

FARGO CITY COMMISSION AGENDA

Monday, June 9, 2025 – 5:00 P.M.

Executive Session at 4:30 p.m.

Roll Call.

PLEASE NOTE: The Board of City Commissioners will convene in the City Commission Chambers at 4:30 p.m. and retire into Executive Session in the Red River Room for purposes of discussing negotiation strategy, to provide negotiating instructions to the City's attorney or other negotiator regarding various and separate pending or potential contracts for the sale of land by the City located west of the landfill, said separate contracts being between the City and Galvanizers, Inc.; WMF Properties, LLC; Hazer Ventures, LLC; Scannell Properties, LLC; Thor Investments, LLC; and ARD Properties, LLC; as discussing such negotiations, strategy and pricing in an open meeting would have a negative fiscal effect on the bargaining position of the City of Fargo. An Executive Session for this matter is authorized pursuant to 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 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 FargoND.gov/CityCommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, May 27, 2025).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending Section 25-1506, of Article 25-15, of Chapter 25, of the Fargo Municipal Code Relating to Licenses - Classifications.
- 2. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending Section 18-0310 of Article 18-03 of Chapter 18 of the Fargo Municipal Code Relating to Public Ways and Places.
- 3. 1st reading of the following Ordinances:
 - a. Repealing and Re-Enacting Article 21-01 of Chapter 21 of the Fargo Municipal Code Relating to the International Building Code.
 - b. Repealing and Re-Enacting Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code Relating to the International Existing Building Code.
 - c. Repealing and Re-Enacting Chapter 21.3 of the Fargo Municipal Code Relating to the International Energy Conservation Code.
 - d. Repealing and Re-Enacting Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code Relating to Fire Protection and Prevention.

- e. Repealing and Re-Enacting Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code Relating to the International Fuel Gas Code.
 - f. Amending Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code Relating to the International Mechanical Code.
 - g. Repealing and Re-Enacting Article 31-01 of Chapter 31 of the Fargo Municipal Code Relating to the International Property Maintenance Code.
 - h. Repealing and Re-Enacting Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code Relating to the International Residential Code.
- 4. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 8-1425 of Article 8-14 of Chapter 8 of the Fargo Municipal Code Relating to Traffic Code; 1st reading, 5/27/25.
 - 5. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 1-0305 (C)(2) & (5) of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of Ordinance Violations; 1st reading, 5/27/25.
 - 6. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 12-0105(E), of Article 12-01, of Chapter 12, of the Fargo Municipal Code, Relating to Running At Large Prohibited - Habitually At Large; an Ordinance Amending Section 12-0117, of Article 12-01, of Chapter 12, of the Fargo Municipal Code, Relating to Potentially Dangerous and Dangerous Dogs; and an Ordinance Amending Section 1-0305, of Article 1-03, of Chapter 1, of the Fargo Municipal Code, Relating to Classification of Ordinance Violations; 1st reading, 5/27/25.
 - 7. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 25-1512, of Article 25-15, of Chapter 25, of The Fargo Municipal Code, Relating to Licenses - Termination, Suspension, Revocation, and Sanctions; 1st reading, 5/27/25.
 - 8. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 25-1507 (F) of Article 25-15 of Chapter 25 of the Fargo Municipal Code, Relating to Alcoholic Beverages; 1st reading, 5/27/25.
 - 9. 2nd reading, waive reading and final adoption of an Ordinance Amending Section 25-1512 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages; 1st reading, 5/27/25.
 - 10. Receive and file the Summons and Complaint relating to Sheilk Sheriff v. Andrew Payne, an individual and City of Fargo, a municipality.
 - 11. Direct the City Attorney's Office to make the necessary Ordinance/Home Rule Charter amendments to comport with recent State Law revisions.
 - 12. Site Authorizations for Games of Chance:
 - a. Fargo Angels Hockey at Radisson Blu.
 - b. ND Horse Park Foundation at The Boiler Room.
 - c. Sharehouse, Inc. at the Bismarck Tavern.
 - d. Sharehouse, Inc. at Rick's Bar and Grill.
 - e. Sharehouse, Inc. at the Round Up.
 - f. Sharehouse, Inc. at Woody's Bar.

13. Applications for Games of Chance:
 - a. North Dakota CPA Society Foundation for a raffle from 6/16/25 to 6/17/25.
 - b. Sharehouse Foundation for a raffle on 6/12/25.
 - c. Villa Nazareth d/b/a CHI Friendship for a raffle on 10/10/25.
14. Right of Way Use Agreement with Bison Gold Investments, LLC for 1141 18th Street North.
15. Non-Exclusive Right of Way Occupancy Agreements with Gateway Infrastructure, LLC and Ubiquity North Dakota, LLC.
16. Variance Acknowledgement and Liability Waiver with 3222 LLC for 3501 Main Avenue.
17. 2024 Capital Improvement Plan revisions.
18. Change Order No. 1 in the amount of \$175,950.75 for Project No. SR-25-B1.
19. Change Order No. 1 in the amount of \$147,262.21 for Project No. TM-25-A1.
20. Removal of Project No. TR-26-B0 from the 2026 Capital Improvement Plan.
21. Task Order No. 1 with Moore Engineering, Inc. in the amount of \$140,000.00 for Project No. MS-25-E0.
22. Create Improvement District No. BR-25-H and adopt Resolution of Necessity.
23. Contract and bond for Improvement District No. BR-25-A1.
24. Contract and bond for Improvement District No. BR-25-B3.
25. Contract and bond for Improvement District No. BR-25-G1.
26. Contract and bond for Improvement District No. PN-25-A1.
27. Contract and bond for Improvement District No. PR-25-F1.
28. Items from the FAHR Meeting:
 - a. Receive and file Sales Tax Revenue Update.
 - b. Utilization of the STOP Grant for the purchase and implementation of the Lethality Assessment Program (LAP).
 - c. Reallocation of unspent funds from Project No. WW1707 for a Solids and Dewatering Facility Plan which may include a Pilot Study.
29. Change Orders for Fire Station No. 5 Renovation Project (ITB24276):
 - a. No. 1 in the amount of \$4,540.00 (mechanical construction contract).
 - b. No. 3 in the amount of -\$1,386.40 (general construction contract).
 - c. No. 2 in the amount of \$675.63 (electrical construction contract).
30. Contract with Kilbourne Construction Management, LLC (SSP25163).
31. Lease with Option to Purchase Agreement with CapFirst Equipment Finance, Inc. (RFP25014).

32. Bid award to Compass Minerals America, Inc. for the 2025/2026 highway deicing salt contract (RFP25165).
33. Bid awards for the Public Works Admin Building Exterior Improvements, as presented (ITB25189).
34. Authorize staff to submit proposed Disadvantaged Business Enterprise (DBE) Goals for FY 2026-2028 to the Federal Transit Administration.
35. Amendment #1 to the State Contract #283 (Paratransit Software) with Via Mobility, LLC.
36. Transit Public Comment Process on Fare/Service Changes.
37. Public Transportation Agency Safety Plan Update.
38. MATBUS Transit Asset Management Plan.
39. Bid advertisement for Project No. WA2403 (Lead Service Line Replacement Phases 1 through 4).
40. Employer Acceptance Agreement adopted by North Dakota Rural Water Association to utilize an apprentice program for training Water Treatment Plant personnel.
41. Direct the City Attorney's Office to draft revisions to Article 16-09.
42. Easement (Temporary Construction Easement) with Fargo Public School District No. 1 for Project No. WA2502 (Water Tower Demolition).
43. Hazard Mitigation Grant Program Subgrant Agreement for PDM 2018 between the North Dakota Department of Emergency Services and the City of Fargo (Project No. WW1707).
44. Bills.

REGULAR AGENDA:

45. Recommendation for appointment of the Fire Chief.

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

46. **PUBLIC HEARING** – Permanent Route and Service Changes for LinkFM.
47. **PUBLIC HEARING** – Application filed by Bert's Truck Equipment of Moorhead, Inc. for a property tax exemption for property located at 2601 3rd Avenue North which the applicant will use for the manufacturing and assembly of snow plow trucks.
48. Construction Update.
49. Recommendation to approve the Request for Proposals for the Convention Center project.
50. Applications for Property Tax Exemptions for Improvements Made to Buildings:
 - a. Wade Savageau (5 years).
 - b. Barry and Kay Malme (5 years).
 - c. Preston Bolton (5 years).

51. Recommendations for appointments to the following Board and Commissions:
 - a. Special Assessment Commission.
 - b. Library Board.
 - c. Arts and Culture Commission.
52. Measles Update.
53. Liaison Commissioner Assignment Updates.
54. **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).**

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 web site at FargoND.gov/CityCommission.

CITY ATTORNEY
Nancy J. Morris

**OFFICE OF THE
CITY ATTORNEY**

SERKLAND LAW FIRM

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS

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

①

June 5, 2025

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

RE: Ordinance Amendment –FMC § 25-1506 – FA-Golf and E-Permits

Dear Mayor Mahoney and Commissioners,

At the City Commission meeting on May 27, 2025, a motion was made on behalf of the Auditor's Office to direct the City Attorney to revise ordinance 25-1506 so that FA-Golf liquor licenses are eligible to receive Class E-Permits. After coordination and input from the Auditor's Office, I am enclosing for your consideration an amendment to the Fargo Municipal Code § 25-1506 – Licenses—Termination, suspension, revocation, and sanctions.

Suggested Motion: I move to waive the receipt and filing of an ordinance amending Fargo Municipal Code § 25-1506 of Article 25-15 of Chapter 25, relating to Licenses—Termination, suspension, revocation, and sanctions, and that this be the first reading of the ordinance.

Sincerely,



William B. Wischer

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1
2 AN ORDINANCE AMENDING SECTION 25-1506, OF ARTICLE 25-15,
3 OF CHAPTER 25, OF THE FARGO MUNICIPAL CODE
RELATING TO LICENSES - CLASSIFICATIONS

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 the
7 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 said
9 home rule charter and any ordinances made pursuant thereto shall supersede state laws in
10 conflict therewith and shall be liberally construed for such purpose; and

11 WHEREAS, the Board of City Commissioners deems it necessary and appropriate
12 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 25-1506, of Article 25-15, of Chapter 25, of the Fargo Municipal Code, is amended
17 as follows:

18 25-1506. – Licenses – Classifications.

19 Licenses authorizing the sale at retail of alcoholic beverages within the city of Fargo shall
20 be divided into the following classes:

21 ***
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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1
2 H. Class E. - A "Class E" license, in the nature of a special permit, shall authorize the
3 holder of an existing "on-sale" license to engage in the sale of alcoholic beverages
4 (on-sale only) on such licensed premises as may be designated in the "Class E" license,
5 subject to the following restrictions and conditions:

- 6 1. A Class "E" license may be issued only to persons currently holding a Class
7 "AB", Class "ABH", "ABH-RZ", Class "A", Class "C", Class "F", Class "FA",
8 Class FA-GOLF, Class "G", Class "H", Class "I", Class "N", Class "W", Class
9 "FA-Entertainment", "RZ-V", VWB or Class "Z" license.

10 ***

11 L. Class FA-GOLF. A Class "FA-GOLF" license shall authorize the licensee to sell
12 "on-sale" only, subject to the following restrictions and conditions:

- 13 1. A Class "FA-GOLF" licensee may sell alcoholic beverages as the food and
14 beverage concessionaire at a golf course which also holds a restaurant license
15 or permit pursuant to the provisions of article 13-04 of the Fargo Municipal
16 Code and which derives a percentage (hereinafter stated) of its gross receipts
17 from the sale of prepared meals and not alcoholic beverages. A recipient of
18 "FA-GOLF" license must derive at least 25% of its gross receipts from the sale
19 of prepared meals and food products and not alcoholic beverages during the
20 months when full golf course operations are open. During the remaining months
21 of the year, said recipient must derive 50% or more of its gross receipts from
22 the sale of prepared meals and not alcoholic beverages. It is the intention of this
23 restriction that the purpose of a "FA-GOLF" license is to allow the sale of
alcoholic beverages as an adjunct to the operation of the golf course and
restaurant and not that of operating a full-time liquor establishment. Further,
such licensee must be located at and serve a golf course of at least nine (9) or
more holes. Said golf course must be USGA approved.
2. The Class "FA-GOLF" license shall authorize licensee to sell "on-sale" only
and no licensee hereunder may conduct any "off-sale" liquor sales.
3. A licensee hereunder, which must also operate a restaurant under the provisions
of this title, shall provide adequate off-street parking within the discretion of
and subject to the approval of the commission.

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4. A recipient of a license hereunder shall not be authorized to receive or be issued a live entertainment license as provided in section 25-1510.

5. A "restaurant" shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d'oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an "FA-GOLF" license is to allow the sale of alcoholic beverages as an adjunct to the operation of the golf course and restaurant and not that of operating a full-time liquor establishment. A recipient of an "FA-GOLF" license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.

~~6. A recipient of a license hereunder shall be allowed to serve alcoholic beverages only in areas which are specifically identified as the licensee's licensed premises. This shall not include, however, the parking lot or the golf course itself. Any service on the golf course itself shall be from one location or one mobile cart for a nine-hole golf course for which an "E" permit shall be obtained by licensee. An eighteen-hole golf course may have two locations or two mobile carts for which an "E" permit shall be obtained by licensee. The fee for an "E" permit as herein required is included in the annual fee and no additional charge will be made for the same. The licensee shall not be entitled to receive any other Class "E" license except for service on the golf course itself as aforesaid.~~

6. 7. A Class "FA-GOLF" license is only available to the food and beverage concessionaire of a golf course as defined hereinbefore. Notwithstanding the closing time as allowed by state law and city ordinance, a licensee hereunder must close at 1:00 o'clock a.m. The license shall be site specific and shall not be transferred in any manner provided, however, the license may be transferred to a successor food and beverage concessionaire of a golf course. Upon cessation or termination of the business, said license shall revert to the city.

ORDINANCE NO. _____

A person who violates any section within Fargo Municipal Code Article 25-15 unless otherwise identified shall be deemed to have committed an infraction and shall be punished as provided in Section 1-0301 of the Fargo Municipal Code, as may be amended from time to time.

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

Attest:

First Reading:
Second Reading and Final Passage:
Publication:

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ASSISTANT CITY ATTORNEYS

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②

June 5, 2025

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

RE: Amending Section 18-0310 of Article 18-03 of Chapter 18 of the Fargo Municipal Code relating to Public Ways and Places

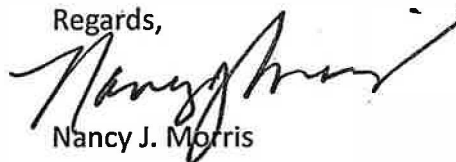
Mayor and Commissioners,

Please find attached for your consideration an amendment to Fargo Municipal Code § 18-0310, deleting paragraph number 2. Fargo Municipal Code § 10-0311 was repealed in its entirety on December 26, 2023. This cross reference was inadvertently not stricken simultaneous to the repeal. Therefore, I am presenting this amendment as a "clean up" matter and seek your approval to amend as stated.

SUGGESTED MOTION: I move to waive the receipt and filing of the enclosed ordinance one week prior to first reading and that this be the first reading, by title, of An Ordinance Amending section 18-0310 of Article 18-03 of Chapter 18 of the Fargo Municipal Code Relating to Public Ways and Places.

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

Regards,



Nancy J. Morris

Enclosure

NJM/lmw

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18-0310 OF ARTICLE 18-03
OF CHAPTER 18 OF THE FARGO MUNICIPAL CODE
RELATING TO PUBLIC WAYS AND PLACES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 18-0310 of Article 18-03 of Chapter 18 of the Fargo Municipal Code is hereby amended to read as follows:

18-0310. – Performers of sidewalk entertainment.

Performers of sidewalk entertainment may perform on any sidewalk or pedestrian way provided that such performers shall:

1. Not violate the prohibitions on disturbing, annoying and unnecessary noise as set forth in article 11-02 of the Fargo Municipal Code.

~~2. Not violate the prohibitions on panhandling as set forth in Fargo Municipal Code section 10-0311.~~

32. Not obstruct or cause to be obstructed pedestrian or vehicular traffic, including but not limited to not obstructing or causing to be obstructed sidewalks, doorways or other access areas. Entertainer must provide a minimum of 6 feet of pedestrian passageway. If a performer attracts a crowd sufficient to obstruct the public way, a police officer may

OFFICE OF THE CITY ATTORNEY
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disperse the crowd if the officer determines the crowd is resulted in an obstructed pathway. The officer may ask the performer to temporarily suspend a performance or to move to a less congested area.

~~43.~~ Not sell records, tapes or other products.

~~54.~~ Perform only at times between the hours of 9:00 a.m. and 10:00 p.m.

~~65.~~ Not consume nor be under the influence of alcoholic beverages or other controlled substances while performing, in compliance with the North Dakota laws and regulations.

~~76.~~ Not perform any nearer than 150 feet from another professional sidewalk entertainer who is also performing.

~~87.~~ Not perform at locations designated for a community event or festival, unless permitted to play at the community event or festival by the event or festival coordinator, pursuant to section 18-0313.

~~98.~~ Comply with all federal, state and local laws when performing within the city, including but not limited to, the panhandling ordinance and the noise ordinance.

~~109.~~ Not perform within fifty (50) feet of a pushcart or permitted outdoor eating area.

~~110.~~ Maintain the permitted area within a radius of ten feet free of trash and debris.

~~121.~~ Not create a fire hazard or use fire, knives, or dangerous items during a performance.

~~1312.~~ Not engage in the application of tattoos or body piercing.

~~1413.~~ Not include obscenity in a performance.

~~1514.~~ Not engage in harassment or coercion of passersby.

~~1615.~~ Not display or offer food or drink for sale.

~~1716.~~ Not display tables, lounge chairs, push carts or mobile display racks.

~~1817.~~ Not block access to an entrance to a building.

~~1918.~~ Not perform in a street, or not interfere with a motorist, either regarding the passage of a vehicle or the sight of its driver.

~~2019.~~ Make no effort to reserve a location for sidewalk entertainment; performance locations shall be on a daily, first-come, first-served basis. Sidewalk entertainers shall abandon the location at the end of the day, including the removal of all personal property by 10:00

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FARGO, NORTH DAKOTA

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p.m.

- ~~2120.~~ Not connect to electric outlets or power sources owned by the city or others without the express written permission to do so.
- ~~2221.~~ Not block or obstruct a curb cut.
- ~~2322.~~ Not perform on any bike path, without prior written approval from the city.
- ~~2423.~~ Not construct a stage or platform.
- ~~2524.~~ Not block a handicap parking spot.
- ~~2625.~~ Not leave any equipment, props, or other items unattended. Unattended items are subject to removal as abandoned property.

Section 2. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

3

ORDINANCE NO. _____

1
2
3 AN ORDINANCE REPEALING AND RE-ENACTING ARTICLE 21-01
4 OF CHAPTER 21 OF THE FARGO MUNICIPAL CODE
5 RELATING TO THE INTERNATIONAL BUILDING CODE

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

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

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

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

15 NOW, THEREFORE,

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

17 Section 1. Repeal.

18 Article 21-01 of Chapter 21 of the Fargo Municipal Code is hereby repealed in its
19 entirety.

20 Section 2. Re-enactment.

21 Article 21-01 of Chapter 21 of the Fargo Municipal Code is hereby re-enacted to read as
22 follows:
23

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ARTICLE 21-01
INTERNATIONAL BUILDING CODE -- ADOPTION – MODIFICATIONS

Section

21-0101

International Building Code adopted.

21-0102

Modification of International Building Code.

21-0101. International Building Code adopted.—The erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, and maintenance of buildings or structures in the city of Fargo, North Dakota, shall meet with the provisions of the rules and regulations of the 2024 Edition of the International Building Code of the International Code Council as the same are now established in said code, a copy of which is on file in the office of the city auditor for the city of Fargo, with the exception of the sections hereinafter set forth affecting local conditions in the city of Fargo, which sections shall be substituted for and in lieu of like sections or paragraphs in said International Building code; and the board of city commissioners of said city of Fargo, by this section hereby approves and adopts such rules and regulations, as so modified, for use and application in the city of Fargo, North Dakota, and within the extra-territorial zoning jurisdiction of the city.

21-0102. Modification of International Building Code.—The International Building Code as adopted in § 21-0101 is hereby changed and amended as follows:

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Building Code of ~~[NAME OF JURISDICTION]~~, the City of Fargo, hereinafter referred to as “this code.”

Section 101.4.3 is hereby amended to read as follows:

101.4.3 Plumbing. The provisions of the ~~International Plumbing Code North Dakota State Plumbing Code~~ shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the ~~International Private Sewage Disposal Code North Dakota State Plumbing Code~~ shall apply to private sewage disposal systems.

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Section 103.1 is hereby amended to read as follows:

1 **103.1 Creation of enforcement agency.** The ~~[INSERT NAME OF DEPARTMENT]~~
2 Inspections Department is hereby created and the official in charge thereof shall be known
3 as the building official. The function of the agency shall be the implementation,
4 administration and enforcement of the provisions of this code.

Section 104.8.1 is hereby amended to read as follows:

5 **104.8.1 Legal Defense.** Any suit or criminal complaint instituted against an officer or
6 employee because of an act or omission performed by that officer or employee in the lawful
7 discharge of duties and under the provisions of this code or other laws and ordinances
8 implemented through the enforcement of this code shall be afforded all the protection
9 provided by the city's insurance pool and immunities and defenses provided by other
10 applicable state and federal laws and shall be defended by legal representatives of the
11 jurisdiction until the final termination of the proceedings. The building official or any
12 subordinate shall not be liable for costs in any action, suit or proceeding that is instituted
13 in pursuance of the provisions of this code. This code shall not be construed to relieve
14 from or lessen the responsibility of any person owning, operating or controlling any
15 building or structure for any damages to persons or property caused by defects, nor shall
16 the code enforcement agency or the city be held as assuming any such liability by reason
17 of the inspection authorized by this code or any permits or certificates issued under this
18 code.

Section 105.2 is hereby amended to read as follows:

6 **105.2 Work exempt from permit.** Exemptions from permit requirements of this code shall
7 not be deemed to grant authorization for any work to be done in any manner in violation
8 of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits
9 shall not be required for the following:

Building:

* * * *

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2. Fences, ~~other than swimming pool barriers~~, not over 7 8.5 feet (~~2134 mm~~) high.

* * * *

6. Sidewalks and driveways ~~not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.~~

* * * *

11. Swings and other playground equipment ~~accessory to detached one and two family dwellings.~~

12. Window awnings in ~~Group R-3 and U occupancies~~, supported by an exterior wall that ~~do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.~~

* * * *

14. Reroofing.

Section 107.2.6.1 is hereby deleted in its entirety.

Section 107.3.1 is hereby amended to read as follows:

107.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, ~~as "Reviewed for Code Compliance."~~ One set of construction documents so reviewed shall be retained by the building official. ~~The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or a duly authorized representative.~~

Section 109.2 is hereby amended to read as follows:

109.2 Schedule of permit fees. Where a permit is required, a fee for each permit and plan review shall be paid as required, in accordance with the schedule as established by the applicable governing authority Board of City Commissioners. The plan review fees specified in this subsection are separate from, and in addition to, permit fees. When submittal documents are incomplete or changed so as to require additional plan review or

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when the project involves deferred submittal items as defined in Section 107.3.4.1, an additional plan review fee shall be charged in an amount not to exceed 10% of the building permit fee established in Section 109.2.

Section 305.2 is hereby amended to read as follows:

305.2 Group E, day care facilities. This group includes buildings and structures or portions thereof occupied by more than ~~five~~ twelve children older than 2 ½ years of age who receive educational, supervision or personal care services for fewer than 24 hours per day.

Section 305.2.2 is hereby amended to read as follows:

305.2.2 ~~Five~~ Twelve or fewer children. A facility having ~~five~~ twelve or fewer children receiving such day care shall be classified as part of the primary occupancy.

Section 305.2.3 is hereby amended to read as follows:

305.2.3 ~~Five~~ Twelve or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having ~~five~~ twelve or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.

Section 308.5 is hereby amended to read in part as follows:

308.5 Institutional Group I-4 day care facilities. Institutional Group I-4 occupancy shall include buildings and structures occupied by more than ~~five~~ twelve persons of any age who receive custodial care for fewer than 24 hours per day by persons other than parents or guardians; relatives by blood, marriage or adoption; and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following:

Adult day care

Child day care

Section 308.5.1 is hereby amended to read in part as follows:

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1 **308.5.1 Classification as a Group E.** A child day care facility that provides care for more
2 than ~~five~~ twelve but not more than 100 children 2 ½ years or less of age, where the rooms
3 in which the children are cared for are located on a level of exit discharge serving such
4 rooms and each of these child care rooms has an exit door directly to the exterior, shall be
5 classified as Group E.

6 **Section 308.5.3** is hereby amended to read as follows:

7 **308.5.3 ~~Five~~ Twelve or fewer persons receiving care.** A facility having ~~five~~ twelve or
8 fewer persons receiving custodial care shall be classified as part of the primary occupancy.

9 **Section 308.5.4** is hereby amended to read as follows:

10 **308.5.4 ~~Five~~ Twelve or fewer persons receiving care in a dwelling unit.** A facility such
11 as the above within a dwelling unit having ~~five~~ twelve or fewer persons receiving custodial
12 care shall be classified as a Group R-3 occupancy or shall comply with the International
13 Residential Code.

14 **Section 406.3.2.1** is hereby amended to read as follows:

15 **406.3.2.1 Dwelling unit separation.** The private garage shall be separated from the
16 dwelling unit and its attic area by means of gypsum board, not less than 1/2 inch (12.7
17 mm) in thickness, applied to the garage side. Garages beneath habitable rooms shall be
18 separated from all habitable rooms above by not less than a 5/8-inch (15.9 mm) Type X
19 gypsum board or equivalent and 1/2-inch (12.7 mm) gypsum board applied to structures
20 supporting the separation from habitable rooms above the garage. Door openings between
21 a private garage and the dwelling unit shall be equipped with either solid wood doors or
22 solid or honeycomb core steel doors not less than 13/8 inches (34.9 mm) in thickness, or
23 doors in compliance with Section 716.2.2.1 with a fire protection rating of not less than
20 minutes. ~~Doors shall be self-closing and self-latching.~~

Section 903.3.1 is hereby amended to read as follows:

903.3.1 Standards. Automatic sprinkler systems shall be designed with a 5 psi safety margin and installed in accordance with Section 903.3.1.1 unless otherwise permitted by Sections 903.3.1.2 and 903.3.1.3 and other chapters of this code, as applicable.

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Section 903.3.1.1.1 is hereby amended to read as follows:

903.3.1.1.1 Exempt locations. * * * *

* * * *

6. Elevator machine room and machinery spaces. Where sprinklers are not installed in elevator machine rooms, shunt trip required in accordance with IBC 3005.5 shall not be installed.

Section 903.3.5 is hereby amended to read as follows:

903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of this section and the International Plumbing Code. For connections to public waterworks systems, the water supply test used for design of fire protection systems shall be adjusted to account for seasonal and daily pressure fluctuations based on information from the water supply authority and as approved by the fire code official. Underground water supply piping shall be constructed of a material allowed by Fargo Municipal Code Chapter 16 and Chapter 22 and shall be allowed to extend into the building through the slab or wall not more than 24 inches.

Section 905.1 is hereby amended to add an exception to read as follows:

Exception: The installation of fire hose on standpipes may be omitted when approved by the local fire code official. Approved standpipe hose valves and connections shall be provided where required.

Section 907.2.11.1 is hereby amended to read as follows:

907.2.11.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

* * * *

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1 4. In sleeping units where the ceiling height of a room open to the hallway serving
2 the sleeping rooms exceeds that of the hallway by 24 inches or more, smoke alarms
3 shall be installed in the hallway and in the adjacent room.

4 **Section 907.2.11.2** is hereby amended to read as follows:

5 **907.2.11.2 Groups R-2, R-3, R-4 and I-1.** Single- or multiple station smoke alarms shall
6 be installed and maintained in Groups R-2, R-3, R-4 and I-1 regardless of occupant load at
7 all of the following locations:

8 * * * *

9 4. In dwelling units where the ceiling height of a room open to the hallway serving
10 the sleeping room exceeds that of the hallway by 24 inches or more, smoke alarms
11 shall be installed in the hallway and in the adjacent room.

12 **Section 1003.3.1** is hereby amended as follows:

13 **1003.3.1 Headroom.** * * * *

14 An approved barrier shall be provided where the vertical clearance above a circulation path
15 is less than 80 inches (2032 mm) high above the finished floor. ~~The leading edge~~ A portion
16 of such a barrier shall be located 27 inches (686 mm) maximum above the finished floor.

17 **Section 1009.8.1** is hereby amended to read as follows:

18 **1009.8.1 System requirements.** Two-way communication systems shall provide
19 communication between each required location and the fire command center or a central
20 control point location approved by the fire department. Where the central control point is
21 not a constantly attended location, the two-way communication system shall have timed,
22 automatic telephone dial-out capability that provides two-way communication with an
23 approved supervising station ~~or emergency services.~~ The two-way communication system
24 shall include both audible and visible signals. ~~Systems shall be listed in accordance with~~
25 ~~UL 2525 and installed in accordance with NFPA 72.~~

26 **Section 1011.1** exception is hereby amended to read as follows.

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Exceptions:

1. Within rooms or spaces used for assembly purposes, stepped aisles shall comply with Section 1030.
2. In B, F, M, S or U occupancies, a stairway that is private and not open to the public that serves an area of 750 square feet or less, shall have a maximum riser height of 8 inches, a minimum thread depth of 9 inches, a minimum width of 36 inches, and shall have at least one handrail that terminates at the top and bottom riser. All other requirements of section 1014 shall apply.

Section 1011.5.2 exceptions are hereby amended to read as follows:

Exceptions:

* * * *

3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies not required by Chapter 11 to be Accessible or Type A dwelling or sleeping units; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be ~~7 3/4~~ 8 inches (~~197~~ 203.2 mm); the minimum tread depth shall be ~~10~~ 9 inches (~~254~~ 228.6 mm); the minimum winder tread depth at the walkline shall be 10 inches (254 mm); and the minimum winder tread depth shall be 6 inches (152mm). A nosing projection not less than 3/4 inch (19.1mm) but not more than 1 1/4 inches (32mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279mm).

* * * *

6. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a maximum 8-inch riser height and minimum 9 tread depth.

Section 1015.2 is hereby amended to read as follows:

1015.2 Where required. Guards shall be located along open-sided walking surfaces, including mezzanines, equipment platforms, aisles, stairs, ramps and landings, that are located more than 30 inches (762 mm) ~~measured vertically to the floor or grade below at~~

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~~any point within 36 inches (914 mm) horizontally to the edge of the open side and at the perimeter of occupiable roofs above the floor or grade below or if within 36 inches (914 mm) horizontally to the edge of the open side, the vertical measurement to the floor or grade below is greater than 48 inches.~~ Guards shall be adequate in strength and attachment in accordance with section 1607.9.

Section 1104.4 exceptions are hereby amended to read as follows:

Exceptions:

1. An accessible route is not required to stories, mezzanines and occupied roofs that have an ~~aggregate~~ area of not more than 3,000 square feet (278.7 m²), or are in a building 2 stories or less above grade plane and are located above ~~and~~ or below accessible levels. This exception shall not apply to:

* * * *

Section 1202.1 is hereby amended to read as follows:

1202.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1202.5, or mechanical ventilation in accordance with the International Mechanical Code.

~~Dwelling units complying with the air leakage requirements of the International Energy Conservation Code or ASHRAE 90.1 shall be ventilated by mechanical means in accordance with Section 403 of the International Mechanical Code. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the International Mechanical Code.~~

Section 1206 is hereby deleted in its entirety.

Section 1403.6 is hereby deleted in its entirety.

Section 1403.7 is hereby deleted in its entirety.

Section 1601.1 is hereby amended to read as follows:

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1601.1 Scope. The provisions of this chapter shall govern the structural design of buildings, structures and portions thereof.

It shall not be the responsibility of the building official to determine engineering requirements of this code. Exclusive of the conventional light-frame wood construction provisions referenced in Section 2308, the method to resist loads as referenced in this chapter is the responsibility of a structural engineer or other qualified design professional.

Section 1610.1 exception is hereby amended to read as follows:

Exception: Foundation walls extending not more than 8 9 feet (~~2438 mm~~) below grade and laterally supported at the top by flexible diaphragms shall be permitted to be designed for active pressure.

Section 1804.4 is hereby deleted in its entirety and the following text enacted:

Section 1804.4 Site Grading. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection. Lots shall be graded to drain surface water away from foundation walls.

The procedure used to establish the final ground level adjacent to the foundation shall account for additional settlement of the backfill.

Section 1809.5 exception is hereby amended to read as follows:

Exception: Free-standing unheated buildings used as Group U or S occupancies for the storage of private or pleasure-type motor vehicles constructed in accordance with Sections 406.1 and 406.3 meeting all of the following conditions shall not be required to be protected:

1. Assigned to Risk Category I.
- ~~2. Area of 600 square feet (56 m²) or less for light frame construction or 400 square feet (37 m²) or less for other than light frame construction.~~
3. 2. Eave height of 10 20 feet (~~3048 mm~~) or less.

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4. 3. Building is not normally occupied.

Section 2901.1 is hereby amended to read as follows:

Section 2901.1 Scope. The provisions of this chapter and the ~~International Plumbing Code~~ North Dakota State Plumbing Code shall govern the design, construction, erection and installation of plumbing components, appliances, equipment and systems used in buildings and structures covered by this code. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Private sewage disposal systems shall conform to the ~~International Private Sewage Disposal Code~~ North Dakota State Plumbing Code. The International Fire Code, the International Property Maintenance Code and the ~~International Plumbing Code~~ North Dakota State Plumbing Code shall govern the use and maintenance of plumbing components, appliances, equipment and systems. The International Existing Building Code and the ~~International Plumbing Code~~ North Dakota State Plumbing Code shall govern the alteration, repair, relocation, replacement and addition of plumbing components, appliances, equipment and systems.

Section 2902.3 is hereby amended to add the following exception:

Section 2902.3 Employee and public toilet facilities. * * * *

Exception: Public toilet facilities shall not be required for:

* * * *

3. Unheated self-storage facilities that are not staffed.

Section 3. Penalty.

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

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Section 4. Effective Date.

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

3
4 (SEAL)

Timothy J. Mahoney, M.D., Mayor

5
6 Attest:

7
8 _____
9 Steven Sprague, City Auditor

0 First Reading:
1 Second Reading:
2 Final Passage:
3 Publication:

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ORDINANCE NO. _____

AN ORDINANCE REPEALING AND RE-ENACTING ARTICLE 21.2-01 OF
CHAPTER 21.2 OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL EXISTING BUILDING CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 2. Re-enactment.

Article 21.2-01 of Chapter 21.2 of the Fargo Municipal Code is hereby re-enacted to read as follows:

CHAPTER 21.2

INTERNATIONAL EXISTING BUILDING CODE

Article

21.2-01 International Existing Building Code--Adoption--Amendments, §§ 21.2-0101 to 21.2-0102

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ARTICLE 21.2-01

Section

21.2-0101 Adoption of International Existing Building Code by Reference

21.2-0102 Amendment to International Existing Building Code

21.2-0101. Adoption of International Existing Building Code by reference.--There is hereby adopted by reference by the board of city commissioners, for the purpose of prescribing regulations governing standards, relative to existing buildings in the city of Fargo, that certain code known as the International Existing Building Code recommended and compiled by the International Code Council, 2024 Edition, a copy of which is on file in the office of the city auditor, and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city.

21.2-0102. Amendment to International Existing Building Code.--The International Existing Building Code as adopted in Section 21.2-0101 is hereby changed and amended as follows:

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Existing Building Code of ~~[NAME OF JURISDICTION]~~ the City of Fargo, hereinafter referred to as "this code."

Section 103.1 is hereby amended to read as follows:

103.1 Creation of agency. The ~~(INSERT NAME OF DEPARTMENT)~~ City of Fargo Inspections Department is hereby created, and the official in charge thereof shall be known as the code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section 104.2.4.1 is hereby deleted in its entirety.

Section 104.8 is hereby amended to read as follows:

104.8 Liability. The code official, member of the Board of Appeals, officer or employee charged with the enforcement of this code, while acting for the

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jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered personally liable, either civilly or criminally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damage to persons or property caused by defects nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 105.2 is hereby amended to read as follows:

Section 105.2 Work exempt from permit. * * * *

Building:

* * * *

7. Reroofing.

8. Window replacement.

Section 109.3.3 is hereby deleted in its entirety.

Section 109.3.10 is hereby deleted in its entirety.

Section 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the other International Codes, such terms shall have the meanings ascribed to them in those codes. Wherever the term "International Plumbing Code" and/or the "International Private Sewage Disposal Code" is used it shall mean the North Dakota State Plumbing Code. Wherever the term "ICC Electrical Code" is used, it shall mean the National Electric Code together with the North Dakota State wiring Standards. Wherever the term "Flood Hazard Area" is used, it shall mean the Fargo Flood Plain Management ordinance together with the Flood Proofing Code of the City of Fargo North Dakota.

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Section 1401.2 is hereby amended to read as follows:

~~1401.2 Conformance. The building shall be safe for human occupancy as determined by the International Fire Code and the International Property Maintenance Code. Any repair, alteration or change of occupancy undertaken within the moved structure shall comply with the requirements of this code applicable to the work being performed. Any field fabricated elements shall comply with the requirements of the International Building Code or the International Residential Code, as applicable. Buildings to be moved within this jurisdiction shall comply with the provisions of this chapter. Buildings to be moved into this jurisdiction shall comply with the provisions of the International Codes for new buildings and shall be certified as to meet compliance by an agency approved by the code official.~~

Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 4. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
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ORDINANCE NO. _____

AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 21.3 OF THE
FARGO MUNICIPAL CODE RELATING TO THE
INTERNATIONAL ENERGY CONSERVATION CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Chapter 21.3 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 2. Re-enactment.

Chapter 21.3 of the Fargo Municipal Code is hereby re-enacted to read as follows:

CHAPTER 21.3

INTERNATIONAL ENERGY CONSERVATION CODE

Article

21.3-01

International Energy Conservation Code--Adoption--Amendments, §§
21.3.-0101 to 21.3-0102

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ARTICLE 21.3-01

Section

21.3-0101 Adoption of International Energy Conservation Code

21.3-0102 Amendment to International Energy Conservation Code

21.3-0101. Adoption of International Energy Conservation Code by Reference.--There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the city of Fargo, that certain code known as the International Energy Conservation Code recommended and compiled by the International Code Council, being particularly the 2024 Edition thereof, a copy of which is on file in the office of the City Auditor, and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city.

21.3-0102. Amendment to International Energy Conservation Code.--The International Energy Conservation Code as adopted in Section 21.3-0101 is hereby changed and amended as follows:

IECC – COMMERCIAL PROVISIONS

Section C101.1 is hereby amended to read as follows:

C101.1 Title. This code shall be known as the Energy Conservation Code of ~~(NAME OF JURISDICTION)~~ the city of Fargo and shall be cited as such. It is referred to herein as “this code”.

Section C103.1 is hereby amended to read as follows:

C103.1 Creation of enforcement agency. The ~~(INSERT NAME OF DEPARTMENT)~~ Inspections Department is hereby created and the official in charge thereof shall be known as the authority having jurisdiction (AHJ). The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section C105.6.2 is hereby amended to delete number 3 regarding compliance documentation.

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Section C405.12 is hereby deleted in its entirety.

Section C405.13 is hereby deleted in its entirety.

Section C405.15 is hereby deleted in its entirety.

Section C406.1.2 is hereby deleted in its entirety.

Section C406.3 is hereby deleted in its entirety.

Section C502.3.8 is hereby deleted in its entirety.

IECC – RESIDENTIAL PROVISIONS

Section R101.1 is hereby amended to read as follows:

R101.1 Title. This code shall be known as the Energy Conservation Code of ~~{NAME OF JURISDICTION}~~ the city of Fargo and shall be cited as such. It is referred to herein as “this code”.

Section R103.1 is hereby amended to read as follows:

R103.1 Creation of enforcement agency. The ~~{INSERT NAME OF DEPARTMENT}~~ Inspections Department is hereby created and the official in charge thereof shall be known as the authority having jurisdiction (AHJ). The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Table R402.1.2 is hereby amended to read as follows:

**TABLE R402.1.2
MAXIMUM ASSEMBLY U-FACTORS^a AND FENESTRATION REQUIREMENTS**

Maximum Assembly U-Factors ^a and Fenestration Requirements			
Climate Zone	****	6	****
Vertical Fenestration U-Factor	****	0.28 ^a 0.32	****

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****	****	****	****
Wood-Framed Wall <i>U</i> -Factor	****	0.045 <u>0.057</u>	****
****	****	****	****
Basement Wall <i>U</i> -Factor	****	0.050 <u>0.059</u>	****
Unheated Slab <i>R</i>-Value & Depth^e	****	0.66	****

(balance of table remains unchanged.)

Table R402.1.3 is hereby amended to read as follows:

TABLE R402.1.3
INSULATION MINIMUM *R*-VALUES AND FENSTRATION REQUIREMENTS
BY COMPONENT^a

Insulation Minimum <i>R</i> -Values and Fenestration Requirements by Component			
Climate Zone	****	6	****
Vertical Fenestration <i>U</i> -Factor	****	0.28 <u>0.32</u>	****
****	****	****	****
Wood-Framed Wall <i>R</i> -Value ^{e, h}	****	30 or 20 & 5 ei or 13 & 10 ei or 0 & 20 ei <u>21 or 13 & 5 ci</u>	****
****	****	****	****
Basement Wall <i>R</i> -Value ^{b, e}	****	15 ei or 19 or 13 & 5 ei <u>15 or 10 ci</u>	****
Unheated Slab <i>R</i>-Value & Depth^e	****	10ei, 3 ft	****

(balance of table remains unchanged.)

Table R402.5.1.1 is hereby amended to read as follows:

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TABLE R402.5.1.1
AIR BARRIER, AIR SEALING AND INSULATION INSTALLATION^a

Air Barrier, Air Sealing and Insulation Installation		
Component	Air Barrier Criteria	Insulation Installation Criteria
Basement, Crawl Space and Slab Foundations	****	<p style="text-align: center;">****</p> <p><u>Exterior foundation insulation shall be covered and flashed to protect it from exposure to light and weather to a minimum of 6 inches (152 mm) below grade and be covered by a minimum 6-mil polyethylene slip sheet over the entire surface.</u></p>

(balance of table remains unchanged.)

Section R403.6.3 is hereby deleted in its entirety.

Section R404.2 is hereby deleted in its entirety.

Section R404.3 is hereby deleted in its entirety.

Table R406.5 is hereby amended to read as follows:

TABLE R406.5
MAXIMUM ENERGY RATING SYSTEM

Maximum Energy Rating Index		
Climate Zone	Energy Rating Index Not Including OPP	Energy Rating Index Including OPP
****	****	****
6	53 <u>58</u>	43 <u>48</u>

(balance of table remains unchanged.)

Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction

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shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 4. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

First Reading:
Second Reading:
Final Passage:
Publication:

Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND RE-ENACTING SECTIONS 9-0701 AND 9-0704
OF ARTICLE 9-07 OF CHAPTER 9 OF THE FARGO MUNICIPAL CODE
RELATING TO FIRE PROTECTION AND PREVENTION

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code
are hereby repealed in their entirety.

Section 2. Re-enactment.

Sections 9-0701 and 9-0704 of Article 9-07 of Chapter 9 of the Fargo Municipal Code
are hereby re-enacted to read as follows:

9-0701. International Fire Code--Adoption.--There is hereby adopted by reference by the
board of city commissioners, for the purpose of prescribing regulations governing conditions
hazardous to life and property from fire or explosion, that certain code known as the International
Fire Code being particularly the 2024 Edition thereof and all subsequent revisions and additions
thereto; save and except such portions as are hereinafter deleted, modified, or amended by

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ordinance or in accordance with the provisions of section 9-0704, a copy of said code is on file in the office of the chief of the Fargo Fire Department and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city.

9-0704. Modification of International Fire Code.--The International Fire Code as adopted in Section 9-0701 is hereby changed and amended as follows:

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Fire Code of ~~[NAME OF JURISDICTION]~~ the city of Fargo, hereinafter referred to as "this code."

Section 103.1 is hereby amended to read as follows:

103.1 Creation of Agency. The ~~[INSERT NAME OF DEPARTMENT]~~ Fargo Fire Department is hereby created and the official in charge thereof shall be known as the fire code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section 104.8 is hereby amended to read as follows:

104.8 Liability. The fire code official, member of the board of appeals, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not be rendered personally liable, either civilly or criminally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act or omission performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be afforded all the protection provided by the city's insurance pool and immunities and defenses provided by other applicable state and federal laws and shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

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This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 105.5.1 is hereby deleted in its entirety.

Table 105.5.9 is hereby amended to read as follows:

Table 105.5.9 Permit Amounts for Compressed Gases.

Type of Gas	Amount (cubic feet at NTP)
Carbon dioxide used in carbon dioxide enrichment systems	875 (100-lb) <u>4375 (500 lbs.)</u>
Carbon dioxide used in insulated liquid carbon dioxide beverage dispensing applications	875 (100-lb) <u>4375 (500 lbs.)</u>
* * * *	* * * *

Section 105.5.14 is hereby deleted in its entirety.

Section 105.5.15 is hereby deleted in its entirety.

Section 105.5.18 Subsection 2 is hereby amended in part to read as follows:

2. To store, handle or use Class 1A liquids in excess of ~~5~~ 30 gallons ~~(19-L)~~, Class 1B liquids in excess of 60 gallons, Class 1C liquids in excess of 90 gallons in a building or ~~in excess of 10 gallons (37.9-L)~~ outside of a building, except that a permit is not required for the following:

* * * *

Section 105.5.18 Subsection 3 is hereby amended to read as follows:

3. To store, handle or use Class II or Class IIIA liquids in excess of ~~25~~ 120 gallons ~~(95-L)~~ in a building or in excess of ~~60~~ 120 gallons ~~(227-L)~~ outside a building, except for fuel oil used in connection with oil-burning equipment.

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1 **Section 105.5.19** is hereby deleted in its entirety.

2 **Section 105.5.25 Subsections 1, 5, and 6** of are hereby deleted in their entirety.

3 **Section 105.5.33** is hereby deleted in its entirety.

4 **Section 105.5.34** is hereby deleted in its entirety.

5 **Section 105.5.35** is hereby deleted in its entirety.

6 **Section 105.5.38** is hereby amended to read as follows:

7 **105.5.38 Open flames and candles.** An operational permit is required to use open flames
8 or candles in connection with assembly areas, dining areas of restaurants or drinking
9 establishments. For purposes of this provision, churches shall not be deemed to be
10 assembly areas and shall not be required to obtain a permit to utilize candles in religious
ceremonies.

11 **Section 105.5.40** is hereby deleted in its entirety.

12 **Section 105.5.42** is hereby deleted in its entirety

13 **Section 105.5.46** is hereby amended to read as follows:

14 **105.5.46 Refrigeration equipment.** An operational permit is required to operate a
15 mechanical refrigeration unit or system regulated by Chapter 6 containing more than 30
pounds of Group A3, B2, or B3 refrigerant.

16 **Section 105.5.47** is hereby amended to read as follows:

17 **105.5.47 Repair garages and motor fuel dispensing facilities.** An operational permit is
18 required for operation of repair garages.

19 **Section 105.5.51** is hereby amended to read as follows:

20 **Section 105.5.51 Temporary membrane structures, special event structures and tents.**
21 An operational permit is required to operate an air-supported temporary membrane
22
23

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structure, a temporary special event structure, or a tent having an area in excess of 400 square feet (37m²) for the purposes of assembly.

* * * *

Section 105.5.55 is hereby deleted in its entirety.

Section 105.5.56 is hereby deleted in its entirety

Section 105.5.57 is hereby deleted in its entirety.

Section 105.6.3 is hereby deleted in its entirety.

Section 105.6.6 is hereby deleted in its entirety.

Section 105.6.8 is hereby deleted in its entirety.

Section 105.6.11 is hereby deleted in its entirety.

Section 105.6.12 is hereby deleted in its entirety.

Section 105.6.13 is hereby deleted in its entirety.

Section 105.6.14 is hereby deleted in its entirety.

Section 105.6.16 is hereby amended to read as follows:

105.6.16 LP-gas. A construction permit is required for installation of or modification to an LP-gas system with a single container in excess of 2000 gallons water capacity or the aggregate capacity of containers is more than 4000 gallons in water capacity. Maintenance performed in accordance with this code is not considered to be a modification and does not require a permit.

Section 105.6.17 is hereby deleted in its entirety.

Section 105.6.18 is hereby deleted in its entirety.

Section 105.6.19 is hereby deleted in its entirety.

Section 105.6.20 is hereby deleted in its entirety.

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Section 105.6.21 is hereby deleted in its entirety.

Section 105.6.22 is hereby deleted in its entirety.

Section 105.6.24 is hereby deleted in its entirety.

Section 105.6.25 is hereby deleted in its entirety.

Section 106.4 is hereby amended as follows:

106.4 Retention of construction documents. One set of construction documents shall be retained by the fire code official for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws. ~~One set of approved construction documents shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.~~

Section 113.4 is hereby amended to read as follows:

113.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of an ~~[SPECIFY OFFENSE] infraction, punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [number of days], or both such fine and imprisonment.~~ Each day that a violation continues after due notice has been served shall be deemed a separate offense. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 203.4.2 is hereby amended to read as follows:

203.4.2 Group E, day care facilities. This group includes buildings and structures or portions thereof occupied by more than ~~five~~ twelve children older than 2 ½ years of age who receive educational, supervision or personal care services for fewer than 24 hours per day.

Section 203.4.2.2 is hereby amended to read as follows:

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203.4.2.2 ~~Five~~ Twelve or fewer children. A facility having ~~five~~ twelve or fewer children receiving such day care shall be classified as part of the primary occupancy.

Section 203.4.2.3 is hereby amended to read as follows:

203.4.2.3 ~~Five~~ Twelve or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having ~~five~~ twelve or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.

Section 203.7.4 is hereby amended to read as follows:

203.7.4 Institutional Group I-4, day care facilities. Institutional Group I-4 shall include buildings and structures occupied by more than ~~five~~ twelve persons of any age who receive custodial care for fewer than 24 hours per day by persons other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following:

Adult day care
Child day care

Section 203.7.4.1 is hereby amended to read as follows:

203.7.4.1 Classification as Group E. Every child day care facility that provides care for more than ~~five~~ twelve but not more than 100 children 2 ½ years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms have an exit door directly to the exterior, shall be classified as Group E.

Section 203.7.4.3 is hereby amended to read as follows:

203.7.4.3 ~~Five~~ Twelve or fewer persons receiving care. A facility having ~~five~~ twelve or fewer persons receiving custodial care shall be classified as part of the primary occupancy.

Section 203.7.4.4 is hereby amended to read as follows:

Section 203.7.4.4 ~~Five~~ Twelve or fewer persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit having ~~five~~ twelve or fewer persons

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receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.

Section 304.1.1 is hereby amended to read as follows:

304.1.1 Valet trash. Valet trash collection shall not be permitted ~~only where approved.~~
Trash and recycling materials shall not be placed in the corridor of Group R occupancies.
~~The owner and valet trash collection service provider shall comply with the rules and~~
~~limitations established by the jurisdiction.~~

Section 307.1.1 is hereby amended to read as follows:

307.1.1 Prohibited open burning. Open burning shall be prohibited when atmospheric conditions or local circumstances make such fires hazardous. All open burning, including recreational fires, are banned when the fire index is at the high, very high or extreme level, and any time during a red flag warning.

* * * *

Section 308.3 is hereby amended by adding the following subsection 1.4 to exception 1:

Exceptions:

1. Open-flame devices are allowed to be used in the following situations, provided approved precautions are taken to prevent ignition of a combustible material or injury to occupants:

* * * *

1.4. Open-flame devices for food warming.

Section 503.4 is hereby amended to read as follows:

503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in Sections 503.2.1 and 503.2.2 shall be maintained at all times. Enforcement of such prohibited parking may be accomplished in the same manner as regulations contained in Article 8-10 and in Section 9-0705 of the Fargo Municipal Code.

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Section 507.5.4 is hereby amended to read as follows:

507.5.4 Obstruction. Unobstructed access to fire hydrants shall be maintained at all times. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants. An approved hydrant marker shall be installed immediately adjacent to the rear of the hydrant.

Section 806.1.1 is hereby amended by adding the following exception:

Exceptions:

* * * *

3. For purposes of this provision, churches shall not be deemed public buildings and may utilize natural or resin bearing cut trees in the altar area of the church. No electric lighting is allowed on the tree.

Section 903.3.1 is hereby amended to read as follows:

903.3.1 Standards. Automatic sprinkler systems shall be designed with a 5 psi safety margin and installed in accordance with Sections 903.3.1.1, unless otherwise permitted by Sections 903.3.1.2 or 903.3.1.3 and other chapters of this code, as applicable.

Section 903.3.1.1.1 is hereby amended to read as follows:

903.3.1.1 Exempt locations. Automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas are protected with an automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion. Sprinklers shall not be omitted from a room merely because it is damp, of fire-resistant-rated construction or contains electrical equipment.

* * * *

6. Elevator machine room and machinery spaces. Where sprinklers are not installed in elevator machine rooms, shunt trip required in accordance with IBC 3005.5 shall not be installed.

Section 903.3.5 Water Supplies is hereby amended to read as follows:

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903.3.5 Water supplies. Water supplies for automatic sprinkler systems shall comply with this section and the standards referenced in Section 903.3.1. The potable water supply shall be protected against backflow in accordance with the requirements of this section and the International Plumbing Code. For connections to public waterworks systems, the water supply test used for design of fire protection systems shall be adjusted to account for seasonal and daily pressure fluctuations based on information from the water supply authority and as approved by the fire code official. Underground water supply piping shall be constructed of a material allowed by Chapters 16 and 22 of the Fargo Municipal Code and shall be allowed to extend into the building through the slab or wall not more than 24 inches.

Section 907.8.3 is hereby deleted in its entirety.

Section 1009.8.1 is hereby amended to read as follows:

1009.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not constantly attended, a two-way communication system shall have a timed automatic telephone dial-out capability that provides two-way communication with an approved supervising station ~~or emergency services~~. The two-way communication system shall include both audible and visible signals. Systems shall be listed in accordance with UL 2525 and installed in accordance with NFPA 72.

Section 1011.1 Exceptions are hereby amended to read as follows:

Exceptions:

1. Within rooms or spaces used for assembly purposes, stepped aisles shall comply with Section 1030.
2. A stairway complying with section 1011 except where in a B, F, M, S or U that serves an area of 750 sf or less, and is not open to the public, that has a maximum riser height of 8 inches and a minimum tread depth of 9 inches, has a minimum width of 36 inches and has at least one handrail that terminates at the top and bottom riser and otherwise complies with section 1014.

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Section 1011.5.2 exceptions are hereby amended to read as follows:

Exceptions:

* * * *

3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies not required by Chapter 11 to be Accessible or Type A dwelling or sleeping units; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be ~~7 ¾ inches (197 mm)~~ 8 inches; the minimum tread depth shall be ~~10 inches (254 mm)~~ 9 inches; and the minimum winder tread depth shall be 6 inches (152 mm). A nosing projection not less than ¾ inch (19.1 mm) but not more than 1 ¼ inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279 mm).

