. Vacate the Findings of Fact, Conclusions and Order for property located at 509 21st Street North.
28. Set October 16, 2023 at 5:15 p.m. as the date and time for a Public Hearing on a dangerous building at 924 7th Street South.
29. Updated art concept for the Skyway Mosaic project.
30. Notice of Grant Award from the ND Department of Emergency Services (NDDDES) in the amount of \$338,921.00 for the Fargo Police Department-Red River Valley Bomb Squad.
31. Bid award to Nelson Auto Center in the amount of \$56,173.00 for the purchase of one Ford F-450 (PBC23377).
32. Piggyback purchase through the Sourcewell Cooperative Contract with Custom Fire Apparatus Inc. in the amount of \$628,464.59 for the purchase of a 2024 Fire Pumper Truck (PBC24002).
33. Extension of the 2022/2023 Services Agreement - Snow Groomer Equipment Services with Midwest Snow Services LLC for the 2023/2024 Winter Season (RFP22156).
34. Resolutions Authorizing the Issuance and Sale of \$701,000.00 and \$10,647,000.00 City of Fargo Solid Waste Revenue Bonds, Series 2023E and Series 2023F.
35. Bid award to Excavating Inc. in the amount of \$6,165,624.20 for Cell 21 Waste Excavation and Construction Project No. SW 23-04.
36. ND Department of Transportation Section 5310 Transit Grant Agreement for Capital Assistant Program for elderly persons and persons with disabilities (CFDA #20.513).
37. Services Agreement with the Minnesota Municipal Utilities Association for OSHA/DOT safety training at the Water Treatment Plant (EX24003).
38. Bills.

#### **REGULAR AGENDA:**

39. **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](https://FargoND.gov/VirtualCommission)).**

#### **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**

40. **PUBLIC HEARING – EOLA Second Addition (4410, 4415, 4448, 4470, 4471 and 4474 24th Avenue South; 4417 and 4477 26th Avenue South); approval recommended by the Planning Commission on 7/6/23 and 9/7/23:**
  - a. PUD, Planned Unit Development Master Land Use Plan amendment.
  - b. Zoning Change from GC, General Commercial with a PUD, Planned Unit Development to GC, General Commercial, with an amended PUD, Planned Unit Development overlay.
  - c. 1st reading of rezoning Ordinance (EOLA Addition).

- d. 1st reading of rezoning Ordinance (EOLA Second Addition).
- e. Plat of EOLA Second Addition.

- 41. **PUBLIC HEARING** – Hearing on a dangerous building located at 1809 14th Avenue South.
- 42. **PUBLIC HEARING** – Application filed by Corvent Medical, Inc. for a property tax exemption for a project to be located at 4837 Amber Valley Parkway South which the applicant will use for the manufacturing of medical ventilators, warehousing ventilators and accessories used with ventilators.
- 43. **PUBLIC HEARING** – Changes to MATBUS Route 18.
- 44. **PUBLIC HEARING** - Special Assessment List for Business Improvement District (BID) fees and unpaid utility bills.
- 45. **PUBLIC HEARING** - Special Assessments for the 2022 New and Reconstruction of City Ordered Sidewalks (Project No. SR-22-A).
- 46. **PUBLIC HEARING** - Special Assessments for the 2022 New and Reconstruction of City Ordered Sidewalks (Project No. SR-22-B).
- 47. **PUBLIC HEARING** - Special Assessment List for the following Improvement Districts, all having been approved by the Special Assessment Commission on 8/29/23:
  - a. Alley Paving Improvement District No. AN-21-A.
  - b. Grading, Salvaged Base, P.C.C. Pavement, Storm Sewer, Water Main, Traffic Signal, Lighting and Shared Use Path Improvement District No. BN-20-A
  - c. New Bridge, Underground Utilities, Paving, Shared Use Path and Structure and Incidentals Improvement District No. BN-21-A.
  - d. New Paving and Utility Construction Improvement District No. BN-21-B.
  - e. New Paving and Utility Construction Improvement District No. BN-21-E.
  - f. New Paving and Utility Construction Improvement District No. BN-21-H.
  - g. New Paving and Utility Construction Improvement District No. BN-21-L.
  - h. New Paving and Utility Construction Improvement District No. BN-22-A.
  - i. New Paving and Utility Construction Improvement District No. BN-22-B.
  - j. New Paving and Utility Construction Improvement District No. BN-22-J.
  - k. New Paving and Utility Construction Improvement District No. BN-22-K.
  - l. New Paving and Utility Construction Improvement District No. BN-22-N.
  - m. Water Main Replacement, Storm Sewer, Street Reconstruction and Incidentals Improvement District No. BR-21-C.
  - n. Paving and Utility Rehab/Reconstruction Improvement District No. BR-21-E.
  - o. Paving and Utility Rehab/Reconstruction Improvement District No. BR-22-F.
  - p. Drain 53 Improvement Project No. 2019-01; SE Cass WRD Improvement District No. FM-20-C.
  - q. Southwest Regional Pond Phase 1 Improvement District No. FP-19-A.
  - r. Storm Sewer Lift Station Rehab/Reconstruction and Incidentals Improvement District No. NR-20-A.
  - s. Asphalt Wear Course Improvement District No. PN-22-A.
  - t. New Paving Construction Improvement District No. PN-23-C.
  - u. Concrete Paving Rehab/Reconstruction Improvement District No. PR-21-F.
  - v. Concrete Paving Rehab/Reconstruction Improvement District No. PR-22-C.
  - w. Seal Coat Improvement District No. PR-22-E.

- x. Asphalt Mill and Overlay Improvement District No. PR-22-F.
  - y. Asphalt Paving Rehab/Reconstruction Improvement District No. PR-22-G.
  - z. Street Lighting and Incidentals Improvement District No. SL-21-B.
  - aa. Street Lighting and Incidentals Improvement District No. SL-21-C.
  - bb. Traffic Signal Improvements Improvement District No. TN-22-A.
  - cc. New Utility Construction Improvement District No. UN-22-M.
48. **PUBLIC HEARING** – CONTINUED to 10/30/23 – Application for a Class “FA” Alcoholic Beverage License for El Agave Mexican Restaurant, LLC d/b/a El Agave Mexican Restaurant to be located at 2581 45th Street South.
49. **PUBLIC HEARING** – CONTINUED to 10/30/23 – Transfer of a Class “FA” Alcoholic Beverage License from Prairie Pasta, Inc. d/b/a Johnny Carino’s to Summit Night Club d/b/a Cairo Restaurant and Nightclub to be located at 4554 7th Avenue South.
50. **PUBLIC HEARING** – Transfer of a Class “AB” Alcoholic Beverage License to Chub’s Pub and Package Place, Inc. d/b/a Chub’s Pub and Package Place at 421 University Drive (ownership change).
51. **PUBLIC HEARING** – Application for a Class “GH” Alcoholic Beverage License for Dami and Company, LLC d/b/a SOHO23 to be located at 1450 25th Street South.
52. **PUBLIC HEARING** – Application for a Class “W” Alcoholic Beverage License for Uncorked Lounge LLC d/b/a Uncorked Lounge to be located at 5601 33rd Avenue South.
53. **PUBLIC HEARING** – Application for a Class “CW” Alcoholic Beverage License for The 40Fifty Lounge, LLC d/b/a The 40Fifty Lounge to be located at 2551 45th Street South Unit 129.
54. **PUBLIC HEARING** – Application for a Class “W” Alcoholic Beverage License for The 1889, LLC d/b/a The 1889 to be located at 602 Main Avenue.
55. Recommendations for the Main Avenue Reconstruction Project – University Drive to 25th Street (Improvement District No. BR-23-A1).
56. Recommendation to approve the Agreement to Grant Emergency Egress Easement and to Grant Option for Parking Lease with T&K Property Management LLC, as presented.
57. Recommendation to approve the Preliminary Budget as the Final Budget for 2024 and the proposed tax levies.
58. Recommendations for appointments to the following Boards and Commissions:
- a. Human Rights Commission.
  - b. Library Board.
59. Applications for Property Tax Exemptions for Improvements Made to Buildings:
- a. Roger and Canan Green, 3380 Maplewood Court South (5 years).
  - b. Adam Halter, 1421 12th Street South (5 years).
  - c. Cory and Laura Marcuson, 3013 9th Street North (5 years).
  - d. Brian Dahlin, 1431 4th Avenue South (5 years).
  - e. Peggy Bokn, 2409 Parkview Drive South (5 years).
  - f. Brent Merrigan, 715 3rd Street North (5 years).

60. Liaison Commissioner Assignment Updates.

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](http://www.FargoND.gov/CityCommission).



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**City Administration**  
225 4th Street North  
Fargo, ND 58102

## MEMORANDUM

**TO:** Fargo City Commission

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

A handwritten signature in black ink, appearing to be "JG", is written over the name "Jim Gilmour" in the "FROM" line.

**DATE:** September 27, 2023

**SUBJECT:** Letter of Support for The Wave Water Park

The City of Fargo is a member of the North Dakota Opportunity Fund (NDOF) Consortium along with 37 other communities in North Dakota. This fund originated as part of the Small Business Jobs Act of 2010.

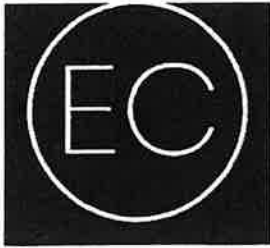
The fund provides loans and investments to small businesses. In order for a business to receive support, the Consortium requires an endorsement letter from the City indicating support for the project and NDOF involvement in the financing. There is no City financial support included or required with the letter of support.

EPIC Companies has requested a letter of support to obtain money from the NDOF to match the Bank of North Dakota interest buy down program. The project is the water park and resort project being developed in southwest Fargo.

The Economic Development Incentives Committee reviewed the request and recommends approval.

### **Recommended Motion**

Provide a letter in support of The Wave Water Park project to the North Dakota Opportunity Fund providing match of the Bank of ND interest buy down program.



**EPIC Companies**

EPICCompaniesND.com

745 31st Ave. E

West Fargo, ND 58078

701.866.1006

8/30/2023

Jim Gilmour  
Strategic Planning Director  
City of Fargo

Mr. Gilmour,

We have recently received our primary sector designation from the North Dakota Department of Commerce, Economic Development & Finance Division and are applying for a local match through the North Dakota Opportunity Fund/Lewis & Clark Development Fund. This is required to qualify for the Bank of North Dakota's PACE interest buydown program which we intend to utilize for The Wave waterpark & resort project. Accordingly, we are requesting a letter of support from the City so we can include with our application.

Please let me know if you need anything further to process this request. Thanks for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blake Nybakken', written in a cursive style.

Blake Nybakken  
Chief Operating Officer



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

2

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE AMENDING SECTION 8-1321 OF ARTICLE 8-13 OF  
2 CHAPTER 8 OF THE FARGO MUNICIPAL CODE RELATING TO  
3 USE OF SAFETY BELTS REQUIRED IN CERTAIN MOTOR VEHICLES

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

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

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

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

13 NOW, THEREFORE,

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

15 Section 1. Amendment.

16 Section 8-1321 of Article 8-13 of Chapter 8 of the Fargo Municipal Code is hereby  
17 amended as follows:

18 8-1321. - Use of safety belts required in certain motor vehicles.

19 A driver may not operate on any street or highway in the City of Fargo, a motor vehicle  
20 designed for carrying fewer than 11 passengers, which was originally manufactured with  
21 safety belts, unless each front seat occupant is wearing a properly adjusted and fastened  
22 safety belt.  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 A. This section shall not apply to the following:

- 2 1. A child in a child restraint device or seat belt as defined in § 39-21-41.2,  
3 N.D.C.C.  
4 2. Drivers of implements of husbandry.  
5 3. To operators of farm vehicles as defined in subsection 5 of § 39-04-19,  
6 N.D.C.C.  
7 4. To rural mail carriers while on duty delivering mail.  
8 5. When all front seat safety belts are in use by other occupants.  
9 6. To an occupant with a medical or physically disabling condition that  
10 prevents appropriate restraint in a safety belt, if a qualified physician,  
11 physician assistant, or advanced practice registered nurse states in a signed  
12 writing the nature of the condition and the reason restraint is inappropriate.  
13 7. To an occupant who is an emergency medical services personnel, during  
14 the provision of direct patient care.

15 ~~B. — A peace officer may not issue a citation for a violation of this section unless the~~  
16 ~~officer lawfully stopped or detained the driver of the motor vehicle for another~~  
17 ~~violation.~~

18 Section 2. Penalty.

19 A person who violates Fargo Municipal Code section 8-1321 shall be deemed to have  
20 committed a non-criminal offense and shall pay a fee of \$40 as provided in Section 1-  
21 0305 of the Fargo Municipal Code, as may be amended from time to time.  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

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Section 3. Effective Date.

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

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

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading and Final Passage:  
Publication:

Erik R. Johnson  
Assistant City Attorney - Fargo

③

September 26th, 2023

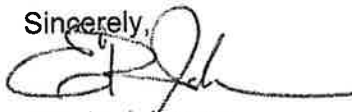
Board of City Commissioners  
City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

RE: Ordinances enacting Articles 3-24 (Lodging Tax) and 3-25 (Sales and Use Tax) to finance the Fargodome Project – Waiver of Second Reading

Dear Commissioners:

Enclosed for waiver of second reading, but not for final passage are the two ordinances pertaining to the enactment of an additional 3% lodging tax and a ¼% sales and use tax to be imposed and collected for the purpose of financing the remodeling of and the addition of the conference center to the Fargodome. As I explained previously, in order to deliver the enacted sales tax ordinance to the North Dakota Tax Commissioner in a timely manner, we are requesting that the City Commission undertake the customary preliminary steps taken with ordinances, prior to actual final passage and enactment, before the December 5th election, with "final passage" and enactment of the ordinances to occur only after the canvassing of the election votes and the certification of the result and only if the home rule charter amendment has been approved by the required 60% vote. There is a regular City Commission meeting scheduled for Tuesday, December 26th, 2023. By that time, the December 18th canvassing results will be known and the results certified and, therefore, if the city voters have approved the Home Rule Charter amendment, the two ordinances will be presented to the City Commission at the December 26th regular meeting for "final passage." The two ordinances are drafted to "take effect" on Friday, December 29, 2023. Thus, the ordinances will take effect after the home rule charter amendment takes effect, with collection of both taxes to commence on April 1, 2024. Therefore, enclosed are the two ordinances that will be used to implement the home rule charter amendment if the amendment is approved by the voters at the special election, submitted herewith for waiver of second reading.

**SUGGESTED MOTION:** I move to waive second reading of the following two ordinances, as presented: An Ordinance Enacting Article 3-24 of Chapter 3 of the Fargo Municipal Code Relating to a Lodging Tax for Fargodome Including Conference Center; and, An Ordinance Enacting Article 3-25 of Chapter 3 of the Fargo Municipal Code Relating to a Sales Tax for Fargodome Including Conference Center; and to place both ordinances on the agenda for the regular meeting of the City Commission on December 26<sup>th</sup>, 2023, for possible final passage and enactment.

Sincerely,  
  
Erik R. Johnson

Enclosures

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ENACTING ARTICLE 3-24  
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE  
RELATING TO A LODGING TAX  
FOR FARGODOME  
INCLUDING CONFERENCE CENTER

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

5  
6 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

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

9  
10 WHEREAS, by a vote of the electorate of the city of Fargo, the City's home rule charter having  
been amended to authorize a three percent (3%) lodging tax to be imposed and collected in addition  
11 to an existing three percent (3%) city of Fargo lodging tax set forth in Article 3-13 of the Fargo  
Municipal Code, said existing tax having been (a) initially imposed by city ordinance as a two  
12 percent lodging tax (City of Fargo Ord. No. 2014 (June 1981)) under city home rule authority at a  
time when North Dakota non-home-rule cities were empowered by state statute to enact lodging  
13 taxes using state statutory authority (N.D.S.L. Ch. 429 (1981), Sec. 1 – 4) and, therefore by  
exclusion, the city of Fargo and other home rule charter cities could utilize home rule city powers to  
14 enact lodging taxes, and (b) subsequently expanded to the existing three percent lodging tax (City of  
Fargo Ord No. 2595 (1991)) also by said home rule authority; and,  
15

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

17  
18 NOW, THEREFORE, Be it Ordained by the Board of City Commissioners of the City of Fargo:

19 Section 1. Enactment. Article 3-24 of Chapter 3 of the Fargo Municipal Code, consisting of  
Sections 3-2401 through 3-2407, is hereby enacted as follows:

20 3-2401. Definitions.—  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1           1.       Gross receipts - shall mean receipts of retailers for the leasing or renting of a hotel or  
2 motel room or other accommodations occupied by the same natural person or persons for residential  
3 housing, for periods of fewer than thirty consecutive calendar days within the corporate limits of the  
4 city of Fargo.

5           2.       Retailer - shall mean any person, firm or corporation in the business of leasing or  
6 renting hotel, motel or other accommodations for periods of fewer than thirty consecutive calendar  
7 days or one month.

8           3.       Ordinance - All references to "this ordinance" shall mean the ordinance enacted by the  
9 board of city commissioners of the city of Fargo and codified as Article 3-24 of the Fargo Municipal  
10 Code containing enumerated sections commencing with this section 3-2401.

11           3-2402. Tax on gross receipts. -- In addition to the tax imposed pursuant to Fargo Municipal  
12 Code Article 3-13, a three percent (3%) tax is hereby imposed upon gross receipts as defined herein,  
13 which tax shall be computed on a monthly basis by each and every hotel, motel or other  
14 accommodations located within the corporate limits of the city of Fargo. Said tax must be in addition  
15 to the state sales tax on rental accommodations provided in chapter 57-39.2, N.D.C.C. Said tax shall  
16 be placed in a Fargodome improvement capital construction fund of the City of Fargo which, together  
17 with interest and other authorized investment earnings, shall be utilized by the city of Fargo for costs  
18 associated with the remodeling of the Fargodome and with the addition to the Fargodome of a  
19 conference center and with ongoing capital projects, maintenance, and operations of the  
20 Fargodome and functionally-related facilities, including the conference center.

21           3-2403. Collection of tax. -- The tax hereby imposed shall be computed by every retailer and  
22 paid to the city of Fargo. Such computation shall be on a monthly basis and payment for each month  
23 shall be made to the city on or before the 10th day of the following month. The payment shall be  
accompanied by a report indicating the amount of gross receipts for the reporting period and shall be  
certified by a certified public accountant or by the retailer, or managing officer thereof. The city may  
retain up to 3% of the total amount collected for administrative costs.

          3-2404. Dedication of tax proceeds. -- All fees, taxes, penalties and other charges imposed  
and collected under this ordinance, less administrative costs, shall be dedicated and utilized for costs  
associated with the remodeling of the Fargodome, with the addition of a conference center to the  
Fargodome, and with ongoing capital projects, maintenance, and operations of the Fargodome and  
functionally-related facilities including the conference center (the "Projects"), said proceeds to be  
placed initially in a Fargodome improvement capital construction fund of the city of Fargo which,  
together with interest and other authorized investment earnings, shall be utilized by the city of  
Fargo for such purposes. Proceeds from such tax may be used to make direct payment of the costs

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 for such construction, maintenance, and operation or may be pledged, applied or directed to amortize  
2 bonds or other obligations which may be sold to finance such costs. Interest earnings, earnings from  
3 authorized investments, or both such interest and investment earnings, on such proceeds may also be  
4 utilized for such purposes. Any funds remaining after completion of the Projects and payment of  
5 related obligations will be placed in a special escrow fund which, together with interest earnings and  
6 investment earnings, shall be utilized by the Fargodome Authority, with the concurrence of the  
7 governing body of the city, to provide for future capital improvements, maintenance, and operation  
8 of the Fargodome and functionally-related facilities including the conference center. Proceeds from  
9 such tax may be combined with proceeds from the sales, gross receipts and use tax being implemented  
10 for the same purpose. All such proceeds of a lodging tax which is imposed pursuant to the authority  
11 granted herein shall be utilized for the purposes authorized herein as the governing body of the city  
12 may select. The Fargodome Authority is hereby authorized and encouraged to provide  
13 recommendations to the governing body of the city.

14 3-2405. Failure to comply--Penalty. -- If any retailer shall fail to make payment as required  
15 by this article or to file the necessary report within the time provided, or, if upon audit, is found to  
16 owe additional tax, such retailer shall be subject to a penalty of 5% of the amount of tax due, plus  
17 interest of 1% of such tax for each month of delay or a fraction thereof. The board of city  
18 commissioners, if satisfied that the delay was excusable, may waive all or any part of such penalty  
19 and interest. Any penalty and interest paid shall be utilized in the same manner as other receipts under  
20 this article.

21 3-2406. Saving clause. -- Should any section, paragraph, sentence, clause or phrase of this  
22 ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall  
23 not be affected thereby.

3-2407. Term. – A tax imposed by this ordinance shall extend for a period of twenty (20)  
years from and after April 1, 2024, and ending on March 31, 2044.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

Section 2. Effective Date.

This ordinance shall be in full force and effect from and after December 29, 2023.

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\_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

4

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ENACTING ARTICLE 3-25  
OF CHAPTER 3 OF THE FARGO MUNICIPAL CODE  
RELATING TO A SALES TAX FOR FARGODOME  
INCLUDING CONFERENCE CENTER

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

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

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

10 WHEREAS, an amendment to the City's Home Rule Charter has been authorized by a vote of at  
11 least 60% of the qualified electors voting on the question, as provided by initiated amendment  
12 Number Two to the Fargo Home Rule Charter; and

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

15 NOW, THEREFORE, Be it Ordained by the Board of City Commissioners of the City of Fargo:

16 Section 1. Enactment. Article 3-25 of Chapter 3 of the Fargo Municipal Code, consisting of  
17 Sections 3-2501 through 3-2512, is hereby enacted as follows:

18 3-2501. Definitions. -- All terms defined in chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-  
19 39.6, and 57-40.2 of the North Dakota Century Code (N.D.C.C.), including any future amendments,  
20 are adopted by reference. All references to the N.D.C.C. include amendments adopted by the North  
21 Dakota Legislative Assembly. All references to "this ordinance" shall mean the ordinance enacted  
22 by the board of city commissioners of the city of Fargo and codified as Article 3-25 of the Fargo  
23 Municipal Code containing enumerated sections commencing with this section 3-2501.

24 3-2502. Collection and administration. -- Where not in conflict with the provisions of this  
25 ordinance, the provisions of N.D.C.C. chapters 40-05.1, 57-39.2, 57-39.4, 57-39.5, 57-39.6, and 57-  
26 40.2, and all administrative rules adopted by the Tax Commissioner, pertaining to the collection and  
27 administration of the retail sales, use, and gross receipts tax, including provisions for liability, refund,

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

penalty, interest or credit, govern the administration by the North Dakota Office of State Tax Commissioner (hereinafter "Tax Commissioner") of the taxes imposed by this ordinance.

1           3-2503. Sales tax imposed. -- Subject to the provisions of N.D.C.C. § 40-05.1-06, and except  
2 as otherwise provided by this ordinance, or the sales and use tax laws of the State of North Dakota, a  
3 tax of one-quarter of one percent (0.25%) is imposed upon the gross receipts of retailers from all sales  
4 at retail, including the leasing or renting of tangible personal property, within the corporate limits of  
5 the of the city of Fargo, North Dakota.

6           3-2504. Use tax imposed. -- Subject to the provisions of N.D.C.C. § 40-05.1-06, and except  
7 as otherwise provided in this ordinance, or the sales and use tax laws of the State of North Dakota, an  
8 excise tax is imposed upon the storage, use, or consumption within the corporate limits of the city of  
9 Fargo, North Dakota of tangible personal property purchased at retail for storage, use, or consumption  
10 in this city, at the rate of one-quarter of one percent (0.25%) of the purchase price of the property. An  
11 excise tax is imposed on the storage, use, or consumption within the corporate limits of the city of  
12 Fargo, North Dakota of tangible personal property not originally purchased for storage, use, or  
13 consumption in this city at the rate of one-quarter of one percent (0.25%) percent of the fair market  
14 value of the property at the time it was brought into this city.

15           With respect to the purchase price of tangible personal property used by a contractor or subcontractor  
16 to fulfill a contract as defined in N.D.C.C. § 57-40.2-03.3, the tax imposed by this section applies only  
17 to bids submitted on or after the effective date of this ordinance.

18           3-2505. Gross receipts of alcoholic beverages. -- Subject to the provisions of N.D.C.C. § 40-  
19 05.1-06, and except as otherwise provided in this ordinance, a gross receipts tax of one-quarter of one  
20 percent (0.25%) is imposed upon all gross receipts from the sale of alcoholic beverages within the  
21 city. A person who receives alcoholic beverages for storage, use, or consumption in this state is  
22 subject to tax on storage, use, or consumption of those alcoholic beverages at the rate of one-quarter  
23 of one percent (0.25%).

          3-2506. Gross receipts of new farm machinery and new farm irrigation equipment. -- Subject  
to the provisions of N.D.C.C. § 40-05.1-06, and except as otherwise provided in this ordinance, a  
gross receipts tax of one-quarter of one percent (0.25%) is imposed upon all gross receipts from the  
sale of new farm machinery and new farm irrigation equipment within the city. A person who  
receives new farm machinery or new farm irrigation equipment for storage, use, or consumption in  
this state is subject to tax on storage, use, or consumption of that machinery and/or equipment at the  
rate of one-quarter of one percent (0.25%).

          3-2507. Maximum tax imposed. -- Any patron or user paying a tax imposed by this ordinance  
in excess of six and 25/100ths dollars (\$6.25) upon any single transaction of one or more items may

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

obtain a credit or refund of the excess tax at the time of purchase from the vendor or request a refund of the excess tax payment by filing a request for refund upon the forms provided by the Tax Commissioner.

1           3-2508. Exemptions. -- All sales, storage, use, or consumption of tangible personal property  
2 which are exempt from imposition and computation of the sales or use tax of the state of North Dakota  
3 are specifically exempt from the provisions of this ordinance.

4           3-2509. Dedication of tax proceeds. -- All fees, taxes, penalties and other charges imposed  
5 and collected under this ordinance, less administrative costs, are hereby dedicated and shall be utilized  
6 for costs associated with the remodeling of the Fargodome, with the addition of a conference center  
7 to the Fargodome, and with ongoing capital projects, maintenance, and operations of the  
8 Fargodome and functionally-related facilities, including the conference center (the "Projects");  
9 said proceeds to be placed initially in a Fargodome improvement capital construction fund of the city  
10 of Fargo which, together with interest and other authorized investment earnings, shall be utilized by  
11 the city of Fargo for such purposes. Proceeds from such tax may be used to make direct payment of  
12 the costs for such construction, maintenance, and operations or may be pledged, applied or directed  
13 to amortize bonds or other obligations which may be sold to finance such costs. Interest earnings,  
14 earnings from authorized investments, or both such interest and investment earnings, on such  
15 proceeds may also be utilized for such purposes. Any funds remaining after completion of the  
16 Projects and payment of related obligations will be placed in a special escrow fund which, together  
17 with interest earnings and investment earnings, shall be utilized by the Fargodome Authority, with  
18 the concurrence of the governing body of the city, to provide for future capital improvements,  
19 maintenance, and operation of the Fargodome and functionally-related facilities including the  
20 conference center. Proceeds from such tax may be combined with proceeds from the lodging tax  
21 being imposed for the same purpose. All such proceeds of a sales, gross receipts and use tax which  
22 is imposed pursuant to the authority granted herein shall be utilized for the purposes authorized herein  
23 as the governing body of the city may select. The Fargodome Authority is hereby authorized and  
encouraged to provide recommendations to the governing body of the city.

16           3-2510. Contract with state tax commissioner. -- The city auditor of the city of Fargo is  
17 hereby authorized to contract with the Tax Commissioner for administration and collection of taxes  
18 imposed by this ordinance. The City Auditor has all powers granted to the Tax Commissioner and in  
19 the absence of a valid contract with the Tax Commissioner or failure of the Tax Commissioner to  
20 perform the delegated duties, shall perform these duties in place of the Tax Commissioner.

19           3-2511. Saving clause. -- Should any section, paragraph, sentence, clause or phrase of this  
20 ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall  
21 not be affected thereby.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

3-2512. Term. – A tax imposed by this ordinance shall extend for a period of twenty (20) years from and after April 1, 2024, and ending on March 31, 2044.

1 Section 2. Effective Date.

2 This ordinance shall be in full force and effect from and after December 29, 2023.

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4  
5 \_\_\_\_\_  
6 Timothy J. Mahoney, M.D., Mayor

7 (SEAL)

8 Attest:

9 \_\_\_\_\_  
10 Steven Sprague, City Auditor

11 First Reading:  
12 Second Reading:  
13 Final Passage:  
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**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (5-2023)

500

pol cash

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\*

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group Delta Delta Delta		Dates of Activity (Does not include dates for the sales of tickets) October 13, 2023	
Organization or Group Contact Person Keely GaiKowski		E-mail Keely.gaikowski@ndsu.edu	Telephone Number 705-881-2296
Business Address 1313 University Dr North		City Fargo	State ND
Mailing Address (if different)		City	State ND
			ZIP Code 58102

**SITE INFO**

Site Name NDSU Memorial Union		County	
Site Physical Address 1401 <del>Adams</del> Administration Ave.		City Fargo	State ND
			ZIP Code 58105
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) Raffle - 10/11, 10/12, 10/13			

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	\$200 Visa Gift Card	\$200
Total (limit \$40,000 per year)		\$ \$200

Intended Uses of Gaming Proceeds  
Donated to St. Jude Children's Research Hospital

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 an 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 for \$40,000 per fiscal year)

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

Yes     No

Printed Name of Organization Group's Permit Organizer Keely GaiKowski	Telephone Number 605-881-2296	E-mail Address Keely.gaikowski@ndsu.edu
Signature of Organization Group's Permit Organizer Keely GaiKowski	Title Director of Philanthropy	Date 9/19/2023



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

56

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

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

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

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

Name of Organization or Group of People permit is issued to Eagles Elementary PTA	Dates of Activity 24 10/27/23 & 02/12/23	If raffle, provide drawing date	
Organization or Group Contact Person Eagles Elementary PTA	Title or Position President	Telephone Number 218-230-3708	
Business Address 3502 S University Dr	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Eagles Elementary School			
Site Address 3502 S University Dr	City Fargo	ZIP Code 58104	County Cass

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Bingo	Toys, books, waterbottles	500
Total (limit \$40,000 per year)		500

Intended Uses of Gaming Proceeds  
 proceeds for literacy, math night, and VIP day with families

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

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

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

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

Organization or Group Contact Person

Name Sascha Cariveau	Title PTA president	Telephone Number 218-230-3708	E-mail Address eagleacespta@gmail.com
Signature of Organization or Group's Top Official 		Title PTA President	Date 09/13/2023



# APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
GAMING DIVISION  
SFN 9338 (4-2023)

150



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\*

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group St. John Paul II Catholic School		Dates of Activity (Does not include dates for the sales of tickets) 10/13/2023 - 10/24/2023	
Organization or Group Contact Person Liz Bassett	E-mail liz.bassett@spaschus.org	Telephone Number 701-893-3242	
Business Address 5600 25th St. S.	City Fargo	State ND	ZIP Code 58104
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name Shanley High School	County CASS
Site Physical Address 5600 25th St. S.	City Fargo
	State ND
	ZIP Code 58078

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)

10/13 - Raffle  
10/24 - Raffle

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle 10/13	up to \$500 cash	\$500 or less
Raffle 10/24	up to \$500 cash	\$500 or less
Total (limit \$40,000 per year)		\$ 1,000

**Intended Uses of Gaming Proceeds**

student activities

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 an 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: \$7,500 (This amount is part of the total prize limit for \$40,000 per fiscal year)

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

Yes     No

Name Liz Bassett	Title Sp Events Coord.	Telephone Number 701-893-3242	E-mail Address liz.bassett@spaschus.org
Signature of Organization or Group's Top Official 		Title Sp. Events Coordinator	Date 9/28/2023

23-1070



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

50d

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

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

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

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

Name of Organization or Group of People permit is issued to Eventide	Dates of Activity 10/13/2023	If raffle, provide drawing date 10/13/2023	
Organization or Group Contact Person Nonda Mack	Title or Position Foundation Exec Director	Telephone Number 218-291-2287	
Business Address 801 Main Ave #201	City Moorhead	State MN	ZIP Code 56560
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) Avalon Events Center			
Site Address 2525 9th Ave S	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	12 bottles whiskey, utility wagon	814.88
Raffle	Glamping certificate; char-griller set	808.00
Raffle	Keurig coffee maker; k-cups	220.00
Raffle	Ninja blender; Swanson health basket	200.00
Raffle	Personal microderm set; Scentsy warmer kit	200.00
(see attached)		
Total (limit \$40,000 per year)		5,641.88

Intended Uses of Gaming Proceeds  
 Support programs at Eventide for the benefit of Eventide residents

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

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

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

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

Organization or Group Contact Person			
Name Nonda Mack	Title Foundation Exec Director	Telephone Number 218-291-2287	E-mail Address nonda.mack@eventide.org
Signature of Organization or Group's Top Official <i>NMack</i>		Title Foundation Executive Director	Date 9/26/2023





**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (9-2023)

(5e)

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\*

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>River Keepers</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>October 19, 2023</b>	
Organization or Group Contact Person <b>Christine Holland</b>	E-mail <b>christine@riverkeepers.org</b>	Telephone Number <b>701.235.2895</b>	
Business Address <b>1120 28th Ave. N., Ste. B</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Gate City Bank</b>	County <b>Cass</b>		
Site Physical Address <b>500 2nd Ave. N.</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.) <b>10/19, raffle</b>			

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
<b>Raffle</b>	<b>See attached sheet</b>	
Total (limit \$40,000 per year)		<b>\$ 427.00</b>

**ADDITIONAL REQUIRED INFORMATION**

Intended Uses of Gaming Proceeds  
**educational outreach regarding the Red River**

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 an 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 for \$40,000 per fiscal year)

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

Printed Name of Organization Group's Permit Organizer <b>Christine Holland</b>	Telephone Number <b>701.235.2895</b>	E-mail Address <b>christine@riverkeepers.org</b>
Signature of Organization Group's Permit Organizer <i>Christine Holland</i>	Title <b>Executive Director</b>	Date <b>9/27/2023</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL  
 GAMING DIVISION  
 SFN 9338 (9-2023)

57

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

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

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

\*See Instruction 2 (f) on Page 2. Poker, Twenty-One, and Paddlewheels may be conducted Only with a Restricted Event Permit. Only one permit per year.  
**LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS**

**ORGANIZATION INFO**

Name of Organization or Group <b>Red River Children's Advocacy Center</b>		Dates of Activity (Does not include dates for the sales of tickets) <b>10/27/2023</b>	
Organization or Group Contact Person <b>Heidi Schultz</b>	E-mail <b>heidi@rrcac.com</b>	Telephone Number <b>701-234-4583</b>	
Business Address <b>100 4th St. S. Suite 302</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58103</b>
Mailing Address (if different)	City	State	ZIP Code

**SITE INFO**

Site Name <b>Holiday Inn Fargo</b>	County <b>Cass</b>
Site Physical Address <b>3803 13th Ave. S.</b>	City <b>Fargo</b>
	State <b>ND</b>
	ZIP Code <b>58103</b>

Provide the exact date(s) & frequency of each event & type (Ex. Bingo every Friday 10/1-12/31, Raffle - 10/30, 11/30, 12/31, etc.)  
**10/27/23**

**PRIZE / AWARD INFO (If More Prizes, Attach An Additional Sheet)**

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Raffle	Winner will receive 50% of the proceeds from this game as the prize.	Approx. \$3000
Raffle Board	Ooni Pizza Oven with accessories	\$510.57
Raffle Board	A cooler of booze	\$500.00
Total (limit \$40,000 per year)		\$ <b>5610.57</b>

**ADDITIONAL REQUIRED INFORMATION**

Intended Uses of Gaming Proceeds  
**All proceeds will go directly to fund the mission of the RRCAC.**

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 an 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 for \$40,000 per fiscal year)

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

Printed Name of Organization Group's Permit Organizer <b>Heidi Schultz</b>	Telephone Number <b>218 701-234-4583 282-0373</b>	E-mail Address <b>heidi@rrcac.com</b>
Signature of Organization Group's Permit Organizer 	Title <b>Development Director</b>	Date <b>9/18/2023</b>



**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (09-2021)

*Sgr*

Applying for (check one)  
 Local Permit       Restricted Event Permit\*  
 Games to be Conducted       Raffle by a Political or Legislative District Party  
 Bingo       Raffle       Raffle Board       Calendar Raffle       Sports Pool       Poker\*       Twenty-One\*       Paddlewheels\*

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

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

Name of Organization or Group of People permit is issued to <b>Homeward Animal Shelter</b>	Dates of Activity <b>Oct 27, 2023</b>	If raffle, provide drawing date <b>Oct 27, 2023</b>	
Organization or Group Contact Person <b>Natalie Perhus</b>	Title or Position <b>Events Coordinator</b>	Telephone Number <b>701-371-3193</b>	
Business Address <b>1201 28th Avenue</b>	City <b>Fargo</b>	State <b>ND</b>	ZIP Code <b>58102</b>
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) <b>Hilton Garden Inn</b>			
Site Address <b>4351 17th Ave S</b>	City <b>Fargo</b>	ZIP Code <b>58103</b>	County <b>Cass</b>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
50/50 Raffle	Cash	\$6,000
Total (limit \$40,000 per year)		\$6,000

Intended Uses of Gaming Proceeds **All proceeds will go to the care of the homeless cats & dogs at Homeward Animal Shelter.**

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

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

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

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

Organization or Group Contact Person

Name <b>Natalie Perhus</b>	Title <b>Events Coordinator</b>	Telephone Number <b>701-371-3193</b>	E-mail Address <b>nperhus@homewardonline.org</b>
Signature of Organization or Group's Top Official <i>Natalie Perhus</i>		Title <b>Executive Director</b>	Date <b>9/28/23</b>

6

**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](http://www.FargoND.gov)

Date: September 27, 2023

To: Fargo City Commission

From: Steven Sprague, City Auditor

Re: Ordinance Amendment - Recommendation to increase the number of Class C & W licenses

After months of discussion, the Liquor Control Board is recommending increasing the number of Class C (Beer) and Class W (Wine) licenses available. The Liquor Control Board is recommending three additional licenses in each class be added.

In 2019 the number of Class C and Class W licenses was set at ten (10) for each license class. The City has issued approximately three (3) new licenses each year, Covid adjusted, and we have now reached the cap. After considerable discussion, the Liquor Board is recommending increasing the number of licenses.

**RECOMMENDED MOTION**

**DIRECT THE CITY ATTORNEY TO AMEND FARGO MUNICIPAL CODE 25-1508 (F) ADDING THREE ADDITIONAL LICENSES TO THE CLASS C AND CLASS W CLASSIFICATIONS**

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## MEMORANDUM

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TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Johnny Carino's Liquor License Extension

DATE: September 27, 2023

The Auditor's office received a request to extend the Johnny Carino's Class FA alcoholic beverage license. This license was purchased in 2005 and the store is closing due to lack of employees to properly maintain the restaurant. The license is grandfathered in as the ordinance that prohibits selling the license was enacted in 2014. The management would like to actively pursue selling the license.

The request is a six-month extension of ordinance 25-1512 on liquor license to allow time to sell and transfer the license to a new entity.

### **Recommended Motion:**

Approve a six-month extension of ordinance 25-1512 until March 31, 2024 for the Johnny Carino's class FA liquor license.



September 27<sup>th</sup>, 2023

Steve Sprague  
City Auditor  
City of Fargo  
P.O. Box 2471  
Fargo, ND 58108

Re: Sale of Liquor License

Hi Steve

We are in the process of selling our liquor license to Heva Ismail for Caro Restaurant and night club. She is in the application process.

The sale of the license was pushed back to the end of October. We would like to have an extension of our license for this sale.

Please let me know if you have any questions.

Thank you,

Todd G Porter



**TO: BOARD OF CITY COMMISSIONERS**  
**FROM: EXECUTIVE ASSISTANT KEMBER ANDERSON**  
**DATE: OCTOBER 2, 2023**  
**SUBJECT: MEETING SCHEDULE FOR 2024**

I am proposing the following schedule for City Commission meetings for calendar year 2024 (please note, if a meeting day falls on a holiday, the meeting will be held on Tuesday).

- January 8 and 22
- February 5 and 20 (Tuesday)
- March 4 and 18
- April 1, 15 and 29
- May 13 and 28 (Tuesday)
- June 10 and 24
- July 8 and 22
- August 5 and 19
- September 3 (Tuesday), 16 and 30
- October 14 and 28
- November 12 (Tuesday) and 25
- December 9 and 23

**RECOMMENDED MOTION:** To approve the 2024 City Commission meeting schedule as outlined above.

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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No.: QR-24-A1 Type: Cost Participation and Maintenance Agreement
NDDOT Project No.: SU-BRU-8-984(175)

Location: Citywide Date of Hearing: 9/25/2023

Table with 2 columns: Routing, Date. Rows include City Commission (10/2/2023), PWPEC File (X), Project File (Jeremy Gorden).

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding a Cost Participation and Maintenance Agreements (CPM) with NDDOT for a bridge rehab project on the 42nd Street Bridge over I-94.

The estimated construction cost breakout is as follows:

Table with 2 columns: Category, Amount. Rows include Estimated Project Cost (\$603,171.50), Federal Share (\$488,146.70), NDDOT Share (\$ 52,481.40), City Share (\$ 62,543.40).

Staff is recommending approval of the CPM Agreement.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of the CPM Agreement with the NDDOT.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve the CPM Agreements with the NDDOT.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Federal Hwy Funds, State & Sales Tax

Table with 2 columns: Question, Yes/No. Rows include 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

Table with 5 columns: Name, Present, Yes, No, Unanimous. Lists committee members and their voting status.

ATTEST:

C: Kristi Olson

Handwritten signature of Tom Knakmuhs, P.E., City Engineer.



# Memorandum

**To:** Members of PWPEC

**From:** Jeremy Gorden, PE, PTOE  
Division Engineer - Transportation

**Date:** September 18, 2023

**Re:** Approval of Cost, Participation and Maintenance (CPM) Agreement with NDDOT for Bridge Rehabilitation Project on 42<sup>nd</sup> Street Bridge over I-94  
NDDOT Project No. SU-BRU-8-984(175)  
City of Fargo Project No. QR-24-A1

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**Background:**

I have attached a CPM Agreement from the Local Government Division of the NDDOT for a bridge rehab project on the 42<sup>nd</sup> Street Bridge over I-94. The project consists of routine structural maintenance items associated with the bridge as it ages. Funding for the project will consist of Federal Highway Funds from our Urban Roads account, Federal Highway Funds from a State Bridge Rehab account, NDDOT Funds and our Infrastructure Sales Tax funds.

The estimated construction cost breakout is as follows:

Estimated Project Cost	\$ 603,171.50
Federal Share	\$ 488,146.70
NDDOT Share	\$ 52,481.40
City Share	\$ 62,543.40

This project is set to be bid in Bismarck on November 17 and is scheduled to have a Substantial Completion Date of October 31, 2024.

**Recommended Motion:**

I recommend approval of the CPM Agreement.

JMG/klb  
Attachment

**MEMO TO:** Chad Orn  
Deputy Director for Planning

**FROM:** Marohl, Sengaroun H., 328-4449  
Local Government Division

**DATE:** 09/07/2023

**SUBJECT:** Cost Participation, Construction and Maintenance Agreement for Project  
SU-BRU-8-984(175) PCN 23933

This contract is a Cost Participation, Construction and Maintenance (CPM) agreement with City of Fargo on 42<sup>nd</sup> St Bridge over I-94 project.