* * * *

6. Stairways used only to attend equipment or private stairways serving an occupant load of 10 or fewer persons and which are not accessible to the public are permitted to have a maximum 8-inch riser height and minimum 9 tread depth.

Section 1103.2 is hereby deleted in its entirety.

Section 1103.5.1 is hereby deleted in its entirety.

Section 1103.5.3 is hereby deleted in its entirety.

Section 1103.5.4 is hereby deleted in its entirety.

Section 2303.1 is hereby amended by adding the following Subsection 7:

Section 2303.1 Location of dispensing devices.

* * * *

7. On new installations, dispensing devices used to fill portable containers with home heating fuels shall not be located on the same island where Class I liquids are dispensed.

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Section 2306.1 is hereby amended to read as follows:

2306.1 General. Storage of flammable and combustible liquids shall be in accordance with Chapter 57 and Sections 2306.2 through 2306.6.3. See also Fargo Municipal Code, Section 9-0604.

Section 3107.2 is hereby amended to read as follows:

3107.2 General. Outdoor assembly events with planned attendance exceeding 1,000 people shall be in accordance with this section and Section 403.11. Temporary structures erected for outdoor assembly events shall comply with this chapter.

Section 3303.1 is hereby amended to read as follows:

3303.1 Program development and maintenance. The owner or owner's authorized agent shall be responsible for the development, implementation and maintenance of an approved, written site safety plan establishing a fire prevention program at the project site applicable throughout all phases of the construction, repair, alteration or demolition work. When required by the fire code official, ~~the~~ plan shall be submitted and approved before a building permit is issued. Any changes to the plan shall be submitted for approval.

Section 4104.2 is hereby amended to read as follows:

4104.2 Open-flame cooking devices. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or decks or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family dwellings.
2. Where buildings, balconies and decks are protected by an automatic sprinkler system.
3. LP-gas cooking devices having LP-gas container with a water capacity not greater than ~~2 1/2 pounds [nominal 1 pound (0.454 kg)]~~ 47.8 pounds [nominal 20 pounds (9 kg)] LP-gas capacity].

Section 5704.2.9.6.1 is hereby amended to read as follows:

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5704.2.9.6.1 Locations where above-ground tanks are prohibited. Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited within the limits established by law as set forth in the fire code adoption ordinance or other regulation adopted by the jurisdiction. Above-ground tanks, with a capacity exceeding 660 gallons in individual capacity or 1,320 gallons in aggregate capacity, outside of buildings shall be installed only in areas zoned industrial or limited industrial and shall be located at least 300 feet from all non-industrial zoned districts.

Exception: Above-ground tanks containing a class II liquid directly connected to a fuel burning appliance shall not exceed 1,320 gallons in all non-industrial zoned districts.

Above-ground tanks used for dispensing outside of buildings in all non-industrial zoned districts shall not exceed 660 gallons in individual capacity or 1,320 gallons in aggregate capacity and shall be listed and labeled as protected above-ground tanks in accordance with UL 2085.

Section 5704.2.13.1.4 is hereby amended to read as follows:

5704.2.13.1.4. Tanks abandoned in place. Tanks abandoned in place shall be as follows:

* * * *

7. Site assessment is required to determine if there are any spills, leaks, or discharge from the tank system. Records of site assessment shall be kept on the site of tank location.

Section 5705.3.7.5.1 exception is hereby amended to read as follows:

Exceptions:

1. Where natural ventilation can be shown to be effective for the materials used, dispensed or mixed.

2. When approved by the chief, continuous ventilation may be provided for one complete air change per hour, if supplemented with mechanical ventilation designed to provide for a complete air change six times per hour. The non-continuous ventilation equipment and any lighting fixtures shall be operated by the same switch located outside of the door.

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Section 5806.2 is hereby amended to read as follows:

5806.2 Limitations. Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established by law as set forth in the fire code adoption ordinance or other regulation adopted by the jurisdiction. Stationary containers shall be installed only in areas zoned industrial or limited industrial and shall be located at least 300 feet from all non-industrial zoning districts.

Section 6103.2.1.6 is hereby amended to read as follows:

6103.2.1.6 Use with self-contained torch assemblies. Portable LP-gas containers are allowed to be used to supply approved self-contained torch assemblies or similar appliances. Such containers shall not exceed a water capacity of ~~2-1/2 pounds (1 kg)~~ 12 pounds.

Section 6104.2 is hereby amended to read as follows:

6104.2 Maximum capacity within established limits. For the protection of heavily populated or congested areas, storage of liquefied petroleum gas shall not exceed an aggregate capacity in any one installation of 2,000 gallons (7570 L) within the limits established by law as set forth in the fire code adoption ordinance or other regulation adopted by the jurisdiction. Unprotected tanks with a water capacity exceeding 2,000 gallons shall be installed only in areas zoned industrial or limited industrial and shall be located at least 300 feet from all non-industrial zoning districts.

* * * *

Appendix B “Fire-Flow Requirements for Buildings” is hereby adopted and enacted in its entirety.

Appendix C “Fire Hydrant Locations and Distribution” is hereby adopted and enacted in its entirety.

Appendix D “Fire Apparatus Access Roads” is hereby adopted and enacted in its entirety.

Section D103.1 of Appendix D is hereby deleted in its entirety.

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Section 3. Penalty.

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

Section 4. Effective Date.

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

(SEAL)

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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AN ORDINANCE REPEALING AND RE-ENACTING ARTICLE 30.1-01 OF
CHAPTER 30.1 OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL FUEL GAS CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 2. Re-enactment.

Article 30.1-01 of Chapter 30.1 of the Fargo Municipal Code is hereby re-enacted to read as follows:

CHAPTER 30.1

INTERNATIONAL FUEL GAS CODE

Article
30.1-01

International Fuel Gas Code—Adoption—Amendments, §§ 30.1-0101 to
30.1-0102

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ARTICLE 30.1-01

INTERNATIONAL FUEL GAS CODE – ADOPTION

Section

30.1-0101 Adoption of International Fuel Gas Code by Reference

30.1-0102 Amendment to International Fuel Gas Code

30.1-0101. Adoption of International Fuel Gas Code by Reference.—There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the City of Fargo, that certain code known as the International Fuel Gas Code sponsored by the International Code Council, being particularly the 2024 Edition thereof, a copy of which is on file in the office of the City Auditor, and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city.

30.1-0102. Amendment to International Fuel Gas Code.—The International Fuel Gas Code as adopted in Section 30.1-0101 is hereby changed and amended as follows:

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Fuel Gas Code of [NAME OF JURISDICTION] the City of Fargo, hereinafter referred to as “this code.”

Section 104.8 is hereby amended to read as follows:

104.8 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered personally liable, either civilly or criminally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of any act or omission in the discharge of official duties. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damage to persons or property caused by defects nor shall the code enforcement agency or the city be held as

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assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 108.2 is hereby amended to read as follows:

108.2 Schedule of permit fees. Where work requires a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the ~~applicable governing authority~~ City of Fargo Board of City Commissioners.

Section 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Mechanical code or ~~International~~ North Dakota State Plumbing Code, such terms shall have meanings ascribed to them as in those codes.

Section 304.6.1 is hereby amended to read as follows:

304.6.1 Two-permanent-openings method. * * * *

Where directly communicating with the outdoors, or where communicating with the outdoors through vertical ducts, each opening shall have a minimum free area of 1 square inch per 4,000 Btu/h (550 mm² /kW) of total input rating of all appliances in the enclosure ~~[see Figures 304.6.1(1) and 304.6.1(2)].~~

* * * *

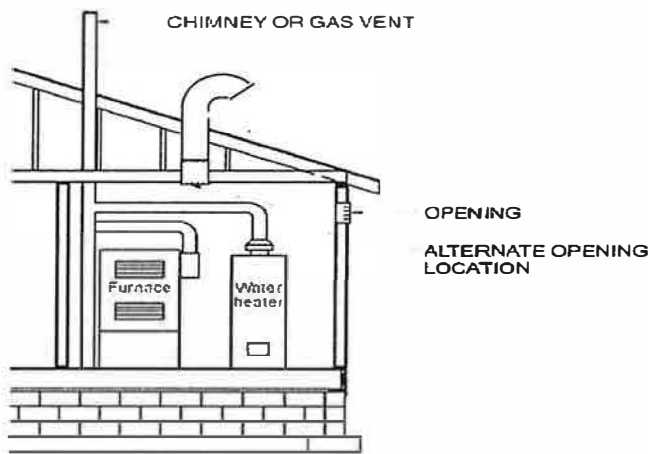
Figure 304.6.1(1) is hereby deleted in its entirety.

Figure 304.6.1(2) is hereby deleted in its entirety.

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Figure 304.6.2 is hereby amended as shown below:



Section 304.6.2 is hereby amended to read as follows:

304.6.2 One-permanent-opening method. One permanent opening, commencing within 12 inches (305 mm) of the top of the enclosure, shall be provided. The appliance shall have clearances of not less than 1 inch (25 mm) from the sides and back and 6 inches (152 mm) from the front of the appliance. The opening shall directly communicate with the outdoors, or through a vertical or horizontal duct, to the outdoors ~~or spaces that freely communicate with the outdoors (see Figure 304.6.2)~~ and shall have a minimum free area of 1 square inch per 3,000 Btu/h (734 mm² /kW) of the total input rating of all appliances located in the enclosure and not less than the sum of the areas of all vent connectors in the space.

Section 304.11 is hereby amended to read as follows:

304.11 Combustion air ducts. Combustion air ducts shall comply with all of the following:

* * * *

5. Ducts shall not be screened where terminating terminate in an attic space.

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* * * *

Section 406.4 is hereby amended to read as follows:

406.4 Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record or indicate a pressure loss caused by leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. ~~Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure.~~ Dial gauges used to measure test pressures shall be performed with gauges of 2-psi incrimination or less and have a range not exceeding 100 psi unless otherwise approved.

Section 406.4.1 is hereby amended to read as follows:

406.4.1 Test pressure. The test pressure to be used shall be not less than 1 ½ times the proposed maximum working pressure, but not less than ~~3 psig (20 kPa gauge); 25 psig irrespective of design pressure.~~ Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

Section 408.2 is hereby amended to read as follows:

408.2 Drips. Where wet gas exists, a drip shall be provided at any point in the line of pipe where condensate could collect. ~~A drip shall be provided at the outlet of the meter and shall be installed so as to constitute a trap wherein an accumulation of condensate will shut off the flow of gas before the condensate will run back into the meter.~~

Section 411.2 is hereby amended to read as follows:

411.2 Manufactured home connections. Manufactured homes shall be connected to the distribution piping system by ~~one of the following materials:~~

- ~~1. Metallic pipe in accordance with Section 403.3.~~
- ~~2. Metallic tubing in accordance with Section 403.4.~~
3. Listed and labeled connectors in compliance with ANSI Z21.75/CSA 6.27 and installed in accordance with the manufacturer's instructions.

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Section 501.12 is hereby amended to read as follows:

501.12 Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C315 or equivalent when each appliance connected into the masonry chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with the International Building Code.
2. Listed chimney-lining systems complying with UL 1777.
3. Other approved materials that will resist, without cracking, softening or corrosion, flue gases and condensate at temperatures up to 1,800°F (982°C).

Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 4. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(S E A L)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 30-0106 OF ARTICLE 30-01
OF CHAPTER 30 OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL MECHANICAL CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 2. Re-enactment.

Section 30-0106 of Article 30-01 of Chapter 30 of the Fargo Municipal Code is hereby re-enacted to read as follows:

30-0106. Standards adopted.--The following standards are hereby adopted for all heating, air conditioning and other gas, oil, or coal consuming appliances:

- A. All heating, air conditioning, or other gas, oil, or coal consuming appliances for either domestic or commercial use installed in the city of Fargo shall bear a seal of approval from the American Gas Association, American Standards Association, Underwriters Laboratories, or other nationally recognized testing laboratory.

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- B. The International Mechanical Code, sponsored by the International Code Council, 2024 Edition, is hereby adopted as the mechanical code for the city of Fargo from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city, with the following amendments:

Section 101.1 is hereby amended to read as follows:

101.1 Title. These regulations shall be known as the Mechanical Code of ~~[NAME OF JURISDICTION]~~, the City of Fargo, hereinafter referred to as "this code."

Section 103.1 is hereby amended to read as follows:

103.1 Creation of agency. The ~~[NAME OF DEPARTMENT]~~ City of Fargo Inspections Department is hereby created and the official in charge thereof shall be known as the code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section 104.8 is hereby amended to read as follows:

104.8 Liability. The code official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered personally liable, either civilly or criminally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of an act or by reason of any an act or omission in the discharge of official duties. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section 108.2 is hereby amended to read as follows:

108.2 Schedule of permit fees. Where work requires a permit, a fee for each permit and mechanical work shall be paid as required, in accordance with the schedule as established by the ~~applicable governing authority~~ City of Fargo Board of City Commissioners.

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Section 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Fuel Gas Code or ~~International~~ North Dakota State Plumbing Code, such terms shall have meanings ascribed to them as in those codes.

Section 307.2.2 is hereby amended to read as follows:

307.2.2 Drain pipe materials and sizes. Components of the condensate disposal system shall be ABS, cast iron, copper and copper alloy, CPVC, cross-linked polyethylene, galvanized steel, PE-RT, polyethylene, polypropylene, PVC or PVDF pipe or tubing. Components shall be selected for the pressure and temperature rating of the installation. Joints and connections shall be made in accordance with the applicable provisions of ~~Chapter 7 of the International North Dakota State~~ Plumbing Code relative to the material type. Condensate waste and drain line size shall be not less than 3 /4-inch pipe size and shall not decrease in size from the drain pan connection to the place of condensate disposal. Where the drain pipes from more than one unit are manifolded together for condensate drainage, the pipe or tubing shall be sized in accordance with Table 307.2.2.

Section 701.3 is hereby added to read as follows:

701.3 Attic space. Attic space shall not be used for combustion air.

Section 908.5 is hereby amended to read as follows:

908.5 Water supply. Cooling towers, evaporative coolers and fluid coolers shall be provided with an approved water supply, sized for peak demand. The quality of water shall be provided in accordance with the equipment manufacturer's recommendations. The piping system and protection of the potable water supply system shall be installed as required by the ~~International~~ North Dakota State Plumbing Code.

Section 1008.2 is hereby amended to read as follows:

1008.2 Discharge. Blowoff valves shall discharge to a safe place of disposal. Where discharging to the drainage system, the installation shall conform to the ~~International~~ North Dakota State Plumbing Code.

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Section 1208.1 is hereby amended to read as follows:

1208.1 General. New ~~Hy~~hydronic piping systems shall be isolated and tested hydrostatically at ~~one and one-half times the maximum system design pressure, but not~~ no less than 100 psi (689 kPa). The duration of each test shall be not less than 15 minutes.

Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 4. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
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ORDINANCE NO. _____

AN ORDINANCE REPEALING AND RE-ENACTING ARTICLE 31-01
OF CHAPTER 31 OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Article 31-01 of Chapter 31 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 2. Re-enactment.

Article 31-01 of Chapter 31 of the Fargo Municipal Code is hereby re-enacted to read as follows:

ARTICLE 31-01

ADOPTION OF INTERNATIONAL PROPERTY MAINTENANCE CODE

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Section

31-0101 Adoption of International Property Maintenance Code by Reference

31-0102 Amendment to International Property Maintenance Code

31-0101. Adoption of International Property Maintenance Code by Reference.--
There is hereby adopted by reference by the board of city commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the city of Fargo, that certain code known as the International Property Maintenance Code recommended and compiled by the International Code Council, being particularly the 2024 Edition thereof, a copy of which is on file in the office of the city auditor, and the same is hereby adopted and incorporated as if fully set forth herein, and from the provisions thereof shall be controlling within the limits of the city and within the extra-territorial zoning jurisdiction of the city.

31-0102. Amendment to International Property Maintenance Code.--The International Property Maintenance Code as adopted in §31-0101 is hereby changed and amended as follows:

Section [A] 101.1 is hereby amended to read as follows:

[A] 101.1 Title. These regulations shall be known as the Property Maintenance Code of ~~[NAME OF JURISDICTION]~~ the city of Fargo, hereinafter referred to as "this code."

Section [A] 102.3 is hereby amended to read as follows:

[A] 102.3 Application to other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of ~~the International Building Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, International Plumbing Code and NFPA-70~~ all applicable ordinances adopted by the city of Fargo. ~~Nothing in this code shall be construed to cancel, modify or set aside any provision of the International Zoning Code.~~

Section [A] 103.1 is hereby amended to read as follows:

[A] 103.1 Creation of agency. The ~~[INSERT NAME OF DEPARTMENT]~~ city of Fargo Inspections Department is hereby created and the official in charge thereof shall be known

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as the code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code

1 **Section [A] 105.7** is hereby amended to read as follows:

2 **[A] 105.7 Liability.** The building official, member of the board of appeals or employee
3 charged with the enforcement of this code, while acting for the jurisdiction in good faith
4 and without malice in the discharge of the duties required by this code or other pertinent
5 law or ordinance, shall not thereby be rendered personally liable, either civilly or
6 criminally, and is hereby relieved from personal liability for any damage accruing to
persons or property as a result of any act or by reason of an act or omission in the discharge
of official duties.

7 This code shall not be construed to relieve from or lessen the responsibility of any person
8 owning, operating, or controlling any building or structure for any damages to persons or
9 property caused by defects, nor shall the code enforcement agency or the city be held as
10 assuming any such liability by reason of the inspection authorized by this code or any
11 permits or certificates issued under this code.

12 **Section 105.9** is hereby enacted to read as follows:

13 **105.9 Certificate of Occupancy for Rental.** For any property that has dwelling units or
14 sleeping units occupied by anyone other than the owner or their family members and
15 regardless if rent, services, or other means of payment are collected or not, a secondary
16 Certificate of Occupancy shall be issued showing compliance with this code and any other
17 codes and ordinances adopted by the city of Fargo. If the property title is transferred to
18 another person or entity, the current or previous secondary Certificate of Occupancy shall
19 be void and a new secondary Certificate of Occupancy shall be obtained.

20 **Section 105.9.1** is hereby enacted to read as follows:

21 **105.9 Certificate issued.** After the building official inspects the building or structure and
22 does not find violations of the provisions of this code or other laws that are enforced by the
23 department, the building official shall issue a certificate of occupancy containing the
following:

- 24 1. The address of the structure.
- 25 2. The name and address of the owner or the owner's authorized agent.

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3. A description of that portion of the structure for which the certificate is issued.
4. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code.
5. The name of the building official.
6. The edition of the code under which the certificate was issued.
7. Where an automatic sprinkler system is provided and whether the sprinkler system is required.
8. Any special stipulations and conditions of the certificate of occupancy.

Section 105.9.2 is hereby enacted to read as follows:

105.9.2 Revocation. The building official is authorized to suspend or revoke a certificate of occupancy issued under the provisions of this code, in writing, wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of the provisions of this code or other ordinance of the jurisdiction.

Section 111.1 exceptions are hereby amended to read as follows:

111.1 General. * * * *

* * * *

3. Boarding the building up for future repair shall not extend beyond one year, unless approved by the building official.
4. Upon completion of demolition, sufficient filling and grading shall be done to bring the area of demolition up to the same level as the existing yard. Frozen fill is not allowed.

Section 201.3 is hereby amended to read as follows:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, ~~International Plumbing Code~~, International Residential Code, ~~International Zoning Code~~

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or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes. Throughout this code, wherever reference is made to the International Plumbing Code, it shall be taken to mean the North Dakota State Plumbing Code and ND Admin. Code Section 62-03.1-01. Throughout this code, wherever reference is made to the NFPA 70, it shall be taken to mean the National Electric Code and Chapter 43-09 of the North Dakota State Wiring Standards.

Section 202 is hereby amended to add the following definitions:

MOTORIZED VEHICLE. An object used for transporting people or goods on land under its own power such as a car, truck, or similar.

NON-MOTORIZED VEHICLE. An object used for transporting people or goods on land using an external source of power such as a trailer or similar.

Section 302.4 is hereby amended to read as follows:

302.4 Weeds. Premises and exterior property shall be maintained free from weeds or plant growth in excess of ~~{JURISDICTION TO INSERT HEIGHT IN INCHES}~~ as provided by Article 11-08 of the Fargo Municipal Code. * * * *

Section 303.2.1 is hereby enacted to read as follows:

303.2.1 Fence or barrier height and clearances. Barrier heights and clearances shall be in accordance with all the following:

1. The top of the barrier shall be not less than 48 inches above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 4 feet measured horizontally from the outside of the pool or spa to the inside of the required barrier.
2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.
3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm)

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4. where measured on the side of the required barrier that faces away from the pool or spa.

5. Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).

Section 303.2.2 is hereby enacted to read as follows:

303.2.2 Openings. Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

Section 303.2.3 is hereby enacted to read as follows:

303.2.3 Solid barrier surfaces. Solid barriers that do not have openings shall not contain indentations or protrusions that form handholds and footholds, except for normal construction tolerances and tooled masonry joints.

Section 303.2.4 is hereby enacted to read as follows:

303.2.4 Mesh fence as a barrier. Mesh fences, other than chain link fences in accordance with Section 303.2.7, shall be installed in accordance with the manufacturer's instructions and shall comply with the following:

1. The bottom of the mesh fence shall be not more than 1 inch (25 mm) above the deck or installed surface or grade.
2. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not permit the fence to be lifted more than 4 inches (102 mm) from grade or decking.
3. The fence shall be designed and constructed so that it does not allow passage of a 4-inch (102 mm) sphere under any mesh panel. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not be more than 4 inches (102 mm) from grade or decking.

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- 1 4. An attachment device shall attach each barrier section at a height not lower than 45
2 inches (1143 mm) above grade. Common attachment devices include, but are not
3 limited to, devices that provide the security equal to or greater than that of a hook-and-
4 eye-type latch incorporating a spring-actuated retaining lever such as a safety gate
5 hook.
- 6 5. Where a hinged gate is used with a mesh fence, the gate shall comply with Section
7 303.2.10.
- 8 6. Patio deck sleeves such as vertical post receptacles that are placed inside the patio
9 surface shall be of a nonconductive material.
- 10 7. Mesh fences shall not be installed on top of on-ground residential pools.

11 Section 303.2.4.1 is hereby enacted to read as follows:

12 303.2.4.1 Setback for mesh fences. The inside of a mesh fence shall be not closer than
13 48 inches (1219 mm) to the nearest edge of the water of a pool or spa.

14 Section 303.2.5 is hereby enacted to read as follows:

15 303.2.5 Closely spaced horizontal members. Where the barrier is composed of horizontal
16 and vertical members and the distance between the tops of the horizontal members is less
17 than 45 inches (1143 mm), the horizontal members shall be located on the pool or spa side
18 of the fence. Spacing between vertical members shall not exceed 1¾ inches (44 mm) in
19 width. Where there are decorative cutouts within vertical members, spacing within the
20 cutouts shall not exceed 1¾ inches (44 mm) in width.

21 Section 303.2.6 is hereby enacted to read as follows:

22 303.2.6 Widely spaced horizontal members. Where the barrier is composed of horizontal
23 and vertical members and the distance between the tops of the horizontal members is 45
24 inches (1143 mm) or more, spacing between vertical members shall not exceed 4 inches
25 (102 mm). Where there are decorative cutouts within vertical members, the interior width
26 of the cutouts shall not exceed 1¾ inches (44 mm).

27 Section 303.2.7 is hereby enacted to read as follows:

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1 **303.2.7 Chain link dimensions.** The maximum opening formed by a chain link fence shall
2 be not more than 2 inches (50.8 mm). Where the fence is provided with slats fastened at
3 the top and bottom which reduce the openings, such openings shall be not more than 2
4 inches (50.8 mm).

5 Section 303.2.8 is hereby enacted to read as follows:

6 **303.2.8 Diagonal members.** Where the barrier is composed of diagonal members, the
7 maximum opening formed by the diagonal members shall be not more than 1¾ inches (44
8 mm). The angle of diagonal members shall be not greater than 45 degrees (0.79 rad) from
9 vertical.

10 Section 303.2.9 is hereby enacted to read as follows:

11 **303.2.9 Clear zone.** Where equipment, including pool equipment such as pumps, filters
12 and heaters, is on the same lot as a pool or spa and such equipment is located outside of the
13 barrier protecting the pool or spa, such equipment shall be located not less than 36 inches
14 (914 mm) from the outside of the barrier.

15 Section 303.2.10 is hereby enacted to read as follows:

16 **303.2.10 Doors and gates.** Doors and gates in barriers shall comply with the requirements
17 of Sections 303.3.11 through 303.2.13 and shall be equipped to accommodate a locking
18 device. Pedestrian access doors and gates shall open outward away from the pool or spa,
19 shall be self-closing and shall have a self-latching device.

20 Section 303.2.11 is hereby enacted to read as follows:

21 **303.2.11 Utility or service doors and gates.** Doors and gates not intended for pedestrian
22 use, such as utility or service doors and gates, shall remain locked when not in use.

23 Section 303.2.12 is hereby enacted to read as follows:

24 **303.2.12 Double or multiple doors and gates.** Double doors and gates or multiple doors
25 and gates shall have not fewer than one leaf secured in place and the adjacent leaf shall be
26 secured with a self-latching device.

27 Section 303.2.13 is hereby enacted to read as follows:

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303.2.13 Latch release. For doors and gates in barriers, the door and gate latch release mechanisms shall be in accordance with the following:

1. Where door and gate latch release mechanisms are accessed from the outside of the barrier and are not of the self-locking type, such mechanism shall be located above the finished floor or ground surface at residential pools and spas, not less 54 inches (1372 mm).
2. Where door and gate latch release mechanisms are of the self-locking type such as where the lock is operated by means of a key, an electronic opener or the entry of a combination into an integral combination lock, the lock operation control and the latch release mechanism shall be located above the finished floor or ground surface at residential pools and spas, at not greater than 54 inches (1372 mm).
3. Where the only latch release mechanism of a self-latching device for a gate is located on the pool and spa side of the barrier, the release mechanism shall be located at a point that is at least 3 inches (76 mm) below the top of the gate.

Section 303.2.14 is hereby enacted to read as follows:

303.2.14 Barriers adjacent to latch release mechanisms. Where a latch release mechanism is located on the inside of a barrier, openings in the door, gate and barrier within 18 inches (457 mm) of the latch shall not be greater than ½ inch (12.7 mm) in any dimension.

Section 303.2.15 is hereby enacted to read as follows:

303.2.15 Structure wall as a barrier. Where a wall of a dwelling or structure serves as part of the barrier and where windows having a sill height of less than 48 inches (1219 mm) above the indoor finished floor, doors and gates shall have an alarm that produces an audible warning when the window, door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017.

Exception: An approved means of protection, such as self-closing doors with self-latching devices, is provided. Such means of protection shall provide a degree of protection that is not less than the protection afforded by an alarm that produces an audible warning when the window, door or their screens are opened.

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Section 303.2.16 is hereby enacted to read as follows:

303.2.16 On-ground residential pool structure as a barrier. An on-ground residential pool wall structure or a barrier mounted on top of an on-ground residential pool wall structure shall serve as a barrier where all the following conditions are present:

1. Where only the pool wall serves as the barrier, the bottom of the wall is on grade, the top of the wall is not less than 48 inches (1219 mm) above grade for the entire perimeter of the pool, the wall complies with the requirements of Section 303.2 and the pool manufacturer allows the wall to serve as a barrier.
2. Where a barrier is mounted on top of the pool wall, the top of the barrier is not less than 48 inches (1219 mm) above grade for the entire perimeter of the pool, and the wall and the barrier on top of the wall comply with the requirements of Section 303.2.
3. Ladders or steps used as means of access to the pool are capable of being secured, locked or removed to prevent access except where the ladder or steps are surrounded by a barrier that meets the requirements of Section 303.
4. Openings created by the securing, locking or removal of ladders and steps do not allow the passage of a 4-inch (102 mm) diameter sphere.
5. Barriers that are mounted on top of on-ground residential pool walls are installed in accordance with the pool manufacturer's instructions.

Section 303.2.17 is hereby enacted to read as follows:

303.2.17 Natural barriers. In the case where the pool or spa area abuts the edge of a lake or other natural body of water, public access is not permitted or allowed along the shoreline, and required barriers extend to and beyond the water's edge not less than 18 inches (457 mm), a barrier is not required between the natural body of water shoreline and the pool or spa.

Section 303.2.18 is hereby enacted to read as follows:

303.2.18 Natural topography. Natural topography that prevents direct access to the pool or spa area shall include but not be limited to mountains and natural rock formations. A natural barrier approved by the governing body shall be acceptable provided that the degree

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of protection is not less than the protection afforded by the requirements of Sections 303.2 through 303.2.16.

Section 304.14 is hereby amended to read as follows:

304.14 Insect screens. During the period from [DATE] April 1 to [DATE] October 31 of each year, every door, window, and other outside opening required for ventilation of habitable rooms, for food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of minimum 16 mesh per inch (16 mesh per 25mm), every screen door used for insect control shall have a self-closing device in good working condition.

Section 307.1 is hereby amended to read as follows:

307.1 Handrails. Stairs having ~~more than~~ four or more risers shall have a handrail on one side of the stair.

Section 309.6 is hereby enacted to read as follows:

309.6 Pest elimination. Licensed contractor required for extermination of insects and vermin in rental properties.

Section 405 is hereby enacted to read as follows:

Section 405 HOME DAY CARE OCCUPANCY

Section 405.1 is hereby enacted to read as follows:

405.1 General. This section shall apply to a home day care operated within a dwelling. It is to include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians or relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for.

Section 405.2 is hereby enacted to read as follows:

405.2 DEFINITION

Section 405.2.1 is hereby enacted to read as follows:

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405.2.1 General. The following term shall, for the purposes of this appendix, have the meaning shown herein.

EXIT ACCESS. That portion of a means-of-egress system that leads from any occupied point in a building or structure to an exit.

Section 405.3 is hereby enacted to read as follows:

405.3 MEANS OF EGRESS

Section 405.3.1 is hereby enacted to read as follows:

405.3.1 Exits required. Two exits are required for home day care. Exits shall comply with Section R318.

Section 405.3.1.1 is hereby enacted to read as follows:

405.3.1.1 Exit access prohibited. An exit access from the area of day care operation shall not pass through bathrooms, bedrooms, closets, garages, fenced rear yards or similar areas.

Exception: An exit may discharge into a fenced yard if the gate or gates remain unlocked during day care hours. The gates may be locked if there is an area of refuge located within the fenced yard and more than 50 feet (15 240 mm) from the dwelling. The area of refuge shall be large enough to allow 5 square feet (0.5 m2) per occupant.

Section 405.3.1.2 is hereby enacted to read as follows:

405.3.1.2 Basements. If the basement of a dwelling is to be used in the day care operation, two exits are required from the basement regardless of the occupant load. One of the exits may pass through the dwelling and the other shall lead directly to the exterior of the dwelling. An emergency and escape window used as the second means of egress from a basement shall comply with Sections R319 and 405.3.1.1.

Section 405.3.1.3 is hereby enacted to read as follows:

405.3.1.3 Yards. Yards to be used as part of the day care operation shall be fenced.

Section 405.3.1.3.1 is hereby enacted to read as follows:

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405.3.1.3.1 Type of fence and hardware. The fence shall be of durable materials and not less than 4 feet (1529 mm) tall, completely enclosing the area used for the day care operation. Each opening shall be a gate or door.

Section 405.3.1.3.2 is hereby enacted to read as follows:

405.3.1.3.2 Construction of fence. Openings in the fence, wall or enclosure required by this section shall have intermediate rails or an ornamental pattern that do not allow a sphere 4 inches (102 mm) in diameter to pass through. In addition, the following criteria must be met:

1. The maximum vertical clearance between grade and the bottom of the fence, wall or enclosure shall be 2 inches (51 mm).
2. Solid walls or enclosures that do not have openings, such as masonry or stone walls, shall not contain indentations or protrusions, except for tooled masonry joints.
3. Maximum mesh size for chain link fences shall be 2 inches square, unless the fence has slats at the top or bottom that reduce the opening to not more than 2 inches. The wire shall be not less than 9 gage [0.148 inch (3.8mm)].

Section 405.3.2 is hereby enacted to read as follows:

405.3.2 Width and height of an exit. The minimum width of a required exit is 36 inches (914 mm) with a net clear width of 32 inches (813 mm). The minimum height of a required exit is 6 feet 8 inches (2032 mm).

Section 405.3.3 is hereby enacted to read as follows:

405.3.3 Type of lock and latches for exits. Regardless of the occupant load served, exit doors shall be openable from the inside without the use of a key or any special knowledge or effort.

Section 405.3.4 is hereby enacted to read as follows:

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405.3.4 Landings. Landings for stairways and doors shall comply with Section R318, except that landings shall be required for the exterior side of a sliding door where a home day care is being operated in a Group R-3 occupancy.

Section 405.4 is hereby enacted to read as follows:

405.4 SMOKE DETECTION

Section 405.4.1 is hereby enacted to read as follows:

405.4.1 General. Smoke detectors shall be installed in dwelling units used for home day care operations. Detectors shall be installed in accordance with the approved manufacturer's instructions. If the current smoke detection system in the dwelling is not in compliance with the currently adopted code for smoke detection, it shall be upgraded to meet the currently adopted code requirements and Section 405.3 before day care operations commence.

Section 405.4.2 is hereby enacted to read as follows:

405.4.2 Power source. The detector shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Required smoke detectors shall be interconnected such that if one detector is activated, all detectors are activated.

Section 405.4.3 is hereby enacted to read as follows:

405.4.3 Location. A detector shall be located in each bedroom and any room that is to be used as a sleeping room, and centrally located in the corridor, hallway or area giving access to each separate sleeping area. Where the dwelling unit has more than one story, and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detector shall be installed on the upper level, except that where the lower level contains a sleeping area, a detector shall be installed on each level. Where sleeping rooms are on the upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms or sleeping areas exceeds that of the hallway by 24 inches (610 mm) or more, smoke detectors shall be installed in the hallway and the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

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Section 602.3 is hereby amended to read as follows:

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from {DATE} September 15 to {DATE} June 1 to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms.

Exception: In older structures where the original design of the heating system operating at full capacity is unable to achieve the minimum temperature required, in the discretion of the building official, the system may be deemed adequate.

Section 602.4 is hereby amended to read as follows:

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from {DATE} September 15 to {DATE} June 1 to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

* * * *

Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

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Section 4. Effective Date.

1 This ordinance shall be in full force and effect from and after its passage, approval and
2 publication.
3

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

5 (SEAL)

6 Attest:

First Reading:
Second Reading:
Final Passage:
Publication:

7 _____
8 Steven Sprague, City Auditor
9
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AN ORDINANCE REPEALING AND RE-ENACTING ARTICLE 21.1-01 OF CHAPTER 21.1
OF THE FARGO MUNICIPAL CODE
RELATING TO THE INTERNATIONAL RESIDENTIAL CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Repeal.

Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code is hereby repealed in its entirety.

Section 2. Re-enactment.

Article 21.1-01 of Chapter 21.1 of the Fargo Municipal Code is hereby re-enacted to read as follows:

CHAPTER 21.1

INTERNATIONAL RESIDENTIAL CODE

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Article

21.1-01 International Residential Code--Adoption—Amendments, §§ 21.1-0101 to 21.1-0102

ARTICLE 21.1-01

Section

21.1-0101 Adoption of International Residential Code by Reference

21.1-0102 Amendment to International Residential Code

21.1-0101. Adoption of International Residential Code by Reference.--There is hereby adopted by reference by the Board of City Commissioners, for the purpose of prescribing regulations governing standards, relative to housing in the city of Fargo, that certain code known as the International Residential Code recommended and compiled by the International Code Council, being particularly the 2024 Edition thereof, a copy of which is on file in the office of the City Auditor, and the same is hereby adopted and incorporated as fully as if set out in length herein, and from the date on which this ordinance shall take effect, the provisions thereof shall be controlling within the limits of the city, and within the extra-territorial zoning jurisdiction of the city.

21.1-0102. Amendment to International Residential Code.--The International Residential Code as adopted in Section 21.1-0101 is hereby changed and amended as follows:

Section R101.1 is hereby amended to read as follows:

R101.1 Title. These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of ~~[NAME OF JURISDICTION]~~ the City of Fargo, and shall be cited as such and will be referred to herein as "this code."

Section R103.1 is hereby amended to read as follows:

R103.1 Creation of agency. The ~~[INSERT NAME OF DEPARTMENT]~~ Inspections Department of the city of Fargo is hereby created and the official in charge thereof shall be known as the building official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

Section R104.8 is hereby amended to read as follows:

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R104.8. Liability. The building official, member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be personally liable, either civilly or criminally, and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. This code shall not be construed to relieve from or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the code enforcement agency or the city be held as assuming any such liability by reason of the inspection authorized by this code or any permits or certificates issued under this code.

Section R105.2 is hereby amended to read as follows:

R105.2 Work exempt from permit. * * * *

Building:

1. Other than storm shelters, one-story detached accessory structures, provided the floor area does not exceed ~~200 (18.58m²)~~ 120 square feet.

2. Fences not over ~~7 (2134 mm)~~ 8.5 feet high.

* * * *

7. ~~Prefabricated~~ Swimming pools that are less than 24 inches (610 mm) deep.

* * * *

10. Decks not exceeding ~~200 (18.58 m²)~~ 120 square feet in area, that are not more than ~~30 (762mm)~~ 7 inches above grade at any point, are not attached to a dwelling and do not serve the exit door required by Section R318.4.

Section R108.3 is hereby amended to read as follows:

R108.3 Building permit valuations. Building permit valuation shall include total value of the work for which a permit is being issued, such as electrical, gas, mechanical, plumbing equipment and other permanent systems, including materials and labor. If, in

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the opinion of the building official, the valuation is underestimated on the application, the permit shall be denied, unless the applicant can show detailed estimates to meet the approval of the building official. Final building permit valuation shall be set by the building official.

Section R201.3 is hereby amended to read as follows:

R201.3 Terms defined in other codes. Where terms are not defined in this code such terms shall have the meanings ascribed in other code publications of the International Code Council. Wherever the term 'International Plumbing Code' or 'International Private Sewage Disposal Code' is used in the International Residential Code, it shall mean the North Dakota State Plumbing Code. Wherever the term 'ICC Electrical Code' is used in the International Residential Code, it shall mean the National Electrical Code together with the North Dakota State Wiring Standards. Wherever reference is made to flood plain requirements, it shall mean the Fargo Flood Plain Management Ordinance together with the Fargo Flood Proofing Code (Fargo Municipal Code Article 21-06).

Section R202 is hereby amended to add a new definition as follows:

LANDING. A constructed platform at the top or bottom of a staircase or between one flight of stairs and another. A landing may not consist of soil, gravel, or sand.

Table R301.2 is hereby amended to read as follows:

Table 301.2(1)
Climatic and Geographic Design Criteria

Ground Snow Load	Wind Design				Seismic Design Category	Subject to Damage From			Winter Design Temp	Ice Underlayment Required	Barrier Flood Hazards	Air Freezing Index	Mean Annual Temp
	Speed (mph)	Topographic Effects	Special Wind Region	Windborne Debris Zone		Weathering	Frost Line Depth	Termite					
50	115	No	No	No	Zone A	Severe	4.5'	None	-18°	Yes	1975	3000	41.5°
Manual J Design Criteria													
Elevation	Latitude	Winter Heating	Summer Cooling	Altitude Correction factor	Indoor Temperature	Design Cooling	Temperature	Heating Temperature Difference					
889	45	-17°	88°	None	70°	75°		37°					
Cooling Temperature Difference	Wind Velocity Heating	Wind Velocity Cooling	Coincident Wet Bulb	Daily Range	Winter Humidity	Summer Humidity							
13°	13 mph	7.5 mph	70	1.1	50%	50%							

Section R301.2.4 is hereby deleted in its entirety.

Section R301.2.4.1 is hereby deleted in its entirety.

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Table R302.1(1) Exterior Walls. The fourth column is hereby amended as follows:

0 feet
~~≥ 5 3~~ feet
 < 2 feet
 ≥ 2 feet to < ~~5 3~~ feet
~~≥ 5 3~~ feet
 < 3 feet
 3 feet
 5 feet
 < 3 feet
 3 feet

Section R302.5.1 is hereby amended to read as follows:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and dwelling unit shall be equipped with solid wood doors not less than 1⅜ inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 1⅜ inches (35 mm) thick, or 20-minute fire rated doors. ~~Doors shall be self-latching and equipped with a self-closing or automatic-closing device.~~

Section R318.3.2 is hereby amended to read as follows:

R318.3.2 Floor elevations at other exterior doors. Exterior doors other than the required egress door shall be provided with landings or floors not more than 7¾ ~~8~~ inches (196 ~~mm~~) below the top of the threshold.

Exception: An exterior landing or floor is not required at the exterior doorway where a stairway with a total rise of less than ~~of not more than two risers~~ 30 inches (762 mm) is located on the exterior side of the door, provided that the door does not swing over the stairway.

Section R318.7.5.1 is hereby amended to read as follows:

R318.7.5.1 Risers. The riser height shall be not more than 7¾ ~~8~~ inches (196 ~~mm~~).
 * * * *

Section R318.7.5.2 is hereby amended to add the following exception:

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Exception: Where a landing is not provided or required by Sections R318.3, R318.3.2, or R318.7.6, the top tread of a stair serving exterior doors other than the required exit door, and in-swinging doors opening into an attached garage, shall be permitted to exceed the smallest tread by more than 3/8 inch (9.5 mm). Such a tread shall be at least 18 inches (457 mm) measured in the direction of travel.

Section R318.7.5.2.1 is hereby amended to read as follows:

R318.7.5.2.1 Winder treads. Winder treads shall have a tread depth of not less than ~~10~~ 9 inches (~~254 mm~~) measured between the vertical planes of the foremost projection of adjacent treads at the intersections with the walkline. * * * *

Section R318.7.6 exceptions are hereby amended to read as follows:

Exceptions:

1. The top landing of an interior stairway, including those in an enclosed garage, shall be permitted to be on the other side of a door located at the top of the stairway provided that the door does not swing over the stairs.
2. At an enclosed garage, the top landing at the stair shall be permitted to be not more than ~~8~~ 7 3/4 inches (~~197 mm~~) below the top of the threshold.
3. At exterior doors, a top landing is not required for an exterior stairway with a total rise of less than 30 inches ~~of not more than two risers~~, provided that the door does not swing over the stairway.
4. ~~Exterior stairways to grade with three or fewer risers serving a deck, porch or patio shall have a bottom landing width of not less than 36 inches (914 mm), provided that the stairway is not the required access to grade serving the required egress door.~~

Section R319.2.3 is hereby amended to add the following exception:

Exception: Below grade emergency escape and rescue windows shall have a maximum sill height of 48 inches.

Section R319.4.2 is hereby amended to read as follows:

R319.4.2 Ladder and steps. Area wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with an approved, permanently affixed ladder or steps, usable with

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the window in the fully open position or shall be equipped with a permanently attached platform at least 30 inches by 16 inches. The maximum distance between the top of the window well and a platform shall be 42 inches and shall not impede the operation of the window. The ladder or steps shall not be obstructed by the emergency escape and rescue opening where the window or door is in the open position. Ladders and steps required by this section shall not be required to comply with Section R318.7.

Section R319.4.2.1 is hereby amended to add the following exception:

Exception: Terraced window wells with a maximum of 24 inches per vertical rise and minimum of 12 inches per horizontal projection on each level shall also be allowed.

Section R321.1.1 is hereby amended to read as follows:

R321.1.1 Where required. Guards shall be provided for those portions of open-sided walking surfaces, including floors, stairs, ramps and landings that are located more than 30 inches (762 mm) measured vertically to the floor or grade below or to the bottom of any window well at any point within 36 inches (914 mm) horizontally to the edge of the open side. Insect screening shall not be considered as a guard.

Section R327.1 is hereby amended to read as follows:

R327.1 Space required. Fixtures shall be spaced in accordance with the requirements of the North Dakota State Plumbing Code and Figure R327.1, except for the clearance in front of the water closets and bidets, which shall be at least 24 inches. and in accordance with the requirements of Section P2705.1.

Section R328 is hereby deleted in its entirety.

Section R401.1 is hereby amended to read as follows:

R401.1 Application. The provisions of this chapter shall control the design and construction of the foundation and foundation spaces for buildings. In addition to the provisions of this chapter, the design and construction of foundations in flood hazard areas and established by Table R301.2 shall meet the provisions of ~~Section R306, the Fargo Floodproofing Code (Article 21-06)~~ and any other applicable requirements of the city of Fargo. Wood foundations shall be designed and installed in accordance with AWC PWF.

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Section R401.3 exception is hereby deleted in its entirety.

Section R403.1.4.1 exceptions are hereby amended to read as follows:

Exceptions:

1. Protection of free-standing accessory structures ~~with an area of 600 square feet (56 m²) or less, of light-frame construction, with an eave height of 10 feet (3048 mm) or less~~ shall not be required.
2. Protection of free-standing accessory structures with an area of 400 square feet (37 m²) or less, of other than light-frame construction, ~~with an eave height of 10 feet (3048 mm) or less~~ shall not be required.
3. Uncovered decks need not be provided with footings that extend below the front line.

Section R404.1.3.2 is hereby amended to read as follows:

Section R404.1.3.2 Reinforcement for foundation walls. Concrete foundation walls shall be laterally supported at the top and bottom. Horizontal reinforcement shall be provided in accordance with Table R404.1.3.2(1). Vertical reinforcement shall be provided in accordance with Table R404.1.3.2(2), R404.1.3.2(3), R404.1.3.2(4), R404.1.3.2(5), R404.1.3.2(6), R404.1.3.2(7), ~~or R404.1.3.2(8),~~ or Table R404.1.2(10) and Figure R404.1.2(1) or Table R404.1.2(11) and R404.1.2 (2). Vertical reinforcement for flat basement walls retaining 4 feet (1219 mm) or more of unbalanced backfill is permitted to be determined in accordance with Table R404.1.3.2(9). For basement walls supporting above-grade concrete walls, vertical reinforcement shall be the greater of that required by Tables R404.1.3.2(2) through R404.1.3.2(8) or by Section R608.6 for the above-grade wall. In buildings assigned to Seismic Design Category D0, D1 or D2, concrete foundation walls shall also comply with Section R404.1.4.2.

Table R404.1.3.2(10) is hereby enacted to read as follows:

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Table R404.1.3.2(10) Foundation Wall Reinforcing

Active Pressure = 45pd

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 24" o.c. #5 (ii), 40" o.c.
	10	#4 @ 30" o.c. #5 Cii2 50" o.c.
9	8	#4 @ 18" o.c. #5 (ii), 28" o.c.
	10	#4 @ 24" o.c. #5 (ii), 36" o.c.
10	10	#4 @ 16" o.c. #5 (ii) 26" o.c.

Notes:

1. Chart is based on an active soil pressure of 45 pounds per cubic foot (pct).
2. Reinforcing steel shall be ASTM A615 Fy – 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^l = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place. or the wall is adequately braced.

Table R404.1.3.2(11) is hereby enacted to read as follows:

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Table R404.1.3.2(11) Foundation Wall Reinforcing
Active Pressure = 65 pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) Feet	Wall Thickness (t) inches	Vertical Reinforcin
8	8	#4 @ 18" o.c. #5 @ 26" o.c. #6 (ti), 40" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c. #6 (ti), 52" o.c.
9	8	#4 @ 12" o.c. #5 @ 18" o.c. #6 (ti), 26" o.c.
	10	#4 @ 16" o.c. #5 @ 24" o.c. #6 (ti), 36" o.c.
10	10	#4 @ 12" o.c. #5 @ 18" o.c. #6 Cii2 24" o.c.

Notes:

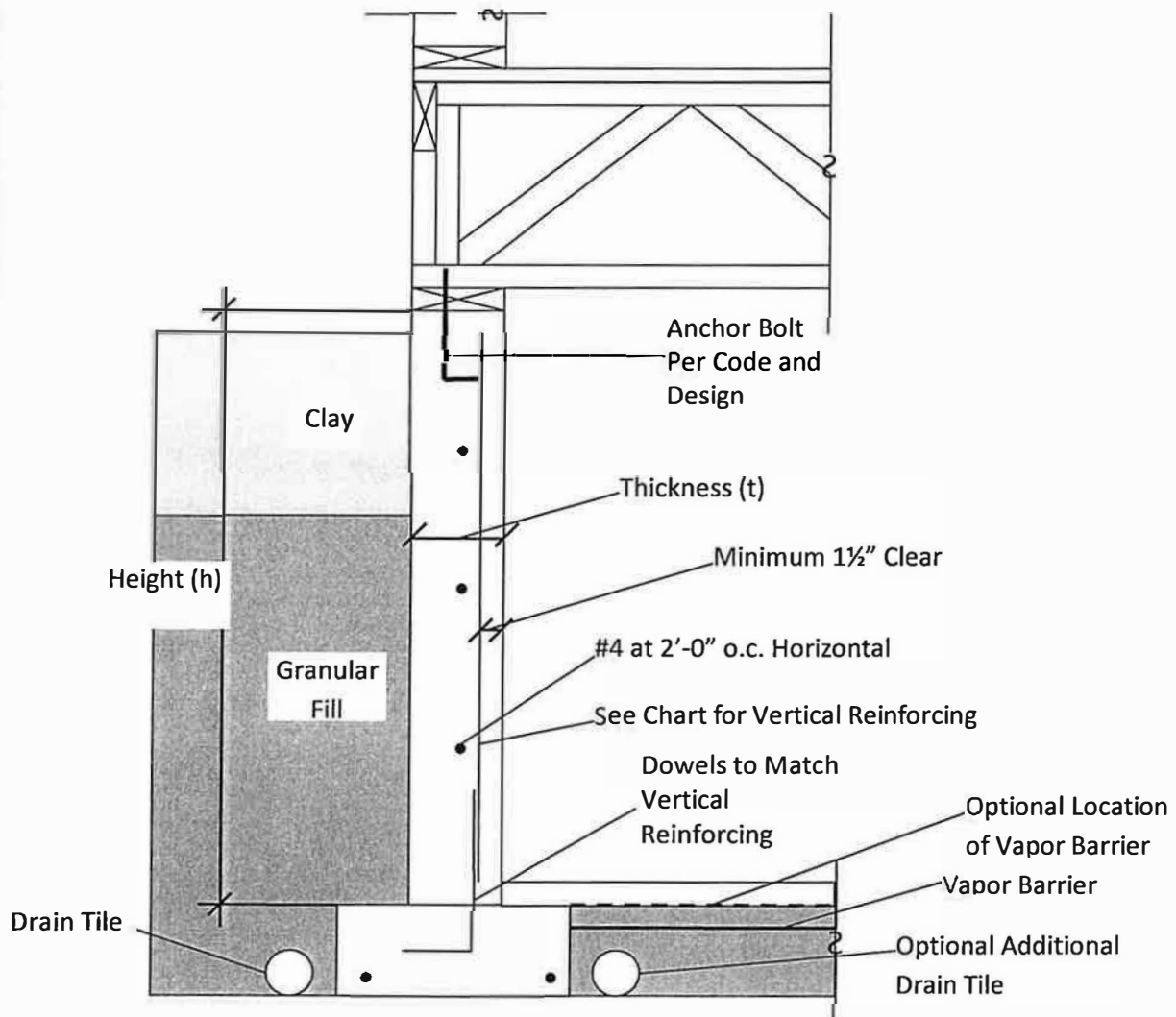
1. Chart is based on an active soil pressure of 65 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy – 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c' = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

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Figures R404.1.3.2(1) and R404.1.3.2(2) are hereby enacted as shown:

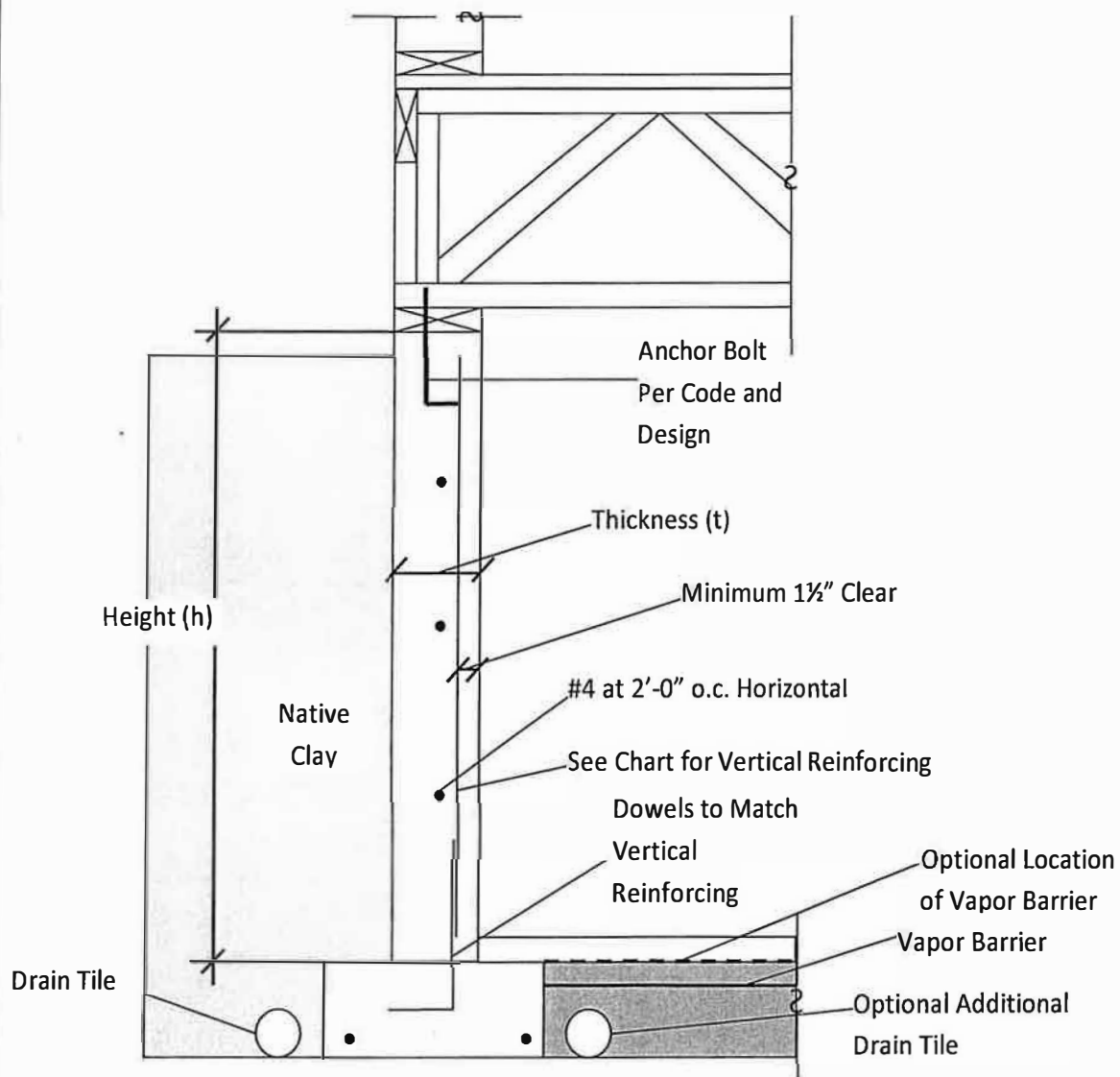
FIGURE R404.1.3.2(1)



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FIGURE R404.1.3.2(2)



Section R507.3 is hereby deleted in its entirety.

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Table R507.3.1 is hereby deleted in its entirety.

Section R602.7.2 is hereby amended to read as follows:

R602.7.2 Rim board headers. Rim board header size, material and span shall be in accordance with Table R602.7(1). Rim board headers shall be constructed in accordance with Figure R602.7.2 and shall be supported at each end by full-height studs. ~~The number of full-height studs at each end shall be not less than one plus the number of studs displaced by half of the header span based on the maximum stud spacing in accordance with Table R602.3(5).~~ Rim board headers supporting concentrated loads shall be designed in accordance with accepted engineering practice.

Section R602.7.5 is hereby amended to read as follows:

R602.7.5 Supports for headers. Headers shall be supported on each end with one or more jack studs or with approved framing anchors in accordance with Table R602.7(1) or R602.7(2). The full-height stud adjacent to each end of the header shall be end nailed to each end of the header in accordance with Table R602.3(1). ~~The minimum number of full-height studs at each end of a header shall be in accordance with Table R602.7.5.~~

Table R602.7.5 is hereby deleted in its entirety.

Table N1102.1.2 (R402.1.2) is hereby amended to read as follows:

TABLE N1102.1.2 (R402.1.2)
MAXIMUM ASSEMBLY U-FACTORS AND FENSTRATION REQUIREMENTS

Maximum Assembly U-Factors and Fenestration Requirements			
Climate Zone	****	6	****
Vertical Fenestration U-Factor	****	0.28 <u>0.32</u>	****
****	****	****	****
Wood-Framed Wall U-Factor	****	0.045 <u>0.057</u>	****
****	****	****	****
Basement Wall U-Factor	****	0.050 <u>0.059</u>	****
Unheated Slab F-Factor	****	0.66	****

(balance of table remains unchanged)

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Table N1102.1.3 (R402.1.3) is hereby amended to read as follows:

TABLE N1102.1.3 (R402.1.3)
INSULATION MINIMUM R-VALUES AND FENESTRATION REQUIREMENTS BY COMPONENT

Insulation Minimum R-Values and Fenestration Requirements by Component			
Climate Zone	* * * *	6	* * * *
Vertical Fenestration U-Factor	* * * *	0.30 0.32	* * * *
* * * *	* * * *	* * * *	* * * *
Wood-Framed Wall R-Value ^e , h	* * * *	30 or 20 & 5 ei or 13 & 10 ei or 0 & 20 ei 21 or 13 & 5 ci	* * * *
* * * *	* * * *	* * * *	* * * *
Basement Wall R-Value ^{b, c}	* * * *	15 ei or 19 or 13 & 5 ei 15 or 10 ci	* * * *
Unheated Slab R-Value & Depth ^e	* * * *	10ei, 3 ft	* * * *

(balance of table remains unchanged)

Table N1102.5.1.1 (R402.5.2.2) is hereby amended to read as follows:

TABLE N1102.5.1.1 (R402.5.1.1) AIR BARRIER, AIR SEALING AND INSULATION INSTALLATION

Air Barrier, Air Sealing and Insulation Installation		
Component	Air Barrier Criteria	Insulation Installation Criteria
Basement, Crawl Space and Slab Foundations	* * * *	* * * *
		<u>Exterior foundation insulation shall be covered and flashed to protect it from exposure to light and weather to a minimum of 6 inches (152 mm) below grade and be covered by a minimum 6-mil polyethylene slip sheet over the entire surface.</u>

(balance of table remains unchanged)

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Section N1104.2 is hereby deleted in its entirety.

Section N1104.3 is hereby deleted in its entirety.

Section N1103.6.3 (R403.6.3) is hereby deleted in its entirety.

Table N1106.5 (R406.5) is hereby amended to read as follows:

TABLE N1106.5 (R406.5)
MAXIMUM ENERGY RATING SYSTEM

Maximum Energy Rating Index											
Climate Zone				Energy Rating Index Not Including OPP				Energy Rating Index Including OPP			
*	*	*	*	*	*	*	*	*	*	*	*
6				53 58				43 48			

(balance of table remains unchanged)

Section M1502.4.2 is hereby amended to read as follows:

M1502.4.2 Duct installation. Exhaust ducts shall be supported at intervals not to exceed ~~12 4~~ feet (3658 mm) and shall be secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Exhaust duct joints shall be sealed in accordance with Section M1601.4.1 and shall ~~may~~ be mechanically fastened. Ducts shall not be joined with screws, or similar fasteners that protrude more than 1/8 inch (3.2 mm) into the inside of the duct. Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

Section M1503.6 exception is hereby deleted in its entirety.

Section M1601.4.1 exceptions are hereby amended to read as follows:

Exceptions:

* * * *

3. For ducts having a static pressure classification of less than 2 inches of water column (500 Pa), additional closure systems shall not be required for continuously welded joints

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

and seams and locking-type joints and seams. ~~This exception shall not apply to snap lock and button lock type joints and seams that are located outside of conditioned spaces.~~

1 **Section M2005.1** is hereby amended to read as follows:

2 **M2005.1 General.** Water heaters shall be installed in accordance with the North Dakota
3 State Plumbing Code, Chapter 28, the manufacturer's instructions and the requirements of
4 this code. * * * *

5 **Section M2101.3** is hereby amended to read as follows:

6 **M2101.3 Protection of potable water.** The potable water system shall be protected from
7 backflow in accordance with the provisions listed in ~~Section P2902~~ the North Dakota State
8 Plumbing Code.

9 **Section M2101.10** is hereby amended to read as follows:

10 **M2101.10 Tests.** New Hydronic piping systems shall be tested hydrostatically at a
11 pressure of ~~one and one-half times the maximum system design pressure, but~~ not less than
12 100 pounds per square inch (689 kPa). The duration of each test shall be not less than 15
13 minutes. Hydronic piping to be embedded in concrete shall be pressure tested and inspected
14 prior to pouring concrete.

15 **Section M2103.3** is hereby amended to read as follows:

16 **M2103.3 Piping joints.** * * * *

17 2. Copper tubing shall be joined by brazing complying with ~~Section 3003.1~~ the North
18 Dakota State Plumbing Code.

19 **Figure G2407.6.1(1) [304.6.1(1)]** is hereby deleted in its entirety.

20 **Figure G2407.6.6(2) [304.6.1(2)]** is hereby deleted in its entirety.

21 **Section G2407.11 (304.11)** is hereby amended to read as follows:

22 **G2407.11 (304.11) Combustion air ducts.** Combustion air ducts shall comply with all of
23 the following:

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* * * *

5. Ducts shall not be screened where terminating in an attic space.

Section G2413.6 (402.6) is hereby amended as follows:

G2413.6 (402.6) Allowable pressure drop. The design pressure loss in any piping system under maximum demand, from the point of delivery to the inlet connection of all appliances served, shall be such that the supply pressure at each appliance inlet is greater than or equal to the minimum pressure required by the appliance, but such pressure loss shall not be greater than .5 inch water column for gas pipe systems operating at less than 2psi.

Section G2417.4.1 (406.4.1) is hereby amended to read as follows:

G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be not less than 1 ½ times the proposed maximum working pressure, but not less than 25 3 psig (20 kPa gauge). Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

Section G2425.12 (501.12) is hereby amended to read as follows:

G2425.12 (501.12) Residential and low-heat appliances flue lining systems. Flue lining systems for use with residential-type and low-heat appliances shall be limited to the following:

1. Clay flue lining complying with the requirements of ASTM C315 or equivalent when each appliance connected into the masonry chimney has a minimum input rating greater than 400,000 Btu/h. Clay flue lining shall be installed in accordance with Chapter 10.
2. Listed chimney lining systems complying with UL 1777.
3. Other approved materials that will resist, without cracking, softening or corrosion, flue gases and condensate at temperatures up to 1,800°F (982°C).
 - a. Aluminum (1100 or 3003 alloy or equivalent) not less than 0.032 inches thick up to 8 inches in diameter.
 - b. Stainless steel (304 or 430 alloy or equivalent) not less than 26 gauge (0.018 inches thick) to 8 inches in diameter or not less than 24 gauge (0.024 inches thick) 8 inches in diameter and larger.

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c. When a metal liner other than a listed chimney liner is used, a condensation drip tee shall be installed and supported in an approved manner.

Section G2427.5.2 (503.5.3) is hereby amended to read as follows:

G2427.5.2 (503.5.3) Masonry chimneys. Masonry chimneys shall be built and installed in accordance with NFPA 211 and shall be lined in accordance with G2425.12. ~~with an approved clay flue lining, a chimney lining system listed and labeled in accordance with UL 1777 or other approved material that will resist corrosion, erosion, softening or cracking from vent gases at temperatures up to 1,800°F (982°C).~~

Section G2439.7.2 (614.9.2) is hereby amended to read as follows:

G2439.7.2 (614.9.2) Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws, ~~or similar fasteners that protrude more than 1/8 inch (3.2 mm) into the inside of the duct.~~ Where dryer exhaust ducts are enclosed in wall or ceiling cavities, such cavities shall allow the installation of the duct without deformation.

Section G2442.4 (618.4) is hereby amended to read as follows:

G2442.4 (618.4) Screen. Required outdoor air inlets shall be covered with a screen having ¼ -inch (6.4 mm) openings. Required outdoor air inlets serving a nonresidential portion of a building shall be covered with screen having openings larger than ¼ inch (6.4mm) and not larger than ½ inch.

Chapters 25 through 43 are hereby deleted in their entirety.

Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 4. Effective Date.

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

(SEAL)

Attest:

Timothy J. Mahoney, M.D., Mayor

First Reading:
Second Reading:
Final Passage:
Publication:

Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

4

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 8-1425 OF ARTICLE 8-14
OF CHAPTER 8 OF THE FARGO MUNICIPAL CODE
RELATING TO TRAFFIC CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

8-1425 – Penalties imposed.

Section 8-1425 of Article 8-14 of Chapter 8 of the Fargo Municipal Code is
amended as follows:

All persons found to have violated provisions of this ~~Chapter~~ Article shall be
punished as stated in section 01-0305(C)(1)(2) or (5), except a violation of section 8-
1418, which shall be an infraction.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Penalty.

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

Section 3. Effective Date.

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

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

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading Final Passage:
Publication:

**OFFICE OF THE
CITY ATTORNEY**

CITY ATTORNEY
Nancy J. Morris

SERKLAND LAW FIRM

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

ASSISTANT CITY ATTORNEYS

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

May 8, 2025

APPROVED BY THE BOARD
OF CITY COMMISSIONERS

R/F 5/12/25

1st reading 5/27/25

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

RE: Amendment of penalty for violation of Fargo Municipal Code § 8-1418 and
and amendments to Fargo Municipal Code § 1-0305 (C) (2) & (5)

Dear Mayor and Commissioners,

Pursuant to your earlier directive, please find attached ordinance revisions relating to the penalty for a violation of Fargo Municipal Code § 8-1418. The revision changes the penalty from a non-criminal \$20 fine for Riding a Bicycle on a Sidewalk specifically prohibited by appropriate signage to an infraction, subject to a fine of up to \$1,000. Fargo Municipal Code § 8-1425 is amended to reflect the change, as well as striking Fargo Municipal Code § 8-1418 from Fargo Municipal Code § 1-0305 (C)(2), Classification of ordinance violations.

You will notice that Fargo Municipal Code § 1-0305 (5) is also amended to reflect the prior repeal of Fargo Municipal Code § 10-0311. This ordinance change is merely a clean-up item as it should have been stricken at the time of the repeal.

Suggested Motion: I move to receive and file the following ordinances amending § 8-1425 of Article 8-14 of Chapter 8 of the Fargo Municipal Code relating to Traffic Code and § 1-0305 (C) (2) and (5) of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Classification of ordinance violations, and to place the ordinances on for first reading at the next regularly-scheduled city commission meeting.

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

Regards,



Nancy J. Morris

NJM/lmw

Enclosures

5

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305(C)(2) & (5)
OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE
RELATING TO CLASSIFICATION OF ORDINANCE VIOLATIONS

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 1-0305(C)(2) & (5) of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby amended to read as follows:

1-0305. Classification of ordinance violations.

C. Violations of the following ordinances are noncriminal offenses and shall require payment of a fee as follows:

1. For a violation of the following ordinances, a fee of \$5.00.
Section 8-1412 (riders/passengers restricted), section 8-1413 (riding on

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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roadway/bike paths—restrictions), section 8-1414 (operate bicycle too fast for conditions), section 8-1416 (carrying packages—restrictions), section 8-1419 (equipment on bicycles), section 8-1420 (bicycles—age restrictions).

2. For a violation of the following ordinances, a fee of \$20.00.
Section 8-0113 (unlawful use of skates/coasters), section 8-0304 (registration card to be carried in the driver's compartment—inspection of card), section 8-0305(a)(1), section 8-0305(A)(4) (displayed license plates and current motor vehicle registration required), section 8-0305(A)(5) (displayed license plate and current motorcycle and trailer registration required), section 8-0318 (operating motor vehicle on bicycle trail), section 8-0323 (license to be carried and exhibited on demand), section 8-0406 (pedestrian-control signal), section 8-0411 (alter traffic or railroad sign), section 8-0412 (display unauthorized signs, signals or marking), section 8-0707 (pedestrian crossing street where prohibited), section 8-0709(A) (pedestrian walking in roadway), section 8-0710 (pedestrian soliciting rides or business), section 8-0712 (pedestrian obstructing traffic), section 8-0901 (fail to display flag/light rear of load), section 8-0902 (improper tires), section 8-0903 (improper horn), section 8-0904 (brakes required), section 8-0905 (mirrors required), section 8-0906 (obstructed vehicle windshield/windows), section 8-0907 (windshield wipers required), 8-0908 (mufflers/exhaust system required), section 8-0909 (leaking or loose load), section 8-0910 (lights/lamps fail to conform to state law), section 8-0911 (fail to display lighted lamps), section 8-0913 (illegal spotlights), section 8-0914 (improper towing connection), section 8-0915 (reflectors/taillight required on trailer), section 8-0916 (flashing lights prohibited), section 8-0917 (illegal light on vehicle), section 8-0919(A) (riding on exterior of vehicle), section 8-0919(B) (more passengers than capacity), section 8-0919(C) (allow body to protrude from moving vehicle), section 8-0928 modified suspension system), section 8-0929 (driving of vehicle in unsafe condition unlawful), section 8-1003(A) thru (J) and (L) thru (S) (stopping, standing, parking prohibited in specific places), section 8-1013 (improper parking/obstructing traffic), section 8-1301(A) (following fire apparatus), section 8-1301(B) (driving vehicle within block of fire apparatus), section 8-1302 (driving through parade/funeral procession), section 8-1304 (failure to obtain parade permit), section 8-1307 (opening and closing vehicle doors), section 8-1311 (improper start of parked vehicle), section 8-1317 (coasting vehicle on downgrade prohibited), section 8-1318 (littering), section 8-1320(A) (operating snowmobile under 16 or allowing when prohibited), section 8-1320(B) (operating snowmobile

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in restricted area), section 8-1410 (traffic laws apply to persons riding bicycles), section 8-1411 (bicyclist to obey traffic control devices), ~~section 8-1418 (riding bicycle on sidewalks restrictions)~~, section 8-1422 (bicycle accidents), section 8-1902 (cruising prohibited), article 8-20 (motorized scooters).

3. For a violation of the following ordinance, a fee of \$25.00.
Section 10-0103(C) (tobacco possession by an individual under 21 years of age prohibited).
4. For a violation of the following ordinances a fee of \$40.00.
Section 8-0105 (driving wrong way on one-way street), section 8-0106 (obey temporary traffic sign/barrier), section 8-0303(B) (parent/guardian allow unlicensed/under 16 to drive), section 8-0303(C) (owner allowing unlicensed/under 16 to drive), section 8-0305(B) (current license required), section 8-0306 (violation of restricted license), section 8-0316 (permit unauthorized person to drive), section 8-0403 (disobey traffic control device (barricade)), section 8-0405 (traffic control signals), section 8-0407 (flashing signals), section 8-0506 (impeding traffic), article 8-06 (regulating turning movements), section 8-1010 (motor vehicle left unattended—brakes to be set, engine stopped, and keys removed), section 8-1011 (drive or park on private property), section 8-1018 (taking on or discharging passengers), section 8-1111 (vehicle required to stop at railroad crossing), section 8-1201 (following too closely), sections 8-1202 thru 8-1218(D) (general rules of the road), section 8-1220 (overtaking and passing a bicycle), section 8-1301(C) (driving over fire hose), section 8-1301(D) (driving through/around barricade), section 8-1305 (driving vehicle on sidewalk), section 8-1306 (improper backing), 8-1308 (helmet required—operator/passenger), section 8-1309 (number of riders on motorcycle limited), section 8-1310 (clinging to a vehicle or allowing same), section 8-1313 (unlawful riding on vehicle), section 8-1315 (unlawful towing), section 8-1316(A) (operating motor vehicle with view obstructed by load/passengers), section 8-1316(B) (passenger obstructing driver's view), section 8-1319 (unlawful operation of motor vehicle private property), section 8-1321 (use of seat belts required), section 8-1804 (driving through school patrols), section 8-1415 (right-of-way emerging from alley or driveway), section 8-1417 (parking restriction).
5. For a violation of the following ordinances, a fee of \$50.00.
Section 8-0116 (failure to yield to emergency vehicle), section 8-0311 (open container), section 8-0317(B)(2) (exhibition driving), section 8-0801 (immediate notice of accident), section 8-0931 (child restraint devices required), 8-1219 (use of motor vehicle), ~~section 10-0311(C) (panhandling within the city of Fargo)~~.

* * * *

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

First Reading:
Second Reading:
Final Passage:
Publication:

Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

6

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING SECTION 12-0105(E), OF ARTICLE 12-01, OF
2 CHAPTER 12, OF THE FARGO MUNICIPAL CODE, RELATING TO
3 RUNNING AT LARGE PROHIBITED – HABITUALLY AT LARGE

4 AND

5 AN ORDINANCE AMENDING SECTION 12-0117, OF ARTICLE 12-01, OF
6 CHAPTER 12, OF THE FARGO MUNICIPAL CODE, RELATING TO
7 POTENTIALLY DANGEROUS AND DANGEROUS DOGS

8 AND

9 AN ORDINANCE AMENDING SECTION 1-0305, OF ARTICLE 1-03,
10 OF CHAPTER 1, OF THE FARGO MUNICIPAL CODE,
11 RELATING TO CLASSIFICATION OF ORDINANCE VIOLATIONS

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

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

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

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

21 NOW, THEREFORE,

22 Be it Ordained by the Board of City Commissioners of the City of Fargo:
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 Section 1. Amendment.

2 Section 12-0105(E), of Article 12-01, of Chapter 12, of the Fargo Municipal Code, is
3 amended as follows:

4 ***

5 ~~E. Any dog or cat that is determined by the Fargo police department to be habitually at~~
6 ~~large is declared to be a public nuisance. The owner, custodian or keeper of any such~~
7 ~~animal shall be notified of said determination in writing and, upon request of the~~
8 ~~humane officer, shall surrender such animal for purposes of placement or destruction;~~
9 ~~provided, however, any said owner, custodian or keeper of any such animal shall have~~
10 ~~ten days from the receipt of notification to appeal to the Fargo municipal court and a~~
11 ~~hearing shall be held. In the event that the court affirms the determination of the police~~
12 ~~department, the court shall:~~

- 13 1. ~~Order the confinement of such animal within a building or secure enclosure,~~
14 ~~said animal not to be removed from such building or enclosure without being~~
15 ~~effectively restrained by chain or leash not exceeding six feet in length; or~~
- 16 2. ~~Order the surrender of such animal to the humane society or other animal~~
17 ~~placement organization for purposes of placement or destruction.~~

18 ***

19 E. Animal Habitually at Large:

- 20 1. “Habitually at large” is defined as 3 or more convictions of Fargo
21 Municipal Code section 12-0105(A) or an equivalent offense of another
22 jurisdiction for the specific animal, within 2 years.
- 23 2. Whenever there is reasonable cause to believe an animal is habitually at
24 large, an application may be presented to the Fargo Municipal Court for a
25 finding that the animal is habitually at large.
- 26 3. After receiving evidence at a hearing on the matter, the Municipal Court
27 shall enter an order containing the court's findings, established by a
28 preponderance of the evidence, whether the City has met its burden of
29 showing the animal is habitually at large.
- 30 4. If the Defendant does not appear at the hearing, testimony may still be taken.

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5. If the Court determines the animal is habitually at large, the Court shall order the surrender of such animal to the custody of the Fargo Police Department or designee.
6. Failure to surrender an animal deemed habitually at large within seven days of the order to surrender is a Class B Misdemeanor.

Section 2. Amendment.

Section 12-0117, of Article 12-01, of Chapter 12, of the Fargo Municipal Code, is amended as follows:

~~12-0117. Potentially dangerous and dangerous dogs.~~

~~A. Designation:~~

- ~~1. Any dog inside the Fargo city limits may be designated as a potentially dangerous dog if the dog:~~
 - ~~a. When unprovoked, bites a human or domestic animal on public or private property;~~
 - ~~b. When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or~~
 - ~~c. Has a known propensity, tendency, or disposition to attack, unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.~~
- ~~2. Any dog within the Fargo city limits may be designated as a dangerous dog if the dog has:~~
 - ~~a. Inflicted substantial bodily injury on a human being or a domestic animal on public or private property;~~
 - ~~b. Killed a domestic animal while off the owner's property; or~~
 - ~~c. Been found to be potentially dangerous, and after the owner has been notified that the dog has been designated as being potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals.~~

~~B. Procedure for designating a dog as potentially dangerous or dangerous:~~

- ~~1. Whenever there is reasonable cause to believe that a dog is dangerous or potentially dangerous, an application may be presented to the municipal~~

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~~court for a finding that the dog is dangerous or potentially dangerous. After receiving evidence at a hearing on the matter, the municipal court shall enter an order containing the court's findings, established by a preponderance of the evidence, whether the dog is dangerous or potentially dangerous and the court shall be authorized to order compliance by the owner of the dog with the provisions of this section and any other conditions which are necessary to ensure the health and safety of others. Such conditions may include, but are not limited to:~~

- ~~a. — That the owner not sell or transfer ownership of the dog.~~
- ~~b. — That the owner advise the court if the dog bites anyone else.~~
- ~~c. — That the owner advise the court if the dog dies or becomes injured.~~
- ~~d. — That the dog undergo obedience training.~~
- ~~e. — That the owner post the property with warnings about a dangerous animal.~~

~~f. — That the dog not be allowed outdoors during certain times, such as between 7:30-9:30 a.m. and 2:00-4:00 p.m. (i.e. times when school age children may be present), or the time when it is known that the postman delivers the mail every day.~~

~~g. — Compliance with all other requirements of this section.~~

~~2. — When a dog is designated to be potentially dangerous or dangerous, the owner shall be notified in writing of such designation.~~

~~3. — Any dog deemed dangerous or potentially dangerous by another jurisdiction and subsequently brought into the city shall be deemed a dangerous or potentially dangerous dog and abide by the provisions of this chapter to notify the police department and meet the registration requirements.~~

~~C. — Registration Requirements. No potentially dangerous dog or dangerous dog shall be kept in the city of Fargo unless the owner, at his or her own cost, has implanted a microchip in the dog, completed an application to register the dog as potentially dangerous or a dangerous dog and submitted said application to the police department. Prior to acceptance of an application, a city representative will retrieve and verify from said microchip and record the microchip information. In addition, the owner shall be required to post a sign, satisfactory to the municipal court judge, at the owner's or any caretaker's residence notifying the public of the presence of a dangerous or potentially dangerous dog.~~

~~D. — Application contents.~~

~~1. — The application to register the dog as a potentially dangerous dog shall include the following:~~

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

- a. ~~The owner's address and home, work and cell telephone number and the implanted microchip identification number, as well as the backup contact person and number;~~
- b. ~~Proof that said dog has been sterilized and has current vaccinations;~~
- c. ~~A yearly registration fee of \$200.~~
- 2. ~~The application to register the dog as a dangerous dog shall include the following:~~
 - a. ~~The owner's address and home, work and cell telephone number; the implanted microchip identification number and the address, home, work and cell telephone number designated by the owner as a back-up contact person;~~
 - b. ~~Proof of continuing liability insurance in a single incident amount of \$300,000 for bodily injury to or death of any person or persons or for damage to property owned by the persons which may result from the ownership, keeping, or maintenance of dogs designated as dangerous;~~
 - c. ~~Proof that said dog has been sterilized and has current vaccinations;~~
 - d. ~~A yearly registration fee of \$500.~~
- E. ~~Yearly registration requirement. All dogs designated as potentially dangerous dogs or dangerous dogs shall file a new application each year with the accompanying registration fees no later than the third Monday of each year.~~
- F. ~~Removal of designation of potentially dangerous dog. The owner of a potentially dangerous dog may apply to the municipal court judge to have the designation removed once the following criteria have been met:~~
 - 1. ~~Minimum of 16 weeks of dog training classes attended and providing a certificate of completion signed by training instructor at approved training facility;~~
 - 2. ~~Successfully passing of the Canine Good Citizen Test approved by the American Kennel Club, or an equivalent test adopted by a similar nationally recognized organization; and providing a certificate of completion;~~
 - 3. ~~No complaints about the dog have been received by the City of Fargo within the previous 12 months as confirmed by the chief of police or designee of the chief.~~
- G. ~~A dog designated as potentially dangerous must be leashed and be under the control of a competent adult at all times when off the owner's property or the property of a caretaker of the dog.~~
- H. ~~Additional requirements for dangerous dogs. In addition to filing a yearly application to register a dangerous dog and paying the accompanying fee of \$500,~~

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ORDINANCE NO. _____

the owner of a dangerous dog shall keep the dog, while on the owner's property, in a proper enclosure. If the dog is outside an enclosure, it must be securely muzzled and restrained by a chain or leash no longer than 6 feet under the physical restraint of a competent adult.

I. ~~Potentially dangerous and dangerous dogs brought into the city. Any dog designated as potentially dangerous or dangerous by another jurisdiction must be registered within 24 hours of being brought into the city limits of Fargo. Such registration shall be with the police department. A dog declared potentially dangerous by another jurisdiction may be brought into the city limits of Fargo provided the owner:~~

1. ~~Notifies the police department of the dog's microchip number, location where the animal will be kept, owner contact information and length of stay;~~
2. ~~Complies with all the requirements established by said jurisdiction, including the laws and applicable court order from said jurisdiction;~~
3. ~~Removes the dog from the city after a period of no more than 14 days.~~

J. ~~Remedies and Enforcement.~~

1. ~~It shall be a Class B misdemeanor offense to:~~
 - a. ~~Be an owner of, or be in possession of, a potentially dangerous dog in violation of the registration requirements set forth in subsection C of this ordinance; or,~~
 - b. ~~Allow a dangerous dog to "run at large" as prohibited by subsection C of this ordinance;~~

2. ~~Dogs in violation of registration requirements may be impounded immediately by the police department and held until brought into compliance. If the dog is found running at large, and is not brought into compliance within 14 days of notification of its designation as a potentially dangerous dog, the dog will be impounded and held until brought into compliance with this section. If not brought into compliance within 5 working days after impoundment, the dog may be euthanized. The owner of said dog is responsible for boarding and expenses associated with this process.~~

3. ~~No person may own a dog in the city of Fargo if the person has been convicted of a violation of this section, or of an equivalent ordinance or statute of another state or political subdivision, more than once. If any member of a household is prohibited from owning a dog pursuant to this section, unless specifically approved with or without restrictions by the police department, no person in the household is permitted to own a dog.~~

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

12-0117. - Potentially dangerous and dangerous dogs.

A. Designation.

1. Any dog inside the City of Fargo may be designated as a potentially dangerous dog if the dog:
 - a. When unprovoked, bites a human or domestic animal on public or private property;
 - b. When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
 - c. Has a known propensity, tendency, or disposition to attack, unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.
2. Any dog within the City of Fargo may be designated as a dangerous dog if the dog has:
 - a. Inflicted substantial bodily injury on a human being or a domestic animal on public or private property;
 - b. Killed a domestic animal while off the owner's property; or
 - c. Previously been found to be potentially dangerous and commits any offense under section 12-0117 (A)(1-2).

B. Procedure for designating a dog as potentially dangerous or dangerous.

1. Whenever there is reasonable cause to believe a dog is dangerous or potentially dangerous, an application may be presented to the municipal court for a finding the dog is dangerous or potentially dangerous. After receiving evidence at a hearing on the matter, the municipal court shall enter an order containing the court's findings, established by a preponderance of the evidence, whether the dog is dangerous or potentially dangerous. The court shall be authorized to order compliance by the owner of the dog with

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2. the provisions of this section and any other conditions which are necessary to ensure the health and safety of others.
3. The owner shall not transfer ownership of the dog after an application has been served. This restraining provision shall be included in the application.
4. If the owner does not appear at the hearing, the Court shall hear the matter and issue an order.
5. When a dog is designated to be potentially dangerous or dangerous, the owner shall be notified in writing of such designation by the Municipal Court.

C. Registration and application.

1. If a dog is deemed dangerous or potentially dangerous, the dog shall be registered with the City of Fargo Police Department. The application to register the dog as a dangerous or potentially dangerous dog shall be determined by the Fargo Police, and at a minimum, include:
 - a. The owner's full name, home address, and telephone number;
 - b. Proof of the implanted microchip identification number;
 - c. Proof of a current City of Fargo animal license;
 - d. Dog's name, breed, and age;
 - e. Current photo of the dog;
 - f. Proof the dog has been sterilized; and
 - g. Proof of current vaccinations.
2. The application to register a dog as potentially dangerous shall include proof of continuing liability insurance in a single incident amount of at least \$100,000 for bodily injury to or death of any person or persons or for damage to property owned by the persons which may result from the ownership, keeping, or maintenance of dogs designated as potentially dangerous, and a yearly registration fee up to \$300.
3. The application to register a dog as dangerous shall include proof of continuing liability insurance in a single incident amount of at least

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 \$400,000 for bodily injury to or death of any person or persons or for
2 damage to property owned by the persons which may result from the
3 ownership, keeping, or maintenance of dogs designated as dangerous, and
 a yearly registration fee up to \$600.

- 4 4. Every owner of a dog designated as potentially dangerous or dangerous
5 shall complete and file an application with the accompanying registration
6 fees no later than the deadline as designated by the court, and then, annually,
 no later than the third Monday of each year thereafter.

7 D. Such additional conditions imposed on a dangerous or potentially dangerous dog
8 may include, but are not limited to:

- 9 1. The owner not sell or transfer ownership of the dog without approval from
 the Court.
- 10 2. Any subsequent owner of the dog shall abide by the Court's Order as if they
11 were the owner.
- 12 3. The owner notify the police if the dog bites anyone else within 48 hours.
- 13 4. The owner notify the police if the dog dies or becomes injured within 48
14 hours.
- 15 5. The owner notify the police if the owner moves within 48 hours.
- 16 6. The dog undergo obedience training.
- 17 7. The owner post the property with warnings about the dog.
- 18 8. The dog not be allowed outdoors during certain times.
- 19 9. The dog be leashed and/or muzzled and/or under the control of a competent
20 adult.
- 21 10. Any caretaker or boarder of the dog be given a copy of the Order.
- 22 11. Compliance with all other requirements of this section.
- 23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 E. Removal of designation of dangerous dog and potentially dangerous dog.

2 1. Removal of designation of dangerous dog. The owner of a dangerous dog
3 may apply to the municipal court to have the designation of dangerous dog
4 transitioned to potentially dangerous dog once the following criteria have
5 been met:

- 6 a. Participation and proof of completion of training classes approved
7 by the Fargo Police Department;
8 b. Letter of recommendation and rehabilitation from the Fargo Police
9 Department approved dog trainer; and
10 c. No complaints about the dog have been received by the City of
11 Fargo within the previous 24 months as confirmed by the Fargo
12 Police.

13 2. Removal of designation of potentially dangerous dog. The owner of a
14 potentially dangerous dog may apply to the municipal court judge to have
15 the designation of potentially dangerous dog removed by following the
16 requirements listed under section 12-0117 (E)(1). If a dangerous dog has
17 transitioned to potentially dangerous, all criteria under subsection 12-0117
18 (E)(1) must be completed again and the timelines restart from the time the
19 dog was deemed to be potentially dangerous by the Court.

20 3. A hearing shall take place to determine whether sufficient criteria, by a
21 preponderance of the evidence, supports changing the designation of the
22 dog. The Court shall issue an amended Order with findings if the
23 designation of the dog changes.

24 F. Foreign judgment. Any dog designated as potentially dangerous, dangerous, or
25 equivalent designation by another jurisdiction must be registered within 24 hours
26 of being brought into the city limits of Fargo. Such registration shall be with the
27 Fargo Police Department. An owner seeking to keep a dangerous or potentially
28 dangerous dog in the City of Fargo in excess of 14 days must petition the Court for
29 an Order to do so. If the Court allows the dog to remain in excess of 14 days, the
30 Court shall issue an Order similar to if the offense had occurred in the City of Fargo.

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

G. Remedies and Enforcement.

1. Dogs in violation of registration or court-ordered conditions requirements may be impounded by the police department and held until the dog is brought into compliance. If not brought into compliance within 5 days after impoundment, the dog may be euthanized or relocated. The owner of said dog is responsible for boarding and all other expenses associated with this process before the dog may be released.
2. No person may own or be in possession of a dog in the City of Fargo if the person has been convicted of any violation of this section, or of an equivalent ordinance or statute of another state or political subdivision, more than once. If any member of a household is prohibited from owning a dog pursuant to this section, no person residing in the same household is permitted to own a dog. The City shall petition the Court and schedule a hearing for an Order which bars the individual from owning dogs. The burden of proof is preponderance of the evidence. An individual who owns a dog after being barred from doing so is guilty of a Class B Misdemeanor.
3. A dog found to be dangerous or potentially dangerous more than once shall be surrendered to the Fargo Police Department or designee for placement or destruction. The City may petition the Court and schedule a hearing for an Order to determine whether two or more findings of dangerous or potentially dangerous have occurred. The burden of proof is preponderance of the evidence. An owner or caretaker who fails to surrender a dog under this section shall be guilty a Class B Misdemeanor.
4. It shall be a Class B misdemeanor offense to allow a potentially dangerous dog or dangerous dog to "run at large."
5. It shall be an infraction if the owner fails to abide by the Court's Order, fails to register a dangerous or potentially dangerous dog, or violates any other provision of this section besides those listed in 12-0117 (G)(2), (G)(3), and G(4).

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. Amendment.

Section 1-0305(A)(1), of Article 1-0305, of Chapter 1, of the Fargo Municipal Code, is amended as follows:

1-0305. - Classification of ordinance violations.

- A. Violations of the following ordinances are Class B misdemeanors, subject to punishment as provided in this article: 1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320(D) (failure to deliver plates), section 8-0803 (accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), section 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0321.1 (criminal mischief-hate crime), section 10-0322 (harassment), section 10-0322.1 (harassment-hate crime), section 10-0323 (simple assault), section 10-0323.1 (simple assault-hate crime), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), section 10-1202(2) ($\geq \frac{1}{2}$ oz. marijuana) and 10-1202(3) (under 21 in possession of marijuana), ~~section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs)~~, 12-0105(E)(6)(failing to surrender habitually at large animal), 12-0117(G)(2)(owning a dog after being barred), 12-0117(G)(3)(failure to surrender a dangerous or potentially dangerous dog), 12-0117(G)(4)(allowing a dangerous or potentially dangerous dog to run at large), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), article 13-18 (massage therapy establishments), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-0412 (unlicensed taxicab or vehicle for hire), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1518(C) (minor misrepresenting age), and section 25-

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1518(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities), article 25-38 (commercial pedal car vehicles).

Section 4. Penalty.

A person who violates Fargo Municipal Code sections 12-0105(E)(6), 12-0117(G)(2), 12-0117 (G)(3), and 12-0117 (G)(4) shall be deemed to have committed a Class B Misdemeanor and shall be punished as provided in Section 1-0301 of the Fargo Municipal Code, as may be amended from time to time.

A person who violates any other section within Fargo Municipal Code Section 12-0117 besides those listed above shall be deemed to have committed an infraction and shall be punished as provided in Section 1-0301 of the Fargo Municipal Code, as may be amended from time to time.

Section 5. Effective Date.

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

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

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading and Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

⑦

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1512, OF ARTICLE 25-15,
OF CHAPTER 25, OF THE FARGO MUNICIPAL CODE, RELATING TO
LICENSES—TERMINATION, SUSPENSION, REVOCATION, AND SANCTIONS

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 25-1512, of Article 25-15, of Chapter 25, of the Fargo Municipal Code, is amended
as follows:

25-1512. - Licenses—Termination, suspension, revocation, and sanctions.

All licenses issued under the provisions of this article, unless otherwise specifically
provided, shall terminate on June 30th next following the date of issuance; provided,
however, that any license issued under the provisions of this article may, under certain

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 circumstances, terminate automatically or may be terminated, suspended or revoked by the
2 commission.

3 A. Any license issued under the provisions of this article shall automatically
4 terminate:

5 1. Upon the death of the licensee unless, upon application to the
6 commission by the personal representative of the decedent, the
7 commission shall consent to the carrying on of such business by the
8 personal representative. Said application must be submitted to the
9 commission within 30 days of the licensee's death.

10 2. When the licensee, for any reason, ceases business at the licensed
11 premises, except as permitted in accordance with § 25-1507(H) of
12 this article. Business shall be deemed to have ceased upon
13 occurrence of any of the following:

14 a. When no sale of alcoholic beverages occurs on the licensed
15 premises for a period of at least 30 consecutive business
16 days; or

17 b. When alcoholic beverages are not sold on the licensed
18 premises on at least 15 of any 60 consecutive business days;
19 or

20 c. When the licensed premises are not open for normal business
21 for at least 180 hours in any 60 consecutive business days;

22 provided, however, upon written request of the licensee, the
23 commission, in its discretion and for good cause shown, may extend
the date upon which business shall be deemed to have ceased. Any
extension granted pursuant to the licensee's request shall be subject
to review every six (6) months. The commission reserves the right
to deny any extension request.

3. When any license or permit of the licensee from the United States
government or state of North Dakota to sell alcoholic beverages at
the licensed premises has terminated or been revoked.

ORDINANCE NO. _____

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

Attest:

First Reading:
Second Reading and Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

8

AN ORDINANCE AMENDING
SECTION 25-1507 (F) OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE,
RELATING TO ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 25-1507 (F) of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended as follows:

ORDINANCE NO. _____

F. The license fees set forth in subsection B of this section shall be for a period of one year ~~from July 1 through June 30~~ and shall be payable in advance at the time of the issuance of the license and thereafter, on or before ~~June 10 of each subsequent year~~ 30 days prior to the renewal date.

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

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

9

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1512 OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE
RELATING TO ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 25-1512 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby
amended as follows:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 **25-1512. Licenses—Termination, suspension, revocation, and sanctions.**

2 All licenses issued under the provisions of this article, unless otherwise specifically
3 provided, shall terminate ~~on June 30th next~~ one year from ~~following~~ the date of issuance; provided,
4 however, that any license issued under the provisions of this article may, under certain
5 circumstances, terminate automatically or may be terminated, suspended or revoked by the
6 commission.
7

8 ***

9 Section 2. Effective Date.

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

12
13
14 _____
Timothy J. Mahoney, M.D., Mayor

15 Attest:

16
17 _____
Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

**OFFICE OF THE
CITY ATTORNEY**

SERKLAND LAW FIRM

10 Roberts Street North

P.O. Box 6017

Fargo, ND 58108

Phone: 701.232.8957 | Fax: 701.237.4049

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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

(10)

June 5, 2025

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

RE: Shelik Sheriff v. Andrew Payne, an individual and City of Fargo, a municipality

Dear Commissioners,

Please find attached for receive and file a Summons and Complaint commenced in District court by Shelik Sheriff v. Andrew Payne, an individual and City of Fargo, a municipality.

SUGGESTED MOTION: I move to receive and file the action Shelik Sheriff v. Andrew Payne, an individual and City of Fargo, a municipality.

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

Regards,



Nancy J. Morris

NJM/lmw

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

<p>SHEILK SHERIFF,</p> <p>Plaintiff,</p> <p>v.</p> <p>ANDREW PAYNE, an individual and CITY OF FARGO, a municipality,</p> <p>Defendant.</p>	<p>SUMMONS</p> <p>Case No.</p>
--	---------------------------------------

THE STATE OF NORTH DAKOTA TO CITY OF FARGO:

You are hereby summoned and required to appear and defend against the Complaint and Demand for Jury Trial in this action, which is or will be filed with the Clerk of East Central Judicial District Court and which is therewith served upon you, by serving upon the undersigned an Answer or other proper response within twenty-one (21) days after the service of this Summons upon you, not including the day of service. If you fail to do so, default judgment will be taken against you for the relief demanded in the Complaint.

SIGNED and DATED this 6th day of May 2025.

/s/ Jason Harmon

JASON HARMON (#09507)
LOWE LAW GROUP
6028 S. Ridgeline Dr. #200
Ogden, UT 84405
(801) 917-8500
j.harmon@lowelawgroup.com
Attorneys for Plaintiff

RECEIVED by Mayor Mahoney
5/9/25 - 3:50 p.m.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

<p>SHEILK SHERIFF,</p> <p>Plaintiff,</p> <p>v.</p> <p>ANDREW PAYNE, an individual and CITY OF FARGO, a municipality,</p> <p>Defendant.</p>	<p>COMPLAINT AND DEMAND FOR JURY TRIAL</p> <p>Case No.</p>
--	---

[¶1] COMES NOW Plaintiff Sheilk Sheriff, by and through undersigned counsel, and hereby petitions, complains, and alleges against the Defendants as follows:

PARTIES

[¶2] Plaintiff Sheilk Sheriff ("Plaintiff") is an individual residing in Cass County, North Dakota.

[¶3] Upon information and belief, Defendant Andrew Payne ("Defendant Payne"), is an individual residing in Cass County, North Dakota.

[¶4] Upon information and belief, Defendant City of Fargo ("Defendant Fargo"), is a municipality in Cass County, North Dakota.

JURISDICTION AND VENUE

[¶5] The events giving rise to this litigation occurred in Cass County. Accordingly, under N.D.C.C. 28-04-03.1, venue is properly placed in this North Dakota District Court in and for Cass County, North Dakota.

[¶6] This Court has jurisdiction over the above-named parties and over the subject matter over this action.

GENERAL ALLEGATIONS

[¶7] On April 12, 2024, Plaintiff was riding his motorcycle traveling on 45th Street in Fargo, North Dakota.

[¶8] At the same time, Defendant Payne was operating a fire engine for the City of Fargo, also traveling on 45th Street in Fargo, North Dakota.

[¶9] As Plaintiff attempted to move into the far-right lane of travel, Defendant Payne attempted to pass in the far-right lane and struck Plaintiff with the fire engine.

[¶10] As a result of the collision, Plaintiff sustained significant bodily injuries causing pain and suffering and required him to undergo medical treatment and procedures.

[¶11] To date, Plaintiff has not fully recovered from his injuries and is expected to require future medical care.

[¶12] As a result of the motor vehicle accident caused by Defendant Payne, Plaintiff has suffered physical and emotional damages.

[¶13] At the time of the collision, Defendant Payne was driving a vehicle owned and/or controlled by Defendant Fargo.

[¶14] At the time of the collision, Defendant Payne was acting as an employee and/or agent of Defendant Fargo.

[¶15] At the time of the collision, Defendant Payne was acting within the course and scope of his employment and/or agency with Defendant Fargo.

FIRST CAUSE OF ACTION
(Negligence- Defendant Payne)

[¶16] Plaintiff re-alleges all preceding paragraphs and incorporates them by reference as fully set forth herein.

[¶17] At all relevant times, Defendant Payne had a duty to act as a reasonably prudent

emergency vehicle operator.

[¶18] Defendant Payne breached that duty by, among other things:

- a. Failing to maintain control of the emergency vehicle;
- b. Traveling at an unreasonable speed;
- c. Failing to keep a proper lookout while driving;
- d. Failing to permit traffic to yield;
- e. Failing to appropriately utilize his emergency lights and horn.

[¶19] Defendant Payne may have acted negligently in other ways which may become apparent during discovery.

[¶20] The negligent and careless acts of Defendant Payne were the direct and proximate cause of the collision, which ultimately resulted in serious bodily injury to Plaintiff.

[¶21] As a direct and proximate result of Defendant Payne's negligence, Plaintiff sustained serious bodily injuries, which have caused him great pain, discomfort, inconvenience, loss of established course of life, and physical and emotional suffering.

[¶22] As a direct and proximate result of Defendant Payne's negligence, Plaintiff has incurred medical expenses, the exact amount to be proven at trial, and will incur future medical expenses.

[¶23] As a direct and proximate result of Defendant Payne's negligence, Plaintiff has suffered severe emotional and mental distress.

[¶24] As a direct and proximate result of Defendant Payne's negligence, Plaintiff has suffered general damages for pain and suffering in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Vicarious Liability – Defendant City of Fargo)

[¶25] Plaintiff realleges and incorporates all previous paragraphs as though fully set forth

herein.

[¶26] At all times relevant herein, Defendant Payne was an employee and/or agent of City of Fargo, Fire Department.

[¶27] At all times relevant herein, Defendant Payne was in the course and scope of his employment and/or agency with the City of Fargo.

[¶28] While acting within the course and scope of his employment/agency with Defendant City of Fargo, Defendant Payne negligently caused Plaintiff to suffer damages.

[¶29] Defendant City of Fargo is liable for all damages caused by Defendant Payne's negligence.

THIRD CAUSE OF ACTION
(Negligence – Defendant City of Fargo)

[¶30] Plaintiff realleges and incorporates all previous paragraphs as though fully set forth herein.

[¶31] Defendant Fargo had a duty to properly hire, train, and supervise its employees, to ensure the safe operation of its equipment and vehicles, and to ensure that its drivers were sufficiently qualified.

[¶32] Defendant Fargo breached these duties by, among other things:

- a. Failing to sufficiently investigate the hiring of Defendant Payne;
- b. Failing to sufficiently train Defendant Payne in his responsibilities and safety as an emergency vehicle operator for the City of Fargo;
- c. Failing to sufficiently and/or properly supervise Defendant Payne in the course and scope of his employment and/or agency; and
- d. Failing to ensure that Defendant Payne was qualified to operate motor vehicles.

[¶33] Defendant Fargo may have acted negligently in other ways which may become apparent during discovery.

[¶34] The negligent and careless acts of Defendant Fargo were the direct and proximate cause of the collision, which ultimately resulted in serious bodily injury to Plaintiff.

[¶35] As a direct and proximate result of Defendant Fargo's negligence, Plaintiff sustained serious bodily injuries, which have caused him great pain, discomfort, inconvenience, loss of established course of life, and physical and emotional suffering.

[¶36] As a direct and proximate result of Defendant Fargo's negligence, Plaintiff has incurred medical expenses, the exact amount to be proven at trial, and will incur future medical expenses.

[¶37] As a direct and proximate result of Defendant Fargo's negligence, Plaintiff has suffered severe emotional and mental distress.

[¶38] As a direct and proximate result of Defendant Fargo's negligence, Plaintiff has suffered general damages for pain and suffering in an amount to be proven at trial.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendant as follows:

1. For general damages for pain and suffering in an amount to be proven at trial.
2. For past and future medical expenses in an amount to be proven at trial.
3. For mileage costs for attending doctors' appointments.
4. For lost wages and loss of future earning potential.
5. For attorney's fees and costs of suit herein.
6. For pre and post judgment interest.
7. For such other relief as may be deemed fair and equitable under the circumstances.

JURY DEMAND

Plaintiff hereby demands a trial by jury in this matter.

SIGNED and DATED this 6th day of May 2025.

/s/ Jason Harmon

JASON HARMON (#09507)
LOWE LAW GROUP
6028 S. Ridgeline Dr. #200
Ogden, UT 84405
(801) 917-8500
j.harmon@lowelawgroup.com
Attorneys for Plaintiff

CITY ATTORNEY

Nancy J. Morris

ASSISTANT CITY ATTORNEYS

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



June 5, 2025

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

RE: Legislation Bills for revisions to Fargo Municipal Code and Home Rule Charter

Dear Mayor and Commissioners,

Recent legislation has prompted the need for revisions to the Fargo Municipal Code and Home Rule Charter. The following bills either revise, remove, or suggest ordinance or home rule charter changes. I am seeking your permission to proceed with the changes, working with various departments to accomplish this task.

- HB 1298- Increases speeding penalties
- SB 2132- Slight changes to definition of careless driving and increase in penalty
- HB 1422- Allows court to impose ticket for DUS even if reinstated within 60 days and increases penalty for said ticket
- HB 1297- Prohibits approval voting
- HB 1229- Add Violation and penalty for fleeing
- SB 2371- Eliminate need to signal out of a traffic circle
- HB 1588- Dangerous weapon or firearm-noncriminal
- SB 2037- Tobacco possession and sale age requirements and punishment are revised.
- HB -1375- Failure to provide identification in a liquor establishment and timing of liquor license violation
- HB 1134- Expands definition of harassment
- HB 1294- Increases fine for overtaking a school bus
- SB 2183- Increases fine for speeding in construction zone
- HB 1316- Additional fine for moving violation if permit driver
- SB 2334- Brewer taproom eligible for gaming site license
- HB 1165- Election law revisions
- HB 1307- Election law revisions
- HB 1469- Requires filing of Statement of Interest
- SB 2268- Recall election process revisions
- HB 1149- Unclaimed property revisions
- HB 1401- Sale of real property procedures
- HB 1466- Distillery license terms

- SB 2324- Home Rule Charter amendment provisions
- HB 1500- Pertaining to nonconforming structures in a residential zoning district
- SB 2027- Floodplain management ordinance revisions
- HB 2253- Compression brake use penalty
- HB 1429- Expands definition of harassment by robot

Suggested Motion: Direct the City Attorney's office to work with the appropriate City department to present ordinance and/or home rule charter amendments to comport with recent State Law revisions.

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

Regards,


Nancy J. Morris

NJM/

cc: Michael Redlinger



GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

1200

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization

Fargo Angels Hockey

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location

Radisson Blu

Street

201 5th Street N

City

Fargo

ZIP Code

58102

County

Cass

Beginning Date(s) Authorized

7/1/2025

Ending Date(s) Authorized

6/30/2026

Number of Twenty-One
tables, if zero, enter "0"

0

Specific location where games of chance will be conducted and played at the site (required)

Games located in back of the bar on the opposite side of bathrooms

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

☐

Bingo

☐

Club Special

☐

Sports Pools

☐

ELECTRONIC Quick Shot Bingo

☐

Tip Board

☐

Twenty-One

☐

Raffles

☐

Seal Board

☐

Poker

☐

ELECTRONIC 50/50 Raffle

☐

Punchboard

☐

Calcuttas

☐

Pull Tab Jar

☐

Prize Board

☐

Paddlewheel with Tickets

☐

Pull Tab Dispensing Device

☐

Prize Board Dispensing Device

☐

Paddlewheel Table

☒

ELECTRONIC Pull Tab Device

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

6/9/25

PRINT Name and official position of person signing on behalf of city/county above

Steven Sprague/City Auditor

INSTRUCTIONS:

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RETURN ALL DOCUMENTS TO:

Office of Attorney General
Licensing Section
600 E Boulevard Ave, Dept. 125
Bismarck, ND 58505-0040
Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

(126)

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization

ND Horse Park Foundation

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location

The Boiler Room

Street

210 Roberts

City

Fargo

ZIP Code

58102

County

Cass

Beginning Date(s) Authorized

07/01/2025

Ending Date(s) Authorized

06/30/2026

Number of Twenty-One
tables, if zero, enter "0"

0

Specific location where games of chance will be conducted and played at the site (required)

Games will be conducted and played in all public areas, excluding bathrooms

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

☐ Bingo

☐ **ELECTRONIC** Quick Shot Bingo

☐ Raffles

☐ **ELECTRONIC** 50/50 Raffle

☐ Pull Tab Jar

☒ Pull Tab Dispensing Device

☒ **ELECTRONIC** Pull Tab Device

☐ Club Special

☐ Tip Board

☐ Seal Board

☐ Punchboard

☐ Prize Board

☐ Prize Board Dispensing Device

☐ Sports Pools

☐ Twenty-One

☐ Poker

☐ Calcuttas

☐ Paddlewheel with Tickets

☐ Paddlewheel Table

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

6/9/25

PRINT Name and official position of person signing on behalf of city/county above

Steven Sprague/City Auditor

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GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

120

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization

Sharehouse, Inc

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location

Bismarck Tavern

Street

522 Broadway

City

Fargo

ZIP Code

58102

County

Cass

Beginning Date(s) Authorized

July 1 2025

Ending Date(s) Authorized

June 30 2026

Number of Twenty-One
tables, if zero, enter "0"

1

Specific location where games of chance will be conducted and played at the site (required)

Games played in entire bar area, excluding restrooms and entryways

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

☒ Bingo

☐ ELECTRONIC Quick Shot Bingo

☐ Raffles

☐ ELECTRONIC 50/50 Raffle

☒ Pull Tab Jar

☒ Pull Tab Dispensing Device

☒ ELECTRONIC Pull Tab Device

☐ Club Special

☐ Tip Board

☐ Seal Board

☐ Punchboard

☐ Prize Board

☐ Prize Board Dispensing Device

☐ Sports Pools

☒ Twenty-One

☐ Poker

☐ Calcuttas

☒ Paddlewheel with Tickets

☐ Paddlewheel Table

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

6/9/25

PRINT Name and official position of person signing on behalf of city/county above

Steven Sprague/City Auditor

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GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

12d

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization

Sharehouse, Inc

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location

Rick's Bar and Grill

Street

2721 Main Ave

City

Fargo

ZIP Code

58103

County

Cass

Beginning Date(s) Authorized

July 1 2025

Ending Date(s) Authorized

June 30 2026

Number of Twenty-One
tables, if zero, enter "0"

1

Specific location where games of chance will be conducted and played at the site (required)

Conducted in SW corner of Bldg, played in entire bar area excluding restrooms, entryways, and patios

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)



Bingo



Club Special



Sports Pools



ELECTRONIC Quick Shot Bingo



Tip Board



Twenty-One



Raffles



Seal Board



Poker



ELECTRONIC 50/50 Raffle



Punchboard



Calcuttas



Pull Tab Jar



Prize Board



Paddlewheel with Tickets



Pull Tab Dispensing Device



Prize Board Dispensing Device



Paddlewheel Table



ELECTRONIC Pull Tab Device

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, It is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

6/9/25

PRINT Name and official position of person signing on behalf of city/county above

Steven Sprague/City Auditor

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GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

92e

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization

Sharehouse, Inc

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location

Round Up

Street 4501 Urban Plains Drive	City Fargo	ZIP Code 58104	County Cass
Beginning Date(s) Authorized July 1 2025	Ending Date(s) Authorized June 30 2026	Number of Twenty-One tables, if zero, enter "0" 1	

Specific location where games of chance will be conducted and played at the site (required)

Conducted in NW portion of Bldg, played in entire bar area excluding restrooms, entryways, and patios

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization **must** provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input checked="" type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input checked="" type="checkbox"/> Twenty-One
<input type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input checked="" type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input checked="" type="checkbox"/> Paddlewheel with Tickets
<input checked="" type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device		

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General	Date
Signature of City/County Official	Date 6/9/25
PRINT Name and official position of person signing on behalf of city/county above Steven Sprague/City Auditor	

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Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
SFN 17996 (4-2023)

(12f)

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization

Sharehouse, Inc

This organization is authorized to conduct games of chance under the license granted by the North Dakota Attorney General at the following location

Name of Location

Woody's Bar

Street

1550 32nd Ave S

City

Fargo

ZIP Code

58103

County

Cass

Beginning Date(s) Authorized

July 1 2025

Ending Date(s) Authorized

June 30 2026

Number of Twenty-One
tables, if zero, enter "0"

1

Specific location where games of chance will be conducted and played at the site (required)

Conducted along N and W walls, played in entire bar area excluding restrooms, entryways, and patios

If conducting Raffle or Poker activity provide date(s) or month(s) of the event(s) if known

RESTRICTIONS FOR CITY/COUNTY USE ONLY

The organization must provide the City/County a list of game types included in their Internal Control Manual and have the manual available upon request. The manual must thoroughly explain each game type to be conducted. The City/County can only approve these games at the site.