Contract # 38231199

- The type of work is structure rehabilitation
- The SU Federal Funds for this project is limited to \$ 300,000.
- Any costs over the above limited amount will be City responsibility.
- The BRU Funding splits is 80.93% Federal and 19.07% State.
  
- No one time changes on the standard agreement template.

38/sm

Contract routing:  
Seng Marohl - Contract Owner  
Stacey Hanson  
Paul Benning  
Shannon Sauer  
Jeremy Gorden - Transportation Division Engineer  
City of Fargo Officials  
Seng Marohl  
Legal  
Chad Orn  
Stacey Hanson

**North Dakota Department of Transportation  
COST PARTICIPATION, CONSTRUCTION, AND MAINTENANCE AGREEMENT  
LPA FEDERAL AID PROJECT**

**Federal Award Information – to be provided by NDDOT**

Assistance Listing No: 20.205

Assistance Listing 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-BRU-8-984(175) PCN: 23933**

**LPA: CITY FARGO**

**Location: FARGO 42ND ST/I-94 GRADE SEPARATION**

**Type of Improvement: STRUCTURE REHABILITATION**

**Length: N/A**

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 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).

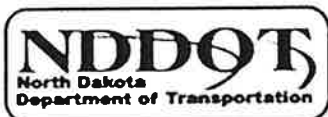
NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code.

Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project cost up to a maximum of \$300,000 for SU. The balance of the project is the obligation of the LPA.

**Additional Funding Clause**

BRU federal funding splits 80.93% Federal and 19.07% State

The total eligible project costs include the cost of those items shown in the engineer's detailed estimate as approved for federal funds and any project changes approved by NDDOT for the use of federal funds.



Federal funds may not be obligated by the LPA, prior to FHWA approval of the program documents for the project.

## PART I

### LPA Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the LPA of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et. Seq.).

Include the following paragraph verbatim in any subcontracts they sign relative to this project:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the solicitation, award, and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NDDOT deems appropriate.

2. To comply with requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
3. To construct the project in conformity with the construction contract, changes to the plans shall meet the requirements of 23 CFR Part 625, Design Standards for Highways and the current edition of the NDDOT's *Local Government Manual*.
4. To construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.
5. To comply with the procedures outlined in the current edition of NDDOT's *Local Government Manual*.
6. To comply with the current edition of NDDOT's *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
7. The LPA will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance,
8. To comply with the requirements of Appendices A and E of the Title VI Assurances, attached and incorporated by reference herein.



## PART II

### Contracting and Construction:

1. On behalf of the LPA, NDDOT will:
  - a. Prepare the bid package, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
  - b. Evaluate the bids as to the sufficiency of Disadvantaged Business Enterprise (DBE) participation and the bidder's good faith efforts in satisfying the requirements of the current edition of the DBE special provision, and 49 CFR Part 26. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
  - c. Tabulate the bids and send to the LPA.
  - d. Concur in the award of the contract, after the LPA has executed the contract, for the sole purpose of enabling the LPA to procure federal aid for the construction of the project.
2. The LPA will:
  - a. Review bids to determine the lowest responsible bidder.
  - b. Execute the contract.
  - c. Distribute copies of the executed contract and contract bond to NDDOT.
3. During the construction of the project, the LPA will:
  - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and the *Standard Specifications for Road and Bridge Construction*.
  - b. Keep all project records and documentation as required in NDDOT's current editions of the *Construction Records Manual* and the *Construction Automated Records System*.
  - c. Make all records available to NDDOT and FHWA for inspection upon request. The LPA will submit all documents and records to NDDOT for review before final payment is made. NDDOT will maintain the project records for three years from the final voucher date of FHWA and then return them to the LPA.
  - d. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

## PART III

### Post Construction:

After the project is completed the LPA agrees to:

1. Control the length and location of curb openings for future entrances and to not permit the length of curb openings for entrances to exceed the length shown on the plans or as shown on a sketch of typical



entrances for similar entrances; and prohibit the construction or use of any entrances along the project within the LPA other than those shown on the plans, without prior approval of NDDOT.

2. Prohibit double parking and diagonal parking within the limits of the project. Additional parallel parking will be allowed within the limits of the project if designed considering the effects the added parking will have on the entire traffic corridor. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
3. If the traffic corridor intersects a state highway, the LPA must justify to NDDOT that any new access allowed will have minimal impact to the state highway. The design will meet the requirements of 23 CFR Part 625, Design Standards for Highways.
4. Prohibit the installation of traffic signals and pedestrian beacons on or in connection with the project, including those installed at the sole cost and expense of the LPA or by others, without NDDOT approval.
5. Maintain all traffic control devices on the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
6. Restrict the speed limit on the project at or below the maximum design speed. Any changes to the speed limit will be pursuant to North Dakota Century Code, Chapter 39-09.
7. Provide maintenance to the completed project at its own cost and expense.
8. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

#### PART IV

General:

1. NDDOT will make all contract payments on behalf of the LPA. Payment will be made upon receipt of the engineer's estimate. The LPA will reimburse NDDOT for payments made less the amount paid by FHWA. No costs will be incurred by NDDOT for the construction and maintenance of this project.

If the LPA fails to reimburse NDDOT within 60 days after billing for funds advanced on behalf of the LPA, this document will constitute an assignment of funds now or hereafter coming into the hands of the state treasurer, which would otherwise be distributed to the LPA out of the highway tax distribution fund, NDCC 54-27-19. The state treasurer is hereby directed to pay NDDOT all such funds until the total equals the sum billed pursuant to this agreement.

2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee, or other person performing services for the LPA who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the LPA shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the LPA, and such officer, employee, or person has not participated in such acquisition for and in behalf of the LPA.
4. The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.



5. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.
6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at the respective places of business as set forth below or at a place designated hereafter in writing by the parties.

Local Government Engineer  
ND Department of Transportation  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

7. The LPA is advised that its signature on this contract or agreement certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.
8. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The LPA, by the signature below of its authorized representative, hereby acknowledges that the LPA has read this agreement, understands it, and agrees to be bound by its terms and conditions.



Executed by the LPA of City of Fargo, North Dakota, the date last below signed.

APPROVED:

\_\_\_\_\_  
LPA/STATES ATTORNEY (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

LPA of City of Fargo

\*

Dr. Timothy J. Mahoney  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\* Mayor  
TITLE

\_\_\_\_\_  
DATE

ATTEST:

Steve Sprague  
AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

Executed by the North Dakota Department of Transportation the date last below signed.

APPROVED as to substance:

Paul Benning **SB**  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

Paul Benning  
SIGNATURE

09/12/23  
DATE

NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE **SS**

\_\_\_\_\_  
DATE

\*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)  
L.D. Approved 4-12-93; 10-22





**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:

APPROVED:

Steve Sprague  
AUDITOR (TYPE OR PRINT)

LPA of City of Fargo

\_\_\_\_\_  
SIGNATURE

Dr. Timothy J. Mahoney  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\* Mayor  
TITLE

\_\_\_\_\_  
DATE

\*Mayor, President or Chairperson of Commission

CLA 19256 (Div. 38)  
L.D. Approved 4-12-93; 1-23



## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION APPENDIX A OF THE TITLE VI ASSURANCES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.



## NORTH DAKOTA DEPARTMENT OF TRANSPORTATION APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



## Risk Management Appendix

### **Routine\* Service Agreements with Sovereign Entities and Political Subdivisions of the State of North Dakota:**

**Parties:** **State** – State of North Dakota, its agencies, officers and employees

**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees

**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$500,000 per person and \$2,000,000 per occurrence**. The minimum limits of liability required of the State are **\$500,000 per person and \$2,000,000 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 \$500,000 per person and \$2,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 07-23



DocuSign Envelope ID: 45967F60-E77D-48CB-911C-6CEEDA2359A

STATE	PROJECT NO.	FCN	SECTION NO.	SHEET NO.
ND	SU-BRU-8-984(175)	23933	1	1

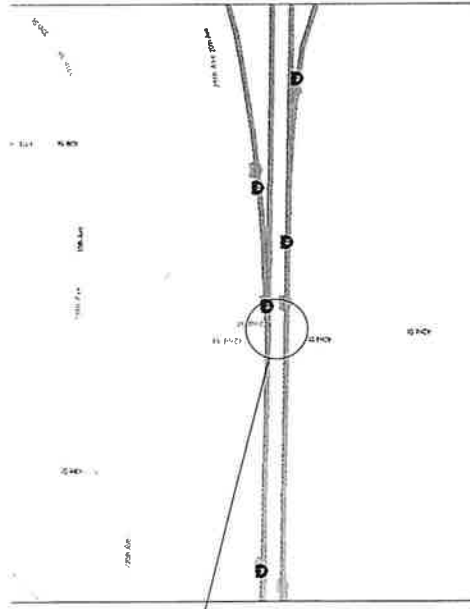
**NORTH DAKOTA**  
**DEPARTMENT OF TRANSPORTATION**

SU-BRU-8-984(175)

Cass County  
42nd Street S over I-94  
Structure Rehabilitation

GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	4/1/2023
Supplemental Specifications	NONE

PROJECT NUMBER \ DESCRIPTION: SU-BRU-8-984(175)    NET MILES: NA    GROSS MILES: NA

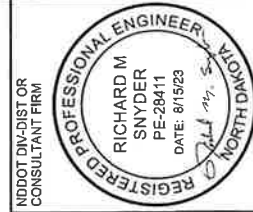


STATE COUNTY MAP

DESIGNER  
Emily Peterson  
DESIGNER  
Richard Snyder

8/15/2023 1:51:58 PM gphason

OTHER REVIEW  
Approval Mark: *[Signature]*  
Digitally signed by Tom Knakmuhale Signed Date: 2023.08.18 12:23:06 -05'00'  
ND DEPARTMENT OF TRANSPORTATION OFFICE OF PROJECT DEVELOPMENT  
Approval Mark: *[Signature]* Date Signed: 08/30/23



SU-BRU-8-984(175) PCN 23933- 42nd St Bridge over I-94					
Description	Project Estimate	Federal	State	City	
Construction cost - SU	\$327,967.50	\$265,424.10		\$62,543.40	
Construction cost - BRU	\$275,204.00	\$222,722.60	\$52,481.40		
Construction Engineering - SU	\$32,796.75	\$26,542.41		\$6,254.34	
Construction Engineering - BRU	\$27,520.40	\$22,272.26	\$5,248.14		
<b>Total</b>	<b>\$663,488.65</b>	<b>\$536,961.36</b>	<b>\$57,729.54</b>	<b>\$68,797.74</b>	

Note: The costs shown are estimates. The City will be billed for actual costs incurred.

**Certificate Of Completion**

Envelope Id: 45967F80E77048CB911C6CEEADA2359A Status: Sent  
 Subject: Contract #38231199: Please DocuSign: CPM Agreement for Fargo 42nd St Bridge over I-94 project  
 Contract Number: 38231199  
 PCN: 23933  
 Source Envelope:  
 Document Pages: 13 Signatures: 2 Envelope Originator:  
 Certificate Pages: 4 Initials: 4 Sengaroun Marohl  
 AutoNav: Enabled 608 E Boulevard Ave  
 Envelopeld Stamping: Enabled Bismarck, ND 58505  
 Time Zone: (UTC-06:00) Central Time (US & Canada) smarohl@nd.gov  
IP Address: 165.234.92.5

**Record Tracking**

Status: Original Holder: Sengaroun Marohl Location: DocuSign  
 9/7/2023 8:08:47 AM smarohl@nd.gov  
 Security Appliance Status: Connected Pool: StateLocal  
 Storage Appliance Status: Connected Pool: Carahsoft OBO North Dakota Department of Transportation CLOUD Location: DocuSign

**Signer Events**

Stacey Hanson  
 smhanson@nd.gov  
 Assistant Local Government Engineer  
 Carahsoft OBO North Dakota Department of Transportation CLOUD  
 Security Level: Email, Account Authentication (None), Authentication

**Signature**

*St*  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 96.2.71.153

**Timestamp**

Sent: 9/7/2023 8:23:49 AM  
 Viewed: 9/7/2023 8:32:45 AM  
 Signed: 9/7/2023 8:59:08 AM

**Authentication Details**

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 Result: passed  
 Vendor ID: TeleSign  
 Type: SMSAuth  
 Performed: 9/7/2023 8:32:37 AM  
 Phone: +1 701-527-8879

SMS Auth:  
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 Result: passed  
 Vendor ID: TeleSign  
 Type: SMSAuth  
 Performed: 9/7/2023 8:58:03 AM  
 Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Paul Benning  
 pbenning@nd.gov  
 Local Government Director  
 Security Level: Email, Account Authentication (None), Authentication

*Paul Benning*

Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.253.12

Sent: 9/7/2023 8:59:14 AM  
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 Signed: 9/12/2023 7:30:43 AM

**Authentication Details**

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 Type: SMSAuth  
 Performed: 9/12/2023 7:29:20 AM  
 Phone: +1 701-214-2502

**Signer Events**

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Shannon Sauer  
ssauer@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Signature**



Signature Adoption: Pre-selected Style  
Using IP Address: 165.234.253.12

**Timestamp**

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Phone: +1 701-426-9825

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

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(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

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

Sengaroun Marohl  
smarohl@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Clint Morgenstern  
cdmorgenstern@nd.gov  
Security Level: Email, Account Authentication  
(None), Authentication

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign



**Signer Events**

Chad Orn  
corn@nd.gov  
Security Level: Email, Account Authentication (None), Authentication  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Timestamp**

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**

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

**Status**



Using IP Address: 165.234.252.245

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**Agent Delivery Events**

Jeremy Gorden  
JGorden@FargoND.gov  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Status**

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**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

Aaron Murra  
amurra@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**

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Hashed/Encrypted

9/7/2023 8:09:01 AM

Envelope Updated

Security Checked

9/7/2023 8:23:48 AM

Envelope Updated

Security Checked

9/7/2023 8:23:48 AM

Envelope Updated

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Security Checked

9/7/2023 8:23:49 AM

Envelope Updated

Security Checked

9/7/2023 8:23:49 AM

Envelope Updated

Security Checked

9/7/2023 8:55:57 AM

**Payment Events**

**Status**

**Timestamps**

(11)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Consent to Construct

Location: 1387 55<sup>th</sup> St N

Date of Hearing: 9/25/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/2/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed the attached correspondence from Division Engineer, Kevin Gorder, regarding a Consent to Construct with 9<sup>th</sup> & Main, LLC at 1387 55<sup>th</sup> Street North.

The owner of 1387 55<sup>th</sup> Street North has applied for permits to build a warehouse type building at this location. The City has a Utility Easement on the south 25' of this parcel for sanitary sewer and water main. The owner would like to build a parking lot on the easement area. The Consent to Construct would allow the owner to build a parking lot, but it describes the responsibilities for each party should the utilities need maintenance.

This Agreement will be recorded and would transfer to any future owners.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of the Consent to Construct at 1387 55<sup>th</sup> Street North with 9<sup>th</sup> & Main, LLC.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Consent to Construct at 1387 55<sup>th</sup> Street North with 9<sup>th</sup> & Main, LLC.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>✓</u>
Tim Mahoney, Mayor	<u>  </u>	<u>  </u>	<u>  </u>	
Nicole Crutchfield, Director of Planning	<u>  ✓  </u>	<u>  ✓  </u>	<u>  </u>	<u>Mark Williams</u>
Steve Dirksen, Fire Chief	<u>  ✓  </u>	<u>  ✓  </u>	<u>  </u>	
Brenda Derrig, Assistant City Administrator	<u>  ✓  </u>	<u>  ✓  </u>	<u>  </u>	
Ben Dow, Director of Operations	<u>  ✓  </u>	<u>  ✓  </u>	<u>  </u>	
Steve Sprague, City Auditor	<u>  ✓  </u>	<u>  ✓  </u>	<u>  </u>	
Tom Knakmuhs, City Engineer	<u>  ✓  </u>	<u>  ✓  </u>	<u>  </u>	
Susan Thompson, Finance Director	<u>  </u>	<u>  </u>	<u>  </u>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** September 25, 2023  
**Re:** Consent to Construct with 9<sup>th</sup> & Main, LLC - 1387 55<sup>th</sup> Street North

---

**Background:**

The Owner of 1387 55<sup>th</sup> Street North has applied for permits to build a warehouse type building at this location. Plans include a large building, a parking lot, and laydown area for inventory. The City has a Utility Easement on the south 25' of this parcel for sanitary sewer and water main. The Owner would like to build a parking lot on the easement area.

The attached Consent to Construct would allow the Owner to build the parking lot, but it describes the responsibilities for each party should the utilities need maintenance. The City would do the excavating and only backfill the excavation site. Replacement of any improvements installed by the Owner would be the Owner's responsibility to replace and/or restore.

This Agreement will be recorded and would transfer to any future owners.

**Recommended Motion:**

Approve the Consent to Construct at 1387 55<sup>th</sup> Street North with 9<sup>th</sup> & Main, LLC.

KOG/klb  
Attachment

### CONSENT TO CONSTRUCTION AGREEMENT

COME NOW, the City of Fargo, a North Dakota municipal corporation, 225 4th Street North, Fargo, ND (hereafter “City”), and 9<sup>th</sup> & Main, LLC, a North Dakota limited liability company, 3321 4<sup>th</sup> Ave S, Suite E, Fargo, ND (hereafter “9<sup>th</sup> & Main”), and enter into this Consent to Construction Agreement.

WHEREAS, by Plat recorded on September 19, 2014 as Document #1427410, a portion of Lot 4, Block 3, of Commerce on 12th Addition to the City of Fargo, Cass County was dedicated to City as a utility easement allowing the City to construct, operate, and maintain a sanitary sewer, water main, and related infrastructure.

WHEREAS, 9<sup>th</sup> & Main is the successor in interest to the real property upon which the City’s easement is located, more particularly described as:

The south 25 feet of Lot 4, Block 3, of Commerce on 12<sup>th</sup> Addition situated in Fargo, Cass County, ND.

Referred to herein as the “Easement Area.”

WHEREAS, 9<sup>th</sup> & Main seeks permission to use the Easement Area in a manner inconsistent with the grant and purpose of the easement. Specifically, 9<sup>th</sup> & Main wishes to build an office/warehouse along with parking and laydown areas on the parcel with a parking lot on the Easement Area.

NOW, THEREFORE, the parties hereby agree, and the City consents that 9<sup>th</sup> & Main may construct a parking lot upon the Easement Area under the following terms and conditions:

1. 9th & Main shall be responsible for all costs and expenses of constructing the office/warehouse and parking lot.
2. If it becomes necessary for City to have all or any portion of the parking lot removed to perform maintenance or repairs to the sanitary sewer, water main, or related infrastructure, then to the extent possible, City shall provide 9th & Main with 30 days written notice to remove the parking lot by and at 9th & Main's expense, except in the event of an emergency. If the City, in its sole discretion, determines an emergency exists, the City may begin any necessary repairs without notice to 9th & Main and will give notice as soon as reasonably possible, either before or after the emergency repairs begin. Upon completion of City's work, it will fill the excavation site, if necessary, and return the Easement Area to level surface. If the parking lot or any portion thereof is removed to protect the City's infrastructure or allow maintenance or repairs as described herein, then 9th & Main shall be solely responsible for the removal and cost thereof as well as replacing the parking lot. City shall not be responsible for the removal or replacement cost of the parking lot.
3. City shall not be responsible for any damage or repairs to the parking lot contemplated herein within, near, or upon the Easement Area, nor shall City be responsible for any costs or expenses incurred by 9th & Main to ensure protection of the City's infrastructure located within the Easement Area. 9th & Main shall be responsible for all the costs and expenses of any repairs, removal, or relocation of the City's infrastructure for which the original easement was given, which is damaged by any of the construction activities undertaken by 9th & Main as permitted herein or by 9th & Main's activity upon or near the Easement Area.
4. 9<sup>th</sup> & Main shall protect the integrity of the City's sanitary sewer, water main, and related infrastructure during construction of the parking lot, office/warehouse space, and laydown area. 9<sup>th</sup> & Main agrees to coordinate with City so the City may inspect and verify all work is in compliance with all specifications and requirements. 9<sup>th</sup> & Main shall follow all North Dakota One Call requirements, N.D. Cent. Code § 49-23-01, for the construction of the office/warehouse building and parking lot.
5. 9th & Main is allowed to park within the Easement Area. The Easement Area shall not be used to store any construction materials or heavy equipment.
6. 9<sup>th</sup> & Main shall give the City a 30 day notice of any change of use in the Easement Area. 9<sup>th</sup> & Main shall allow the City time to review the proposed change to determine any impacts to the sanitary sewer, water main, or related infrastructure. 9<sup>th</sup> & Main agrees to amend this Agreement if the change of use impacts the maintenance and operation of the sanitary sewer, water main, or related infrastructure.
7. To the fullest extent permitted by law, 9<sup>th</sup> & Main agrees to hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any kind that may be brought against the City, its officers, agents and employees arising from 9<sup>th</sup> & Main's construction of the office/warehouse and parking lot, and future use and existence of the parking lot upon the Easement Area.
8. 9th & Main hereby recognizes and acknowledges that City's easement located upon the subject property affords City the reasonable right of access to the Easement Area for the

customary use and purpose of the dedication, including the rights of ingress and egress to perform maintenance, repairs, and improvements to the City's infrastructure located within, upon, or below the Easement Area. 9th & Main hereby agrees it will not undertake any actions to impede or impair the City's right of access.

9. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree that any dispute arising out of this Agreement shall be venued in State District Court in Cass County, North Dakota, and the parties hereby expressly waive any objection to personal jurisdiction.
10. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
11. This Agreement constitutes the entire agreement between the parties regarding the matters described herein.
12. Any modifications or amendments of this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this 19 day of Sept., 2023.

9<sup>th</sup> & Main, LLC, a North Dakota limited liability company



By: Levi Arneson

Its: Treasurer

STATE OF ND )  
 ) ss.  
COUNTY OF Cass )

On this 19th day of Sept, 2023, before me, a notary public in and for said county and state, personally appeared Levi Arneson, the Treasurer of 9<sup>th</sup> & Main, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.

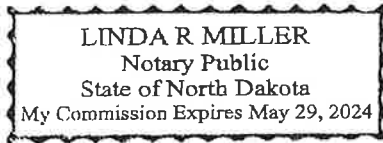


Notary Public

Cass County, ND

My Commission expires: 5/29/24

(SEAL)







PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

12

Project No. SR-23-A1

Type: Change Order #1 & Time Extension

Location: Citywide

Date of Hearing: 9/25/2023

Routing

City Commission
PWPEC File
Project File

Date
10/2/2023
X
Brandon Beaudry

The Committee reviewed the accompanying correspondence from Project Manager, Brandon Beaudry, related to Change Order #1 in the amount of \$65,450.00 for additional work along with the associated 35-day time extension as follows:

Table with 2 columns: Original Completion Dates, Revised this Memo. Rows show Substantial and Final completion dates for both original and revised versions.

Staff is recommending approval of Change Order #1 in the amount of \$65,450.00 and the associated 35-day time extension as described above.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 and the associated time extension to Master Construction.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$65,450.00, bringing the total contract amount to \$1,102,650.00 and the associated 35-day time extension to the Substantial and Final Completion Dates to Dirt Dynamics

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments

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

Table with 2 columns: Yes, No. Rows show N/A for all three items.

COMMITTEE

Tim Mahoney, Mayor
Nicole Crutchfield, Director of Planning
Steve Dirksen, Fire Chief
Brenda Derrig, Assistant City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
Tom Knakmuhs, City Engineer
Susan Thompson, Finance Director

Table with 4 columns: Present, Yes, No, Unanimous. Shows voting status for each committee member.

ATTEST:

C: Kristi Olson

Handwritten signature of Tom Knakmuhs, P.E.
Tom Knakmuhs, P.E.
City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Brandon Beaudry, Project Inspector  
**Date:** September 8, 2023  
**Re:** Project No. SR-23-A1 (Sidewalk & Shared Use Path Rehab/Reconstruction)  
 Change Order #1 and Time Extension

**Background:**

Project No. SR-23-A1 is for Sidewalk & Shared Use Path Rehab/Reconstruction. This change order is for additional spot repair sidewalk added to the contract through public complaints, various areas Citywide.

The attached change order in the amount of \$65,450, which increases the total contract amount to \$1,102,650, is for additional work as shown on Change Order #1. A description of the additional work is shown on the attached change order.

Master Construction is requesting a 35-day time extension to complete the additional sidewalk reconstruction work added to the contract.

This Project is funded by sales tax and special assessments.

**Recommended Motion:**

Approve Change Order #1 in the amount of \$65,450 with a 35-day time extension to Master Construction.

Original Completion Dates	Revised Previously	Revised This Memo
<b>Substantial – September 22, 2023</b> <b>Final – October 13, 2023</b>	- -	<b>Substantial – October 27, 2023</b> <b>Final – November 13, 2023</b>

BGB/jmg  
 Attachment

C: Tom Knakmuhs  
 Kevin Gorder



**CHANGE ORDER REPORT**  
**SIDEWALK & SHARED USE PATH REHAB/RECONSTRUCTION**  
**PROJECT NO. SR-23-A1**  
**VARIOUS AREAS CITY WIDE**

Change Order No 1 Master Construction Co Inc Change Order Date 9/7/2023

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

**EXPLANATION OF CHANGE** Change Order # 1

Section	Line No	Item Description	Unit	Orig Qty	Prev Qty	Cont Qty	Prev C/O Qty	Curr C/O Qty	Tot Qty	Unit Price (\$)	C/O Ext Price (\$)
Assessed	1	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	2875	2875	0	100	100	2975	\$135.00	\$13,500.00
	2	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	363	363	0	0	0	363	\$170.00	\$0.00
	5	F&I Sidewalk 6" Thick Reinf Conc	SY	50	50	0	75	75	125	\$130.00	\$9,750.00
City Paid	9	Rem & Repl Sidewalk 4" Thick Reinf Conc	SY	1193	1193	0	200	200	1393	\$135.00	\$27,000.00
	10	Rem & Repl Sidewalk 6" Thick Reinf Conc	SY	197	197	0	20	20	217	\$170.00	\$3,400.00
	11	F&I Sidewalk 4" Thick Reinf Conc	SY	40	40	0	40	40	80	\$115.00	\$4,600.00
	14	Casting to Grade - w/Conc	EA	4	4	0	3	3	7	\$1,100.00	\$3,300.00
	17	Mulching Type 1 Hydro	SY	4200	4200	0	300	300	4500	\$5.00	\$1,500.00
	18	Seeding Type B	SY	4200	4200	0	300	300	4500	\$6.00	\$1,800.00
	19	Remove Driveway All Thicknesses All Types	SY	20	20	0	20	20	40	\$30.00	\$600.00
<b>Assessed Sub Total \$23,250.00</b>											

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 (\$)
								City Paid Sub Total		\$42,200.00

Summary

Source Of Funding	Special Assessed / Sales Tax
Net Amount Change Order # 1 (\$)	\$65,450.00
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$1,037,200.00
Total Contract Amount (\$)	\$1,102,650.00

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

CONTRACT DATES

Current Substantial Completion Date	Current Final Completion Date
9/22/2023	10/13/2023
Additional Days Substantial Completion	Additional Days Final Completion
35	31
New Substantial Completion Date	New Final Completion Date
10/27/2023	11/13/2023

Interim Completion Dates

APPROVED

For Contractor

*M. Starck*  
Title *SEPT 8, 2023*

APPROVED DATE

Department Head

Mayor

Attest

*T. Hill*

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

13

Project No. MP-20-A2 Type: Final Balancing Change Order #6

Location: Roberts Alley Power Date of Hearing: 9/25/2023

<u>Routing</u>	<u>Date</u>
City Commission	<u>10/2/2023</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed the accompanying correspondence from Project Manager, Kevin Gorder, regarding Final Balancing Change Order #6 in the amount of \$0.00, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Final Balancing Change Order #6 in the amount of \$0.00, bringing the total contract amount to \$515,399.00.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of Final Balancing Change Order #6 to Magnum Electric.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Final Balancing Change Order #6 in the amount of \$0.00, bringing the total contract amount to \$515,399.00 to Magnum Electric.

PROJECT FINANCING INFORMATION:


Recommended source of funding for project: Street Sales Tax

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

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>        </u>
Tim Mahoney, Mayor	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>
Nicole Crutchfield, Director of Planning	<u>    ✓    </u>	<u>    ✓    </u>	<u>        </u>	<u>Mark Williams</u>
Steve Dirksen, Fire Chief	<u>    ✓    </u>	<u>    ✓    </u>	<u>        </u>	<u>        </u>
Brenda Derrig, Assistant City Administrator	<u>    ✓    </u>	<u>    ✓    </u>	<u>        </u>	<u>        </u>
Ben Dow, Director of Operations	<u>    ✓    </u>	<u>    ✓    </u>	<u>        </u>	<u>        </u>
Steve Sprague, City Auditor	<u>    ✓    </u>	<u>    ✓    </u>	<u>        </u>	<u>        </u>
Tom Knakmuhs, City Engineer	<u>    ✓    </u>	<u>    ✓    </u>	<u>        </u>	<u>        </u>
Susan Thompson, Finance Director	<u>        </u>	<u>        </u>	<u>        </u>	<u>        </u>

ATTEST:

  
 Tom Knakmuhs, P.E.  
 City Engineer

C: Kristi Olson



# Memorandum

**To:** Members of PWPEC  
**From:** Kevin Gorder, Division Engineer  
**Date:** September 25, 2023  
**Re:** MP-20-A2 Final Balancing Change Order #6

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**Background:**

Project No. MP-20-A2 is the city contract in Roberts Alley to complete the necessary work required to bring the secondary power components up to code after the primary power supply was buried by Xcel Energy.

All work has been completed by Magnum Electric, Inc. and accepted by the City.

Original Contract Amount	\$498,660.00
Previously Approved Change Orders	<u>\$ 16,739.00</u>
Total Approved Contract	\$515,399.00
Final Contract Amount	\$515,399.00
FBCO Amount due	-0-

Attached is the Final Balancing Change Order with no changes to the final contract amount.

**Recommended Motion:**

Approve Final Balancing Change Order #6 with no changes to the approved contract amount for Project No. MP-20-A2.

KOG/jmg  
Attachment



**CHANGE ORDER REPORT**  
**ROBERTS ALLEY POWER**  
**PROJECT NO. MP-20-A2**

Final Balancing  
 Change Order

**ROBERTS ALLEY FROM 2ND TO 4TH AVE**

**Change Order No** 6 **Change Order Date** 9/11/2023  
**Contractor** Magnum Electric, Inc.

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

**EXPLANATION OF CHANGE** Change Order # 6

Final Balancing Change Order

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 (\$)	Sub Total
											\$0.00

Summary

Source Of Funding

Net Amount Change Order # 6 (\$)

Previous Change Orders (\$)

Original Contract Amount (\$)

Total Contract Amount (\$)

Street Sales Tax

\$0.00

\$16,739.00

\$498,660.00

\$515,399.00

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

APPROVED   
For Contractor *Magnum Electric, Inc*  
Title *VP of Business Development*

APPROVED DATE   
Department Head  
Mayor  
Attest





**CHANGE ORDER REPORT  
CRACK SEAL & LEVEL  
PROJECT NO. PR-23-A1  
CITY WIDE**

Final Balancing  
Change Order

**Change Order No** 1 **Change Order Date** 9/14/2023  
**Contractor** Roadway Services Inc

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

**EXPLANATION OF CHANGE** Change Order # 1  
Final Quantities

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 (\$)
Paving	2	Repair Crack - Fill	LB	26000	0	26000	-300	25700	\$1.70	-\$510.00
	3	Repair Crack - Level	LF	6700	0	6700	319	7019	\$3.60	\$1,148.40
	4	Repair Crack - Rout and Fill	LF	15000	0	15000	-6074	8926	\$0.88	-\$5,345.12
<b>Paving Sub Total</b>										<b>-\$4,706.72</b>

Summary.

Source Of Funding  
 Net Amount Change Order # 1 (\$)   
 Previous Change Orders (\$)   
 Original Contract Amount (\$)   
 Total Contract Amount (\$)

Sales Tax  
 -\$4,706.72  
 \$0.00  
 \$83,520.00  
 \$78,813.28

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

APPROVED

For Contractor

Title



Lance Jerstad  
 Vice President

APPROVED DATE

Department Head

Mayor

Attest



REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

15

Improvement District No. BR-23-G0

Type: Contract Amendment #2

Location: 32nd Ave S, 22nd St – University Dr

Date of Hearing: 9/25/2023

<u>Routing</u>	<u>Date</u>
City Commission	10/2/2023
PWPEC File	X
Project File	Eric Hodgson

The Committee reviewed the accompanying correspondence from Project Manager, Eric Hodgson, regarding Amendment #2 in the amount of \$94,559.00 for additional work.

Staff is recommending approval of Amendment #2 in the amount of \$94,559.00, bringing the total contract amount to \$1,999,401.00.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of Amendment #2 to Apex Engineering.

RECOMMENDED MOTION

Concur with the recommendation of PWPEC and approve Amendment #2 in the amount of \$94,559.00, bringing the total contract amount to \$1,999,401.00 to Apex Engineering.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: WM Repl Funds & Special Assessments

	<u>Yes</u>	<u>No</u>
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

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Brenda Derrig, Assistant City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Tom Knakmuhs, City Engineer
- Susan Thompson, Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 City Engineer

# Memorandum

**To:** Members of PWPEC

**From:** Eric Hodgson, Civil Engineer II

**Date:** September 25, 2023

**Subject:** Improvement District No. BR-23-G0 - Amendment No. #2  
32<sup>nd</sup> Avenue South from 22<sup>nd</sup> Street to University Drive  
Out of Scope Work and Splitting up the Project

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## **Background:**

On September 6, 2022, City Commission awarded Apex Engineering a design contract for 32<sup>nd</sup> Avenue South from 22<sup>nd</sup> Street to University Drive. This entire corridor had been awarded Federal Aid for two different years (2024 and 2026). It was the City's intention to develop a single set of plans and advance construct the 2026 portion with the 2024 portion next year, a practice the City commonly does. Since the time of the award, we have received notice from the NDDOT that they are not currently in a position to let the City advance construct the 2026 portion next year. As a result, we will be splitting the project up into 2 separate projects.

The proposed Contract Amendment #2 provided by Apex totaling \$94,559 is the amount required to cover both out of scope work we asked Apex to perform, and to cover the additional work associated with splitting the project into two separate projects that they have yet to perform.

For your review, Apex Engineering has provided the Contract Amendment #2 document outlining the services to be provided and is attached to this memorandum.

## **Recommended Motion:**

Approve Contract Amendment #2 submitted by APEX Engineering in the amount of \$94,559.

EBH/klb  
Attachment

- 1.) "Engineering Services Agreement Amendment #2 – Project No. BR-23-G0".





Water | Transportation | Municipal | Facilities

701.373.7960  
4733 Amber Valley Parkway  
Fargo, ND 58104

**Engineering Services Agreement**  
**Amendment #2 – Project No. BR-23-G0**

**Project:** Amendment #2 for Phase I – Design Services  
32<sup>nd</sup> Avenue South Reconstruction – 22<sup>nd</sup> Street to Storm Sewer Lift Station #27  
City of Fargo Improvement District No. BR-23-G0  
Apex Project No. 22.103.0151

**Client:** City of Fargo (Engineering Department)  
Attn: Eric Hodgson, PE – Engineering Department

**Background / Description of Work:**

This amendment includes additional time required to coordinate, attend, and provide meeting minutes for additional project review committee meetings, time to research and collect PLSS elements for the boundary survey, and time to split the project into two (2) separate project plans and bidding documents.

The additional time to provide the above referenced tasks is represented in the following:

- 1. Attachment #1 – Scope of Services and Summary of Hours / Fee = \$94,599

**Fee Amendment Request:**

Amendment #2: Phase I – Design Services = \$94,599

**Contract Terms & Conditions:**

Apex Engineering Group, Inc. (“Consultant”) hereby proposes, and the City of Fargo (“City”) hereby authorizes, the above-described Amendment #2 and additional services described here in, including attachments, to be completed under the same Terms & Conditions of the original agreement signed by both parties and approved by the City of Fargo on September 23<sup>rd</sup>, 2022.

City of Fargo Authorization:

Signature: \_\_\_\_\_  
Dr. Tim Mahoney

Title: Mayor

Date: \_\_\_\_\_

Consultant:

Signature: \_\_\_\_\_  
Joshua C. Olson

Title: Vice President

Date: September 13, 2023

## Attachment #1

### Amendment Request #2 Scope of Services and Summary of Hours / Fee Additional Work in Phase I: Design Services

#### For 32<sup>nd</sup> Avenue South Reconstruction – 22<sup>nd</sup> Street to Storm Sewer Lift Station #27 City of Fargo Project No. BR-23-GO

Apex Engineering Group, Inc.

Client: City of Fargo

#### PHASE I: DESIGN SERVICES – SUPPLEMENTAL SERVICES

This scope of services pertains to the supplemental request for additional work on 32<sup>nd</sup> Ave South from 22<sup>nd</sup> Street to Storm Sewer Lift Station #27. The additional service within this request includes the time necessary coordinate, attend, and provide meeting minutes for additional project review committee meetings, time to research and collect PLSS elements for the boundary survey, and time to split the project into two (2) separate project plans and bidding documents.

#### ORIGINAL TASKS - OUT OF SCOPE ADDITIONAL WORK

#### TASK 1: ADDITIONAL TASKS – PROJECT ADMINISTRATION

**1.05 Additional Project Review Committee Meetings (14):** Apex organized and conducted bi-weekly Project Review Committee (PRC) meetings at the request of the City. This resulted in eleven (11) additional virtual PRC meetings throughout the development and design of the project. This task also includes time for three (3) more PRC meeting to break the plans into two (2) separate sets. Time to prepare detailed minutes for distribution is included within this task.

- Senior Engineer: 28 Hrs x \$198 = \$5,544
- Lead Engineer: 21 Hrs x \$185 = \$3,885
- **Subtotal = \$9,429**

**1.06 Estimate to Find Project Limits:** Apex will prepare an estimate for each new project to finalize the project cost splits. Cost estimates will be separated by different funding sources as required and show the estimated amount of federal aid eligible for each new project. Historical cost data and bid tabulations from the NDDOT and City of Fargo will be used in determining unit prices. This task includes calculating up to four (4) different estimates or two (2) different separation locations.

- Senior Engineer: 4 Hrs x \$198 = \$792
- Lead Engineer: 8 Hrs x \$185 = \$1,480
- Graduate Engineer: 24 Hrs x \$130 = \$3,120
- **Subtotal = \$5,392**

### **TASK 3: ADDITIONAL TASKS – PRELIMINARY SURVEY**

**3.03 Survey & CADD drafting for PLSS Elements (Additional Tasks):** Apex researched, collected field data, and drafted all the necessary property corners and section corners to obtain the permanent easements / right of way for the project. This task was not included in the original scope of work. (Survey II time was for courthouse research)

- Survey II: 40 Hrs x \$110 = \$4,400
- Survey Crew: 24 Hrs x \$210 = \$5,040
- **Subtotal = \$9,440**

**Subtotal (Original Tasks Out of Scope) = \$ 24,261**

### **MODIFYING PLAN INTO TWO (2) SEPARATE PLAN SETS**

### **TASK 7: ADDITIONAL TASKS – FINAL DESIGN AND BID DOCUMENTS (PREPARING 2 PLAN SETS)**

**7.01 Upfront Plan Sheets (Sections 1, 2, & 4):** Apex will prepare or modify two (2) title sheet for the plans and the applicable upfront sheets as per NDDOT standards and plan format. These sheets include all the drafting and assembly required for the Table of Contents, Scope of Work, and Plan Legend.

- Graduate Engineer: 8 Hrs x \$130 = \$1,040
- **Subtotal = \$1,040**

**7.02 Quantities (Sections 8):** Apex will prepare or modify section 8 for both projects. Estimated quantities will be all inclusive for each project based on the modified project limits.

- Senior Engineer: 4 Hrs x \$198 = \$792
- Project Engineer: 8 Hrs x \$142 = \$1,136
- **Subtotal = \$1,928**

**7.03 Basis of Estimate / Data Tables (Sections 10 & 11):** Apex will prepare or modify section 10 and section 11 for both projects. This task includes new earthwork, topsoil, and removal tables for both projects.

- Senior Engineer: 4 Hrs x \$198 = \$792
- Graduate Engineer: 24 Hrs x \$130 = \$3,120
- **Subtotal = \$3,912**

**7.04 General Details and Typical Sections (Sections 20 & 30):** Apex will prepare necessary plan details and typical sections for existing pavement sections, proposed pavement sections, drainage details, utility details, intersection details, paving details, and other details as required to break the plan set into two (2) biddable projects.

- Graduate Engineer: 16 Hrs x \$130 = \$2,080
- **Subtotal = \$2,080**

**7.05 Removals (Section 40):** Apex will prepare removal plan sheets showing the removal of existing pavement, underground utilities, & obstructions as needed to break the plan set into two biddable projects.

- Graduate Engineer: 16 Hrs x \$130 = \$2,080
- **Subtotal = \$2,080**

**7.06 Storm Sewer Pipe and Structure Schedules (Section 50):** Apex will prepare storm sewer pipe and structure schedules to break the plans set into (2) biddable projects.

- Senior Engineer: 4 Hrs x \$198 = \$792
- Lead Engineer: 4 Hrs x \$185 = \$740
- Design Engineer: 16 Hrs x \$160 = \$2,560
- **Subtotal = \$4,092**

**7.07 Utility Plan and Profiles (Section 55):** Apex will prepare plan and profile sheets showing the storm sewer pipe and structures, sanitary sewer pipe and structures, and watermain pipe and structures to break the plans set into (2) biddable projects.

- Lead Engineer: 8 Hrs x \$185 = \$1,480
- Project Engineer: 8 Hrs x \$142 = \$1,136
- Lead Engineer Tech: 14 Hrs x \$127 = \$1,778
- **Subtotal = \$4,394**

**7.08 Paving Plan and Profile and Intersection Layouts (Section 60):** Apex will prepare final plan sheets showing horizontal alignment, vertical profiles, geometric layouts, and curb grades. Tie-in grades along the corridor will also be shown on the plan view. Plan sheets will also show the roadway stationing, radius points, intersection point data, curve data, and coordinate data sheets. Intersection layouts will be broken into each of the two (2) plan set depending on location of intersection.

- Project Engineer: 8 Hrs x 142 = \$1,136
- Graduate Engineer: 12 Hrs x \$130 = \$1,560
- **Subtotal = \$2,696**

**7.09 Erosion and Sediment Control (Section 75, 76 & 77):** Apex will break the erosion and sediment control section into two (2) plan sets, showing the erosion and sediment control layout and seeding areas.

- Graduate Engineer: 8 Hrs x \$130 = \$1,040
- **Subtotal = \$1,040**

**7.10 ADA Grading (Section 80):** Apex will break the ADA grading section into two (2) plan sets, showing the ADA line and grade sections at each intersection.

- Graduate Engineer: 8 Hrs x \$130 = \$1,040
- **Subtotal = \$1,040**

**7.11 Landscaping (Section 85):** Apex will break the landscaping section into two (2) plan sets.

- Graduate Engineer: 4 Hrs x \$130 = \$520
- **Subtotal = \$520**

**7.12 Jointing (Section 90):** Apex will break the jointing section into two (2) plan sets. The jointing plan will take into consideration how the project will likely be phased and where construction joints will occur.