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)



Bingo



Club Special



Sports Pools



ELECTRONIC Quick Shot Bingo



Tip Board



Twenty-One



Raffles



Seal Board



Poker



ELECTRONIC 50/50 Raffle



Punchboard



Calcuttas



Pull Tab Jar



Prize Board



Paddlewheel with Tickets



Pull Tab Dispensing Device



Prize Board Dispensing Device



Paddlewheel Table



ELECTRONIC Pull Tab Device

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

If any information above is false, it is subject to administrative action on behalf of the State of North Dakota Office of Attorney General

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

6/9/25

PRINT Name and official position of person signing on behalf of city/county above

Steven Sprague/City Auditor

INSTRUCTIONS:

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

130a

Applying for (check one)							
<input checked="" type="checkbox"/> Local Permit		<input type="checkbox"/> Restricted Event Permit*					
Games to be conducted		<input type="checkbox"/> Raffle by a Political or Legislative District Party					
<input type="checkbox"/> Bingo	<input checked="" type="checkbox"/> Raffle	<input type="checkbox"/> Raffle Board	<input type="checkbox"/> Calendar Raffle	<input type="checkbox"/> Sports Pool	<input type="checkbox"/> Poker*	<input type="checkbox"/> Twenty-One*	<input type="checkbox"/> 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 North Dakota CPA Society Foundation		Dates of Activity (Does not include dates for the sales of tickets) June 16-17, 2025	
Organization or Group Contact Person Sherre Sattler	E-mail ssattler@ndcpas.org	Telephone Number 701-775-7111	
Business Address 3100 S Columbia Rd Suite 500	City Grand Forks	State ND	ZIP Code 58201
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Holiday Inn		County Cass	
Site Physical Address 3803 13th Ave S	City Fargo	State ND	ZIP Code 58103
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 June 16-17, 2025			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Medora Vacation (2 musical, 2 pitchfork fondue, 1 night RoughRider hote)	\$601.21
Raffle	Golf Package (Hat, Towel, Balls, Stanley, Vest, Polo)	\$450
Raffle	Amazon Gift Card	\$250
Total (limit \$40,000 per year)		\$ 1301.21

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds Scholarships for students pursuing their CPA Credential	
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) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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) <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - Total Retail Value: 1447.31 (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.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Printed Name of Organization Group's Permit Organizer Sherre Sattler	Telephone Number 701-775-7111	E-mail Address ssattler@ndcpas.org
Signature of Organization Group's Permit Organizer <i>Sherre Sattler</i>	Title Executive Director	Date 6/3/2025



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

136

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 Sharehouse Foundation		Dates of Activity (Does not include dates for the sales of tickets) June 12, 2025	
Organization or Group Contact Person Julie Rivenes	E-mail jriveres@sharehouse.org	Telephone Number 701-478-9518	
Business Address 4227 9th Ave S	City Fargo	State ND	ZIP Code 58103
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name Fargo Downtown Square		County Cass	
Site Physical Address Broadway and 2nd Ave N	City Fargo	State ND	ZIP Code 58102
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.) June 12th, 2025 Raffle Drawing at 7:00PM			

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

Game Type	Description of Prize	Exact Retail Value of Prize
50/50 Raffle	1/2 Cash Proceeds taken in	
Total (limit \$40,000 per year)		\$

ADDITIONAL REQUIRED INFORMATION

Intended Uses of Gaming Proceeds The funds will go towards the Foundation General Fund which is used for items most needed to serve our clients.	
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) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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) <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes - Total Retail Value: <input type="text"/> (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.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Printed Name of Organization Group's Permit Organizer Julie Rivenes	Telephone Number 701-478-9518	E-mail Address jriveres@sharehouse.org
Signature of Organization Group's Permit Organizer 	Title Executive Director of ShareHouse Foundation	Date 5/27/2025



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
GAMING DIVISION
 SFN 9338 (4-2023)

130

Applying for (check one)							
<input checked="" type="checkbox"/> Local Permit	<input type="checkbox"/> Restricted Event Permit*						
Games to be conducted		<input type="checkbox"/> Raffle by a Political or Legislative District Party					
<input type="checkbox"/> Bingo	<input checked="" type="checkbox"/> Raffle	<input type="checkbox"/> Raffle Board	<input type="checkbox"/> Calendar Raffle	<input type="checkbox"/> Sports Pool	<input type="checkbox"/> Poker*	<input type="checkbox"/> Twenty-One*	<input type="checkbox"/> 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 Villa Nazareth DBA CHI Friendship		Dates of Activity (Does not include dates for the sales of tickets) 10/10/25	
Organization or Group Contact Person Dori Leslie	E-mail dori.leslie@commonsprit.org	Telephone Number 701-293-2980	
Business Address 801 Page Drive	City Fargo	State ND	ZIP Code 58103
Mailing Address (if different)	City	State	ZIP Code

SITE INFO

Site Name CHI Friendship		County Cass	
Site Physical Address 801 Page Drive	City Fargo	State ND	ZIP Code 58103
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.) one time raffle drawing on 10/10/25			

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

Game Type	Description of Prize	Exact Retail Value of Prize
Raffle	Visa Gift Cards - See Attached	2,600.00
Total (limit \$40,000 per year)		\$ 2,600.00

Intended Uses of Gaming Proceeds

All proceeds will be used to purchase Christmas gifts for people with disabilities.

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

Name Kristine Christensen	Title Controller	Telephone Number 701-235-8217	E-mail Address kristine.christensen508@commonsprit.org
Signature of Organization or Group's Top Official 		Title Controller	Date 6/3/2025

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(14)

Type: Right of Way Use Agreement

Location: 1141 18 Street North

Date of Hearing: 4/21/2025

Routing

City Commission

PWPEC File

Project File

Date6/9/2025XMatt Jennings

The Committee reviewed a communication from Civil Engineer, Matt Jennings, regarding a Right of Way Use Agreement with Bison Gold Investments at 1141 18th Street North.

The developer, Roers, reached out with plans to redevelop the parcels along 18th Street North, specifically between parcels 1117 and 1141. The redevelopment is for the proposed Skyline Apartment Building. They have requested City right of way to accommodate precast deliveries and framing/siding work during construction. Bison Gold Investments LLC will perform periodic sidewalk maintenance along their detour route, including sweeping and snow removal, until the ROW Use Agreement expires.

On a motion by Steve Sprague, seconded by Tim Mahoney, the Committee voted to recommend approval of the Right of Way Use Agreement with Bison Gold Investments, LLC.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Right of Way Use Agreement with Bison Gold Investments, LLC.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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)

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Steve Dirksen, Fire Chief

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Brenda Derrig, Assistant City Administrator

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Ben Dow, Director of Operations

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Steve Sprague, City Auditor

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Tom Knakmuhs, City Engineer

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Susan Thompson, Finance Director

☒☒☐

Nathan Boerboom

ATTEST:

C: Kristi Olson


 Nathan Boerboom, P.E.
 Assistant City Engineer



To: Members of PWPEC
From: Matthew Jennings, ROW Management
Date: April 16, 2025
Re: Bison Gold Investments LLC – Skyline Apartments – ROW Use Agreement – 1141 18th Street North

Background:

The developer, Roers, through their company Bison Gold Investments LLC, reached out with plans to redevelop the parcels along the east side of 18th Street North, specifically between parcels 1117 and 1141. This redevelopment is for the proposed Skyline Apartment building. They have requested the use of the City right of way to accommodate precast deliveries and framing/siding work during construction.

Roers plans to use their private site for material and equipment storage crane operations and staging but needs a way to access the site. Since the alley behind their property is heavily used by apartments, garages, and townhomes, Roers staff believes it would be in the neighborhood's best interest to handle material drop-offs and site access from the 18th Street North boulevard.

Their proposal is to use the eastern boulevard of 18th Street as a haul road for deliveries to their site. They plan to work with City Engineering staff to establish specific entry and exit points along 18th Street North, adjacent to their property. After construction of the new apartment, they would be responsible for replacing any damaged sidewalk, curb and gutter, and for regrading and seeding any damaged boulevards.

Attached is the agreement to use the ROW during construction. The primary use will be for site access and material unloading.

Bison Gold Investments LLC will perform periodic sidewalk maintenance along their detour route, including sweeping and snow removal, until the ROW Use Agreement expires. The agreement may be extended depending on the contractor's need for right of way use and the construction timeline.

Recommended Motion:

Recommend approval of the ROW Use Agreement with Bison Gold Investments LLC.

Date: 4/9/2025 Author: Just Scholz Project: Roers (1141 18th St N Sidewalk Detour)

Comments:
THIS TRAFFIC CONTROL PLAN IS BASED ON MUCTD SUGGESTED LAYOUTS
AND WAS NOT DESIGNED BY AN ENGINEER OR GOVERNING AUTHORITY



Right of Way Use Agreement

This Right of Way Use Agreement (“Agreement”) is made and entered into between Bison Gold Investments, LLC, a North Dakota Limited Liability Company (“Owner”), and the City of Fargo, a North Dakota municipal corporation (“City”).

WHEREAS, Owner is in the process of construction of an apartment building near NDSU located upon Lot 1, Block 1, Skyline Addition to the City of Fargo, Cass County, North Dakota (the “Development Property”); and

WHEREAS, Owner has requested permission from the City to utilize portions of the public right of way (“PROW” or “Right of Way”), including use of the boulevard for access and deliveries to the Development Property; and

WHEREAS, the parties now desire to entire into this Agreement to memorialize certain rights and responsibilities with respect to use of the PROW by Owner.

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

1. Owner is the fee title owner of the Development Property described as:

Lot 1, Block 1, Skyline Addition, Fargo, Cass County, North Dakota

2. Owner shall be permitted use of the PROW adjacent to the intended construction activity upon the Development Property, under certain terms and conditions as stated herein. Owner shall be responsible for ensuring all construction and restoration work upon the Development Property, and in any way impacting the PROW along 18th Street North, complies with all City Construction Standards and Specifications, which can be found at: <https://fargond.gov/city-government/departments/engineering/design-construction/construction-specifications>.
3. Owner shall be permitted use of the PROW in such a manner as described in this Agreement until no later than September 1, 2026 or as modified from time to time by written agreement signed by the parties hereto. Any request for extension of the term of this Agreement must be made by Owner in writing at least thirty (30) days' prior to the expiration to allow City adequate time to consider the request. Owner shall be required to meet the timeframes for interim and final completion as stated in this Agreement. If this Agreement is not renewed or modified in accordance with this provision, the Agreement shall automatically terminate at 11:59 p.m. Central Standard Time on September 1, 2026.
4. Owner is required to obtain all permits required for working in PROW. As part of the permit review process for work in the PROW, City Engineering must approve proposed design documents for proposed construction, modifications, and improvements in the PROW. Any proposed change, modification, or alteration to the design documents for construction, modifications, and improvements after initial approval by City Engineering must be submitted to City Engineering for review and approval no less than 30 days prior to commencement of any work in the PROW.
5. Owner agrees to comply with all City ordinances, policies and regulations to minimize noise impacts to the neighborhood surrounding the Development Property between the hours of 10:00 p.m. and 7:00 a.m.
6. Owner shall be responsible for periodic snow removal operations along the pedestrian detour route until the expiration of this Agreement. Snow removal operations shall be started as directed by the City Engineer or designee.
7. For access to the Development Property, Owner will be allowed to enter and exit the eastern boulevard of 18th Street from designated entrance and exit locations off of the 18th Street roadway as agreed upon by Owner and City. Owner will be responsible for the repairs and replacement, including all associated costs and expenses, of any boulevard, sidewalk and curb and gutter damaged as a result of the site access authorized by this Agreement. If Owner fails to repair and/or replace damaged sidewalk or curb and gutter before expiration of this Agreement, then this provision shall survive termination until all such repair and replacement work is completed by Owner in a manner satisfactory to City.
8. Owner and the City acknowledge that work adjacent to the 12th Avenue North Right of Way will be necessary throughout the duration of this Agreement. The Owner is responsible for implementing traffic control and closing the portion of the 12th Avenue

North sidewalk adjacent to the Development Property during any operations that could pose a risk to pedestrian safety.

9. Any change to dates of impacts must first be approved by City Engineering. Impacts that are not identified in this Agreement must first be approved by City Engineering. City Engineering reserves the right to obtain City Commission approval of impacts if in the sole discretion of City Engineering the impacts are too large for City Engineering to decide without City Commission approval. Any impacts requiring City Commission approval may require an amendment to this Agreement.
10. Owner shall be responsible for all private utilities affected by its construction activities, and shall notify the utility provider of proposed impacts. Owner shall be solely responsible for contracting with the private utility providers and for payment to all parties involved. City shall have no responsibility for the reestablishment of private utility disruptions caused by Owner's construction activities.
11. Owner hereby grants to City a right of entry and access to the Development Property, in the event City must enter the workspace to remedy a public safety concern, provide fire protection to the site and adjoining properties, or for any reason as determined in City's sole discretion. Owner agrees and understands that City is not responsible for construction delays or conflicts occasioned by the City's need to protect the public under any circumstances. City agrees to make a reasonable attempt to contact the Owner and its Construction Manager prior to City entry to the Development Property, except in case of an emergency as defined and determined solely by City.
12. Owner will, during any use of PROW, use due care to protect City streets, utilities, infrastructure, and all other public property and private utilities occupying the PROW. Extraordinary or excessive damage caused by Owner's construction activities shall be remedied immediately, at the sole discretion of City. If Owner refuses to remedy such damage, then the City may elect to repair the damage and all costs incurred by the City to remedy the damage will be billed to the Owner. Payment is due within 30 days. If payment is not received within 30 days, interest will accrue at a rate of 1.5% per month.

Owner agrees that failure to provide payment to the City of the restored infrastructure and improvements shall result in the establishment of a special assessment district consisting solely of the Development Property, for the purpose of financing the Owner's payment responsibilities to the City. City will levy special assessments against the Development Property to recover all costs of the project, in accordance with Chapter 40-22 of the North Dakota Century Code and the City of Fargo Infrastructure Funding Policy. Owner waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Development Property. Owner further waives its right to protest the amount, benefit or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing the work required in accordance with the terms of this Agreement.

13. Owner accepts and shall be responsible for all maintenance of the street, curb, adjoining green space, sidewalk, driveways, street lighting and City utilities, which may be impacted by Owner's work in the PROW. Owner shall undertake all maintenance activities, including sweeping, snow removal and hauling, along the PROW and within the construction site, all to the satisfaction of the City Engineer or its designee.
14. At its discretion, City may terminate this Agreement should it view the public infrastructure or public health to be at a greater risk than is acceptable to the City. City shall give Owner thirty (30) days' notice to vacate the PROW if such condition is found to exist. However, in the event of an emergency, as determined in the sole discretion of City, City may immediately terminate Owner's use of the PROW and direct Owner to restore the PROW to the City's sole use and control.
15. Notices required by this Agreement shall be given as follows:

As to the Owner:	As to the City:
Roers Dalton Olson dolson@roers.com 200 45 th St S Fargo, ND 58103 (701) 356-5050	City of Fargo Engineering attn.: Matt Jennings feng@fargond.gov 225 4 th St N Fargo, ND 58102 (701) 241-1545
16. Owner agree to hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents, consultants, and employees, its property, streets, sidewalks, or any other municipal improvements by reason of the Owner's use of the PROW near the Development Property. Owner agrees to secure liability insurance for at least \$500,000, and name City as an additional insured on such policy. Owner shall provide a Certificate of Insurance evidencing the City's insured status in advance of any construction activity within the PROW.
17. It is understood and agreed by and between the parties that this Agreement is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.
18. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
19. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

20. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable. This Agreement is to be construed as if drafted by all parties.
21. This Agreement, together with any incorporated documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.
22. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.
23. It is specifically agreed between the parties that this Agreement or a Memorandum of this Agreement may be recorded against the Development Property.
24. This Agreement shall be binding on the parties' successors and assigns, and may not be transferred or assigned without the prior written consent of the parties hereto.
25. The City and Owner wish to work together to provide an acceptable finished product. Owner shall provide to City a deposit in the amount of \$10,000 to cover all expenses that may be incurred by City as a result of Owner's work in the PROW.

Failure of the Owner to pay any billings provided for herein within 30 days from the due date shall result in City applying the deposit toward unpaid billings and thereby reducing the deposit for the amount(s) billed.

When a corrective measure is required by the City, City will notify Owner by phone and email. If the Owner fails to timely remedy and the City incurs the expense, the amount of deposit shall be reduced accordingly. If at any time the amount of the deposit is reduced to less than \$5,000, Owner shall replenish the deposit to \$10,000.

Once the project is finished and final acceptance is given by the City, the Owner shall request reimbursement of the remaining deposit in writing. Any deposit remaining at the end of the construction project and acceptance by City of the return of the right of way to City shall be refunded to Owner.

When the project is finished and all work has been accepted by the City, any unpaid costs incurred by the City that are the responsibility of the Owner will be assessed to the Development Property. The Owner hereby expressly waives any protest of this assessment.

By: [Signature]

Its: [Signature]

On this 13th day of May, 2025, before me personally appeared _____ of Bison Gold Investments, LLC, a North Dakota Limited Liability Company that is described in, and that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

Notary Public



Dated this ____ day of _____, 2025.

City of Fargo, a North Dakota municipal
corporation

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

ATTEST

Steve Sprague, City Auditor

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

On this ____ day of _____, 2025, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
City of Fargo Engineering Department

This document was prepared by:
Kasey D. McNary
Assistant City Attorney
Serkland Law Firm
10 Roberts St N
Fargo, ND 58108
701-232-8957
kmcnary@serklandlaw.com

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(15)

Type: Proposed Fiber Installation

Location: Citywide

Date of Hearing: 5/5/2025

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/9/2025</u>
PWPEC File	<u>X</u>
Project File	<u>Kevin Gorder</u>

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding the proposed fiber installation and Agreements with Gateway Fiber and Ubiquity.

Staff is seeking approval of the fiber installation and Agreements to forward on to City Commission for approval.

On a motion by Tim Mahoney, seconded by Brenda Derrig, the Committee voted to recommend approval of the fiber installation and Agreements with Gateway Fiber and Ubiquity and submit it to the City Commission.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Agreements with Gateway Fiber and Ubiquity for fiber installation in City right of way.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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)

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

COMMITTEE

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

Present	Yes	No	Unanimous
			<u><input checked="" type="checkbox"/></u>
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	<u>Ryan Erickson</u>
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
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<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	

ATTEST:


 Tom Knakmuhs, P.E.
 City Engineer

Memorandum

To: Members of PWPEC
From: Kevin Gorder, Division Engineer
Date: May 16, 2025
Re: Proposed Citywide Fiber Installation Update

This item is a continuation of the discussion on two fiber companies requesting an agreement to install their fiber in the city right of way. Engineering has presented the information at Commission and individually to most of the Commission members to see if they have questions or comments on this topic.

An update to any comments received by the Commission members will be presented at PWPEC Monday afternoon. Any public comments received from the public will also be shared at the meeting.

Engineering is seeking any additional comments from PWPEC relating to this topic and is requesting a recommendation to forward both agreements to the City Commission for approval at their next regular Commission meeting.

Recommended Action:

Approve the proposed fiber installation and agreements with Gateway Fiber and Ubiquity and forward on to City Commission for their approval.

NON-EXCLUSIVE RIGHT OF WAY OCCUPANCY AGREEMENT

This Non-Exclusive Right of Way Occupancy Agreement (the “**Agreement**”), dated May ___, 2025, is made and entered into by and between the **City of Fargo**, a North Dakota municipal corporation (the “**City**”), and **Gateway Infrastructure, LLC**, a Delaware limited liability company (“**Licensee**”).

WHEREAS, the City has jurisdiction over the use of the public rights-of-way in the City (the “**Public ROW**”); and

WHEREAS, the City adopted a Right-of-Way Occupancy Ordinance, Article 24-03 of the Fargo Municipal Code of Ordinances (the “**Ordinance**”), which authorizes the City to register any person wanting to occupy or use the Public ROW and which provides terms for using the Public ROW; and

WHEREAS, Licensee desires to use the Public ROW in the City and occupy the Public ROW to construct, install, maintain, and operate a fiber optic infrastructure network and associated appurtenances within the City for the purpose of offering communications services; and

WHEREAS, the City has determined that, upon Licensee completing the necessary registration for occupancy of the Public ROW, the Licensee can be granted access to the Public ROW in accordance with the terms of this Agreement; and

WHEREAS, the City Commission has determined that the Agreement as hereinafter set forth should be adopted.

NOW, THEREFORE, in consideration of the foregoing and the following covenants and agreements, it is hereby agreed by and between the City and Licensee (collectively the “**Parties**”) as follows:

SECTION 1 USE AND OCCUPANCY OF ROW

1.1. Permission to Use and Occupy ROW.

- A. Pursuant to the terms of this Agreement and any exhibits thereto (which are incorporated into and made part of this Agreement), and upon Licensee’s compliance with the Ordinance, City hereby grants Licensee permission to use and occupy the Public ROW (“**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and, if necessary, removing a fiber optic infrastructure network and associated appurtenances (“**Network**”) in accordance with the terms and conditions of this Agreement. The Network shall be for the purpose of offering wholesale and retail communications services, including broadband internet access service as defined in 47 C.F.R. § 8.1(b) and voice over internet protocol services (“**Services**”), but excluding multichannel video programming services that would be subject to a video services franchise.

- B. The Network may also consist of equipment and facilities that may include underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access handholes; electronic equipment; power generators; pedestals; boxes; vaults; and other similar facilities (“**Network Facilities**”). This Agreement and the License do not authorize Licensee to install or use any wireless communications facility within the Public ROW. Any installation of wireless communications facilities within the Public ROW shall be governed by Article 24-04 of the Fargo Municipal Code of Ordinances.
 - C. This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any City owned property, including poles and conduits, must be governed under a separate agreement regarding that use, if any.
 - D. This Agreement and License are subject and subordinate to City’s prior and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing sewer mains, sewer lines, water mains, water lines, storm drains, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal purposes.
 - E. City’s grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, superior claims of title or other property interests that may affect the Public ROW, in addition to those uses permitted by the Fargo Municipal Code. Licensee will obtain at its own cost and expense any required permission or rights as may be necessary to accommodate such pre-existing property interests, so long as such pre-existing interests do not contravene state or federal law.
 - F. Licensee hereby acknowledges that it has examined all the definitions and provisions of the Ordinance, which are incorporated herein by reference, and agrees that the provisions thereof are valid and binding upon Licensee, its contractors, subcontractors, and any person or entity performing any work on the Network or Network Facilities. Licensee agrees to abide by the provisions of the Ordinance, as it exists on the effective date of this Agreement and as thereafter amended or modified, and as may be amended from time to time as required by applicable law or agreement, and other relevant and generally applicable regulations and supplemental specifications as to construction, operation, or maintenance promulgated by the City.
- 1.2. Subject to Federal, State and Local Law. This Agreement and License are subject to City’s valid authority under federal, state, and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. In the event of a material conflict between the terms of local law and the applicable provisions of this Agreement, the applicable provisions of this

Agreement will prevail. The Parties hereby agree that if future modifications or amendments to federal or state law necessitate modifications to this Agreement, including but not limited to any provisions pertaining to revenue sharing or Public ROW occupancy fees, the Parties will work in good faith to agree upon the modifications.

- 1.3. No Grant of Property Interests. The License does not grant or convey any property interest to Licensee.
- 1.4. Non-Exclusive License. The License granted by this Agreement is non-exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights to any other individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, governmental authority, or other entity of any nature whatsoever, as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.5. Police Powers. Licensee's rights afforded by this Agreement are subject to the police powers of the City to adopt and enforce ordinances of general applicability and necessary to the health, safety, and welfare of the public. Licensee will comply with all such generally applicable laws and ordinances enacted by the City pursuant to that power.
- 1.6. City's Principles and Intents. The following provisions are statements of the City's intent in entering into this Agreement and shall not supplant or modify specific provisions of this Agreement:
 - A. Encourage the installation and operation of a fiber network with features meeting the current and future fiber related needs and interests of the City of Fargo community;
 - B. Encourage implementation of technical advances in communications technology;
 - C. Encourage the Licensee to provide high quality customer service;
 - D. Ensure that the installation and maintenance of fiber facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
 - E. Protect the City's interests and health, safety and welfare of its citizenry;
 - F. Encourage the universal availability of high-speed fiber-based internet within the City's municipal boundaries on a non-discriminatory basis; and
 - G. Receive compensation for the private commercial use of the Public ROW in accordance with applicable law.

- 1.7. Construction Plan. Within thirty (30) days of the date of this Agreement, Licensee and the City will memorialize in writing a mutually agreeable plan for construction of the Network (the “**Construction Plan**”), which will include, among other things, a timeline for meeting certain specified milestones established on a per linear foot basis. Any modifications to the Construction Plan must be agreed to in writing by designated representatives of both Parties.

SECTION 2 GENERAL FINANCIAL REQUIREMENTS

- 2.1. License and Occupancy Fees. From and after the date that Licensee first commences construction of the Network Facilities in the Public ROW (the “**Construction Commencement Date**”), Licensee shall pay the City an annual license fee (the “**License Fee**”) equal to the greater of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000) (the “**Minimum Fee**”) or five percent (5%) of Gross Revenues (as defined below).. Licensee shall remit payment to the City within forty-five (45) days of the end of each calendar quarter during the Term (as defined in Section 7.1 below). These payments will be accompanied by a report showing the basis for the computation and such other relevant facts as may be reasonably required by the City to determine the accuracy of such payments.
- 2.2. Minimum Fee.
 - A. On each anniversary of the Construction Commencement Date, the Maximum Fee will be automatically adjusted downward by an amount, if any, equal to the percentage of linear feet then occupied by the Network Facilities in the Public ROW as compared to that number of occupied linear feet contemplated on such date under the Construction Plan. For example, if on the first anniversary of the Construction Commencement Date the Network Facilities occupied 20,000 linear feet in the Public ROW and the Construction Plan included a milestone of 25,000 feet as of such date, the Minimum Fee would be reduced to \$280,000 (\$350,000 x 80%). Notwithstanding the foregoing, in no event will the Minimum Fee be adjusted if the failure to achieve any milestones in the Construction Plan are attributable to factors within Licensee’s reasonable control.
 - B. In the event that at any time during the Term Licensee notifies the City it will cease construction of Network Facilities in the Public ROW (the “**Construction End Date**”), the Minimum Fee will be permanently adjusted downward by an amount equal to the percentage of linear feet occupied by the Network Facilities in the Public ROW on the Construction End Date as compared to the total number of linear feet contemplated to be constructed under the Construction Plan. For example, if on the Construction End Date, the Network Facilities occupied 180,000 linear feet in the Public ROW and the total linear feet to be constructed under the Construction Plan was 200,000, the Minimum Fee would be permanently adjusted to \$315,000 (\$350,000 x 90%).

Any adjustment to the Minimum Fee will occur in the next calendar year. In no event will the City be required to refund any fee payments made during the installation.

- 2.3. Gross Revenues. The term “**Gross Revenues**” means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions of services or goods, received by Licensee or its affiliated companies from any customers, consumers, businesses, residents, tenants, licensees, lessees, and others for broadband internet access services provided within the corporate boundaries of the City using Network Facilities located at least in part in the Public ROW. Gross Revenues do not include: (i) any revenue not actually received, even if billed, such as bad debt; (ii) refunds, rebates, or discounts made to Customers or the City; (iii) revenue received from the sale of broadband internet services for resale in which the purchaser is required to collect and remit a license or similar fee to the City from the purchaser’s customer; (iv) revenue derived from the provision of broadband internet services to customers where none of the Network Facilities used to provide such services are located in Public ROW; (v) any forgone revenue from Licensee’s provision of broadband internet services to customers at no charge if required by applicable law; (vi) any revenue derived from advertising; (vii) any revenue derived from voice over internet protocol services; (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the broadband internet services; (ix) any revenue derived from referral or marketing agreements with third-party providers of online services which Licensee may make available to customers; (x) any tax of general applicability imposed upon Licensee or its customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users’ tax, public service tax, communications taxes, and fees not imposed by this Agreement); (xi) any forgone revenue from Licensee’s provision, in Licensee’s discretion, of free or reduced cost broadband internet services to any person, including without limitation employees of Licensee; and (xii) sales of capital assets or sales of surplus equipment.
- 2.4. Pass Through. To the extent allowed by applicable law, Licensee may identify and collect, as a separate item on the regular bill of any customer of Licensee whose broadband internet services are provided by Network Facilities located at least in the Public ROW, that customer’s pro rata amount of the License Fee.
- 2.5. Other Fees.
- A. Except as provided herein, Licensee shall not be relieved from its obligation to pay administrative fees, public impact fees, and inspection fees, as may be required by the City of Fargo Excavation Fees and Guidelines.
 - B. Excavation and other permit fees relating to performance of work in the Public ROW shall continue to be paid by Licensee throughout its construction and installation of the Network Facilities.

- C. If the City engages an independent third-party consultant for the purpose of overseeing construction and restorative work by Licensee in the Public ROW, the Parties acknowledge and agree that quality assurance work completed by such consultant or their sub-consultants shall be done so in accordance with a separate service order that the City will have with this consultant. Licensee will reimburse the City for any reasonable amounts paid by the City for this work no later than forty-five (45) calendar days after receipt of an invoice from the City.
 - D. Licensee's affiliates, customers, clients, contractors, tenants, licensees, and lessees which utilize Licensee's Network and Network Facilities to provide services to residents and businesses of the City must be either franchised with the City or enter into a separate agreement with the City prior to providing any services to any residents or businesses of the City.
- 2.4 Alternative Charge. In the event that the occupancy fees, as described in Section 2.1 above, are preempted by applicable law, the City and Licensee will negotiate in good faith an amendment to this Agreement establishing an alternative per linear foot charge for Licensee's use of the ROW.
- 2.5 Failure to Pay. Failure by Licensee to pay the License Fee shall be deemed a breach of this Agreement and the Ordinance and may be enforced according to the provision of this Agreement and the Ordinance or by any other means available to City, including but not limited to, the denial of permits for work within the ROW.
- 2.6 Audits. Upon thirty (30) days prior written notice, the City will have the right to conduct an independent audit of Licensee's records once every two (2) years, in accordance with generally accepted accounting principles. Any undisputed additional amounts due the City as a result of such audit will be paid within thirty (30) days following written notice by the City to the Licensee, which notice will include a copy of the audit report. The audit cost will be paid by Licensee if payments have been underpaid by ten percent (10%) or more. In lieu of, or in addition to, an independent audit, City shall have the right to review Licensee's records. Licensee's records shall at all times be maintained in accordance with generally accepted accounting principles (GAAP), unless Licensee clearly and specifically indicates and fully describes to the City any variation from GAAP.
- 2.7 Acceptance of Payment. No acceptance of any payment will be construed as a release or accord and satisfaction of any claim the City may have for further or additional sums payable as an occupancy fee under this Agreement or for the performance of any other obligation hereunder.
- 2.8 Failure to Pay. Failure to pay any fees required by this Section within thirty (30) days of receipt of written notice of such failure from the City will be grounds for termination of this Agreement and reinstatement thereof may be had only upon resolution by the City Commission.

2.9 Penalty for Late Payment. In the event that any undisputed License Fee is not made on or before the dates specified herein, Licensee will pay as additional compensation a late charge, equal to seven and one-half percent (7.5%) of the total amount of the License Fee payment amount which was untimely.

2.10 Licensee's Financial Acknowledgements.

- A. Licensee expressly acknowledges and agrees that, except for the payments expressly required by Section 2.1, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by Licensee at the direction of the City or the Ordinance pursuant to this Agreement, or otherwise in connection with the construction, operation, maintenance, or upgrade of the Network Facilities (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Agreement) are part of the occupancy fee chargeable against the compensation payments to be paid to the City by Licensee pursuant to Section 2.1.
- B. Licensee expressly acknowledges and agrees that the compensation payments due from the Licensee to City pursuant to Section 2.1 shall take precedence over all other payments, contributions, services, equipment, facilities, support, resources, or other activities to be paid or supplied by Licensee pursuant to this Agreement and the compensation and other payments to be made pursuant to this Section 2.1 of this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or general applicability or other fees or charges which Licensee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of Licensee.
- C. Licensee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the occupancy fee in the above Section 2.1 from or against any City or other governmental taxes of general applicability, or other fees or charges which Licensee is required to pay to the City or other governmental agencies unless otherwise authorized by a change of applicable law.
- D. Licensee shall not apply or seek to apply all or any part of the amount of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of the Licensee unless otherwise authorized by a change of applicable law.

- E. Licensee shall not apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of Licensee unless otherwise authorized by a change of applicable law.
- F. Unless otherwise authorized by a future change of applicable law, in the event Licensee applies or seeks to apply all or any part of the amount of the occupancy fee to City, payments as a deduction or other credit from or against such City or other governmental taxes of general applicability or other fees or charges, or unless authorized by a change in applicable law in the event that Licensee applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against the occupancy fee payable to the City, then, in any such event, the City may terminate this Agreement for cause due to a material breach, and without any liability or compensation to Licensee.

SECTION 3 LICENSEE'S OBLIGATIONS

- 3.1. Individual Permits Required. Subject to the specific requirements of the Fargo Municipal Code and policies adopted by the Fargo City Commission, Licensee will obtain City's approval of required individual encroachment, construction, excavation, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City, as may be authorized. Licensee will pay all processing, engineering, and inspection fees associated with the issuance of individual permits by City.
- 3.2. Performance Bond. Licensee must provide City with a performance bond in the amount of One Hundred Thousand Dollars (\$100,000) during construction of the Network and Network Facilities.
- 3.3. Insurance. Licensee must carry and maintain insurance in the amounts and of the types as follows:
 - A. Liability Insurance. As of the effective date of this Agreement and during the entire term of this Agreement, the Licensee will, at its sole expense, maintain public liability insurance with a company licensed to do business in the State of North Dakota with a rating by A.M. Best of not less than "A" that will protect the Licensee, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officials, officers, directors, employees, or agents, or any contractors or subcontractors of Licensee. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal

injury, death, and damage to property resulting from the Licensee's automobiles, products, construction, maintenance, installation, and other related work, and operations. The amount of such insurance shall be subject to periodic changes as described in this Section, or as may be required by applicable law, but will not be less than the following:

General Liability Insurance:

Bodily injury and/or death per person	\$1,000,000
Bodily injury and/or death per occurrence	\$1,000,000
Property damage per occurrence	\$1,000,000
Property damage and bodily injury, aggregate	\$2,000,000

Automobile Coverage

Combined single limited	\$1,000,000
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Umbrella Coverage	\$5,000,000
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B. The liability policy will provide for the following, by endorsement or otherwise:

- The policy will cover personal injury as well as bodily injury and death;
- The policy will cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries, and property damage;
- Broad form property damage liability will be afforded;
- The City will be included as an additional insured on the policy;
- The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under the coverage;
- Standard form of cross-liability will be afforded; and
- The policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

C. The automobile insurance policy will provide for the following, by endorsement or otherwise: (1) the City will be included as an additional

insured on the policy; and (2) the policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

- D. Licensee will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements. The certificate of insurance should confirm that the required endorsements are in effect.
- E. Any deductible or self-insured retention must be declared to the City.
- F. Licensee will have insurance coverage to cover any valid claim arising before sale or transfer of the Network Facilities or termination of this Agreement.
- G. It will be the obligation of the Licensee to notify the City promptly of any pending or threatened litigation likely to negatively impact its ability to provide the insurance coverage required herein.
- H. Notwithstanding the foregoing, Licensee will promptly repair any damage to the ROW, City property, or private property if such damage is directly caused by Licensee's work and no other person is responsible for the damage (e.g., where a person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this provision will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.

- 3.4. Worker's Compensation Insurance. Licensee will obtain and maintain worker's compensation insurance for all Licensee's employees, and in case any work is subcontracted, Licensee will require any subcontractor similarly to provide worker's compensation insurance for all of the subcontractors' employees, in compliance with state laws, and to fully protect the City from any and all claims arising out of work-related occurrences. Licensee hereby indemnifies the City for any damage resulting to it from failure of either Licensee or any subcontractor to obtain and maintain such insurance. Licensee will provide the City with a certificate of insurance indicating worker's compensation insurance prior to operations under this Agreement and the commencement of any construction, system upgrade, reconstruction, or maintenance of the Network Facilities. The certificate of insurance should confirm that the required endorsements are in effect.
- 3.5. Licensee's Sole Cost and Expense. Licensee will perform all work at its sole cost and expense.
- 3.6. Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing its work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City.

- 3.7. Reasonable Care. Licensee will exercise reasonable care when performing its work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 3.8. No Nuisance. Licensee will maintain its Network Facilities in good and safe condition, normal wear and tear excepted.
- 3.9. Repairs. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by Licensee's work and no other person is responsible for the damage. Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.10. As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in the Public ROW and will provide them to the City upon reasonable request and on a mutually-agreed timetable, subject to applicable confidentiality protections.
- 3.11. Network Design. Licensee hereby agrees, to the extent commercially reasonable and technically feasible, that it shall build, install, and construct, within five years of the effective date of this Agreement, to all areas of the City making its Network and Services available to every residence, household, and business located within the City's municipal boundaries. In the event of annexation by the City, any new territory brought into the City's municipal boundaries shall become part of the service area covered by this Agreement. Licensee shall retain the discretion to determine the timing, location, design, and construction of the Network Facilities. Licensee's use of Public ROW or City property shall be conducted in a manner consistent with lawful and applicable public easement rights.
- 3.12. Traffic Control. Licensee shall provide traffic control that meets all requirements of the MUTCD adopted by the State of North Dakota. All costs for traffic control will be the sole responsibility of the Licensee.
- 3.13. Reports. Licensee is required to submit to the City upon request all reports and information as provided in this Agreement or the Ordinance.

SECTION 4 CITY'S RESPONSIBILITIES

- 4.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, infrastructure, or property of City or its residents, the City and/or other public utilities may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. The City and any affected public utility will, however, make reasonable efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, the City and any other public utility benefiting from this

provision will promptly provide to Licensee a written description of any emergency removals or relocations of Licensee's Network Facilities. Licensee will reimburse City and any affected public utility for its actual, reasonable, and documented costs or expenses incurred for any such emergency work, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse the City and any affected public utility under this section will be separate from Licensee's obligation to reimburse the City for any other reasonable expense the City may incur.

- 4.2. Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with planned use of the Public ROW or property of the City, State of North Dakota, or any other political subdivision for any governmental purpose as reasonably determined by the City, Licensee will, upon written notice from any of the foregoing entities, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the Parties, taking into account the needs of the governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the Parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City or any such public entity may not require Licensee to relocate or remove its Network Facilities with less than ninety (90) days' written notice.
- 4.3. Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with the City's planned use of the ROW for a non-governmental (i.e., commercial) purpose or a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless and until Licensee receives adequate funds for such relocation or adjustment. If there is any dispute between Licensee and the affected third party involving use of the ROW, the City will attempt to mediate the dispute between the parties so as to avoid or mitigate unreasonable delays.
- 4.4. Non-Discrimination. The City will, at all times, treat Licensee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state authority to offer wired facilities-based broadband internet service.
- 4.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to the same or similar conditions existing prior to Licensee's construction.
- 4.6. City will permit the work as current staffing levels allow. If Gateway and/or their contractor would like expedited permit reviews, Licensee will be required to execute an Agreement with the City regarding reimbursement. The City would

develop the Agreement and negotiate acceptable terms of the Agreement with the Licensee to cover the cost of expediting the permit approval and walk throughs.

SECTION 5 CONTRACTORS AND SUBCONTRACTORS

- 5.1. Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the work on Licensee's behalf.
- 5.2. Contractors to be Licensed, Bonded and Insured. Any contractors and subcontractors engaged or hired by Licensee to perform work under this Agreement must be licensed as a contractor with the State of North Dakota as well as bonded and insured in accordance with applicable law.
- 5.3. Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City ("**Authorized Individuals**"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

SECTION 6 DEFENSE AND INDEMNITY

- 6.1. Obligations. Licensee will defend and indemnify the City, its Commission and the members, officers, elected representatives, agents, and employees, from and against any and all claims, and including reasonable attorney's fees and legal costs, for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of the Network and Network Facilities. It is expressly understood that the City has no control, standard, or regulation pertaining to the subject matter of programs distributed by Licensee. Licensee also agrees to hold harmless the City, its Commission and the members, officers, elected representatives, agents, and employees from any and all claims, suits, and actions at law or in equity, for libel, slander, patent or copyright infringements, to the extent that the City is made a party defendant in any action arising out of the subject matter of programs transmitted by Licensee. Licensee shall, at its sole cost and expense, defend such actions and appeals therefrom including those involving the City. Licensee's indemnity obligations shall require it to pay settlement amounts to resolve an indemnified claim and damages and costs finally awarded against the City by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").
- 6.2. Exclusions. Section 6.1 will not apply to the extent the underlying allegation arises from or is related to the negligence or willful misconduct of an indemnified party

- 6.3. Notice of Claim. The City agrees to provide reasonable efforts to promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegations that preceded the Third Party Legal Proceeding no later than five (5) days after the City became aware of the Third Party Legal Proceeding. City also must reasonably cooperate in the defense at Licensee's request. The City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (a) the City may appoint its own non-controlling counsel, at its own expense; and (b) any settlement requiring the City to admit liability, pay money, or take (or refrain from taking) any action, will require the City's prior written consent, not to be unreasonably withheld or delayed.

SECTION 7 TERM AND TERMINATION

- 7.1. Term. This Agreement shall become effective on the date the last party to sign executes this Agreement ("**Effective Date**"). The Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Following expiration of the Original Term, this Agreement will automatically renew for additional ten-year periods (each, a "**Renewal Term**") unless either Party provides notice of non-renewal not less than 120 days prior to expiration of the then current term. The Original Term and any Renewal Terms are sometimes collectively referred to in this Agreement as the "**Term.**"
- 7.2. Procedure for Remedying Agreement Violations. In addition to any other applicable legal remedy, if Licensee fails to perform in a timely manner any material obligation required by the Ordinance or this Agreement, following notice from the City and an opportunity to cure such nonperformance, the City may remedy such violation in accordance with the following procedures:
- A. The City will first notify Licensee of the violation in writing, and demand a cure within a reasonable time, which will not be less than twenty (20) days in the case of the failure of the Licensee to pay any sum or other amount due the City under the Ordinance or this Agreement, and not less than thirty (30) days in all other cases. If Licensee fails to cure the violation within the time prescribed in the notice, or if Licensee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Licensee will then be given a written notice of a public hearing to be held before the City Commission. The notice will specify the violations alleged to have occurred.
 - B. At the public hearing, the City Commission will hear and consider all relevant evidence, and thereafter render findings and its decision.
 - C. In the event the City Commission finds that Licensee has corrected the violation or has diligently commenced efforts to correct such violation after notice thereof from the City and is diligently proceeding to fully remedy

such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.

- D. In the event the City Commission finds that a material violation exists and that Licensee has not corrected the same in a satisfactory manner or has not diligently commenced efforts to correct such violation, the City Commission may establish a date, no earlier than twenty (20) days after the public hearing, by which Licensee must comply with the obligation. The City Commission may also implement the termination procedures outlined in this Agreement and the Ordinance. However, any termination procedures will be stayed until a final ruling is obtained in accordance with subsection F below.
- E. In determining whether a violation is material, the City will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the City or the City's residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters as the City may deem appropriate.
- F. If the violation as proposed depends on a finding of fact, such finding of fact will be made by the City only after a hearing providing the Licensee with a full and fair opportunity to be heard. Licensee will have the right to appeal any such decision to state court and the revocation or penalty will not become effective until any such appeal has become final or the time for taking such appeal will have expired.
- G. The City has not required Licensee to furnish to the City a security deposit to secure payment of liquidated damages that may be imposed by City for defaults of this Agreement. However, the City reserves the right to require a reasonable security deposit if Licensee continuously violates this Agreement or if there is a change in ownership or control of Licensee.

7.3. Revocation or Termination of Agreement.

- A. Upon completion of the Term, if a new Agreement is not granted to the Licensee by the City, Licensee's right to occupy the Public ROW shall terminate, subject to applicable state and federal law.
- B. The City shall have the right to revoke the Agreement for Licensee's failure to construct, operate or maintain the Network and Network Facilities as required by this Agreement or the Ordinance, or for defrauding or attempting to defraud the City or its residents.
- C. To invoke the provisions of this Section, the City shall give Licensee written notice of the default in its performance. If, within ninety (90) days, following such written notice from the City to Licensee, or such other period as Licensee and the City shall agree, Licensee has not taken corrective

action to the reasonable satisfaction of the City, the City may give written notice to Licensee of its intent to revoke the Agreement, stating its reasons.

- D. Prior to revoking the Agreement, the City shall hold a public hearing, upon thirty (30) days advance notice to the public and written notice to Licensee, at which time Licensee and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine whether to revoke the Agreement based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to Licensee to affect any cure. If the City determines to revoke the Agreement, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to Licensee.
- E. If the City revokes the Agreement, or if for any other reason Licensee abandons, terminates, or fails to operate or maintain the Network or Network Facilities, the following procedures and rights are effective:
 - The City may (a) require the Licensee to remove its above-ground facilities along with junction boxes buried in the ROW and equipment at the Licensee's sole cost and expense and restore affected sites, or (b) permit the Licensee to abandon such Network Facilities in place. If the Licensee fails to do so within a reasonable period of time, the City may have the removal done at Licensee's expense.
 - If the Network Facilities is abandoned by the Licensee, the ownership of all portions of the Network and Network Facilities in the ROW shall revert to the City and the City may retain, sell, assign, or transfer all or part of the assets. City's assumption of ownership shall not render City liable for any claims, causes of action, injuries, disputes, lawsuits, or liabilities of Licensee accruing or arising prior to City's assumption of ownership.
- F. Notwithstanding the foregoing, Licensee may appeal a revocation decision by the City to a court of competent jurisdiction and such appeal shall stay the implementation of such revocation.

SECTION 8 NETWORK SYSTEM SERVICES

8.1. System Services.

- A. Grantee shall, to the extent commercially reasonable and technologically feasible, provide additional facilities and equipment, expand capacity, and otherwise upgrade its Network and Network Facilities throughout the Term, as required to incorporate improvements in technology to reasonably meet the needs and interests of the community in light of the costs thereof.

- B. In furtherance of the general policy of the City that Licensee's services be innovative and modern, Licensee will pursue a continuous policy of incorporating new technical developments into the Network and Network Facilities and will identify and respond to changing community interests and desires regarding services where economically and technically feasible.
- 8.2. Dark Fiber. For the purpose of expanding City's internal network, Licensee will provide City two (2) strands of "dark" fiber optic cable along routes requested from time to time by the City during the Term on terms and conditions mutually agreed by the Parties, upon the initial construction, modification, or expansion by Licensee of the Network Facilities along such routes. Such dark fiber shall be limited to the exclusive use of City or its governmental entity designee for any noncommercial, public purpose. All costs relating to the use, maintenance, or repair of the dark fiber shall be the responsibility of the City as calculated on a pro-rata basis with reference to the total number of fiber(s) in the strand. City and Licensee will execute an additional agreement addressing the disposition and maintenance of such dark fiber in greater detail.
- 8.3. Innerduct Option. Licensee shall provide City the option of causing the installation of additional innerduct by Licensee along any and all routes upon the initial construction, modification, or expansion by Licensee of the Network Facilities on terms and conditions mutually agreed to by the Parties. Such innerduct shall be and remain under the exclusive control of the City, or its designated governmental entity, and shall be limited to the exclusive use of the City for any noncommercial, public purpose. The City shall be responsible for all marginal costs relating to the installation of such innerduct and its maintenance by the Licensee. The Licensee shall cooperate with and assist the City in identifying likely routes, build-out schedules, and cost estimates. The City and Licensee will execute an additional agreement addressing the City's innerduct option in greater detail. The foregoing limit on use shall not be construed to limit the City's ability to transmit, interconnect, and otherwise enable services using such facility for noncommercial, public purpose with any other public sector entity, including federal, state, or local agencies and/or political subdivisions.
- 8.4. Right of Inspection. City will have the right to inspect all construction, reconstruction, or installation work performed by Licensee under the provisions of the Agreement and other pertinent provisions of law, to ensure Licensee's compliance and to protect the public health, safety, and welfare of City's residents and citizens. Licensee will have the right to be present at such inspections.
- 8.5. Periodic Evaluation. The field of communications is rapidly changing and may see many regulatory, technical, financial, marketing, and legal changes during the term of this Agreement. Therefore, in order to provide for a maximum degree of flexibility in this Agreement, and to help achieve a continued advanced and modern Network and Network Facilities, the following evaluation provisions shall apply:

- A. Upon thirty (30) days written notice to Licensee, the City may require an evaluation session. Evaluation sessions may occur no more than once every three (3) years beginning three (3) years from the Effective Date, unless otherwise mutually agreed to by the parties.
- B. All evaluation sessions shall be open to the public and notice of sessions published the same way as a legal notice.
- C. Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, Network and Network Facilities performance, facilities and support, municipal uses of fiber, customer complaints, amendments to this Agreement, judicial rulings, FCC rulings, line extension policies, and any other topics City and Licensee deem relevant.
- D. As part of a periodic review, the City or Licensee may contract with an independent research organization to conduct an objective survey to identify ongoing community needs.
- E. As part of a periodic evaluation, the City or Licensee may contract for or perform a technical review and performance evaluation. The City and Licensee shall be notified of all such testing and designate representatives to be in attendance and shall also be provided with the results of such tests including any recommendations resulting from such tests along with City or Licensee's proposed satisfaction of any such recommendations.
- F. As a result of a periodic review or evaluation session, the City and Licensee, in good faith, may develop such changes and modifications to the terms and conditions of the Agreement as are mutually agreed upon.

SECTION 9 MISCELLANEOUS

- 9.1. Assignment. Neither party may assign or transfer its rights or obligations under this Agreement, in whole or in part, without the written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, Licensee may, without the City's consent, (i) assign its rights and obligations under this Agreement to an affiliate, (ii) assign its right to receive payments under this Agreement to any creditor, and (iii) assign its rights and obligations under this Agreement to an entity acquiring all or substantially all of Licensee's assets. Any agreed upon assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.
- 9.2. Notices. All notices related to this Agreement will be in writing and sent:
 - A. If to Licensee:

Gateway Infrastructure, LLC

275 N. Service Road
Wright City, MO 63390

B. If to City:

City of Fargo – Engineering Department
225 4th Street North
Fargo, ND 58102

With a copy to:

City Auditor
225 4th Street North
Fargo, ND 58102

Notices are effective when actually received by the party designated above by personal delivery, registered or certified mail postage prepaid, by express mail, or by overnight courier.

The addresses of the parties may be changed upon notice to the other party given as provided in this Section.

- 9.3. Governing Law. This Agreement is governed by the laws of the State of North Dakota. The parties hereby agree that any and all disputes arising hereunder shall be litigated in the State District Court for Cass County, North Dakota, and Licensee hereby consents to jurisdiction and waives any objection based upon improper venue.
- 9.4. Entire Agreement. This Agreement constitutes the entire agreement between Licensee and City relating to the subject matter hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Licensee and City.
- 9.5. No Forbearance or Waiver. The failure or delay of a Party to insist on the timely performance or any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.
- 9.6. Approval. This Agreement shall not be effective until approved by the Fargo City Commission and executed by the Mayor on behalf of City.
- 9.7. Non-Discrimination. Licensee will comply, and require compliance by its contractors) with applicable federal, state, and local laws with respect to

prohibitions against discrimination on the basis of race, color, sex, age, disability, political, or religious opinions, affiliations, or national origin.

- 9.8. Reservation of Rights. The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any such rights.
- 9.9. Binding Effect. This Agreement is made expressly for the benefit of, and shall be binding on, the heirs, beneficiaries, personal representatives, successors, and assigns of the respective parties. This Agreement shall run with the Network Facilities and will be binding upon all successive owners of record.
- 9.10. Severability. If any part of this Agreement is deemed invalid, illegal, or unenforceable, the remainder of this Agreement will remain in effect.

Dated this 29th day of May, 2025

Gateway Infrastructure, LLC

By: [Signature]
Name: Chris Surdo
Title: Chief Executive Officer

STATE OF _____)
) ss
COUNTY OF _____)

On this 29 day of May, 202⁵, before me, a notary public in and for said county and state, personally appeared _____ to me known to be the _____ of Ubiquity North Dakota, LLC, the entity described in and who executed the within and foregoing instrument and acknowledged to me that said entity executed the same.

(SEAL)

Christina Meyer
Notary Public
Warren County, MO
My Commission expires: 5-2-2026



Dated this _____ day of _____, 2024

City of Fargo

By: _____

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

ATTEST:

Steven Sprague, Auditor

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

On this _____ day of _____, 2024, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota
My commission expires: _____

NON-EXCLUSIVE RIGHT OF WAY OCCUPANCY AGREEMENT

This Non-Exclusive Right of Way Occupancy Agreement (“**Agreement**”) is made and entered into by and between the **City of Fargo**, a North Dakota municipal corporation (“**City**”), and **Ubiquity North Dakota, LLC**, a Delaware limited liability company, and its direct parent, and its direct parent’s subsidiaries, successors, or assigns (“**Licensee**”).

WHEREAS, the City has jurisdiction over the use of the public rights-of-way in City (“**Public ROW**”); and

WHEREAS, the City adopted a Right-of-Way Occupancy Ordinance, Article 24-03 of the Fargo Municipal Code of Ordinances (the “**Ordinance**”), which authorizes the City to register any person wanting to occupy or use the Public ROW and which provides terms for using the Public ROW; and

WHEREAS, Licensee desires to use the Public ROW to provide an open access fiber optic network within the City and occupy the Public ROW to construct, install, maintain, and operate a fiber optic infrastructure network and associated appurtenances within the City for the purpose of offering communications services; and

WHEREAS, the City has determined that, upon Licensee completing the necessary registration for occupancy of the Public ROW, the Licensee can be granted access to the Public ROW in accordance with the terms of this Agreement; and

WHEREAS, the City Commission has determined that the Agreement as hereinafter set forth should be adopted.