- Graduate Engineer: 4 Hrs x \$130 = \$520
- **Subtotal = \$520**

**7.13 Work Zone Traffic Control and Phasing Plan (Section 100):** Apex will break the work zone traffic control and phasing section into two (2) plan sets. The phased construction sequence and the traffic control

device list will also be broken into two (2) plans sets within this task. All layouts will be in accordance with MUTCD, NDDOT, and City of Fargo guidelines.

- Senior Engineer: 8 Hrs x \$198 = \$1,584
- Graduate Engineer: 40 Hrs x \$130 = \$5,200
- **Subtotal = \$6,784**

**7.14 Signing Plans (Sections 110):** Apex will break the signing plan section into two (2) plan sets, including plan sheets showing sign removals and new signing. Signing for all special panel signs will be created using GUIDESIGN design software and will follow City of Fargo Standards. All posts will be designed to City of Fargo Standards.

- Graduate Engineer: 8 Hrs x \$130 = \$1,040
- **Subtotal = \$1,040**

**7.15 Pavement Marking Plans (Sections 120):** Apex will break the pavement marking section into two (2) plan sets.

- Graduate Engineer: 4 Hrs x \$130 = \$520
- **Subtotal = \$520**

**7.16 Signals, and ITS Plans (Sections 150 & 160):** Apex will break the signals and ITS plan sections into two (2) plan sets.

- Lead Engineer: 4 Hrs x \$185 = \$740
- Project Engineer: 10 Hrs x \$142 = \$1,420
- **Subtotal = \$2,160**

**7.17 Street Lighting (Sections 140):** Apex will break the street lighting section into two (2) plan sets.

- Lead Engineer: 4 Hrs x \$185 = \$740
- Lead Engineer Tech: 4 Hrs x \$127 = \$508
- **Subtotal = \$1,248**

**7.18 Modeling:** Apex will review the model to verify that the new construction limits for each of the two (2) plan sets are modeled accurately, develop a final model for each project using AutoCAD Civil 3D. This will include all geometric elements necessary to create a proposed final surface, proposed subgrade surface, and earthwork calculations. All this information will be distributed in the final AMG (Automated Machine Guidance) files submitted to the NDDOT before the project is bid.

This task will also include adding a transition on the west side of 15<sup>th</sup> Street to allow the traveling public to transition from the new typical section to the existing typical section until the second project is constructed. Drainage will be reviewed and adjusted to prevent surface water from ponding.

- Lead Engineer: 4 Hrs x \$185 = \$740
- Project Engineer: 30 Hrs x \$142 = \$4,260
- **Subtotal = \$5,000**

**7.19 Cross Sections:** Apex will break the cross sections into two (2) plan sets. Cross sections will be generated every 25 ft and will be used to determine construction limits and to develop earthwork quantities.

- Lead Engineer: 4 Hrs x \$185 = \$740
- Project Engineer: 16 Hrs x \$142 = \$2,272
- **Subtotal = \$3,012**

**7.20 Notes or Special Instructions to Bidders (Section 6):** Apex will break the notes or special instructions to bidders into two (2) plan sets, some notes will be duplicated and other will be specific for one or the other plan set. Apex will work with the Cities of Fargo to develop the Notes or Special Instructions to Bidders for inclusion in the plans.

- Senior Engineer: 10 Hrs x \$198 = \$1,980
- Lead Engineer: 4 Hrs x \$185 = \$740
- Project Engineer: 10 Hrs x \$142 = \$1,420
- **Subtotal = \$4,140**

**7.21 Plan Submittals (95%, & Final):** Apex will schedule, send notices, and prepare plan sets for distribution (by electronic PDF) two weeks prior to the 95% review meetings for each plan set. This will be an additional review for each new plan set, after the initial comments have been incorporated into the plan set. Apex will incorporate one (1) set of review comments into the plans as appropriate and submit final plans.

- Senior Engineer: 4 Hrs x \$198 = \$792
- Lead Engineer: 4 Hrs x \$185 = \$740
- Design Engineer: 4 Hrs x \$160 = \$640
- Lead Engineer Tech: 16 Hrs x \$127 = \$2,032
- **Subtotal = \$4,204**

**7.22 Final Quantities and Cost Estimate:** Apex will break the final quantities and cost estimate into two (2) separate estimates, one (1) for each plan set. Apex will compile the quantities and construction cost estimate prior to the 95% and final plan submittals. Bid items shall conform to NDDOT bid item numbers. Cost estimates will be separated by different funding sources as required. Historical cost data and bid tabulations from the NDDOT and City of Fargo will be used in determining unit prices.

- Lead Engineer: 4 Hrs x \$185 = \$740
- Graduate Engineer: 40 Hrs x \$130 = \$5,200
- **Subtotal = \$5,940**

**7.23 Utility Engineering:** Apex will finalize impacts to private utilities, develop utility conflict plans and cross sections that show the utility conflicts and identify the anticipated relocations and adjustments for both projects. Apex will schedule and conduct one (1) final Utility Conflict Meeting with the affected private utility companies, to be held at Apex or virtual. One (1) on site meeting will also be conducted as needed to coordinate impacts with each private utility. Possible options for relocation, adjustment, or mitigation of impacts will be reviewed with the utility companies. Apex will provide meeting minutes.

- Lead Engineer: 4 Hrs x \$185 = \$740
- Graduate Engineer: 20 Hrs x \$130 = \$2,600
- **Subtotal = \$3,340**

**7.24 Special Provision Modifications:** Apex will separate the special provisions into two (2) separate projects. This task also includes time to modify the sanitary sewer by-pass special provision into two (2) standalone projects.

- Senior Engineer: 4 Hrs x \$198 = \$792
- Lead Engineer: 4 Hrs x \$185 = \$740
- Project Engineer: 32 Hrs x \$142 = \$4,544
- **Subtotal = \$6,076**

**7.25 Addenda and Bid Questions:** Apex will assist the City of Fargo with questions received during the bidding process for each project. Apex will draft all addenda as a result of changes to the Contract Documents. This task is only for the second project bid before the 2026 construction season.

- Senior Engineer: 2 Hrs x \$198 = \$396
- Project Engineer: 8 Hrs x \$142 = \$1,136
- **Subtotal = \$1,532**

**Subtotal for additional out of scope work = \$24,261**

**Subtotal for additional work splitting the project into two (2) plan sets = \$70,338**

**Total for Supplemental #2 = \$94,599**

COVER SHEET  
CITY OF FARGO PROJECTS

16

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:

Paving and Utility Rehab/Reconstruction

Improvement

District No.

BR-24-A

Call For Bids	<u>October 2</u>	, <u>2023</u>
Advertise Dates	<u>October 11 &amp; 18</u>	, <u>2023</u>
Bid Opening Date	<u>November 8</u>	, <u>2023</u>
Substantial Completion Date	<u>October 4</u>	, <u>2024</u>
Final Completion Date	<u>November 3</u>	, <u>2024</u>

N/A

PWPEC Report (Part of 2024 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)

N/A

Supplemental Funding Language Included

Project Engineer

Aaron Edgar

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**  
**PAVING AND UTILITY REHAB/RECONSTRUCTION**  
**IMPROVEMENT DISTRICT NO. BR-24-A**  
**ON 7TH STREET NORTH FROM 7TH AVENUE TO 10TH**  
**AVENUE, ON 8TH AVENUE NORTH FROM 7TH STREET TO**  
**BROADWAY, ON 9TH AVENUE NORTH FROM 8TH STREET**  
**TO BROADWAY, AND ON 10TH AVENUE NORTH FROM**  
**7TH STREET TO BROADWAY.**

**Nature & Scope**

This project is for the replacement of the water main, sanitary sewer, storm sewer, street reconstruction, and sidewalk replacement.

**Purpose**

The existing water mains are CIP, which were installed over 100 years ago and are being replaced to minimize impacts and costs associated with breaks. The existing sanitary sewer mains are VCP, which were installed over 100 years ago and are showing signs of deterioration. As part of this project, we will replace the sanitary sewer pipe. 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, curb and gutter, storm sewer inlets and leads, driveway approaches, and sidewalk replacement. The project will be funded by a combination of City Funds and Special Assessments to the benefiting properties. Assessments will be applied per City policy.

**Special Assessment District**

All properties within the Special Assessment District will benefit from the infrastructure improvements and were determined through consideration of the longevity, consistency, and uniformity of benefiting properties within the City of Fargo. Special Assessments will be levied to each property in accordance with the City's Infrastructure Funding Policy and are subject to the approval of the Special Assessment Commission and the City Commission.

**Feasibility**

The estimated cost of construction is \$3,476,572.00. The cost breakdown is as follows:

**Sanitary Sewer**

<b>Construction Cost</b>		\$562,550.00
--------------------------	--	--------------

**Fees**

Admin	4%	\$22,502.00
Contingency	5%	\$28,127.50
Engineering	10%	\$56,255.00
Interest	4%	\$22,502.00
Legal	3%	\$16,876.50

---

<b>Total Estimated Cost</b>		<b>\$708,813.00</b>
-----------------------------	--	---------------------

**Funding**

Utility Funds - Wastewater - 521	68.18%	\$483,273.70
Special Assessments	31.82%	\$225,539.30

**Water Main**

<b>Construction Cost</b>		\$815,250.00
--------------------------	--	--------------

**Fees**

Admin	4%	\$32,610.00
Contingency	5%	\$40,762.50
Engineering	10%	\$81,525.00
Interest	4%	\$32,610.00
Legal	3%	\$24,457.50

---

<b>Total Estimated Cost</b>		<b>\$1,027,215.00</b>
-----------------------------	--	-----------------------

**Funding**

Utility Funds - Water - 501	77.02%	\$791,125.99
Special Assessments	22.98%	\$236,089.01

<b>Storm Sewer</b>			
<b>Construction Cost</b>			<b>\$251,700.00</b>
<b>Fees</b>			
Admin	4%		\$10,068.00
Contingency	5%		\$12,585.00
Engineering	10%		\$25,170.00
Interest	4%		\$10,068.00
Legal	3%		\$7,551.00
<b>Total Estimated Cost</b>			<b>\$317,142.00</b>
<b>Funding</b>			
Utility Funds - Stormwater - 524	50.00%		\$158,571.00
Special Assessments	50.00%		\$158,571.00

<b>Street Light</b>			
<b>Construction Cost</b>			<b>\$34,072.00</b>
<b>Fees</b>			
Admin	4%		\$1,362.88
Contingency	5%		\$1,703.60
Engineering	10%		\$3,407.20
Interest	4%		\$1,362.88
Legal	3%		\$1,022.16
<b>Total Estimated Cost</b>			<b>\$42,930.72</b>
<b>Funding</b>			
Utility Funds - Street Lights - 528	100.00%		\$42,930.72

**Paving and Incidentals**

<b>Construction Cost</b>		\$1,813,000.00
<b>Fees</b>		
Admin	4%	\$72,520.00
Contingency	5%	\$90,650.00
Engineering	10%	\$181,300.00
Interest	4%	\$72,520.00
Legal	3%	\$54,390.00
<b>Total Estimated Cost</b>		<b>\$2,284,380.00</b>

**Funding**

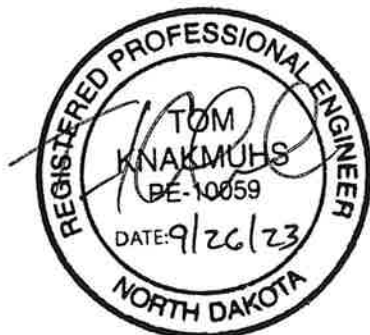
Utility Funds - Wastewater - 521	25.13%	\$574,100.30
Utility Funds - Water - 501	13.84%	\$316,236.01
Sales Tax Funds - Infrastructure - 420	19.84%	\$453,274.29
Special Assessments	41.18%	\$940,769.40

**Project Funding Summary**

Utility Funds - Wastewater - 521	24.14%	\$1,057,374.00
Utility Funds - Water - 501	25.28%	\$1,107,362.00
Utility Funds - Stormwater - 524	3.62%	\$158,571.00
Utility Funds - Street Lights - 528	0.98%	\$42,930.72
Sales Tax Funds - Infrastructure - 420	10.35%	\$453,274.29
Special Assessments	35.63%	\$1,560,968.71
<b>Total Estimated Project Cost</b>		<b>\$4,380,480.72</b>

This project does not have any alternate or optional containers.

We believe this project to be cost effective.



A handwritten signature in black ink that reads "T. Knakmuhs".

Thomas Knakmuhs, PE  
City Engineer



**LOCATION AND COMPRISING  
PAVING AND UTILITY REHAB/RECONSTRUCTION  
IMPROVEMENT DISTRICT NO. BR-24-A**

**ON 7TH STREET NORTH FROM 7TH AVENUE TO 10TH AVENUE, ON 8TH AVENUE NORTH FROM 7TH STREET TO BROADWAY, ON 9TH AVENUE NORTH FROM 8TH STREET TO BROADWAY, AND ON 10TH AVENUE NORTH FROM 7TH STREET TO BROADWAY.**

**LOCATION:**

On 7th Street North from 7th Avenue to 10th Avenue, on 8th Avenue North from 7th Street to Broadway, on 9th Avenue North from 8th Street to Broadway, and on 10th Avenue North from 7th Street to Broadway.

**COMPRISING:**

Lots 1 and 2, Block 2 of Sheehan's Subdivision.  
All in Park Addition.

Lots 7 through 11, Block 2.  
All in Park Addition.

Lots 10 through 12, Block 1.  
Lots 14 and 15, Block 1.  
Lots 16 through 18 and the west ½ of vacant alley adjacent, Block 1.  
All in Park Addition.

Lot 1, Block 9.  
All in Meritcare Addition.

Lot 1 and 3, Block 8.  
All in Meritcare Addition.

Lot 1, block 7.  
All in Meritcare Addition.

Lot 1, Block 6,  
All in Meritcare addition.

All unplatted that is bounded on the north by 9th Avenue North, bounded on the south by 8th Avenue North, bounded on the west by 7th Street North, and bounded on the east by Broadway North.

All unplatted that is bounded on the north by 9th Avenue North, bounded on the south by 8th Avenue North, bounded on the west by 8th Street North, and bounded on the east by 7th Street North.

Lots 2 through 9, Block 13.  
All in Harwoods 2nd Addition.

Lots 1 through 5, Block 16.  
Lots 8 through 10, Block 16.  
All in Harwoods 2nd Addition.

Lots 1 through 14, Block 15.  
Lots 17 and 18, Block 15.  
All in Douglas Addition.

Lots 1 through 6, Block 1.  
All in Diamond Willow Addition.

Lots C, D, E, F, and H, Block 18 of Marelius's Subdivision.  
All in Chapins Addition.

All the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO ENGINEERING  
DEPARTMENT

LOCATION & ASSESSMENT AREA

PAVING AND UTILITY REHAB/RECONSTRUCTION

IMPROVEMENT DISTRICT NO. BR-24-A

17

September 14, 2023

Board of City Commissioners  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner  
Temporary Easement – Improvement District #BR-23-G2**

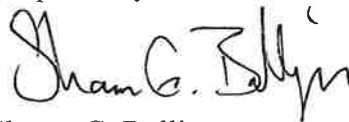
Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a temporary easement in association with Improvement District #BR-23-G2. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a temporary easement from **Easter Deals Goodwill ND Inc** in association with Improvement District #BR-23-G2 and that the Mayor is instructed to execute the Memorandum of Offer to Landowner & Easement document on behalf of the City of Fargo.

Please return the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Jeremy Gorden  
Nancy J. Morris



**MEMORANDUM OF OFFER TO LANDOWNER**

City of Fargo, Engineering Department

Project BR-23-G2	County Cass	Parcel(s) 3N
Landowner Easter Seals Goodwill ND Inc		
Mailing Address 3011st St. NE Mandan, ND 58554		


The following-described real property and/or related temporary easement areas are being acquired for project purposes:

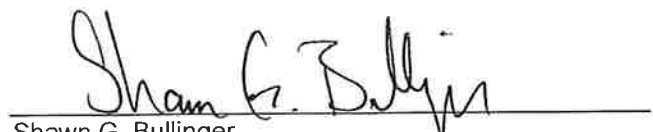
See attached exhibit(s) to the easements accompanying this Memorandum of Offer.

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 1,168.00 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

Land	\$	<u>                    </u>	
Easement and Access Control	\$	<u>          1,168.00</u>	
Improvements on Right of Way*	\$	<u>                    </u>	
Damages to Remainder	\$	<u>                    </u>	
Total Offer			\$ <u>                    1,168.00</u>

\*Description of Damages to Remainder are as follows:

  
 Owner Signature  
 Signature hereby constitutes acceptance of offer as presented above.

  
 Shawn G. Bullinger  
 Land Acquisition Specialist, City of Fargo

*Fargo City Commission has considered the offer and approves the same:*



                    Timothy J. Mahoney                      
 MAYOR  
 \_\_\_\_\_  
 SIGNATURE  
 \_\_\_\_\_  
 DATE

**EASEMENT**  
**(Temporary Construction Easement)**

**KNOW ALL MEN BY THESE PRESENTS** that **EASTER SEALS GOOD WILL ND INC.** a North Dakota non-profit corporation, whether one or more, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to him in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of street and utility construction and activities appurtenant thereto, said land being more fully described, to-wit:

A temporary easement, over, under and across that part of Lot 18 and Lot 19, Block 5, MARYDALE ADDITION to the City of Fargo, situate in the County of Cass and the State of North Dakota described as follows:

The South 10.00 feet of the West 25.00 feet of said Lot 18;

together with the South 10.00 feet of the East 15.00 feet of the said Lot 19.

Said parcels contains 400 square feet, more or less, and is subject to all existing easements of record.

Said parcel is pictorially represented in Exhibit "A" hereto and made a part hereof.

Grantor, his successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, his successors and assigns, further agrees they will not disturb, injure, molest or in

any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project, provided that Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate on June 30, 2026, or end of project, whichever occurs later.

(Signatures on following pages).

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed this 7<sup>th</sup> day of September, 2023.

GRANTOR:

EASTER SEALS GOODWILL ND INC.  
a North Dakota non-profit corporation

By: 

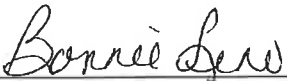
Its: President & CEO

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

On this 7<sup>th</sup> day of Sept, 2023, before me, a notary public in and for said county and state, personally appeared Gordon Hauge, the CEO of EASTER SEALS GOODWILL ND INC., a North Dakota non-profit corporation, to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



  
Notary Public  
Cass County, North Dakota  
Morton



18

August 21, 2023

Board of City Commissioners  
City of Fargo  
200 North Third Street  
Fargo, ND 58102

Re: Temporary Construction Easement  
Improvement District #BR-24-A1

Dear Commissioners:

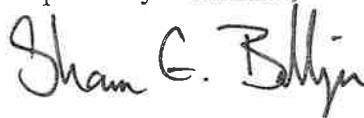
Accompanying for City Commission review and approval are (2) Temporary Construction Easements with **FM Property Pros II LLC** in association with Improvement District #BR-24-A1.

RECOMMENDED MOTION:

Approve Temporary Construction Easements with **FM Property Pros II LLC**.

Please return a copy of the signed originals.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Kasey McNary

**EASEMENT**

(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **FM PROPERTY PROS II, LLC**, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of removing a city sidewalk from private property, together with the customary appurtenances, said tract being described as follows:

**A tract of land in Lots 3 and 4, Block 16 of Harwood's 2nd Addition to Fargo on file as document A-13B at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota, more particularly described as follows:**

**The easterly 12.00 feet of said Lot 4 and the easterly 12.00 feet of the northerly 10.00 feet of said Lot 3.**

**Said tract contains 720 square feet, more or less.**

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee’s officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for removal and reconstruction of the

sidewalk and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

This Easement shall terminate on September 30, 2024, or upon completion of construction, whichever occurs later.

[Signature pages to follow]





**GRANTEE:**

City of Fargo, North Dakota, a North Dakota Municipal Corporation

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

**ATTEST:**

\_\_\_\_\_  
Steve Sprague, City Auditor

STATE OF NORTH DAKOTA   )  
  )  
COUNTY OF CASS                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

The legal description was prepared by:  
Justin W. Zastrow (LS-27985)  
Professional Land Surveyor  
City of Fargo – Engineering Dept.  
225 4th St N  
Fargo ND 58102  
(701) 476-6796

This document prepared by:  
Kasey D. McNary (ND# 06590)  
Assistant City Attorney  
SERKLAND LAW FIRM  
10 Roberts Street N | PO Box 6017  
Fargo, ND 58102  
(701) 232-8957

**EASEMENT**

(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **FM PROPERTY PROS II, LLC**, hereinafter referred to as “Grantor”, for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, its successors and assigns, hereinafter referred to as “Grantee”, a temporary construction easement under, over, upon and in the land hereinafter described for the purpose of removing a city sidewalk from private property, together with the customary appurtenances, said tract being described as follows:

**A tract of land in Lot 5, Block 16 of Harwood's 2nd Addition to Fargo on file as document A-13B at the Cass County Recorder's Office, City of Fargo, Cass County, North Dakota, more particularly described as follows:**

**The easterly 13.00 feet of the easterly 100 feet of said Lot 5.**

**Said tract contains 650 square feet, more or less.**

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee’s officers, contractors, agents and employees may at any and all times when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agree that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for removal and reconstruction of the

sidewalk and all other construction activities during the construction phase of said project, and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the parcel so as to interfere in any manner with the said parcel during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as it was prior to the time construction activities began.

This Easement shall terminate on September 30, 2024, or upon completion of construction, whichever occurs later.

[Signature pages to follow]



**GRANTEE:**

City of Fargo, North Dakota, a North Dakota  
Municipal Corporation

\_\_\_\_\_  
Timothy J. Mahoney, Mayor

**ATTEST:**

\_\_\_\_\_  
Steve Sprague, City Auditor

STATE OF NORTH DAKOTA   )  
  )  
COUNTY OF CASS            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me a notary public in and for said county and state, personally appeared Timothy J. Mahoney and Steve Sprague, known to me to be the Mayor and City Auditor, respectively, of the city of Fargo, the Grantee described in and that executed the within and foregoing instrument, and acknowledged to me that said Grantee executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires:

The legal description was prepared by:  
Justin W. Zastrow (LS-27985)  
Professional Land Surveyor  
City of Fargo – Engineering Dept.  
225 4th St N  
Fargo ND 58102  
(701) 476-6796

This document prepared by:  
Kasey D. McNary (ND# 06590)  
Assistant City Attorney  
SERKLAND LAW FIRM  
10 Roberts Street N | PO Box 6017  
Fargo, ND 58102  
(701) 232-8957



## MEMORANDUM

**Date:** September 28, 2023

**To:** Board of City Commissioners

**From:** Brady Scribner, City of Fargo Emergency Manager

**Re:** Acceptance of North Dakota Department of Emergency Services FY 2023 Emergency Management Performance Grant

---

### Situation:

Expected and regularly awarded grant funding to the City of Fargo Emergency Management position has changed and a slight accounting change is necessary to continue receiving these funds.

### Background:

The City of Fargo Emergency Management position has received grant funding in various forms and amounts since 2003. The bulk of these funds have been received as pass-through funds from Cass County as the subapplicant to grants from the North Dakota Department of Emergency Services (NDDDES) with the primary grant being the Emergency Management Performance Grant (EMPG). The pass-through funds have been expected annually with grant revenue and related payroll expenditures routinely programmed into the annual budget and tracked with project code F1043. This grant requires a 50/50 cost share of local funds.

Cuts to the grant funding provided by NDDDES through EMPG have changed how these grant funds are distributed across the state. This has required the City of Fargo to become a subapplicant to the EMPG grant.

### Assessment:

The process change as a result of the City of Fargo becoming a subapplicant of the EMPG grant will have minimal impact on how the grant funds are received and utilized. An established accounting process exists for these funds but would require changing where we receipt these funds within our system which our Finance department is aware of. The level of grant funding for the Emergency Management position has not changed and the local match of funding is expected and has occurred regularly.

### Recommended Motion:

1. Accept and approve the awarded FY23 EMPG grant funding amount of \$60,108 under CFDA #97.042.
2. Expect an annual consent agenda item regarding the award of EMPG grant funds as they are available

**Attachments:** FY\_2023\_EMPG\_Local Guidance; Fargo-2023-EMPG Award Package

September 20, 2023

Fargo  
Brady Scribner  
225 4th St N  
Fargo, ND 58102

Dear Brady Scribner:

Congratulations on behalf of the North Dakota Department of Emergency Services (NDDDES) Division of Homeland Security, your grant application submitted for the FY 2023 Emergency Management Performance Grant (EMPG) has been approved for award in the amount of \$60,108 (federal share). Of the award \$9,909 (federal share) is for the tasks on the EM Duties Checklist to be completed throughout the duration of the grant (July 1, 2023 – June 30, 2024). This grant requires a 50/50 cost share.

To accept the award and the terms and conditions complete the following steps **within 10 days** from the date of this letter:

- Step 1: Print or download the Notice of Grant Award and Special Conditions
- Step 2: Sign page 1 of the Notice of Grant Award
- Step 3: Initial all pages of the Special Conditions
- Step 4: Upload the signed Notice of Grant Award and Special Conditions pages into the NDDDES Grants System (<https://grants.des.nd.gov>) to the [Project](#) page. (See directions at the end of this letter.)

**Project Reporting**

Project status reports are required quarterly, with a final report due at closeout. Quarterly reports are due fifteen (15) days after the end of the reporting period for each quarter. Reports should show a steady progression of the project. If there is no progression during a quarter and explanation as to why the project is not progressing is required. Failure to complete the reports will result in delays to reimbursement requests being processed. Reports are completed in the grants management system at <https://grants.des.nd.gov> on the Project page under Progress Monitoring tab.

Reporting Period	Report Due Date
October 1 – December 31	due by January 15
January 1 – March 31	due by April 15
April 1 – June 30	due by July 15
July 1 – September 30	due by October 15

**DES Grants System Document Upload Instructions**

1. Log in at <https://grants.des.nd.gov/>
2. On your home page click on **FY 2023 EMPG** - this takes you to a screen with a **red** banner at the top.
3. On the left-hand side, click on **Projects**, then click on the project that shows to the right – this takes you to a screen with a **blue** banner at the top.
4. Toward the bottom of the page on the right, click on **Add Document** – follow the directions on your screen and click **Upload** to upload your documents.

Please contact Annette Sabot at 701-328-8251 with any questions.



Doug  
Burgum  
GOVERNOR

Major General  
Alan S. Dohrmann  
DIRECTOR – DEPARTMENT  
OF EMERGENCY SERVICES

Darin  
Hanson  
DIRECTOR – DIVISION  
OF HOMELAND SECURITY

Darin  
Anderson  
DIRECTOR – DIVISION  
OF STATE RADIO

***Ensuring a safe and secure homeland for all North Dakotans***



Sincerely,



Debbie LaCombe  
Preparedness Chief



Doug  
Burgum  
GOVERNOR


Major General  
Alan S. Dohrmann  
DIRECTOR - DEPARTMENT  
OF EMERGENCY SERVICES

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OF STATE RADIO

***Ensuring a safe and secure homeland for all North Dakotans***



NOTICE OF GRANT AWARD			
<b>Recipient Contact Name:</b> Debbie LaCombe		<b>Recipient Contact #:</b> 701-328-8119	
<b>Title of Grant Program:</b> FY2023 Emergency Management Performance Grant			
<b>Federal Award Identification Number:</b> EMD-2023-EP-00001		<b>Federal Award Date:</b> July 19, 2023	
<b>Federal Awarding Agency:</b> U.S. Department of Homeland Security			
<b>CFDA No.</b> 97.042 EMPG			
<b>Subrecipient Name and Address</b> Fargo 225 4th St N Fargo, ND 58102		<b>Subrecipient Contact Name:</b> Brady Scribner Telephone: 701-476-4069 Email: BScribner@FargoND.gov	
<b>Subrecipient UEI:</b> K2QJQZVH5PM6	<b>Grant Number:</b> 45	<b>County/Tribe:</b> Cass	
<b>Performance Period</b>	<b>From:</b> July 1, 2023	<b>Through:</b> June 30, 2024	
<b>Grant Amount:</b> \$60,108	<b>Subrecipient Cost Share:</b> \$60,108	<b>Total Project Cost:</b> \$120,216	
<b>Scope of Service:</b> The intent of this award is to sustain and enhance all-hazards emergency management capabilities of the subrecipient to coordinate natural and man-made hazards, as well as technological events that threaten the security of the homeland and safety and well-being of citizens. in accordance with the federal Notice of Funding Opportunity for this grant program, the approved work plan and cost line items located in the NDDDES grant portal.			
<b>Reporting Requirements:</b> Progress reports on the status of the project must be submitted to NDDDES quarterly through the NDDDES grant portal. Reports are due January 15, April 15, July 15, and October 15 for the life of the grant. A final report is due with the final reimbursement request.			
<b>Special Conditions:</b> The above grant project is approved subject to the special conditions or limitations as indicated on the attached page as well as completion of the required tasks listed on the FY 2023 EM Duties checklist.			
<b>Terms and Conditions:</b> This award is subject to the terms and conditions incorporated directly or by reference in the following: <ol style="list-style-type: none"> <li>1) Fiscal Requirements and Other Program Rules, Regulations, Laws, and Polices for Federal Programs which can be found at <a href="https://grants/des/nd.gov/site/HSGP.cfm">https://grants/des/nd.gov/site/HSGP.cfm</a>.</li> <li>2) Applicable Federal and State laws and regulations.</li> <li>3) The recipient agrees by signing this document that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity &amp; FEMA Preparedness Grants Manual for this grant program.</li> </ol>			
<b>This contract is not effective until fully executed by both parties.</b> By signing below, you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.			
<b>Evidence of Subrecipient's Acceptance</b>		<b>Evidence of NDDDES Approval</b>	
Signature	Date	 Signature	9/20/2023 Date
<b>Typed Name and Title of Authorized Representative</b> Brady Scribner Emergency Manager		<b>Typed Name and Title of Authorized Representative</b> Darin Hanson Director, Division of Homeland Security	



## SPECIAL CONDITIONS Emergency Management Performance Grant (EMPG)

### 1. DHS Standard Terms and Conditions Generally

The Fiscal Year (FY)2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations. The FY 2023 DHS Standard Terms and Conditions are at [www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions](http://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions).

### 2. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

- DHS financial assistance sub-recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.
- By accepting this agreement, sub-recipients, and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

### 3. General Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- Sub-recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- Sub-recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- Sub-recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Sub-recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.

### 4. Acknowledgement of Federal Funding from DHS

Sub-recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

### 5. Age Discrimination Act of 1975

Sub-recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

### 6. Americans with Disabilities Act of 1990

Sub-recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101 - 12213), which prohibits sub-recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Initial



#### **7. Best Practices for Collection and Use of Personally Identifiable Information**

Sub-recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Sub-recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

#### **8. Civil Rights Act of 1964 - Title VI**

Sub-recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

#### **9. Civil Rights Act of 1968**

Sub-recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100.

#### **10. Copyright**

Sub-recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

#### **11. Debarment and Suspension**

Sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

#### **12. Drug-Free Workplace Regulations**

Sub-recipients must comply with drug-free workplace requirements in Subpart B of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

#### **13. Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude sub-recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

#### **14. Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX**

Sub-recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Initial



**15. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety**

State, Tribal, local, and territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. State, Tribal, local, and territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.

**16. Energy Policy and Conservation Act**

Sub-recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**17. False Claims Act and Program Fraud Civil Remedies**

Sub-recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

**18. Federal Debt Status**

All sub-recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

**19. Federal Leadership on Reducing Text Messaging while Driving**

Sub-recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

**20. Hotel and Motel Fire Safety Act of 1990**

Sub-recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a.

**21. John S. McCain National Defense Authorization Act of Fiscal Year 2019**

Sub-recipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute - as it applies to DHS sub-recipients, and their contractors and subcontractors - prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

**22. Limited English Proficiency (Civil Rights Act of 1964 - Title VI)**

Sub-recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

**Initial**



### **23. Lobbying Prohibitions**

Sub-recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

### **24. National Environmental Policy Act**

Sub-recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require sub-recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

### **25. Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participation of faith-based organizations in individual DHS programs.

### **26. Non-Supplanting Requirement**

Sub-recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

### **27. Notice of Funding Opportunity Requirements**

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

### **28. Patents and Intellectual Property Rights**

Sub-recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Sub-recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

### **29. Procurement of Recovered Materials**

States, political subdivisions of states (i.e., sub-recipients), and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**Initial**



### 30. Rehabilitation Act of 1973

Sub-recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

### 31. Reporting of Matters Related to Recipient Integrity and Performance

#### *General Reporting Requirements:*

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the sub-recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

### 32. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Sub-recipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act Sections 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

### 33. SAFECOM

Sub-recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

### 34. Terrorist Financing

Sub-recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Sub-recipients are legally responsible to ensure compliance with the Order and laws.

### 35. Trafficking Victims Protection Act of 2000 (TVPA)

#### *Trafficking in Persons:*

Sub-recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

### 36. Universal Identifier and System of Award Management

#### *Requirements for System for Award Management and Unique Entity Identifier*

Sub-recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

### 37. USA PATRIOT Act of 2001

Sub-recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

Initial



### **38. Use of DHS Seal, Logo and Flags**

Sub-recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

### **39. Whistleblower Protection Act**

Sub-recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

### **40. Environmental Planning and Historic Preservation (EHP) Review**

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the sub-recipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/ FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

### **41. Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

### **42. Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, sub-recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

### **43. Disposition of Equipment Acquired Under the Federal Award**

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

**Initial**





**44. Prior Approval for Modification of Approved Budget**

Before making any change to the approved budget for this award, you must request prior written approval from NDDDES. NDDDES may be required by 2 C.F.R. section 200.308 to request FEMA approval of any budget modifications.

**45. NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs**

Sub-recipient is required to also follow the applicable provisions of the NDDDES Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs as well as State or local provisions that may be stricter than Federal or State laws, regulations, or policies. This document can be found under the HSGP tab on the NDDDES Grants website at <https://grants.des.nd.gov>.

**46. Reimbursements, Quarterly Status Reports, Time Extension Requests, Scope Changes, and Project Closeout**

Sub-recipient must submit all reimbursement requests, quarterly reports, time extension requests, scope change requests, and project closeouts along with required documentation in the NDDDES Grants Management System at <https://grants.des.nd.gov>.

**47. EM Duties Checklist**

All work plan activities listed on the EM Duties Checklist must be completed. Grant award will be reduced for any tasks not completed by the deadline and in the amount designated for each task in accordance with the EM Duties Checklist.

**48. Un-expended Funds**

At the conclusion of the period of performance as noted on the Notice of Grant Award, upon completion of the project, or withdrawal of the project by the sub-recipient; whichever comes first, unexpended funds will be de-obligated. By signing the Notice of Grant Award, the sub-recipient is authorizing NDDDES to expend the de-obligated funds on program costs.

**49. Award Acceptance**

The Notice of Grant Award and these Special Conditions constitute the operative document obligating and reserving the Federal funds for use by the sub-recipient. By signing the Notice of Grant Award sub-recipients is certifying acceptance of the terms and conditions of the award.

Initial



**FISCAL YEAR 2023**

**EMERGENCY**

**MANANGEMENT**

**PERFORMANCE GRANT**

**(EMPG) LOCAL**

**GUIDANCE**

**APPLICATION GUIDANCE**  
For Local Emergency  
Managers

North Dakota Department  
of Emergency Services  
(NDDDES)  
Division of Homeland Security



**Preparedness Grants Manual:** <https://www.fema.gov/grants/preparedness/manual>  
**2022-2026 Strategic Plan:** <https://www.fema.gov/about/strategic-plan>  
**2019 EMAP Standards:** <https://emap.org/index.php/what-is-emap/the-emergency-management-standard>  
**2023 EMPG NOFO:** <https://www.fema.gov/grants/preparedness/emergency-management-performance/fy-23-nofo>

## Program Description

Funding for this program is provided by the U.S. Department of Homeland Security (DHS): Federal Emergency Management Agency (FEMA)/ Grants Program Directorate (GPD). North Dakota applicants must apply for the funding through the North Dakota Department of Emergency Services (NDDDES): Division of Homeland Security.

The Emergency Management Performance Grant (EMPG) assists states, local, tribal, and territorial emergency management agencies to implement the National Preparedness System (NPS) and to support the National Preparedness Goal (the Goal) of a secure and resilient nation.

Program Objectives include building and sustaining those capabilities that are identified as high priority through the Threat and Hazard Identification and Risk Assessment (THIRA) process and other relevant information sources.

### **Assistance Listings Title and Number**

Emergency Management Performance Grant Program (97.042)

### **Federal Notice of Funding Opportunity Title**

Fiscal Year 2023 Emergency Management Performance Grant (EMPG) Program

### **Application Information**

Local Emergency Managers must apply for FY 2023 EMPG through NDDDES (the SAA).

### **Cost Share or Match**

A 50% non-federal local cost match is required under this program.

DHS/FEMA administers cost-matching requirements in accordance with 2 C.F.R 200.306. To meet matching requirements, the recipient contributions must be verifiable, reasonable, allowable, allocable, and necessary under the grant program and must comply with all Federal requirements and regulations.

**Date Application Posted to NDDDES website:**

**June 6, 2023**

**Period of Performance Start Date:**

**July 1, 2023**

Period of Performance End Date:

June 30, 2024

Application Submission Deadline

**July 15, 2023, Midnight CT**

Applicants must submit their application to NDDes (SAA) by Friday, **July 15, 2023**, no later than midnight CT. All applications **must** be received by the established deadline. **Applicants are solely responsible for completing their application prior to the established deadline. Application instructions are in the EMPG folder in the Grants Management System (GMS).**

By submitting an application to NDDes, the applicant agrees to comply with the requirements of the Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) for Fiscal Year (FY) 2023 Emergency Management Performance Grant Program (EMPG) and the terms and conditions of the award.

Unique Entity Identifier

Applicants applying for EMPG funding through NDDes (SAA) **must** have a Unique Entity Identifier (UEI) number. The applicant must provide a UEI with their application.

If you are going to apply for this funding opportunity and have not obtained a UEI, please obtain a UEI (check with your auditor). If your organization does not yet have a UEI, visit [SAM.gov](https://sam.gov) to get a UEI and select "Get Started", then choose "Get Unique Entity ID."

Obtaining a UEI is free of charge, so if you encounter any organizations or websites soliciting a fee or charge to acquire a UEI it is likely a scam or fraudulent.

**Note:** If you do not have a UEI by the time the application is due on **July 15, 2023**, then your application will not be considered for funding.

EMPG NATIONAL PRIORITIES

Priorities should be primarily driven by the THIRA process. Other relevant information sources, such as: 1) after-action reports (AARs) following exercises or real-world events; 2) audit and monitoring findings; 3) Hazard Mitigation Plans; and/or 4) other deliberate planning products may also be used to inform priorities. When developing priorities, sub-recipients should consider the following national priorities, which correspond directly to the 2022-2026 FEMA Strategic Plan.

- 1) Instill Equity as a Foundation of Emergency Management
  - Recipients are strongly encouraged to explore how EMPG Program-funded activities can address the needs of underserved, at-risk communities to help ensure consistent and systematic, fair, just, and impartial treatment of all individuals before, during and after a disaster.
  - To the extent possible, equity considerations must be factored into all FY 2023 EMPG Program-funded investments across all national priority areas. **Additionally, applicants are required to designate at least one project in their FY 2023 EMPG Program Work Plan that specifically addresses equity considerations.**

- Update Emergency Operations Plans (EOPs) and other deliberate plans as necessary to ensure the needs of underserved, at-risk communities are adequately addressed in those plans.
- Provide training and exercises to include representatives of underserved, at-risk communities.
- Incorporating Community Emergency Response Team (CERT) into your community and/or schools.

2) Lead Whole of Community in Climate Resilience

- Climate change is one of the greatest challenges facing emergency managers today, and it continues to shape the field of emergency management. To meet this challenge, the emergency management field needs to anticipate the increasing demands generated by more extreme and frequent disasters, from wildfires to inland flooding. Emergency managers must learn to manage and support climate-related emergencies such as drought and extreme heat.
  - Development/updating of disaster housing plans to incorporate and address climate data/projections/risks (e.g., ensure housing is not placed in potentially climate impacted areas and that housing solutions are climate resilient).
  - The development of evacuation plans in accordance with climate exacerbated risk (e.g., mass evacuation during catastrophic fast-moving events, like wildfires).
  - Establishment of risk communications plans to inform all residents (including those with access and functional needs) about climate risks (e.g., what the communities can do at a local and individual level to prepare) and potential evacuations.
  - Development of internal plans (including response and recovery) that incorporate climate impact on emergency management resources (e.g., personnel, logistics, etc.).
  - Development of climate literacy plans to enable communities to understand and prepare for their climate-related risks.
  - Conducting exercises that incorporate climate considerations into response and recovery efforts to increase climate literacy and prepare communities to respond to and recover from climate-exacerbated disasters.
  - Incorporation of climate considerations into risk assessments (e.g., THIRA) and mitigation plans.
  - Creating or updating hazard fuel reduction and safety zone mapping to manage vegetation within a jurisdiction to minimize potential wildfire ignitions along the wildland-urban interface.

3) Promote and Sustain a Ready FEMA and Prepared Nation

- As disasters become more frequent, severe, and complex, the demands placed upon the emergency management community, as well as federal resources, have increased dramatically.
- To adapt to this trend, FEMA and emergency management communities must expand our approach to readiness, preparedness, and resiliency by increasing the

overall emergency management capabilities at all levels of government, as well as the private sector, the nonprofit sector, and among individuals.

- Aligning state and local readiness plans to these targets will ensure agencies can continuously support the needs and priorities identified by whole community partners, in addition to continuity of government across all hazards.
  - Readiness - Catastrophic Disaster Housing
    - Assessment of accessible housing needs, including the unique risks and needs of underserved communities.
  - Readiness - Disaster Financial Management
    - Development of plan for the sequencing of federal, nonprofit, and state disaster programs.
    - Development of Disaster Financial Management Plan.
  - Readiness - Evacuation Plan/Annex
    - Assessment of evacuation capabilities and needs, including ensuring accessibility and effective communication for persons with disabilities and others with access and functional needs, and integration of these requirements into evacuation plans.
    - Development/updating of evacuation plans.
    - Improvement of evacuation capabilities, such as transportation systems to support contraflow lanes.
    - Conducting evacuation training and exercises.
    - Development of public awareness campaign supporting evacuation plans.
    - See Planning Considerations: Evacuation and Sheltering- in-Place for additional guidance.
  - Readiness - Logistics - Distribution Management Planning
    - Development/Updating of a Distribution Management Plan (DMP) which addresses:
      - State/local staging site plans
      - State/local commodity point of distribution site plans.
      - Staging and Point of Distribution staffing strategies/plans
      - Transportation strategies/plans
      - Resource sourcing strategies/plans
      - Provision of critical emergency supplies for underserved communities
  - Readiness - Resilient Communications
    - Development of Statewide Communication Interoperability Plans, Tactical Interoperable Communications Plan and Standard Operating Procedures that address continuity and recovery of emergency communications systems.
    - Conducting risk and vulnerability assessments associated with emergency communications systems, to include cybersecurity risks.

- Conducting of National Incident Management Systems (NIMS) compliant training, exercise, and evaluation activities to test emergency communications capabilities, to include testing of resiliency and continuity of communications.
- Physical hardening of infrastructure systems and support emergency communications.

## TRAINING AND EXERCISES

### **Integrated Preparedness Plan (IPP)**

Sub-recipients are expected to engage senior leaders and other whole community stakeholders to identify preparedness priorities specific to training and exercise needs, which will guide development of the local multi-year IPP. These priorities should be informed by various factors, including jurisdiction-specific threats and hazards (i.e., the THIRA); areas for improvement identified by real-world events and exercises (i.e., AARs); external requirements such as state or national preparedness reports, homeland security policy, and industry reports; and accreditation standards, regulations, or legislative requirements. Sub-recipients must document these priorities, in conjunction with the Work Plan development process, and use them to deploy a schedule of preparedness events and activities in the IPP. Information related to IPPs, and Integrated Preparedness Planning Workshops (IPPWs) can be found on the HSEEP website at [Homeland Security Exercise and Evaluation Program](#) and [FEMA Preparedness Toolkit](#).

Sub-recipients should ensure that their EMPG Program Work Plans (In Grants Management System Application) and IPPs align with and are complementary to one another and are used in tandem to support shared priorities for building and sustaining local preparedness capabilities. Sub-recipients should use the same shared set of priorities in both their IPP and EMPG Program Work Plan, so that EMPG Program investments and projects help sub-recipients implement the planning, training, and exercise activities in their IPPs and advance their IPP priorities. To this end, sub-recipients should develop their IPPs and EMPG Program Work Plans together to create a planned, organized, and methodical approach for closing capability gaps over multiple years. This will help ensure that priorities for both the IPP and EMPG Program Work Plan are based on closing capability gaps documented in their THIRA and other relevant sources of information. For example, if a recipient selects Logistics and Distribution Management, Resilient Communications, and Housing as its priorities for its EMPG Program Work Plan, those should also be priorities in its IPP. Additionally, IPPs should include all planning, training, and exercise activities funded by the EMPG Program and included in EMPG Program Work Plans, as well as activities funded by other sources. This will ensure that sub-recipients' preparedness projects, investments, and activities are concentrated, focused, and oriented towards closing gaps related to their top priorities, regardless of funding source.



### **Validating Capabilities through Exercises**

All sub-recipients are required to develop and maintain a progressive exercise program consistent with HSEEP guidance in support of the National Exercise Program (NEP). The NEP serves as the principal exercise mechanism for examining national preparedness and measuring readiness. The NEP is a two-year cycle of exercises across the nation that validates capabilities in all preparedness mission areas. The two-year NEP cycle is guided by Principals' Strategic Priorities, established by the National Security Council, and informed by preparedness data from jurisdictions across the Nation. See [Exercises](#) for additional information.

While there are no minimum exercise requirements for FY 2023, NDDDES is requiring each county to conduct one exercise in their jurisdiction to test their plans and their responder's plans. The exercise needs to be a tabletop or higher and be progressive. These exercises must be included in the FY 2023 EMPG Program Work Plan submitted for state approval and should also be included in the local IPP. *Using WebEOC for your exercise is now a requirement. A Exercise/LEPC calendar has been created in WebEOC for you to enter your exercises, so you have a quick reference to statewide exercises and we, at the state, will have situational awareness, as well. Geneva will provide more instruction by June 15<sup>th</sup>, 2023.* A real event will need to be approved by Scott Helpfrey to ensure it meets the priorities set in the local IPP.

Sub-recipients should submit their AAR/IP to NDDDES no later than 90 days after completion of the exercise. Sub-recipients are reminded of the importance of implementing corrective actions throughout the exercise cycle.

### **Training**

Like the exercise guidance above, training activities should align to you current, multi-year IPP developed through an annual IPPW and build from training gaps identified in the THIRA and work plan development process.

Training should foster the development of a community-oriented approach to emergency management that emphasizes engagement at the community level, strengthens best practices, and provides a path toward building sustainable resilience, all of which is included in the curriculum of the EMI Basic Academy. The EMI Basic Academy provides a foundational education in emergency management as a way for emergency managers to begin or advance their career. The goal of the Basic Academy is to support the early careers of managers through a training experience combining knowledge of all fundamental systems, concepts, and practices of cutting-edge emergency management.

EMPG Program funds used for training should support the nationwide implementation of NIMS. The NIMS Training Program establishes a national curriculum for NIMS and provides information on NIMS courses. Recipients are encouraged to place emphasis on the core competencies as defined in the NIMS Training Program. NIMS is also included in the curriculum of the EMI Basic Academy.

All EMPG Program-funded personnel are expected to be trained emergency managers (see [NQS Implementation](#) section). All EMPG Program-funded personnel must complete *either* the Independent Study courses identified in the Professional Development Series, *or* the National Emergency Management Basic Academy delivered either by EMI or at a sponsored state, local, tribal, territorial, regional, or other designated location.

In addition to training activities aligned to and addressed in the IPP, all EMPG Program-funded personnel (including full- and part-time SLTT recipients and sub-recipients) must complete the following training requirements and record proof of completion:

- 1) NIMS Training, Independent Study (IS)-100 (any version), IS-200 (any version), IS-700 (any version), and IS-800 (any version)<sup>4</sup>, **and**;
- 2) Professional Development Series (PDS) **or** the Emergency Management Professionals Program (EMPP) Basic Academy listed in the chart below.

<b>PDS Professional Development Series</b>	<b>OR</b>	<b>Basic Academy Basic Academy Pre-requisites and Courses</b>
IS-120.a: An Introduction to Exercises	<b>OR</b>	IS-100 (any version): Introduction to the Incident Command System
IS-230.d: Fundamentals of Emergency Management	<b>OR</b>	IS-700 (any version): National Incident Management System (NIMS) – An Introduction
IS-235.b: Emergency Planning	<b>OR</b>	IS 800 (any version): National Response Framework, An Introduction
IS-240.b: Leadership and Influence	<b>OR</b>	IS-230.d: Fundamentals of Emergency Management
IS-241.b: Decision Making and Problem Solving	<b>OR</b>	E/L101: Foundations of Emergency Management
IS-244.b: Effective Communication	<b>OR</b>	E/L102: Science of Disasters
IS-244.b: Developing and Managing Volunteers	<b>OR</b>	E/L103: Planning Emergency Operations E/L04: Exercise Design
	<b>OR</b>	E/L105: Public Information & Warning

## PROGRAM FUNDING GUIDELINES

Federal funds made available through this award may be used only for the purpose set forth in this award and must be consistent with the statutory authority for the award. Award funds may not be used for matching funds for any other Federal award, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the federal government or any other government agency.

EMPG sub-recipients may only fund activities and projects that are included on their FY 2023 EMPG Program Work Plan submitted to and approved by NDDDES.

The following types of projects will **not** be considered:

- Unmanned Aircraft Systems (UAS)
- Weapons/weapons accessories/ammunition
- Costs associated with hiring, equipping, training, etc., sworn public safety officers whose primary job responsibilities include fulfilling traditional public safety duties such as law enforcement, firefighting, emergency medical services, or other first responder duties.
- Costs that supplant traditional public safety positions and responsibilities.
- Activities and projects unrelated to the completion and implementation of the EMPG program.
- Covered (People’s Republic of China) Telecommunications Equipment or Services ([2 CFR § 200.216](#))

## Allowable Costs

### Cost Principles:

All costs charged to this award must be consistent with the Cost Principles for Federal Awards located at 2 C.F.R. Part 200, Subpart E.

In general, the following costs are allowed under this program: planning, organization, equipment, training, exercise, and travel. See the NDDDES Fiscal and Program Policy, located in the EMPG folder on the Grants Management System for more information.

### Management & Administration (M&A) Costs

Management and Administration (M&A) activities are not operational costs; they are costs and activities incurred in direct support of the grant or because of the grant and should be allocated across the entire lifecycle of the grant. They are directly related to managing and administering the award, such as financial management and monitoring. It should be noted that salaries of local emergency managers are not typically categorized as M&A unless the local emergency manager chooses to assign personnel to specific M&A activities.

Local EMs may retain and use up to five percent (5%) of the amount received from the state for local M&A purposes.

### Whole Community Preparedness

EMPG Program sub-recipients should engage with the whole community to advance community and individual preparedness and to work as a nation to build and sustain resilience. Sub-recipients should consider the three goals of the [2022-2026 FEMA Strategic Plan](#) in their program design and delivery. Sub-recipients should integrate program design and delivery practices that ensure representation and services for under-represented diverse populations that may be more impacted by disasters including children, seniors, individuals with disabilities or other access and functional needs, individuals with diverse culture and language use, individuals with lower economic capacity, and other underserved populations.

Individual preparedness should be coordinated by an integrated body of government and nongovernmental representatives as well, including but not limited to, elected officials, the private sector (especially privately owned critical infrastructure), private nonprofits, nongovernmental

organizations (including faith-based, community-based, and voluntary organizations), advocacy groups for under-represented diverse populations that may be more impacted by disasters including children, seniors, individuals with disabilities or other access and functional needs, individuals with diverse culture and language use, individuals with lower economic capacity, and other underserved populations. By engaging these stakeholders, EMPG Program sub-recipients can help FEMA develop and promote a suite of well-targeted solutions for individuals and communities to adopt. Sub-recipients should coordinate preparedness initiatives with FEMA and whole community partners to efficiently apply federal funding to reach the goal of individual and community resilience.

The following preparedness programs are allowable expenses and resources:

- **Community Emergency Response Team (CERT)** programs, which educate volunteers about disaster preparedness for the hazards that may impact their area and train them in basic disaster response skills, such as fire safety, light search and rescue, team organization, and disaster medical operations. CERT offers a consistent, nationwide approach to volunteer training and organization that professional responders can rely on during disaster situations, allowing them to focus on more complex tasks. Contact Larry Regorrah, he is the CERT Program Manager for the state.
- **Financial Preparedness Activities** that encourage and assist Americans in preparing for the true cost of disasters. Allowable activities include encouraging emergency savings, promoting home and renter's insurance, and promoting flood insurance for individuals and families. Partnerships with local financial wellness organizations such as credit unions, financial counselors, community banks, and others that reach a variety of audiences are encouraged.
- **Preparedness of Community-Based Organizations** that serve as a critical safety net for Americans disproportionately impacted by disasters. Examples of community-based organizations include but are not limited to food banks, food pantries, homeless shelters, school readiness and after school centers, adult day care centers, job training centers, legal assistance centers, and cultural centers. Allowable activities include Whole Community exercises, trainings, and activities focused on staff preparedness, information sharing with clients and government, and continuity of essential functions in the event of an emergency.
- **Youth Preparedness Resources** are available on [Ready Kids](#). Bolstering youth preparedness across the nation is a priority for FEMA as the Agency works with state, local, tribal, and territorial partners to create a culture of preparedness in the United States. Information on youth-centric educational curricula, games, planning materials, and other relevant resources can be found at [Ready Kids](#). Furthermore, FEMA's Individual and Community Preparedness Division and regional-based Community Preparedness Officers are available to provide grant recipients with guidance and assistance.

[See 2023 Preparedness Grants Manual - Appendix H for more information.](#)

[EMPG Program Specific Application Instructions](#)

**The application guide to submit to NDDes via the NDDes Grants Management System is in the EMPG folder on the Grants Management System (GMS) login page.**

## Award Administration Information

### Notice of Grant Award

Notification of award approval is made through the NDDDES Grants Management System (GMS) to the sub-recipient's authorized official listed in the initial application. The sub-recipient should follow the directions in the notification to confirm acceptance of the award.

Sub-recipients must accept their awards no later than 10 days from the award date. The sub-recipient shall notify NDDDES of its intent to accept and proceed with work under the award by signing the Notice of Grant Award and initial the Special Conditions pages and upload them to the Project page in the GMS.

Funds will remain on hold until the sub-recipient accepts the award and all other conditions of the award have been satisfied, or the award is otherwise rescinded. Failure to accept the grant award within the 10-day timeframe may result in a loss of funds. Sub-recipients who wish to decline the award must provide a written notice of intent to decline through the GMS.

Sub-award of sub-recipients whose project(s) require an EHP and who's EHP is not approved by DHS/FEMA within 30 days of the State receiving the federal award, will include the condition that the project cannot be started, or any funds expended until the EHP is approved. Projects started prior to EHP approval will result in the award being rescinded. NDDDES will notify the sub-recipient when the EHP has been approved.

See the [Preparedness Grants Manual](#) for information on federal administrative and national policy requirements, including the DHS Standard Terms and Conditions. Specific information on EMPG is in Appendix H.

**Before accepting the award, the Emergency Manager should carefully read the award package for instructions on administering the grant award and the terms and conditions associated with responsibilities under Federal Awards. Sub-recipients must accept all conditions in the NOFO as well as any Special Terms and Conditions in the Notice of Award to receive an award under this program.**

### Reporting

Sub-recipients are required to submit various financial and programmatic reports as a condition of their award acceptance. Future awards and funds reimbursement may be withheld if these reports are delinquent. **Reporting will be done electronically through the NDDDES Grants Management System (GMS) located at <https://grants.des.nd.gov/>.**

In addition, sub-recipients may have additional reporting requirements to the federal awarding agency. See the [Preparedness Grants Manual](#) for information on federal reporting requirements, including financial, programmatic, and closeout reporting and disclosing information per 2 C.F.R. § 180.335.

[Financial Reporting Requirements](#)

Sub-recipients must submit a reimbursement request through the NDDes Grants Management System (GMS) at least every quarter. See the [Reimbursement Processing Checklist](#) for a list of documentation that must be included with the reimbursement request.

[Program Performance Reporting Requirements](#)

Sub-recipients are responsible for providing updated performance reports on a quarterly basis through the NDDes Grants Management System (GMS).

[Program Performance Reporting Periods Due Dates](#)

The following reporting periods and due dates apply for the performance progress reports:

Reporting Period	Report Due Date
October 1 - December 31	January 15
January 1 - March 31	April 15
April 1 - June 30	July 15
July 1 - September 30	October 15

[Program Reimbursement Request Due Dates](#)

The following reporting periods and due dates apply for the reimbursement requests.

Reporting Period	Report Due Date
October 1 - December 31	January 30
January 1 - March 31	April 30
April 1 - June 30	July 31
July 1 - September 30	October 31

[Closeout Reporting Requirements](#)

Within 15 days after the end of the Period of Performance, sub-recipients must submit a final reimbursement request and final project status report detailing all accomplishments and a qualitative summary of the impact of those accomplishments throughout the Period of Performance, as well as other documents required by program guidance or terms and conditions of the award, to include the [tangible personal property report](#) (inventory of all equipment and software acquired using funds from the award).

The sub-recipient must liquidate all obligations incurred under the EMPG award by the end of the period of performance. Unliquidated obligations at the end of the period of performance will result in the costs being disallowed.

After these reports have been reviewed and approved by NDDDES, a close-out notice will be completed to close out the grant. The notice will indicate the Period of Performance is closed, list any remaining funds that will be de-obligated, address the requirement of maintaining the grant records for three years from the date of the final Federal Financial Report submitted by NDDDES to DHS/FEMA, and disposition and reporting requirements for any equipment purchased using EMPG funding.

Federal rules require that all equipment purchased with federal funds must be inventoried and tagged. Sub-recipients are to record equipment purchased with a value of \$5,000 or more on the [Inventory List form](#) and submit it to NDDDES. NDDDES will then issue the sub-recipient inventory tags based on the submitted form. All inventory tags must be placed on identified equipment within 30 days of receiving the tags.

#### [Environmental Planning and Historic Preservation \(EHP\) Compliance](#)

As a Federal agency, DHS/FEMA is required to consider the effects of its actions on the environment and/or historic properties to ensure that all activities and programs funded by the agency, including grants-funded projects, comply with federal EHP regulations, laws, and Executive Orders as applicable. Sub-recipients proposing projects that have the potential to impact the environment, including but not limited to construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process. The EHP review process involves the submission of a detailed project description ([EHP Screening Form](#)) along with supporting documentation so that DHS/FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties. In some cases, DHS/FEMA is also required to consult with other regulatory agencies and the public to complete the review process. **An EHP must be completed for all training and exercise** and of course, for equipment. The forms have been updated to make it easier. There is now a separate form for each of the 3 projects (Training, Exercise and Equipment). They are in the EMPG folder under "templates.

**The EHP review process must be completed before funds are released to carry out the proposed project, otherwise, NDDDES will not be able to fund the project due to non-compliance with EHP laws, executive orders, regulations, and policies.**

Additionally, all sub-recipients are required to comply with GPD EHP Policy Guidance. This EHP Policy Guidance can be found in FP 108-023-1 at <https://www.fema.gov/media-library/assets/documents/85376> and GPD EHP Compliance and Reference Documentation.

Costs incurred to comply with FEMA's EHP requirements are the responsibility of the sub-recipient. This includes costs associated with the preparation, collection, or assembly of the

necessary documentation, the submission of the EHP clearance form, and/or the consultation fees for the development of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS).

## NDDES GRANT REQUIREMENTS

This is a four (4) quarter grant to coincide with the EM Duties Checklist. **The National Priority of Equity is mandatory this year.** On pages 4-6 of this document, you will find a list of the types of projects you could consider. **The project will need to be part of your FY 2023 EMPG application work plan.**

## NDDES REQUIRED TASKS - Instructions to the EM Duties Checklist

July - September 2023

- **WebEOC**
  - WHY - WebEOC provides situational awareness and a common operating picture at all levels of government of ongoing incidents within the state. It provides leadership and key agencies with the necessary information to determine what actions (i.e., pre-positioning or movement of resources, outreach/coordination with other agencies, public messaging, etc.), if any, are needed. WebEOC is a perishable skill if not used on a regular basis and therefore it is imperative that all emergency managers maintain a level of proficiency; especially if there aren't many incidents in your jurisdiction.
  - To satisfy this requirement you must:
    - Report all incident-related information (i.e., storm reports, declarations, fires damage reports, etc.) and submit requests for State/Federal assistance via WebEOC.
    - Logging in once a quarter and making a single entry (i.e., storm reports, fire declaration/burn ban,) is no longer acceptable. Any incident meeting the Incident Reporting Guidance, located in the WebEOC Event/Position Log, needs to be reported via WebEOC.
    - It is your responsibility to log the information into WebEOC, it is not the duty officer's responsibility.
      - ❖ Note: *If there were not any incidents that meet the Incident Reporting Guidance within your jurisdiction during the quarter, note that in your quarterly report. In addition, you must complete the quarterly homework assignment Geneva will conduct.*
  - The expectation is that when you host/participate in an exercise you are required to utilize WebEOC as part of the exercise.
    - Add planned exercises to the WebEOC Exercise/LEPC Calendar. Instructions will be coming from Geneva by June 15, 2023.
    - Need to contact Geneva to set up an incident for the exercise.
      - At a **minimum**, you need to enter 3 event log entries and 2 request for assistance entries.



- **Local Emergency Operations Plan (LEOP)**
  - To be updated every two years.
  - If yours was updated last year, note in your Quarterly Progress Report that it is up to date.
  - Due September 30, 2023.
- **LEPC Membership List**
  - Update electronic copy of LEPC Membership list and upload with your Quarterly Progress Report. **You no longer need to put in WebEOC, Jeff has access to the Quarterly Reports in GMS.**
  - Due September 30, 2023.
- **LEPC Meeting Minutes**
  - There needs to be one (1) LEPC Meeting per (POP) Period of Performance (July 1, 2023 - June 30, 2024).
  - Add your LEPC meeting information to the WebEOC Exercise/LEPC Calendar.
  - No need to email Jeff saying you didn't have a meeting, as that doesn't meet the requirement.
  - After you have an LEPC Meeting, the minutes need to be uploaded with your Quarterly Progress Report. **You no longer need to put in WebEOC, Jeff has access to the Quarterly Reports in GMS.**
- **Quarterly Progress Report** - Due October 15, 2023
- **Quarterly Reimbursement Request** - Due October 31, 2023

#### October - December 2023

- **WebEOC**
  - WHY - WebEOC provides situational awareness and a common operating picture at all levels of government of ongoing incidents within the state. It provides leadership and key agencies with the necessary information to determine what actions (i.e., pre-positioning or movement of resources, outreach/coordination with other agencies, public messaging, etc.), if any, are needed. WebEOC is a perishable skill if not used on a regular basis and therefore it is imperative that all emergency managers maintain a level of proficiency; especially if there aren't many incidents in your jurisdiction.
  - To satisfy this requirement you must:
    - Report all incident-related information (i.e., storm reports, declarations, fires, damage reports, etc.) and submit requests for State/Federal assistance via WebEOC.
    - Logging in once a quarter and making a single entry (i.e., storm reports, fire declaration/burn ban) is no longer acceptable. Any incident meeting the Incident Reporting Guidance, located in the WebEOC Event/Position Log, needs to be reported via WebEOC.
    - It is your responsibility to log the information into WebEOC, it is not the duty officer's responsibility.
      - ❖ *Note: If there were not any incidents that meet the Incident Reporting Guidance within your jurisdiction during the quarter, note that in your quarterly report. In addition, you must complete the quarterly homework*

*assignment Geneva will conduct.*

- The expectation is that when you host/participate in an exercise you are required to utilize WebEOC as part of the exercise.
- Add planned exercises to the WebEOC Exercise/LEPC Calendar. Instructions will be coming from Geneva by June 15, 2023.
- Need to contact Geneva to set up an incident for the exercise.
  - At a **minimum**, you need to enter 3 event log entries and 2 request for assistance entries.
- **Local Hazardous Materials Operational Procedures**
  - To be updated every year.
  - If no updates, state in Quarterly Progress Report.
  - Due December 31, 2023.
- **THIRA Review /Update Steps 1 - 3**
  - Review and update the new THIRA tool. Will have more information within the next couple weeks on the new tool.
  - Changed when due, so that we can use the information to submit the State's THIRA to FEMA.
  - **Due October 31, 2023.**
- **Hazconnect**
  - Need to login once a year.
  - Due December 31, 2023
- **LEPC Meeting Minutes**
  - There needs to be one (1) LEPC Meeting per (POP) Period of Performance (July 1, 2023 - June 30, 2024).
  - Add your LEPC meeting information to the WebEOC Exercise/LEPC Calendar.
  - No need to email Jeff saying you didn't have a meeting, as that doesn't meet the requirement.
  - After you have an LEPC Meeting, the minutes need to be uploaded with your Quarterly Progress Report. **You no longer need to put in WebEOC, Jeff has access to the Quarterly Reports.**
- **Mutual Aid Agreements**
  - Upload Electronic Mutual Aid Agreements into your WebEOC Local File Library by December 31, 2023.
  - If nothing new, note in your Quarterly Progress Report.
- **Quarterly Progress Report - Due January 15, 2024**
- **Quarterly Reimbursement Request - Due January 31, 2024**

## January - March 2024

- **WebEOC**
  - WHY - WebEOC provides situational awareness and a common operating picture at all levels of government of ongoing incidents within the state. It provides leadership and key agencies with the necessary information to determine what actions (i.e., pre-positioning or movement of resources, outreach/coordination with other agencies, public messaging, etc.), if any, are needed. WebEOC is a perishable skill if not used on a regular basis and therefore it is imperative that all emergency

managers maintain a level of proficiency; especially if there aren't many incidents in your jurisdiction.

- To satisfy this requirement you must:
  - Report all incident-related information (i.e., storm reports, declarations, fires, damage reports, etc.) and submit requests for State/Federal assistance via WebEOC.
  - Logging in once a quarter and making a single entry (i.e., fire declaration/burn ban) is no longer acceptable. Any incident meeting the Incident Reporting Guidance, located in the WebEOC Event/Position Log, needs to be reported via WebEOC.
  - It is your responsibility to log the information into WebEOC, it is not the duty officer's responsibility.
    - ❖ Note: *If there were not any incidents that meet the Incident Reporting Guidance within your jurisdiction during the quarter, note that in your quarterly report. In addition, you must complete the quarterly homework assignment Geneva will conduct.*
- The expectation is that when you host/participate in an exercise you are required to utilize WebEOC as part of the exercise.
  - Add planned exercises to the WebEOC Exercise/LEPC Calendar. Instructions will be coming from Geneva by June 15, 2023.
  - Need to contact Geneva to set up an incident for the exercise.
    - At a **minimum**, you need to enter 3 event log entries and 2 request for assistance entries.
- **Local & Private Resources**
  - Maintain and provide an updated electronic listing of local and private resources (to include city, township, and county) identified in the LEOP.
  - Due March 31, 2024.
- **LEPC Meeting Minutes**
  - There needs to be one (1) LEPC Meeting per (POP) Period of Performance (July 1, 2023 - June 30, 2024).
  - Add your LEPC meeting information to the WebEOC Exercise/LEPC Calendar.
  - No need to email Jeff saying you didn't have a meeting, as that doesn't meet the requirement.
  - After you have an LEPC Meeting, the minutes need to be uploaded with your Quarterly Progress Report. **You no longer need to put in WebEOC, Jeff has access to the Quarterly Reports.**
- **Shelter Board in WebEOC**
  - WHY - Sheltering is a local responsibility and as part of your planning efforts you need to ensure shelter has been pre-identified, roles and responsibilities are assigned, and basic capability and contact information is captured. In the event the American Cross is unable to assist and/or respond in a timely manner, it's critical you have access to accurate and current information and plans must address contingencies to help fill the gap.
  - To satisfy this requirement you must:
    - Review and update shelter-related information in the "Statewide Shelters"

board. This includes shelter locations, contact information, capabilities (i.e., ADA compliant, backup generator, capacity, etc.) and any applicable documents (i.e., shelter survey, SOP's, layout/photo, etc.).

- *Note: Contact Geneva to demonstrate functionality of the "Statewide Shelters" board and how to update information, if needed.*
- **Integrated Preparedness Plan Workshop (IPPW)**
  - All Integrated Preparedness Plan Workshops (IPPW) must be completed by March 31, 2023.
  - Live group video calls will be conducted beginning December 2023 to discuss alternate methods of conducting an IPPW in jurisdictions where face-to-face meetings are a challenge.
  - Jurisdictions must identify and submit to Scott Helphrey, a point of contact (POC) and alternate POC for their IPP by April 1, 2024, who will:
    - Act on behalf of the jurisdiction as primary contact with all communications regarding the IPP.
    - Participate in DES-led IPP meetings.
    - Have decision-making authority regarding questions, concerns, IPP submission, editing and reviews of the IPP.
  - Jurisdictions participating in Regional IPPs must follow the same guidelines selecting individuals to act on behalf of the group with the same authority and responsibilities.
  - Integrated Preparedness Plans are due by June 30, 2023.
  - Should include representatives from the jurisdiction's training and exercise, budget, planning, recovery and mitigation, threat, and risk assessment, and first responder agencies such as fire, law enforcement, emergency medical services, and healthcare. Other recommended participants include elected officials, key business partners, representatives of the public, subject matter experts (SMEs) and representatives of special needs and underserved groups.
  - Due March 31, 2024.
- **Quarterly Progress Report** - Due April 15, 2024
- **Quarterly Reimbursement Request** - Due April 30, 2024

#### April - June 2024

- **WebEOC**
  - WHY - WebEOC provides situational awareness and a common operating picture at all levels of government of ongoing incidents within the state. It provides leadership and key agencies with the necessary information to determine what actions (i.e., pre-positioning or movement of resources, outreach/coordination with other agencies, public messaging, etc.), if any, are needed. WebEOC is a perishable skill if not used on a regular basis and therefore it is imperative that all emergency managers maintain a level of proficiency; especially if there aren't many incidents in your jurisdiction.
  - To satisfy this requirement you must:
    - Report all incident-related information (i.e., storm reports, declarations, fires, damage reports, etc.) and submit requests for State/Federal assistance via

- WebEOC.
- It is your responsibility to log the information into WebEOC, it is not the duty officer's responsibility.
- Logging in once a quarter and making a single entry (i.e., fire declaration/burn ban) is no longer acceptable. Any incident meeting the Incident Reporting Guidance, located in the WebEOC Event/Position Log, needs to be reported via WebEOC.
- It is your responsibility to log the information into WebEOC, it is not the duty officer's responsibility.
  - ❖ Note: *If there were not any incidents that meet the Incident Reporting Guidance within your jurisdiction during the quarter, note that in your quarterly report. In addition, you must complete the quarterly homework assignment Geneva will conduct.*
- The expectation is that when you host/participate in an exercise you are required to utilize WebEOC as part of the exercise.
  - Add planned exercises to the WebEOC Exercise/LEPC Calendar. Instructions will be coming from Geneva by June 15, 2023.
  - Need to contact Geneva to set up an incident for the exercise.
    - At a **minimum**, you need to enter 3 event log entries and 2 request for assistance entries.
- **LEPC Meeting Minutes**
  - There needs to be one (1) LEPC Meeting per (POP) Period of Performance (July 1, 2023 - June 30, 2024).
  - Add your LEPC meeting information to the WebEOC Exercise/LEPC Calendar.
  - No need to email Jeff saying you didn't have a meeting, as that does not meet the requirement.
  - After you have an LEPC Meeting, the minutes need to be uploaded with your Quarterly Progress Report. **You no longer need to put in WebEOC, Jeff has access to the Quarterly Reports.**
- **Annual Section 324 Notice**
  - The public notice should be posted between **April 1-30, 2024**. This allows for the reporting season to close and the newest information be made available to the citizens of North Dakota.
  - The EPCRA guidance out of the handbook and a template example that can be used by the LEPC's are in the EMPG folder in the Grants Management System under Resources.
  - The template can be modified to meet your community needs as you see fit.
  - Because there is no longer one standalone means of reaching the mass community, there needs to be numerous means to reach as much of the community as possible (digital, newspaper, social media platforms, etc.).
  - A copy needs to be uploaded with the Quarterly Progress Report. Due July 15, 2024.

- **Integrated Preparedness Plan (IPP)**
  - To be submitted to Scott Helphrey by June 30, 2024.
  - Once approved, needs to be uploaded with FY2023 Application in GMS on the blue screen (Project Page).
- **Training** - Two scenarios
  - Initial Training (Year One) - The Professional Development Series (online) must be completed within one (1) year of starting your position. It is a requirement for Basic Academy.
  - Continuing Education (Year Two and Going Forward) - All EMs will complete a minimum of eight (8) total hours of training per year. Meetings, conferences, and exercises do not count toward training hours.
- **Exercise**
  - At a minimum one (1) exercise will be conducted in your jurisdiction to test your plans and responders as related to your IPP priorities.
  - The expectation is that when you host/participate in an exercise you are required to utilize WebEOC as part of the exercise.
    - Add planned exercises to the WebEOC Exercise/LEPC Calendar. Instructions will be coming from Geneva by June 15, 2023.
    - Need to contact Geneva to set up an incident for the exercise.
      - At a **minimum**, you need to enter 3 event log entries and 2 request for assistance entries.
  - Substitution of real events need to be approved by Scott/Larry.
- **After-Action Report/Improvement Plan (AAR/IP)**
  - AAR/IP for the tabletop, functional, or full-scale exercise conducted in your jurisdiction must be completed and sent to Larry by June 30, 2024.
  - This also includes AAR/IP's written by third party contractors.
- **Quarterly Progress Report** - Due July 15, 2024
- **Quarterly Reimbursement Request** - Due July 31, 2024

## FY2023 EMERGENCY MANAGERS DUTIES CHECKLIST

<b>OPERATIONS</b>	July-Sept, 2023	Oct-Dec 2023	Jan-March 2024	April-June 2024	Send to:
*Report <b>All</b> Incidents and Submit Requests for State/Federal Assistance via WebEOC. *Required to utilize WebEOC as part of your exercise. *Add planned exercises to WebEOC Calendar. *Contact Geneva to set up an incident for the exercise. *See Local Guidance for more details.	Quarterly	Quarterly	Quarterly	Quarterly	WebEOC
Review and update shelter-related information in the "Statewide Shelters" board. Includes shelter locations, contact information, capabilities and any applicable documents. See EMPG local guidance for full explanation.			3/31/2024		WebEOC Shelter Board
<b>PLANNING</b>					
Local Emergency Operations Plan to be updated every two years. Make sure the most current is with the Regional Coordinators. If no updates, state so in Quarterly Report.	9/30/2023				Regional Coordinator
Local Hazardous Materials Operational Procedures to be updated yearly.		12/31/2023			WebEOC (Local File Library)
THIRA - Review/Update Steps 1-3		10/31/2023			Teams Folder or Regional Coordinator
<b>LOGISTICS</b>					
Maintain/Provide Local & Private Resources Identified in LEOP to NDDDES (NIMS Compliance).			3/31/2024		WebEOC (Local File Library)
<b>HAZMAT/LEPC</b>					
Publish Annual Section 324 Notice. Upload a copy with Quarterly Report in GMS.				4/1- 4/30/2023	GMS
Hazconnect Login - Need to login once a year.		12/31/2023			Hazconnect
Submit Electronic Copies of LEPC Membership List. Upload in GMS with Quarterly Report.	9/30/2023				GMS
LEPC Meeting <b>Minutes</b> (Need Minutes, not agenda)- Upload in GMS with Quarterly Report.	Ongoing	Ongoing	Ongoing	Ongoing	GMS
<b>MUTUAL AID</b>					
Submit Electronic Mutual Aid Agreements to NDDDES (NIM's Compliance). Note in quarterly report if no updates or new agreements.		12/31/2022			WebEOC (Local File Library)
<b>TRAINING</b>					
Integrated Preparedness Plan Workshop (IPPW)			3/31/2024		Scott
Integrated Preparedness Plan (IPP)				6/30/2024	Scott

Initial Training (Year One) - The Professional Development Series (online) must be completed withing one (1) year of your start date.	1 Year Anniversary	1 Year Anniversary	1 Year Anniversary	1 year Anniversary	Scott
Continuing Education (Year Two & Later) - All EMs will complete a minimum of eight (8) total hours of training per year. Meetings, conferences, and exercises do not count toward training hours.				6/30/2024	Scott
<b>EXERCISE</b>					
At a minimum one (1) Exercise will be conducted in your jurisdiction to test your plans and responders as related to your IPP priorities. Real events need to be approved by Scott/Larry.				6/15/2024	Larry
All AARs for Exercise will be submitted to Scott/Larry No Later Than 90 days after the exercise is completed.				6/30/2024	Scott/Larry
<b>REPORTING</b>					
Quarterly Reports on time.	10/15/2023	1/15/2024	4/15/2024	7/15/2024	*GMS
Reimbursement Requests must be done at least quarterly.	10/31/2023	1/31/2024	4/30/2024	7/31/2024	*GMS
*GMS (Grants Management System)					

### NDDDES Awarding Agency Contact Information

NDDDES staff will provide programmatic support and technical assistance. A list of contacts is provided below:

- Programmatic or Administrative Questions (grant guidance, reimbursement requests, change requests, etc.)
  - Annette Sabot [asabot@nd.gov](mailto:asabot@nd.gov)
  - Debbie LaCombe [dlacombe@nd.gov](mailto:dlacombe@nd.gov)
  - Karen Hilfer [khilfer@nd.gov](mailto:khilfer@nd.gov)
    - EHP Review Process (EHP guidance, screening form, etc.)





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September 21, 2023

Fargo City Commission  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

RE: EXTENSION TO RFQ18084 – FARGODOME ARCHITECTURAL SERVICES

Commissioners:

On May 21<sup>st</sup>, 2018, the City Commission approved the selection and contract for RLE Architects & Interiors to lead the predesign work at FARGODOME. Within this Request for Qualifications, a three-phase approach was proposed by RLE Architects & Interiors. Phase 1 involved investigative research and review, along with programming and predesign, to determine an initial footprint of any building additions, budget estimates for initial funding procurement, and schematic design elements.

With Phase 1 completed, FARGODOME would like to move forward with the Scope of Work listed in Phase 2 of RFQ18084. Within this Scope of Work, Phase 2 will commence only if a fee can be negotiated for these services. This phase will consist of design development through construction level documents, and a detailed construction cost estimate. Bidding for a construction project could be included within this phase.

At this time, we are asking for approval to proceed within the original RFQ to move forward with Phase 2 of the Architectural Services provided by RLE Architects & Interiors for the FARGODOME and have this work funded out of the FARGODOME Permanent Fund.

Suggested Motion:

Approve the recommendation to extend the contract with RLE Architects & Interiors for Phase 2 of Architectural Services at the FARGODOME and have this work funded out of the FARGODOME Permanent Fund.

Thank you for your consideration of this matter.

Sincerely,

Rob Sobolik  
General Manager, FARGODOME

# CITY OF Fargo Fire Department

(21)

## MEMORANDUM

**TO: FARGO CITY COMMISSION**

**FROM: FIRE CHIEF STEVE DIRKSEN**

**DATE: 09/27/2023**

**SUBJECT: CHANGE ORDER FOR PROJECT BP0065 FIRE STATION #8**

This request is for three change orders for the construction of Fire Station # 8.

CO # 4. – Hand Form (3) trench drains in apparatus bay in lieu of preformed trench drains. \$5,880.00

The original price of the contract for General Construction was \$3,504,720.00. Previous change orders increased the cost of General Construction to \$3,531,018.34. This change order will increase the cost of General Construction to \$3,536,898.34.

**RECOMMENDED MOTION:** Approve change order #4 for BP0065 Fire Station #8 in the amount of \$5,880.00.

Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 04

**Date:** 9/19/2023

**Project Number:** 2301

**Contract Date:** 5/15/2023

To:	Project:
City of Fargo Fire Department 637 NP Avenue Fargo ND 58102	Fargo Fire Department Station #8 6617 33rd Street South Fargo ND 58104

**Description of Change:**

Hand form (3) trench drains in aparatus bay in lieu of preformed trench drains.

Project Original Contract Sum	3,504,720.00
Total of Previously Approved Change Orders	0.00
Contract Amount Prior to this Change Order	3,504,720.00
Proposed Contract Amount of this Change Order	5,880.00
Proposed Contract Amount Including this Change Order	3,510,600.00

Accepted By:		
<hr/>	<hr/>	<hr/>
Contractor <i>(Company Name)</i>	Owner <i>(Company Name)</i>	Other <i>(Company Name)</i>
<hr/>	<hr/>	<hr/>
By <i>(Signature)</i>	By <i>(Signature)</i>	By <i>(Signature)</i>
<hr/>	<hr/>	<hr/>
Printed Name	Printed Name	Printed Name
<hr/>	<hr/>	<hr/>
Date	Date	Date
<hr/>	<hr/>	
	Owner's Change Order Number	

Ledgestone Inc.  
 22930 CO Hwy 6  
 Detroit Lakes MN 56501

www.ledgestoneinc.com  
 218-849-6140  
 218-847-5013



LEDGESTONE, INC.

# Change Order Request

**COR Number:** 04

**Date:** 9/19/2023

<b>To:</b> City of Fargo Fire Department	<b>Project:</b> Fargo Fire Department Station #8
--	--

Item	Description	Quantity	UOM	Unit Price	Extended Price
<b>03 - Concrete</b>					
	Concrete forming	1.00	LS	5,600.00	5,600.00
	Profit & Overhead	0.00		0.00	280.00
<b>Concrete Total:</b>					<b>5,880.00</b>
<b>Change Order Total:</b>					<b>5,880.00</b>

## Change Order

Summit Siteworks, LLC.

1551 8th Ave NW - West Fargo, ND 58078 - Phone:701-478-4101



Contractor: LedgeStone  
 Project: Firehall #8  
 Date: 9/19/2023

We hereby submit change order for:

<u>QTY</u>	<u>Units</u>	<u>Description</u>
132	LF	Hand Forming Trench in lieu of pour around manufactured trench drain

**Total Change Orders:** \$5,600.00

Original Bid (contract sum):	\$452,644
Net change by previously authorized change orders:	\$0
Contract sum prior to this change order:	\$452,644
Contract sum increased by this change order will be:	\$5,600
The new contract sum including this change order:	\$458,244

**Total for this Change Order:**  
 Four Hundred Fifty Eight Thousand Two Hundred Forty Four Dollars and Zero Cents

PAYMENT:

Payment is due on that portion of work completed by the end of the month, by the following 10th of the month.  
 Finance charges of 1.5% per month on accounts 30 days or more past due. No Retainage.

AUTHORIZED SIGNATURE : \_\_\_\_\_

NOTE: This proposal may be withdrawn by us if not accepted within 30 days. All materials are guaranteed to be as specified and for a period of one year after placement.  
 All work to be completed in a workman - like manner according to standard practices. Any alterations or deviation from the above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.  
 Owner is to carry fire, tornado, and any other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance. Any concrete cracking due to soil or compaction of soil is not the responsibility of Summit Siteworks LLC.. Any concrete that cracks or spawls after temperatures drop below 30% Fahrenheit is Contractor's responsibility.

Acceptance of Proposal: The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

SIGNATURE : \_\_\_\_\_ DATE OF ACCEPTANCE : \_\_\_\_\_

Please Sign and Return one copy to be put on Schedule.



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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: GRANT LARSON** *GL*  
**DIRECTOR OF ENVIRONMENTAL HEALTH**

**DATE: SEPTEMBER 28, 2023**

**RE: ENVIRONMENTAL HEALTH PROGRAM REQUIREMENTS**

The Environmental Health Division requests the following program requirements be directed to the City of Fargo Attorney for review:

- Recreational Aquatic Facilities (Article 13-10)
- Hotels & Motels (Article 13-14)
- Massage Therapy Establishments (Article 13-18)

If you have any questions, please call 701.241.1388.

**Suggested Motion:** Move to direct Article 13-10, Article 13-14, and Article 13-18 to the City Attorney for review.


GL/lls



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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: SEPTEMBER 28, 2023**

**RE: NOTICE OF GRANT AWARD AMENDMENT WITH ND  
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR  
COMMUNITY GRANT PROGRAM.  
NO: G23.359      CFDA: 93.991  
ADDITIONAL FUNDS: \$10,000  
EXPIRES: 09/30/2024**

The attached notice of grant award with ND Department of Health and Human Services is for the Community Grant Program where Fargo Cass Public Health will utilize funds to support the Cass Clay Food in addressing food access and nutrition security.

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

**Suggested Motion:**

Move to approve the notice of grant award amendment with ND Department of Health and Human Services.

DF/lis  
Attachment



# Page 144 NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
SFN 53771 (04-2023)

Grant Number G23.359	CFDA Name Preventive Health and Health Services Block Grant	CFDA Number 93.991
FAIN Number NB01TO000022	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2023
Federal Award Date 09/11/2023	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 Community Grant Program	North Dakota Department of Health and Human Services (NDDHHS) Project Code: 4521 HLH 5143 31
Grantee Name Fargo Cass Public Health	Project Director Brianna Monahan
Address 1240 25 <sup>th</sup> Street South	Address 600 E. Boulevard Ave., Dept. 325
City/State/ZIP Code Fargo, ND 58103-2367	City/State/ZIP Code Bismarck, ND 58505-0250
Contact Name Larry Anenson	Contact Name Brianna Monahan
Telephone Number 701-241-8575	Telephone Number 701-328-2698
Email Address lanenson@fargond.gov	Email Address bmonahan@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$10,000	\$0	\$10,000
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$10,000	\$0	\$10,000
Indirect Rate (Check One)	<input type="checkbox"/> Subrecipient waived indirect costs	<input checked="" type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

### Scope of Service

Grantee will utilize funds to support the Cass Clay Food Partners in addressing food access and nutrition security in the Fargo region in accordance with grant guidance and Grantee's workplan.

### Reporting Requirements

Grantee must submit reimbursement requests via the Program Reporting System (PRS).  
Grantee will submit a report on activities and event participation with each reimbursement request.  
Reimbursement for the period ending June 30, 2024 must be received by July 15, 2024.  
Reimbursement for the period ending September 30, 2024 must be received by October 31, 2024.  
Reimbursement will be processed upon Department approval of expenditures and reports.