NOW, THEREFORE, in consideration of the foregoing and the following covenants and agreements, it is hereby agreed by and between City and Licensee (collectively the “**Parties**”) as follows:

SECTION 1 USE AND OCCUPANCY OF ROW

1.1. Permission to Use and Occupy ROW.

- A. Pursuant to the terms of this Agreement and any exhibits thereto (which are incorporated into and made part of this Agreement), and upon Licensee’s compliance with the Ordinance, City hereby grants Licensee permission to use and occupy the Public ROW (“**License**”) for the purpose of constructing, installing, repairing, maintaining, operating, and, if necessary, removing an open access fiber optic infrastructure network and associated appurtenances (“**Network**”) in accordance with the terms and conditions of this Agreement. The Network shall be for the purpose of offering wholesale and retail communications services, including broadband internet access service as defined in 47 C.F.R. § 8.1(b) and voice over internet protocol services (“**Services**”), but excluding multichannel video programming services that would be subject to a video services franchise.

- B. The Network may also consist of equipment and facilities that may include underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access handholes; electronic equipment; power generators; pedestals; boxes; vaults; and other similar facilities (“**Network Facilities**”). This Agreement and the License do not authorize Licensee to install or use any wireless communications facility within the Public ROW. Any installation of wireless communications facilities within the Public ROW shall be governed by Article 24-04 of the Fargo Municipal Code of Ordinances.
 - C. This Agreement and the License do not authorize Licensee to use any property other than the Public ROW as agreed herein. Licensee’s use of any City owned property, including poles and conduits, must be governed under a separate agreement regarding that use, if any.
 - D. This Agreement and License are subject and subordinate to City’s prior and continuing right to use the Public ROW, including but not limited to constructing, installing, operating, maintaining, repairing, or removing sewer mains, sewer lines, water mains, water lines, storm drains, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal purposes.
 - E. City’s grant of the License is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, superior claims of title or other property interests that may affect the Public ROW, in addition to those uses permitted by the Fargo Municipal Code. Licensee will obtain at its own cost and expense any required permission or rights as may be necessary to accommodate such pre-existing property interests, so long as such pre-existing interests do not contravene state or federal law.
 - F. Licensee hereby acknowledges that it has examined all the definitions and provisions of the Ordinance, which are incorporated herein by reference, and agrees that the provisions thereof are valid and binding upon Licensee, its contractors, subcontractors, and any person or entity performing any work on the Network or Network Facilities. Licensee agrees to abide by the provisions of the Ordinance, as it exists on the effective date of this Agreement and as thereafter amended or modified, and as may be amended from time to time as required by applicable law or agreement, and other relevant and generally applicable regulations and supplemental specifications as to construction, operation, or maintenance promulgated by the City.
- 1.2. Subject to Federal, State and Local Law. This Agreement and License are subject to City’s valid authority under federal, state, and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Agreement. In the event of a material conflict between the terms of local law and the applicable provisions of this Agreement, the applicable provisions of this

Agreement will prevail. The parties hereby agree that if future modifications or amendments to federal or state law necessitate modifications to this Agreement, including but not limited to any provisions pertaining to revenue sharing or Public ROW occupancy fees, the parties will work in good faith to agree upon the modifications.

- 1.3. No Grant of Property Interests. The License does not grant or convey any property interest to Licensee.
- 1.4. Non-Exclusive License. The License granted by this Agreement is non-exclusive. City expressly reserves the right to grant licenses, permits, franchises, privileges, or other rights to any other individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, governmental authority, or other entity of any nature whatsoever, as well as the right in its own name as a City, to use Public ROW for similar or different purposes allowed Licensee under this Agreement.
- 1.5. Police Powers. Licensee's rights afforded by this Agreement are subject to the police powers of the City to adopt and enforce ordinances of general applicability and necessary to the health, safety, and welfare of the public. Licensee will comply with all such generally applicable laws and ordinances enacted by the City pursuant to that power.
- 1.6. City's Principles and Intents. The following provisions are statements of the City's intent in entering into this Agreement and shall not supplant or modify specific provisions of this Agreement:
 - A. Provide for the installation and operation of an open access fiber network with features meeting the current and future fiber related needs and interests of the City of Fargo community;
 - B. Encourage prompt implementation of technical advances in communications technology;
 - C. Encourage the Licensee to provide high quality customer service;
 - D. Ensure that the installation and maintenance of fiber facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
 - E. Protect the City's interests and health, safety and welfare of its citizenry;
 - F. Ensure the universal availability of high-speed fiber-based internet within the City's municipal boundaries on a non-discriminatory basis; and
 - G. Receive the maximum permissible compensation for the private commercial use of the Public ROW.

SECTION 2 GENERAL FINANCIAL REQUIREMENTS

2.1. License and Occupancy Fees. Licensee hereby acknowledges the difficulty for City to determine the precise, actual costs of maintaining the license granted hereunder and the Public ROW, and the future added costs that will be incurred by the City for projects because of the need for contractors and City personnel to work around Licensee's Network Facilities once installed within the Public ROW. The Parties therefore agree that from the effective date of this Agreement Licensee shall pay City the greater of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) annually or five percent (5%) (the "Revenue Percentage") of Gross Revenues (as defined below) for a full calendar year, whichever is greater. Licensee shall remit quarterly payments of \$87,500 to the City within forty-five (45) days of the end of each calendar quarter. At the end of each calendar year, the Licensee shall submit a report showing the basis for the computation and such other relevant facts as may be required by the City to determine if any payment is due that exceeds the \$350,000. If additional payment is required, it shall be included in the first quarter payment of the following calendar year. Licensee and Licensor agree to increase, at the time of renewal, the minimum amount for License and Occupancy Fees based on an increase to the Municipal Cost Index (MCI), published by American City & County, from the Effective Date to the time of renewal. The increase will be calculated as the difference between the value published for the month and year of the Effective Date and the latest value published at the time of renewal divided by the value published on the Effective Date multiplied by \$350,000. The new minimum amount for License and Occupancy Fees will be the increase, as calculated, added to the prior License and Occupancy Fees amount of \$350,000. If the Municipal Cost Index is no longer published, the Consumer Price Index will be used.

2.2. Gross Revenues.

- A. The term "Gross Revenues" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions of services or goods, received by Licensee or its affiliated companies from any customers, consumers, businesses, residents, tenants, licensees, lessees, and others resulting from Licensee's Network, Services, and Network Facilities, and any related services contemplated by this Agreement located in or provided within the City's municipal boundaries.
- B. Gross Revenues do not include:
 - (1) any revenue not actually received, even if billed, such as bad debt;
 - (2) refunds, rebates, or discounts given by Licensee to its customers or to City;
 - (3) revenue received by Licensee from the sale of Services for resale in which the purchaser is required to collect and remit similar fees from the

- purchaser's customer to the City;
- (4) revenue received by Licensee from its provision of Services to customers whereby none of the Network Facilities used to provide such Services are located in the Public ROW;
- (5) any forgone revenue from Licensee's provision of Services to customers at no charge if required by state law to provide such Services at no charge;
- (6) any revenue received by Licensee from rental of modems or other hardware used to provide or facilitate the provision of the Services to customers;
- (7) any tax of general applicability imposed upon Licensee or its customers by City or by any state, federal, or any other governmental entity, and required to be collected by Licensee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise tax, utility users tax, public service tax, communications taxes, and tax-related fees);
- (8) any forgone revenue from Licensee's provision, in Licensee's discretion, of free or reduced cost Services to employees of Licensee; provided, however, that any forgone revenue which Licensee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (9) Licensee's sales of capital assets or sales of surplus equipment.

2.3 Other Fees.

- A. Except as provided herein, Licensee shall not be relieved from its obligation to pay administrative fees, public impact fees, and inspection fees, as may be required by the City of Fargo Excavation Ordinance.
- B. Excavation and other permit fees relating to performance of work in the Public ROW shall continue to be paid by Licensee throughout its construction and installation of the Network Facilities.
- C. Licensee's affiliates, customers, clients, contractors, tenants, licensees, and lessees which utilize Licensee's Network and Network Facilities to provide services to residents and businesses of the City must be either franchised with the City or enter into a separate agreement with the City prior to providing any services to any residents or businesses of the City.

- 2.4 Alternative Charge. In the event that the occupancy fees, as described in Section 2.1 above, are preempted by law, the City may establish and apply to Licensee an alternative per linear foot charge for Licensee's use of the ROW. If the City is then applying a linear foot charge to any similar user of the ROW, the City shall apply to Licensee a linear foot charge at the rate per linear foot that it is charging any similar user. A "similar user" shall mean any entity or company that occupies the ROW and offers services similar to those that Licensee offers or provides. The City shall apply the rate per linear foot thus determined to be the actual linear feet of cables, wires, or other devices that Licensee is occupying in the ROW in the year

at issue. If no similar user exists at the time that the City establishes a linear foot charge for Licensee, the City shall determine Licensee's in accordance with the Ordinance. If no rate is provided by Ordinance, then City shall determine Licensee's charge by reference to the revenues that the City received, or should have received, in the previous twelve (12) months from Licensee. For example, if the City should have received Four Hundred Thousand Dollars (\$400,000) from Licensee for the prior twelve (12) month period and Licensee's Network Facilities occupied four hundred thousand (400,000) linear feet of ROW during that period, Licensee's rate per linear foot will be One Dollar (\$1.00). The rate will then be applied in each subsequent year to the number of linear feet that Licensee's Network Facilities occupy the ROW that year. If the City determines by audit that the revenues that it received in the base period were incorrect, the City shall make appropriate adjustments, both retroactively and prospectively.

Should the above-described linear foot charge be declared invalid by a court or other body of competent authority, or in any way be preempted, relieving Licensee of the obligation to pay the linear foot charge, the City shall establish a further alternative reasonable charge or other appropriate method of compensation. To the extent permitted by law, any such further charge shall be comparable to payments Licensee would otherwise have been obligated to pay to the City under Section 2.1. No such further alternative charge shall be established without a public hearing with notice to Licensee of such hearing not less than thirty (30) days prior to the public hearing.

2.5 Failure to Pay. Failure to pay occupancy fees based on Gross Revenues or a charge based on a per linear foot assessment or such other charge or other compensation as set by the Fargo City Commission shall be deemed a breach of this Agreement and the Ordinance and may be enforced according to the provision of this Agreement and the Ordinance or by any other means available to City, including but not limited to, the denial of permits for work within the ROW.

2.6 Audits. Payments due the City under the terms of this Agreement will be computed monthly for the preceding month and will be paid and delivered to the City via wire transfer as directed by the Finance Director on or before the thirtieth (30th) calendar day from each computation date to the City. The City will be furnished via e-mail with each payment, certified as correct by the Licensee, a payment worksheet reflecting the total amount of Gross Revenues and the computations for the monthly payment period to be covered by the payment not more than once per year. Upon thirty (30) days prior written notice, the City will have the right to conduct an independent audit of Licensee's records once every two (2) years, in accordance with generally accepted accounting principles. Any additional amounts due the City as a result of such audit will be paid within thirty (30) days following written notice by the City to the Licensee, which notice will include a copy of the audit report. The audit cost will be paid by Licensee if payments have been underpaid by five percent (5%) or more. In lieu of, or in addition to, an independent audit, City shall have the right to review Licensee's records. Licensee's records shall at all times be maintained in accordance with generally accepted accounting principles (GAAP), unless Licensee clearly and specifically indicates and fully describes to the City any variation from GAAP.

- 2.7 Acceptance of Payment. No acceptance of any payment will be construed as a release or accord and satisfaction of any claim the City may have for further or additional sums payable as an occupancy fee under this Agreement or for the performance of any other obligation hereunder.
- 2.8 Failure to Pay. Failure to pay any fees required by this Section within twenty (20) days of receipt of written notice of such failure from the City will be grounds for termination of this Agreement and reinstatement thereof may be had only upon resolution by the City Commission.
- 2.9 Penalty for Late Payment. In the event that any occupancy fee payment or recomputed amount is not made on or before the dates specified herein, Licensee will pay as additional compensation a late charge, equal to five percent (5%) of the total amount of the occupancy fee payment amount which was untimely.
- 2.10 Licensee's Financial Acknowledgements.
- 2.10.1 Licensee expressly acknowledges and agrees that, except for the payments expressly required by Section 2.1, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by Licensee at the direction of the City or the Ordinance pursuant to this Agreement, or otherwise in connection with the construction, operation, maintenance, or upgrade of the Network Facilities (including specifically, but not by way of limitation, such payments, contributions, services, equipment, facilities, support, resources, or other activities as described in or provided for in this Agreement) are part of the occupancy fee chargeable against the compensation payments to be paid to the City by Licensee pursuant to Section 2.1.
- 2.10.2 Licensee expressly acknowledges and agrees that the compensation payments due from the Licensee to City pursuant to Section 2.1 is separate from any other payments made for contributions, services, equipment, facilities, support, resources, permits, or other activities to be paid or supplied by Licensee pursuant to this Agreement. The compensation and other payments to be made pursuant to this Agreement shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes or other fees or charges which Licensee shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of Licensee.
- 2.10.3 Licensee shall not have or make any claim for any deduction or other credit of all or any part of the amount of the occupancy fee in the above Section 2.1 from or against any City or other governmental taxes of general applicability, or other fees or charges which Licensee is required to pay to the City or other governmental agencies unless otherwise authorized by a change of applicable law.
- 2.10.4 Licensee shall not apply or seek to apply all or any part of the amount of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement as a deduction or other credit from or against any City or other government taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate

and distinct obligations of the Licensee unless otherwise authorized by a change of applicable law.

2.10.5 Licensee shall not apply or seek to apply all or any part of the amount of any City or other governmental taxes or other fees or charges of general applicability as a deduction or other credit from or against any of the occupancy fee in the above Section 2.1 to be made pursuant to this Agreement, each of which shall be deemed to be separate and distinct obligations of Licensee unless otherwise authorized by a change of applicable law.

2.10.6 Unless otherwise authorized by a future change of applicable law, in the event Licensee applies or seeks to apply all or any part of the amount of the occupancy fee to City, payments as a deduction or other credit from or against such City or other governmental taxes of general applicability or other fees or charges, or unless authorized by a change in applicable law in the event that Licensee applies or seeks to apply all or any part of the amount of such taxes or other fees or charges as a deduction or other credit from or against the occupancy fee payable to the City, then, in any such event, the City may terminate this Agreement for cause due to a material breach, and without any liability or compensation to Licensee.

3 **SECTION 3 LICENSEE'S OBLIGATIONS**

3.1 Individual Permits Required. Subject to the specific requirements of the Fargo Municipal Code and policies adopted by the Fargo City Commission, Licensee will obtain City's approval of required individual encroachment, construction, excavation, and other necessary permits before placing its Network Facilities in the Public ROW or other property of City, as may be authorized. Licensee will pay all processing, engineering, and inspection fees associated with the issuance of individual permits by City.

3.2 Bond. The Licensee shall provide a bond that shall be in effect for two years, with good and sufficient surety, conditioned, among other things, that the applicant will save harmless the City from damages caused by reason of any negligence or faulty work by the Licensee or any employee or subcontractor of the Licensee. The minimum amount of the bond shall be \$150,000 with the effective date of March 2. The bond can be provided by a contractor that is licensed by the City.

3.3 Insurance. Licensee must carry and maintain insurance in the amounts and of the types as follows:

3.3.1 Liability Insurance. As of the effective date of this Agreement and during the entire term of this Agreement, the Licensee will, at its sole expense, maintain public liability insurance with a company licensed to do business in the State of North Dakota with a rating by Best of not less than "A" that will protect the Licensee, the City, and the City's officials, officers, employees, and agents from claims which may arise from operations under this Agreement, whether such operations are by the Licensee, its officials, officers, directors, employees, or agents, or any contractors or subcontractors of Licensee. This liability insurance will include, but will not be limited to, protection against claims arising from bodily and personal injury, death, and damage to property resulting from the Licensee's automobiles,

products, construction, maintenance, installation, and other related work, and operations. The amount of such insurance shall be subject to periodic changes as described in this Section, or as may be required by applicable law, but will not be less than the following:

General Liability Insurance:

Bodily injury and/or death per person	\$5,000,000
Bodily injury and/or death per occurrence	\$5,000,000
Property damage per occurrence	\$2,000,000
Property damage and bodily injury, aggregate	\$7,000,000

Automobile Coverage

Combined single limited	\$2,000,000
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Umbrella Coverage	\$2,000,000
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3.3.2 The liability policy will provide for the following, by endorsement or otherwise:

3.3.2.1 The policy will cover personal injury as well as bodily injury and death;

3.3.2.2 The policy will cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal Sec. 8.4.1

3.3.2.3 Broad form property damage liability will be afforded;

3.3.2.4 The City will be included as an additional insured on the policy;

3.3.2.5 The coverage is primary insurance and no other insurance or fund of the City will be called upon to contribute to a loss under the coverage;

3.3.2.6 Standard form of cross-liability will be afforded; and

3.3.2.7 The policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

3.3.3 The automobile insurance policy will provide for the following, by endorsement or otherwise: (1) the City will be included as an additional insured on the policy; and (2) the policy will not be cancelled without thirty (30) days prior written notice of such cancellation to the City.

- 3.3.4 Upon ninety (90) days prior written notice to Licensee, the City reserves the right to adjust the limit coverage requirements no more than every three (3) years. Any such adjustment by the City will be no greater than the increase in the State of North Dakota Consumer Price Index for such three (3) year period, unless otherwise required by applicable law.
- 3.3.5 Licensee will submit to the City documentation of the required insurance including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements. The certificate of insurance should confirm that the required endorsements are in effect.
- 3.3.6 Any deductible or self-insured retention must be declared to the City.
- 3.3.7 Licensee will have insurance coverage to cover any valid claim arising before sale or transfer of the Network Facilities or termination of this Agreement.
- 3.3.8 It will be the obligation of the Licensee to notify the City promptly of any pending or threatened litigation likely to negatively impact its ability to provide the insurance coverage required herein.
- 3.3.9 Notwithstanding the foregoing, Licensee will promptly repair any damage to the ROW, City property, or private property if such damage is directly caused by Licensee's work and no other person is responsible for the damage (e.g., where a person other than Licensee fails to accurately or timely locate its underground facilities as required by applicable law). Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this provision will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.4 Worker's Compensation Insurance. Licensee will obtain and maintain worker's compensation insurance for all Licensee's employees, and in case any work is subcontracted, Licensee will require any subcontractor similarly to provide worker's compensation insurance for all of the subcontractors' employees, in compliance with state laws, and to fully protect the City from any and all claims arising out of work-related occurrences. Licensee hereby indemnifies City for any damage resulting to it from failure of either Licensee or any subcontractor to obtain and maintain such insurance. Licensee will provide the City with a certificate of insurance indicating worker's compensation insurance prior to operations under this Agreement and the commencement of any construction, system upgrade, reconstruction, or maintenance of the Network Facilities. The certificate of insurance should confirm that the required endorsements are in effect.
- 3.5 Licensee's Sole Cost and Expense. Licensee will perform all work at its sole cost and expense.
- 3.6 Compliance with Laws. Licensee will comply with all applicable laws and regulations when performing its work. Licensee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by City.

- 3.7 Reasonable Care. Licensee will exercise reasonable care when performing its work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater.
- 3.8 No Nuisance. Licensee will maintain its Network Facilities in good and safe condition.
- 3.9 Repairs. Licensee will promptly repair any damage to the Public ROW, City property, or private property if such damage is caused by Licensee's work and no other person is responsible for the damage. Licensee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Licensee's obligation under this Section will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.
- 3.10 As-Built Drawings and Maps. Licensee will maintain accurate as-built drawings and maps of its Network Facilities located in the Public ROW and will provide them to City upon reasonable request and on a mutually-agreed timetable, subject to applicable confidentiality protections.
- 3.11 Network Design. Licensee hereby agrees that it shall build, install, and construct, within five years of the effective date of this Agreement, to all areas of the City making its Network and Services available to every residence, household, and business located within the City's municipal boundaries. In the event of annexation by the City, any new territory brought into the City's municipal boundaries shall become part of the service area covered by this Agreement. If the Licensee determines any part of the city is not serviceable, it shall provide documentation to the Licensor giving the reasons why it cannot provide service. The City Engineer or designee shall make the determination of not servicing any area identified by the Licensee. The Licensee can appeal the decision to the City Commission if they disagree with the decision by the City Engineer or designee. Licensee shall retain the discretion to determine the timing, location, design, and construction of the Network Facilities. Licensee's use of Public ROW or City property shall be conducted in a manner consistent with lawful and applicable public easement rights.
- 3.12 Traffic Control. Licensee shall provide traffic control that meets all requirements of the MUTCD adopted by the State of North Dakota. All costs for traffic control will be the sole responsibility of the Licensee.
- 3.13 Reports. Licensee is required to submit to the City upon request all reports and information as provided in this Agreement or the Ordinance.

4 CITY'S RESPONSIBILITIES

- 4.1 Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, infrastructure, or property of City or its residents, City and/or other public utilities may remove or relocate the applicable portions of the Network Facilities without prior notice to Licensee. City and any affected public utility will, however, make reasonable efforts to provide prior notice to Licensee before making an emergency removal or relocation. In any event, City and any other municipal utility benefitting from this provision will promptly provide to Licensee a written description of any emergency removals

or relocations of Licensee's Network Facilities. Licensee will reimburse City municipal utility for its actual, reasonable, and documented costs or expenses incurred for any such emergency work, the direct cause of which was Licensee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Licensee's obligation to reimburse City and any affected public utility under this section will be separate from Licensee's obligation to reimburse City for any other reasonable expense City may incur.

- 4.2 Relocation to Accommodate Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with planned use of the Public ROW or property of the City, State of North Dakota, or any other political subdivision for any governmental purpose as reasonably determined by the City, Licensee will, upon written notice from any of the foregoing entities, relocate its Network Facilities at Licensee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the governmental purpose and Licensee's interest in maintaining the integrity and stability of its Network. Licensee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances, except that City or any such public entity may not require Licensee to relocate or remove its Network Facilities with less than thirty (30) days' notice.
- 4.3 Relocation to Accommodate Non-Governmental Purposes. If Licensee's then-existing Network Facilities would interfere with a third-party's use of the Public ROW, Licensee will not be required to relocate its Network Facilities unless the City Commission reasonably determines that a failure to relocate Network Facilities will result in a material detriment or financial loss to the citizens of the City of Fargo. If there is any dispute between Licensee and the affected third party involving use of the ROW, City will attempt to mediate the dispute between the parties so as to avoid or mitigate unreasonable delays.
- 4.4 Post-Removal Restoration of Public ROW. When removal or relocation is required under this Agreement, Licensee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to the same or similar conditions existing prior to the Licensee's construction.
- 4.5 City will permit the work as current staffing levels allow. Permits processed under the aforementioned capacity shall not be unreasonably withheld, conditioned or delayed. If Ubiquity and/or their contractor would like expedited permit reviews and/or a higher volume of active permits, Licensee will be required to execute an Agreement with the City regarding reimbursement. The City would develop the Agreement and negotiate acceptable terms of the Agreement with the Licensee to cover the cost of expediting the permit approval and walk throughs.

5 CONTRACTORS AND SUBCONTRACTORS

- 5.1 Use of Contractors and Subcontractors. Licensee may retain contractors and subcontractors to perform the work on Licensee's behalf.

5.2 Contractors to be Licensed, Bonded and Insured. Any contractors and subcontractors engaged or hired by Licensee to perform work under this Agreement must be licensed as a contractor with the State of North Dakota as well as bonded and insured in accordance with applicable law.

5.3 Authorized Individuals. Licensee's contractors and subcontractors may submit individual permit applications to City on Licensee's behalf, so long as the permit applications are signed by individuals that Licensee has authorized to act on its behalf via a letter of authorization provided to City ("**Authorized Individuals**"). City will accept permit applications under this Agreement submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Licensee under this Agreement.

6 DEFENSE AND INDEMNITY

6.1 Obligations. Licensee will defend and indemnify the City, its Commission and the members, officers, elected representatives, agents, and employees, from and against any and all claims, and including reasonable attorney's fees and legal costs, for injury or damage to persons or property, both real and personal, caused by the negligence or willful misconduct of Licensee or its contractors related to the construction, erection, operation and maintenance of the Network and Network Facilities. It is expressly understood that the City has no control, standard, or regulation pertaining to the subject matter of programs distributed by the Licensee. The Licensee also agrees to hold harmless the City, its Commission and the members, officers, elected representatives, agents, and employees from any and all claims, suits, and actions at law or in equity, for libel, slander, patent or copyright infringements, to the extent that the City is made a party defendant in any action arising out of the subject matter of programs transmitted by Licensee. Licensee shall, at its sole cost and expense, defend such actions and appeals therefrom including those involving the City. Licensee's indemnity obligations shall require it to pay settlement amounts to resolve an indemnified claim and damages and costs finally awarded against the City by a competent tribunal in any legal proceeding filed by a third party for property damage, personal injury, or death to the extent caused by the negligence or willful misconduct of Licensee or its contractors arising from this Agreement ("**Third Party Legal Proceeding**").

6.2 Exclusions. Section 6.1 will not apply to the extent the underlying allegation arises from or is related to the negligence or willful misconduct of an indemnified party.

6.3 Notice of Claim. City agrees to provide reasonable efforts to promptly notify Licensee in writing of the Third Party Legal Proceeding and any allegations that preceded the Third Party Legal Proceeding no later than fifteen (15) days after City became aware of the Third Party Legal Proceeding. City also must reasonably cooperate in the defense at Licensee's request. City must tender sole control of the indemnified portion of the Third Party Legal Proceeding to Licensee, subject to the following: (a) City may appoint its own non-controlling counsel, at its own expense; and (b) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld or delayed.

7 TERM AND TERMINATION

7.1 Term. This Agreement shall become effective on the date the last party to sign executes this Agreement (“**Effective Date**”). The Agreement will expire automatically on the tenth (10th) anniversary of the Effective Date (“**Original Term**”), unless earlier terminated in accordance with the provisions herein or renewed by written agreement of the parties made prior to the tenth anniversary of the Effective Date. If renewed, the Agreement will renew for a successive ten (10) year term or another term as agreed upon by the parties in writing.

7.2 Procedure for Remedying Agreement Violations. In addition to any other applicable legal remedy, if Licensee fails to perform in a timely manner any material obligation required by the Ordinance or this Agreement, following notice from the City and an opportunity to cure such nonperformance, the City may remedy such violation in accordance with the following procedures:

7.2.1 The City will first notify Licensee of the violation in writing, and demand a cure within a reasonable time, which will not be less than twenty (20) days in the case of the failure of the Licensee to pay any sum or other amount due the City under the Ordinance or this Agreement, and not less than thirty (30) days in all other cases. If Licensee fails to cure the violation within the time prescribed in the notice, or if Licensee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, the Licensee will then be given a written notice of a public hearing to be held before the City Commission. The notice will specify the violations alleged to have occurred.

7.2.2 At the public hearing, the City Commission will hear and consider all relevant evidence, and thereafter render findings and its decision.

7.2.3 In the event the City Commission finds that Licensee has corrected the violation or has diligently commenced efforts to correct such violation after notice thereof from the City and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings will terminate and no penalty or other sanction will be imposed.

7.2.4 In the event the City Commission finds that a material violation exists and that Licensee has not corrected the same in a satisfactory manner or has not diligently commenced efforts to correct such violation, the City Commission may establish a date, no earlier than twenty (20) days after the public hearing, by which Licensee must comply with the obligation. The City Commission may also implement the termination procedures outlined in this Agreement and the Ordinance. However, any termination procedures will be stayed until a final ruling is obtained in accordance with subsection F below.

7.2.5 In determining whether a violation is material, the City will take into consideration the reliability of the evidence of the violation, the nature of the violation, and the damage, if any, caused to the City or the City's residents thereby, whether the violation was chronic, and any justifying or mitigating circumstances, and such other matters as the City may deem appropriate.

7.2.6 If the violation as proposed depends on a finding of fact, such finding of fact will be made by the City only after a hearing providing the Licensee with a full and fair opportunity to

be heard. Licensee will have the right to appeal any such decision to state court and the revocation or penalty will not become effective until any such appeal has become final or the time for taking such appeal will have expired.

- 7.2.7 City has not required Licensee to furnish to City a security deposit to secure payment of liquidated damages that may be imposed by City for defaults of this Agreement. However, City reserves the right to require a reasonable security deposit if Licensee continuously violates this Agreement or if there is a change in ownership or control of Licensee.

7.3 Revocation or Termination of Agreement.

- 7.3.1 Upon completion of the term of this Agreement, if a new, extended, or renewed Agreement is not granted to the Licensee by the City, the Licensee's right to occupy the ROW shall terminate, subject to applicable state and federal law.
- 7.3.2 The City shall have the right to revoke the Agreement for the Licensee's failure to construct, operate or maintain the Network and Network Facilities as required by this Agreement or the Ordinance, or for defrauding or attempting to defraud the City or its residents.
- 7.3.3 To invoke the provisions of this Section, the City shall give the Licensee written notice of the default in its performance. If, within ninety (90) days, following such written notice from the City to the Licensee, or such other period as the Licensee and the City shall agree, the Licensee has not taken corrective action to the satisfaction of the City, the City may give written notice to the Licensee of its intent to revoke the Agreement, stating its reasons.
- 7.3.4 Prior to revoking the Agreement, the City shall hold a public hearing, upon thirty (30) days advance notice to the public and written notice to Licensee, at which time the Licensee and the public shall be given an opportunity to be heard. Following the public hearing, the City may determine whether to revoke the Agreement based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Licensee to affect any cure. If the City determines to revoke the Agreement, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the Licensee.
- 7.3.5 If the City revokes the Agreement, or if for any other reason the Licensee abandons, terminates, or fails to operate or maintain the Network or Network Facilities, the following procedures and rights are effective:
- 7.3.5.1 The City may (a) require the Licensee to remove its above-ground facilities along with junction boxes buried in the ROW and equipment at the Licensee's sole cost and expense and restore affected sites, or (b) permit the Licensee to abandon such Network Facilities in place. If the Licensee fails to do so within a reasonable period of time, the City may have the removal done at the Licensee's expense.

7.3.5.2 The City may require the Licensee to continue operating and maintaining the Network and Network Facilities for a period of time not to exceed one (1) year.

7.3.5.3 If the Network Facilities is abandoned by the Licensee, the ownership of all portions of the Network and Network Facilities in the ROW and Public Utility Easements shall revert to the City and the City may retain, sell, assign, or transfer all or part of the assets. City's assumption of ownership shall not render City liable for any claims, causes of action, injuries, disputes, lawsuits, or liabilities of Licensee accruing or arising prior to City's assumption of ownership.

7.3.6 Notwithstanding the foregoing, the Licensee may appeal a revocation decision by the City to a court of competent jurisdiction and such appeal shall stay the implementation of such revocation if a stay or injunction is obtained from the court.

8 NETWORK SYSTEM SERVICES

8.1 System Services.

8.1.1 Licensee shall have the right to provide additional facilities and equipment, expand capacity, and otherwise upgrade its Network and Network Facilities throughout the term of this Agreement, as required to incorporate improvements in technology.

8.1.2 [Intentionally left blank]

8.2 State-of-Art Review.

8.2.1 Subject to this section, the City may request in writing the Licensee to review the Network and Network Facilities related to routine upgrades and maintenance requirements. Such request for Licensee's review by the City shall take place no sooner than five years from the effective date of this agreement and/or not more than twice during the original term of this Agreement.

8.2.2 The following factors shall be considered in a review:

8.2.2.1 Characteristics of the Network and Network Facilities;

8.2.2.2 The State-of-Art (as defined below);

8.2.2.3 Characteristics of other systems utilizing similar State-of-Art;

8.2.2.4 The additional benefits provided to end-users by requiring the installation of State-of-Art;

8.2.2.5 The marketplace demand for the State-of-Art determined by a third-party independent research company selected by both parties;

8.2.2.6 The costs of any State-of-Art upgrades or changes;

8.2.2.7 Availability of market competition; and

8.2.2.8 Any additional factors deemed relevant by the City or the Licensee.

8.2.3 “State-of-Art” shall mean: (1) equipment that is readily available with reasonable delivery schedules from two (2) or more sources of supply; and/or; (2) equipment that is presently installed and activated to fully use existing capabilities; and (3) equipment that is in widespread, regular use throughout at least three (3) other systems controlled, maintained, or operated by the Licensee in markets with characteristics similar to the City (including but not limited to size, population, density, demographics, and infrastructure) or other systems owned by others in the State of North Dakota with characteristics similar to the City.

8.2.4 If Licensee determines after review of the factors described in this Section and discussions with the City that an upgrade is necessary, it will order a public hearing to consider such action and to receive public comment. Notice of such hearing shall be provided to Licensee and the public no later than thirty (30) days prior to such hearing. If, after such hearing, the City reasonably determines that an upgrade is necessary, the City and Licensee will negotiate in good faith to amend this Agreement as required. In examining the economic feasibility of required system improvements, the parties shall consider whether to extend the term of this Agreement to permit a lengthier recovery of the cost of the improvements in order to lessen the burden on end-users.

8.3 Dark Fiber. For the purpose of expanding City’s internal network, Licensee may provide City two (2) strands of “dark” fiber optic cable along routes specified by City or alternate locations as mutually agreed by the parties during the term, at no charge to City, upon the initial construction, modification, or expansion by Licensee of the Network Facilities along such routes. Such dark fiber shall be limited to the exclusive use of City or its governmental entity designee for any noncommercial, public purpose. All costs relating to the use, maintenance, or repair of the dark fiber shall be the responsibility of the City as calculated on a pro-rata basis with reference to the total number of fiber(s) in the strand. City and Licensee may execute an additional agreement addressing the disposition and maintenance of such dark fiber in greater detail.

8.4 Innerduct Option. [Intentionally left blank]. Conduit Option. Licensee shall provide City the option of causing the installation of additional conduit by Licensee along any and all routes upon the initial construction, modification, or expansion by Licensee of fiber optic routes within the Public ROW. Such conduit shall be and remain under the exclusive control of City, or its designated governmental entity, and shall be limited to the exclusive use of City for any noncommercial, public purpose. City shall be responsible for all marginal costs relating to the installation of such conduit and its maintenance by Licensee. Licensee shall cooperate with and assist the City in identifying likely routes, build-out schedules, and cost estimates. The parties may execute an additional agreement addressing the City's conduit option in greater detail. The foregoing limit on use shall not be construed to limit the Licensor's ability to transmit, interconnect, and otherwise enable services using such facility for noncommercial,

public purpose with any other public sector entity, including federal, state, or local agencies and/ or political subdivisions.

8.5 Right of Inspection. City will have the right to inspect all construction, reconstruction, or installation work performed by Licensee under the provisions of the Agreement and other pertinent provisions of law, to ensure Licensee's compliance and to protect the public health, safety, and welfare of City's residents and citizens. Licensee will have the right to be present at such inspections.

8.6 [Intentionally left blank]

9 MISCELLANEOUS

9.1 Assignment. Neither party may assign or transfer its rights or obligations under this Agreement, in whole or in part, without the written consent of the other party. Notwithstanding this requirement, Licensee may assign or transfer its rights or obligations under this Agreement to an affiliate or subsidiary of Licensee, for which Licensee shall provide notice of such transfer or assignment. Any assignee will take the place of the assigning party, and the assigning party will be released from all of its rights and obligations upon such assignment.

9.2 Notices. All notices related to this Agreement will be in writing and sent:

9.2.1 If to Licensee:

Ubiquity North Dakota, LLC
Attention: General Counsel
121 W. Trade Street
Suite 1275
Charlotte, NC 28202

9.2.2 If to City:

City of Fargo – Engineering Department
225 4th Street North
Fargo, ND 58102

With a copy to:

City Auditor
225 4th Street North
Fargo, ND 58102

Notices are effective when actually received by the party designated above by personal delivery, registered or certified mail postage prepaid, by express mail, or by overnight courier.

The addresses of the parties may be changed upon notice to the other party given as provided in this Section.

- 9.3 Governing Law. This Agreement is governed by the laws of the State of North Dakota. The parties hereby agree that any and all disputes arising hereunder shall be litigated in the State District Court for Cass County, North Dakota, and Licensee hereby consents to jurisdiction and waives any objection based upon improper venue.
- 9.4 Entire Agreement. This Agreement constitutes the entire agreement between Licensee and City relating to the subject matter hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Licensee and City.
- 9.5 No Forbearance or Waiver. The failure or delay of City to insist on the timely performance or any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.
- 9.6 Approval. This Agreement shall not be effective until approved by the Fargo City Commission and executed by the Mayor on behalf of City.
- 9.7 Non-Discrimination. Licensee will comply, and require compliance by its contractors) with applicable federal, state, and local laws with respect to prohibitions against discrimination on the basis of race, color, sex, age, disability, political, or religious opinions, affiliations, or national origin.
- 9.8 Reservation of Rights. The parties expressly reserve any rights either of them may have under state or federal law concerning the subject matter of this Agreement and further agree that by execution and performance of this Agreement, neither party shall be deemed to have waived any such rights.
- 9.9 Binding Effect. This Agreement is made expressly for the benefit of, and shall be binding on, the heirs, beneficiaries, personal representatives, successors, and assigns of the respective parties. This Agreement shall run with the Property and will be binding upon all successive owners of record.
- 9.10 Severability. If any part of this Agreement is deemed invalid, illegal, or unenforceable, the remainder of this Agreement will remain in effect.

Dated this 4 day of June, 2025

Ubiquity North Dakota, LLC

By: _____

Its: Co-CEO & Managing Director

STATE OF North Carolina)
) ss
COUNTY OF Mecklenburg)

On this 4 day of June, 2025, before me, a notary public in and for said county and state, personally appeared Jamie Farp to me known to be the Co-CEO & Mrs Partner of Ubiquity North Dakota, LLC, the entity described in and who executed the within and foregoing instrument and acknowledged to me that said entity executed the same.

(SEAL)



Sarah E Portela

Notary Public

Mecklenburg County, North Carolina

My Commission expires: June 15, 2027

Dated this _____ day of _____, 2025

City of Fargo

By: _____

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

ATTEST:

Steven Sprague, Auditor

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

On this ____ day of _____, 2025, before me, a notary public in and for said county and state, personally appeared Dr. Timothy J. Mahoney, M.D. and Steven Sprague, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the North Dakota municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota
My commission expires: _____

16

June 9, 2025

Honorable Board of City
Commissioners
City of Fargo
Fargo, North Dakota

Re: Variance Acknowledgement and Liability Waiver

Attached is a Variance Acknowledgement and Liability Waiver for the property located at 3501 Main Avenue. This waiver is a condition of approval of a variance to the City Floodproofing Code, which was approved by the Board of Adjustments on May 27, 2025. The variance applies to a slab-on-grade commercial structure, and the structure will meet the State of North Dakota's building elevation requirements.

For reference, I have included a map showing the property in discussion.

Recommended Motion:

To authorize the City of Fargo Mayor to sign the Variance Acknowledgement and Liability Waiver for the property located at 3501 Main Avenue.

Respectfully,



Jody Bertrand, PE, CFM

VARIANCE ACKNOWLEDGEMENT AND LIABILITY WAIVER

This Agreement, made by and between 3222 LLC, a North Dakota limited liability company (“3222” or “Owner”) and the city of Fargo, a North Dakota municipal corporation (“City”) is for the purpose of granting Owner a variance to the City Floodproofing Code and Waiver of Liability.

WHEREAS, Owner requested a waiver of the elevation requirements of the City Floodproofing Construction Requirements, which establishes requirements for building elevations for the issuance of a building permit for the proposed construction located at:

Lot 15, less the southerly 16.5 feet of Goodman’s Subdivision of a part of the Southwest Quarter of Section Two, in Township One Hundred Thirty-nine North of Range Forty-nine West of the Fifth Principal Meridian, situate in the City of Fargo, the County of Cass and the State of North Dakota.

(Street address: 3501 Main Avenue, Fargo, ND 58103).

The City of Fargo Floodproofing Construction Requirements are found here:

[http://download.cityoffargo.com/0/floodproof construction requirements - revised april 2015.pdf](http://download.cityoffargo.com/0/floodproof%20construction%20requirements%20-%20revised%20april%202015.pdf)

WHEREAS, On May 27, 2025, the Fargo Board of Adjustment approved the elevation variance request contingent upon certain construction requirements; and

WHEREAS, As a condition of the elevation variance, 3222 shall waive any liability against City; and

WHEREAS, As further and additional conditions, 3222 agrees that the building will be constructed to a minimum finish floor elevation of 901.7 which is 1.8 feet below the required 41 foot Water Surface Elevation Inundation Area (WSEIA) plus 1.2 feet per the City of Fargo Floodproof Construction Requirements, as recommended by City Engineering Staff to ensure the structure is reasonably safe from flooding.

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

1. 3222 is granted a variance from the City of Fargo Floodproof Construction Requirements, revised April 2015, so long as the following conditions of construction are met:
 - (a) The structure will be constructed without a basement.
2. 3222 hereby waives any and all liability against City, and agrees to indemnify and hold City harmless from any all claims asserted as a result of the waiver granted herein. 3222 understands and agrees that City shall not be liable for, and City does not accept any liability for the proposed structure along with any other features constructed and/or installed within this property.
3. Owner accepts all liability with respect to the improvements completed on this property, for itself, its successors and assigns.

(Signatures on Following Pages)

Dated this 27th day of May, 2025.

3222, LLC, a North Dakota limited liability company

By: 

Its

PRESIDENT

TYLER A. BRANDT

Printed Name

STATE OF ND

)

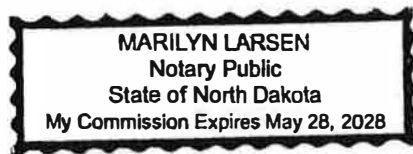
) ss.

COUNTY OF Cass

)

On this 27th day of May, 2025, before me, a notary public in and for said county and state, personally appeared Tyler Brandt, to me known to be the President of 3222 LLC, a North Dakota limited liability company, described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



Marilyn Larsen
Notary Public
Cass County, North Dakota

Dated this ____ day of _____, 2025.

CITY OF FARGO, a NORTH DAKOTA municipal
corporation

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

ATTEST:

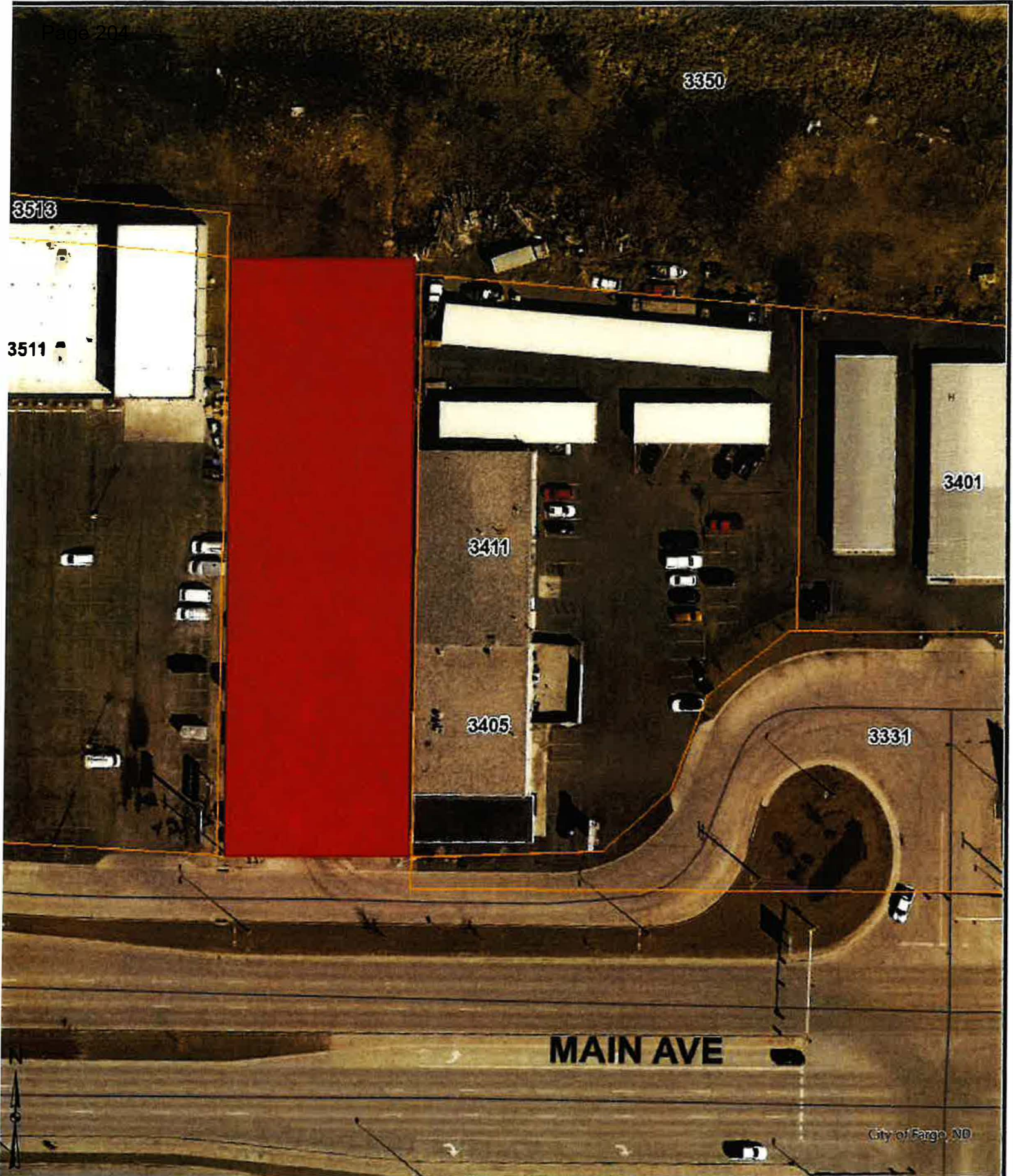
Steven Sprague, City Auditor

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

On this ____ day of _____, 2025, before me, a notary public in and for said county and state, personally appeared DR. TIMOTHY J. MAHONEY, M.D., and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

Notary Public
Cass County, North Dakota
My Commission expires:



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

3501 Main Avenue	
1:1,128	5/28/2025 11:01 AM
This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.	

THE CITY OF

Fargo

FAR MORE



City of Fargo, ND

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

17

Type: 2024 CIP Revision Summary

Location: Various Locations

Date of Hearing: 6/2/2025

Routing

City Commission

Date

6/9/2025

PWPEC File

X

Project Files

Tom Knakmuhs

The Committee reviewed the accompanying correspondence from City Engineer, Tom Knakmuhs, regarding a summary of the revisions made to the 2024 CIP.

There were a number of revisions made throughout the year to the 2024 CIP; projects were added, the size and scope of some projects changed, and some projects that were initially planned were ultimately not bid in 2024.

Staff is recommending removal of PR-24-B1, UR-24-B1, TR-24-A1, RR-19-A1, TR-24-B1, UR-24-E1, DN-23-A1, MS-24-A1, AN-23-A1, and Public Information Coordinator Services from the 2024 CIP.

On a motion by Steve Sprague, seconded by Ryan Erickson, the Committee voted to recommend approval of the CIP revisions.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the 2024 CIP revisions.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Various

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)

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Vacant, Fire Chief

Brenda Derrig, Assistant City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor

Tom Knakmuhs, City Engineer

Susan Thompson, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input 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"/>	Nathan Boerboom
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:


 Nathan Boerboom, P.E.
 Assistant City Engineer



Memorandum

To: PWPEC
From: Tom Knakmuhs, City Engineer
Date: 5/22/2025
Re: 2024 Capital Improvement Plan Recap and Revisions

There were a number of revisions made throughout the year to the 2024 CIP; Projects were added, the size and scope of some projects changed, and some projects that were initially planned were ultimately not bid in 2024. Below is a summary of the revisions to the 2024 CIP:

Pavement Preservation Projects:

- **PR-23-B1 (Concrete Spot Repairs City Wide):**
 - Project PR-24-B1 (Concrete Spot Repairs City Wide) had an estimated construction cost of \$750,000. The work planned as part of this project was instead included as part of Project PR-25-A1.
 - This project should be removed from the 2024 CIP.

Storm Sewer Utility Projects:

- **UR-24-B1 (Storm Sewer Area Repairs – Lining):**
 - This was a placeholder for a lining project for storm sewer area repairs. Due to other project priorities, there was not adequate budget for this project in 2024. Instead, some of the repairs have been added to a sanitary sewer lining project (UR-25-D1) and repaired in 2025, while other repairs will be included in future CIPs.
 - This project should be removed from the 2024 CIP.

Traffic and Streetlight Projects:

- **TR-24-A1 (Street Light & Traffic Signal Rehab Citywide):**
 - This was a placeholder project to address and street light and traffic signal issues throughout the city. Rather than bid this maintenance project, it was decided to create an RFP to hire a contractor to perform this maintenance work.
 - This project should be removed from the 2024 CIP.

Safety Improvement Projects:

- **RR-19-A1 (Railroad Quite Zone – 7 Ave N and 16 St N):**
 - Engineering has encountered a number of issues on this project over the last several years. The consulting engineer that was hired for the project design has had significant turnover, resulting in a number of new project engineers. That turnover has resulted in significant delays in the project design. A project design has been submitted to BNSF for review. We are also still working to secure the necessary easements for this project.
 - This project was previously moved from the 2022 CIP to the 2023 CIP by PWPEC on 1/3/2023 and again moved from the 2023 CIP to the 2024 CIP by PWPEC on 2/26/2024.
 - This project should be removed from the 2024 CIP.
- **TR-24-B1 (Safe Routes to Schools):**
 - This was a placeholder project to address high priority Safe Routes to Schools projects. Rather than bid out a project, some of these high priority items were incorporated into other projects.
 - This project should be removed from the 2024 CIP.

Miscellaneous Projects:

- **Public Information Coordinator Services:**
 - This project was included in the 2024 CIP in the event the city needed additional assistance communicating with the public during any of our projects. The Engineering Department did not require additional assistance in 2024.
 - This project should be removed from the 2024 CIP.
- **UR-24-E1 (Water Service Lowering Project):**
 - This project is for the lowering of water services that are susceptible to freezing. Due to the new lead service line replacement funding that became available, it was decided to not advance this project in 2024.
 - This project should be removed from the 2024 CIP.

Federal Aid Projects:

- **BR-23-G1 (32 Ave S from 22 St S to 15 St S):**
 - This project was previously moved from the 2024 CIP to the 2025 CIP by PWPEC on 4/22/2024.
 - This project should be removed from the 2024 CIP.

New Development Projects:

- **DN-23-A1 (New Development – SW Metro Pond Drain):**
 - The work originally anticipated for this project was incorporated into FP-19-A4.
 - This project should be removed from the 2024 CIP.
- **MS-24-A1 (Woodbury Court Noise Wall):**
 - This project was included in the 2024 CIP at the request of some of the property owners in Woodbury Court. Staff worked with a consulting engineer on the preliminary project design and necessary easement locations. Engineering was not able to acquire all necessary easements and will not be moving forward with the project.
 - This project should be removed from the 2024 CIP.

Alley Paving Projects:

- **AN-23-A1 (Alley Paving - NP Ave to 1 Ave N (11 St S to 12 St S)):**
 - The location of this placeholder project was originally added to the 2023 CIP by PWPEC on 6/30/2023. It was later moved from the 2023 CIP to the 2024 CIP by PWPEC on 2/26/2024. Given the likelihood of near-term redevelopment in the area, it has been determined that this project should not move forward at this time.
 - This project should be removed from the 2024 CIP.

The attached spreadsheets provide greater detail of the differences between to updated CIP, based on the changes previously summarized in this memo, and the initially approved CIP, but below is a summary and/or explanation of some of these changes.

- The total CIP, including miscellaneous costs, fees, and contingency, increased by \$42,136,748. The total CIP increased from \$100,137,360 to \$142,274,108.
- The total amount of Engineering and Admin fees, increased by \$5,607,180. These fees increased from \$6,050,940 to \$11,658,120.
- Summary of funding changes:
 - Prairie Dog Funds:
 - An additional \$2,066,088 of Prairie Dog Funds was utilized in the 2024 CIP.
 - This increase was primarily the result of three projects:
 - UR-24-C1 (Water Main Crossing – Under the BNSF Railroad tracks between Main Ave and NP Ave): This project was to

install a new watermain connection between Main Ave and NP Ave. There is currently only one water main connection between 25th St and University Drive and that existing water main runs under a building. This project will relocate this important water main connection to a better location.

- This project utilized \$405,972 of Prairie Dog Funds.
- UR-24-F1 (Sanitary Sewer Lining project): This project will line over 11,000 feet of sanitary sewer main, rehab/repair 20 manholes, and line (from the main to the boulevard), over 300 sewer services.
 - This project utilized \$1,232,407 of Prairie Dog Funds.
- BR-24-G1 (13 ½ St from 16th Ave S to 17th Ave S): This project was to reconstruct a one-block segment of 13 ½ St next to the Block Redevelopment project.
 - This project utilized \$340,160 of Prairie Dog Funds.
- Even with the \$2,066,088 increase in Prairie Dog Fund expenditure, there remains an unencumbered balance of \$644,392 from the total distribution of \$24,142,834.75 received by the City of Fargo for the 2021 – 2023 Biennium.
- Sales Tax – Infrastructure:
 - A reduction of \$2,081,940 of Sales Tax funds was utilized in the 2024 CIP. This decrease was primarily the result of a smaller than anticipated mill and overlay project. It is worth noting that there was also a mill and overlay project funded with Prairie Dog funds.
- Utility – Street Lights:
 - A reduction of \$1,195,198 of Street Light Utility funds was utilized in the 2024 CIP. This decrease was primarily the result of utilizing an RFP process rather than a bidding process for the citywide rehab project, as outlined previously in this memo.
- Utility – Storm:
 - A reduction of \$1,568,220 of Storm Sewer Utility funds was utilized in the 2024 CIP. This decrease was primarily the result of moving BR-23-G1 (32nd Ave S from 22nd St S to 15th St S) from the 2024 CIP to the 2025 CIP.
- Utility – Waste Water:
 - A reduction of \$1,552,475 of Water Reclamation Utility funds was utilized in the 2024 CIP. This decrease was primarily the result of moving BR-23-G1 (32nd Ave S from 22nd St S to 15th St S) from the 2024 CIP to the 2025 CIP.
- Utility – Water:

- A reduction of \$1,956,883 of Water Utility funds was utilized in the 2024 CIP. This decrease was primarily the result of moving BR-23-G1 (32nd Ave S from 22nd St S to 15th St S) from the 2024 CIP to the 2025 CIP.

Recommended Motion:

Approve the removal of PR-24-B1, UR-24-B1, TR-24-A1, RR-19-A1, TR-24-B1, UR-24-E1, DN-23-A1, MS-24-A1, AN-23-A1, and Public Information Coordinator Services from the 2024 CIP.