### Special Conditions

None.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2023 to June 30, 2025 [Finance Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 09/28/2023	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Jesse L. Tran, PhD, MBA, Assistant Unit Director Health Promotion & Chronic Disease Prevention Unit	
Date	Signature	Date	Signature
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Dirk D. Wilke, J.D., M.B.A., Executive Director of Public Health	

If attachments are referenced, they must be returned with the signed award.  
If you did not receive attachments as indicated, contact the Program Director identified above.






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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: SEPTEMBER 27, 2023**

**RE: NOTICE OF GRANT AWARD AMENDMENT WITH ND  
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR  
MATERNAL AND CHILD HEALTH PROGRAM.  
NO: G23.425           CFDA: 93.994  
ADDITIONAL FUNDS: \$17,500  
EXPIRES: 09/30/2024**

The attached notice of grant award amendment is providing for Fargo Cass Public Health to increase the number of infants who are breastfed and who are breastfed exclusively through 6 months and increase the number of children and adolescents who are physically active.

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

**Suggested Motion:**

Move to approve the notice of grant award amendment with ND Department of Health and Human Services.

DF/lls  
Attachment



# NOTICE OF GRANT AWARD

NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
SFN 53771 (04-2023)

Grant Number G23.425	CFDA Name Maternal and Child Health Federal Consolidated Programs	CFDA Number 93.994
FAIN Number B0447437	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2023
Federal Award Date 10/27/2022	Grant End Date 9/30/2024	
Federal Awarding Agency United States 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 Increase number of infants who are breastfed and who are breastfed exclusively through six months and Increase number of children and adolescents who are physically active	North Dakota Department of Health and Human Services (NDDHHS) Project Code 4551 HLH 5133 04
Grantee Name Fargo Cass Public Health	Project Director Mikaela Schlosser
Address 1240 25th St S	Address 600 East Boulevard Ave., Dept 325
City/State/ZIP Code Fargo, ND 58103	City/State/ZIP Code Bismarck, ND 58505-0250
Contact Name Larry Anenson	Contact Name Mikaela Schlosser
Telephone Number 701.241.8475	Telephone Number 701-328-4529
Email Address LAnenson@FargoND.gov	Email Address mischlosser@nd.gov

	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$17,500	\$13,125	\$30,625
Previous Funds Awarded	\$0	\$0	\$0
Total Funds Awarded	\$17,500	\$13,125	\$30,625
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimus rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %

Scope of Service  
Grantee agrees to carry out the project/program in accordance with the activities stated in the Grantee's action plan.

Reporting Requirements  
Reporting Requirements are 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 NDDHHS as signed by Grantee for the period of July 1, 2023 to June 30, 2025 [Finance Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 09/27/2023	Signature <i>Desi Fleming</i>	Date	Signature
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Unit Director 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., Executive Director of Public Health	

If attachments are referenced, they must be returned with the signed award.  
If you did not receive attachments as indicated, contact the Program Director identified above.

**G23.425**  
**Fargo Cass Public Health**  
**Attachment A**

**Reporting Requirements**

Grantee will submit expenditure reports at least quarterly (may submit monthly) via the Program Reporting System (PRS).

Grantee will submit data and progress reports for federal reporting purposes on forms approved by the Department via the PRS.

Reimbursement will be processed upon Department approval of expenditures and reports.

**Expenditure and Progress Reports Due Dates**

<b>Expenditure Reporting Period</b>	<b>Due Date</b>
October 1, 2023 – December 31, 2023	January 15, 2024
January 1, 2024 – March 31, 2024	April 15, 2024
April 1, 2024 – June 30, 2024	July 15, 2024
July 1, 2024 – September 30, 2024	October 15, 2024

**Quarterly Conference Calls (Note: all times are Central Time)**

<b>Quarterly Conference Calls (Note: all times are Central Time)</b>			
<u><b>January 18, 2024</b></u> Breastfeeding 9:00-10:00 am Nutrition & Physical Activity 10:00-11:00 am	<u><b>April 18, 2024</b></u> Breastfeeding 9:00-10:00 am Nutrition & Physical Activity 10:00-11:00 am	<u><b>July 18, 2024</b></u> Breastfeeding 9:00-10:00 am Nutrition & Physical Activity 10:00-11:00 am	<u><b>October 17, 2024</b></u> Breastfeeding 9:00-10:00 am Nutrition & Physical Activity 10:00-11:00 am

## Attachment A - Continued

### TITLE V/MATERNAL AND CHILD HEALTH (MCH) GRANT

#### MCH DATA REPORTING GUIDANCE

**Unduplicated count** of individuals serviced under Title V enables the State to track and report on the number of individuals who were served by the Title V program within the top level (Direct Services) of the MCH Pyramid.

**Total recipient count of individuals** served by Title V enables the State to track and report on the number of individuals who received a Title V service within the top two levels (Direct Services and Enabling Services) of the MCH Pyramid.

#### **MCH Pyramid Levels:**

**Direct Services** – Direct services are preventive, primary, or specialty clinical services to pregnant women and children, including children with special health care needs, where MCH Services Block Grant funds are used to reimburse or fund providers for these services through a formal process similar to paying a medical billing claim or managed care contracts. State reporting on direct services should not include the costs of clinical services which are delivered with Title V dollars but reimbursed by Medicaid, CHIP or other public or private payers. Examples include, but are not limited to, preventive, primary or specialty care visits, emergency department visits, inpatient services, outpatient and inpatient mental and behavioral health services, prescription drugs, occupational and physical therapy, speech therapy, durable medical equipment and medical supplies, medical foods, dental care, and vision care.

**Enabling Services** – Enabling services are non-clinical services (i.e., not included as direct or public health services) that enable individuals to access health care and improve health outcomes where MCH Services Block Grant funds are used to finance these services. Enabling services include, but are not limited to: case management, care coordination, referrals, translation/interpretation, transportation, eligibility assistance, health education for individuals or families, environmental health risk reduction, health literacy, and outreach. State reporting on enabling services should not include the costs for enabling services that are reimbursed by Medicaid, CHIP, or other public and private payers. This category may include salary and operational support to a clinic or program that enable individuals to access health care or improve health outcomes. Examples include the salary of a public health nurse who provides prenatal care in a local clinic or compensation provided to a specialist pediatrician who provides services for children with special health care needs.

**Public Health Services and Systems** – Public health services and systems are activities and infrastructure to carry out the core public health functions of assessment, assurance, and policy development, and the 10 essential public health services. Examples include the development of standards and guidelines, needs assessment, program planning, implementation, and evaluation, policy development, quality assurance and improvement, workforce development, and population-based disease prevention and health promotion campaigns for services such as newborn screening, immunization, injury prevention, safe-sleep education and anti-smoking. State reporting on public health services and systems should not include costs for direct clinical preventive services, such as immunization, newborn screening tests, or smoking cessation.

Reference: Title V Maternal and Child Health Services Block Grant to State Program – Guidance and Forms for the Title V Application/Annual Report and Appendix of Supporting Documents

**G23.425**  
**Fargo Cass Public Health**  
**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.
- Before changing/carrying out any activities not in the approved action plan must be submitted to the Project Director for approval.
- Non-approved line items in budget must be submitted to the Project Director for approval before any purchases are incurred.
- 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.*

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**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: SEPTEMBER 15, 2023**

**RE: NOTICE OF GRANT AWARD AMENDMENT WITH ND  
DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR WIC.  
NO: G21.1024A CFDA: 10.557  
ADDITIONAL FUNDS: \$83,490  
EXPIRES: 09/30/2023**

The attached notice of grant award amendment is providing additional funding of \$83,490 for WIC. Due to the late arrival of this contract addendum from the State and with the contract end date of 9/30/23, the Mayor's signature was obtained 9/15/23 so return to the State for execution was not delayed. This is an existing contract for FCPH in which we were awarded additional funds. This item will be on Commission 10/2/23 for full approval.

**BUDGET ADJUSTMENTS**

<b>REVENUE</b>		
<b>WIC</b>	<b>101-0000-331-12-29</b>	<b>\$83,490</b>
<b>EXPENSES</b>		
<b>Machinery/Equipment</b>	<b>101-6090-451-74-10 HE27</b>	<b>\$ 6,000</b>
<b>Computer Equipment</b>	<b>101-6090-451-74-11 HE27</b>	<b>\$ 8,800</b>

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

**Suggested Motion:**

Move to approve the notice of grant award amendment with ND Department of Health and Human Services.

DF/lis  
Attachment

REPORT OF ACTION

**FINANCE COMMITTEE**

**Location:** Fargo Cass Public Health

**Agenda Item:** Budget Adjustment

**Presenter:** Melissa Perela

**Date of Hearing:** September 25, 2023

A budget adjustment was requested due to additional funding of \$83,490 for WIC. Due to the late arrival of the contract addendum from the State and with the contract end date of 9/30/23, the Mayor's signature was obtained 9/15/23 so return to the State for execution was not delayed. This is an existing contract for FCPH in which we were awarded additional funds.

Budget Adjustment Requested:

**Revenue:**

WIC	101-0000-331-12-29	\$83,490
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**Expenses:**

Machinery/Equipment	101-6090-451-74-10 HE27	\$6,000
Computer Equipment	101-6090-451-74-11 HE27	\$8,800

The remaining amount of the grant will go back to the salary/benefits fund.

**MOTION:**

The motion before the committee was to adjust the 2023 budget accounts as requested above.

Mike Redlinger moved to approve, second by Brenda Derrig and all members present voted in favor.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Tim Mahoney, Mayor	<u>X</u>	<u>X</u>		
Dave Piepkorn, City Commissioner	<u>X</u>	<u>X</u>		
Mike Redlinger, City Administrator	<u>X</u>	<u>X</u>		
Brenda Derrig, Assistance City Administrator	<u>X</u>	<u>X</u>		
Susan Thompson, Finance Director	<u>X</u>	<u>X</u>	<u>X</u>	
Tanner Smedshammer, Purchasing Manager	<u>X</u>	<u>X</u>		
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		

Timothy Mahoney, Finance Committee Chair



**NOTICE OF GRANT AWARD**  
 NORTH DAKOTA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 SFN 53771 (09-2022)

Grant Number G21.1024A	CFDA Name Special Supplemental Nutrition Program for Women, Infants and Children		CFDA Number 10.557
FAIN Number 233ND707W1003	Grant Type (Check One) <input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D	Grant Start Date 10/1/2022	Grant End Date 9/30/2023
Federal Award Date 10/1/2022	Federal Awarding Agency U.S. Department of Agriculture		
This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.			
Title of Project/Program Women, Infant and Children (WIC)		North Dakota Department of Health and Human Services (NDDHHS) Project Code: 4551 HLH 5153 01	
Grantee Name Fargo Cass Public Health		Project Director Amanda Varriano	
Address 1240 25 <sup>th</sup> St S		Address 600 East Boulevard Ave. Dept. 325	
City/State/ZIP Code Fargo, ND 58103		City/State/ZIP Code Bismarck, ND 58505-0250	
Contact Name: Kim Vance		Contact Name: Amanda Varriano	
Telephone Number: 701-277-1455		Telephone Number: 701-328-2496	
Email Address: kvance@fargond.com		Email Address: alvarriano@nd.gov	
	NDDHHS Cost Share	Grantee Cost Share	Total Costs
Amount Awarded	\$83,490	\$0	\$83,490
Previous Funds Awarded	\$554,000	\$0	\$554,000
Total Funds Awarded	\$637,490	\$0	\$637,490
Indirect Rate (Check One)	<input checked="" type="checkbox"/> Subrecipient waived indirect costs	<input type="checkbox"/> De minimis rate of 10%	<input type="checkbox"/> Negotiated/Approved rate of %
Scope of Service This amendment provides additional funding of \$83,490 as follows: \$8,800 to purchase four desktop computers and \$74,690 in support for the ongoing operations of WIC services. 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 None.			
This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDHHS as signed by Grantee for the period of July 1, 2021 to June 30, 2023 [Finance Use Only: <input checked="" type="checkbox"/> Requirements Received; <input checked="" type="checkbox"/> Questionnaire received] and (2) applicable State and Federal regulations.			
Evidence of Grantee's Acceptance		Evidence of NDDHHS Acceptance	
Date 9/15/2023	Signature <i>Desi Fleming</i>	Date 9-15-2023	Signature <i>Deanna Askew</i>
Typed Name/Title of Authorized Representative Desi Fleming, Director of Public Health		Typed Name/Title of Authorized Representative Deanna Askew, Unit Director, Family Health & Wellness	
Date 9/15/23	Signature <i>Timothy J. Mahoney</i>	Date 09/25/2023	Signature <i>Christopher D. Jones</i>
Typed Name/Title of Authorized Representative Timothy J. Mahoney, Mayor, City of Fargo		Typed Name/Title of Authorized Representative Christopher D. Jones, Commissioner	
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.			






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**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: SEPTEMBER 27, 2023**

**RE: MASTER CLINICAL AFFILIATION AGREEMENT WITH  
UNIVERSITY OF NORTH DAKOTA.  
EXPIRES: 10/08/2028**

The attached Master Clinical Affiliation Agreement with University of North Dakota is to provide collaboration with the University of North Dakota to meet educational needs of their students.

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

**Suggested Motion:**  
Move to approve Master Clinical Affiliation with UND.

DF/ls  
Attachment

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**Master Clinical Affiliation Agreement**

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This AGREEMENT is made by and between the University of North Dakota (“University” or “UND”) and Fargo Cass Public Health (“Facility”).

WHEREAS, the State of North Dakota, doing business as the University of North Dakota, desires to obtain internships or clinical education experience for its students/residents and

WHEREAS, it is the shared responsibility of the University and the Facility to create and maintain an appropriate learning environment and

WHEREAS, the Facility is committed to the professional education and training of University students/residents and is willing to assist in their education by providing them high-quality internships or clinical education experiences.

NOW THEREFORE, the University and Facility agree as follows:

**I. THE UNIVERSITY AGREES:**

1.1 To provide Facility with a list of University departments and programs covered by this Agreement (see Exhibit A).

1.2 To be responsible for meeting applicable program accreditation requirements.

1.3 To provide information to its students/residents and the Facility that outlines standards of performance and guidelines for the clinical education experience or internship.

1.4 To assign appropriate faculty/staff to serve as clinical education or internship liaisons between the Facility and the University (see Exhibit A).

1.5 To provide professional and general liability insurance for its students/residents with limits of \$1,000,000 per occurrence and \$5,000,000 in the aggregate. Professional and general liability coverage for University’s faculty/staff liaisons is provided through the North Dakota state risk management fund, which has limits of \$406,250 per person and \$1,625,000 per occurrence, with no aggregate limit.

1.6 To inform students/residents of the confidential nature of all Facility patient and client records, and of their obligations to protect the privacy and security of all protected health information.

1.7 To place only students/residents who have satisfactorily completed all required prerequisite courses and any other academic requirements and have been recommended by University faculty for placement in such a clinical education experience or internship. Upon request, University will provide Facility with information regarding the student’s/resident’s

experience and/or academic background prior to placement, as authorized by the student/resident.

1.8 To inform the students/residents that they must adhere to the administrative policies and procedures of the Facility.

1.9 To inform the students/residents that they must comply with the health requirements of the Facility and supply the Facility with any required documentation.

1.10 To assure that a criminal background check is completed on all students/residents to be placed with the Facility. Upon request, University shall make available to the Facility a background check report for all student/resident participants, as well as a detailed description of the various components of the University's comprehensive background check process.

1.11 To inform the students/residents that they may be required to undergo a drug test pursuant to the Facility's policies and practices, and that the cost of any drug test will be paid by the student/resident, if not the Facility.

## **II. THE FACILITY AGREES:**

2.1 To collaborate with the University in the selection of learning assignments which meet the educational needs of the students/residents.

2.2 To supervise and instruct the students/residents during the experience. Upon request, the Facility shall provide vitae of persons supervising or instructing students/residents to the University.

2.3 To conduct student/resident performance evaluations as directed by the University.

2.4 To notify the University immediately if a student/resident is not performing satisfactorily. The Facility will follow any oral notice or communication made under this paragraph with a written communication.

2.5 If interns or clinical education students/residents are required by Facility to undergo a drug test, Facility shall provide University with notice and explanation of any positive or unacceptable drug test results. If students/residents are required by Facility to undergo a drug test, Facility shall obtain advance authorization from students/residents permitting Facility to notify and explain to University any positive or unacceptable drug test result.

2.6 To provide the students/residents with appropriate office space, equipment, and resources, including access to the Facility's physical and/or on-line library, to carry out their assigned duties and learning objectives.

2.7 To orient students/residents to the Facility and its conduct and performance policies, procedures, rules, and regulations.

2.8 To supply the University with copies of any policies or procedures with which the students/residents will be expected to comply.

2.9 To notify the University prior to student/resident placement in the Facility of any health and fitness related requirements, including medical insurance coverage, immunization record, physical exam, and/or drug testing.

2.10 To maintain throughout the term of this Agreement all licenses, permits, certificates, and accredited statuses held at the time of execution of this Agreement, which are applicable to performance of this Agreement.

2.11 To maintain a positive, respectful, and adequately resourced learning environment so that sound educational experiences can occur (see Exhibit B).

### **III. THE UNIVERSITY AND THE FACILITY AGREE:**

3.1 That the number of students/residents placed in the Facility, the duration, and the timing of the experience shall be mutually agreed upon.

3.2 To collaborate in identifying specific experience objectives and learning activities for each student/resident placed in the Facility.

3.3 To follow termination procedures outlined in the University's applicable program guidelines or instruction manual in the event a student/resident placement is terminated prior to its intended conclusion.

3.4 That the Facility may exclude from participation any student/resident whose performance is determined to be detrimental to the Facility's clients; who violates established Facility policies, procedures and/or ethics codes; or whose performance is otherwise unsatisfactory, including any student/resident who is unable to maintain compatible working relationships with Facility employees, or whose health status precludes their regular attendance and successful completion of the experience.

3.5 In the event a student is exposed to an infectious or environmental hazard or other occupational injury (i.e. needle stick) while at the Facility, the Facility will provide such emergency care as is provided its employees, including, where applicable: examination and evaluation by Facility's emergency department or other appropriate facility as soon as possible after the injury; emergency medical care immediately following the injury as necessary; initiation of the HBV, Hepatitis C (HCV), and HIV protocol as necessary; and HIV counseling and appropriate testing as necessary. In the event that the Facility does not have the resources to provide such emergency care, the Facility will refer such student to the nearest emergency facility. The student will be responsible for any charges thus generated.

3.6 That the University is primarily responsible for the educational program, academic affairs, and the assessment of assigned University students.

3.7 That the University is primarily responsible for the appointment and assignment of faculty members with responsibility for the teaching of assigned University students.

3.8 That the Facility recognizes that, in order for University to maintain accreditation for certain departments/programs, a representative from the applicable accrediting council/organization may need to observe a student/resident providing services under this Agreement. Facility shall allow the representative access to its facility provided that University, student/resident, and the applicable accrediting council/organization take reasonable steps to ensure appropriate professional conduct related to protected health information and ensures that the representative is held to the same standards of patient privacy rules/expectations as the student/resident and University.

#### **IV. LIABILITY**

4.1 Each party shall be responsible for claims, losses, damages, and expenses, which may arise out of negligent or wrongful acts or omissions of that party or its agents or employees, acting within the scope of their duties in the performance of this Agreement.

4.2 The tort liability of the University is as set out in chapter 32-12.2 of the North Dakota Century Code and is subject to the conditions and limitations contained therein. Nothing herein shall preclude the State of North Dakota from asserting against third parties any defenses to liability it may have under North Dakota law or be construed to create a basis for a claim or suit when none would otherwise exist.

4.3 Facility agrees to inform University in the event either an investigation or claim arises out of patient or client care services performed by a University student/resident and shall provide University with reasonable access to information involving such student/resident in any investigation or claim. Facility shall notify University of the disposition of any such investigation or claim.

#### **V. TERM AND TERMINATION OF AGREEMENT**

5.1 This Agreement shall be effective beginning the date of execution by the parties and shall remain in effect for five (5) years from the date of execution. Either party may terminate this Agreement without cause at any time upon 60 days written notice to the other party.

5.2 In the event that the Facility terminates this Agreement, the Facility agrees that no students/residents participating in an ongoing internship or clinical education experience will be denied the opportunity to complete the affiliation, even when the effective date of termination occurs prior to the completion date of the internship or clinical education experience. In such an event, all applicable provisions of this Agreement, including the right to terminate any student/resident, shall remain in force until the end of the internship or clinical education experience.

5.3 The University may terminate this Agreement effective upon delivery of written notice

to the Facility, or at such later date as may be stated in the notice, if any license, permit, certificate or accreditation required by law, rule or regulation, or by the terms of this Agreement, is for any reason denied, removed, suspended, or not renewed.

**VI. NONDISCRIMINATION**

The University and the Facility agree that in the performance of this contract there will be no discrimination in violation of the law or the policies of the University of North Dakota. Therefore, there will be no discrimination on the basis of race, color, sex, religion, sexual orientation, gender identity, genetic information, age, national origin, the presence of any mental or physical disability, political belief or affiliation, status with respect to marriage or public assistance, or status as a veteran.

**VII. APPLICABLE LAW**

This Agreement is governed by the laws of the State of North Dakota.

**VIII. ASSIGNMENT**

Neither party may assign or otherwise transfer or delegate any right or duty, without the express written consent of the other party.

**IX. NOTICES**

All notices or other communications purporting to exercise or otherwise affect rights and duties under this Agreement shall be given by registered or certified mail, addressed to the parties as indicated below, and are complete on the date mailed.

**UNIVERSITY:**

University of North Dakota  
School of Medicine & Health Sciences  
Office of Education & Faculty Affairs  
1301 North Columbia Road Stop 9037  
Grand Forks ND 58202

**FACILITY:**

Fargo Cass Public Health  
1240 25<sup>th</sup> Street South  
Fargo ND 58103

The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

**X. MODIFICATION**

This Agreement may not be waived, altered, modified, supplemented, or amended in any manner except by written agreement signed by both parties.

**XI. SEVERABILITY**

If any term or provision of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term or provision.

**XII. MERGER**

This Agreement constitutes the entire agreement between the parties. There is no understanding, agreements, or representations, oral or written, not specified within this Agreement.

**XIII. CONSIDERATION**

Under the terms of this Agreement, neither party is obligated to make any payments of any kind to the other party.

**XIV. WAIVER**

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, and no waiver by either party, whether written or oral, express or implied, of any rights under, or arising from, the Agreement shall be binding on any subsequent occasion; and no concession by either party shall be treated as an implied modification of the Agreement unless specifically agreed in writing.

**XV. INDEPENDENT CONTRACTORS**

The parties are independent contractors and shall not act as an agent for the other party, nor shall either party be deemed to be an employee of the other party for any purpose whatsoever. Neither of the parties shall have any authority, either express or implied, to enter any agreement, incur any obligations on the other party's behalf, nor commit the other party in any manner whatsoever without the other party's express prior written consent. Any promotional business representation by either party of the other shall be approved in advance.

Remainder left blank intentionally  
~Signatures on following page~

**AUTHORIZED SIGNATURES**

APPROVED FOR:  
Fargo Cass Public Health

By: Desi Fleming Date: 09/27/2023  
Desi Fleming  
Director of Public Health

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Timothy J. Mahoney  
Mayor, City of Fargo

APPROVED FOR:  
University of North Dakota

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Relling, PT, Ph.D.  
Associate Dean for Health Sciences for School of Medicine & Health Sciences

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Maridee Shogren, D.N.P., C.N.M., C.L.C.  
Dean of College of Nursing and Professional Disciplines, Clinical Professor



**EXHIBIT A:**

Clinical Education Departments/Programs Covered Under this Affiliation Agreement at the  
University of North Dakota ([www.und.edu](http://www.und.edu))

**College of Arts and Sciences:**

Communication Science & Disorders  
Forensic Psychology, MS/MA  
Psychology, Clinical (PhD)

**College of Business and Public Administration**

Business Administration, Masters  
Public Administration, Masters & Certificate

**College of Education and Human Development:**

Community Mental Health, Addiction, and Rehabilitation Counseling, Masters  
Counseling, Graduate Certificate (K-12)  
Counseling, Masters (emphasis K-12)  
Counseling Psychology/PhD  
Kinesiology & Public Health Education  
Recreational & Leisure/Tourism Studies/Services  
Rehabilitation and Human Services  
School Counseling Distance Program (Masters)

**College of Nursing and Professional Disciplines:**

Human Nutrition  
Dietetics/Coordinated Program in Dietetics  
Nutrition (MS)  
Nutrition Health & Wellness Coaching Certificate  
Nursing, BSN  
Nursing, RN to BSN  
Advanced Practice Registered Nursing

- Adult Gerontology Primary Care Nurse Practitioner
- Family Nurse Practitioner
- Psychiatric Mental Health Nurse Practitioner
- Nurse Anesthesia

Nursing Educator  
Nursing, PhD  
Nursing – Doctor of Nursing Practice  
Social Work (BSW)  
Social Work (MSW)

**School of Medicine and Health Sciences:**

Athletic Training

Graduate Medical Education (residents scheduled individually on the Professional Liability policy)

Histotechnician Certificate Program

Medical/Clinical Laboratory Science

Medicine

Occupational Therapy

Physical Therapy

Physician Assistant

Public Health, Masters (MPH)

Sports Medicine

Sports Medicine Physical Therapy Residency

**EXHIBIT B:**  
TEACHER-LEARNER EXPECTATIONS

The UNIVERSITY holds in high regard professional behaviors and attitudes, including altruism, integrity, respect for others and a commitment to excellence. Effective learning is best fostered in an environment of mutual respect between teachers and learners. In the context of medical education the term “teacher” is used broadly to include peers, resident physicians, full-time and volunteer faculty members, clinical preceptors, nurses and ancillary support staff, as well as others from whom students learn.

**GUIDING PRINCIPLES:**

**Duty:** Healthcare profession educators have a duty not only to convey the knowledge and skills required for delivering the professions’ standard of care but also to instill the values and attitudes required for preserving the healthcare professions’ social contract with its patients.

**Integrity:** Learning environments that are conducive to conveying professional values must be based on integrity. Students and residents learn professionalism by observing and emulating role models who epitomize authentic professional values and attitudes.

**Respect:** Respect for every individual is fundamental to the ethic of healthcare. Mutual respect is essential for nurturing that ethic. Teachers have a special obligation to ensure that students and residents are always treated respectfully.

**RESPONSIBILITIES OF TEACHERS AND LEARNERS:**

Teachers should:

- Treat students fairly and respectfully
- Maintain high professional standards in all interactions
- Be prepared and on time
- Provide relevant and timely information
- Provide explicit learning and behavioral expectations early in a course
- Provide timely, focused, accurate and constructive feedback on a regular basis and thoughtful and timely evaluations at the end of a course
- Display honesty, integrity and compassion
- Practice insightful (Socratic) questioning, which stimulates learning and self-discovery and avoid overly aggressive questioning which may be perceived as hurtful, humiliating, degrading or punitive
- Solicit feedback from students regarding their perception of their educational experiences
- Encourage students who experience mistreatment or who witness unprofessional behavior to report the facts immediately

Students should:

- Be courteous of teachers and fellow students
- Be prepared and on time
- Be active, enthusiastic, curious learners
- Demonstrate professional behavior in all settings
- Recognize that not all learning stems from formal and structured activities
- Recognize their responsibility to establish learning objectives and to participate as an active learner
- Demonstrate a commitment to life-long learning, a practice that is essential to any healthcare profession
- Recognize personal limitations and seek help as needed
- Display honesty, integrity and compassion
- Recognize the privileges and responsibilities coming from the opportunity to work with patients in clinical settings
- Recognize the duty to place patient welfare above their own
- Recognize and respect patients’ rights to privacy
- Solicit feedback on their performance and recognize that criticism is not synonymous with “abuse”

**Relationships between Teachers and Students**

Students and teachers should recognize the special nature of the teacher-learner relationship, which is in part defined by professional role modeling, mentorship, and supervision. Because of the special nature of this relationship, students and teachers should strive to develop their relationship to one characterized by mutual trust, acceptance and confidence. They should both recognize the potential for conflict of interest and respect appropriate boundaries.



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## Memorandum

DATE: October 2, 2023  
TO: Mayor and Board of City Commissioners  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Dangerous Building at 509 21<sup>st</sup> St N

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### Background:

The property at 509 21 St. N., Fargo was declared a Dangerous Building during the regular meeting of the City Commission on October 31, 2022. At this meeting, the Board approved the deadline for removal of the structure by December 30, 2022. The property was in transition of ownership due to foreclosure proceedings at that time. An extension was granted on December 12, 2022 to allow Ocwen Loan Servicing, LLC ("PPH") (1) secure ownership, (2) obtain necessary permits, and (3) perform the work on the property so that it is "code compliant" and no longer a "dangerous building" by the opinion of the Building Official by June 1, 2023. On May 10, 2023, the property was sold to Wilmington at a Sheriff's sale.

Significant improvements have been done with the property prior to the sale and have continued after the sale. The Inspections Department has determined that sufficient work has been completed on the structure and a vacation of the "dangerous building" Findings of Fact, Conclusions and Order, and any amendment is appropriate.

The recommendation is **to vacate the Findings of Fact, Conclusions and Order, and any amendment for the property located at 509 21<sup>st</sup> Street North.**



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## Memorandum

DATE: October 2, 2023  
TO: Mayor Mahoney and Board of City Commissioners  
FROM: Shawn Ouradnik, Inspections Director  
SUBJECT: Dangerous Building Notice and Order at 924 7 St N, Fargo, ND 58102

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The property owner of 924 7 St N, Fargo, ND 58102 FM Property Pros II LLC, have failed to comply with the order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-04, it will now be necessary for you to set a date for a hearing of this order at which time the property owner will be able to appear and show cause why the building should not be removed and the costs of that removal assessed against this property.

The recommendation is **to make a motion, in accordance with FMC Article 21-0405, to set 5:15 pm Monday, October 16, 2023 as the time and date for the hearing regarding the dangerous building order for the structure at 924 7 St N, Fargo, ND 58102.**



# PLANNING & DEVELOPMENT

**FARGO CITY HALL**  
225 4th Street North  
Fargo, ND 58102  
Office: 701.241.1474 | Fax: 701.241.1526  
Email: [Planning@FargoND.gov](mailto:Planning@FargoND.gov)  
[FargoND.gov](http://FargoND.gov)

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## MEMORANDUM

TO: City Commission

FROM: Maegin Elshaug, Planning Coordinator *ME*

DATE: September 27, 2023

RE: Updated art concept for Skyway Mosaic project on skyway pillar

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Tommy Schmidt (project manager) has proposed a public art project on a skyway pillar using small mosaic tiles, located on Broadway near 2<sup>nd</sup> Avenue North, adjacent to the Black Building. He is working with artist LesleyAnne Buegel, who is designing and installing the artwork. The project was approved as part of the Call for Public Art Projects in 2022. The project has secured necessary approvals from the City Commission, including funding (May 2022) and installation on the pillar (Spring 2023).

The project manager recently notified staff that part of the tile order was not delivered, and the concept was revised by the artist in order to work with the tile that was received. An updated concept is attached and is being brought forward for your consideration.

Recommendation:

Approve the updated art concept for the Skyway Mosaic project.

Attachments





THE FARGO POLICE DEPARTMENT  
CHIEF DAVID B. ZIBOLSKI  
105 25th Street North  
Fargo, ND 58102-4002  
Main Line: 701.235.4493 | Fax: 701.297.7789  
FargoPolice.com

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September 28, 2023

Board of City Commissioners  
City Hall  
Fargo, ND 58102

RE: Acceptance of Emergency Services Grant

Dear Commissioners,

The Fargo Police Department – Red River Valley Bomb Squad has been awarded a grant from the North Dakota Department of Emergency Services (NDDDES) in the amount of \$338,921. The grant application was reviewed and approved via consent agenda by the Board of City Commissioners on March 20, 2023 for the purchase of a reusable Total Containment Vessel to safely secure, transport, and test explosive or chemical devices. There is no requirement for the City of Fargo to match any of the awarded grant funding.

**Recommended Motion:**

Approve the acceptance of the North Dakota Department of Emergency Services (NDDDES) Grant Award. Adjust the Police Department’s 2023 budget line Account #216-5016-411-74-10

Sincerely,

David B. Zibolski  
Chief of Police

Attachment: NDDDES Notice of Grant Award



September 19, 2023

Fargo Police Department - Red River Valley Bomb Squad  
Brady Scribner  
105 25th St N  
Fargo, ND 58102

Dear Mr. Brady Scribner:

Congratulations on behalf of the North Dakota Department of Emergency Services (NDDes) Division of Homeland Security, your grant application submitted for the FY 2023 State Homeland Security Program (SHSP) has been approved for award in the amount of \$338,921.00.

To accept the award and the terms and conditions complete the following steps **within 10 days** from the date of this letter:

- Step 1: Print or download the Notice of Grant Award and Special Conditions
- Step 2: Sign page 1 of the Notice of Grant Award
- Step 3: Initial all pages of the Special Conditions
- Step 4: Upload the signed Notice of Grant Award and Special Conditions pages into the NDDes Grants System (<https://grants.des.nd.gov>) to the Project page. (See directions at the end of this letter.)
- Step 5: Upload a copy of your jurisdiction's/entity's procurement policy to the Project page. (Note: A documented procurement policy is required per 2 CFR §200.318.)

**Do NOT begin any portion of your project including obligating or expending funds until the following requirement is met:**

- FY 2023 National Cybersecurity Risk Assessment (NCSR) completion. The NCSR (<https://www.cisecurity.org/ms-isac/services/ncsr/>). The NCSR is required of all subrecipients. It is open from October 1 through February 28<sup>th</sup>. See the NCSR Instructions attachments in the NDDes grants management system for additional information and instructions. Once you have completed the NCSR, upload a copy of the FY 2023 Completion Certificate to the Project page and send a note to [drice@nd.gov](mailto:drice@nd.gov) so that NDDes can document completion.
  - Failure to complete the NCSR during the timeframe noted above will result in a hold being placed on your project until the NCSR re-opens in October of the following year and is completed.

### **Procurement Requirements**

Federal 2 CFR §200.318-200.326 Procurement Standards as well as applicable state and local procurement laws and regulations must be followed when purchasing goods (example: equipment) and services (example: planning, training, or exercise activities).

Projects with an aggregate cost of \$10,000 or more must obtain a minimum of **three** quotes (each from a different vendor). Subrecipients must accept the quote from the vendor providing the lowest aggregate cost of the goods or services. Quotes must be obtained within the project period of performance. Quotes obtained prior to the project period of performance, or after the work has already been completed will not be accepted.

To aid subrecipients NDDes has provided the Quote (Informal) Request Form at [grants.des.nd.gov](https://grants.des.nd.gov). It is



Doug  
Burgum  
GOVERNOR

Major General  
Alan S. Dohrmann  
DIRECTOR – DEPARTMENT  
OF EMERGENCY SERVICES

Darin  
Hanson  
DIRECTOR – DIVISION  
OF HOMELAND SECURITY

Darin  
Anderson  
DIRECTOR – DIVISION  
OF STATE RADIO

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recommended that subrecipients use this form or a similar jurisdiction/entity specific form when requesting quotes to ensure that all vendors are quoting on the same specifications.

Please contact our office at 701-328-8250 or at [drice@nd.gov](mailto:drice@nd.gov) for any questions about procurement. Upon request, NDDes prior to you accepting a quote will review the quotes for compliance with federal procurement standards and provide feedback.

**NOTE:** If your application included a name brand or a particular contractor/vendor, the award is **NOT** an approval of that brand name or contractor/vendor. All procurement transactions must be conducted in a manner providing full and open competition (2 CFR §200.319). Please see the *NDDes Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs* as well as the Reimbursement Processing checklist at [HSGP - grants.des.nd.gov](http://HSGP-grants.des.nd.gov) for more information on the types of documentation you will need to provide to NDDes to show compliance.

Finally, the North Dakota State Procurement Office has cooperative purchasing contracts that can be used by eligible entities, including cities, counties, townships, public education, and tribal entities. See [CooperativePurchasing.pdf \(nd.gov\)](#) for more information. A current list of State Contracts can be found at [ND State Contracts](#). If under the column entitled **CP**, there is a **Y** then it has a cooperative purchasing contract.

**Project Reporting**

Project status reports are required quarterly, with a final report due at closeout. Quarterly reports are due fifteen (15) days after the end of the reporting period for each quarter. Reports should show a steady progression of the project. If there is no progression during a quarter and explanation as to why the project is not progressing is required. Failure to complete the reports will result in delays to reimbursement requests being processed. Reports are completed in the grants management system at <https://grants.des.nd.gov> on the Project page under Progress Monitoring tab.


Reporting Period	Report Due Date
October 1 – December 31	due by January 15
January 1 – March 31	due by April 15
April 1 – June 30	due by July 15
July 1 – September 30	due by October 15

**DES Grants System Document Upload Instructions**

1. Log in at <https://grants.des.nd.gov/>
2. On your home page click on **FY 2023 SHSP** - this takes you to a screen with a **red** banner at the top.
3. On the left-hand side, click on **Projects**, then click on the project that shows to the right – this takes you to a screen with a **blue** banner at the top.
4. Toward the bottom of the page on the right, click on **Add Document** – follow the directions on your screen and click **Upload** to upload your documents.

Please contact Karen Hilfer or Dave Rice at 701-328-8100 with any questions.

Sincerely,

  
Debbie LaCombe  
Preparedness Chief



Doug  
Burgum  
GOVERNOR

Major General  
Alan S. Dohrmann  
DIRECTOR – DEPARTMENT  
OF EMERGENCY SERVICES

Darin  
Hanson  
DIRECTOR – DIVISION  
OF HOMELAND SECURITY

Darin  
Anderson  
DIRECTOR – DIVISION  
OF STATE RADIO

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NOTICE OF GRANT AWARD		
<b>Recipient Contact Name:</b> Debbie LaCombe		<b>Recipient Contact #:</b> 701-328-8119
<b>Title of Grant Program:</b> FY 2023 State Homeland Security Program		
<b>Federal Award Identification Number:</b> EMW-2023-SS-00001		<b>Federal Award Date:</b> 9/11/2023
<b>Federal Awarding Agency:</b> U.S. Department of Homeland Security		
<b>CFDA No.</b> 97.067 SHSP		
<b>Subrecipient Name and Address</b> Fargo Police Department - Red River Valley Bomb Squad 105 25th St N Fargo, ND 58102		<b>Subrecipient Contact Name:</b> Brady Scribner Telephone: 701-476-4069 Email: BScribner@FargoND.gov
<b>Subrecipient UEI:</b> K2QJQZVH5PM6	<b>Grant Number:</b> 9	<b>County/Tribe:</b> Cass
<b>Performance Period</b>	<b>From:</b> September 19, 2023	<b>Through:</b> March 31, 2025
<b>Grant Amount:</b> \$338,921.00	<b>Subrecipient Cost Share:</b> \$0.00	<b>Total Project Cost:</b> \$338,921.00
<b>Scope of Service:</b> The intent of this award is to enhance the capability of the subrecipient to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and other catastrophic events in accordance with the federal Notice of Funding Opportunity for this grant program, the approved application scope of work and cost line items located in the NDDes grant portal.		
<b>Reporting Requirements:</b> Progress reports on the status of the project must be submitted to NDDes quarterly through the NDDes grant portal. Reports are due January 15, April 15, July 15, and October 15 for the life of the grant. A final report is due with the final reimbursement request.		
<b>Special Conditions:</b> The above grant project is approved subject to the special conditions or limitations as indicated on the attached page.		
<b>Terms and Conditions:</b> This award is subject to the terms and conditions incorporated directly or by reference in the following: <ol style="list-style-type: none"> <li>1) Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs which can be found at <a href="https://grants/des/nd.gov/site/HSGP.cfm">https://grants/des/nd.gov/site/HSGP.cfm</a>.</li> <li>2) Applicable Federal and State laws and regulations.</li> <li>3) The recipient agrees by signing this document that all allocations and use of funds under this grant will be in accordance with the Federal/State Notice of Funding Opportunity &amp; FEMA Preparedness Grants Manual for this grant program.</li> </ol>		
<b>This contract is not effective until fully executed by both parties.</b> By signing below, you are accepting the terms and conditions of the award. Please make sure you read and understand these documents before signing. Maintain a copy of these documents in your official file for this award.		
<b>Evidence of Subrecipient's Acceptance</b>		<b>Evidence of NDDes Approval</b>
 Signature	9/27/23 Date	 Signature
		9/19/2023 Date
<b>Typed Name and Title of Authorized Representative</b> Brady Scribner Emergency Manager		<b>Typed Name and Title of Authorized Representative</b> Darin Hanson Director, Division of Homeland Security



## SPECIAL CONDITIONS State Homeland Security Grant Program (SHSP)

### 1. DHS Standard Terms and Conditions Generally

The Fiscal Year (FY) 2023 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY023. These terms and conditions flow down to subrecipients unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations. They FY 2023 DHS Standard Terms and Conditions are at [www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions](http://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions).

### 2. Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

- DHS financial assistance sub-recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002.
- By accepting this agreement, sub-recipients, and their executives, as defined in 2 C.F.R. section 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

### 3. General Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- Sub-recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS.
- Sub-recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel.
- Sub-recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- Sub-recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance.

### 4. Acknowledgement of Federal Funding from DHS

Sub-recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

### 5. Age Discrimination Act of 1975

Sub-recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

### 6. Americans with Disabilities Act of 1990

Sub-recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. sections 12101 - 12213), which prohibits sub-recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

*BS*



Initial

### 7. Best Practices for Collection and Use of Personally Identifiable Information

Sub-recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Sub-recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.

### 8. Civil Rights Act of 1964 - Title VI

Sub-recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

### 9. Civil Rights Act of 1968

Sub-recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100.

### 10. Copyright

Sub-recipients must affix the applicable copyright notices of 17 U.S.C. sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

### 11. Debarment and Suspension

Sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

### 12. Drug-Free Workplace Regulations

Sub-recipients must comply with drug-free workplace requirements in Subpart B of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. sections 8101-8106).

### 13. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude sub-recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

### 14. Education Amendments of 1972 (Equal Opportunity in Education Act) - Title IX

Sub-recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.



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**15. E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety**

State, Tribal, local, and territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. State, Tribal, local, and territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.

**16. Energy Policy and Conservation Act**

Sub-recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94-163 (1975) (codified as amended at 42 U.S.C. section 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**17. False Claims Act and Program Fraud Civil Remedies**

Sub-recipients must comply with the requirements of the False Claims Act, 31 U.S.C. sections 3729-3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. sections 3801-3812, which details the administrative remedies for false claims and statements made.)

**18. Federal Debt Status**

All sub-recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)

**19. Federal Leadership on Reducing Text Messaging while Driving**

Sub-recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.

**20. Hotel and Motel Fire Safety Act of 1990**

Sub-recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. section 2225a.

**21. John S. McCain National Defense Authorization Act of Fiscal Year 2019**

Sub-recipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. sections 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute - as it applies to DHS sub-recipients, and their contractors and subcontractors - prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

**22. Limited English Proficiency (Civil Rights Act of 1964 - Title VI)**

Sub-recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

**ETS**  
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### **23. Lobbying Prohibitions**

Sub-recipients must comply with 31 U.S.C. section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt 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 any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

### **24. National Environmental Policy Act**

Sub-recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. section 4321 et seq.) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require sub-recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

### **25. Nondiscrimination in Matters Pertaining to Faith-Based Organizations**

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participation of faith-based organizations in individual DHS programs.