Attachments:

- 2024 CIP as approved by Commission on 1/8/2024
- Updated 2024 CIP with removal of projects listed above
- Increase/(Decrease) between Updated and Approved CIP

Increase/(Decrease) between Updated and Approved CIP

As Approved by City Commission on 1/8/2024	Construction Costs	Misc Costs	Fees and Contingency	Total Cost	Outside Funding	Special Assessments	Prairie Dog	Sales Tax - Infrastructure	Sales Tax - Flood	Utility - Street Lights	Utility - Storm	Utility - Waste Water	Utility - Water
Locally Funded and Programmed Projects	\$ 24,661,138	\$ 80,000	\$ 6,140,154	\$ 30,881,292	\$ -	\$ 9,158,507	\$ 1,273,320	\$ 8,136,545	\$ 2,036,235	\$ 3,468,525	\$ 2,265,550	\$ 2,001,239	\$ 2,541,371
Core Neighborhood Projects - Street Reconstruction and Utility Replacement Projects	\$ 8,311,138	\$ 80,000	\$ 1,854,754	\$ 10,245,892	\$ -	\$ 2,136,707	\$ 273,320	\$ 1,702,395	\$ 2,036,235	\$ 331,125	\$ 200,000	\$ 1,528,739	\$ 2,037,371
Pavement Preservation Projects	\$ 5,550,000	\$ -	\$ 2,223,000	\$ 10,773,000	\$ -	\$ 4,091,850	\$ 1,000,000	\$ 5,681,150	\$ -	\$ -	\$ -	\$ -	\$ -
Storm Sewer Utility Projects	\$ 3,000,000	\$ -	\$ 830,000	\$ 3,830,000	\$ -	\$ 1,764,450	\$ -	\$ -	\$ -	\$ -	\$ 2,065,550	\$ -	\$ -
Traffic and Streetlight Improvements	\$ 1,040,000	\$ -	\$ 270,400	\$ 1,310,400	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,310,400	\$ -	\$ -	\$ -
Safety Improvement Projects	\$ 1,450,000	\$ -	\$ 377,000	\$ 1,827,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,827,000	\$ -	\$ -	\$ -
Sidewalk Projects	\$ 1,100,000	\$ -	\$ 286,000	\$ 1,386,000	\$ -	\$ 693,000	\$ -	\$ 693,000	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous Projects	\$ 1,210,000	\$ -	\$ 299,000	\$ 1,509,000	\$ -	\$ 472,500	\$ -	\$ 60,000	\$ -	\$ -	\$ -	\$ 472,500	\$ 504,000
Federal Aid Projects	\$ 20,999,066	\$ 3,081,148	\$ 2,001,844	\$ 25,182,058	\$ 11,169,842	\$ 7,074,017	\$ 996,715	\$ 476,976	\$ -	\$ 205,754	\$ 1,694,585	\$ 1,737,455	\$ 1,826,714
Prairie Dog Extra Projects	\$ 15,947,652	\$ -	\$ 4,671,390	\$ 20,619,042	\$ -	\$ 8,496,600	\$ 10,166,500	\$ -	\$ -	\$ -	\$ -	\$ 1,164,641	\$ 791,301
Flood Control Projects	\$ 17,489,856	\$ 1,870,000	\$ 1,748,986	\$ 21,108,842	\$ -	\$ -	\$ -	\$ -	\$ 21,108,842	\$ -	\$ -	\$ -	\$ -
New Development Projects	\$ 1,662,006	\$ -	\$ 432,122	\$ 2,094,128	\$ -	\$ 2,094,128	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Alley Paving Projects	\$ 200,000	\$ -	\$ 52,000	\$ 252,000	\$ -	\$ 252,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total =	\$ 80,059,718	\$ 5,031,148	\$ 15,046,494	\$ 100,137,360	\$ 11,169,842	\$ 27,075,251	\$ 12,436,535	\$ 8,613,521	\$ 23,145,076	\$ 3,674,280	\$ 3,960,134	\$ 4,903,335	\$ 5,159,385

As Updated	Construction Costs	Misc Costs	Fees and Contingency	Total	Outside Funding	Special Assessments	Prairie Dog	Sales Tax - Infrastructure	Sales Tax - Flood	Utility - Street Lights	Utility - Storm	Utility - Waste Water	Utility - Water
Locally Funded and Programmed Projects	\$ 21,190,344	\$ 138,951	\$ 5,179,800	\$ 26,509,095	\$ 729,797	\$ 6,799,722	\$ 1,911,699	\$ 6,134,110	\$ 2,036,235	\$ 2,021,056	\$ 2,349,943	\$ 2,115,331	\$ 2,411,201
Core Neighborhood Projects - Street Reconstruction and Utility Replacement Projects	\$ 8,311,138	\$ 80,000	\$ 1,854,754	\$ 10,245,892	\$ -	\$ 2,136,707	\$ 273,320	\$ 1,702,395	\$ 2,036,235	\$ 331,125	\$ 200,000	\$ 1,528,739	\$ 2,037,371
Pavement Preservation Projects	\$ 4,797,407	\$ -	\$ 1,247,326	\$ 6,044,733	\$ -	\$ 1,917,871	\$ -	\$ 3,702,967	\$ -	\$ 347,517	\$ 6,158	\$ 70,220	\$ -
Storm Sewer Utility Projects	\$ 2,815,052	\$ 43,951	\$ 731,914	\$ 3,590,917	\$ 441,654	\$ 1,005,478	\$ -	\$ -	\$ -	\$ -	\$ 2,143,785	\$ -	\$ -
Traffic and Streetlight Improvements	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Safety Improvement Projects	\$ 1,065,407	\$ -	\$ 277,006	\$ 1,342,413	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,342,413	\$ -	\$ -	\$ -
Sidewalk Projects	\$ 1,214,393	\$ -	\$ 315,742	\$ 1,530,135	\$ -	\$ 914,758	\$ -	\$ 615,377	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous Projects	\$ 2,986,946	\$ 15,000	\$ 753,059	\$ 3,755,005	\$ 288,144	\$ 824,908	\$ 1,638,378	\$ 113,371	\$ -	\$ -	\$ -	\$ 516,373	\$ 373,831
Federal Aid Projects	\$ 1,504,790	\$ 344,966	\$ 47,868	\$ 1,897,624	\$ 1,500,153	\$ -	\$ -	\$ 397,471	\$ -	\$ -	\$ -	\$ -	\$ -
Prairie Dog Extra Projects	\$ 23,003,510	\$ -	\$ 5,980,913	\$ 28,984,423	\$ 252,699	\$ 13,684,862	\$ 12,590,925	\$ -	\$ -	\$ 458,025	\$ 41,971	\$ 1,164,641	\$ 791,301
Flood Control Projects	\$ 16,291,559	\$ 1,740,740	\$ 1,629,156	\$ 19,661,454	\$ -	\$ -	\$ -	\$ 19,661,454	\$ -	\$ -	\$ -	\$ -	\$ -
New Development Projects	\$ 49,218,997	\$ 4,015,537	\$ 11,599,432	\$ 64,833,965	\$ 1,701,632	\$ 63,061,445	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70,888	\$ -
Alley Paving Projects	\$ 307,577	\$ -	\$ 79,970	\$ 387,547	\$ -	\$ 387,547	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total =	\$ 111,516,776	\$ 6,240,193	\$ 24,517,139	\$ 142,274,108	\$ 4,184,281	\$ 83,933,576	\$ 14,502,624	\$ 6,531,581	\$ 21,697,689	\$ 2,479,082	\$ 2,391,914	\$ 3,350,860	\$ 3,202,502

Increase/(Decrease) between Updated and Approved

\$ 31,457,058 \$ 1,209,045 \$ 9,470,644 \$ 42,136,748 \$ (6,985,561) \$ 56,858,325 \$ 2,066,088 \$ (2,081,940) \$ (1,447,388) \$ (1,195,198) \$ (1,568,220) \$ (1,552,475) \$ (1,956,883)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

18

Project No. SR-25-B1

Type: Change Order #1

Location: Citywide

Date of Hearing: 6/2/2025

Routing

City Commission

Date

6/9/2025

PWPEC File

X

Project File

Brandon Beaudry

The Committee reviewed a communication from Project Manager, Brandon Beaudry, regarding Change Order #1 in the amount of \$175,950.75 for additional work.

Staff is seeking approval of Change Order #1 in the amount of \$175,950.75, which increases the total contract to \$635,764.95 to Border States Paving.

On a motion by Benda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 to Border States Paving.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$175,950.75, bringing the total contract amount to \$635,764.95, to Border States Paving.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax, Street Light Utility & 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)

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Vacant, Fire Chief

Brenda Derrig, Assistant City Administrator

Ben Dow, Director of Operations

Steve Sprague, City Auditor


Tom Knakmuhs, City Engineer

Susan Thompson, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input 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"/>	Nathan Boerboom
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Nathan Boerboom, P.E.
 Assistant City Engineer

Memorandum

To: Members of PWPEC
From: Brandon Beaudry, Project Manager
Date: May 20, 2025
Re: Project No. SR-25-B1 - Change Order #1

Background:

Project No. SR-25-B1 is for Sidewalk & Shared Use Path Rehab/Reconstruction. This project consists of sidewalk & shared use path removal and replacement, new sidewalk installation, and incidentals Citywide.

Border States Paving, Inc. is the Prime Contractor for this project.

This change order is for additional new sidewalk added to the contract, requested by the property owner.

The attached change order in the amount of **\$175,950.75**, which increases the total contract amount to \$635,794.95 (38.26% of the original contract), is for additional work as shown on Change Order #1.

This project is funded by Sales Tax and Special Assessments.

Recommended Motion:

Approve Change Order #1 to Border States Paving, Inc. in the amount of \$175,950.75.

BGB/klb
Attachment

C: Tom Knakmuhs, City Engineer
Kevin Gorder, Division Engineer

CHANGE ORDER REPORT
SIDEWALK & SHARED USE PATH REHAB/RECONSTRUCTION
PROJECT NO. SR-25-B1
VARIOUS AREAS CITY WIDE

Change Order No 1 **Change Order Date** 5/1/2025
Contractor Border States Paving 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
Change order for Timber Parkway South.

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 (\$)
Assessed	1	F&I Sidewalk 4" Thick Reinf Conc	SY	2761		2761	0	2761	\$75.10	\$0.00
	5	Rem & Repl Curb & Gutter	LF	60		60	40	100	\$79.30	\$3,172.00
	9	F&I Inlet - Round (RDI) Reinf Conc	EA	1		1	2	3	\$6,400.00	\$12,800.00
	10	Remove Tree	EA	1		1	3	4	\$946.00	\$2,838.00
Assessed Sub Total										\$18,810.00
City Paid	14	Rem & Repl Curb & Gutter	LF	130		130	120	250	\$79.30	\$9,516.00
	15	F&I Sidewalk 4" Thick Reinf Conc	SY	80		80	150	230	\$75.20	\$11,280.00
	16	F&I Sidewalk 6" Thick Reinf Conc	SY	52		52	43	95	\$80.00	\$3,440.00
	19	F&I Det Wam Panels Cast Iron	SF	148		148	216	364	\$63.10	\$13,629.60
	23	Seeding Type B	SY	5200		5200	2100	7300	\$5.10	\$10,710.00
	24	Mulching Type 1 Hydro	SY	5200		5200	2100	7300	\$5.10	\$10,710.00
City Paid Sub Total										\$59,285.60

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 1	36	Remove Pipe All Sizes All Types	LF	0		0	18	18	\$25.00	\$450.00
	37	Topsoil - Import	CY	0		0	35	35	\$35.00	\$1,225.00
	38	Boulevard Grading	SY	0		0	1011	1011	\$4.25	\$4,296.75
	39	F&I Sidewalk 4" Thick Reinf Conc	SY	0		0	1169	1169	\$78.60	\$91,883.40
Change Order 1 Sub Total										\$97,855.15

Summary

Source Of Funding	Sidewalk Assessment / Sales Tax / Street Lights
Net Amount Change Order # 1 (\$)	\$175,950.75
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$459,814.20
Total Contract Amount (\$)	\$635,764.95

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

APPROVED

For Contractor

Title

5 /19 /2025

Camden larson

Project Manager



APPROVED DATE

Department Head

Mayor

Attest



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(19)

Project No. TM-25-A1

Type: Change Order #1

Location: Citywide

Date of Hearing: 6/2/2025

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/9/2025</u>
PWPEC File	<u>X</u>
Project File	<u>Leroy Grant</u>

The Committee reviewed a communication from Project Manager, Leroy Grant, regarding Change Order #1 in the amount of \$147,262.21 for additional work.

Staff is seeking approval of Change Order #1 in the amount of \$147,262.21, which increases the total contract to \$680,958.33 to 3D Specialties, Inc.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of Change Order #1 to 3D Specialties, Inc.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$147,262.21, bringing the total contract amount to \$680,958.33, to 3D Specialties, Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Street Light Utility

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

COMMITTEE

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

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input 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"/>	Nathan Boerboom
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Nathan Boerboom, P.E.
 Assistant City Engineer

Memorandum

To: Members of PWPEC
From: Leroy Grant, Project Manager
Date: May 29, 2025
Re: Project No. TM-25-A1 - Change Order #1

Background:

Project No. TM-25-A1 is for new pavement markings at various locations Citywide. The purpose of the project is to install new pavement markings for safer road condition for motorists and pedestrians where the existing pavement markings have faded or portions are missing.

3D Specialties, Inc. is the Prime Contractor for this project.

This change order is for additional pavement marking quantities that have been added to the contract. Pavement markings were replaced on 12th Avenue North between 29th Street North and Elm Street North.

The attached change order in the amount of **\$147,262.21** is for additional work as shown on Change Order #1.

This project is funded by Street Light Utility Funds.

Recommended Motion:

Approve Change Order #1 to in the amount of \$147,262.21 for Project No. TM-25-A1..

LG/klb
Attachment



**CHANGE ORDER REPORT
PAVEMENT MARKINGS
PROJECT NO. TM-25-A1
VARIOUS LOCATIONS CITYWIDE**

Change Order No 1
Contractor 3D Specialties Inc

Change Order Date 5/28/2025

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

Additional pavement marking quantities have been added to the contract. Pavement markings were replaced on 12th Avenue North between 29th Street North and Elm Street North.

Section	Line No	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price (\$)	C/O Ext Price (\$)
Change Order 1	5	F&I Grooved Plastic Film Message	SF	0		0	480	480	\$20.80	\$9,984.00
	6	F&I Grooved Plastic Film 4" Wide	LF	0		0	11566	11566	\$6.93	\$80,152.38
	7	F&I Grooved Plastic Film 8" Wide	LF	0		0	1110	1110	\$13.86	\$15,384.60
	8	F&I Grooved Plastic Film 16" Wide	LF	0		0	39	39	\$27.73	\$1,081.47
	9	F&I Grooved Contrast Film 7" Wide	LF	0		0	3352	3352	\$12.13	\$40,659.76
										Change Order 1 Sub Total
										\$147,262.21

Summary

Source Of Funding	Utility Funds - Street Lights - 528
Net Amount Change Order # 1 (\$)	\$147,262.21
Previous Change Orders (\$)	\$0.00
Original Contract Amount (\$)	\$533,696.12
Total Contract Amount (\$)	\$680,958.33

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

APPROVED
For Contractor
Title

Mykel Croucher
3D Specialties, Inc.
Manager
Jeff L...

APPROVED DATE
Department Head
Mayor
Attest

THC

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(20)

Project No. TR-26-B0

Type: 2026 CIP Revision

Location: 45th St, 9th Ave S to 44th Ave S

Date of Hearing: 6/2/2025

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/9/2025</u>
PWPEC File	<u>X</u>
Project File	<u>Jeremy Gorden</u>

The Committee reviewed a communication from Division Engineer, Jeremy Gorden, regarding the removal of Project No. TR-26-B0 from the 2026 CIP.

The City of Fargo began the preliminary engineering and have realized that this project is not cost effective at this time.

On a motion by Steve Sprague, seconded by Susan Thompson, the Committee voted to recommend removal of Project No. TR-26-B0 from the 2026 CIP.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and remove Project No. TR-26-B0 from the 2026 Capital Improvement Plan.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

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)

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


COMMITTEE

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

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input 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"/>	Nathan Boerboom
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Nathan Boerboom,
 Assistant City Engineer

Memorandum

To: Members of PWPEC

From: Jeremy M. Gorden, PE, PTOE
Division Engineer-Transportation

Date: May 29, 2025

Subject: 45th Street Adaptive Traffic Signal Project
Recommendation to Remove Project from 2026 Work Plan/CIP
City of Fargo Project No. TR-26-B0

Background:

In late 2023 we submitted a project for the Federal Carbon Reduction Program Funds that are a part of the 4-year highway bill. We requested a project of \$1.5M and were awarded 750k through FM Metro COG. The project included 15 signalized intersections on 45th Street, from 9th Avenue South to 44th Avenue South. We were going to need additional vehicle detection devices at each intersection in the field, as well as additional software for a traffic signal central system that runs our entire network of traffic signals. We have begun preliminary engineering and have realized that this project is not cost effective at this time and we are recommending that we stop work on the project and notify Metro COG of our intentions to return the funds to them. We would need to spend at least 500k on engineering and the 20% local cost share for the project and we feel this isn't in our best interest. The funds for the project are set to be spent in 2026 and Metro COG will need to solicit project applications from interested parties for prospective projects. We have a proposed shared use path project along Drain 27 south of 52nd Avenue South that could be an ideal candidate for these funds, but the final decision will be Metro COG's Policy Board sometime this summer.

Recommended Motion:

Concur with Engineering staff's recommendation to remove the 45th Street Adaptive Traffic Signal Project from our work plan and notify Metro COG of our decision.

JMG/klb

(21)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No.: MS-25-E0

Type: Task Order #1

Location: 64th Ave S & 100th Ave S, I-29 to Wild Rice River

Date of Hearing: 6/2/2025

Routing

City Commission

PWPEC File

Project File

Date

6/9/2025

X

Jody Bertrand

The Committee reviewed the accompanying correspondence from Storm Sewer Utility Engineer, Jody Bertrand, regarding the approval of Task Order #1 with Moore Engineering for Project No. MS-25-E0 for Drain #53 Area Storm Sewer Master Plan.

Staff is seeking approval of Task Order #1 with Moore Engineering in the amount of \$140,000.00.

On a motion by Susan Thompson, seconded by Brenda Derrig, the Committee voted to approve Task Order #1 with Moore Engineering in the amount of \$140,000.00.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Task Order #1 with Moore Engineering in the amount of \$140,000.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Sewer Utility Funds

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)

Yes	No
N/A	
N/A	
N/A	

COMMITTEE

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

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ryan Erickson
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input 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"/>	Nathan Boerboom
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson


 Nathan Boerboom, P.E.
 Assistant City Engineer

Memorandum

To: Members of PWPEC
From: Jody Bertrand, Storm Sewer Utility Engineer
Date: June 2, 2025
Re: Task Order #1 with Moore Engineering
Project #MS-25-E0 – Drain #53 Area Storm Sewer Master Plan – Phase 2 & Levee Impact Analysis South of 64th Avenue South

The City of Fargo does not currently have a detailed plan for stormwater management as the City expands to the southeast, specifically in the Drain #53 Area between 64th Avenue South and 100th Avenue South and between Interstate 29 and the Wild Rice River, including existing rural subdivisions.

Moore developed an InfoSWMM hydraulic model of the area during Phase 1 existing conditions modeling. Additionally, the City of Fargo recently completed Fargo Growth Plan 2024. Phase 2 will update the hydraulic model to include future land use planning classifications to add the detail needed to advise city planners and developers as development begins in an area of the City with tremendous growth potential. The updated hydraulic model will also include planning for an extension of Drain #53, which will serve as the outlet for new development.

In addition to stormwater modeling, a preferred alignment will be developed for a flood risk reduction levee from 76th Avenue South to 100th Avenue South to prevent Wild Rice River breakout water from inundating future development.

The proposed scope of services and study area map from Moore Engineering is attached for your review.

Funding is proposed to be funded through the storm sewer utility.

Recommended Motion:

Approve the attached Task Order #1 in the amount of \$140,000 for Moore Engineering to develop Drain #53 storm sewer master plan – phase 2 and levee analysis south of 64th Avenue South.

In accordance with paragraph 1.1 of the Task Order Agreement between Owner and Engineer for Master Professional Services, dated January 11, 2023 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

- A. Project Title: MS-25-E0; Drain #53 Storm Sewer Master Plan – Phase 2 and Levee Impact Analysis South of 64th Avenue South
- B. Description: Moore Engineering will complete modeling services for phase 2 for the Drain #53 area south of 64th Avenue South with recent updated information and determine possible levee alignments to prevent impacts from the Wild Rice River breakout flows to future developments.

2. Services of Engineer

Services to be completed by the Engineer are as specified in the proposal submitted by Moore dated May 16, 2025. Proposal is attachment A of this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Master Services Agreement dated January 11, 2023.

4. Times for Rendering Services

Phase	Completion Date
Phase 1: Stormwater Modeling & Estimates	January 16, 2026
Phase 2: Levee Design Alternatives & Estimate	January 16, 2026
Phase 3: Administration and Design Reports	January 16, 2026

5. Payments to Engineer

- A. Owner shall pay Engineer for services rendered as follows:

Phase	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Phase 1: Stormwater Modeling & Estimates	Hourly Not to Exceed	\$55,000.00
Phase 2: Levee Design Alternatives & Estimate	Hourly Not to Exceed	\$55,000.00
Phase 3: Administration and Design Reports	Hourly Not to Exceed	\$30,000.00
Total Services = \$ 140,000.00		

- B. The terms of payment are set forth in Article 3 of the Master Services Agreement.

6. Attachments

Attachment A – Proposal submitted by Moore dated May 16, 2025.

Attachment B – Commission ROA dated June 9, 2025.

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement, which is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____.

Owner:

Engineer:

By: _____

By:  _____

Name: Dr. Tim Mahoney

Name: Kurt Lysne, PE, CFM

Title: Mayor

Title: Market Leader / Senior Engineer

Designated Representative for Task Order:

Designated Representative for Task Order:

Name: Jody Bertrand

Name: Nathan Trosen

Title: Storm Sewer Utility Engineer

Title: Project Manager

Approval Requirements

\$15,000 or less – City Engineer

\$15,001 - \$100,000 – PWPEC

Over \$100,000 – PWPEC & Commission



925 10th Avenue East
West Fargo, ND 58078
P: 701.282.4692
F: 701.282.4530



May 16, 2025

City of Fargo
Nathan Boerboom, Assistant City Engineer
225 4th Street N
Fargo, ND 58102

Subject: Letter Proposal

Drain #53 Area Storm Sewer Master Plan – Phase 2
& Levee Impact Analysis S of 64th Avenue S
Moore Project 20870A

Dear Mr. Boerboom,

Moore Engineering, Inc. ("Moore") is pleased to submit our proposal to the City of Fargo ("Owner") to provide **Phase 2** engineering services to complete the Stormwater Master Plan and Levee Impact Analysis for the Drain #53 area south of 64th Avenue S.

Project Understanding

The City of Fargo does not currently have a detailed plan for stormwater management as the City expands to the southeast, specifically in the Drain #53 Area between 64th Avenue S and 100th Avenue S and between Interstate 29 and the Wild Rice River, including existing rural subdivisions. The general area is shown in **Attachment 1**.

Moore developed an InfoSWMM hydraulic model of the area during Phase 1 existing conditions modeling. Additionally, the City of Fargo recently completed Fargo Growth Plan 2024. Phase 2 will update the hydraulic model to include future land use planning classifications to add the detail needed to advise city planners and developers as development begins in an area of the city with tremendous growth potential. The updated hydraulic model will also include planning for an extension of Drain #53, which will serve as the outlet for new development.

In addition to stormwater modeling, a preferred alignment will be developed for a flood risk reduction levee from 76th Avenue S to 100th Avenue South to prevent Wild Rice River breakout water from inundating future development.

Scope of Work

To meet the project objectives above, Moore proposes to provide the following services:

- 1) Attend meetings with Owner to receive comments ensure study meets desired outcomes.
- 2) Convert existing model from InfoSWMM to XPSWMM due to retiring status of InfoSWMM.
- 3) Develop alignment and 30% plans for Drain #53 from 74th Avenue S to approximately 100th Avenue S.,
 - a. Identify potential utility conflicts based on available One Call documentation.
 - b. Update HEC-RAS modeling based on post-diversion construction.
 - i. Update made to latest FM Diversion model publicly available
 - ii. Lateral inflow to be based on updated stormwater model
 - iii. Open channel with crossings each ½ mile
 1. Import HEC-RAS cross sections to SWMM model
 - iv. Document WSEL elevations through the basin for 2-, 10-, 50-, 100-, and 500-year events assuming post-Diversion conditions
 1. Downstream boundary and or backwater conditions: Assume normal depth downstream of 64th Avenue South or tailwater from FM Diversion model
- 4) Develop preliminary concepts for regional stormwater flow management.
 - a. Discharge to Drain #53 - Ponds with lift stations
 - i. Target one lift station with wet pond for each mile of channel with possibility of gravity flow under normal conditions
 - ii. Initial discharge rate based on 1 cfs/acre in accordance with City of Fargo Policy on Storm Water Discharge and Treatment Requirements.
 1. 2-, 5-, 10-, 25-, 50, and 100-year events will be run in the model. Requirements for pond size will be based on 100-year event with initial pumping rate.
 - iii. Land use/curve number will be based on new growth plan as provided by City
 - iv. Interconnection between ponds will be studied to maximize storage and gravity outlets, while minimizing pump sizes
 1. Forcemains if necessary.
 - a. If forcemain is needed, length be minimized
 - i. Study potential middle channel pond and low collection area w/ lift station and possible “step-up” in drain profile. Avoid if possible.
 2. Channels will only be considered if pipe options are not feasible.
 - v. Drain 53 will be added to XPSWMM model to determine hydraulic grade line in channel.
 - vi. Determine if gravity outlets are possible
 - b. Discharge to Wild Rice River (if determined necessary)
 - i. Determine if and where it makes financial and constructability sense to break the drainage pattern between Drain 53 and Wile Rice River
 1. Flow through lift station(s) with gate closures
 2. 100-year pond discharges via gravity discharge to river elevation to be determined based upon post-FM Diversion HEC-RAS model
 - c. Identify potential utility conflicts based on available One Call documentation.

- 5) Determine levee alignment from 76th Avenue South to 100th Avenue South
 - a. Assume two alignment options
 - i. Option 1 – Following roads
 1. Temporary flood protection measures to ensure Wild Rice breakouts do not reach the southern edge of developed properties
 2. Identify strategic locations to raise roads overtopping during the 500-year with Diversion event, or suggest other measures
 - ii. Option 2 – Paralleling the Wild Rice River corridor
 1. Permanent flood protection option to be constructed prior to or as development moves south towards the Wild Rice River
 - b. Research existing Cass County levees and land rights
 - i. Tie into Options if possible
 - c. Design to Fargo Standard Levee Specifications
 - i. 10 ft levee top width
 - ii. 4H:1V side slopes
 - iii. 15 ft clear zone each from toe of slope each side
 - d. Elevation to be based on effective BFE 4 ft (3 ft freeboard + settlement + topsoil) and compared with post-Diversion 500-year WSEL
 - e. Assume CLOMR-Model for post-Diversion impact analysis. If state will not permit, may need to check impacts with effective model (not planning this effort in scope).
 - i. Assumes all construction will occur post FM Diversion construction and post-diversion model(s) are appropriate
- 6) Estimate right of way needs for future Drain 53 corridor
- 7) Write final report and adopt Stormwater Management recommendations specific the study area.
- 8) Determine if future phases of study are needed.

Deliverable(s)

- Copies of updated hydraulic models (HEC-RAS and XPSWMM)
- Signed hydraulic report
- Impact analysis report for selected Wild Rice levee alignment

Basis of Proposal

The following items form the basis of this Proposal:

- Owner will provide GIS files or expected land use maps of Fargo Growth Plan 2024
- Owner will provide initial preferred Wild Rice levee alignment
- Three in-person meetings with City Engineering staff are included in this proposal
- Monthly 30-min virtual check-in meetings during months where in-person meetings do not occur are included in this proposal
- No presentations to City Council are included in this proposal
- No permitting will be completed with this Plan
- Construction staging sequences will not be determined in this Plan
- LiDAR will be used for this conceptual study. Future final designs will require collection of site-specific topographic survey.

- This scope is limited to regional stormwater and does not include any road, sanitary sewer, water or additional utility design.

Schedule

Moore will perform the Scope of Work listed above in accordance the following schedule:

Modeling work will be started immediately upon execution of a contract between Moore and the Owner. Ultimately, we think the study will take approximately seven months after contract execution and the receipt of all relevant data from the Owner. Moore will provide monthly status reports to the Owner with schedule updates, and work with the Owner to ensure that the schedule, although fluid, is clearly understood and found acceptable.

Fee

Moore will perform the tasks specified in the Scope of Work above on an hourly basis under the Category Billing Rates as provided in our Master Service Agreement with the Owner. Category Billing Rates and expense costs are valid through the end of the current year. On January 1 in each subsequent year, Category Billing Rates and reimbursable expenses may be adjusted to meet market conditions.

Based on our current understanding of the work, we estimate the overall fee for this project to be **ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000)**. A detailed breakdown of services is as follows:

- \$55,000 – Stormwater modeling; Drain 53 alignment determination and cost estimates
- \$55,000 – Levee design alternatives from 76th Ave S to 100th Ave S; HEC-RAS modeling and 30% cost estimate
- \$30,000 – Summary reports, documentation, and project meetings

The fee breakdown listed above is for information only. Moore may alter the distribution of compensation between individual phases listed above to be consistent with services actually rendered but shall not exceed the total contract compensation amount unless approved in writing by the Owner.

Standard Terms and Conditions

It is our understanding that the final terms and conditions will be set by a final executed contract from the Owner. Therefore, Moore's standard terms and conditions are not attached to this proposal.

Closing

Should you find this Proposal acceptable, please have the authorized representative of the City of Fargo sign the Acceptance portion of this letter below and return one (1) fully executed copy of this Proposal to me. Receipt of a fully executed copy of this Proposal will serve as our Agreement and our Notice to Proceed.

We appreciate the opportunity to submit this Proposal to the City of Fargo, and we look forward to working with you on this Project. Should you have any questions or need additional information, please contact me by phone at (701) 282-4692 or by email at kurt.lysne@mooreengineeringinc.com.

Sincerely,



Kurt Lysne, PE, CFM
Market Leader / Senior Engineer



Nate Trosen, PE
Project Manager

Enclosure: As noted

Acceptance for City of Fargo:

We hereby authorize Moore Engineering, Inc. to proceed with the work described above.

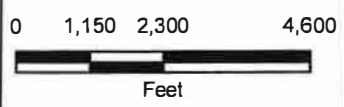
Signature	_____	_____
Name	_____	_____
Title	_____	_____
Date	_____	_____

Address for giving notices: 225 4th Street N
Fargo, ND 58102



Moore Engineering Inc., Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

**Drain #53 Area
Stormwater & Levee Master Plan
Approximate Study Boundary**



22

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-25-H

Call For Bids	<u>June 9</u>	<u>2025</u>
Advertise Dates	<u>June 18 & 25</u>	<u>2025</u>
Bid Opening Date	<u>July 16</u>	<u>2025</u>
Substantial Completion Date	<u>October 17</u>	<u>2025</u>
Final Completion Date	<u>November 15</u>	<u>2025</u>

<u>X</u>	PWPEC Report (Attach Copy)
<u>X</u>	Engineer's Report (Attach Copy)
<u>X</u>	Direct City Auditor to Advertise for Bids
<u>X</u>	Bid Quantities (Attach Copy for Auditor's Office Only)
<u>X</u>	Notice to Property Owners (Special Assessments)
<u>N/A</u>	Supplemental Funding Language Included

Project Engineer Shane Geraghty

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:

<u>X</u>	Create District (Attach Copy of Legal Description)
<u>X</u>	Order Plans & Specifications
<u>X</u>	Approve Plans & Specifications
<u>X</u>	Adopt Resolution of Necessity
<u>N/A</u>	Approve Escrow Agreement (Attach Copy for Commission Office Only)
<u>X</u>	Assessment Map (Attach Copy for Auditor's Office Only)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-25-H1

Type: 2025 CIP Revision

Location: Citywide

Date of Hearing: 4/7/2025

Routing

City Commission

PWPEC File

Project File

Date6/9/25XShane Geraghty

The Committee reviewed a communication from Project Manager, Shane Geraghty, regarding the addition of Improvement District No. BR-25-H1 to the 2025 CIP.

The existing CIP water main on 3rd Street North was installed over 100 years ago and has reached its useful life. In order to reduce the risk of future water main breaks, it should be replaced. Water main services will also be replaced from the main to the curb stops. Like the water main, the VCP sanitary sewer is over 100 years old and should be replaced to prevent future breaks. All sanitary sewer services on the corridor should be replaced with the main. It is not anticipated that any storm sewer replacement will be required on this project.

Like the utilities, the existing pavement along the corridor is failing and should be replaced. This project will remove and replace all sidewalks, driveway aprons, curb and gutter and roadway pavement with new gravel base. The street lights will also be replaced along the entire corridor.

The 2015 2nd Street North reconstruction project replaced the pavement at the intersection of 1st Avenue North and 3rd Street, as well as made storm sewer improvements. This project will tie in to those improvements and utilize that new storm sewer. At the same time, 10" PVC water main was stubbed onto 3rd Street, where we will connect on this project.

The estimated cost of construction for the project is \$1,200,000 with an additional \$312,000 in overhead costs for a total project cost of approximately \$1,512,000. The project will be funded through Special Assessments and Prairie Dog funds.

Engineering is seeking the addition of BR-25-H1 to the 2025 CIP.

On a motion by Brenda Derrig, seconded by Steve Sprague, the Committee voted to recommend approval of adding Improvement District No. BR-25-H1 to the 2025 CIP.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the addition of Improvement District No. BR-25-H1 to the 2025 CIP.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Prairie Dog Funds & 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)

Yes	No
N/A	
N/A	
N/A	

PWPEC ROA
ID BR-25-H1 2025 CIP Revision
4/7/2025 -- Page 2

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

ATTEST:

C: Kristi Olson

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



Tom Knakmuhs, P.E.
City Engineer

RESOLUTIONS PERTAINING TO IMPROVEMENT DISTRICT NO. BR-25-H

PAVING AND UTILITY REHAB/RECONSTRUCTION

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

That the Board of City Commissioners deems it expedient that Improvement District No. BR-25-H (Paving and Utility Rehab/Reconstruction) in the City of Fargo, North Dakota, be created in accordance with North Dakota Century Code, Section 40-22-08 and the location and comprising included with the Engineer's Report,

NOW THEREFORE BE IT RESOLVED, the Improvement District BR-25-H in the City of Fargo, North Dakota, be and the same is hereby created.

That, pursuant to North Dakota Century Code, Section 40-22-10, the Board of City Commissioners has directed the City Engineer to report as to the general nature, purpose and feasibility relative to the construction of Improvement District No. BR-25-H in the City of Fargo, North Dakota; as well as an estimate of the approximate cost of said construction,

That, pursuant to North Dakota Century Code, Section 40-22-11, the Board of City Commissioners has directed the City Engineer to prepare Plans and Specifications for the construction of Improvement District No. BR-25-H in the City of Fargo, North Dakota

WHEREAS, The Board of City Commissioners of the City of Fargo, North Dakota, has created Improvement District No. BR-25-H in the City of Fargo, North Dakota, as required by law; and

WHEREAS, Plans and Specifications and the Engineer's Report prepared by the City Engineer, have been considered;

NOW THEREFORE BE IT RESOLVED, That the Plans and Specifications and Engineer's Report for the construction of Improvement District No. BR-25-H in the City of Fargo North Dakota, be and the same are hereby approved and ordered filed in the Office of the Auditor.

CERTIFICATE

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

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota do hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the Board of City Commissioners of the City of Fargo at the Regular Meeting of the Board held on Monday, June 9th, 2025.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Fargo, North Dakota, this 5th day of June, 2025.

Steven Sprague
City Auditor

(SEAL)



**ENGINEER'S REPORT
PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-25-H
3RD ST N FROM NP AVE TO 1ST AVE N**

Nature & Scope

This project will replace water main, sanitary sewer, sidewalks, curb and gutter, concrete pavement, driveway aprons and street lights.

Purpose

The existing CIP water main on 3rd St is over 100 years old and needs to be replaced. Project No. FM-14-92 stubbed 10" PVC water main south from 1st Ave N and we will tie into that stub. Likewise, the VCP sanitary sewer is 100 years old and shows signs of deterioration and should be replaced. We will install new water main and sanitary sewer services along with the new mains. The street reconstruction is necessary because the condition of the existing pavement has deteriorated and also because of the utility work. Street lights improvements will be completed with this project as well.

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 \$1,027,301.50. The cost breakdown is as follows:

Paving

Construction Cost		\$600,178.50
Fees		

Admin	4%	\$24,007.14
Contingency	5%	\$30,008.93
Engineering	10%	\$60,017.85
Interest	4%	\$24,007.14
Legal	3%	\$18,005.36

Total Estimated Cost		\$756,224.92
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Funding

State Funds - Other ND	76.49%	\$578,467.12
Special Assessments	23.51%	\$177,757.80

Water Main

Construction Cost		\$152,443.00
Fees		

Admin	4%	\$6,097.72
Contingency	5%	\$7,622.15
Engineering	10%	\$15,244.30
Interest	4%	\$6,097.72
Legal	3%	\$4,573.29

Total Estimated Cost		\$192,078.18
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Funding

State Funds - Other ND	84.14%	\$161,607.78
Special Assessments	15.86%	\$30,470.40

Sanitary Sewer

Construction Cost		\$234,912.00
Fees		

Admin	4%	\$9,396.48
Contingency	5%	\$11,745.60
Engineering	10%	\$23,491.20
Interest	4%	\$9,396.48
Legal	3%	\$7,047.36

Total Estimated Cost		\$295,989.12
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Funding

State Funds - Other ND	89.71%	\$265,518.72
Special Assessments	10.29%	\$30,470.40

Street Amenities

Construction Cost		\$39,768.00
Fees		

Admin	4%	\$1,590.72
Contingency	5%	\$1,988.40
Engineering	10%	\$3,976.80
Interest	4%	\$1,590.72
Legal	3%	\$1,193.04

Total Estimated Cost		\$50,107.68
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Funding

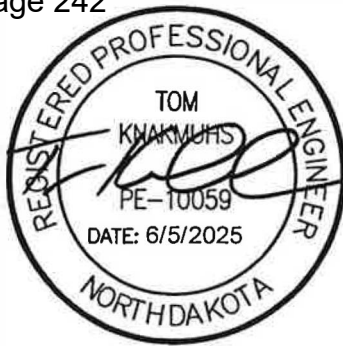
Special Assessments	100.00%	\$50,107.68
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Project Funding Summary

State Funds - Other ND	77.69%	\$1,005,593.62
Special Assessments	22.31%	\$288,806.28

Total Estimated Project Cost		\$1,294,399.90
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We believe this project to be cost effective.



A handwritten signature in black ink, appearing to read "T. Knakmuhs".

Thomas Knakmuhs, P.E.
City Engineer



**LOCATION AND COMPRISING
PAVING AND UTILITY REHAB/RECONSTRUCTION
IMPROVEMENT DISTRICT NO. BR-25-H
3RD ST N FROM NP AVE TO 1ST AVE N**

LOCATION:

3rd Street North from NP Avenue to 1st Avenue North.

COMPRISING:

Parcels facing 3rd Street North between 1st Avenue and NP Avenue North.

Please refer to the Special Assessment Boundary Map for all properties included within the Special Assessment District.

**RESOLUTION DECLARING
PAVING AND UTILITY REHAB/RECONSTRUCTION
NECESSARY
IMPROVEMENT DISTRICT NO. BR-25-H**

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

That it be and is hereby declared necessary to construct Paving and Utility Rehab/Reconstruction, Improvement District No. BR-25-H in the City of Fargo, North Dakota, according to the Engineer's Report for this district and the Plans and Specifications approved by the Board of City Commissioners of the City of Fargo, North Dakota, filed in the Office of the City Auditor, and open for public inspection. A map of the district is attached hereto and incorporated as if fully set forth herein.

That a portion of said Paving and Utility Rehab/Reconstruction improvement is to be paid from State and Local Funds, and approximately 22.31% is to be assessed against the benefited property in amounts proportionate to and not exceeding the benefits to be derived by them respectively from said improvement.

Protests against the proposed Paving and Utility Rehab/Reconstruction must be in writing and must be filed with the City Auditor's Office within 30 days after the First publication of this Resolution.

BE IT FURTHER RESOLVED, That the City Auditor's Office is hereby instructed to publish this Resolution, as required by law.

CERTIFICATE

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

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Board of City Commissioners of the City of Fargo at the Regular Meeting of the Board held on Monday, June 9th, 2025.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Fargo, North Dakota, this 9th day of June, 2025.

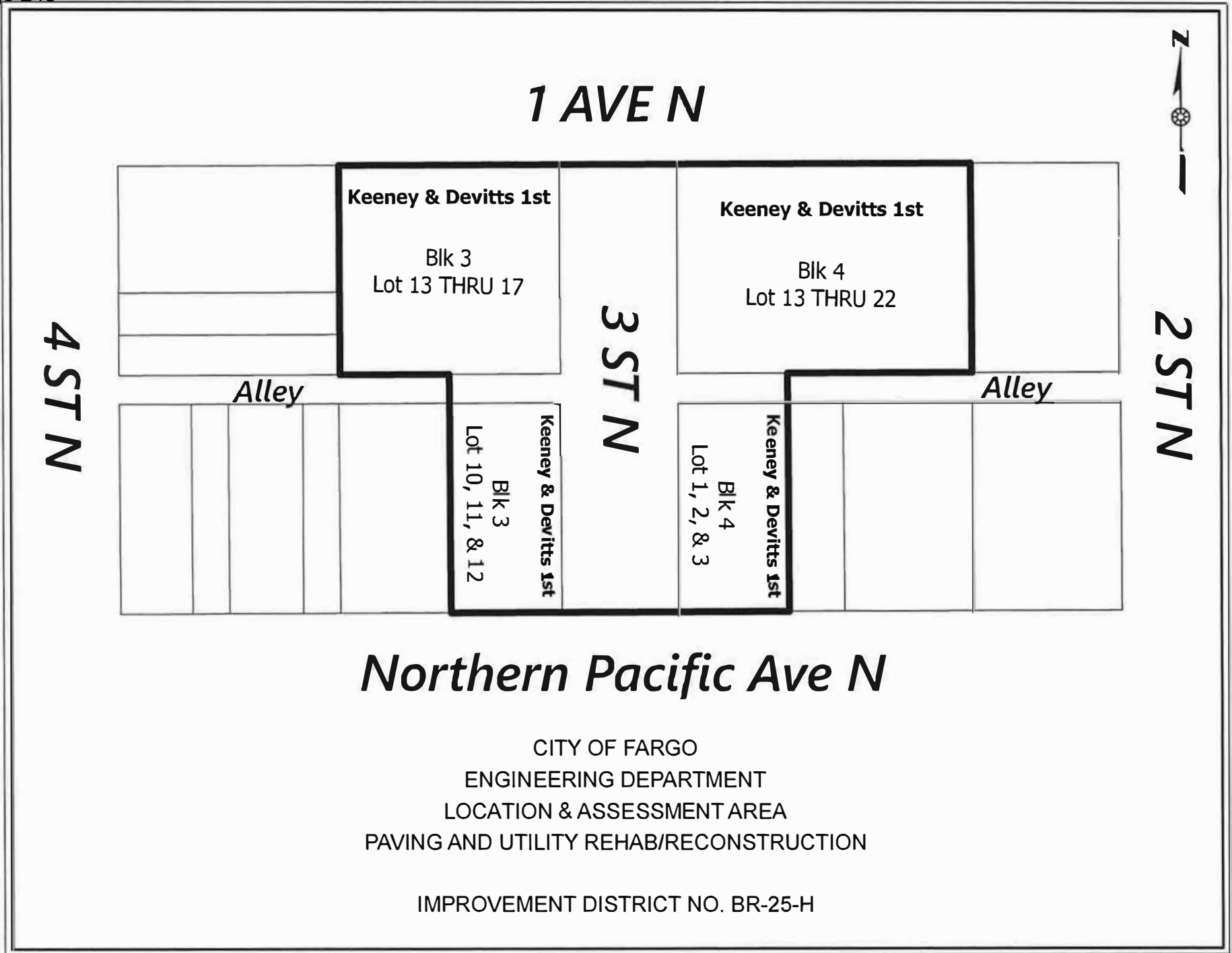
40-22-15

40-22-17

Steven Sprague
City Auditor

(SEAL)

(June 18 and 25, 2025)





FINANCE OFFICE
225 4th Street North
Fargo, ND 58102
Phone: (701) 241-1333
www.FargoND.gov

TO: Board of Commissioners

FROM: Susan Thompson, Director of Finance

RE: FAHR Staff meeting – Items for Commission Review/Approval

DATE: June 5, 2025

Receive & File: Sales Tax Update

Action Needed: *FAHR endorsed the respective departments' requests for City Commissions approval. Reports of Action, along with supporting schedules, are included.*

Other Financial Considerations

Police – STOP Grant Application

Water Reclamation – Budget Reallocation Request for Facility Planning

City of Fargo

Comparative Sales Tax Analysis of All Sales Tax Revenue - ACCRUAL BASIS

PB: 55/KAC (prior to 2022)

5/21/2025

Payment Date	month collected	Amount	County Collections	County Growth %	City Collections	City Growth %		
			4,869,792.67	-4.7%	14,984,570.85	-4.7%		
						14,984,570.85 City 2025		
						4,869,792.67 County 2025		
						15,722,428.95 City 2024		
						5,190,674.29 County 2024		
						(737,858.10) City Change		
						(320,881.62) County Change		
5/21/2025	Mar-25	County Sales Tax	1,698,986.33		City Sales Tax	5,424,656.49		
4/22/2025	Feb-25	County Sales Tax	1,477,568.31		City Sales Tax	4,523,059.25		
3/21/2025	Jan-25	County Sales Tax	1,693,239.03		City Sales Tax	5,036,855.11		
2/22/2025	Dec-24	County Sales Tax	2,207,030.88	23,304,345.12	0.9%	6,626,714.99	69,824,744.71	0.8%
1/21/2025	Nov-24	County Sales Tax	2,281,112.22		City Sales Tax	6,540,733.99		
12/20/2024	Oct-24	County Sales Tax	1,764,529.62		City Sales Tax	5,342,358.63	69,824,744.71	City 2024
11/22/2024	Sept-24	County Sales Tax	2,257,740.11		City Sales Tax	6,622,406.84	23,304,345.12	County 2024
10/21/2024	Aug-24	County Sales Tax	2,088,361.27		City Sales Tax	6,284,633.45		
9/21/2024	July-24	County Sales Tax	1,746,626.42		City Sales Tax	5,168,111.30	69,250,461.96	City 2023
8/21/2024	June-24	County Sales Tax	2,659,707.17		City Sales Tax	7,859,913.01	23,106,462.71	County 2023
7/22/2024	May-24	County Sales Tax	1,348,902.41		City Sales Tax	4,252,926.43		
6/24/2025	Apr-24	County Sales Tax	1,759,660.73		City Sales Tax	5,404,517.72	574,282.75	City Change
5/21/2024	Mar-24	County Sales Tax	2,276,388.27		City Sales Tax	6,980,911.25	197,882.41	County Change
4/22/2024	Feb-24	County Sales Tax	1,023,591.77		City Sales Tax	3,163,097.74		
3/21/2024	Jan-24	County Sales Tax	1,890,686.25		City Sales Tax	5,378,419.96		
2/22/2024	Dec-23	County Sales Tax	2,781,114.42	23,106,462.71	0.2%	8,158,464.07	69,250,461.96	4.0%
1/22/2024	Nov-23	County Sales Tax	1,559,305.60		City Sales Tax	4,709,032.00		
12/20/2023	Oct-23	County Sales Tax	1,916,009.28		City Sales Tax	5,684,255.33	69,250,461.96	City 2023
11/22/2023	Sep-23	County Sales Tax	2,480,655.78		City Sales Tax	7,615,211.78	23,106,462.71	County 2023
10/21/2023	Aug-23	County Sales Tax	1,509,750.17		City Sales Tax	4,530,239.98		
9/20/2023	Jul-23	County Sales Tax	2,012,131.70		City Sales Tax	6,030,106.74	66,571,120.26	City 2022
8/20/2023	Jun-23	County Sales Tax	2,337,746.99		City Sales Tax	6,739,403.04	21,358,922.89	County 2022
7/21/2023	May-23	County Sales Tax	1,873,134.11		City Sales Tax	5,735,919.99		
6/21/2023	Apr-23	County Sales Tax	2,076,304.07		City Sales Tax	6,368,293.95	2,679,341.70	City Change
5/21/2023	Mar-23	County Sales Tax	1,528,002.65		City Sales Tax	4,619,852.76	1,747,539.82	County Change
4/22/2023	Feb-23	County Sales Tax	1,455,198.19		City Sales Tax	4,544,116.43		
3/19/2023	Jan-23	County Sales Tax	1,577,109.75		City Sales Tax	4,515,505.89		
2/22/2023	Dec-22	County Sales Tax	2,311,087.61	21,358,922.89	-2.6%	7,015,548.33	64,571,120.26	4.3%
1/24/2023	Nov-22	County Sales Tax	1,892,168.21		City Sales Tax	5,746,351.94		
12/21/2022	Oct-22	County Sales Tax	1,904,586.17		City Sales Tax	5,637,286.90	66,571,120.26	City 2022
11/22/2022	Sep-22	County Sales Tax	1,828,464.08		City Sales Tax	5,282,124.95	21,358,922.89	County 2022
10/21/2022	Aug-22	County Sales Tax	1,905,477.39		City Sales Tax	5,697,578.75		
9/20/2022	Jul-22	County Sales Tax	2,321,971.24		City Sales Tax	7,149,286.78	63,840,810.53	City 2021
8/20/2022	Jun-22	County Sales Tax	1,816,911.33		City Sales Tax	5,066,525.72	21,920,710.74	County 2021
7/21/2022	May-22	County Sales Tax	1,811,968.57		City Sales Tax	5,388,350.10		
6/21/2022	Apr-22	County Sales Tax	1,971,576.35		City Sales Tax	6,059,165.61	2,730,309.73	City Change
5/21/2022	Mar-22	County Sales Tax	1,526,674.55		City Sales Tax	4,461,738.30	(561,787.85)	County Change
4/22/2022	Feb-22	County Sales Tax	613,842.16		City Sales Tax	4,850,989.43		
3/19/2022	Jan-22	County Sales Tax	1,434,195.23		City Sales Tax	4,216,173.45		
2/22/2022	Dec-21	County Sales Tax	2,471,070.77	21,920,710.74	31.1%	7,455,248.61	63,840,810.53	29.9%
1/25/2022	Nov-21	County Sales Tax	1,587,312.19		City Sales Tax	4,653,877.92		
12/21/2021	Oct-21	County Sales Tax	2,245,078.73		City Sales Tax	6,847,607.38		
11/22/2021	Sep-21	County Sales Tax	1,578,911.41		City Sales Tax	4,305,274.70		
10/21/2021	Aug-21	County Sales Tax	1,846,222.17		City Sales Tax	4,948,174.14		
9/20/2021	Jul-21	County Sales Tax	1,941,367.18		City Sales Tax	5,563,279.08		
8/20/2021	Jun-21	County Sales Tax	1,928,026.98		City Sales Tax	5,794,768.26		
7/21/2021	May-21	County Sales Tax	2,134,078.28		City Sales Tax	6,292,906.78	49,146,842.57	City
6/21/2021	Apr-21	County Sales Tax	1,247,864.18		City Sales Tax	3,423,096.66	16,719,327.13	County
5/21/2021	Mar-21	County Sales Tax	1,924,292.66		City Sales Tax	5,462,536.61		
4/22/2021	Feb-21	County Sales Tax	1,588,269.26		City Sales Tax	4,766,421.14		
3/19/2021	Jan-21	County Sales Tax	1,428,216.93		City Sales Tax	4,327,619.25		
2/22/2021	Dec-20	County Sales Tax	1,445,794.87	16,719,327.13	0.3%	4,232,187.36	49,146,842.57	-5.0%
1/25/2021	Nov-20	County Sales Tax	1,587,940.99		City Sales Tax	4,492,863.04		
12/21/2020	Oct-20	County Sales Tax	1,630,976.65		City Sales Tax	4,999,947.66		
11/23/2020	Sep-20	County Sales Tax	1,396,321.95		City Sales Tax	3,952,605.63		
10/21/2020	Aug-20	County Sales Tax	1,694,006.82		City Sales Tax	4,276,558.28		
9/22/2020	Jul-20	County Sales Tax	1,467,915.93		City Sales Tax	4,382,459.17		
8/21/2020	Jun-20	County Sales Tax	1,605,095.72		City Sales Tax	4,774,814.61		
7/22/2020	May-20	County Sales Tax	1,557,866.22		City Sales Tax	4,797,152.70		
6/19/2020	Apr-20	County Sales Tax	860,574.06		City Sales Tax	2,448,782.22		
5/21/2020	Mar-20	County Sales Tax	1,293,072.02		City Sales Tax	3,865,417.55		
4/22/2020	Feb-20	County Sales Tax	1,306,194.23		City Sales Tax	4,286,357.93		
3/20/2020	Jan-20	County Sales Tax	873,567.87		City Sales Tax	2,637,696.22		
2/21/2020	Dec-19	County Sales Tax	1,884,500.14	16,670,138.34	6.0%	5,542,185.17	51,732,824.69	7.4%
1/23/2020	Nov-19	County Sales Tax	1,765,912.60		City Sales Tax	5,757,005.84		
12/20/2019	Oct-19	County Sales Tax	1,053,485.18		City Sales Tax	3,055,444.40		
11/22/2019	Sep-19	County Sales Tax	1,586,457.86		City Sales Tax	4,786,259.66		
10/21/2019	Aug-19	County Sales Tax	1,600,148.48		City Sales Tax	4,940,121.35		
9/23/2019	Jul-19	County Sales Tax	1,209,618.14		City Sales Tax	3,618,612.18		
8/21/2019	Jun-19	County Sales Tax	2,012,988.64		City Sales Tax	6,334,417.88		
7/22/2019	May-19	County Sales Tax	1,000,237.92		City Sales Tax	2,954,722.53		
6/21/2019	Apr-19	County Sales Tax	1,206,333.76		City Sales Tax	3,957,201.59		
5/21/2019	Mar-19	County Sales Tax	1,575,011.74		City Sales Tax	4,907,368.09		
4/22/2019	Feb-19	County Sales Tax	781,011.94		City Sales Tax	2,472,350.68		
3/21/2019	Jan-19	County Sales Tax	1,072,429.94		City Sales Tax	3,407,135.32		
2/22/2019	Dec-18	County Sales Tax	1,602,337.29	15,720,221.20		4,957,423.52	48,185,965.90	
1/23/2019	Nov-18	County Sales Tax	1,331,035.62		City Sales Tax	4,232,397.07		
12/21/2018	Oct-18	County Sales Tax	1,343,355.18		City Sales Tax	4,113,930.12		
11/23/2018	Sep-18	County Sales Tax	1,718,685.28		City Sales Tax	5,054,359.80		
10/19/2018	Aug-18	County Sales Tax	991,141.62		City Sales Tax	2,924,184.95		
9/24/2018	Jul-18	County Sales Tax	1,438,831.10		City Sales Tax	4,290,954.46		
8/21/2018	Jun-18	County Sales Tax	1,796,550.82		City Sales Tax	5,462,231.25		
7/23/2018	May-18	County Sales Tax	1,042,677.94		City Sales Tax	3,258,203.14		
6/21/2018	Apr-18	County Sales Tax	1,142,864.18		City Sales Tax	3,527,756.41		
5/21/2018	Mar-18	County Sales Tax	1,508,616.11		City Sales Tax	4,674,211.89		
4/20/2018	Feb-18	County Sales Tax	713,349.48		City Sales Tax	2,264,455.70		
3/21/2018	Jan-18	County Sales Tax	1,090,776.58		City Sales Tax	3,425,857.59		
2/22/2018	Dec-17	County Sales Tax	1,871,667.76		City Sales Tax	6,232,808.91		
1/23/2018	Nov-17	County Sales Tax	924,357.13		City Sales Tax	2,809,247.58		
Totals Since 2018		\$ 146,465,944			\$ 442,579,398			



FARGO POLICE DEPARTMENT

A SAFE AND UNIFIED COMMUNITY BUILT ON TRUST, ACCOUNTABILITY AND INCLUSION

CRIMINAL INVESTIGATIONS DIVISION

MEMORANDUM

To: City Commission

From: LT Nate Nieman

Date: 05.29.2025

RE: STOP Grant Application – Lethality Assessment Program (LAP)

FAR Commission:

The Fargo Police Department is applying for the STOP Grant to support the implementation of the Lethality Assessment Program (LAP).

The Maryland Lethality Assessment Program (MD LAP), hereinafter referred to as LAP, is a proactive initiative designed to enhance victim safety by equipping law enforcement agencies, local advocacy centers, and prosecution teams with a standardized questionnaire to assess the lethality risk of incidents involving domestic violence. This tool allows officers to immediately connect victims with safety planning resources and advocacy services while still on scene—potentially preventing future violence.

LAP empowers law enforcement and local partners to intervene early, offer meaningful assistance to victims, and improve outcomes through coordinated response efforts.

Cost Breakdown for LAP Implementation:

The LAP implementation involves three primary cost categories:

- Consultant Fees: \$2,500 (based on two consultants, as required by MNADV)
- Travel Costs: \$2,056
- Annual Single Jurisdiction Fee: \$2,500
- The State will fund 75% and the City will match 25%

Following the conclusion of the grant period, the Fargo Police Department will sustain the LAP through its operations budget. Each year, the FPD executive staff prepares and submits the department's annual budget for City Commission approval as part of the city's standard fiscal planning process.

Recommended Motion:

Move to accept and utilize the STOP Grant for the purchase and implementation of the Lethality Assessment Program (LAP) for the Fargo Police Department. This program will significantly enhance victim safety, reduce the number of steps required for officer referrals, assist prosecutors in improving offender accountability, and reestablish communication channels with RACC while maintaining all applicable privacy laws and standards.

LAP Implementation	
Item Description	Amount
Single Jurisdiction Annual Fee	\$2,500.00
LAP Consultant Travel Costs*	\$2,056.00
LAP Consultant Fee	\$2,500.00
Grand Total	\$7,056.00

Funding Summary			
	STOP Funds Amount	Match Funds Am	Project Total
LAP Project	\$5,292.00	\$1,764.00	\$7,056.00
Supplies	\$998.89	\$332.96	\$1,331.85
Total	\$6,290.89	\$2,096.96	\$8,387.85

Match is calculated based on the Funds Requested divided by 75% and then multiplied by 25%.

Match Funds		
	Funds Requested	Match Amount Required
Law Enforcement Project 1	\$6,290.89	\$2,096.97

Title Page

Application Date:

Applicant Organization: Fargo Police Department

Applicant Mailing Address: 105 25th St N

City: Fargo

State: ND

Zip Code: 58102

Name and Title of Project Coordinator / Contact Person: Jordan DiPalma, Victim Services Specialist

Telephone Number: 701.241.8291

Fax Number: [I do not know]

Email address: jdipalma@fargond.gov

Name and Title of Authorized Official: William Ahlfeldt, Captain of Criminal Investigations Division

Telephone Number: 701.241.1414

Fax Number: [I do not know]

Email address: wahlfeldt@fargond.gov

UEI Number: Kathy has this – will get before submitting application

Amount of STOP Funds Requested. Do not include match funds. The STOP funds requested amount is found upon completion of the STOP FUNDS BUDGET section.

\$6290.89

Indicate the dollar amount from the requested total above that will be used for sexual assault. If zero, enter 0.

\$0.00

Description of the Problem / Statistical Documentation

In the space below, please address the following items:

- Provide a brief overview of the community where this project will take place. Include information about the geographic location (ex: part of the state, rural/urban, tribal, etc.)
 - This project will take place in Cass County, North Dakota. Cass County has an estimated population of 200,945 people (United States Census, 2024). The county is a mix of suburban and rural communities with the majority of the population living in the city of Fargo.
 - This project will allow for collaboration between the county's local community advocacy center, the Rape and Abuse Crisis Center, the Cass County State Attorney's Office, and the Fargo Police Department.

Provide a description of the problem in your service area, the impact of the problem, and identity the factors that contribute to and/or cause the problem.

Domestic violence (DV) and intimate partner violence (IPV) has existed in the United States since the country was founded. Society's view of the DV and IPV epidemic has shifted from a cultural norm to a serious safety concern that must be addressed. This shift has happened within the last 50 years and the criminal justice system has been working to strengthen laws, sentencing, and protection order statutes to increase safety for victims. Across the country, law enforcement agencies are starting to incorporate their own victim advocates into their agencies, community advocacy centers partner with the prosecution and law enforcement to provide support to victims, and prosecution teams have court advocates to provide support to victims as they navigate the legal system.

In our service area, the Fargo Police Department (FPD) has a civilian staff member who works with DV and IPV victims. The FPD collaborates with the RACC and the Cass County State Attorney's Office. The FPD's Victim Services Specialist (VSS) works with the court advocates, Victim Witness Coordinators (VWCs), to provide support to DV and IPV victims from the time the crime is reported until the case is adjudicated. So with all of this support, why is DV and IPV the most insidious crime type that our jurisdiction faces?

Part of the answer is that DV and IPV are a cycle. It takes victims on average 7 times to leave their abuser. The other part is that these support mechanisms take place after police have left the scene; they are reactive. The reactive nature of the criminal justice system and legal system exacerbates the effects of DV and IPV, not only to victims, but also to law enforcement, community advocates, and prosecutors.

Law enforcement will continually respond to calls for service for domestic and will send the reports to the prosecution team. The prosecution team will review the report and try to charge out the case, however, due to the slow moving nature of the court system, the victim has disengaged from the process. The community advocacy center is working with victims who did not report and those who have and are now jaded against the criminal justice system and court system. Eventually victims will stop reporting and the lethality rates continue to rise.

All of the agencies are indirectly impacted by using resources, time, and emotional labor that could numb responding members to the danger of the situation. Yet the victim is most impacted by these effects. The victim doesn't see 3 separate agencies. They see one system that isn't helping them. They see one system that isn't moving fast enough and they feel like just a number. To them, this isn't a case report or a court file; this is their life. Eventually they lose faith in the system they were told is here to help them and keep them safe. DV and IPV is a complex and nuanced problem that is embedded into the fibers of society. Those who commit DV and IPV need to face accountability for their actions, however, that accountability usually rests solely on the victim. It requires both a proactive and reactive approach.

Provide local or regional data of domestic violence, sexual assault, stalking, or dating violence that is important and related to the problem.

The following data is for the 2024 calendar year.

- The FPD responded to 3283 domestic violence calls.
- In 2024, the FPD Victim Services Specialist worked with 1166 victims of domestic violence. Of those 1166 people, 328 required extensive on going case management services.
- On average, the CCSAO declined 50% of domestic violence charges due to unsupportive victims and insufficient evidence.

Statutory Program Purpose Area(s)

1. Developing and implementing more effective police, court, and prosecution policies, protocols, orders, and services specifically devoted to preventing, identify, and responding to violent crimes against women, including the crimes of sexual assault, dating violence, stalking, and domestic violence, as well as the appropriate treatment of victims.

Current Efforts

Describe progress toward meeting your current contract (Oct. 2024 – Sept. 2025) goals and objectives for the time period from Oct. 1 through March 31. If this is the first time your agency is submitting a request for STOP funds, type NA.

N/A

Project Description

The project description should explain the proposed projects funded with STOP funds. This section should correlate with your budget. Describe job duties of funded employees, explain travel purposes, services provided, etc.

LAP – how is it beneficial to FPD directly and RACC and SAO, how is it beneficial to the victim, and overall description

A copy of the LAP questions has been uploaded as an attachment for your review.

The Maryland Lethality Assessment Program (MD LAP hereinafter referred to as LAP) is a program that trains law enforcement agencies, local community advocacy centers, and prosecution teams how to use a questionnaire that can assess the lethality of the specific incident that officers have responded to. Roughly 20 years ago a law enforcement officer condensed the Johns Hopkin’s Danger Assessment into what is now known as the LAP so that officers can still assess the lethality of a situation on scene without carrying physical paper copies. LAP 1.0 was originally administered by officers on scene using a pocket sized card. Officers would score the assessment while writing their report and make a referral to their local advocacy center if the score was high enough.

LAP 2.0 is administered similarly with a few key changes since its creation. The LAP 2.0 is now administered through an app that is installed on officers’ work phones. As officers ask the questions, the app is automatically scoring. Pending what questions were answered with “yes”, an on-scene referral to

the local community advocacy domestic violence hotline will take place. Officers will have the victim call utilizing the victim's phone, or the officer's work phone if the victim's phone is damaged or the victim does not have a phone. The community advocate will create a safety plan for the victim and set up a meeting for the following day so that the victim can receive resources and referrals.

Utilizing the LAP program is a proactive approach to victim safety because resources and safety planning are able to be given to the victim on scene. Often times the victim has become accustomed to the abuse. They may not see the danger they are in, or they may minimize the behavior when it is time to meet with an advocate the following day. The LAP allows law enforcement and local advocates to intercede and assist the victim during the call, which could prevent future violence from escalating.

Previously the FPD was able to share domestic violence police reports with the RACC, however, the FPD has been advised to not engage in that practice anymore due to state privacy laws. This creates a barrier for the RACC when it comes to reaching out to victims who may need resources. With the LAP 2.0, that channel of communication would be opened again while following state and federal privacy laws. On scene communication with an advocate is paramount because the victim is most willing to accept help while law enforcement are present due to safety concerns. The conversation that the victim has with the community advocate will still remain confidential as if they went in person. If the victim does not want to speak with an advocate on scene, the FPD's VSS would follow up with them the next day to ensure they are still receiving outreach and resources.

Due to the digital nature of the LAP, there is a report that is specifically formatted for prosecution to show the lethality of the incident. Other agencies who utilize LAP 2.0 have shared that that this report has helped improved bail/bond setting, sentencing, and helped keep defendants accountable, even if a victim is scared to testify at the previously mentioned hearings. Prosecutors will be able to better show pattern and behavior as well as have an additional piece of evidence. The LAP 2.0 has been scientifically vetted to be accurate and is admissible in a court of law as evidence, similar to the Johns Hopkin's Danger Assessment.

In summary, the digital nature and on scene application will drastically improve the safety of the victim, reduce the number of steps an officer would take for a referral, assist prosecution in improving accountability levels, and once again open the channel of communication with RACC while maintaining privacy laws and standards.

LAP Cost

There are three main cost categories for the LAP implementation: the consultant fee of \$2500, the travel costs of \$2056, and the annual single jurisdiction fee of \$2500. The following amounts are based off of 2 consultants as required by the MNADV.

The consultant fee, which pays the consultants for their training time, is a one-time fee of \$2500.

The agency implementing the LAP is financially responsible for all travel, lodging, and per diem costs, which amounts to a total of \$2056. Basic economy flights through Delta from Annapolis, Maryland to Fargo, North Dakota for late October 2025 were \$544 each, creating a total of \$1088.

Per Diem costs were determined using the 2025 GSA rates, which are as follows: \$16 for breakfast, \$19 for lunch, \$28 for dinner, \$5 for incidental expenses, and \$51 for the first and last day of travel. It will take one day to travel from Annapolis, Maryland to Fargo, North Dakota. Training will take one full day. Travel back to Annapolis from Fargo will take another full day. Both consultants would receive \$51 for the first travel day, \$68 for the training day, and \$51 for the last travel day. This amount equals \$170 which would equal a total of \$340 for both consultants.

Lodging costs were determined by using the government rate at the Holiday Inn Fargo (located on 13th Ave) which equals \$157 per night. The consultants are male and female so separate rooms would be appropriate. Two rooms for two nights at \$157 equals \$628.

The travel, lodging, and per diem all equal \$2056.

The annual fee covers the online platform that keeps record of all completed lethality assessments, manages officer accounts, and creates reports for grant reporting and prosecution as well as access to the MNADV's online training and publication library.

Soft Room – how is it beneficial to FPD and the victim, overall description

A soft room is a room that is intentionally designed to provide a comfortable, safe, and supportive environment for those who are disclosing traumatic events to officers. Many law enforcement agencies across the country have implemented or are starting to implement soft rooms as it is considered a victim centered practice.

The Fargo Police Department moved into their current space in 2017. The building was a former Border States Electric office and lineman truck garage. Many aspects of the building had to be renovated to be compliant with federal and state guidelines for law enforcement agencies. Safety and compliance were the top priority when it came to renovations and a majority of the budget was dedicated to meeting those priorities.

There is currently a soft room that is in need of some updating. Now that the FPD has its own law-enforcement based victim advocate, formally known as the Victim Services Specialist (VSS), they need a soft space to meet with victims as well. Detectives and the VSS are currently working together to coordinate who is using the soft room when, but this practice is not serving victims in the best way. Fargo is the largest jurisdiction in Cass County and often there are multiple victims who come in to speak with an officer, detective, or the VSS at once. Having two soft rooms would remove the burden of a long wait time for the victim.

The new soft room will go next door the current soft room, right off of the lobby. The new soft room will replace what used to be the finger printing station when they were done with ink and paper. The new finger printing station has been relocated elsewhere in the building, creating an opportunity to repurpose the existing and currently unused space.

The current soft room has already been furnished with comfy chairs and end tables so only one set of those are being requested for the new soft room. The current soft room could be softer so there will be 2 sets of décor requested to help meet that need.

Soft Room Cost –

Pricing for furniture was gathered from Ikea’s website. Ikea has high quality furniture with high durability while being stylish. Pricing for décor was sourced from Hobby Lobby, Amazon, or Wal-Mart as both stores are affordable if that is applicable. Ikea, Wal-Mart, Hobby Lobby, and Amazon were all used to gather pricing information.

Additions to the current soft room include a floor lamp, a table lamp, a set of coasters, and a small artificial plant. The floor lamp is from Ikea and is priced at \$69.99. The table lamp is from Wal-Mart and is priced \$14.99. The set of 6 coasters are from Amazon and are priced at \$29.99. The small artificial plant is from Hobby Lobby and is priced at \$19.99. The total for the requested items, which does not include tax, to enhance the existing soft room is \$134.96.

Requests for the new soft room are 2 chairs, 2 end tables, a floor lamp, a table lamp, a clock, a set of coasters, a large artificial plant, a small artificial plant, and an essential oil diffuser. The Morabo chair is from Ikea and is \$349.99 each, totaling 699.98. The Hemnes end table is from Ikea and is \$129.99 each, totaling \$259.98. The floor lamp is from Ikea and is priced at \$69.99. The table lamp is from Wal-Mart and is priced \$14.99. The clock is from Amazon and is priced at \$16.99. The set of 6 coasters are from Amazon and are priced at \$29.99. The large artificial plant is from Hobby Lobby and is priced at \$49.99. The small artificial plant is from Hobby Lobby and is priced at \$19.99. The essential oil diffuser is from Amazon and is priced at \$34.99. The total for the requested items, which does not include tax, to furnish the new soft room is \$1196.89.

Program Plan – up to 4 goals

Goal 1: Improve on scene domestic violence response.

- Objective 1: Implement the LAP
 - Strategies:
 - Create buy in from RACC and CCSAO [completed]
 - Secure funding [in process]
 - Coordinate with MNADV [in process]

Goal 2: Provide a victim-centered experience to those who disclose their stories.

- Objective 1: Create a designated VSS meeting space.
 - Strategies:
 - Create buy in from chain of command [completed]
 - Secure funding [in process]
 - Acquire comfort furnishings and items [in process]
- Objective 2: Enhance the current soft room that detectives utilize.
 - Strategies:
 - Create buy in from chain of command [completed]
 - Secure funding [in process]
 - Acquire comfort furnishings and items [in process]

Sustainability

In 2-3 sentences, describe how this project will be funded after the STOP funds are no longer available.

- The LAP and the maintenance of the soft room will be funded through the Fargo Police Department operations budget. Each year the budget is reviewed and the following fiscal year's budget is prepared by the FPD executive staff to be presented to the City Commission for approval.

Cooperation and Collaboration

Complete and attach to the application the following documents:

- Confidentiality and Privacy Statement
- Certification of Consultation
- 3 current letters of collaboration
 - ☐ RACC
 - ☐ State Attorney's Office
 - ☐ Darrell

LAP Implementation		*see breakdown to the right
Item Description	Amount	
Single Jurisdiction Annual Fee	\$2,500.00	
LAP Consultant Travel Costs*	\$2,056.00	
LAP Consultant Fee	\$2,500.00	**see breakdown below
Grand Total	\$7,056.00	

Consultant			
Days	Description of Activity	Hours	Total
1	MOU Meeting & Creation	8	\$650
2	Technical Set Up	8	\$550
3	Training Prep	8	\$650
4	Training	8	\$650
	Grand Total		\$2,500

Supplies			
Item Requested	# of units	Cost per Unit	Total
Ikea Morabo Chair	2	\$349.99	\$699.98
Ikea Hamnes End Table	2	\$129.99	\$259.98
Ikea Floor Lamp	2	\$69.99	\$139.98
Wal-Mart Table Lamp	2	\$14.99	\$29.98
Amazon Set of 6 Coasters	2	\$29.99	\$59.98
Hobby Lobby Artificial Small Plant	2	\$19.99	\$39.98
Hobby Lobby Large Artificial Plant	1	\$49.99	\$49.99
Amazon Clock	1	\$16.99	\$16.99
Amazon Essential Oil Diffuser	1	\$34.99	\$34.99
	Grand Total		\$1,331.86

Match is calculated based on the Funds Requested divided by 75% and then multiplied by 25%.

Match Funds		
	Funds Requested	Match Amount Required
Law Enforcement Project 1	\$6,290.89	\$2,096.97

Match Funds for Law Enforcement			
Budget Category	Description	Match Amount Required	Source of Funding
Consultant	LAP Consultants (2)	\$625.00	Operations Budget
Travel, Food, Lodging	Funds for training	\$514.00	Operations Budget
Other Costs	Annual Fee	\$625.00	Operations Budget
Supplies	Soft Room items	\$332.97	Operations Budget

Funding Summary			
Budget Category	STOP Funds Amount	Match Amount Required	Project Total
Consultant	\$1,875.00	\$625.00	\$2,500.00
Travel, Food, Lodging	\$1,542.00	\$514.00	\$2,056.00
Other Costs	\$1,875.00	\$625.00	\$2,500.00
Supplies	\$998.89	\$332.97	\$1,331.86

Funding Summary			
	STOP Funds Amount	Match Funds Amount	Project Total
LAP Project	\$5,292.00	\$1,764.00	\$7,056.00
Supplies	\$998.89	\$332.97	\$1,331.86
Total	\$6,290.89	\$2,096.96	\$8,387.86

Travel Cost Breakdown		
Category	2 Trainers	Cost Per Item
Travel*	\$1,088.00	\$544.00
Lodging**	\$628.00	\$314.00
Per Diem***	\$340.00	\$170.00
Total	\$2,056.00	\$1,028.00

*based off of basic class plane tickets for 2 trainers

**based off of 2 rooms for 2 nights at government rate

***based off of 2 trainers - see below

Per Diem Rates - based off of 2025 GSA rates	
Breakfast	\$16.00
Lunch	\$19.00
Dinner	\$28.00
Incidental Expenses	\$5.00
First and Last Day of Travel	\$51.00

Per Diem Calculations	
Travel Day - to Fargo	\$51.00
Training	\$68.00
Travel Day - Home	\$51.00
Total	\$170.00
Total for 2 Trainers	\$340.00

MEMORANDUM

June 2nd 2025

To: City Commission
From: Jim Hausauer, Water Reclamation Utility Director *JA*
Re: Budget Reallocation Request for Facility Planning: Solids & Dewatering Evaluation

Background/Need

A high-level explanation of the Water Reclamation Facility (WRF) treatment process begins with the separation of liquid & solid components of wastewater prior to advanced treatment. The liquids proceed through clarifiers and a series of trickling filters for biochemical oxygen demand (BOD), ammonia and nitrogen reduction. The solids are separated through clarification, heated, stabilized through anaerobic digestion, dewatered and subsequently hauled to the landfill for disposal. Prior to the WRF Expansion, solids that were generated, resulted in dewatering three days a week. Now the WRF expansion is nearing completion and fully operational, the volume of solids produced & requiring treatment, has far exceeded expectations through the Hybrid Integrated Fixed Film Activated Sludge (IFAS) process. While this is excellent for the environment and meeting regulatory permit requirements, it has resulted in dewatering 4-6 days a week. Due to the rapid regional growth, and changes in the solids feed to the dewatering process, the WRF is seeing over 200,000 gpd of biosolids to the dewatering facility. The higher hydraulic feed rates are problematic for operations staff that result in longer days of operation, weekend staffing and less efficient dewatering prior to final disposal. All of which result in increased overtime and costs.

Proposed Funding

The dewatering facility capacity established in the 2014 WRF Solids Facility Plan, will be reached in the near future based on current flows from Fargo & its regional customers. As a result, planning for a future WRF solids & dewatering expansion is necessary due to solids capacity and the useful life of the dewatering equipment. The Facility Plan will explore issues tied to solids handling for the WRF including:

- Analysis of future conditions including solids production from both old and new treatment trains.
- Evaluation of the digestion process, solids transfer and optimization alternatives.
- Alternatives for side stream management and struvite control.
- Evaluation of dewatering alternatives through analysis or pilot study.
- Alternatives for interim solids handling.

These tasks will be assembled into a single Facility Plan document for a Capital Improvement roadmap. The Facility Plan also will be submitted to the ND Department of Environmental Quality for approval and possible CWSRF Funding for any future projects.

Recommendation

Authorize a Water Reclamation Budget Reallocation of unspent funds from Project WW1707 for a Solids and Dewatering Facility Plan which may include a Pilot Study.



(29)

Fire Department
637 NP Avenue
Fargo, ND 58102
Phone: 701.241.1540 | Fax: 701.241.8125
www.FargoND.gov

MEMORANDUM

TO: FARGO CITY COMMISSION

FROM: DIVISION CHIEF TIM BINFET

DATE: JUNE 9, 2025

SUBJECT: CHANGE ORDER No.3 FOR CONSTRUCTION PROJECT BP2405 FIRE STATION 5

This request is for six changes to the Fire Station 5 construction project:

Laney's Inc

1. A problem with existing plumbing in the mezzanine floor drain was discovered and repaired to meet code. This is summarized in MPR-03 and resulted in an additional cost of \$1,731.00.
2. A backflow preventer needed to be moved from the apparatus bay to the mechanical room to meet plumbing code. This is summarized in MPR-04 and resulted in an additional cost of \$2,809.00

Grotberg Electric Inc

3. A wall mounted phone line was added to the dayroom area. This is summarized in EPR-05 and resulted in an additional cost of \$467.73.
4. A light fixture that was originally planned as a can light was replaced with a surface mounted light fixture in room 100. This is summarized in EPR-06 and resulted in an additional cost of \$207.90.

Roers Construction LLC

5. A shelf and wall cabinets will be added to the area of the firefighter computer workspace. This is summarized in GPR-06 and resulted in an additional cost of \$1,501.00.
6. Mirrors in the fitness room that were included in the original project were elected to be omitted from the project. This is summarized in GPR-07 and resulted in a credit of \$2,887.50.

The original adjusted price of the contract was \$2,038,325.09. The proposed changes of this change order will bring the total cost of the contract to \$2,042,154.22.

RECOMMENDED MOTION: Approve change order No.3 for the contract BP2405, Fire Station 5, in the amount of \$3,829.13.

CHANGE ORDER NO.: 1

Owner: City of Fargo
 Engineer: KLI Engineering LLC

Owner's Project No.:
 Engineer's Project No.: 2404-00262
 Contractor's Project
 No.:

Contractor: Laney's Inc.
 Project: Fire Station No. 5 Addition
 Contract Name: General Construction (Stipulated Price)
 Date Issued: May 16, 2025

Effective Date of Change Order: May 9, 2025

The Contract is modified as follows upon execution of this Change Order:

Description:

1. The existing plumbing in the mechanical room that attached to the mezzanine floor drain above is loose. The cost to reinstall and bring up to code is \$1,731.00. This is summarized in MPR-03.
2. The backflow preventor needed to be moved from the apparatus bay to the mechanical room due to a code concern. The cost associated with this is \$2,809.00. This is summarized in MPR-04.

Attachments:

MPR-03, MPR-04

Change in Contract Price	Change in Contract Times
Original Contract Price:	Original Contract Times:
\$ 416,863.00	Substantial Completion: August 13, 2025
	Ready for final payment: August 27, 2025
Increase from previously approved Change Orders:	Increase from previously approved Change Orders:
\$ 0.00	Substantial Completion: N/A
	Ready for final payment: N/A
Contract Price prior to this Change Order:	Contract Times prior to this Change Order:
\$ 416,863.00	Substantial Completion: August 13, 2025
	Ready for final payment: August 27, 2025
Increase this Change Order:	Change resulting from this Change Order:
\$ 4,540.00	Substantial Completion: N/A
	Ready for final payment: N/A
Contract Price incorporating this Change Order:	Contract Times with all approved Change Orders:
\$ 421,403.00	Substantial Completion: August 13, 2025
	Ready for final payment: August 27, 2025

Recommended by Engineer (if required)		Accepted by Contractor	
By:	<u>Cassie Mirano</u>		<u>Tom O. Nelson</u>
Title:	<u>Project Manager</u>	President	
Date:	<u>5/16/2025</u>		<u>Tom O. Nelson</u>
	<u>Authorized by Owner</u>		
By:			
Title:	<u>Mayor</u>		
Date:			<u>June 2, 2025</u>

Proposal By

Box 2562 - Fargo, North Dakota 58108
 Phone: 701-237-0543 Fax: 701-237-9767
www.laneysinc.com



Proposed to: KLJ ENGINEERING	Home Phone	Cell Phone	E-Mail Address
Street Address 300 23RD, AVE E	Work Phone	Fax #	Contact Name
City, State, Zip Code WEST FARGO, N.D. 58078	Job Location FARGO, N.D.	Job Name FARGO FIRE #5	Proposal Date 04/29/25

We propose the following:

MPR03 - MEZZANINE FLOOR DRAIN

TO REPLACE EXISTING FLOOR DRAIN AND PIPING AND BRING UP TO CODE WITH A VENT

MATERIAL \$211.00

LABOR \$1,520.00

Total: \$1,731.00

THANK YOU FOR YOUR CONSIDERATION!

Proposed By:

DAVE THENE

04/29/25

Laney's Commercial Manager

Date

Note: This proposal may be withdrawn by Laney's if not accepted within 30 days.

Acceptance of Proposal

Purchaser

Date

The above prices, specifications and conditions are satisfactory and are hereby accepted. Laney's Inc. is authorized to do the work as specified and payment for such work will be made as outlined in this document.

I understand that I am responsible for payment for any approved work that is performed outside the scope of this estimate.

Billing Terms:☐

Bill Total Upon Completion

☐

Progress Billing

Payment Terms/Conditions:DOWNPAYMENT REQUIRED: ☐

Work can be scheduled
 with a DOWNPAYMENT of: \$

PAYMENT DUE UPON COMPLETION

All payments not made when due will bear interest at eighteen (18%) percent per annum. If payments are not made when due, you will also be responsible for all costs of collection, including reasonable attorney's fees. Any person or company supplying labor or materials for this improvement to your property may file a lien against your property in order to protect their interests. The Purchaser under this agreement acknowledges and understands that Laney's may pull a credit report from a credit reporting agency in order to determine if credit will be extended.

Proposal By

Box 2562 - Fargo, North Dakota 58108
 Phone: 701-237-0543 Fax: 701-237-9767
www.laneysinc.com



Proposed to: KLJ ENGINEERING	Home Phone	Cell Phone	E-Mail Address
Street Address 300 23 RD, AVE.E	Work Phone	Fax #	Contact Name
City, State, Zip Code WEST FARGO, N.D. 58078	Job Location FARGO, N.D	Job Name FARGO FIRE #5	Proposal Date 03/25/25

We propose the following:**CHANGE ORDER**

TO RUN A SEPARATE 2" COPPER LINE WITH RPZ FROM THE MECHANICAL ROOM TO THE EXISTING 2" TRUCK FILLING LINE ABOVE THE DOOR (RPZ SPITS WATER AT TIMES AND NEEDS A FLOOR DRAIN BELOW RPZ)

THIS RFI WAS CLOSED

MATERIAL \$1,184.00

LABOR \$1,045.00

INSULATOR \$580.00

Total: \$2,809.00

THANK YOU FOR YOUR CONSIDERATION!

Proposed By:

DAVE THENE

03/25/25

Laney's Commercial Manager

Date

Note: This proposal may be withdrawn by Laney's if not accepted within 30 days.

Acceptance of Proposal

Purchaser

Date

The above prices, specifications and conditions are satisfactory and are hereby accepted. Laney's Inc. is authorized to do the work as specified and payment for such work will be made as outlined in this document.

I understand that I am responsible for payment for any approved work that is performed outside the scope of this estimate.

Billing Terms:
☐

Bill Total Upon Completion

☐

Progress Billing

Payment Terms/Conditions:

DOWNPAYMENT REQUIRED: ☐

Work can be scheduled with a DOWNPAYMENT of: \$

PAYMENT DUE UPON COMPLETION

All payments not made when due will bear interest at eighteen (18%) percent per annum. If payments are not made when due, you will also be responsible for all costs of collection, including reasonable attorney's fees. Any person or company supplying labor or materials for this improvement to your property may file a lien against your property in order to protect their interests. The Purchaser under this agreement acknowledges and understands that Laney's may pull a credit report from a credit reporting agency in order to determine if credit will be extended.

CHANGE ORDER NO.: 2

Owner: City of Fargo
 Engineer: KLJ Engineering LLC

Owner's Project No.:
 Engineer's Project No.: 2404-00262
 Contractor's Project
 No.:

Contractor: Grotberg Electric Inc
 Project: Fire Station No. 5 Addition
 Contract Name: Electrical Construction (Stipulated Price)
 Date Issued: May 16, 2025

Effective Date of Change Order: April 16, 2025

The Contract is modified as follows upon execution of this Change Order:

Description:

1. The city has requested the integration of a wall mounted phone line in room Living 105. This is summarized in EPR-05 and results in an increased cost of \$467.73
2. There was a can light originally shown in room 100, but due to there being no ceiling in this room to recess it within, the fixture was changed to a surface mounted one. This is summarized in EPR-06 and results in an increased cost of \$207.90.

Attachments:

EPR-05 and EPR-06

Change in Contract Price		Change in Contract Times	
Original Contract Price:		Original Contract Times:	
\$ 421,445.00		Substantial Completion: August 13, 2025	
		Ready for final payment: August 27, 2025	
Increase from previously approved Change Orders:		Increase from previously approved Change Orders:	
\$ 2,883.25		Substantial Completion: N/A	
		Ready for final payment: N/A	
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 424,328.25		Substantial Completion: August 13, 2025	
		Ready for final payment: August 27, 2025	
Increase this Change Order:		Change resulting from this Change Order:	
\$ 675.63		Substantial Completion: N/A	
		Ready for final payment: N/A	
Contract Price incorporating this Change Order:		Contract Times with all approved Change Orders:	
\$ 425,003.88		Substantial Completion: August 13, 2025	
		Ready for final payment: August 27, 2025	

Recommended by Engineer (if required)		Accepted by Contractor	
By:	<u>Casimir</u>		<u>Stephane Noss</u>
Title:	<u>Project Manager</u>	<u>CEO</u>	<u>Secretary/Treasurer</u>
Date:	<u>5/16/2025</u>		<u>06/02/2025</u>
	<u>Authorized by Owner</u>		
By:			
Title:	<u>Mayor</u>		
Date:			



300 23rd Ave E, Suite 100
West Fargo, ND 58078-7820
701 232 5353
KLJENG.COM

March 28, 2025

Tom Moltzan
Project Manager
Grotberg Electric, Inc.
1049 5th Avenue NE
West Fargo, ND 58078

Re: Fire Station No 5 Proposal Request 05 - Phone

Dear Mr. Moltzan:

The city has requested integration of a wall mounted phone line in room Living 105. Please submit a proposal for this on or before April 4, 2025. Proposal shall include detailed/itemized costs to be broken down into labor and materials.

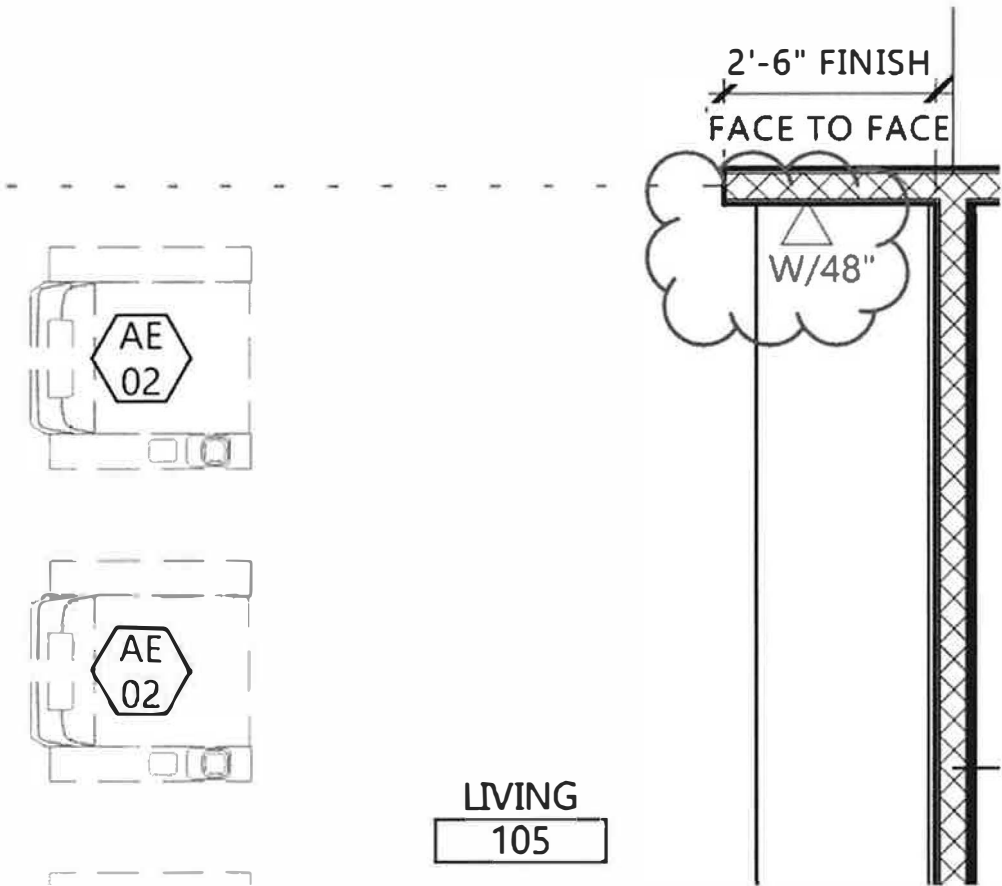
Please note this is not a change order nor direction to proceed with the work. If you have any questions, please contact me at 701-241-2317 or cassie.mcnames@kljeng.com.

Sincerely,
KLJ

A handwritten signature in cursive script that reads "Cassie McNames".

Cassie McNames
Senior Project Manager
Enclosure(s): EPR05 Sketch
Project #: 2404-00262
cc: File, Nicholas Naujokas, Brian Wetland, Drew Crane

EPR-05: PHONE LINE



CHANGE NOTICE

CCN # EPR-5 PHONE JACK
 Date: 4/7/2025
 Project Name: Fargo Fire Station #5
 Project Number: Fargo Fire Station #5
 Page Number: 1

Client Address:

Itemized Breakdown

Description	Qty	Total Mat.	Total Hrs.
3/4" CONDUIT - EMT	10	15.45	0.40
3/4" CONN SS STL - EMT	2	4.79	0.25
3/4" COUPLING SS STL - EMT	1	2.82	0.05
1/2 OR 3/4" SNAP CLOSE CLIP - SIDE MNT TO MTL STUD SUPPORT	2	3.01	0.18
4x 2 1/8" SQ BOX COMB KO	1	18.07	0.29
4" SQ 1G PLSTR RING 5/8" RISE	1	7.24	0.03
#8x 1/2 WAFER HEAD SHEET MTL SCREW	4	0.20	0.08
Totals	21	51.58	1.27

Summary

General Materials		51.58
Material Tax	(@ 8.000 %)	4.13
Total Material		55.71
JOURNEYMAN	(1.27 Hrs @ \$70.00)	88.90
FOREMAN @ 25%	(0.32 Hrs @ \$80.00)	25.60
Subtotal		170.21
Markup	(@ 10.000 %)	17.02
Subtotal		187.23
DATA	(\$255.00 + 0.000 % + 10.000 % + 0.000 %)	280.50
Subtotal		467.73
Final Amount		\$467.73

CLIENT ACCEPTANCE

ORIGINAL

CHANGE NOTICE

Client Address:

CCN #

EPR-5 PHONE JACK

Date:

4/7/2025

Project Name:

Fargo Fire Station #5

Project Number:

Fargo Fire Station #5

Page Number:

2

CCN #	EPR-5 PHONE JACK
Final Amount:	\$467.73
Name:	_____
Date:	_____
Signature:	_____
Change Order #:	_____

I hereby accept this quotation and authorize the contractor to complete the above described work.

Cost Breakdown		Total (\$)
Material Cost		31.09
Direct Labor Cost		80.03
Subcontractors Cost		255.00
Total Cost		366.12

ORIGINAL

CHANGE NOTICE

CCN #	EPR-6 LIGHT RM 100
Date:	4/24/2025
Project Name:	Fargo Fire Station #5
Project Number:	Fargo Fire Station #5
Page Number:	1

Client Address:

Itemized Breakdown

Description	Qty	Total Mat.	Total Hrs.
TYPE GLIGHT RM 100	1	175.00	0.00
Totals	1	175.00	0.00

Summary

General Materials		175.00
Material Tax (@ 8.000 %)		14.00
Total Material		189.00
Subtotal		189.00
Markup (@ 10.000 %)		18.90
Subtotal		207.90
Final Amount		\$207.90

CLIENT ACCEPTANCE

CCN # EPR-6 LIGHT RM 100
Final Amount: \$207.90

Name: _____

Date: _____

Signature: _____

Change Order #: _____

I hereby accept this quotation and authorize the contractor to complete the above described work.

Cost Breakdown

	Total (\$)
Material Cost	189.00
Total Cost	189.00

ORIGINAL

CHANGE ORDER NO.: 3

Owner: City of Fargo
 Engineer: KLJ Engineering LLC
 Contractor: Roers Construction Joint Venture,
 LLC

Owner's Project No.:
 Engineer's Project No.: 2404-00262
 Contractor's Project
 No.:

Project: Fire Station No. 5 Addition

Contract Name: General Construction (Stipulated Price)

Date Issued: May 16, 2025

Effective Date of Change Order: April 16, 2025

The Contract is modified as follows upon execution of this Change Order:

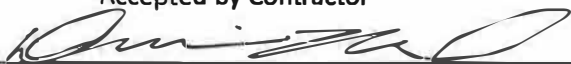
Description:

1. The city has elected to integrate a shelf above workspace 108. This is summarized in GPR-06 and results in an additional cost of \$1,501.10.00.
2. The city has elected to omit all the mirrors along the west wall of Fitness Room 106. This is summarized in GPR-07 and there is a credit of \$2,887.50 to omit this work.

Attachments:

GPR-06 and GPR-07

Change in Contract Price		Change in Contract Times	
Original Contract Price:		Original Contract Times:	
\$ 1,173,000.00		Substantial Completion:	August 13, 2025
		Ready for final payment:	August 27, 2025
Increase from previously approved Change Orders:		Increase from previously approved Change Orders:	
\$ 24,133.92		Substantial Completion:	N/A
		Ready for final payment:	N/A
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 1,197,133.92		Substantial Completion:	August 13, 2025
		Ready for final payment:	August 27, 2025
Increase this Change Order:		Change resulting from this Change Order:	
\$ (1,386.40)		Substantial Completion:	N/A
		Ready for final payment:	N/A
Contract Price incorporating this Change Order:		Contract Times with all approved Change Orders:	
\$ 1,195,747.52		Substantial Completion:	August 13, 2025
		Ready for final payment:	August 27, 2025

Recommended by Engineer (if required)		Accepted by Contractor	
By:	<u>Cassie Murano</u>		<u></u>
Title:	<u>Project Manager</u>		<u>Construction Executive</u>
Date:	<u>5/16/2025</u>		<u>5/23/2025</u>
	<u>Authorized by Owner</u>		
By:	<u></u>		<u></u>
Title:	<u>Mayor</u>		<u></u>
Date:	<u></u>		<u></u>



300 23rd Ave E, Suite 100
West Fargo, ND 58078-7820
701 232 5353
KLJENG.COM

March 28, 2025

Tyler Miller
Project Manager
Roers Construction Joint Venture, LLC
200 45th St S
Fargo, ND 58103

Re: Fire Station No 5 Proposal Request 06 – Work Space Shelving

Dear Mr. Miller:

The owner has requested integration of a shelf above Work Space 108 as shown in the drawing attached. The work is generally described as follows.

- Add: (2) Two 3'-0" tall wall cabinets with adjustable shelving and plam-1 finish at work space 108. Lower countertop height to 2'-6".

We request a proposal for this work on or before April 4, 2025. Please note this is not a change order nor direction to proceed with the work. If you have any questions, please contact me at 701-241-2317 or cassie.mcnames@kljeng.com.

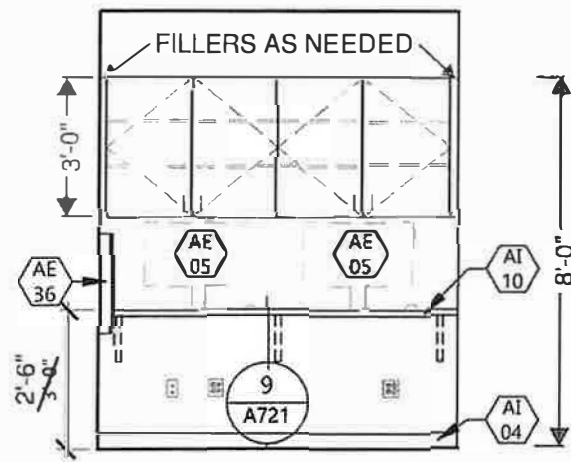
Sincerely,
KLJ

A handwritten signature in cursive script that reads "Cassie McNames".

Cassie McNames
Senior Project Manager
Enclosure(s): GPR-06 Drawing
Project #: 2404-00262
cc: File, Alec Korby, Nicholas Naujokas, Drew Crane

GPR - 06: WORK STATION SHELVING

ADD: (2) TWO 3'-0" TALL WALL CABINETS
WITH ADJUSTABLE SHELVING AND PLAM-1
FINISH AT WORK SPACE 108.
LOWER COUNTERTOP HEIGHT TO 2'-6".



12 WORK SPACE ELEV
A701 1/4" = 1'-0"



PCO #007

ROERS
200 45th St S
Fargo, North Dakota 58103
Phone: (701) 356-5050
Fax: (701) 282-2121

Project: 24-012 - Fire Station #5 Addition

Prime Contract Potential Change Order #007: GPR 06 - Work Space

TO:		FROM:	
PCO NUMBER/REVISION:	007 / 0	CONTRACT:	24-012 - Fire Station No. 5 Addition
REQUEST RECEIVED FROM:		CREATED BY:	Tyler Miller (Roers Construction Joint Venture)
STATUS:	Pending - In Review	CREATED DATE:	4/14/2025
REFERENCE:		PRIME CONTRACT CHANGE ORDER:	#003 - GPR 06 - Work Space
FIELD CHANGE:	No		
LOCATION:		ACCOUNTING METHOD:	Amount Based
SCHEDULE IMPACT:		PAID IN FULL:	No
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$1,501.10

POTENTIAL CHANGE ORDER TITLE: GPR 06 - Work Space

CHANGE REASON: Design Development

POTENTIAL CHANGE ORDER DESCRIPTION: *(The Contract Is Changed As Follows)*CE #007 - GPR 06 - Work Space Shelving

The owner has requested integration of a shelf above Work Space 108 as shown in the drawing attached. The work is generally described as follows.

☐ Add: (2) Two 3'-0" tall wall cabinets with adjustable shelving and plam-1 finish at work space 108. Lower countertop height to 2'-6".

ATTACHMENTS:

2404-00262 FireStationNo5 GPR06 WorkSpaceShelving.pdf

#	Budget Code	Description	Amount
1	6-401.L UPPER CABINETS.DIRECT LABOR	Install labor	\$420.00
2	6-400.S ARCHITECTURAL CASEWORK.SUBCONTRACT	Casework - Material	\$885.30
Subtotal:			\$1,305.30
OHP (15.00%):			\$195.80
Grand Total:			\$1,501.10

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

ROERS

Page 1 of 1

Printed On: 4/14/2025 01:04 PM CDT



CONSTRUCTION | PROPERTY MANAGEMENT | DEVELOPMENT | REAL ESTATE

Building success.

GPR 06 – Work Space Shelving

Install of cabinets

- 2 workers – 3 HRS
 - Total 6 HRS @ \$70 = \$420

www.roers.com

FARGO

2000 1st Ave N
Fargo ND 58103

DICKINSON

1000 1st Ave N
Dickinson ND 58601

BISMARCK

1510 Continental Ave
Bismarck ND 58501

MINOT

1000 1st Ave N
Minot ND 58701



Northern Woodwork, Inc.

Commercial Casework & Millwork Packages Since 1920

Date: 4/11/2025

Change Proposal

To: Roers Construction
Attn: Tyler Miller
Project: Fargo Fire Station #5
Fargo, ND
NWI Job #: 4067
Issued By: Jay Kinsman – Co-Owner/Estimating
218-681-2305 ext. 202
jay@northernwoodworkinc.com

Regarding: PR #06
Add: \$885.30 Including Sales Taxes
Includes: 2 Plastic Laminate Wall Cabinets, Jobsite Delivery with Remainder of Project

No work will be performed on this change proposal until a signed and dated authorization is received by mail, fax or email.

Accepted By: _____

Date: _____



300 23rd Ave E, Suite 100
West Fargo, ND 58078-7820
701 232 5353
KLJENG.COM

April 16, 2025

Tyler Miller
Project Manager
Roers Construction Joint Venture, LLC
200 45th St S
Fargo, ND 58103

Re: Fire Station No 5 Proposal Request 07 – Omit Mirrors in Fitness Room

Dear Mr. Miller:

The owner has elected to omit all of the mirrors along the west wall of Fitness Room 106. These are shown in detail 6/A701. It is understood the blocking associated with these mirrors have already been installed. However, the material itself has not yet been procured. Therefore, we are requesting a credit for the labor and material associated with the mirrors.

We request a proposal for this work on or before April 23, 2025. Please note this is not a change order nor direction to proceed with the work. If you have any questions, please contact me at 701-241-2317 or cassie.mcnames@kljeng.com.

Sincerely,
KU

A handwritten signature in cursive script that reads "Cassie McNames".

Cassie McNames
Senior Project Manager
Enclosure(s): None
Project #: 2404-00262
cc: File, Alec Korby, Nicholas Naujokas, Drew Crane

ROERS

Building success.

PCO #008

ROERS
200 45th St S
Fargo, North Dakota 58103
Phone: (701) 356-5050
Fax: (701) 282-2121

Project: 24-012 - Fire Station #5 Addition

Prime Contract Potential Change Order #008: CE #009 - PR 007 - Omit Mirrors in Fitness Area

TO:		FROM:	
PCO NUMBER/REVISION:	008 / 0	CONTRACT:	24-012 - Fire Station No. 5 Addition
REQUEST RECEIVED FROM:		CREATED BY:	Tyler Miller (Roers Construction Joint Venture)
STATUS:	Pending - In Review	CREATED DATE:	5/5/2025
REFERENCE:		PRIME CONTRACT CHANGE ORDER:	None
FIELD CHANGE:	No		
LOCATION:		ACCOUNTING METHOD:	Amount Based
SCHEDULE IMPACT:		PAID IN FULL:	No
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$(2,887.50)

POTENTIAL CHANGE ORDER TITLE: CE #009 - PR 007 - Omit Mirrors in Fitness Area

CHANGE REASON: Design Development

POTENTIAL CHANGE ORDER DESCRIPTION: (The Contract Is Changed As Follows)

CE #009 - PR 007 - Omit Mirrors in Fitness Area
Deduct to remove mirrors from the Fitness Area

ATTACHMENTS:

#	Budget Code	Description	Amount	OHP (5.00% Applies to All Line Items)	Subtotal
1	8-620.S ENTRANCES/STOREFRONTS.SUB CONTRACT	omit mirrors in fitness area	\$(2,750.00)	\$(137.50)	\$(2,887.50)
Subtotal:			\$(2,750.00)	\$(137.50)	\$(2,887.50)
Grand Total:					\$(2,887.50)

SIGNATURE

DATE

SIGNATURE

DATE

SIGNATURE

DATE

716 4th St E, Horace, ND 58047

Phone: 701-540-5558

Email: nolan.vanyo@galaxygnc.com

Date: 5/5/25

Contractor: Roers

Job Name/Location: Fire Hall

Included Sections: SF1, SF2, SF3, SF4, W1, W2 w/ and w/o operators

Aluminum Storefronts (meets or exceeds energy code)	Old Castle 3000XT (2" x 4 ½") at Exterior Old Castle FG2000 (1 ¾" x 4 ½") at Interior
Aluminum Entrances	Old Castle 3000XT (2" x 4 ½") Exterior, FG2000 (1 ¾" x 4 ½") at Interior Standard Medium Stile doors with 10" bottom rail
Hardware	First choice rim panic design hardware closer 5" Saddle threshold Brush sweep (at exterior) Rim cylinder (where requested)
Glass & Glazing	1" Clear Tempered Dual Low-E at Exterior ¼" Clear Tempered at Interior ¼" 45 min fire rated at doors 100, 115, 115B, 116 ¼" mirror at fitness room
Caulking	Exterior at storefronts
Excluded:	Interior caulking, interior trim, final cleaning, and demolition
Add:	per handicap operator if necessary

TOTAL:
Add:

DEDUCT: \$2,750.00 for the mirrors in the gym area

PR 007

Price subject to change after 15 days

We propose hereby to furnish material complete in accordance with above specifications. All material is guaranteed to be as specified. Any alterations or deviations from above specifications will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by worker's compensation.

(Nolan) Estimating _____

Acceptance of proposal – the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to supply materials as specified. Payment terms are Net 30 with a service charge of 1.5% monthly (18% annually) charged on all balances over 30 days. A \$25.00 charge is applied for all NSF checks

Customer Authorized Signature: _____



716 4th St E, Horace, ND 58047

Phone: 701-540-5558

Email: nolan.vanyo@galaxygnc.com

Price subject to change after 15 days

We propose hereby to furnish material complete in accordance with above specifications. All material is guaranteed to be as specified. Any alterations or deviations from above specifications will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by worker's compensation.

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Customer Authorized Signature: _____




PLANNING & DEVELOPMENT

30

FARGO CITY HALL
225 4th Street North
Fargo, ND 58102
Office: 701.241.1474 | Fax: 701.241.1526
Email: Planning@FargoND.gov
FargoND.gov

MEMORANDUM

TO: CITY COMMISSIONERS

FROM: MARK WILLIAMS 

DATE: JUNE 9, 2025

SUBJECT: CONTRACT WITH KILBOURNE CONSTRUCTION MANAGEMENT
FOR ROCO RAMP ROLL UP DOORS (SSP25163)

On May 12, 2025 the Board of City Commissioners approved the award for a gateless security system project, which would include three high-speed rollup doors, for the ROCO parking ramp with Kilbourne Construction Management. The cost of the project will be approximately \$244,002.

Attached you will find the Contract .

Recommendation: Approve the contract agreement between the City of Fargo and Kilbourne Construction Management (KCM) for a gateless security system project for the ROCO parking ramp.





AIA Document A102[®] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 22nd day of May in the year 2025
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Fargo
Planning and Development
225 4th Street North
Fargo ND 58102

and the Contractor:

(Name, legal status, address and other information)

Kilbourne Constructin Management, LLC
210 N Broadway, Suite 300
Fargo ND 58102

for the following Project:

(Name, location and detailed description)

25-102 ROCO Parking Ramp
217 Roberts St N, Fargo, ND 58102
Install Gateless Security Equipment

The Architect:

(Name, legal status, address and other information)

ESG Architecture & Design
350 N 5th Street, Suite 400
Minneapolis, MN 55401

The Owner and Contractor agree as follows.

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

The parties should complete A102™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	RELATIONSHIP OF THE PARTIES
4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
6	CHANGES IN THE WORK
7	COSTS TO BE REIMBURSED
8	COSTS NOT TO BE REIMBURSED
9	DISCOUNTS, REBATES AND REFUNDS
10	SUBCONTRACTS AND OTHER AGREEMENTS
11	ACCOUNTING RECORDS
12	PAYMENTS
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16	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

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

Procurement of equipment after Design is completed by the Architect (ESG)

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

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

§ 4.3 Substantial Completion

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

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

- ☐ Not later than () calendar days from the date of commencement of the Work.
- ☒ By the following date: December 31, 2025

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

Portion of Work	Substantial Completion Date
<u>NA</u>	

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

The Construction Manager's fee, which shall be included in the GMP, is a lump sum fixed fee which is equal to (6%) of the projected cost of the Work plus (6%) of any Contingency used, as determined when the parties agree upon a GMP and document the acceptance of the GMP.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

Changes that increase the scope of work will be charged a fee of (6%) on the increased scope, and changes that decrease the scope of work will not reduce the lump sum fee.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

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User Notes:

(1399213896)

See 6.1.3

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed One Hundred Ten percent (110 %) of the standard rental rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
<u>NA</u>		

§ 5.1.6 Liquidated damages, if any:

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

NA

§ 5.1.7 Other:

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

NA

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Two Hundred Forty Four Thousand Two Dollars and Zero Cents (\$ 244,002.00), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
<u>NA</u>	

§ 5.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<u>NA</u>		

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
<u>NA</u>	

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption.)