### **26. Non-Supplanting Requirement**

Sub-recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

### **27. Notice of Funding Opportunity Requirements**

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

### **28. Patents and Intellectual Property Rights**

Sub-recipients are subject to the Bayh-Dole Act, 35 U.S.C. section 200 et seq, unless otherwise provided by law. Sub-recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. section 401.14.

### **29. Procurement of Recovered Materials**

States, political subdivisions of states (i.e., sub-recipients), and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**BTS**  
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### 30. Rehabilitation Act of 1973

Sub-recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973) (codified as amended at 29 U.S.C. section 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

### 31. Reporting of Matters Related to Recipient Integrity and Performance

#### *General Reporting Requirements:*

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the sub-recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

### 32. Required Use of American Iron, Steel, Manufactured Products, and Construction Materials

Sub-recipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act Sections 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

### 33. SAFECOM

Sub-recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

### 34. Terrorist Financing

Sub-recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Sub-recipients are legally responsible to ensure compliance with the Order and laws.

### 35. Trafficking Victims Protection Act of 2000 (TVPA)

#### *Trafficking in Persons:*

Sub-recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. section 7104. The award term is located at 2 C.F.R. section 175.15, the full text of which is incorporated here by reference.

### 36. Universal Identifier and System of Award Management

#### *Requirements for System for Award Management and Unique Entity Identifier*

Sub-recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

### 37. USA PATRIOT Act of 2001

Sub-recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. sections 175-175c.

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### **38. Use of DHS Seal, Logo and Flags**

Sub-recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

### **39. Whistleblower Protection Act**

Sub-recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C section 2409, 41 U.S.C. section 4712, and 10 U.S.C. section 2324, 41 U.S.C. sections 4304 and 4310.

### **40. Environmental Planning and Historic Preservation (EHP) Review**

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the sub-recipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/ FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

### **41. Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

### **42. Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, sub-recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

### **43. Disposition of Equipment Acquired Under the Federal Award**

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

*ES*  
 Initial



**44. Prior Approval for Modification of Approved Budget**

Before making any change to the approved budget for this award, you must request prior written approval from NDDes. NDDes may be required by 2 C.F.R. section 200.308 to request FEMA approval of any budget modifications.

**45. National Cybersecurity Review**

Sub-recipients are required to complete the Nationwide Cybersecurity Review (NCSR) to benchmark and measure their progress of improving their cybersecurity posture. The NCSR can be found at <https://www.cisecurity.org/ms-isac/services/ncsr>.

**46. NDDes Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs**

Sub-recipient is required to also follow the applicable provisions of the NDDes Fiscal Requirements and Other Program Rules, Regulations, Laws, and Policies for Federal Programs as well as State or local provisions that may be stricter than Federal or State laws, regulations, or policies. This document can be found under the HSGP tab on the NDDes Grants website at <https://grants.des.nd.gov>.

**47. Reimbursements, Quarterly Status Reports, Time Extension Requests, Scope Changes, and Project Closeout**

Sub-recipient must submit all reimbursement requests, quarterly reports, time extension requests, scope change requests, and project closeouts along with required documentation in the NDDes Grants Management System at <https://grants.des.nd.gov>.

**48. Un-expended Funds**

At the conclusion of the period of performance as noted on the Notice of Grant Award, upon completion of the project, or withdrawal of the project by the sub-recipient; whichever comes first, unexpended funds will be de-obligated. By signing the Notice of Grant Award, the sub-recipient is authorizing NDDes to expend the de-obligated funds on program costs.

**49. Award Acceptance**

The Notice of Grant Award and these Special Conditions constitute the operative document obligating and reserving the Federal funds for use by the sub-recipient. By signing the Notice of Grant Award sub-recipients is certifying acceptance of the terms and conditions of the award.

**BS**  
Initial



**PUBLIC  
WORKS**

31

**FLEET MANAGEMENT, FORESTRY  
STREETS & SEWERS  
WATERMANS & HYDRANTS**  
402 23rd Street North  
Fargo, ND 58102  
Phone: 701.241.1453 | Fax: 701.241.8100  
[FargoND.gov](http://FargoND.gov)

September 28, 2023

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

RE: (1) Ford F-450 (PBC23377)

Commissioners:

On September 18, 2023, one (1) quote was received and read for the purchase of one (1) Ford F-450.

The results are as follows:

<u>Firm</u>	<u>Price for (1)</u>
Nelsons Auto Center	\$56,173.00

The review committee consisting of Ben Dow, Allan Erickson, and Tom Ganje evaluated one (1) quote and determined that the quote was compliant with ND Service Cooperative Contract 22.3. This North Dakota Specification is a cooperative purchasing contract established pursuant to North Dakota Century Code (NDCC) sections 54-44.4-13. Funding for this project is included in the 2023 Central Garage Equipment Replacement budget.

Our recommendation is to purchase one (1) Ford F-450 based on the quote from Nelsons Auto Center.

SUGGESTED MOTION:

For PBC23377, approve the recommendation to purchase one (1) Ford F-450 from Nelsons Auto Center totaling \$56,173.00.

Respectfully Submitted,

Tom Ganje  
Fleet Purchasing Manager



**Fleet Department**  
 2228 College Way, PO Box 338  
 Fergus Falls, MN 56538-0338  
 Phone: 218-998-8865  
 Toll Free: 800-477-3013 Ext. 8865  
[mlarson@nelsonfleet.com](mailto:mlarson@nelsonfleet.com)

<b>VEHICLE</b>	<b>QUOTE</b>	<b>NUMBER</b>	<b>F X4H</b>
<b>Sold To:</b> Fargo, ND, City of <b>Attn:</b> Tom Ganje <b>Address:</b> 402 23rd St N Fargo, ND 58102		<b>Date:</b> 9/15/2023 <b>Phone:</b> 701-241-1460 <b>FAX:</b> <b>Salesperson:</b> Melissa Larson Key Code:	
<b>Stock No:</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>
X4H	2024	Ford	F450 DRW X 4WD SuperCab 192" WB Color: Silver/Cloth
			<b>New/Used</b>
			New
			<b>Vehicle ID Number</b>
Price of Vehicle:			\$60,530.00
Includes All Standard Equipment, Plus;			\$343.00
1S Slate Cloth Split Bench Seat			\$91.00
41P Skid Plates			\$91.00
192" WB instead of 168" WB			\$161.00
Less Contract Discount			-\$4,700.00
Quote Does Not Include Tax or Registration			
Subtotal:			\$56,173.00
Trade - In:			
Total Cash Price:			<b>\$56,173.00</b>
<b>Your Purchase Order #</b>	<b>0</b>	<b>Project #</b>	<b>Contract # 22.3 VHL</b>
<b>Priority</b>			

**Thanks for your business!**

Ship To / Lessee / End User: Fargo, ND, City of  
 Attn: Tom Ganje  
 Police Department  
 Address: 402 23rd St N  
 Order Approved by:

FAX:  
 Phone: 701-241-1460  
 email: Tom Ganje <TGanje@FargoND.gov>

Signed: \_\_\_\_\_ Title \_\_\_\_\_

Printed Name: \_\_\_\_\_ and Date: \_\_\_\_\_



**PUBLIC  
WORKS**

**FLEET MANAGEMENT, FORESTRY  
STREETS & SEWERS  
WATERMAINS & HYDRANTS**  
402 23rd Street North  
Fargo, ND 58102  
Phone: 701.241.1453 | Fax: 701.241.8100  
[FargoND.gov](http://FargoND.gov)

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September 28, 2023

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

RE: (1) One 2024 Fire Pumper Truck Purchase – PBC24002

Commissioners:

A cost evaluation process was started in spring 2023 for the purchase of a new 2024 Fire Pumper Truck. Multiple vendors were contacted and proposals evaluated. It was determined that refurbishing one of current pump trucks along with utilizing a purchase consortium was the best solution for the purchase. The Sourcewell Cooperative Purchasing agency has contract number 113021-CSM available that meets all of the City of Fargo guidelines.

The review committee, consisting of Chief Dirksen, Ben Dow and Tom Ganje, determined this option and proposal met the specifications required of the Fire Department. A proposal synopsis is attached for your clarification and consideration. This item has been approved by the Finance Committee at the September 25, 2023's meeting. It is our recommendation to purchase from Custom Fire Apparatus Inc. using the Sourcewell Buying contract. Funding for this project is included in the 2024 Vehicle Replacement Budget

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Custom Fire Apparatus Fire Pumper Truck thru Sourcewell for the total amount of \$628,464.59. A 2-year lease will be procured for the full cost at the time the vehicle is received by the City of Fargo.

Respectfully Submitted,

Tom Ganje  
Fleet Purchasing Manager



**Custom Fire Apparatus Inc.**  
509 68<sup>th</sup> Ave  
Osceola, WI 54020  
800.443.8851

To: **Fargo Fire Department**  
**Fargo, North Dakota**

September 26, 2023

### **SALES/SERVICE PROPOSAL**

We hereby propose and agree to furnish, after your acceptance of this proposal and the signing of a contract, the following Apparatus and Equipment:

***“One (1) Re-chassis of your existing pumper apparatus onto a new model year Spartan Metro Star (chassis pricing below) in accordance with the following line-item work:***

#### **Side Mt Pumper Upgrades:**

- Inspect pump and provide status report to Fargo Fire Department
- Upgrade all body lighting and pole light to LED
- Recertify pump
- Replace all compartment doors with new ROM doors to include lighting
- Replace Waterous primer with Trident primer
- Replace main intake and tank to pump valves with Akron electric valves and controllers
- Repaint existing body and replace graphics
- Replace Tank Fill valve handle with a large pull style handle

#### **Remove existing CustomFIRE stainless steel apparatus body from donor Spartan Advantage chassis**

*NOTE: Final pricing includes credit for CustomFIRE is to retain ownership of existing chassis; Fargo is to provide title upon receipt of completed project.*

- Prep new chassis for existing apparatus body
- Install existing apparatus body on new chassis
- Install existing Sigtronics intercom system into new chassis

**Inspect Electrical system** and provide status report to Fargo FD

#### **Existing Apparatus Body Upgrades:**

- Remove existing compartment doors.
- Furnish and Install new satin ROM roll up doors
- Remove and replace rear chevron with NFPA approved safety configuration
- Check condition of treadplate over compartment roofs and leak test
  - provide status report to Fargo FD



**Custom Fire Apparatus Inc.**

509 68<sup>th</sup> Ave  
Osceola, WI 54020  
800.443.8851

**ONE HUNDRED AND THIRTY-TWO THOUSAND SEVEN HUNDRED EIGHTY-  
FOUR AND 59/100 DOLLARS.**

**\$132,784.59 USD**

*Price is subject to change if further issues are found during service. You will be notified prior to any additional charges*

THE SPARTAN METRO STAR NEW CHASSIS AS PER ATTACHED SPECIFICATION SHEETS CAN BE PURCHASED AND DELIVERED TO CUSTOM FIRE APPARATUS, INC. FOR THE AMOUNT OF:

**FOUR HUNDRED NINETY-FIVE THOUSAND SIX HUNDRED EIGHTY AND  
NO/100 DOLLARS.**

**\$495,680.00 USD**

*If an L9 engine is NOT available or cannot be provided for that specific quote or build slot at time of production, you will automatically be upgraded and charged for an X12 (or the X10 engine) with all costs associated with the upgrade being passed on to the end user. No exceptions.*

*If a pre-2027 emission engine is NOT available at the time of build (starting production on January 1, 2026) your order will automatically be upgraded and charged for either the 2027 engine compliant Cummins X-10 or X-15, with all associated costs being passed on to the end user. No exceptions.*



**Custom Fire Apparatus Inc.**

509 68<sup>th</sup> Ave  
Osceola, WI 54020  
800.443.8851

**SALES TERMS:** Transportation of donor apparatus to and from CustomFIRE is to be provided by Fargo Fire Department. Chassis Progress Payment due upon its shipment (**6 – 8 months**) to CustomFIRE. Balance of payment is due on the day of departure from the CustomFIRE factory.

***Donor apparatus to be brought to CustomFIRE factory 4 weeks prior to anticipated delivery of new replacement chassis for disassembly. Completion of each pumper to be 4 – 5 weeks following receipt of chassis.***

***Price is valid for 30 calendar days from above date***

**Thank you for your business, Service Dept.**

1-715-294-5829

[service@customfire.com](mailto:service@customfire.com)





**PUBLIC  
WORKS**

**FLEET MANAGEMENT, FORESTRY  
STREETS & SEWERS  
WATERMANS & HYDRANTS**

402 23rd Street North

Fargo, ND 58102

Phone: 701.241.1453 | Fax: 701.241.8100

FargoND.gov

(33)

September 20, 2023

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

RE: Authorization to Extend the 2022/2023 Snow Groomer Services Contract with Midwest Snow Services LLC. for the 2023/2024 Winter Season (RFP# 22156).

Commissioners:

In September of 2022, Public Works issued a Request for Proposal (RFP) for "Snow Groomer Services" in association with the city snow hauling operations. Upon the closing of the RFP a total of two (2) sealed responses were received. Based on the stated criteria and staff review, Midwest Snow Services LLC. was awarded the Snow Groomer Services contract for the 2022/2023 snow season. As part of the 2022 RFP, language was included that allows for two (2) one (1) year extensions. Public Works staff has visited with Midwest Snow Services LLC., and at this time, we are requesting authorization to extend the contract for one year with a 3% (\$6.90) hourly price increase.

RECOMMENDED MOTION: I/we hereby move based on the request for proposal (RFP# 22156) to extend the 2022/2023 Snow Groomer Services contract with Midwest Snow Services LLC. for one year.

Respectfully submitted,

Ben Dow  
Public Works Director

## SERVICES AGREEMENT

### SNOW GROOMER EQUIPMENT SERVICES

#### I. Agreement

This agreement is between the City of Fargo (City) and Midwest Snow Services LLC (Contractor) to provide snow groomer equipment services for the City. This agreement shall commence upon signing by both parties and expire on October 1, 2024. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for one (1) additional one (1) year extensions, provided the extension is signed by parties on or before September 30 of the contract year. A mutually agreeable contract increase may be initiated in August of the renewing year.

#### II. Scope of Services

Contractor agrees to provide two (2) Snow Groomers for purposes of moving snow to assist and supplement the City's snow removal operations. The Snow Groomer service will pile snow that has been hauled to the City snow retention location. Contractor must ensure that all equipment is properly insured, registered and inspected. Contractor is responsible for the condition of the equipment, and if unsatisfactory to the sole discretion of City, the equipment will be removed from service and billable time will cease. Contractor is responsible for ensuring all drivers/operators are properly licensed. Contractor must comply with all State, Federal and Local laws, regulations and ordinances applicable to the operation of Contractor's equipment.

#### III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds. City shall be entitled to verify the condition and registration of the equipment, as well as contractor license/driver operators' license status.

#### IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor at a rate of;

- \$236.90 Snow Groomer 2011 Prinoth Bison X,
- \$236.90 Snow Groomer 2012 Prinoth Bison X,

Commencing at the time of arrival of each piece of equipment at the location and start time designated by the City, until such time the equipment is released by the City, to the nearest ½ hour. Absolutely no payment will be made for time lost due to equipment breakdowns, maintenance or repairs, lunch or dinner periods, or any other reasons that take the equipment out of service. Equipment cost will include operator, fuel, maintenance, repairs, transportation to and from City of Fargo snow retention areas, and all other associated costs of operation.

Contractor shall receive no less than \$5,000 per snow groomer contracted for the contract period, provided Contractor is not in breach of the terms of this Agreement at the end of the contract period. Failure to provide the equipment and operator when properly noticed

shall be deemed a default. Termination prior to the end of the contract period shall be deemed a default, terminating the City's obligation to pay the minimum compensation amount.

Final invoices shall be submitted no later than November 1 of the contract year. Contractor will be paid either the amount due for services rendered or the Minimum Compensation Amount, whichever is greater.

**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. Contractor's employees must be covered by North Dakota's Workers Compensation. Contractor shall carry appropriate liability insurance coverage, including but not limited to Public Liability Insurance in the amount of \$1,000,000 per person, \$500,000 per accident, and property damage in the amount of \$300,000 per accident. Contractor shall provide City as Certificate of Insurance naming the City of Fargo as an additional insured, and such insurance must be maintained during the term of this Agreement and any extension agreed to thereafter.

**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 herein including Request for Proposal, and all attachments of this agreement constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 9-20-23

CONTRACTOR

Midwest Snow Services LLC

By: Tanner Parkus

Its: owner

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Dr. Timothy J. Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor



**Division of Solid Waste**

2301 8<sup>th</sup> Avenue North  
Fargo, North Dakota 58102  
Phone: 701-241-1449  
Fax: 701-241-8109



September 20, 2023

Honorable Board of City Commissioners  
City of Fargo  
Fargo, North Dakota 58102

RE: Project SW 23-01, SW23-04

Dear Commissioners:

The City of Fargo utilizes State Revolving Loans (SRF) in its utility operations for larger capital project financing. Solid Waste is currently utilizing this program for the Cell 20 project (**Loan 1**) as part of the reclamation and redevelopment of the East Landfill.

Solid Waste was authorized by the City Commission on July 24, 2023 to apply for **Loan 2** through the Clean Water SRF program for the next two phases of major capital projects for Cell 21 and Cell 22. Construction on Cell 21 will begin in 2024 with activity for Cell 22 expected to begin in 2027. That application has been approved by the State of North Dakota.

<u>Bond</u>	<u>Purpose</u>	<u>Borrowing Amount</u>
2023E	Engineering	\$ 701,000
2023F	Construction	\$10,647,000

Bond Counsel and City staff reviewed the attached loan agreements and are seeking your approval of the resolution to authorize the issuance and sale of revenue notes for the Projects to the ND Public Finance Authority.

**SUGGESTED MOTION:**

Approve and complete the resolutions authorizing the issuance and sale of Solid Waste Revenue Bonds 2023E and 2023F totaling \$11,348,000 through the CWSRF program.

Respectfully Submitted,

Scott Olson  
Solid Waste Utility Director

Attachment

cc: Michael Redlinger, City Administrator  
Susan Thompson, Finance Director  
Randy Hanson, Stantec

CITY OF FARGO, STATE OF NORTH DAKOTA  
RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$701,000  
CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2023E

RECITATIONS

The City of Fargo, North Dakota (the “City”), hereby recites that by resolution of its governing body the City has:

1. Found and determined that it is necessary for the City to plan, design and construct a reclamation and redevelopment of the City’s former landfill site to expand capacity for disposal, including leachate management and reduction (the “Redevelopment”).
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Redevelopment and an estimate of the probable cost of the Redevelopment.
3. After receiving and approving the engineer’s report, directed the engineer to prepare detailed plans and specifications for construction of the Redevelopment.
4. Approved the engineer’s detailed plans and specifications for construction of the Redevelopment and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. Applied to the North Dakota Department of Environmental Quality (the “Department”) and the North Dakota Public Finance Authority (the “Public Finance Authority”) for financial assistance to finance engineering costs (the “Project”) of the Redevelopment, which application has been approved.
6. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of revenue bonds and required by the Home Rule Charter and ordinances of the City of Fargo for the purpose of providing money to pay for the cost of the Project in the manner required of the City by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota.

RESOLUTION

Be it resolved by the governing body of the City:

SECTION 1. Authorization and  
Sale.

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way

inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$701,000 in principal amount of its CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2023E (the “Municipal Securities”), pursuant to N.D.C.C. ch. 40-35, upon the terms as set forth in this Resolution.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a loan agreement to be entered into between the City and the Public Finance Authority (the “Loan Agreement”). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the “Authorized Officers”), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

## SECTION 2.

### Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2023E, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$701,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 1.50% per year (plus an administrative fee as set out in the Loan Agreement), with principal payable in installments on September 1 of each of the years and in the amounts set forth below. Interest shall be payable semiannually on each March 1 and September 1 commencing March 1, 2024. Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project. The Municipal Securities are subject to mandatory sinking fund redemption together with accrued interest to the Redemption Date on September 1 of the following years and in the following principal amounts:



<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>	<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>
2025	\$ 16,000	2040	\$25,000
2026	20,000	2041	25,000
2027	20,000	2042	25,000
2028	20,000	2043	25,000
2029	20,000	2044	25,000
2030	20,000	2045	25,000
2031	20,000	2046	25,000
2032	20,000	2047	25,000
2033	20,000	2048	25,000
2034	20,000	2049	25,000
2035	20,000	2050	30,000
2036	20,000	2051	30,000
2037	20,000	2052	30,000
2038	20,000	2053	30,000
2039	25,000	2054	30,000*

\*maturity

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Bank"), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the "Bond Registrar"), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made

during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

### SECTION 3.

#### Source of Payment.

The City hereby dedicates and pledges the Net Revenues (as defined in Section 4.02 hereof) of the City's solid waste utility (the "Solid Waste Utility") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Net Revenues and permitted herein, provided that, notwithstanding anything else contained in this resolution, for so long as the City's Qualified Energy Conservation Bonds, Series 2015C (the "Series 2015C Bonds") are outstanding, the Tipping Fees, as defined in the resolution adopted September 28, 2015 relating to the Series 2015C Bonds, which constitute a portion of said Net Revenues, shall be pledged to the payment of the Municipal Securities on a subordinate basis to the Series 2015C Bonds. In addition, in conjunction with the issuance of the Municipal Securities, the City will issue its Solid Waste Revenue Bonds, Series 2023F (the "Series 2023F Bonds"; together with the Municipal Securities and any other obligations secured by the Net Revenues on a parity therewith, the "Bonds") in order to finance costs of the Redevelopment.

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4.

Funds.

4.01. Solid Waste Fund. The City has created, and will maintain, a SOLID WASTE FUND (the "Solid Waste Fund"). The City shall credit and pay to the Solid Waste Fund, as received, the entire gross revenues derived from the operation of the City's Solid Waste Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Solid Waste Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Solid Waste Utility not necessary to be retained, and from the investment of any of the money so collected. On the books and records of the Solid Waste Fund there shall be established and maintained the following funds as a part of the Solid Waste Fund. Amounts on deposit in the Solid Waste Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Solid Waste Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the Solid Waste Utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Solid Waste Utility.

4.03. Solid Waste Revenue Bond Fund. The City has created, and will maintain, a SOLID WASTE REVENUE BOND FUND (the "Solid Waste Revenue Bond Fund"). Upon each such monthly apportionment, out of the Net Revenues on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Solid Waste Revenue Bond Fund credited to the Solid Waste Revenue Bond Fund subsequent to the last monthly apportionment. If Net Revenues on hand at any time are insufficient to permit the transfer to the Solid Waste Revenue Bond Fund of the full amount so required, such deficiencies shall be restored out of the next Net Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Solid Waste Revenue Bond Fund.

In the event Net Revenues on deposit in the Solid Waste Revenue Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Solid Waste Revenue Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Net Revenues and the transfers from the Surplus Fund shall be apportioned among each series of Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Solid Waste Revenue Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Solid Waste Fund, provided that City reserves the right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Solid Waste Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Solid Waste Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Solid Waste Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Solid Waste Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Rebate Fund. There is hereby established a Rebate Fund. The City shall from time to time, and as required by Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, as amended (collectively, the "Code"), calculate the amount of rebate payable with respect to Bonds to the United States of America pursuant to Section 148 of the Code. The City may from time to time, and shall upon payment being due to the United States of America, withdraw the amount of such payment from the Surplus Fund and any SRF Reserve Fund, the Solid Waste Revenue Bond Fund and the Operation and Maintenance Fund, in such order, the amount of such payment notwithstanding any provision to the contrary in this Resolution. Amounts in the Rebate Fund shall be used solely to make required payments to the United States of America and shall not be pledged to the payment of the Bonds. All interest earnings on investments in the Rebate Fund shall be retained in the Rebate Fund.

4.06. Reserve Account. A separate SRF Reserve Fund (the “Reserve Account”) is established within the Solid Waste Fund and shall be funded to the total amount of \$32,250, payable installments of \$6,450.00 on September 1 in the years 2025-2029, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$701,000.

SECTION 5.

Additional Net

Revenues Parity Pledges.

5.01. Parity Bonds. The City reserves the right to issue one or more series of bonds with a parity of lien on the Net Revenues as to both principal and interest with the Bonds (herein referred to as “Additional Bonds”). The term Additional Bonds does not include Subordinate Bonds issued pursuant to Section 5.03 hereof, but does include Additional Bonds issued for refunding purposes. In the event the City shall at any time determine it to be necessary and expedient to issue Additional Bonds to finance capital improvements of the Solid Waste Utility, such Additional Bonds will be made payable from the Net Revenues of the Solid Waste Utility on a parity as to both principal and interest with the then outstanding Bonds. Additional Bonds or Additional SRF Bonds may be issued only if the annual Net Revenues received during the fiscal year of the City next preceding such issuance shall have equaled or exceeded 110% of the average annual principal and interest to become due and payable on all Bonds to be outstanding during the term of the proposed Additional Bonds.

If any of the rates and charges for solid waste service shall have been increased or reduced at any time subsequent to the commencement of the fiscal year immediately preceding the issuance of Additional Bonds as contemplated above, the Net Revenues for the period prior to such change shall be deemed, for the purpose of the computation required above, to be those which would have been received by applying the revised rates and charges to the service actually provided during such period, less the estimated amount of decrease in service, if any, due to an increase in said rates and charges, and by deducting from the gross revenues so determined the actual operating expenses of the Solid Waste Utility, together with reasonably expected increases in operating expenses resulting from the improvements financed by such Additional Bonds, as determined by the report of an independent engineer selected by the City, for said period.

So long as Bonds are outstanding pursuant to resolutions which require greater coverage for the issuance of additional parity bonds, the provisions of such resolutions shall govern.

5.02. Additional SRF Bonds. The City reserves the right to issue one or more series of bonds with a parity pledge of Net Revenues (hereinafter referred to as “Additional SRF Bonds”), so long as such bonds can be issued in compliance with the requirements of Section 5.01 and pursuant to applicable policies of the Public Finance Authority. The Additional SRF Bonds may be secured by a separate reserve fund (an “SRF Reserve Fund”), funded either by proceeds of such bonds or from Net Revenues, provided such separate reserve fund shall not be a greater amount than that required generally by the Public Finance Authority of the State of North Dakota for its similar loans. All Additional SRF Bonds must be sold to the Public Finance Authority of the State of North Dakota pursuant to its state revolving loan fund program and shall bear interest at rates determined by the City to be less than available on publicly offered Additional Bonds at the time such bonds are issued.

5.03. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon said Net Revenues of the Solid Waste Utility, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder (“Subordinate Bonds”), and such additional bonds or obligations shall not be payable from the Solid Waste Revenue Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be transferred from the Surplus Fund to other funds of the City pursuant to Section 4.04 of this Resolution.

SECTION 6.  
Covenants.

Solid Waste Utility

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Solid Waste Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor, 110% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Solid Waste Utility. The City will continue to own, operate and maintain the Solid Waste Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Solid Waste Utility not essential to continued operation of the Solid Waste Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Solid Waste Utility or to pay principal and interest on obligations issued with respect to the Solid Waste Utility. The City will continue to maintain the Solid Waste Utility in good and efficient operating condition, supplying solid waste service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Solid Waste Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend and account for its Solid Waste Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Solid Waste Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Solid Waste Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Solid Waste Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Solid Waste Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Solid Waste Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Solid Waste Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Solid Waste Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Solid Waste Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Solid Waste Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Net Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Solid Waste Utility, the Solid Waste Revenue Bond Fund, Reserve Account, Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.
- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Solid Waste Utility.

- d. That it will promptly deposit into the Solid Waste Revenue Bond Fund all sums required to be so deposited.
- e. That it will operate the Solid Waste Utility in a sound, efficient and economic manner.

SECTION 7.

Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Net Revenues as set forth in this resolution.

7.02. Federal Tax Laws. The City hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Municipal Securities of the interest on the Municipal Securities under Section 103 of the Code. The City also covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Municipal Securities or any other funds or any facilities refinanced thereby or take or omit to take any action which would cause the Municipal Securities to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or "private activity bonds" within the meaning of Section 141 of the Code. The City will comply with all requirements of Section 148 of the Code to the extent applicable to the Municipal Securities. The City shall comply with all requirements set forth in any tax compliance certificate executed in connection with the issuance of the Municipal Securities. The covenants and obligations of the City set forth in this Section 7.02 shall survive the payment, redemption and defeasance of the Municipal Securities until the expiration of all statutes of limitation applicable to the City with respect to the Municipal Securities.

The City recognizes that the provisions of this Section 7.02 are intended to comply with provisions of the Code applicable to the Municipal Securities and if as a result of a change in an applicable section of the Code or in the interpretation thereof, a change in this Section 7.02 shall be permitted or necessary to assure continued compliance with provisions of the Code, then the City shall be empowered to amend this Section 7.02 upon receipt of a written opinion of bond counsel satisfactory of the City to the effect that either (i) such amendment is required to maintain the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Municipal Securities, or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of interest paid or payable on the Municipal Securities.

This section shall be applicable only to the obligations, covenants, agreements, limitations, conditions and restrictions of and upon the City in relation to the holder of the Municipal Securities.

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Adopted October 2, 2023.

CITY OF FARGO

By: \_\_\_\_\_  
Tim Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City Auditor

FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA  
 STATE OF NORTH DAKOTA  
 COUNTY OF CASS

CITY OF FARGO

SOLID WASTE REVENUE BOND,  
 SERIES 2023E

No. R-1 \$701,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
1.50%	September 1, 2054	[ _____ ], 2023	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: SEVEN HUNDRED ONE THOUSAND DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the “City”), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of one and one half percent (1.50%), payable on each March 1 and September 1, commencing March 1, 2024. The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. The City hereby promises to pay the Administrative Fee, as defined in the Loan Agreement (being one half of one percent (0.50%) per annum on the outstanding principal amount of the Bond), payable semi-annually on each March 1 and September 1. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner’s address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the “Act”), and pursuant to a Resolution (the “Resolution”) and a Loan Agreement (the “Loan Agreement”) adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for a description of the Funds and Accounts pledged to the payment of the Municipal Securities and

the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder, if any, are not general obligations of the City, but are payable solely from Net Revenues received by the City from the operation of the solid waste facility of the City of Fargo and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner's duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: \_\_\_\_\_  
Tim Mahoney  
Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City  
Auditor

\_\_\_\_\_  
CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

ATTACHMENT A

Clean Water Loan Info PRELIMINARY	
Loan #	148
Loan	Fargo
Interest Rate	1.50%
Administration Fee	0.50%
Loan Request	701,000.00
Loan Amount	701,000.00
Fully Funded Amount	0.00
Insurance Denomination	5,000.00
Credit Rating	Aa2
Security Type	Revenue
Closing Date	11/1/2023
First Maturity	9/1/2025
Term	30
Final Maturity	9/1/2054
First Interest	3/1/2024
First Interest Payment	1,000.00
First Admin. Payment	333.00
Debt Service Reserve Fund	32,250.00
First DSRF Payment	9/1/2025

Point Distribution  
Landfill Leachate - Engineering

Date	Principal	Interest	Total Principal & Interest	Annual P&I Payment	Outstanding Balance	Admin. Fee	Total Payment	Annual Total Payment	Debt Service Reserve Funding
					701,000.00				
3/1/2024	-	1,000.00	1,000.00	-	701,000.00	333.00	1,333.00	-	-
9/1/2024	-	5,257.50	5,257.50	6,257.50	701,000.00	1,752.50	7,010.00	8,343.00	-
3/1/2025	-	5,257.50	5,257.50	-	701,000.00	1,752.50	7,010.00	-	-
9/1/2025	16,000.00	5,257.50	21,257.50	26,515.00	685,000.00	1,752.50	23,010.00	30,020.00	6,450.00
3/1/2026	-	5,137.50	5,137.50	-	665,000.00	1,712.50	6,850.00	-	-
9/1/2026	20,000.00	4,987.50	24,987.50	30,275.00	645,000.00	1,662.50	26,850.00	33,700.00	6,450.00
3/1/2027	-	4,837.50	4,837.50	-	625,000.00	1,612.50	6,450.00	-	-
9/1/2027	20,000.00	4,687.50	24,687.50	29,975.00	605,000.00	1,562.50	26,250.00	32,900.00	6,450.00
3/1/2028	-	4,537.50	4,537.50	-	585,000.00	1,512.50	6,050.00	-	-
9/1/2028	20,000.00	4,387.50	24,387.50	29,775.00	565,000.00	1,462.50	25,850.00	31,700.00	-
3/1/2029	-	4,237.50	4,237.50	-	545,000.00	1,412.50	5,650.00	-	-
9/1/2029	20,000.00	4,087.50	24,087.50	28,475.00	525,000.00	1,362.50	25,450.00	31,300.00	-
3/1/2030	-	3,937.50	3,937.50	-	505,000.00	1,312.50	5,250.00	-	-
9/1/2030	20,000.00	3,787.50	23,787.50	27,875.00	485,000.00	1,262.50	25,050.00	32,100.00	-
3/1/2031	-	3,637.50	3,637.50	-	465,000.00	1,212.50	4,850.00	-	-
9/1/2031	20,000.00	3,487.50	23,487.50	28,775.00	445,000.00	1,162.50	24,650.00	31,700.00	-
3/1/2032	-	3,337.50	3,337.50	-	425,000.00	1,112.50	4,450.00	-	-
9/1/2032	20,000.00	3,187.50	23,187.50	28,475.00	405,000.00	1,062.50	24,450.00	31,300.00	-
3/1/2033	-	3,037.50	3,037.50	-	385,000.00	1,012.50	4,050.00	-	-
9/1/2033	20,000.00	2,887.50	22,887.50	28,175.00	365,000.00	962.50	39,900.00	30,900.00	-
3/1/2034	-	2,737.50	2,737.50	-	345,000.00	912.50	3,650.00	-	-
9/1/2034	20,000.00	2,587.50	22,587.50	27,875.00	325,000.00	862.50	35,000.00	30,500.00	-
3/1/2035	-	2,437.50	2,437.50	-	305,000.00	812.50	3,250.00	-	-
9/1/2035	20,000.00	2,287.50	22,287.50	27,575.00	285,000.00	762.50	30,500.00	30,100.00	-
3/1/2036	-	2,137.50	2,137.50	-	265,000.00	712.50	2,850.00	-	-
9/1/2036	20,000.00	1,987.50	21,987.50	27,275.00	245,000.00	662.50	28,500.00	29,700.00	-
3/1/2037	-	1,837.50	1,837.50	-	225,000.00	612.50	2,450.00	-	-
9/1/2037	20,000.00	1,687.50	21,687.50	26,975.00	205,000.00	562.50	27,500.00	29,300.00	-
3/1/2038	-	1,537.50	1,537.50	-	185,000.00	512.50	2,050.00	-	-
9/1/2038	20,000.00	1,387.50	21,387.50	26,675.00	165,000.00	462.50	26,500.00	28,900.00	-
3/1/2039	-	1,237.50	1,237.50	-	145,000.00	412.50	1,650.00	-	-
9/1/2039	25,000.00	1,087.50	26,087.50	31,375.00	125,000.00	362.50	29,250.00	33,500.00	-
3/1/2040	-	1,000.00	1,000.00	-	105,000.00	312.50	1,312.50	-	-
9/1/2040	25,000.00	800.00	25,800.00	31,000.00	85,000.00	262.50	28,500.00	33,000.00	-
3/1/2041	-	712.50	712.50	-	65,000.00	212.50	925.00	-	-
9/1/2041	25,000.00	512.50	25,512.50	30,625.00	45,000.00	162.50	28,750.00	32,500.00	-
3/1/2042	-	425.00	425.00	-	25,000.00	112.50	537.50	-	-
9/1/2042	25,000.00	225.00	25,225.00	30,250.00	5,000.00	62.50	28,500.00	32,000.00	-
3/1/2043	-	137.50	137.50	-	0.00	12.50	150.00	-	-
9/1/2043	25,000.00	37.50	25,375.00	29,875.00	0.00	6.25	28,250.00	31,500.00	-
3/1/2044	-	250.00	250.00	-	0.00	0.00	250.00	-	-
9/1/2044	25,000.00	50.00	25,500.00	29,500.00	0.00	0.00	28,000.00	31,000.00	-
3/1/2045	-	162.50	162.50	-	0.00	0.00	162.50	-	-
9/1/2045	25,000.00	37.50	25,375.00	29,125.00	0.00	0.00	27,750.00	30,500.00	-
3/1/2046	-	75.00	75.00	-	0.00	0.00	75.00	-	-
9/1/2046	25,000.00	16.25	25,162.50	28,750.00	0.00	0.00	27,500.00	30,000.00	-
3/1/2047	-	7.50	7.50	-	0.00	0.00	7.50	-	-
9/1/2047	25,000.00	0.00	25,000.00	28,375.00	0.00	0.00	27,250.00	29,500.00	-
3/1/2048	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2048	25,000.00	0.00	25,000.00	28,000.00	0.00	0.00	27,000.00	29,000.00	-
3/1/2049	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2049	25,000.00	0.00	25,000.00	27,625.00	0.00	0.00	26,750.00	28,500.00	-
3/1/2050	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2050	30,000.00	0.00	30,000.00	32,250.00	0.00	0.00	31,500.00	33,000.00	-
3/1/2051	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2051	30,000.00	0.00	30,000.00	31,800.00	0.00	0.00	31,200.00	32,400.00	-
3/1/2052	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2052	30,000.00	0.00	30,000.00	31,350.00	0.00	0.00	30,900.00	31,800.00	-
3/1/2053	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2053	30,000.00	0.00	30,000.00	30,900.00	0.00	0.00	30,600.00	31,200.00	-
3/1/2054	-	0.00	0.00	-	0.00	0.00	0.00	-	-
9/1/2054	30,000.00	0.00	30,000.00	30,450.00	0.00	0.00	30,300.00	30,600.00	-
<b>Total</b>	<b>\$ 701,000.00</b>	<b>\$ 183,197.50</b>	<b>\$ 884,197.50</b>	<b>\$ 884,197.50</b>	<b>\$ 0.00</b>	<b>\$ 61,005.50</b>	<b>\$ 945,203.00</b>	<b>\$ 945,203.00</b>	<b>\$ 32,250.00</b>

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on October 2, 2023, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
City Auditor

(SEAL)

CITY OF FARGO, STATE OF NORTH DAKOTA  
RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF  
\$10,647,000  
CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2023F

RECITATIONS

The City of Fargo, North Dakota (the “City”), hereby recites that by resolution of its governing body the City has:

1. Found and determined that it is necessary for the City to plan, design and construct a reclamation and redevelopment of the City’s former landfill site to expand capacity for disposal, including leachate management and reduction (the “Project”).
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Project and an estimate of the probable cost of the Project.
3. After receiving and approving the engineer’s report, directed the engineer to prepare detailed plans and specifications for construction of the Project.
4. Approved the engineer’s detailed plans and specifications for construction of the Project and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. By publication, advertised for bids for construction of the Project.
6. Opened and made public the bids, entered them in the minutes of the meeting of the governing body at which they were considered and caused them to be kept by the City Auditor.
7. After requiring the engineer to make a careful and detailed statement of the estimated cost of the Project, awarded the contract to the lowest responsible bidder and approved the contractor’s performance bond.
8. Applied to the North Dakota Department of Environmental Quality (the “Department”) and the North Dakota Public Finance Authority (the “Public Finance Authority”) for financial assistance to finance costs of the Project, which application has been approved.
9. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of revenue bonds and required by the Home Rule Charter and ordinances of the City of Fargo for the purpose of providing money to pay for the cost of the Project in the manner required of the City by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota.

RESOLUTION

Be it resolved by the governing body of the City:



SECTION 1. Authorization and Sale.

1.01. Ratification of Prior Acts. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

1.02. Authorization. It is hereby found and determined to be necessary for the City to issue \$10,647,000 in principal amount of its CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2023F (the "Municipal Securities"), pursuant to N.D.C.C. ch. 40-35, upon the terms as set forth in this Resolution.

1.03. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a loan agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

SECTION 2.

Term of Bonds.

2.01. Form. The Municipal Securities issued under this Resolution shall be designated CITY OF FARGO SOLID WASTE REVENUE BOND, SERIES 2023F, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

2.02. Terms. The City authorizes the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$10,647,000, dated the date of issuance and delivery to the Public Finance Authority.

The Municipal Securities shall bear interest commencing on the date of delivery thereof at the rate of 1.50% per year (plus an administrative fee as set out in the Loan Agreement), with principal payable in installments on September 1 of each of the years and in the amounts set forth below. Interest shall be payable semiannually on each March 1 and September 1 commencing March 1, 2024. Interest will be payable only on funds actually advanced to the City by the Public Finance Authority as a draw on the Municipal Securities. The schedule below and attached to the

Municipal Securities will be revised to reflect the actual principal amount loaned to the City at the completion of the Project. The Municipal Securities are subject to mandatory sinking fund redemption together with accrued interest to the Redemption Date on September 1 of the following years and in the following principal amounts:

<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>	<u>Redemption Date</u> <u>(September 1)</u>	<u>Amount</u>
2025	\$225,000	2040	\$305,000
2026	230,000	2041	310,000
2027	235,000	2042	315,000
2028	240,000	2043	320,000
2029	245,000	2044	330,000
2030	250,000	2045	335,000
2031	255,000	2046	340,000
2032	260,000	2047	350,000
2033	265,000	2048	355,000
2034	270,000	2049	360,000
2035	275,000	2050	370,000
2036	280,000	2051	375,000
2037	285,000	2052	385,000
2038	290,000	2053	390,000
2039	295,000	2054	405,000*

\*maturity

2.03. Payment to Registered Holders. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

2.04. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Bank"), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

2.05. Transfer and Exchange. The Municipal Securities are transferable upon the books of the City at the principal office of the Bank of North Dakota, as bond registrar, or a successor bond registrar appointed by the Bank of North Dakota (the "Bond Registrar"), by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Municipal

Securities of other authorized denominations. Upon such transfer or exchange, the City will cause new Municipal Securities to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Municipal Securities shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Municipal Securities.

2.06. Registered Owner Deemed Owner. The City, the Bond Registrar and the paying agent may deem and treat the person in whose name any Municipal Securities are registered as the absolute owner thereof, whether the Municipal Securities are overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City, the Bond Registrar nor the paying agent shall be affected by any notice to the contrary. The City shall pay the fees and expenses of the Bond Registrar and the paying agent.

2.07. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of the City Auditor and when so prepared shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Auditor and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by the City to the Public Finance Authority.

2.08. Redemption. The Municipal Securities shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Public Finance Authority, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

2.09. Authorization of Related Documents. The Mayor, City Auditor, and other authorized officers of the City are hereby authorized to execute such additional agreements, certificates, and documents required or appropriate in connection with the issuance of the Municipal Securities and the transactions contemplated by the issuance thereof.

2.10. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the City to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

### SECTION 3.

#### Source of Payment.

The City hereby dedicates and pledges the Net Revenues of the City's solid waste utility, (the "Solid Waste Utility") to the payment of the principal of and interest on the Municipal Securities on a parity basis with bonds previously issued or to be issued and secured by a pledge of the Net Revenues and permitted herein, provided that, notwithstanding anything else contained in this resolution, for so long as the City's Qualified Energy Conservation Bonds, Series 2015C (the "Series 2015C Bonds") are outstanding, the Tipping Fees, as defined in the resolution adopted September 28, 2015 relating to the Series 2015C Bonds, which constitute a portion of said Net

Revenues, shall be pledged to the payment of the Municipal Securities on a subordinate basis to the Series 2015C Bonds. In addition, in conjunction with the issuance of the Municipal Securities, the City will issue its Solid Waste Revenue Bonds, Series 2023E (the "Series 2023E Bonds"; together with the Municipal Securities and any other obligations secured by the Net Revenues on a parity therewith, the "Bonds") in order to finance engineering costs of the Project.

The Net Revenues are to be deposited in the funds set forth in Section 4 hereof.

SECTION 4.

Funds.

4.01. Solid Waste Fund. The City has created, and will maintain, a SOLID WASTE FUND (the "Solid Waste Fund"). The City shall credit and pay to the Solid Waste Fund, as received, the entire gross revenues derived from the operation of the City's Solid Waste Utility, including any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees and charges for services, facilities, products and by-products of the Solid Waste Utility furnished or sold to the City and its inhabitants and all other customers, and for the availability thereof, and from sale of any of the properties of the Solid Waste Utility not necessary to be retained, and from the investment of any of the money so collected. On the books and records of the Solid Waste Fund there shall be established and maintained the following funds as a part of the Solid Waste Fund. Amounts on deposit in the Solid Waste Fund from time to time shall be apportioned among said funds at least once in each calendar month and shall thereafter be held and administered and disbursed from the several funds established in this section.

4.02. Operation and Maintenance Fund. The City has created, and will maintain, an OPERATION AND MAINTENANCE FUND (the "Operation and Maintenance Fund"). Upon each such monthly apportionment, as a first lien and charge on the gross revenue, the City shall transfer to the Operation and Maintenance Fund from amounts on deposit in the Solid Waste Fund such sum as shall be needed, over and above any credit balance held therein, to pay all claims then due and allowed which by accepted accounting practices constitute normal, reasonable and current expenses of operation and maintenance of the utility, and to pay such expenses estimated to accrue for a period of one month, and to maintain a reasonable reserve for contingencies. Monies in the Operation and Maintenance Fund shall be used only to pay expenses of the foregoing type and not for major repairs, replacements, or capital improvements which are properly chargeable to replacement and depreciation reserves or surplus funds. All revenues in excess of such amount deposited to the Operation and Maintenance Fund shall be the Net Revenues (the "Net Revenues") of the Solid Waste Utility.

4.03. Solid Waste Revenue Bond Fund. The City has created, and will maintain, a SOLID WASTE REVENUE BOND FUND (the "Solid Waste Revenue Bond Fund"). Upon each such monthly apportionment, out of the Net Revenues on hand at the time of each such distribution, an amount equal to not less than one-sixth (1/6) of the amount necessary to pay interest which becomes due on the next interest payment dates for the Bonds and an amount equal to not less than one-twelfth (1/12) of the sum of principal payments to become due on the next principal payment dates for the Bonds. These amounts may be reduced by an amount equal to the interest earnings on the Solid Waste Revenue Bond Fund credited to the Solid Waste Revenue Bond Fund subsequent to the last monthly apportionment. If Net Revenues on hand at any time are insufficient to permit the transfer to the Solid Waste Revenue Bond Fund of the full amount so required, such deficiencies shall be

restored out of the next Net Revenues thereafter received. There shall also be credited to said fund the accrued interest, if any, paid on each subsequent issue of Additional Bonds and Additional SRF Bonds, if any. The money in said fund shall be solely for the purposes of paying principal of, and premium, if any, and interest on Bonds, as such principal, premium and interest respectively come due. Subordinate Bonds (hereinafter defined) shall not be payable from the Solid Waste Revenue Bond Fund.

In the event Net Revenues on deposit in the Solid Waste Revenue Bond Fund and amounts on deposit in the Surplus Fund available for transfer to the Solid Waste Revenue Bond Fund are insufficient to pay the principal of, and premium, if any, and interest on the Bonds then due, such Net Revenues and the transfers from the Surplus Fund shall be apportioned among each series of Bonds in proportion to the amount of principal, premium, if any, and interest then payable on the Bonds of each series. Transfers from any SRF Reserve Fund, including the Reserve Account established hereunder, shall be applied only to principal, premium, if any, and interest payable on the related series of SRF Bonds.

4.04. Surplus Fund. All surplus Net Revenues from time to time received in excess of the current requirements of the Solid Waste Revenue Bond Fund and any SRF Reserve Fund shall be credited on the books of the City to the Surplus Fund of the Solid Waste Fund, provided that City reserves the right to create additional funds within said fund for the purpose of segregating any of such surplus Net Revenues which may be pledged and appropriated to the payment of any Subordinate Bonds hereafter issued to finance improvements, replacements, or repairs of the Solid Waste Utility, subject to the prior lien on the Net Revenues of the Bonds. Surplus Net Revenues on hand from time to time shall be available and shall be used to the full extent necessary to restore a deficiency in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, the Reserve Account and any other SRF Reserve Fund, but when not so needed may be used to pay for capital improvements, replacements, or repairs to the Solid Waste Utility, or to pay principal and interest on Subordinate Bonds hereafter issued for such purposes, or they may be used to redeem and pay prior to maturity Bonds (other than Subordinate Bonds) when and as such bonds become redeemable according to their terms, or purchase Bonds (other than Subordinate Bonds) in the secondary market when deemed advisable. The City shall maintain in the Surplus Fund such cash or investments as it shall from time to time determine to constitute an adequate reserve for operation or maintenance emergencies and for depreciation and contemplated improvement or replacement of the Solid Waste Utility. At the end of the City's fiscal year, if there are no deficiencies in the Operation and Maintenance Fund, the Solid Waste Revenue Bond Fund, or any SRF Reserve Fund and there is an adequate reserve for operation and maintenance emergencies and for depreciation, contemplated improvements and replacements of the Solid Waste Utility, the City may transfer monies in excess of such requirements to other funds of the City in accordance with and subject to the limitations contained in the ordinances of the City and the provisions of state law.

4.05. Rebate Fund. There is hereby established a Rebate Fund. The City shall from time to time, and as required by Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated in connection therewith, as amended (collectively, the "Code"), calculate the amount of rebate payable with respect to Bonds to the United States of America pursuant to Section 148 of the Code. The City may from time to time, and shall upon payment being due to the United States of America, withdraw the amount of such payment from the Surplus

Fund and any SRF Reserve Fund, the Solid Waste Revenue Bond Fund and the Operation and Maintenance Fund, in such order, the amount of such payment notwithstanding any provision to the contrary in this Resolution. Amounts in the Rebate Fund shall be used solely to make required payments to the United States of America and shall not be pledged to the payment of the Bonds. All interest earnings on investments in the Rebate Fund shall be retained in the Rebate Fund.

4.06. Reserve Account. A separate SRF Reserve Fund (the "Reserve Account") is established within the Solid Waste Fund and shall be funded to the total amount of \$411,075, payable in installments of \$82,215 on September in the years 2025-2029, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$10,647,000.

SECTION 5. Additional Net Revenues Parity Pledges.

5.01. Parity Bonds. The City reserves the right to issue one or more series of bonds with a parity of lien on the Net Revenues as to both principal and interest with the Bonds (herein referred to as "Additional Bonds"). The term Additional Bonds does not include Subordinate Bonds issued pursuant to Section 5.03 hereof, but does include Additional Bonds issued for refunding purposes. In the event the City shall at any time determine it to be necessary and expedient to issue Additional Bonds to finance capital improvements of the Solid Waste Utility, such Additional Bonds will be made payable from the Net Revenues of the Solid Waste Utility on a parity as to both principal and interest with the then outstanding Bonds. Additional Bonds or Additional SRF Bonds may be issued only if the annual Net Revenues received during the fiscal year of the City next preceding such issuance shall have equaled or exceeded 110% of the average annual principal and interest to become due and payable on all Bonds to be outstanding during the term of the proposed Additional Bonds.

If any of the rates and charges for solid waste service shall have been increased or reduced at any time subsequent to the commencement of the fiscal year immediately preceding the issuance of Additional Bonds as contemplated above, the Net Revenues for the period prior to such change shall be deemed, for the purpose of the computation required above, to be those which would have been received by applying the revised rates and charges to the service actually provided during such period, less the estimated amount of decrease in service, if any, due to an increase in said rates and charges, and by deducting from the gross revenues so determined the actual operating expenses of the Solid Waste Utility, together with reasonably expected increases in operating expenses resulting from the improvements financed by such Additional Bonds, as determined by the report of an independent engineer selected by the City, for said period.

So long as Bonds are outstanding pursuant to resolutions which require greater coverage for the issuance of additional parity bonds, the provisions of such resolutions shall govern.

5.02. Additional SRF Bonds. The City reserves the right to issue one or more series of bonds with a parity pledge of Net Revenues (hereinafter referred to as "Additional SRF Bonds"), so long as such bonds can be issued in compliance with the requirements of Section 5.01 and pursuant to applicable policies of the Public Finance Authority. The Additional SRF Bonds may be secured by a separate reserve fund (an "SRF Reserve Fund"), funded either by proceeds of such bonds or from Net Revenues, provided such separate reserve fund shall not be a greater amount

than that required generally by the Public Finance Authority of the State of North Dakota for its similar loans. All Additional SRF Bonds must be sold to the Public Finance Authority of the State of North Dakota pursuant to its state revolving loan fund program and shall bear interest at rates determined by the City to be less than available on publicly offered Additional Bonds at the time such bonds are issued.

5.03. Subordinate Lien Bonds. Except as authorized in Sections 5.01, 5.02 and 5.03, the City will issue no additional bonds or other obligations of any kind payable from or constituting a lien upon said Net Revenues of the Solid Waste Utility, unless the lien thereof is expressly made junior and subordinate to the lien on the then outstanding Bonds issued hereunder ("Subordinate Bonds"), and such additional bonds or obligations shall not be payable from the Solid Waste Revenue Bond Fund or any SRF Reserve Fund but may be payable from funds permitted to be transferred from the Surplus Fund to other funds of the City pursuant to Section 4.04 of this Resolution.

SECTION 6.  
Covenants.

Solid Waste Utility

6.01. Rate Covenant. The City will establish, impose and collect rates and charges for the services, facilities, products, and by-products of the Solid Waste Utility, according to a schedule projected to generate Net Revenues in each fiscal year at least equal to, together with other revenues expected to be available therefor, 110% of the actual annual debt service on all Bonds outstanding, and to pay all amounts owed to any insurer of the Bonds outstanding. If the actual Net Revenues fail to meet this level, the City shall promptly increase its rates and charges to a level so that Net Revenues are projected to meet the required level. Annual debt service shall be determined for each fiscal year on the basis of a bond year ending on the January 1 immediately following the end of each fiscal year.

6.02. Covenant to Maintain Solid Waste Utility. The City will continue to own, operate and maintain the Solid Waste Utility, and will not sell or otherwise dispose of any properties thereof; provided, that any properties of the Solid Waste Utility not essential to continued operation of the Solid Waste Utility in satisfaction of other covenants herein prescribed may be sold or otherwise disposed of at their market value, and the proceeds thereof used to purchase other property required for the Solid Waste Utility or to pay principal and interest on obligations issued with respect to the Solid Waste Utility. The City will continue to maintain the Solid Waste Utility in good and efficient operating condition, supplying solid waste service and facilities to the City and its inhabitants, and will not authorize or enfranchise the establishment of any other utility for such purpose.

6.03. General. The City covenants and agrees with the holders from time to time of all the Municipal Securities that until all the Municipal Securities are fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Solid Waste Utility as a public convenience, free from all liens thereon or on the income therefrom, and will maintain, expend and account for its Solid Waste Fund and the several funds therein as provided in Section 4, and will not issue bonds, notes or other indebtedness secured by or payable from the income or revenues of the Solid Waste Utility except upon the conditions and in the manner prescribed in Section 5, and will perform and cause all officers and employees of the City to perform and enforce

each and all of the additional covenants and agreements set forth in this Section 6. The City further covenants to cause the Solid Waste Utility to be properly maintained and no free service shall be provided to any person or corporation.

6.04. Competing Service. The City will not establish or enfranchise any other facilities in competition with the facilities of the Solid Waste Utility.

6.05. Property Insurance. The City will cause all buildings, properties, fixtures and equipment constituting a part of the Solid Waste Utility to be kept insured with a reputable insurance carrier or carriers, qualified under the laws of North Dakota, in such amounts as are ordinarily carried, and against loss or damage by such hazards and risks as are ordinarily insured against, by public bodies owning and operating properties of a similar character and size; provided that if at any time the City is unable to obtain insurance, it will obtain insurance in such amounts and against risks as are reasonably obtainable. The proceeds of all such insurance shall be available for the repair, replacement or reconstruction of damaged or destroyed property, and until paid out in making good such loss or damage, are pledged as security for the outstanding Bonds. All insurance proceeds received in excess of the amount required for restoration of the loss or damage compensated thereby shall be and become part of the revenues appropriated to the Solid Waste Fund. If for any reason insurance proceeds are insufficient for the repair, replacement and reconstruction of the insured property, the City shall supply the deficiency from revenues on hand in the Surplus Fund.

6.06. Liability Insurance and Surety Bonds. The City will carry insurance against liability of the City and its employees for damage to persons and property resulting from the operation of the Solid Waste Utility in such amounts as the City determines from time to time to be necessary or advisable by reason of the character and extent of such operation. It will also cause all persons handling money and other assets of the Solid Waste Fund to be adequately bonded for the faithful performance of their duties and to account for and pay over such money to the City. All amounts received under such insurance and bonds shall be applied to the payment of the loss or damage covered thereby. The premiums for all insurance and bonds required by this Section 6.06 and Section 6.05 constitute part of the operating expenses of the Solid Waste Utility, but no insurance liabilities of the City in excess of amounts received under such insurance and bonds shall constitute a lien or charge on revenues or any other assets herein or otherwise pledged to the Solid Waste Fund.

6.07. Cost of Insurance and Accounting. The insurance and fidelity bond premiums and the cost of the bookkeeping and audits herein provided for and of the billings and collection of the gross revenues shall be payable from the Operation and Maintenance Fund.

6.08. General Covenants. The City hereby covenants and agrees with the owners of all outstanding Municipal Securities as follows:

- a. That it will, to the extent the Net Revenues are sufficient, promptly cause the principal and interest on all Municipal Securities to be paid as they become due.
- b. That it will maintain complete books and records relating to the operation of the Solid Waste Utility, the Solid Waste Revenue Bond Fund, Reserve Account,



Operation and Maintenance Fund, and Surplus Fund, in accordance with generally accepted accounting principles, and will cause such books and records to be audited annually at the end of each fiscal year, and an audit report prepared and made available for inspection of owners of the Municipal Securities.

- c. That it will not issue bonds or other obligations having a claim superior to the claim of the Municipal Securities upon the Net Revenues of the Solid Waste Utility.
- d. That it will promptly deposit into the Solid Waste Revenue Bond Fund all sums required to be so deposited.
- e. That it will operate the Solid Waste Utility in a sound, efficient and economic manner.

SECTION 7.

Miscellaneous.

7.01. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the City, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest on the Municipal Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the City but are payable solely from the Net Revenues as set forth in this resolution.

7.02. Federal Tax Laws. The City hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the holders of the Municipal Securities of the interest on the Municipal Securities under Section 103 of the Code. The City also covenants that it will not directly or indirectly use or permit the use of any of the proceeds of the Municipal Securities or any other funds or any facilities refinanced thereby or take or omit to take any action which would cause the Municipal Securities to be "arbitrage bonds" within the meaning of Section 148(a) of the Code or "private activity bonds" within the meaning of Section 141 of the Code. The City will comply with all requirements of Section 148 of the Code to the extent applicable to the Municipal Securities. The City shall comply with all requirements set forth in any tax compliance certificate executed in connection with the issuance of the Municipal Securities. The covenants and obligations of the City set forth in this Section 7.02 shall survive the payment, redemption and defeasance of the Municipal Securities until the expiration of all statutes of limitation applicable to the City with respect to the Municipal Securities.

The City recognizes that the provisions of this Section 7.02 are intended to comply with provisions of the Code applicable to the Municipal Securities and if as a result of a change in an applicable section of the Code or in the interpretation thereof, a change in this Section 7.02 shall be permitted or necessary to assure continued compliance with provisions of the Code, then the City shall be empowered to amend this Section 7.02 upon receipt of a written opinion of bond counsel satisfactory of the City to the effect that either (i) such amendment is required to maintain the exclusion from gross income under Section 103 of the Code of interest paid and payable on the Municipal Securities, or (ii) such amendment shall not adversely affect the exclusion from gross income under Section 103 of the Code of interest paid or payable on the Municipal Securities.

This section shall be applicable only to the obligations, covenants, agreements, limitations, conditions and restrictions of and upon the City in relation to the holder of the Municipal Securities.

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Adopted October 2, 2023.

CITY OF FARGO

By: \_\_\_\_\_  
Tim Mahoney, Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City Auditor

Exhibit A

FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA  
 STATE OF NORTH DAKOTA  
 COUNTY OF CASS

CITY OF FARGO

SOLID WASTE REVENUE BOND,  
 SERIES 2023F

No. R-1 \$10,647,000

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP</u>
1.50%	September 1, 2054	[            ], 2023	NONE

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: TEN MILLION SIX HUNDRED FORTY SEVEN THOUSAND DOLLARS

KNOW ALL PERSONS BY THESE PRESENTS that the City of Fargo, North Dakota (the “City”), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay solely from the sources set forth herein to the Registered Owner specified above, or registered assigns, the Principal Amount (set forth above), or such lesser amount actually disbursed to the City, on or before the Maturity Date (set forth above). Interest shall accrue from the Date of Original Issuance at the annual rate of one and one half percent (1.50%), payable on each March 1 and September 1, commencing March 1, 2024. The Principal Amount of this Bond is subject to mandatory redemption on the dates and in the amounts set forth in Attachment A to this Municipal Security, which Attachment A shall be revised in accordance with Section 2.02 of the Loan Agreement in the event funds are advanced to the City less than as originally set forth in the Loan Agreement. The City hereby promises to pay the Administrative Fee, as defined in the Loan Agreement (being one half of one percent (0.50%) per annum on the outstanding principal amount of the Bond), payable semi-annually on each March 1 and September 1. All payments due with respect to this Bond are payable in lawful money of the United States of America at the main office of the Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner’s address set forth on the registration books or by wire or other electronic funds transfer.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the “Act”), and pursuant to a Resolution (the “Resolution”) and a Loan Agreement (the “Loan Agreement”) adopted and entered into by the City. Reference is hereby made to the Resolution and the Loan Agreement for

a description of the funds and accounts pledged to the payment of the Municipal Securities and the rights of the Registered Owner of the Municipal Securities. The principal and interest payments for this Bond and the Administrative Fee payable hereunder, if any, are not general obligations of the City, but are payable solely from Net Revenues received by the City from the operation of the solid waste utility of the City of Fargo and from any future additions thereto and betterments thereof.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the City kept by the Bank of North Dakota, as bond registrar, by the Registered Owner hereof in person or by the Owner's duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

This Municipal Security shall be subject to redemption, in whole or in part, and if in part in principal amounts which are integral multiples of \$5,000, prior to their stated maturity, with the written consent of the Registered Owner, at a price equal to the principal amount thereof plus accrued interest to the date of redemption.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the City has caused this Municipal Securities to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: \_\_\_\_\_  
Tim Mahoney  
Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City  
Auditor

\_\_\_\_\_  
CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

BANK OF NORTH DAKOTA

By: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Social Security or other identifying number of Assignee

\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

## ATTACHMENT A

Clean Water Loan Info PRELIMINARY	
Loan #	145
Loan	Fargo
Interest Rate	1.50%
Administration Fee	0.50%
Loan Request	10,647,000.00
Loan Forgiveness	-1,502,000.00
Loan Amount	9,145,000.00
Fully Funded Amount	0.00
Insurance Deduction	5,000.00
Credit Rating	A-2
Security Type	Revenue
Closing Date	11/1/2023
First Maturity	9/1/2025
Term	30
Final Maturity	9/1/2054
First Interest	3/1/2024
First Interest Payment	20,000.00
First Admin. Payment	6,666.00
Debt Service Reserve Fund	411,075.00
First DSRF Payment	9/1/2025

Project Description  
Landfill Leachate - Construction

Date	Principal	Interest	Total Principal & Interest	Annual P&I Payment	Outstanding Balance	Admin. Fee	Total Payment	Annual Total Payment	Debt Service Reserve Fund
3/1/2024	-	20,000.00	20,000.00	-	9,145,000.00	6,666.00	26,666.00	-	-
9/1/2024	-	66,587.50	66,587.50	88,587.50	9,145,000.00	22,862.50	91,450.00	118,116.00	-
3/1/2025	-	68,587.50	68,587.50	-	9,145,000.00	22,862.50	91,450.00	-	-
9/1/2025	225,000.00	66,587.50	291,587.50	362,175.00	8,920,000.00	22,862.50	316,450.00	407,900.00	82,215.00
3/1/2026	-	66,900.00	66,900.00	-	8,920,000.00	22,300.00	89,200.00	-	-
9/1/2026	230,000.00	66,900.00	296,900.00	363,800.00	8,690,000.00	22,300.00	319,200.00	408,400.00	82,215.00
3/1/2027	-	65,175.00	65,175.00	-	8,690,000.00	21,725.00	86,900.00	-	-
9/1/2027	235,000.00	65,175.00	300,175.00	365,350.00	8,455,000.00	21,725.00	321,900.00	408,800.00	82,215.00
3/1/2028	-	63,412.50	63,412.50	-	8,455,000.00	21,137.50	84,550.00	-	-
9/1/2028	240,000.00	63,412.50	303,412.50	366,825.00	8,215,000.00	21,137.50	324,550.00	409,100.00	82,215.00
3/1/2029	-	61,612.50	61,612.50	-	8,215,000.00	20,537.50	82,150.00	-	-
9/1/2029	245,000.00	61,612.50	306,612.50	368,225.00	7,970,000.00	20,537.50	327,150.00	409,300.00	82,215.00
3/1/2030	-	59,775.00	59,775.00	-	7,970,000.00	19,925.00	79,700.00	-	-
9/1/2030	250,000.00	59,775.00	309,775.00	369,550.00	7,720,000.00	19,925.00	329,700.00	409,400.00	-
3/1/2031	-	57,900.00	57,900.00	-	7,720,000.00	19,300.00	77,200.00	-	-
9/1/2031	255,000.00	57,900.00	312,900.00	370,800.00	7,465,000.00	19,300.00	332,200.00	409,400.00	-
3/1/2032	-	55,987.50	55,987.50	-	7,465,000.00	18,662.50	74,650.00	-	-
9/1/2032	260,000.00	55,987.50	315,987.50	371,975.00	7,205,000.00	18,662.50	334,650.00	409,300.00	-
3/1/2033	-	54,037.50	54,037.50	-	7,205,000.00	18,012.50	72,050.00	-	-
9/1/2033	265,000.00	54,037.50	319,037.50	373,075.00	6,940,000.00	18,012.50	337,050.00	409,100.00	-
3/1/2034	-	52,050.00	52,050.00	-	6,940,000.00	17,350.00	69,400.00	-	-
9/1/2034	270,000.00	52,050.00	322,050.00	374,100.00	6,670,000.00	17,350.00	339,400.00	408,800.00	-
3/1/2035	-	50,025.00	50,025.00	-	6,670,000.00	16,675.00	66,700.00	-	-
9/1/2035	275,000.00	50,025.00	325,025.00	375,050.00	6,395,000.00	16,675.00	341,700.00	408,400.00	-
3/1/2036	-	47,962.50	47,962.50	-	6,395,000.00	15,987.50	63,950.00	-	-
9/1/2036	280,000.00	47,962.50	327,962.50	375,925.00	6,115,000.00	15,987.50	343,950.00	407,900.00	-
3/1/2037	-	45,862.50	45,862.50	-	6,115,000.00	15,287.50	61,150.00	-	-
9/1/2037	285,000.00	45,862.50	330,862.50	376,725.00	5,830,000.00	15,287.50	346,150.00	407,300.00	-
3/1/2038	-	43,725.00	43,725.00	-	5,830,000.00	14,575.00	58,300.00	-	-
9/1/2038	290,000.00	43,725.00	333,725.00	377,450.00	5,540,000.00	14,575.00	348,300.00	406,600.00	-
3/1/2039	-	41,550.00	41,550.00	-	5,540,000.00	13,850.00	55,400.00	-	-
9/1/2039	295,000.00	41,550.00	336,550.00	378,100.00	5,245,000.00	13,850.00	350,400.00	405,800.00	-
3/1/2040	-	39,337.50	39,337.50	-	5,245,000.00	13,112.50	52,450.00	-	-
9/1/2040	300,000.00	39,337.50	339,337.50	378,675.00	4,940,000.00	13,112.50	352,450.00	405,000.00	-
3/1/2041	-	37,050.00	37,050.00	-	4,940,000.00	12,350.00	49,400.00	-	-
9/1/2041	310,000.00	37,050.00	347,050.00	384,100.00	4,630,000.00	12,350.00	359,400.00	408,800.00	-
3/1/2042	-	34,725.00	34,725.00	-	4,630,000.00	11,575.00	46,300.00	-	-
9/1/2042	315,000.00	34,725.00	349,725.00	384,450.00	4,315,000.00	11,575.00	361,200.00	407,600.00	-
3/1/2043	-	32,362.50	32,362.50	-	4,315,000.00	10,787.50	43,150.00	-	-
9/1/2043	320,000.00	32,362.50	352,362.50	384,725.00	3,995,000.00	10,787.50	363,150.00	406,300.00	-
3/1/2044	-	29,962.50	29,962.50	-	3,995,000.00	9,987.50	39,950.00	-	-
9/1/2044	330,000.00	29,962.50	359,962.50	389,925.00	3,665,000.00	9,987.50	369,950.00	409,900.00	-
3/1/2045	-	27,487.50	27,487.50	-	3,665,000.00	9,162.50	36,650.00	-	-
9/1/2045	335,000.00	27,487.50	362,487.50	389,975.00	3,330,000.00	9,162.50	371,650.00	408,300.00	-
3/1/2046	-	24,975.00	24,975.00	-	3,330,000.00	8,325.00	33,300.00	-	-
9/1/2046	340,000.00	24,975.00	364,975.00	389,950.00	2,990,000.00	8,325.00	373,300.00	406,600.00	-
3/1/2047	-	22,425.00	22,425.00	-	2,990,000.00	7,475.00	29,900.00	-	-
9/1/2047	350,000.00	22,425.00	372,425.00	394,850.00	2,640,000.00	7,475.00	379,900.00	409,800.00	-
3/1/2048	-	19,800.00	19,800.00	-	2,640,000.00	6,600.00	26,400.00	-	-
9/1/2048	355,000.00	19,800.00	374,800.00	394,600.00	2,285,000.00	6,600.00	381,400.00	407,800.00	-
3/1/2049	-	17,137.50	17,137.50	-	2,285,000.00	5,712.50	22,850.00	-	-
9/1/2049	360,000.00	17,137.50	377,137.50	394,275.00	1,925,000.00	5,712.50	382,850.00	405,700.00	-
3/1/2050	-	14,437.50	14,437.50	-	1,925,000.00	4,812.50	19,250.00	-	-
9/1/2050	370,000.00	14,437.50	384,437.50	398,675.00	1,555,000.00	4,812.50	389,250.00	408,500.00	-
3/1/2051	-	11,662.50	11,662.50	-	1,555,000.00	3,887.50	15,550.00	-	-
9/1/2051	375,000.00	11,662.50	386,662.50	398,325.00	1,180,000.00	3,887.50	390,550.00	406,100.00	-
3/1/2052	-	8,850.00	8,850.00	-	1,180,000.00	2,950.00	11,800.00	-	-
9/1/2052	385,000.00	8,850.00	393,850.00	402,700.00	795,000.00	2,950.00	396,800.00	408,600.00	-
3/1/2053	-	5,962.50	5,962.50	-	795,000.00	1,987.50	7,950.00	-	-
9/1/2053	390,000.00	5,962.50	395,962.50	401,925.00	405,000.00	1,987.50	397,950.00	405,900.00	-
3/1/2054	-	3,037.50	3,037.50	-	405,000.00	1,012.50	4,050.00	-	-
9/1/2054	405,000.00	3,037.50	408,037.50	411,075.00	-	1,012.50	409,050.00	413,100.00	-
<b>Total</b>	<b>\$ 9,145,000.00</b>	<b>\$ 2,416,137.50</b>	<b>\$ 11,561,137.50</b>	<b>\$ 11,561,137.50</b>	<b>\$</b>	<b>\$ 805,579.00</b>	<b>\$ 12,366,516.00</b>	<b>\$ 12,366,516.00</b>	<b>\$ 411,075.00</b>





CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on October 2, 2023, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
City Auditor

(SEAL)

Doug Burgum  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



## North Dakota Public Finance Authority

August 30, 2023

Scott Olson  
City of Fargo  
solson@fargond.gov

Dear Scott Olson:

The Public Finance Authority's Advisory Committee approved the City of Fargo's requested landfill engineering loan in the amount of \$701,000 on August 30, 2023. The financing will be provided under the **Clean Water** State Revolving Fund Program. This loan approval is contingent upon the ND Department of Environmental Quality determining project eligibility and expires in one year. If any other conditions to loan approval are known as of the date of this letter, an attachment will be included.

If the first draw of funds is not made within one year of the date of approval, the applicant must submit a new application and related attachments for consideration by the PFA and its' advisors, as applicable.

We are providing a copy of this letter and a preliminary debt service schedule to your bond counsel. Please contact your bond counsel to discuss and coordinate the completion of the loan documents.

A copy of the annual or biennial audited financial statements, or the annual report, as appropriate under N.D.C.C.' 54-10-14, **must be submitted to the Public Finance Authority every year that the loan is outstanding**. This requirement is set out in the form of the loan agreement.

Please feel free to call us or your bond counsel if you have any questions concerning the loan closing.

Sincerely,

Benita Eberts, CPA  
Business Manager

cc: Jennifer L. Hanson, Dorsey & Whitney LLP ([hanson.jennifer@dorsey.com](mailto:hanson.jennifer@dorsey.com))  
Kara Tonolli, Dorsey & Whitney LLP ([tonolli.kara@dorsey.com](mailto:tonolli.kara@dorsey.com))  
Steven Sprague, Fargo City Auditor ([ssprague@fargond.gov](mailto:ssprague@fargond.gov))

**Borrower: City of Fargo**

**Loan approval subject to the following Conditions:**

ND Department of Environmental Quality:

- Receipt of the engineering agreement
- Approval of the Facility Plan with Engineering Stamp
- Completion of the environmental review process
- Approval of the plans and specifications
- Review of bid documents and authorization to award

Doug Burgum  
GOVERNOR

Drew H. Wrigley  
ATTORNEY GENERAL

Doug Goehring  
AGRICULTURE COMMISSIONER



## North Dakota Public Finance Authority

September 7, 2023

Scott Olson  
City of Fargo  
solson@fargond.gov

Dear Scott Olson:

On September 7, 2023 the Industrial Commission approved a \$10,647,000 loan requested by the City of Fargo. The loan will be made under the Public Finance Authority's Clean Water State Revolving Fund Program. This loan approval is contingent upon the ND Department of Environmental Quality determining project eligibility and expires in one year. If any other conditions to loan approval are known as of the date of this letter, an attachment will be included. If the first draw of funds is not made within one year of the date of approval, the applicant must submit a new application and related attachments for consideration by the PFA and its' advisors, as applicable.

Please contact your bond counsel to discuss and coordinate completion of the loan documents. Once the documents are approved, you will receive a letter from the Department of Environmental Quality concerning the submission of payment requests for draws on the approved loan amount.

Please be sure to alert your Independent Public Accounting Firm that the Clean Water State Revolving Fund Program (Environmental Protection Agency's Capitalization Grants for Clean Water State Revolving Funds, CFDA #66.458) is considered a federal award for auditing purposes. Your financial statements may be required to be audited in compliance with the Single Audit Act with respect to the receipt and expenditure of loan proceeds. In addition, any equipment purchased with SRF funds must comply with the Federal equipment management requirements published in OMB Circular A-110 ( \_\_.34). If you have any questions, please discuss this with your Independent Public Accounting Firm.

A copy of the annual or biennial audited financial statements, or the annual report, as appropriate under N.D.C.C. 54-10-14, **must be submitted to the Public Finance Authority every year that the loan is outstanding.** This requirement is set out in the form of the loan agreement.

Please feel free to call your bond counsel or us if you have any questions concerning the loan closing.

Sincerely,

Benita Eberts  
Business Manager

cc: Steven Sprague, Fargo City Auditor ([ssprague@fargond.gov](mailto:ssprague@fargond.gov))

**Borrower: City of Fargo**

**Loan approval subject to the following Conditions:**

ND Department of Environmental Quality:

- Receipt of the engineering agreement
- Approval of the Facility Plan with Engineering Stamp
- Completion of the environmental review process
- Approval of the plans and specifications
- Review of bid documents and authorization to award



35

Division of Solid Waste

2301 8<sup>th</sup> Avenue North  
Fargo, North Dakota 58102  
Phone: 701-241-1449  
Fax: 701-241-8109

September 20, 2023

Honorable Board of City Commissioners  
City of Fargo  
Fargo, North Dakota 58102

RE: Project SW 23-04

Dear Commissioners:

Bids were opened at 11:45 AM on Wednesday, September 20, 2023, for the Cell 21 Waste Excavation and Construction Project SW 23-04. A detailed bid tabulation sheet is attached for your review. Bid totals are as follow:

COMPANY	BID AMOUNT		COMPANY	BID AMOUNT
Excavating Inc.	\$6,165,624.20		Park Construction Co	\$9,104,242.50
Bruski Excavating, Inc.	\$6,828,110.00		Gladen Construction Inc	\$9,439,520.00
Ames Construction	\$7,824,295.00		R.J. Zavoral and Sons	\$9,959,397.50
Knife River Materials	\$8,594,279.00		Frattalone Co.	NO BID

Along with Stantec this office recommends award of the contract to Excavating Inc. in the amount of \$6,165,624.20 as the lowest and best bid. This project has been approved for financing through the North Dakota Clean Water state Revolving Fund (CWSRF) Program Loan 2, approved by the City Commission on July 24, 2023, with loan payments included within the Solid Waste Division annual budget. Please note that the *Engineer's Estimate* (based on similar recent projects) for this project was \$5,917,245.00

**SUGGESTED MOTION:**

Accept the bid from Excavating Inc. in the amount of \$6,165,624.20 for the Cell 21 Waste Excavation and Construction Project SW 23-04.

Respectfully Submitted,

Scott Olson  
Solid Waste Utility Director

Attachment

cc: Michael Redlinger, City Administrator  
Jill Pagel, Auditors Office  
Scott Anderson, Landfill Supervisor  
Randy Hanson, Stantec



**Stantec Consulting Services Inc.**

3303 Fiechtner Drive, Suite 100  
 Fargo ND 58103-8726

September 20, 2023

Project 227705930

**Scott Olson**  
**Solid Waste Utility Director**  
**2301 8th Avenue North**  
**Fargo, North Dakota 58102**  
 Dear Scott,

**Reference: Cell 21 Waste Excavation and Construction Bid Opening (CWSRF 380715-11)**

Bids were opened on Wednesday, September 20, 2023, for Cell 21 Waste Excavation and Construction project SW 23-04 at the Fargo Landfill. A summary of the bids received include the following:

<b>Company</b>	<b>Bid Amount</b>
Excavating Inc	\$ 6,165,624.20
Burski Excavating, Inc	\$ 6,828,110.00
Ames Construction	\$ 7,824,295.00
Knife River Materials	\$ 8,594,279.00
Park Construction Co.	\$ 9,104,242.50
Gladden Construction Inc.	\$ 9,439,520.00
RJ Zavoral and Sons	\$ 9,959,397.50

After completing a review of the detailed bid tabulation and discussions on items included in the bids, Stantec recommends award of the project to Excavating, Inc. of West Fargo, North Dakota in the amount of \$6,165,624.20. Excavating Inc. provided the lowest bid on the project, and we are familiar with work they have completed in the past on landfill related and large excavation projects. We are confident they can complete the project as designed.

If you have any questions or need any additional information, please reach me at [randy.hanson@stantec.com](mailto:randy.hanson@stantec.com) or 701.261.3828.

Sincerely,

**STANTEC CONSULTING SERVICES INC.**

**Randy Hanson**  
 Principal, Senior Project Manager  
 Phone: (701) 893-2313



Mobile: 701-261-3828  
randy.hanson@stantec.com

CITY OF FARGO  
DIVISION OF SOLID WASTE  
Cell 21 Waste Excavation and Construction  
PROJECT SW 23-04

Bids Opened: 11:45 AM  
Date: 9/20/23

Engineers Estimate: \$5,917,245

Bid Item	Quantity	Unit Price	Extended Price	Contractor		Contractor		Contractor		Contractor	
				Excavating Inc.	Burski Excavating	Amus Construction	Knite River Materials				
1 Mobilization and Demobilization	1	US \$ 96,000.00	\$ 96,000.00	\$ 275,000.00	\$ 900,000.00	\$ 527,200.00					
2 Field Engineering	1	US \$ 36,850.00	\$ 36,850.00	\$ 35,000.00	\$ 60,000.00	\$ 60,000.00					
3 Site Preparation	1	US \$ 12,500.00	\$ 12,500.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00					
4 Erosion Control	1	US \$ 8,250.00	\$ 8,250.00	\$ 8,700.00	\$ 62,400.00	\$ 62,400.00					
5 Excavation of Soils	1	US \$ 550,000.00	\$ 550,000.00	\$ 1,540,000.00	\$ 3,355,000.00	\$ 3,355,000.00					
6 Stockpiling of Soils in Landfill East of 45th Street	316,500	CY \$ 1.65	\$ 522,225.00	\$ 2,500.00	\$ 788,750.00	\$ 1,577,500.00					
7 Stockpiling of Soils in Landfill West of 45th Street	250,000	CY \$ 3.10	\$ 775,000.00	\$ 5,500.00	\$ 1,375,000.00	\$ 1,375,000.00					
8 Excavation and Relocation of Waste	235,000	CY \$ 4.15	\$ 975,250.00	\$ 4,100.00	\$ 963,500.00	\$ 1,433,500.00					
9 Exposing of Existing Liner Tie-in	1,550	LF \$ 15.95	\$ 24,722.50	\$ 28.00	\$ 43,400.00	\$ 20,150.00					
10 Leachate Handling	1	US \$ 35,000.00	\$ 35,000.00	\$ 25,000.00	\$ 18,000.00	\$ 18,000.00					
11 Controlled Fill in Landfill East of 45th Street*	55,000	CY \$ 5.35	\$ 294,250.00	\$ 3.50	\$ 192,500.00	\$ 27,500.00					
12 Controlled Fill in Landfill West of 45th Street	2,000	CY \$ 8.00	\$ 16,000.00	\$ 8.00	\$ 16,000.00	\$ 1,000.00					
13 Clay Subliner	60,000	CY \$ 1.95	\$ 117,000.00	\$ 2.25	\$ 135,000.00	\$ 48,000.00					
14 60 Mil HDPE Geomembrane	60,000	CY \$ 6.44	\$ 386,400.00	\$ 6.83	\$ 409,800.00	\$ 384,000.00					
15 6-inch HDPE SDR 11 Perforated Pipe	1,720	LF \$ 138.50	\$ 238,220.00	\$ 128.00	\$ 220,160.00	\$ 137,600.00					
16 6-inch HDPE SDR 11 Solid Pipe	300	LF \$ 55.00	\$ 16,500.00	\$ 28.00	\$ 8,400.00	\$ 13,200.00					
17 18-inch HDPE SDR 11 Slope Riser Pipe	300	LF \$ 292.00	\$ 87,600.00	\$ 170.00	\$ 51,000.00	\$ 37,500.00					
18 12-inch Granular Drainage Layer	60,000	EA \$ 9.86	\$ 591,600.00	\$ 14.75	\$ 885,000.00	\$ 672,000.00					
19 Riser Vault	2	EA \$ 92,250.00	\$ 184,500.00	\$ 71,000.00	\$ 142,000.00	\$ 140,000.00					
20 Leachate Pumping System	2	EA \$ 65,165.00	\$ 130,330.00	\$ 45,000.00	\$ 90,000.00	\$ 90,000.00					
21 24-inch HDPE Foremain SDR 17	200	LF \$ 34.85	\$ 6,970.00	\$ 18.00	\$ 3,600.00	\$ 17,600.00					
22 12-inch Corrugated HDPE Culvert (Flared Ends)	240	LF \$ 57.39	\$ 13,773.60	\$ 46.00	\$ 11,040.00	\$ 13,200.00					
23 12-inch RCP Culvert	42	LF \$ 169.55	\$ 7,121.10	\$ 130.00	\$ 5,460.00	\$ 5,670.00					
24 2-inch Conduit Piping	285	LF \$ 23.50	\$ 6,697.50	\$ 25.00	\$ 7,125.00	\$ 17,100.00					
25 Turf Restoration	1.5	Ag \$ 5,500.00	\$ 8,250.00	\$ 13,800.00	\$ 20,700.00	\$ 13,500.00					
26 Access Road Construction North of Cell 21	525	LF \$ 80.98	\$ 42,514.50	\$ 95.00	\$ 49,875.00	\$ 39,375.00					
27 RipRap	10	SY \$ 120.00	\$ 1,200.00	\$ 110.00	\$ 1,100.00	\$ 1,750.00					
<b>BID TOTAL</b>			\$ 6,155,624.20	\$ 6,828,110.00	\$ 7,324,295.00	\$ 8,594,279.00					

Contractor  
Park Construction Company

Contractor  
Sluden Construction, Inc.

Contractor  
R.J. Zavoral and Sons, Inc.

Contractor  
Fractious Companies

No Bid - MDE/WVE Solicitation Not Included in Outside Envelope

PL

PROJECT DESCRIPTION		Cell #21 Waste Excavation and Construction								
SOLID WASTE PROJECT		SW 23-04			Bid Opening:			9/20/2023		
LOCATION		Fargo Landfill			ENGINEER'S ESTIMATE			<u>\$5,917,245.00</u>		
COMPANY	ST LIC		BONDED		ADDENDA				MBE/ WBE	Base Bid Amount
	YES	NO	YES	NO	#1	#2	#3	#4		
Frattalone Companies	✓		✓		✓	✓	✓	✓		
R.J. Zavoral and Sons, Inc.	✓		✓		✓	✓	✓	✓	✓	9,959,397.50
Excavating Inc.	✓		✓		✓	✓	✓	✓	✓	6,165,624.20
<del>RL Larson Excavating, Inc.</del>										
Ames Construction	✓		✓		✓	✓	✓	✓	✓	7,824,295.00
Park Construction Company	✓		✓		✓	✓	✓	✓	✓	9,104,242.50
Gladen Construction Inc.	✓		✓		✓	✓	✓	✓	✓	9,439,520.00
Burski Excavating, Inc.	✓		✓		✓	✓	✓	✓	✓	6,828,110.00
Knife River Materials	✓		✓		✓	✓	✓	✓	✓	8,594,279.00
<del>Weit &amp; Company, Inc.</del>										
<del>Border States Paving, Inc.</del>										

(36)

October 2, 2023

Board of City Commissioners  
City Hall - 225 4<sup>th</sup> St N  
Fargo, ND 58102

Dear Commissioners:

On November 28, 2022 the Fargo City Commission authorized the approval of grant applications, local share and grant execution to the State of North Dakota (see attached).

The resulting contract 38231181 received from the North Dakota Department of Transportation (NDDOT) Transit Division is attached.

The grant includes capital discretionary \$81,600 for Mobility Management in 5310 CDFA No. 20.513 funds. The Transit Department did incorporate the local share for the projects in the 2023 Transit capital budget.

The contract awards will have a profound impact on our community's transit system and the transportation options we offer our residents and visitors. These awards will vastly improve our ability to address the critical need to get equipment purchases/repairs on a regular schedule.

***The requested motion is to approve the attached contract with NDDOT.***

Thank you.



Julie Bommelman  
Transit Director  
City of Fargo  
701.476.6737

/enc

November 28, 2022

Board of City Commissioners  
 City Hall - 225 4<sup>th</sup> St N  
 Fargo, ND 58102

Dear Commissioners:

The State of North Dakota has made \$12.8M available in grant funding for public transportation (transit). The grant opportunity is for capital discretionary 5339 CDFA No. 20.526 and 5310 CFDA No. 20.513 funds (for bus and bus facilities by the Federal Transit Administration (FTA) and administered by the NDDOT). The Transit Department budgeted the local share (\$822,400) for these projects in the Transit capital budget for 2023:

**CITY OF FARGO TRANSIT DEPARTMENT 2024 CAPITAL STATE GRANT REQUESTS:**

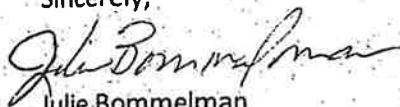
TRANSIT	552-2561-510.74-10	Replace Paratransit Scheduling Software (Local Share)	100,000			
	552-2561-510.74-10	Automated Bus Announcement System (Local Share)	600,000			
	552-2561-510.74-10	Miscellaneous Support Equipment (Local Share)	100,000			
	552-2561-510.74-10	Replace Toolcat (Local Share)	64,000			
	552-2561-510.74-10	Update MTG Building (Local Share)	566,000			
	552-2561-510.74-10	Mobility Manager (Local Share)	102,000			
	552-2561-510.74-10	Fixed Route Bus Replacements	1,150,000			
	552-2561-510.74-10	Paratransit Bus Replacements	230,000			
	552-2561-510.74-10	GTC Deck Overlay	1,000,000			
	552-2561-510.74-10	Supervisor Vehicle Replacement	40,000			
<b>Total Transit</b>			<b>3,952,000</b>	<b>3,952,000</b>	<b>3,952,000</b>	<b>822,400</b>

These grants would have a profound impact on our community's transit system and the transportation options we offer our residents. There is a critical need to keep vehicle purchases on a regular, rotating schedule – these grants would allow for the replacement of two (2) 35-foot and two (2) paratransit vehicles, the final phase of the bus deck resurfacing at the Ground Transportation Center, replacement of the automatic vehicle location/automated vehicle announcement system, replacement of the paratransit scheduling software/hardware, miscellaneous interior replacements/upgrades to the Metro Transit Garage (MTG) which is fifteen years old (i.e. replacement of the bus wash), the Mobility Manager position and a replacement service vehicle. Several of these items are cost shared with Moorhead, the displayed amounts are Fargo's share only. The MAT Coordinating Board reviewed and approved this request at the November 16, 2022 Board meeting.

The Transit Development Plan identified the need to upgrade and rehab equipment, and the Federal Transit Administration has implemented a requirement to have and follow a Transit Asset Management Plan which outlines equipment maintenance and lifecycle requirements.

The requested motion is to approve applying for grant funding for the items listed, and, upon successful receipt of funds, approve the grant execution. Thank you.

Sincerely,



Julie Bommelman  
 City of Fargo Transit Director  
 701-476-6737  
[jbommelman@cityoffargo.com](mailto:jbommelman@cityoffargo.com)

For Schedule Information: 701-232-7500

MEMORANDUM

TO: Chad Orn  
Deputy Director for Planning

FROM: Stacey Hanson  
Assistant Engineer for Local Government  
Becky Hanson  
Transit Program Manager

DATE: 9/5/2023

SUBJECT: Section 5310, Enhanced Mobility of Seniors & Individuals with Disabilities  
City of Fargo  
SFY 2024 (July 1, 2023 - June 30, 2024)

This is a contract to provide transit funds under the regulations of Section 5310, Enhanced Mobility of Seniors & Individuals with Disabilities Grant Funds. Standard methodology was used in distribution of funds.

Federal Transit Administration Funds of \$81,600 are allocated for funding the Mobility Manager Position. Twenty percent (20%) local match is required.

38/bh 328-2542

NORTH  
**Dakota** | Transportation  
Be Legendary.™

September 5, 2023

Julie Bommelman  
Fargo Metro Area Transit  
650 23<sup>rd</sup> St N  
Fargo, ND 58102

FY 2024 – Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities  
Grant, CFDA No. 20.513

Thank you for submitting a 5310 grant application and we are pleased to inform you that we are able to provide funding for Fargo Metro Area Transit. The award amount is \$81,600 for a Mobility Manager Position. Please see Attachment A.

The NDDOT has made changes to this contract that you need to be aware of. The contract documents now include a detailed Scope of Work (Section 2) and updates to Closeout Requirements (Section 17). Also review Section 5. Risk Assessment, Section 6. Risk Based Monitoring and Section 14. Audit and Inspection for additional requirements that effect your agency.

In order to begin the funding process, please:

1. Complete the contractor and witness information in DocuSign **(the contractor and witness must be different people)**.
2. Have your organization's president or chairman digitally sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project. Please also submit a proof of authorization to sign if it is not the president or chairperson of your agency.
3. Finish the DocuSign process to send to the witness for signature.
4. Have a witness sign and date the agreement (under Witness).

FY2024 – Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Grant  
September 5, 2023  
Page 2

5. Upon completion of executing all documents, finish the DocuSign process and the contract documents will return to NDDOT for processing.

Thank you for your continuing efforts to improve transportation in North Dakota. If you have any questions or need assistance, please contact Sara Susie at (701) 328-2540 or [ssusie@nd.gov](mailto:ssusie@nd.gov).

With gratitude,

*Becky Hanson*

Becky Hanson  
Transit Program Manager

Cc: Kevin Hanson, Board Chair  
Dan Farnsworth, Fargo/Moorhead COG  
Enclosure



**North Dakota Department of Transportation  
SECTION 5310 TRANSIT GRANT AGREEMENT**

**Federal Award Information**

Assistance Listing No.: 20.513

Assistance Listing Title: Capital Assistance Program For Elderly Persons and Persons with Disabilities

Awarding Federal Agency: Federal Transit Administration (FTA)

Pass-through entity: North Dakota Department of Transportation (NDDOT)

NDDOT Program Mgr.: Hanson, Becky R.  
Telephone: (701) 328-2542 Email: bhanson@nd.gov

Subrecipient/Contractor Name: City of Fargo DUNS No.: 070265871 Unique Entity ID: K2QJQZV5PM6

Federal Award Project Description: NDDOT FFY2022 & FFY2023 Section 5310 Small Urban for Capital and Operating Assistance

Federal Aid Identification No. (FAIN) and Award Date: ND2023-010, 07/18/2023

Period of Performance: 07/18/2023 - 10/31/2025

Subaward Period of Performance Start Date: July 1, 2023 End Date June 30, 2024

Subaward Budget Period Start Date: July 1, 2023 End Date: June 30, 2024

Total Federal Operating Award: \$0

Total Federal Admin Award: \$0

Total Federal Capital Award: \$81,600

Total Project Budget Including Local Match: \$102,000

Total Operating Budget: \$0 Federal Funds: \$0 Matching Funds: \$0

Total Admin/Capital Budget: \$102,000 Federal Funds: \$81,600, 80% Matching Funds: \$20,400, 20%

Research and Development Activities: This award does not include funds for Research and Development Activities.

Indirect Cost Rate (ICAP): N/A

**Notice to Subrecipients: This agreement is subject to all the Certifications and Assurances required by the FTA. Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.**

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.



WHEREAS, Section 5310 of the Fixing America's Surface Transportation (FAST) Act, and the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (IIJA), provides formula funding to states for the purpose of assisting private nonprofit groups and associations in meeting the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs; and

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications in accordance with the guidelines of the State Management Plan for Public Transportation, the FTA Circular 9070.1 Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions, Federal Certifications and Assurances, and the Master Agreement with the FTA; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to improve mobility for seniors and individuals with disabilities by removing barriers to transportation service and expanding transportation mobility options. This program supports transportation services planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas – large urbanized (over 200,000), small urbanized (50,000-200,000), and rural (under 50,000) in the state of North Dakota. Eligible projects include both "traditional" capital investment and "nontraditional" investment beyond the Americans with Disabilities Act (ADA) complementary paratransit services; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

**Section 1. Purpose of Performance.** For the period of July 1, 2023, through June 30, 2024, the Contractor shall undertake and provide the transportation services as described in the project description and budget (Attachment A) and the Contractor's grant application, on file with NDDOT. The term of the agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2024.

**Section 2. Scope of Work.**

The Contractor shall undertake and complete the Project in accordance with this agreement and as described in its application, which is incorporated into the agreement by this reference.

See attached Scope of Work

**Section 3. Cost.** NDDOT shall reimburse the Contractor for costs incurred while performing this service not to exceed \$81,600, providing these costs are incurred in accordance and within the rates of participation, as indicated in Attachment A, and are allowable costs as determined under 48 CFR 31.2 or 48 CFR 31.6, and 2 CFR Part 200, as applicable. Requests for reimbursements can be submitted to NDDOT at the end of the quarter being reported. NDDOT reserves the right to request supporting documentation for any and all submittals. NDDOT will reimburse those eligible costs based on the program guidelines for the item categories and its appropriate reimbursement ratio (Attachment A).

Eligible costs item categories may include:

Mobility Management (80/20)

**Section 4. Indirect Cost Rate Provision.** Federal agencies and NDDOT shall review and approve the negotiated indirect cost rate, unless there is a federal statute that states otherwise, or a federal



agency head has made other approved provisions. Any rate approved by a federal agency, or a cognizant agency must be approved by NDDOT.

If the contractor does not have a federally negotiated indirect cost rate, the NDDOT can either:

- negotiate an indirect rate with the contractor
- allow the de minimis 10% flat rate (the de minimis rate, is not applicable in certain cases (200.414(f); Appendix VII.D.1.B).) This rate may be used indefinitely, until the contractor seeks to formally negotiate a rate. If the de minimis rate is used, the NDDOT does not need to review and approve.

**Section 5. Risk Assessments.** The NDDOT shall conduct pre-award risk assessments of applicants prior to issuing a contract. The contractor shall conduct risk assessments of their subawardees either before or after making the award to determine the appropriate level of monitoring. The contractor shall document its procedures for assessing risk and have them available upon NDDOT request.

**Section 6. Risk Based Monitoring.** The NDDOT shall conduct a risk assessment on the contractor and the following specific conditions shall be met and/or maintained throughout this agreement.

1. Compliance Review every three (3) years
2. Submit Receipts one (1) Random Quarter each year
3. Review audit reports and determine how material any audit findings are in the audit reports and where they pose an increased risk to subrecipients abilities to comply and carry out their Statements of Work.
4. Provide ongoing training and technical assistance on program related areas.

The NDDOT reserves the right to increase the monitoring during the agreement period based on periodical review of audit reports, audit findings, compliance review findings, federal reports, and reimbursement requests.

**Section 7. Property.** All purchases, property management, and property disposition shall be made in accordance with State and Federal requirements, copies of which will be provided by NDDOT on request. Such property shall be used for the duration of its useful life. If any project property is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition. The NDDOT may choose to transfer any assets in good working condition to other eligible Contractors or approve the asset to be sold. If the NDDOT has approved the property to be sold, the Contractor may retain \$5,000 plus the percentage of its local share. Any remaining federal share must be returned to FTA.

**Section 8. Purchase of Project Assets.** The purchase of all project assets financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and Federal regulations.

**Section 9. Use of Project Assets.** The Contractor agrees that the project asset shall be used for providing transportation service in accordance with the project description in the grant application. Such asset shall be used for the duration of its useful life. If any project asset is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition. The NDDOT may choose to transfer any assets in good working condition to other eligible Contractors or approve the asset to be sold. If the NDDOT has approved the asset to be sold, the Contractor may retain \$5,000 plus the percentage of its local share. Any remaining federal share must be returned to FTA.



**Section 10. Amendments and Contract Changes.** All modifications or changes in this agreement shall be in writing and agreed upon by both parties.

**Section 11. Subcontracting.** The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

**Section 12. Assignments.** Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or assets and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

**Section 13. Records and Reports.**

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

**Section 14. Audit and Inspection.** The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized representatives to inspect all vehicles, facilities, and assets used by the Contractor as part of the project and all relevant project data and records. 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. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

- All entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process.
- All entities must complete the Single Audit Certification form
- All entities must provide a schedule of expenditures.

**Section 15. Termination.** NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

**Section 16. Action Upon Termination.** The Contractor agrees to dispose of the project asset in accordance with NDDOT's program policy, copies of which will be made available by NDDOT upon request.



**Section 17. Closeout.** The Federal awarding agency or pass-through entity and contractor will comply with CFR §200.344 closeout requirements. The NDDOT is responsible for closing out the agreement when it determines that all application administrative actions and all required work have been completed and the agreement has reached its period of performance end date. The contractor shall submit, no later than 90 calendar days after the period of performance end date of this agreement, all financial, performance and other reports as required by the terms and conditions of this agreement. The NDDOT may, if necessary, offer extensions of this deadline as long as the request is in writing at least 30 days prior to the agreement period of performance end date.

Other Closeout requirements are attached:

**Section 18. Prohibited Interest.** No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

**Section 19. Other Federal Provisions.** The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them: See Attachment B and complete required forms.

**Section 20. Safety Jurisdiction.** FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit or for-profit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

**Section 21. Statement of Financial Assistance.** This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

**Section 22. Applicable Law.** Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement and conduct its activities so as not to endanger any person or property.

**Section 23. 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 agreement (from FTA MA (29) dated February 7, 2022) between purchaser and FTA, as 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.

**Section 24. Disputes.** FTA Cir. 4220.1. 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 NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. 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. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Section 25. Merger and Waiver.** 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. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

**Section 26. Conflicts of Interest.** No official or employee of a state or any other governmental instrumentality who is authorized in their official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a state or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than their employment or retention by a state or other governmental instrumentality, in a contract or subcontract in connection with such project. No officer or employee of such person retained by a state or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of NDDOT and of such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

**Section 27. Insurance.** The Contractor shall maintain insurance coverage on the project asset in an amount adequate to protect the fair market value of the asset throughout the duration of this agreement.

**Section 28. No Obligation by the Federal Government.** The purchaser 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 purchaser, 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.

**Section 29. Incorporation of Federal Transit Administration (FTA) Terms -** The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, 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 NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.

**Section 30. Subcontract Provisions.** The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

“This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.”



**Section 31. Risk Management.** The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

WITNESS:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

CONTRACTOR:

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE



**NORTH DAKOTA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
DIRECTOR (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

SS

APPROVED as to substance by:

**Paul Benning**

\_\_\_\_\_  
LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

*Paul Benning*  
\_\_\_\_\_  
SIGNATURE

09/05/23

\_\_\_\_\_  
DATE

SH

CLA 17014 (Div. 38)  
L.D. Approved 7-17-89; 8-23



### CERTIFICATION OF LOCAL MATCH

It is hereby certified that \_\_\_\_\_ will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider 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 for Transit Provider.** Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

**Source:**

\_\_\_\_\_  
\_\_\_\_\_

Executed at \_\_\_\_\_, North Dakota, the last date below signed.

WITNESS:

APPROVED:

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME (TYPE OR PRINT)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\*  
\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

\*Director or President of Transit Board

CLA 17014 (Div. 38)  
L.D. Approved 7-17-89; 8-23





**Attachment A**

**Project Name**

**City of Fargo/Fargo MAT Bus  
SFY 2024 (July 1, 2023 - June 30, 2024)**

	<b>Local Match Percentage</b>	<b>Funding Source</b>	<b>TOTAL Federal Share ND2023-010</b>	<b>Local Share</b>	<b>Total</b>
<b>Funding Category</b>					
<b>117L00 Mobility Management</b>	<b>20</b>	<b>5310</b>	<b>\$81,600</b>	<b>\$20,400</b>	<b>\$102,000</b>
<b>TOTALS</b>			<b>\$81,600</b>	<b>\$20,400</b>	<b>\$102,000</b>

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

<b>CFDA Title</b>	<b>CFDA No.</b>	<b>Title 49 USC Chapter 53 Section</b>	<b>Award Name</b>
<b>Capital Assistance Program</b>	<b>CFDA No 20.513</b>	<b>5310</b>	<b>Elderly and Persons with Disabilities Program</b>
Section 5310 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing			

## NDDOT CONTRACT No. 38231181

### Scope of Work – Section 5310 – Elderly Persons and Persons with Disabilities

1. Provide public transportation services throughout the Contractors service area.
2. Must have an approved Coordination Plan or be a part of the Statewide NDDOT Coordinated Plan or MPO Plan. Current plan must be uploaded in BC Resources.
3. Must submit quarterly budget reports.
4. Must submit receipts/documentation for reimbursement as stated in Section 6. of this Contract
5. Must submit ridership logs one quarter a year. This is subject to change if more monitoring is required.
6. Must follow your agencies Procurement Plan for all purchases.
7. Must be Active on sam.gov and remain so for the duration of this contract.
8. Must have signed the current FTA Annual Certifications and Assurances in the BlackCat system.
9. Must be in compliance with all federal and state requirements.

## Operations and Management Under \$150,000 Federal Clauses

### ACCESS TO RECORDS AND REPORTS

- a. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

### AMERICANS WITH DISABILITIES ACT(ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

### CHARTER SERVICE

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under: 1. Federal transit laws, specifically 49 U.S.C. § 5323(d); 2. FTA regulations, "Charter Service," 49 C.F.R. part 604; 3. Any other federal Charter Service regulations; or 4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include: 1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA; 2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or 3. Any other appropriate remedy that may apply. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

### CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

- a) **Nondiscrimination in Federal Public Transportation Programs.** 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) **Prohibition against Employment Discrimination.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

#### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing

regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. 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.

**2. 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.

**3. 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.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

## CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under

any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

## **CORONAVIRUS RELIEF AND CARES ACT CERTIFICATION**

The Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Pub. L. 116–260, Div. M), requires that, to the maximum extent possible, funds made available under the Act and in title XII of division B of the CARES Act (Pub. L. 116–136) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies that it has not furloughed any employees.

## **DEBARMENT AND SUSPENSION**

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.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

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 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 Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency 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 Agency's written consent; and that, unless the Agency'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).

## **DISPUTES, BREACHES, DEFAULTS, AND LITIGATION**

(a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220. (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason. (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

(c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

(d) Enforcement. The Recipient must pursue its legal rights and remedies available under any third party agreement or any federal, state, or local law or regulation.

## **DHS SEAL, LOGO, AND FLAGS**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre approval.

## **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked

as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient 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 Recipient, 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 the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a

"covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **NOTICE TO THIRD PARTY PARTICIPANTS**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

The contractor shall report any current or prospective legal matter with potentially serious consequences, including a major dispute, default, breach, or litigation, or knowledge that the contractor has submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance; suspension, debarment, or other similar administrative or enforcement action against OCTA or the contractor; or any matter or situation, including any other change or legal action that may adversely affect the Federal Government's interest in a Project or related activities.

## **PROCUREMENT OF RECOVERED MATERIALS**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND 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 causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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(l) 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.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any



system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services procured or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c. See Public Law 115-232, section 889 for additional information.
- d. See also § 200.471.

## PROMPT PAYMENT

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## PUBLIC TRANSPORTATION AGENCY SAFETY PLANS (PTASP)

For Fiscal Year 2020, FTA required this certification from each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA's state safety oversight programs, and each State that is required to draft and certify a public transportation agency safety plan on behalf of a small public transportation provider pursuant to 49 CFR § 673.11(d) by July 20, 2020. This certification does not apply to any applicant that receives financial assistance from FTA exclusively under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs.

## PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## RESTRICTIONS ON LOBBYING

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that

agency a statement, whether that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt 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 that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **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 Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SCHOOL BUS OPERATIONS**

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment

or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

## SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

## SOLID WASTES

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

## SUBSTANCE ABUSE REQUIREMENTS

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, or Agency, 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 and to submit the Management Information System (MIS) reports to the Agency.

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract

without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

## **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

## **VETERANS HIRING PREFERENCE**

Veterans Employment - Recipients and subrecipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

## **VIOLATION AND BREACH OF CONTRACT**

### **Disputes:**

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. 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. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

### **Performance During Dispute:**

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

### **Claims for 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 or damage.

### **Remedies:**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and 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 in which the Agency is located.

### **Rights and Remedies:**

Duties and obligations imposed by the contract documents 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 Agency 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.

## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

**Instructions for Certification:** By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR 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 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred,
2. Suspended,
3. Proposed for debarment,
4. Declared ineligible,
5. Voluntarily excluded, or
6. Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. 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,
2. Violation of any Federal or State antitrust statute, or,
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is 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 listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

1. Equals or exceeds \$25,000,
2. Is for audit services, or,
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
  - a. Debarred from participation in its federally funded Project,
  - b. Suspended from participation in its federally funded Project,
  - c. Proposed for debarment from participation in its federally funded Project,
  - d. Declared ineligible to participate in its federally funded Project,
  - e. Voluntarily excluded from participation in its federally funded Project, or
  - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

### **Certification**

Contractor: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

### Federal Certifications

#### CERTIFICATION AND RESTRICTIONS ON LOBBYING

---

I, \_\_\_\_\_ hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that:  
(Name of Bidder/Company Name)

- 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, and 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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the 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 agreements) 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 31 U.S.C. § 1352. 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.

Name of Bidder/Company Name \_\_\_\_\_

Type or print name \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_

NDDOT CONTRACT No. 38231181

Closeout Requirements – Section 5310 – Elderly Persons and Persons with Disabilities

1. Must submit all 4 quarterly budget reports.
2. Must submit receipts/documentation for reimbursement as stated in Section 6. of this Contract.
3. Must submit ridership logs one quarter a year. This is subject to change if more monitoring is required.



## Risk Management Appendix

### **Routine\* Transit 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 **\$500,000 per person and \$2,000,000 per occurrence**. The minimum limits of liability required of the State are **\$500,000 per person and \$2,000,000 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, the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State 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 the 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 \$500,000 per person and \$2,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

\*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007  
Revised 07-23



**Certificate Of Completion**

Envelope Id: B206B98416194DCBA1BD0845FCBA8A1D  
 Subject: Contract #38231181: Please DocuSign: Section 5310 Transit Grant Agreement  
 Contract Number: 38231181  
 PCN:  
 Source Envelope:  
 Document Pages: 28  
 Certificate Pages: 3  
 AutoNav: Enabled  
 EnvelopeId Stamping: Enabled  
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:  
 Sara Susie  
 608 E Boulevard Ave  
 Bismarck, ND 58505  
 ssusie@nd.gov  
 IP Address: 165.234.92.5

**Record Tracking**

Status: Original  
 9/5/2023 12:15:00 PM  
 Security Appliance Status: Connected  
 Storage Appliance Status: Connected

Holder: Sara Susie  
 ssusie@nd.gov  
 Pool: StateLocal  
 Pool: Carahsoft OBO North Dakota Department of  
 Transportation CLOUD

Location: DocuSign  
 Location: DocuSign

**Signer Events**

Becky Hanson  
 bhanson@nd.gov  
 Carahsoft OBO North Dakota Department of  
 Transportation CLOUD  
 Security Level: Email, Account Authentication  
 (None)

**Signature**

*Becky Hanson*

Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.252.245

**Timestamp**

Sent: 9/5/2023 12:24:51 PM  
 Viewed: 9/5/2023 12:29:18 PM  
 Signed: 9/5/2023 12:29:37 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Stacey Hanson  
 smhanson@nd.gov  
 Assistant Local Government Engineer  
 Carahsoft OBO North Dakota Department of  
 Transportation CLOUD  
 Security Level: Email, Account Authentication  
 (None), Authentication

*St*

Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.253.12

Sent: 9/5/2023 12:29:42 PM  
 Viewed: 9/5/2023 2:22:47 PM  
 Signed: 9/5/2023 2:22:50 PM

**Authentication Details**

SMS Auth:  
 Transaction: 4035adc1-d993-4f0f-93ae-70dbf9f41bbd  
 Result: passed  
 Vendor ID: TeleSign  
 Type: SMSAuth  
 Performed: 9/5/2023 2:22:35 PM  
 Phone: +1 701-527-8879

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Paul Benning  
 pbenning@nd.gov  
 Local Government Director  
 Security Level: Email, Account Authentication  
 (None), Authentication

*Paul Benning*

Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.253.12

Sent: 9/5/2023 2:22:59 PM  
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 Signed: 9/5/2023 3:21:57 PM

**Authentication Details**

**Signer Events****Signature****Timestamp****SMS Auth:**

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 Result: passed  
 Vendor ID: TeleSign  
 Type: SMSAuth  
 Performed: 9/5/2023 3:21:03 PM  
 Phone: +1 701-214-2502

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Shannon Sauer  
 ssauer@nd.gov

Security Level: Email, Account Authentication  
 (None), Authentication

SS

Signature Adoption: Pre-selected Style  
 Using IP Address: 165.234.253.12

Sent: 9/5/2023 3:22:04 PM  
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 Signed: 9/5/2023 4:59:35 PM

**Authentication Details****SMS Auth:**

Transaction: 2250efa8-bbf2-47c4-aab7-e09982fdb9da  
 Result: passed  
 Vendor ID: TeleSign  
 Type: SMSAuth  
 Performed: 9/5/2023 4:59:15 PM  
 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)

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Clint Morgenstern  
 cdmorgenstern@nd.gov

Security Level: Email, Account Authentication  
 (None), Authentication

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Chad Orn  
 corn@nd.gov

Security Level: Email, Account Authentication  
 (None), Authentication

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Laureen M. Martin  
 lmartin@nd.gov

Security Level: Email, Account Authentication  
 (None), Authentication

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
<b>Editor Delivery Events</b> Sara Susie ssusie@nd.gov Richland County Chairperson Carahsoft OBO North Dakota Department of Transportation CLOUD Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Status</b> <div style="border: 1px solid black; padding: 5px; text-align: center; font-weight: bold; font-size: 1.2em;">VIEWED</div> Using IP Address: 165.234.252.245	<b>Timestamp</b> Sent: 9/5/2023 12:15:32 PM Viewed: 9/5/2023 12:15:57 PM Completed: 9/5/2023 12:24:50 PM
<b>Agent Delivery Events</b> Julie Bommelman jbommelman@cityoffargo.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Status</b>	<b>Timestamp</b> Sent: 9/5/2023 4:59:43 PM Resent: 9/15/2023 9:13:32 AM Resent: 9/20/2023 11:55:07 AM Viewed: 9/22/2023 12:50:01 PM
<b>Intermediary Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b> Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Legal Admin dotlegaladmin@nd.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Status</b>	<b>Timestamp</b>
<b>Witness Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Notary Events</b>	<b>Signature</b>	<b>Timestamp</b>
<b>Envelope Summary Events</b> Envelope Sent Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated Envelope Updated	<b>Status</b> Hashed/Encrypted Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked Security Checked	<b>Timestamps</b> 9/5/2023 12:15:32 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:50 PM 9/5/2023 12:24:51 PM 9/5/2023 12:24:51 PM 9/5/2023 12:24:51 PM 9/5/2023 12:28:36 PM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>



37

City of Fargo  
PO Box 2083  
225 4th Street North  
Fargo, ND 58102  
Phone: 701.241.1333 | Fax: 701.476.4188  
[www.FargoND.gov](http://www.FargoND.gov)

TO: BOARD OF CITY COMMISSIONERS  
FROM: TROY HALL, WATER UTILITY DIRECTOR  
RE: CONTRACT FOR OSHA SAFTEY TRAINING - EX24003  
DATE: SEPTEMBER 28, 2023


The attached contract with Minnesota Municipal Utilities Association is for OSHA/DOT required safety training within the City of Fargo's Water Plant. This contract will service the Water Plant from October 2023 through December 31, 2024.

Suggested Motion:

Move to approve the contract for Minnesota Municipal Utilities Association.




## EXEMPT PURCHASE REQUEST FORM (EX)

Requested by:	Troy Hall	Department:	Water Treatment Plant
Date of Request:	9/28/23	Phone Number:	701-241-6741
E-mail:	thall@fargond.gov	Reference exemption table justification (pg 1) (n)	
Dept Head Signature:		Estimated Amount of Purchase:	\$34,150

## Product or Service description:

Required OSHA/DOT Safety Training and Regulatory Compliance for Water Treatment Plant staff. Minnesota Municipal Utilities Association's Safety Management Program contract would service the WTP from October 2023 through December 31, 2024.

This training has been included in the 2024 budget.

Vendor Name: Minnesota Municipal Utilities Association			
Address: 3131 Fernbrook Lane N.			
City: Plymouth	State: MN	Zip Code: 55447-5337	
Contact Person: Mike Willetts	Title: Director of Training & Safety		
Telephone: 602-802-8474	Email: mwilletts@mmua.org		
Purchasing Manager Approval:			
Exempt Purchase (EX) Number:	EX24003		



*To unify, support, and serve  
as a common voice for municipal utilities*

September 15, 2023

Dear Valued Member,

Thank you for your support and on-going participation in MMUA's Safety Management Program.

As mentioned in the letter we sent out earlier this month, we will be adjusting our fiscal year beginning in 2025; therefore, all agreements will be dated and in force from October 1, 2023, through December 31, 2024. Going forward, contracts will automatically renew annually on January 1 unless amended. We hope this will be a more convenient process in the future.

Included with this letter is the contract. Please sign and return it to Larry Pederson at MMUA with a copy of your certificate of insurance that meets the requirements as indicated in Part IV of the contract. Upon receipt of these items, we will send you the fully executed contract.

Also enclosed please find our Overview of Safety Management Tiers. If you are interested in adding days of service to your contract, please let us know at your earliest convenience.

If you have questions, please contact me at 612-802-8474.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Willetts".

Mike Willetts  
Director of Training and Safety  
Cell: 612-802-8474  
mwilletts@mmua.org



SERVICES AGREEMENT

Date: September 15, 2023

Contract No. 132-2024

**Safety Management Services**

This Services Agreement (the "Agreement") is made as of October 1, 2023, between the Minnesota Municipal Utilities Association (MMUA) and the City of Fargo - Water Filtration, each a "Party" and collectively, the "Parties."

**PART I – Scope of Services**

**PART II – Duration / Amendment / Renewal**

**PART III – Obligations**

**PART IV – Standard Terms and Conditions**

The terms of this Agreement are hereby accepted by the Parties.

City of Fargo - Water Filtration

Minnesota Municipal Utilities Association

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title Chief Executive Officer

Date \_\_\_\_\_

Date \_\_\_\_\_

PO # \_\_\_\_\_



---

**PART I – SCOPE OF SERVICES**

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MMUA will provide/deliver for the term of this Agreement:

1. The services of a person engaged by MMUA, in the capacity of Regional Safety Coordinator.
2. The assigned Regional Safety Coordinator will:
  - a. Plan, organize and/or conduct regular monthly safety meetings at City of Fargo - Water Filtration.
  - b. Develop and maintain a standard safety management record keeping and reporting system at City of Fargo - Water Filtration.
  - c. The record system will include (check those covered by this Agreement):
    - Required OSHA records
    - Required DOT records
    - Required ADA records
    - Provide written program
    - Provide annual site inspection
    - Provide interpretation and clarification of OSHA rules.
  - d. Visit City of Fargo - Water Filtration unless circumstances lend a different location approved by City of Fargo - Water Filtration management (collectively, the "Services").
    - Tier service level: 2
    - Number of days per year: 24
3. The Services will be provided in the following city departments:
  - a. \_\_\_\_\_ # of employees \_\_\_\_\_
  - b. \_\_\_\_\_ # of employees \_\_\_\_\_
  - c. \_\_\_\_\_ # of employees \_\_\_\_\_
  - d. \_\_\_\_\_ # of employees \_\_\_\_\_
  - e. \_\_\_\_\_ # of employees \_\_\_\_\_

---

**PART II – TERM/ RENEWAL/ AMENDMENT**

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1. TERM/RENEWAL: This Agreement shall remain in force from October 1, 2023 until December 31, 2024. Thereafter, it shall continue automatically for successive twelve-month calendar year periods unless terminated by either Party providing written notice at least sixty (60) days in advance of the end of the then-current term.
2. AMENDMENT: This Agreement may be amended or modified upon the mutual agreement of both Parties but only if in writing, signed by the Parties, dated, and appended to this Agreement.

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**PART III – OBLIGATIONS**

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1. COMPENSATION: For the Services, City of Fargo - Water Filtration shall pay MMUA an annual fee of \$27,319.95 in the first year. Such compensation shall be due and payable according to the selected payment terms below.

Payment terms for the fee agreed to above shall be based on one of the following options (select one):

- Full 15-month payment (October 1, 2023 to December 31, 2024) (\$34,150.00), contract amount will be billed on an annual basis thereafter, consistent with the amount communicated by MMUA each September as described below.
- Annual payment (\$27,319.95)
- Quarterly payments (\$6,830.00 each)

For any term less than twelve (12) full calendar months, the fee shall be a portion of the annual fee, pro-rated based on the number of calendar months or partial calendar months in which the Services are provided as a percentage of twelve (12).

For years after the first year, the annual fee will be adjusted to reflect the cost of the Services for the coming twelve-month period. This fee will be set by the MMUA Board of Directors and provided to City of Fargo - Water Filtration in a written notice within 30 days of the Board's action.

2. OTHER CITY OBLIGATIONS:

- Provide workspace for Regional Safety Coordinator when on-site.
- Provide clerical support for Regional Safety Coordinator.
- Schedule participation of employees in regular safety meetings.
- Provide the required training for employees as recommended by the Regional Safety Coordinator.
- Provide to MMUA in a timely manner any information MMUA indicates is needed to perform the services hereunder. MMUA may rely on the accuracy of information provided by City of Fargo - Water Filtration and its representatives.
- Provide annual written evaluation of services of MMUA and its Regional Safety Coordinator.

3. MMUA OBLIGATIONS:

- Employ, assign, and supervise Regional Safety Coordinator.
- Plan, organize, and/or conduct regular monthly safety meetings on-site.
- Develop and maintain a standard safety management record keeping and reporting system on-site, including required OSHA records, required DOT records, required ADA records, and maintenance of safety manuals.
- Monitor safety training/certificate/licensure requirements, and recommend needed training.
- Prepare or oversee the preparation of required state and federal reports related to OSHA, DOT, and ADA compliance.
- Document safety meetings and training provided.
- Provide a standard interpretation of laws, rules, and regulations pertaining to safety management.

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**PART IV – STANDARD TERMS AND CONDITIONS**

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1. **INDEPENDENT CONTRACTOR:** In performing the Services, MMUA is an independent contractor and shall not be considered an employee, agent, partner, joint venturer, or representative of City of Fargo - Water Filtration for any purpose.
2. **STANDARD OF CARE:** City of Fargo - Water Filtration acknowledges that MMUA undertakes to provide the Services to City of Fargo - Water Filtration as a member of MMUA and, similarly to other members of MMUA, consistent with its nonprofit purpose and that in so doing, MMUA affords to City of Fargo - Water Filtration a convenience, cost savings, and efficiency otherwise not available to City of Fargo - Water Filtration from other service providers. City of Fargo - Water Filtration acknowledges that MMUA will exercise its best efforts to perform the Services in accordance with current rules and practices but also acknowledges that the ultimate responsibility for an interpretation of law lies with City of Fargo - Water Filtration and its attorney and that the application of such law and of the appropriate methods and practices also lies with City of Fargo - Water Filtration in the exercise of its best judgment with reasonable and due regard for the safety of its employees and other third persons. MMUA assumes no responsibility under this Agreement other than to render the Services in good faith. It shall not be responsible for any action of City of Fargo - Water Filtration, its agents, or employees.
3. **SCOPE AND SCHEDULE CHANGES:** The fees agreed to in Part III constitute MMUA's estimate of the effort and charges required to perform the Services. Any services not expressly set forth in this Agreement are excluded from the obligations of MMUA. If MMUA is delayed in performing the Services by any act of war, force majeure, or other circumstance beyond its control, then the schedule of performance shall be extended for the number of days as the occurrence delays performance, and the compensation limits under the Agreement shall be equitably adjusted, if necessary, to compensate MMUA for any additional costs due to the delay.
4. **BENEFICIARY.** The Services are solely for the benefit of City of Fargo - Water Filtration. Nothing contained in this Agreement shall create any duties, liabilities, or obligations on the part of MMUA toward any person other than City of Fargo - Water Filtration.
5. **FINANCING CHARGES FOR LATE PAYMENTS:** If City of Fargo - Water Filtration fails to pay undisputed invoiced amounts within thirty (30) days after delivery of invoice, additional charges shall become due and payable at a rate of 1½ percent per month (or the maximum percentage allowed by law, whichever is lower) on the unpaid amounts. All payments shall first be credited against any accrued interest. If City of Fargo - Water Filtration fails to pay invoiced amounts within sixty (60) days after delivery of invoice, MMUA in its sole discretion may suspend the Services without incurring any liability or waiving any right established hereunder or by law.
6. **WORK PRODUCT:** City of Fargo - Water Filtration shall preserve and protect MMUA's proprietary and copyright interests, rights, and privileges with respect to works of general application provided by MMUA to City of Fargo - Water Filtration. The Parties may use and duplicate materials developed by MMUA specifically for City of Fargo - Water Filtration pursuant to this Agreement without obligation of royalty or first seeking consent.
7. **INSURANCE:** Each Party shall procure and maintain at its own expense the following minimum insurance coverages to be in force for the duration of this Agreement:

- a. General Liability. Commercial General Liability Insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. Each Party shall endorse as additional insureds the other Party, its respective elected and appointed officials, employees, and agents, on its policy.
  - b. Automobile Liability. Business automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum combined single liability limit of \$1,000,000 per occurrence.
  - c. Professional (Errors and Omissions) Liability. Professional Liability Insurance for all claims a Party may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to this Agreement. Each Party shall carry the following minimum limits: \$1,000,000 per occurrence; \$2,000,000 annual aggregate. If such insurance is discontinued, extended reporting period/tail coverage must be obtained by the Party to fulfill this requirement.
  - d. Workers' Compensation. Each Party shall maintain Workers' Compensation insurance for all its respective employees in accordance with the statutory requirements of the State of Minnesota and/or the state(s) in which City of Fargo - Water Filtration is legally obligated to carry such insurance. Each Party shall also carry Employers' Liability Coverage with minimum limits as follows:
    - \$500,000 – Bodily Injury by Disease per employee
    - \$500,000 – Bodily Injury by Disease aggregate
    - \$500,000 – Bodily Injury by Accident
  - e. Additional Insurance Conditions.
    - i. Each Party shall deliver to the other Party a Certificate of Insurance as evidence that the above coverages are in full force and effect no later than the first day on which service is to commence or December 31, 2023, whichever comes later.
    - ii. The insurance requirements may be met through any combination of primary and umbrella/excess insurance. In that case, the other Party must be named as an additional insured on any umbrella/excess policy held by the other in fulfillment of this requirement.
    - iii. The policies held by each Party shall be primary insurance and non-contributory to any other valid and collectible insurance available with respect to any claim arising out of the Services.
8. MUTUAL INDEMNIFICATION: To the fullest extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, its respective employees, officials, and agents from and against all claims, actions, damages, losses, and expenses, including reasonable attorney fees and costs, arising out of the other Party's negligence, performance, or failure to perform its obligations under this Agreement. The indemnification obligation shall apply to subcontractor(s), or anyone directly or indirectly employed or hired by a Party, or anyone for whose acts the Party may be liable. The obligations in this section shall survive the completion or termination of this Agreement.

9. DISPUTE RESOLUTION: In the event that a dispute arises between the Parties as to the interpretation or performance of this Agreement, then upon written request of either Party, representatives with settlement authority for each Party shall meet and confer in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution methods. If the Parties are unable to resolve the dispute through these methods, either Party may commence an action in Hennepin County District Court.
10. ENTIRE AGREEMENT; HEADINGS: This Agreement constitutes the entire understanding and agreement of the Parties, and any and all prior agreements, oral discussions, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect. Headings are for convenience and are not a part of this Agreement.
11. CHOICE OF LAW: The laws of the state of Minnesota shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties.
12. ASSIGNMENT: This Agreement will inure to the benefit of the Parties hereto and shall be binding on them and their respective legal representatives, successors, and assigns. Provided, however, neither Party hereto may assign any of its rights herein to any person without the prior written consent of the other Party.
13. DRAFTING: The Parties agree that they participated equally in, and are jointly responsible for, the drafting of this Agreement. In the event of any dispute, any ambiguity in this Agreement shall not be construed against either Party.
14. COUNTERPARTS: This Agreement may be executed in counterpart copies by the Parties and each counterpart, when taken together with the other, shall be deemed one and the same executed Agreement.



Overview of Safety Management Tiers

	Tier 1 - Compliance/Mentorship	Tier 2 - Competency	Tier 3 - Comprehensive
<b>Options</b>	6 Service Days Per Year (Every Other Month)	1 - 3 Service Days Per Month	> 3 Service Days Per Month
<b>Time</b>			
<b>Included (as time allows)*</b>	1. Written Safety Manual Development and Maintenance - AWAIR - Bloodborne Pathogens - Confined Spaces Entry and Rescue - Employee Right to Know - Emergency Action Plan and Preparedness - Excavation and Trenching - Lockout/Tagout - Fall Protection - Personal Protective Equipment 2. Group Employee Training (in person or virtual) 3. Annual Safety Training Calendar 4. Standardized Safety Program Filing and File Management	1. Written Safety Manual Development and Maintenance - AWAIR - Bloodborne Pathogens - Confined Spaces Entry and Rescue - Employee Right to Know - Emergency Action Plan and Preparedness - Excavation and Trenching - Lockout/Tagout - Fall Protection - Personal Protective Equipment 2. Group Employee Training (in person or virtual) 3. CPR/AED/First Aid Training 4. Annual Safety Training Calendar 5. Standardized Safety Program Filing and File Management 6. Facility Safety Audit - Mock OSHA Inspection with Report 7. Worksite Safety Audit - Mock OSHA Inspection with Report 8. Worksite Training 9. Safety Grant Development and Support 10. Accident Investigation 11. OSHA Inspection Support Services 12. Limited Classic Training - Choose up to 5 options from MMUA's list of Classic Training Options	1. Written Safety Manual Development and Maintenance - AWAIR - Bloodborne Pathogens - Confined Spaces Entry and Rescue - Employee Right to Know - Emergency Action Plan and Preparedness - Excavation and Trenching - Lockout/Tagout - Fall Protection - Personal Protective Equipment 2. Group Employee Training (in person or virtual) 3. CPR/AED/First Aid Training 4. Annual Safety Training Calendar 5. Standardized Safety Program Filing and File Management 6. Facility Safety Audit - Mock OSHA Inspection with Report 7. Worksite Safety Audit - Mock OSHA Inspection with Report 8. Worksite Training 9. Safety Grant Development and Support 10. Accident Investigation 11. OSHA Inspection Support Services 12. Unlimited Classic Training - Choose an unlimited number of options from MMUA's list of Classic Training Options 13. Unlimited Technical Training - Choose an unlimited number of options from MMUA's list of Technical Training Options

\*Included offerings are subject to number of days contracted. MMUA's role as a safety partner does not guarantee compliance or competency.