The completed design will be similar to the NP Ave Parking Garage

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents

Init.

and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Included in the GMP. Hourly fees will be charged to each add to scope change order for Construction Manager, supervisory and administrative personnel

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference

between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

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

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

25th day of the month.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 15th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Fifteen (15) days after the Architect receives the Application for Payment.

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

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

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

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

Owner will hold retainage from the Contractor to mirror Retainage held from Subcontractor's payments. No further retainage shall be withheld. Payment of the retainage at Substantial Completion by the Owner (subject to Owner's right to withhold under this Agreement) assumes that all lien waivers have been provided to the Owner from the Contractor and from any Subcontractors. In the event lien waivers have not been furnished, Owner may not release any retainage held until compliance is made or the parties mutually agree in writing that payment can be made. Retainage withheld will not be released until after Substantial Completion, or upon mutual agreement of the parties.

§ 12.1.8.1.1 The following items are not subject to retainage:

Init.

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User Notes:

(1399213896)

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

No retainage shall be held on materials, equipment, appliances, etc., purchased directly by the Construction Manager or Vendors contracted by the Construction Manager.

No retainage shall be held on professional fees such as surveying or testing, mobilization, permit costs (if paid by the Construction Manager), general liability insurance, Payment and Performance Bonds or special insurance if required by Owner.

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

The Owner recognizes that certain Subcontractors complete their work early in the course of the Project and may have performed well and extended extra efforts to maintain the progress of the Work. Accordingly, the Owner agrees to consider in good faith and act promptly upon request made by Construction Manager for the early release, in whole or in part, of retainage held on account of Subcontractors who have performed in the manner described above or for other equitable reasons.

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

NA

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

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

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 Final Payment

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

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

NA

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

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

(Insert rate of interest agreed upon, if any.)

1.5 % per month

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 15 of AIA Document A201–2017
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

All proven incurred costs.

§ 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

§ 15.2 The Owner's representative:
(Name, address, email address and other information)

Mark Williams
City of Fargo. Planning and Development
mwilliams@fargond.gov

§ 15.3 The Contractor's representative:
(Name, address, email address and other information)

Karren Thompson
Kilbourne Construction Management, LLC
karren@kcmfargo.com

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

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

~~§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents.~~

§

§ 15.6 Notice in electronic format, pursuant to Article I of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

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

NA

§ 15.7 Other provisions:

NA

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 ~~AIA Document A102™–2017, Exhibit A, Insurance and Bonds~~
- .3 ~~AIA Document A201™–2017, General Conditions of the Contract for Construction~~
- .4 ~~Building information modeling exhibit, dated as indicated below:~~

Init.

~~(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~

.5 Drawings

Number	Title	Date
<u>TBD by ESG Architects</u>		

.6 Specifications

Section	Title	Date	Pages
<u>TBD by ESG Architects</u>			

.7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

.8 ~~Other Exhibits:~~
~~(Check all boxes that apply.)~~

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

~~[] — The Sustainability Plan:~~

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

~~[] — Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
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~~.9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A101 2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)~~

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

OWNER (Signature) Tim Mahoney
Mayor, City of Fargo

(Printed name and title)

DocuSigned by:
Bill Rothman
7DA19373D11C4E6...

CONTRACTOR (Signature)
Bill Rothman CFO

(Printed name and title)

Witness (Signature)

Date

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Karren Thompson, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:20:08 ET on 05/22/2025 under Order No. 3104239993 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

DocuSigned by:

Karren Thompson

408C76A8CDEF407

(Signed)

Contract Administrator

(Title)

5/22/2025

(Dated)



**PUBLIC
WORKS**

(31)

**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMAINS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 Fax: 701.241.8100
FargoND.gov

June 9, 2025

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

RE: Lease Agreement No. 40006074 for a 2025 Solid Waste Articulated Haul Truck (RFP25014)

Dear Commissioners:

On 12/23/2024, the Board of City Commissioners approved the purchase of a Articulated Haul Truck for the Solid Waste Department from RDO Equipment in the amount of \$517,000. Additionally, a 5-year/6,000-hour premier warranty for the equipment, priced at \$26,559.2 was secured.

CapFirst will be providing a five-year lease for a total of \$543,559.25. Agreement No. 40006074

SUGGESTED MOTION:

Approve a five-year lease with CapFirst Equipment Finance for a Three-Axle Articulated Haul Truck for the Solid Waste Department.

Respectfully Submitted,

Tom Ganje
Fleet Purchasing Manager





3266 Oak Ridge Loop E
West Fargo, ND 58078

May 15, 2025

City of Fargo, North Dakota
ATTN: Tim Mahoney
402 23rd St N
Fargo, ND 58102

RE: Lease with Option to Purchase Agreement No. 40006074

Dear Mr. Mahoney:

Enclosed please find the following documentation for this lease:

- Invoice for Advance Payment and Documentation Fee
- Lease with Option to Purchase Agreement No. 40006074
- Exhibit A - Equipment Description
- Exhibit B - Rental Payments
- Exhibit C - Certificate of Acceptance
- Exhibit D - Resolution
- Insurance Coverage Information

Please fill in the name and address of your insurance agent where indicated. It is important that you request a certificate of insurance be forwarded to our office just as soon as possible.

- Certificate of Incumbency
- 8038-G -- We will take care of filing this form with the IRS. Please sign both originals where indicated in **blue ink**.

Please sign and seal all documents where indicated and return all of the executed documents to my attention. You can reach me at (701) 639-7209 if you have any other questions pertaining to the documentation. Thank you.

Sincerely,
CapFirst Equipment Finance, Inc.

A handwritten signature in blue ink, appearing to read 'David Suppes', followed by a horizontal line.

David Suppes
President



**3266 Oak Ridge Loop E
West Fargo, ND 58078**

Invoice#:

Invoice Date:

INVOICE

Advance Payment

5/15/2025

Remit To:

CapFirst Equipment Finance, Inc.
3266 Oak Ridge Loop E
West Fargo, ND 58078

Invoice to:

City of Fargo, North Dakota
402 23rd St N
Fargo, ND 58102

LEASE#	AMOUNT
40006074	
First Advance Payment:	\$120,000.00
Documentation Fee	\$300.00
Total Amount Due:	\$120,300.00

LEASE WITH OPTION TO PURCHASE AGREEMENT NO. 40006074

Between

CapFirst Equipment Finance, Inc.

As Lessor

and

CITY OF FARGO, NORTH DAKOTA

As Lessee

Dated as of May 15, 2025

THIS LEASE WITH OPTION TO PURCHASE AGREEMENT dated as of 5/15/2025 (the Lease), by and between CapFirst Equipment Finance, Inc., a corporation duly organized and existing under the laws of the state of North Dakota as lessor ("Lessor") whose address is 3266 Oak Ridge Loop E West Fargo, ND 58078; and City of Fargo, North Dakota a political subdivision of the state of North Dakota as lessee ("Lessee"), whose address is 402 23rd St N, Fargo, ND 58102;

WITNESSETH:

WHEREAS, Lessee is authorized by law to acquire such items of personal property as are needed to carry out its governmental functions, and to acquire such personal property by entering into lease with option to purchase agreements; and

WHEREAS, Lessee has determined that it is necessary for it to acquire under this Lease certain items of personal property described herein as Equipment; and

WHEREAS, Lessor is willing to acquire such items of Equipment and to lease them to Lessee pursuant to this Lease;

NOW THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Contractor: Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

Equipment: The personal property described in the attached Exhibit A which is being leased with option to purchase by Lessee pursuant to this Lease.

Fiscal Year: The twelve month fiscal period of Lessee which commences on January 1st in every year and ends on the following December 31st.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Interest: The portion of any Rental Payment designated as and comprising interest as shown in the attached Exhibit B.

Net Proceeds: Any insurance proceeds or condemnation award, paid with respect to the Equipment, remaining after payment there from of all expenses incurred in the collection thereof.

Non-appropriation: The failure of City of Fargo, North Dakota to appropriate money for any Fiscal Year of Lessee sufficient for the continued performance of this Lease by Lessee, as evidenced by the passage of an ordinance or resolution specifically prohibiting Lessee from performing its obligations under this Lease, and from using any moneys to pay the Rental Payments due under this Lease for a designated Fiscal Year and all subsequent Fiscal Years.

Payment Date: The date upon which any Rental Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborer's,

materialmen's, supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Principal: The portion of any Rental Payment designated as principal in the attached Exhibit B.

Purchase Option Price: With respect to the Equipment, as of the Payment Dates specified in the attached Exhibit B, the amount so designated and set forth opposite each such date in the attached Exhibit B.

Rental Payment: The payment due from Lessee to Lessor on each Payment Date during the Term of this Lease, as shown on Exhibit B.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

State: The State of North Dakota.

State and Federal Law or Laws: The Constitution and any law of the State and any charter, ordinance, rule or regulation of any agency or political subdivision of the State; and any law of the United States, and any rule or regulation of any federal agency.

Term of this Lease or Lease Term: The period during which this Lease is in effect as specified in Section 4.1.

Section 1.2. Exhibits.

The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit A: A description of the Equipment being leased by Lessee pursuant to this Lease, including the serial number thereof which shall be inserted when available.

Exhibit B: A schedule indicating the date and amount of each Rental Payment coming due during the Lease Term, the amount of each Rental Payment comprising Principal and Interest, and the price at which Lessee may exercise its option to purchase Lessor's interest in the Equipment in accordance with Article X. The due date of each Rental Payment shall be inserted on Exhibit B by Lessor when available.

Exhibit C: A Certificate of Acceptance of Lessee indicating that the Equipment has been delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Rental Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

Exhibit D: A form of resolution of the governing body of Lessee relating to the Lease and certain federal tax matters.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Lessee. Lessee represents, covenants and warrants as follows:

(a) Lessee is a political subdivision of the State, duly organized and existing under the Constitution and laws of the State.

(b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

(c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.

(d) In authorizing and executing this Lease, Lessee has complied with all public bidding and other State and Federal Laws applicable to this Lease and the acquisition of the Equipment by Lessee.

(e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other person, firm or corporation except as provided under the terms of this Lease.

(f) Lessee will use the Equipment during the Lease Term only to perform the essential governmental functions needed by City of Fargo, North Dakota.

(g) Lessee will take no action that would cause the Interest portion of the Rental Payments to become includible in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the Code) and Treasury Regulations promulgated thereunder (the Regulations), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Rental Payments does not become includible in gross income of the recipient for federal income tax purposes under the Code and Regulations.

(h) Upon delivery and installation of the Equipment, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.

(i) Lessee will cause a resolution substantially in the form attached hereto as Exhibit D to be adopted by its governing body.

(j) Lessee will submit to the Secretary of the Treasury an information reporting statement at the time and in the form required by the Code and the Regulations.

Section 2.2. Representations, Covenants and Warranties of Lessor. Lessor represents, covenants and warrants as follows:

(a) Lessor is a corporation duly organized, existing and in good standing under and by virtue of the laws of the state of North Dakota, and is duly qualified and in good standing as a domestic corporation authorized to transact business in the State; has power to enter into this Lease; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment except Permitted Encumbrances.

ARTICLE III

LEASE OF EQUIPMENT

Section 3.1. Lease. Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon the terms and conditions set forth in this Lease.

Section 3.2. Possession and Enjoyment. Lessor hereby covenants to provide Lessee during the Term of this Lease with the quiet use and enjoyment of the Equipment, and Lessee shall during the Term of this Lease peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Lessor will, at the request of Lessee and at Lessee's cost, join in any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so.

Section 3.3. Lessor Access to Equipment. The Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

ARTICLE IV

TERM OF LEASE

Section 4.1. Lease Term. This Lease shall be in effect for a Term commencing upon its date of execution and ending as provided in Section 4.5.

Section 4.2. Termination by Lessee. In the sole event of Non-appropriation, Lessee shall have the right to terminate this Lease, in whole but not in part, at the end of any Fiscal Year of Lessee, in the manner and subject to the terms specified in this Section and Section 4.4. Lessee may effect such termination by giving Lessor a written notice of termination and by paying to Lessor any Rental Payments and other amounts which are due and have not been paid at or before the end of its then current Fiscal Year. Lessee shall endeavor to give notice of termination not less than sixty (60) days prior to the end of such Fiscal Year, and shall notify Lessor of any anticipated termination. In the event of termination of this Lease as provided in this Section, Lessee shall deliver possession of the Equipment to Lessor in accordance with Section 12.3, and shall convey to Lessor or release its interest in the Equipment within ten (10) days after the termination of this Lease.

Section 4.3. Intent to Continue Lease Term; Appropriations. Lessee presently intends to continue this Lease for its entire Term and to pay all Rental Payments specified in Exhibit B. The officer of Lessee responsible for preparation of Lessee's budget shall include in the budget request for each Fiscal Year the Rental Payments to become due in such Fiscal Year, and shall use all reasonable and lawful means available to secure the appropriation of money for such Fiscal Year sufficient to pay the Rental Payments coming due therein. Lessee reasonably believes that moneys in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated and made available for this purpose.

Section 4.4. Effect of Termination. Upon termination of this Lease as provided in Section 4.2, Lessee shall not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years, but if Lessee has not delivered possession of the Equipment to Lessor in accordance with Section 12.3 and conveyed to Lessor or released its interest in the Equipment within ten (10) days after the termination of this Lease, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments thereafter coming due under Exhibit B which are attributable to the number of days after such ten (10) day period during which Lessee fails to take such actions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required.

Section 4.5. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) the termination thereof by Lessee in accordance with Section 4.2;
- (b) the exercise by Lessee of its option to purchase Lessor's interest in the Equipment pursuant to Article X;
- (c) a default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII; or
- (d) the payment by Lessee of all Rental Payments and other amounts authorized or required to be paid by Lessee hereunder.

ARTICLE V

RENTAL PAYMENTS

Section 5.1. Rental Payments. Lessee agrees to pay Rental Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Rental Payments shall be paid to Lessor at its offices at the address specified in the first paragraph of this Lease, or to such other person or entity to which Lessor has assigned such Rental Payments as specified in Article XI, at such place as such assignee may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America, to Lessor or, in the event of assignment of the right to receive Rental Payments by Lessor, to its assignee. Interest shall accrue from the first day of the calendar month in which the Certificate of Acceptance is executed.

Section 5.2. Current Expense. The obligations of Lessee under this Lease, including its obligation to pay the Rental Payments due with respect to the Equipment, in any Fiscal Year for which this Lease is in effect, shall constitute a current expense of Lessee for such Fiscal Year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. Nothing herein shall constitute a pledge by Lessee of any taxes or other moneys, other than moneys lawfully appropriated from time to time by or for the benefit of Lessee in the annual budget and the proceeds or Net Proceeds of the Equipment, to the payment of any Rental Payment or other amount coming due hereunder.

Section 5.3. Interest Component. A portion of each Rental Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Rental Payment.

Section 5.4. Rental Payments to be Unconditional. Except as provided in Section 4.2, the obligation of Lessee to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between Lessee and Lessor or any other person, Lessee shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other payments required under this Lease. Lessee's obligation to make Rental Payments or other payments during the Lease Term shall not be abated through accident or unforeseen circumstances. However, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder; and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damages therefor.

ARTICLE VI

INSURANCE AND NEGLIGENCE

Section 6.1. Liability Insurance. Upon receipt of possession of the Equipment, Lessee shall take such measures as may be necessary to ensure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 6.2. Property Insurance. Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed and to pay the applicable Purchase Option Price of the Equipment. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

Section 6.3. Worker's Compensation Insurance. If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 6.4. Requirements For All Insurance. All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of

the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Sections 6.1 and 6.2 shall name Lessee and Lessor as insured parties, and any insurance policy or rider required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (and riders) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable in which event Lessee shall notify Lessor of this fact.

Section 6.5. Lessee's Negligence. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

Section 6.6. Damage to or Destruction of Equipment. If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practicable after such event either: (i) replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement; or (ii) pay the applicable Purchase Option Price of the Equipment as set forth in Exhibit B. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, declare the applicable Purchase Option Price of the Equipment set forth in Exhibit B immediately due and payable, and Lessee shall be obligated to pay the same. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligation under this Section. On payment of the Purchase Option Price, this Lease shall terminate and Lessee thereupon shall become entitled to the Equipment AS IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE, except that the Equipment shall not be subject to any lien or encumbrance created by or arising through Lessor.

ARTICLE VII

OTHER OBLIGATIONS OF LESSEE

Section 7.1. Use; Permits. Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Equipment, and if compliance with any such State and Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

Section 7.2. Maintenance of Equipment by Lessee. Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.

Section 7.3. Taxes, Other Governmental Charges and Utility Charges. Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Equipment, the Rental Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation,

maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Equipment; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

Section 7.4. Advances. If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18% per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

ARTICLE VIII

TITLE

Section 8.1. Title. During the Term of this Lease, and so long as Lessee is not in default under Article XII, legal title to the Equipment and any and all repairs, replacements, substitutions and modifications to it shall be in Lessee. Upon termination of this Lease for any of the reasons specified in Section 4.5, Clauses (a) and (c), full and unencumbered legal title to the Equipment shall pass to Lessor, and Lessee shall have no further interest therein. In either of such events, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title to the Equipment to Lessor and the termination of Lessee's interest therein, and upon request by Lessor shall deliver possession of the Equipment to Lessor in accordance with Section 12.3. Upon termination of this Lease for any of the reasons specified in Section 4.5, Clauses (b) and (d), Lessor's security or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.

Section 8.2. Security Interest. Lessor shall have and retain a security interest under the Uniform Commercial Code in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof made pursuant to Section 8.5, in order to secure Lessee's payment of all Rental Payments due during the Term of this Lease and the performance of all other obligations herein to be performed by Lessee. If any portion of the Equipment shall constitute a vehicle, Lessor shall have authority, upon filing the manufacturer's certificate of origin for such Equipment, to require the notation of Lessor's security interest on any applicable records and the certificate of title for such Equipment. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.

Section 8.3. Liens. During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.4. Installation of Lessee's Equipment. Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5. Modification of Equipment. Lessee shall, at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of this Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State and Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such item the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon the request and at the expense of Lessee.

Section 8.6. Personal Property. The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

ARTICLE IX

WARRANTIES

Section 9.1. Selection of Equipment. The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorizes Lessor to add the serial number of the Equipment to Exhibit A when available.

Section 9.2. Installation and Maintenance of Equipment. Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3. Contractor's Warranties. Lessor hereby assigns to Lessee for and during the Term of this Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4. Patent Infringement. Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment.

Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5. Disclaimer of Warranties. THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

ARTICLE X

OPTION TO PURCHASE

Section 10.1. When Available. Lessee shall have the option to purchase Lessor's interest in the Equipment on any Payment Date for the then applicable Purchase Option Price set forth in Exhibit B, but only if Lessee is not in default under this Lease, and only in the manner provided in this Article.

Section 10.2. Exercise of Option. Lessee shall give notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option is to be exercised and shall deposit with Lessor on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due (including the Rental Payment due on the Payment Date on which the option is to be exercised) and the applicable Purchase Option Price set forth in Exhibit B. The closing shall be on the Payment Date on which the option is to be exercised at the office of Lessor.

Section 10.3. Release of Lessor's Interest. Upon exercise of the purchase option by Lessee, Lessor shall convey or release to Lessee, all of its right, title and/or interest in and to the Equipment by delivering to Lessee such documents as Lessee deems necessary for this purpose.

ARTICLE XI

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1. Assignment by Lessor. Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's right, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Rental Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participations in its right, title and/or interest in and to this Lease, the Rental Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2. Assignment and Subleasing by Lessee. Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

(i) This Lease and the obligation of Lessee to make Rental Payments hereunder, shall remain obligations of Lessee.

(ii) The sublessee shall assume the obligations of Lessee hereunder to the extent of the interest subleased.

(iii) Lessee shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.

(iv) No sublease by Lessee shall cause the Equipment to be used for a purpose other than a governmental function authorized under the provisions of the Constitution and laws of the State.

(v) No sublease shall cause the Interest component of the Rental Payments due with respect to the Equipment to become includible in gross income of the recipient for federal income tax purposes.

Section 11.3. Restriction on Mortgage or Sale of Equipment by Lessee. Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove any Equipment not constituting a vehicle from its boundaries, without the written consent of Lessor. Lessee shall not, without the written permission of Lessor, store or house any Equipment constituting a vehicle outside the corporate boundaries of Lessee.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

Section 12.1. Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more of the following events:

(i) Failure by Lessee to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three (3) days after telephonic or telegraphic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statute, as amended, or under any similar acts which may hereafter be enacted.

The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligations under this Lease with respect to the Equipment, other than its obligation to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2. Remedies on Default. Whenever any event of default referred to in Section 12.1 hereof shall have happened and be continuing with respect to the Equipment, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) Lessor, with or without terminating this Lease may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(ii) Lessor, with or without terminating this Lease, may repossess the Equipment by giving Lessee written notice to deliver the Equipment to Lessor, whereupon Lessee shall do so in the manner provided in Section 12.3; or in the event Lessee fails to do so within ten (10) days after receipt of such notice, Lessor may enter upon Lessee's premises where the Equipment is kept and take possession of the Equipment and charge Lessee for costs incurred in repossessing the Equipment, including reasonable attorneys' fees. Lessee hereby expressly waives any damages occasioned by such repossession. If the Equipment or any portion of it has been destroyed or damaged beyond repair, Lessee shall pay the applicable Purchase Option Price of the Equipment, as set forth in Exhibit B (less credit for Net Proceeds), to Lessor. Notwithstanding the fact that Lessor has taken possession of the Equipment, Lessee shall continue to be responsible for the Rental Payments due during the Fiscal Year then in effect. If this Lease has not been terminated, Lessor shall return the Equipment to Lessee at Lessee's expense when the event of default is cured.

(iii) If Lessor terminates this Lease and takes possession of the Equipment, Lessor shall within thirty (30) days thereafter use its best efforts to sell the Equipment or any portion thereof in a commercially reasonable manner at public or private sale in accordance with applicable State laws. Lessor shall apply the proceeds of such sale to pay the following items in the following order: (a) all costs incurred in securing possession of the Equipment; (b) all expenses incurred in completing the sale; (c) the applicable Purchase Option Price of the Equipment; and (d) the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect. Any sale proceeds remaining after the requirements of Clauses (a), (b), (c) and (d) have been met may be retained by Lessor.

(iv) If the proceeds of sale of the Equipment are not sufficient to pay the balance of any Rental Payments owed by Lessee during the Fiscal Year then in effect, Lessor may take any other remedy available at law or in equity to require Lessee to perform any of its obligations hereunder.

Section 12.3. Return of Equipment. Upon the expiration or termination of this Lease prior to the payment of all Rental Payments in accordance with Exhibit B, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (i) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (ii) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 12.5. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of moneys or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease (but not evidencing an action by a nondefaulting party against a defaulting party) are commenced in any court or before any other tribunal of competent jurisdiction, the legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6. Late Charge. Whenever any event of default referred to in Section 12.1, Clause (i) hereof shall have happened and be continuing with respect to the Equipment, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge for each thirty (30) day period or part thereof during which such event of default occurs equal to four percent (4%) of the delinquent amount, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

ARTICLE XIII

ADMINISTRATIVE PROVISIONS

Section 13.1. Notices. All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified on the first page hereof; provided that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent.

Section 13.2. Financial Information. During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of Lessee to continue this Lease as may be requested by Lessor or its assignee.

Section 13.3. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by Lessor and Lessee.

Section 13.6. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or Clauses of this Lease.

Section 13.7. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

Section 13.8. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officer; and Lessee has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

LESSOR:
CAPFIRST EQUIPMENT FINANCE, INC.

By: _____

Title: _____

Date: 5/15/2025

LESSEE:
City of Fargo, North Dakota

By: _____ 

Name/Title: Tim Mahoney / Mayor

Date: 5/15/2025

ATTEST:

By: _____ 

Name/Title: Steven Sprague / City Auditor

EXHIBIT A
EQUIPMENT

Lessee: City of Fargo, North Dakota
402 23rd St N
Fargo, North Dakota 58102

Date of Lease: 5/15/2025
Lease #: 40006074

The Equipment which is the subject of the attached Lease with Option to Purchase Agreement is as follows:

Location Site: 402 23rd St N Fargo, North Dakota 58102

QTY.	SERIAL NO.	DESCRIPTION
1	1DW310PAVSLB09745	2025 John Deere 310P Articulated Truck

Description of Financed Amount:

Cost of above Equipment	\$543,559.26
Cost of related charges:	
Transportation	
Physical Modifications (specify)	
Warranty	
Add: Sales or other tax, if applicable	
Less: Trade - In, if applicable	
Down Payment	
Net Financed Amount:	\$543,559.26

EXHIBIT B

SCHEDULE OF RENTAL PAYMENTS

Lessee: City of Fargo, North Dakota
 402 23rd St N
 Fargo, North Dakota 58102

Date of Lease: 5/15/2025
 Lease #: 40006074

RENTAL PAYMENTS

Rental Payment Date	Rental Payment	Interest	Principal	Purchase Option Price*
5/15/2025	\$120,000.00	\$0.00	\$120,000.00	\$427,208.00
5/15/2026	\$120,000.00	\$19,565.91	\$100,434.09	\$325,364.00
5/15/2027	\$120,000.00	\$14,926.46	\$105,073.54	\$219,192.00
5/15/2028	\$120,000.00	\$10,072.69	\$109,927.31	\$108,507.00
5/15/2029	\$113,119.00	\$4,994.68	\$108,124.32	\$0.00

*After payment of Rental Payment due on such date.

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

I, the undersigned, hereby certify that I am the duly qualified and acting Mayor of the City of Fargo, North Dakota (Lessee); and, with respect to the Lease with Option to Purchase Agreement dated May 15, 2025 (Lease), by and between Lessee and CapFirst Equipment Finance, Inc. (Lessor), that:

1. The equipment described in the Lease (the Equipment) has been delivered and installed in accordance with Lessee's Specifications (as that term is defined in the Lease) and has been accepted by Lessee.
2. The rental payments provided for on Exhibit B to the Lease (the Rental Payments) shall commence and be due and payable on 5/15/2025 and continue thereafter, on the dates and in the amounts shown on Exhibit B to the Lease.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.
4. Lessee has obtained from a reputable insurance company qualified to do business in the state of North Dakota insurance with respect to, all risks required to be covered thereby pursuant to Article VI of the Lease.
5. Lessee is exempt from all personal property taxes, and is exempt from sales and/or use taxes with respect to the Equipment and the Rental Payments.
6. During the Lease Term (as defined in the Lease) the Equipment will be used by Lessee to perform essential governmental functions.
7. There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease; the proper authorization, approval and execution of the Lease and other documents contemplated thereby; the appropriation of moneys, or any other action taken by Lessee to provide moneys, sufficient to make Rental Payments coming due under the Lease in Lessee's current fiscal year; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.

Dated: May 15, 2025

City of Fargo, North Dakota

By: _____ 

Name/Title: Tim Mahoney / Mayor

ATTEST:

By: _____ 

Name/Title: Steven Sprague / City Auditor

EXHIBIT D

RESOLUTION RELATING TO LEASE WITH OPTION
TO PURCHASE AGREEMENT NO. 40006074

BE IT RESOLVED by the governing body of the City of Fargo, North Dakota (the Issuer), as follows:

Section 1. Recitals and Authorization. The Issuer, as lessee, has heretofore entered into a Lease with Option to Purchase Agreement No. 40006074 dated as of 5/15/2025 (the Lease), with CapFirst Equipment Finance, Inc., as lessor. It is hereby determined that it is necessary and desirable and in the best interests of the Issuer to enter into the Lease for the purposes therein specified, and the execution and delivery of the Lease by the Issuer are hereby approved, ratified and confirmed.

Section 2. Designation as Qualified Tax-Exempt Obligation. Pursuant to Section 265(b)(3)(B)(ii) of the Internal Revenue Code of 1986 (the Code), the Issuer hereby specifically designates the Lease as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In compliance with Section 265(b)(3)(D) of the Code, the Issuer hereby represents that the Issuer will not designate more than \$10,000,000 of obligations issued by the Issuer in the calendar year during which the Lease is executed and delivered as such "qualified tax-exempt obligations."

Section 3. Issuance Limitation. In compliance with the requirements of Section 265(b)(3)(C) of the Code, the Issuer hereby represents that the Issuer (including all "subordinate entities" of the Issuer within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates not to issue in the calendar year during which the Lease is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code (other than "private activity bonds" as defined in Section 141 of the Code) in an amount greater than \$10,000,000.

City of Fargo, North Dakota

By: _____ 

Name/Title: Tim Mahoney / Mayor

ATTEST:

By: _____ 

Name/Title: Steven Sprague / City Auditor

INSURANCE COVERAGE REQUIREMENT

Your lease with CAPFIRST EQUIPMENT FINANCE, INC. requires you to maintain certain insurance coverage. In order to assist you with obtaining coverage from your insurance company, please provide us with the following agent information, as well as provide your insurance company with the requirements as shown below:

<u>INSURANCE AGENT DATA:</u>	
NAME OF INSURANCE AGENT: _____	
ADDRESS: _____	
PHONE #: _____	CONTACT PERSON: _____

Named Insured / Lessee:

City of Fargo, North Dakota

Lease with Option to Purchase Agreement No.:

40006074

Coverage:

All Risk Personal Property and/or
EDP, if applicable

Certificate Holders:

Loss Payee(s) As Their Interests
May Appear:

CapFirst Equipment Finance, Inc., and/or its assigns
3266 Oak Ridge Loop E
West Fargo, ND 58078

Coverage:

General Liability

Certificate Holders:

Additional Insured:

CapFirst Equipment Finance, Inc., and/or its assigns
3266 Oak Ridge Loop E
West Fargo, ND 58078


The Insurance Certificate should show the coverage limits and the insurance carrier's name(s) and policy number(s). Please have the Certificate of Insurance sent to CapFirst Equipment Finance, Inc. at the address above, or fax it to us at (701) 639-7031.

WE WOULD APPRECIATE YOUR AGENT INCLUDING OUR LEASE NUMBER ON THE CERTIFICATE.

CERTIFICATE OF INCUMBENCY

**LEASE WITH OPTION TO PURCHASE AGREEMENT NO. 40006074
DATED AS OF 5/15/2025**

I, Steven Sprague, do hereby certify that I am the duly elected or appointed and acting City Auditor of the City of Fargo, North Dakota (the "Lessee"), a political subdivision duly organized and existing under the laws of the State of North Dakota and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

Print Name	Title	Sample Signature
<u>Tim Mahoney</u>	<u>Mayor</u>	
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such entity hereto on 5/15/2025.

Signature

Steven Sprague / City Auditor
Print Name / Title

(SEAL)

Form **8038-G**
(Rev. October 2021)
Department of the Treasury
Internal Revenue Service

Information Return for Tax-Exempt Governmental Bonds

► Under Internal Revenue Code section 149(e)
► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.
► Go to www.irs.gov/F8038G for instructions and the latest information.

OMB No. 1545-0047

Part I Reporting Authority

Check box if Amended Return ☐

1 Issuer's name CITY OF FARGO, NORTH DAKOTA		2 Issuer's employer identification number (EIN) 45-1002069
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) STEVEN SPRAGUE, CITY AUDITOR		3b Telephone number of other person shown on 3a (701) 241-1333
4 Number and street (or P.O. box if mail is not delivered to street address) 225 4th Ave N	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code FARGO, ND 58102		7 Date of issue 5/15/2025
8 Name of issue Lease Purchase #40006074		9 CUSIP number
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information STEVEN SPRAGUE, CITY AUDITOR		10b Telephone number of officer or other employee shown on 10a 701 241-1333

Part II Type of Issue (Enter the issue price.) See the instructions and attach schedule.

11 Education	11	
12 Health and hospital	12	
13 Transportation	13	
14 Public safety	14	
15 Environment (including sewage bonds)	15	
16 Housing	16	
17 Utilities	17	
18 Other. Describe ► Lease Purchase #40006074	18	543,559.26
19a If bonds are TANs or RANs, check only box 19a <input type="checkbox"/>		
b If bonds are BANs, check only box 19b <input type="checkbox"/>		
20 If bonds are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>		

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	5/15/2029	\$ 543,559.26	\$ N/A	4 years	4.60 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22	N/A
23 Issue price of entire issue (enter amount from line 21, column (b))	23	543,559.26
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	N/A
25 Proceeds used for credit enhancement	25	N/A
26 Proceeds allocated to reasonably required reserve or replacement fund	26	N/A
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V	27	N/A
28 Proceeds used to refund prior taxable bonds. Complete Part V	28	N/A
29 Total (add lines 24 through 28)	29	N/A
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	N/A

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	►	N/A years
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded	►	N/A years
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	►	N/A
34 Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)		N/A

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 10-2021)

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	N/A
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions	36a	N/A
b	Enter the final maturity date of the GIC ► (MM/DD/YYYY) N/A		
c	Enter the name of the GIC provider ► N/A		
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37	N/A
38a	If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► <input type="checkbox"/> and enter the following information:		
b	Enter the date of the master pool bond ► (MM/DD/YYYY) N/A		
c	Enter the EIN of the issuer of the master pool bond ► N/A		
d	Enter the name of the issuer of the master pool bond ► N/A		
39	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box		<input checked="" type="checkbox"/>
40	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box		<input type="checkbox"/>
41a	If the issuer has identified a hedge, check here ► <input type="checkbox"/> and enter the following information:		
b	Name of hedge provider ► N/A		
c	Type of hedge ► N/A		
d	Term of hedge ► N/A		
42	If the issuer has superintegrated the hedge, check box		<input type="checkbox"/>
43	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box		<input type="checkbox"/>
44	If the issuer has established written procedures to monitor the requirements of section 148, check box		<input type="checkbox"/>
45a	If some portion of the proceeds was used to reimburse expenditures, check here ► <input type="checkbox"/> and enter the amount of reimbursement		N/A
b	Enter the date the official intent was adopted ► (MM/DD/YYYY) N/A		

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative

Date

TIM MAHONEY / MAYOR

Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name ►

Firm's EIN ►

Firm's address ►

Phone no.

Form **8038-G**

(Rev. October 2021)

Department of the Treasury
Internal Revenue Service**Information Return for Tax-Exempt Governmental Bonds**

► Under Internal Revenue Code section 149(e)

► See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.► Go to www.irs.gov/F8038G for instructions and the latest information.

OMB No. 1545-0047

Part I Reporting AuthorityCheck box if **Amended Return** ► ☐

1 Issuer's name CITY of FARGO, NORTH DAKOTA		2 Issuer's employer identification number (EIN) 45-1002069
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) STEVEN SPRAGUE, CITY AUDITOR		3b Telephone number of other person shown on 3a (701) 241-1333
4 Number and street (or P.O. box if mail is not delivered to street address) 225 4th Ave N	Room/suite	5 Report number (For IRS Use Only) 3
6 City, town, or post office, state, and ZIP code FARGO, ND 58102		7 Date of issue 5/15/2025
8 Name of issue Lease Purchase #40006074		9 CUSIP number
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Part II Type of Issue (Enter the issue price.) See the instructions and attach schedule.

11	Education	11	
12	Health and hospital	12	
13	Transportation	13	
14	Public safety	14	
15	Environment (including sewage bonds)	15	
16	Housing	16	
17	Utilities	17	
18	Other. Describe ► Lease Purchase #40006074	18	543,559.26
19a	If bonds are TANs or RANs, check only box 19a	►	<input type="checkbox"/>
19b	If bonds are BANs, check only box 19b	►	<input type="checkbox"/>
20	If bonds are in the form of a lease or installment sale, check box	►	<input checked="" type="checkbox"/>

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	5/15/2029	\$ 543,559.26	\$ N/A	4 years	4.60 %

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23	Issue price of entire issue (enter amount from line 21, column (b))	23	543,559.26
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	N/A
25	Proceeds used for credit enhancement	25	N/A
26	Proceeds allocated to reasonably required reserve or replacement fund	26	N/A
27	Proceeds used to refund prior tax-exempt bonds. Complete Part V	27	N/A
28	Proceeds used to refund prior taxable bonds. Complete Part V	28	N/A
29	Total (add lines 24 through 28)	29	N/A
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	N/A

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	►	N/A years
32	Enter the remaining weighted average maturity of the taxable bonds to be refunded	►	N/A years
33	Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	►	N/A
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	►	N/A

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 10-2021)

Part VI Miscellaneous

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36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions	36a	N/A
b	Enter the final maturity date of the GIC ► (MM/DD/YYYY) N/A		
c	Enter the name of the GIC provider ► N/A		
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37	N/A
38a	If this issue is a loan made from the proceeds of another tax-exempt issue, check box ► <input type="checkbox"/> and enter the following information:		
b	Enter the date of the master pool bond ► (MM/DD/YYYY) N/A		
c	Enter the EIN of the issuer of the master pool bond ► N/A		
d	Enter the name of the issuer of the master pool bond ► N/A		
39	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box		<input checked="" type="checkbox"/>
40	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box		<input type="checkbox"/>
41a	If the issuer has identified a hedge, check here ► <input type="checkbox"/> and enter the following information:		
b	Name of hedge provider ► N/A		
c	Type of hedge ► N/A		
d	Term of hedge ► N/A		
42	If the issuer has superintegrated the hedge, check box		<input type="checkbox"/>
43	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box		<input type="checkbox"/>
44	If the issuer has established written procedures to monitor the requirements of section 148, check box		<input type="checkbox"/>
45a	If some portion of the proceeds was used to reimburse expenditures, check here ► <input type="checkbox"/> and enter the amount of reimbursement		N/A
b	Enter the date the official intent was adopted ► (MM/DD/YYYY) N/A		

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative

Date

TIM MAHONEY / MAYOR

Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name ►

Firm's EIN ►

Firm's address ►

Phone no.



**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

June 5, 2025

The Honorable Board of City Commissioners
City of Fargo
225 4th Street N.
Fargo, ND 58102

RE: Authorization to award the 2025/2026 Highway Deicing Salt contract (RFP25165) to
Compass Minerals America Inc.

Commissioners:

Proposals were received and opened on Thursday, May 29, 2025, in response to a Request for Proposal (RFP) issued by Public Works for "Furnishing and Delivering Bulk Highway Deicing Salt". A total of two (2) sealed responses were received, all of which were reviewed and fully analyzed by a selection committee made up of four (4) members of the Public Works Department staff.

The two proposals received were evaluated on:

- Experience,
- Product Cost,
- Product Specifications.

Through the evaluation process, it was identified that all proposals met both the "Experience" and "Product Specifications" requirements of the RFP. Based on the attached RFP price tabulation the selection committee is making a recommendation to award the 2025/2026 Highway Deicing Salt contract to Compass Minerals America Inc. at a price of \$122.44 per ton.

RECOMMENDED MOTION: I/we hereby move based on the request for proposal (RFP25165) to award the 2025/2026 Highway Deicing Salt contract to Compass Minerals America Inc. at a price of \$122.44 per ton.

Respectfully submitted,

Ben Dow
Public Works Operations Director

Bulk Highway Deicing Salt RFP BID Tabulation**Fargo Public Works - 2025/2026 Season****RFP25165, Received 5/29/2025**

Company	Option 1 Price (4000 ton)	Option 2 Price (1000 ton)	Total Option 1	Total Option 2	Total Cost (Op. 1&2)
Compass Minerals America Inc.	\$122.44	\$122.44	\$489,760.00	\$122,440.00	\$612,200.00
NSC Minerals LTD	\$123.09	\$123.09	\$492,360.00	\$123,090.00	\$615,450.00



(33)

**FLEET MANAGEMENT, FORESTRY
STREETS & SEWERS
WATERMAINS & HYDRANTS**
402 23rd Street North
Fargo, ND 58102
Phone: 701.241.1453 | Fax: 701.241.8100
FargoND.gov

June 4, 2025

The Honorable Board of City Commissioners
City of Fargo
225 4th Street N
Fargo, ND 58102

RE: Public Works Admin Exterior Improvements (ITB25189) – Bid Acceptance and Award

Commissioners:

Fargo Public Works published an advertisement requesting bids (ITB24028) for general construction, and electrical for exterior improvements on the Public Works Administrative building located at 2401 3rd Avenue N. Bids were received and opened on June 4, 2025. A total of eight bids, two for single prime general construction, four for multiple prime general construction, and two for multiple prime electrical construction were received.

Based on a review of all bids received, staff are recommending the award to the low-bidders, Rice Companies, Inc. under multiple prime general construction and Quality Electric ND, LLC under multiple prime electrical construction.

Division 2 – Multiple Prime Bidder	Contract	Bid Price	Engineer's Opinion of Cost
Rice Companies, Inc.	General	\$399,770.00	\$721,130.00
Quality Electric ND, LLC	Electrical	\$60,025.00	\$42,900.00
Total		\$459,795.00	\$764,030.00

RECOMMENDED MOTION: I/we hereby move based on advertisement for bids (ITB25189) to accept the bids and award to the low bidders, Rice Companies, Inc. and Quality Electric ND, LLC under multiple prime.

Respectfully submitted,

Ben Dow
Public Works Operations Director



300 23rd Ave E, Suite 100
 West Fargo, ND 58078
 701 232 5353
KLJENG.COM

June 4, 2025

Ben Dow
 Public Works Operations Director
 2401 3rd Ave North
 Fargo, ND 58102

Re: Recommendation of Award for Public Works Admin Building Exterior Improvements

Bids on the referenced project were opened on June 4, 2025. A total of 8 bids were received. Two for a single prime bid (Division 1), four for multiple prime (Division 2) – general construction, two for multiple prime (Division 2) – electrical construction. No bids were rejected. The bids were reviewed for mathematical errors, and none were found. All bids appear to be responsive. A copy of the bid tabulation is attached.

The sum of the apparent lowest, responsible bidders included in Division 2 were compared to the apparent lowest, responsible bidder for Division 1. The sum of the Division 2 bidders provides the lowest total project price. The apparent low bidders submitting a bid are listed below for the three separate prime contracts.

Division 2 – Multiple Prime Bidder	Contract	Bid Price	Engineer's Opinion of Cost
Rice Companies, Inc.	General	\$399,770.00	\$721,130.00
Quality Electric ND, LLC	Electrical	\$60,025.00	\$42,900.00
Total		\$459,795.00	\$764,030.00

As bid, the total bid construction costs are \$304,235 lower than the engineer's opinion of cost. Given the significant difference between the general bid provided by Rice Companies, Inc. and the engineer's opinion of cost, KLJ did reach out to Rice Companies, Inc. to confirm they weren't aware of any errors or concerns with their lump sum bid. None were noted.

It is our recommendation to move forward with the award of the contract to the apparent low bidders for Division 2, if the owner determines they are responsible. The apparent low bidders are Rice Companies, Inc. (General Construction), and Quality Electric ND, LLC (Electrical Construction).

If you elect to move forward with awarding the multiple prime contracts, you will find two copies of the Notice of Award, one for Rice Companies, Inc and one for Quality Electric ND, LLC, attached for your approval and signature. Please date (top of the document), sign and return both documents to our office.

If you have any questions, please contact our office.



300 23rd Ave E, Suite 100
West Fargo, ND 58078
701 232 5353
KLJENG.COM

Sincerely,

KLJ Engineering, LLC

A handwritten signature in blue ink that reads "Cassie McNames". The signature is fluid and cursive, with the first name "Cassie" being more prominent than the last name "McNames".

Cassie McNames, PE
Senior Project Manager

Project No.: 2404-01630

Copy To: Adam Peterson, Lindi Braun
Enclosure(s): (1) Bid tabulation (2) Notice to Award

Bid Opening June 4, 2025 @ 11:45am
Public Works Admin Building Exterior Improvements
City of Fargo



Bidder Name	Acknowledge Addenda	Contractor License	Bid Bond	Division 1: Single Prime	Division 2: Multiple Prime Bidders	
	#1				General	Electrical
Rice Companies, LLC	X	X	X	\$	\$ 399,770.00	\$
Valor Contracting	X	X	X	\$	\$ 462,200.00	\$
Rick Electric	X	X	X	\$	\$	\$ 85,700.00
Quality Electric ND LLC	X	X	X	\$	\$	\$ 60,025.00
Gast Construction	X	X	X	\$ 710,000.00	\$ 645,400.00	\$
MinKo Construction Inc	X	X	X	\$ 769,500.00	\$ 704,500.00	\$
				\$	\$	\$
Total Engineer's Opinion of Cost				\$ 764,030.00	\$ 721,130.00	\$ 42,900.00

Tabulation of Bids Prepared by: Cassie Munroe

Date: 6/4/2025

NOTICE OF AWARD

Date of Issuance:

Owner: City of Fargo, ND

Owner's Project No.:

Engineer: KLJ Engineering LLC

Engineer's Project No.: 2404-01630

Project: Public Works Admin Building Exterior Improvements

Contract Name: General Construction

Bidder: Rice Companies, Inc.

Bidder's Address: 5301 Veterans Blvd S, Fargo, ND 58104

You are notified that Owner has accepted your Bid dated **June 4, 2025** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Exterior façade and lighting improvements and incidentals for a pre-engineered metal building located at 2401 3rd Avenue North in Fargo, ND. Work will also include fabrication and installation of a steel canopy, replacement of exterior doors and windows, and exterior building signage.

The Contract Price of the awarded Contract is \$399,770.00. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes and Unit Price Work, as applicable.

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner [3] counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): Submit Certificate of Insurance and Certificate of Workers' Compensation Insurance

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Fargo

By (*signature*):

Name (*printed*): Timothy Mahoney

Title: Mayor

Copy: Engineer

NOTICE OF AWARD

Date of Issuance:

Owner:	City of Fargo, ND	Owner's Project No.:	
Engineer:	KLJ Engineering LLC	Engineer's Project No.:	2404-01630
Project:	Public Works Admin Building Exterior Improvements		
Contract Name:	Electrical Construction		
Bidder:	Quality Electric ND, LLC		
Bidder's Address:	3918 37 th Avenue South, Fargo, ND 58104		

You are notified that Owner has accepted your Bid dated **June 4, 2025** for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Exterior façade and lighting improvements and incidentals for a pre-engineered metal building located at 2401 3rd Avenue North in Fargo, ND. Work will also include fabrication and installation of a steel canopy, replacement of exterior doors and windows, and exterior building signage.

The Contract Price of the awarded Contract is **\$60,025.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes and Unit Price Work, as applicable.

[3] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **[3]** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): Submit Certificate of Insurance and Certificate of Workers' Compensation Insurance

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Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: City of Fargo

By (*signature*):

Name (*printed*): Timothy Mahoney

Title: Mayor

Copy: Engineer



Metropolitan Area Transit

650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

34

Memorandum

To: City of Fargo Commission
From: Shaun Crowell, Mobility Manager
Date: June 9, 2025
RE: *DBE Goals for Fargo 2026 - 2028*

MATBUS is establishing a new overall goal for Disadvantaged Business Enterprise (DBE) participation in its federally-funded projects scheduled in FY 2026-2028. This includes consultation with general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and assist MATBUS's efforts to establish a level playing field for the participation of DBEs.

The proposed goal will be .49% for City of Fargo Transit.

The proposed DBE Goals are due to the FTA by August 1, 2025

Requested motion: Authorize staff to submit proposed goals to the FTA.



Metropolitan Area Transit

650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

Regional Civil Rights Officer
Federal Transit Administration
1961 Stout Street
Suite 13-301
Denver, CO 80202

Subject: City of Fargo FFY 2026 - 2028 DBE Goal (Vendor 1156)

Dear Regional Civil Rights Officer:

The City of Fargo respectfully submits the following methodology and DBE Goal of .49% for FFY 2026 - 2028:

DBE Goal Setting Methodology Requirements:

OUTREACH:

Public participation methods employed by the City of Fargo included legal notices in the papers, letters to women, minority groups, the local Chamber of Commerce, Small Business Administration, and cultural diversity groups.

The notification includes the types of work which will be available through our organization and invites these groups to participate (letter and notices are enclosed).

When the opportunity presents itself, we do encourage potentially eligible businesses to register to become a DBE.

We have taken the opportunity to work with a DBE vendor selling office supplies, that will work on matching prices on products, so we do hope to build that relationship over time and utilize their services.

METHODOLOGY:

The contracting opportunities are limited for our organization. Attached you will find a listing of potentially available contracting opportunities, the budget affiliated with each item, and the corresponding NAICS code.

Step 1, Development of base figure, We have 4 DBEs we have used in the past are likely to use in the future. We have counted 685 firms ready, willing and able including DBEs and non-DBEs. Dividing the two, we get our base figure of .6%.

Step 2, Adjustment to the Base Figure. The 4 DBE firms are included in the listing of the available firms in the area (for example, there is 1 DBE Commercial digital printing firm – that 1 is part of the 685 existing firms). Therefore, I believe the .6% is accurate – the 4 firms divided by all 685 of the firms.

For Schedule Information: 701-232-7500

We adjusted for past participation for the last three years; we calculated the median of the past participation, which was .37%. and the .6% base figure and the average of the two is .49%.

Race-conscious/Race-neutral Breakdown. Please note Fargo's goal is 100% race-neutral – there is not a breakdown since we did not exceed our goals in the last three years.

Enclosed are the following items pertaining to Fargo's FY 2026 - 2028 DBE Goal for your consideration:

1. Fargo's Goal Methodology (Including NAICS Attachment)
2. Public Notice on DBE Goal Published on www.matbus.com
3. Solicitation of DBE's – Notice in Local Newspaper
4. Letter to Businesses and Organizations regarding DBE/SBE

The goal is set at .49%. Fargo Transit invited public comment on April 16, 2025 for a period of 45 days for the purpose of obtaining input on the proposed goal, on April 16, 2025 we made available an opportunity for potential DBEs to meet with us either in person or by phone to provide comments regarding our DBE goals.

No comments were received.

RACE-NEUTRAL PARTICIPATION

Fargo Transit proposes to move forward in FY 2026 - 2028 utilizing a race-neutral program in achieving the DBE goal of .49% during these fiscal years. Fargo Transit feels a race-neutral program is the best approach in obtaining satisfactory DBE participation. Fargo did not exceed our goals for the last three years and cannot calculate the Race/Gender-Neutral Split.

In Summary

Opportunities to use DBE's in the Fargo/Moorhead metro area is limited. Marketing and office supplies are the one area we use DBE's the most and the DBE usually is much higher than a local non-DBE firm we receive bids from.

Should you have any questions, please contact me at 701-476-5967.

Sincerely,

Julie Bommelman
Transit Director, DBELO

Shaun Crowell, Mobility Manager
City of Fargo
650 23rd St N
Fargo, ND 58102
scrowell@matbus.com

NAICS CODE	CLASSIFICATION	FARGO GL-EXPENDITURES CODE	ESTIMATED CONTRACT OPPORTUNITIES-PROFESSIONAL SERVICES FARGO	ESTIMATED CONTRACT OPPORTUNITIES-SUPPLIES/SERVICES FARGO	ESTIMATED CONTRACT OPPORTUNITIES-PROFESSIONAL SERVICES MOORHEAD	ESTIMATED CONTRACT OPPORTUNITIES-SUPPLIES/SERVICES MOORHEAD	DBE BUSINESS PREVIOUSLY USED/WILL UNLEY USE AGAIN	DBE BUSINESS-FM AREA Updated 6/28/24	DBE BUSINESS-ND Updated 6/28/24	DBE BUSINESS-MN Updated 6/28/24	Total DBEs for estimated contracting opp	FM METRO BUSINESS	Listing Date Updated using Google Search
236220	Commercial and Institutional Building Construction							0	0	43	13	27	4/22/2025
238110	Concrete Contractors						0	0	0	27	27	127	4/22/2025
238210	Electrical Contractors and Other Wiring Installation Contractors						1	1	2	20	20	30	4/22/2025
238330	Plumbing, Heating, Air Conditioning and Sanitary	4310		\$ 60,000			0	1	7	17	10	118	4/22/2025
323113	Commercial Screen Printing							0	0	5	5	18	4/22/2025
323111	Commercial Digital Printing (except books)	5510		\$ 7,000		\$ 11,430	1	0	0	11	11	22	4/22/2025
323119	Other Commercial Printing							0	0	0	0	22	4/22/2025
339950	Sign Manufacturing							0	0	0	0	22	4/22/2025
424720	Petroleum Bulk Stations and Terminals							0	0	4	4	7	4/22/2025
441310	Automotive Parts and Accessories Stores							0	0	0	0	20	4/22/2025
441320	Tire Dealers							0	0	0	0	19	4/22/2025
459410	Other Fuel Dealers	6110		\$ 14,000			1	0	1	1	1	19	4/22/2025
459319	Other Fuel Dealers							0	0	0	0	17	4/22/2025
485310	Taxi Service							0	0	0	0	7	4/22/2025
485510	Charter bus Industry							0	0	0	0	10	4/22/2025
485991	Special Needs Transportation							0	0	3	3	6	4/22/2025
488410	Motor Vehicle Towing							0	0	1	1	16	4/22/2025
492110	Couriers							0	0	1	1	19	4/22/2025
512110	Motion Picture and Video Production				\$ 3,600			0	0	9	9	14	4/22/2025
515112	Radio Stations							0	0	0	0	12	4/22/2025
515120	Television Broadcasting							0	0	0	0	15	4/22/2025
515210	Cable and Other Subscription Programming							0	0	0	0	3	4/22/2025
517210	Wireless Telecommunications Carriers (except Satellite)							0	0	0	0	0	4/22/2025
519130	Internet Publishing and Broadcasting and Web Search Portals							0	0	1	1	4	4/22/2025
522110	Commercial Banking							0	0	0	0	20	4/22/2025
524126	Direct Property and Casualty Insurance							0	0	0	0	14	4/22/2025
541310	Architectural Services							0	0	22	22	22	4/22/2025
541330	Engineering Services							0	1	45	46	19	4/22/2025
541410	Interior Design Services							0	0	15	15	21	4/22/2025
541430	Graphic Design Services				\$ 300			1	2	41	43	18	4/22/2025
541611	Adm. Mgmt. & General Mgmt Consulting Services (First Transit Contract)							0	3	118	121	0	4/22/2025
541613	Adm. Mgmt. & General Mgmt Consulting Services	3420, 5411		\$ 105,800			0	0	0	47	47	16	4/22/2025
541810	Advertising Agencies	3110		\$ 3,500				0	0	32	32	19	4/22/2025
541880	Direct Mail Advertising							0	0	5	5	14	4/22/2025
561310	Employment Placement Agencies							0	0	0	0	18	4/22/2025
561612	Security Guards & Patrol Services/Armored Car Services	3380, 3699		\$ 354,500				0	0	0	0	6	4/22/2025
561622	Locksmiths							0	0	0	0	6	4/22/2025
56	Exterminating & Pest Control Services	17 10						0	0	0	0	5	4/22/2025
0								0	0	0	0	18	4/22/2025
0		4205, 4206		\$ 85,751		\$	0	0	0	0	0	17	4/22/2025
0		4210, 4220,		\$ 29,500				0	0	0	0	20	4/22/2025
		5660, 5760		\$ 4,500				0	0	0	0	20	4/22/2025
		5660, 5760		\$ 7,200				0	0	0	0	20	4/22/2025
811122	Glass Repair (Automotive)							0	0	0	0	18	4/22/2025
811198	Auto Washing, Repair & Maintenance	4325, 4330		\$ 935,000				0	0	0	0	22	4/22/2025
811211	Radio Repair							0	0	0	0	15	4/22/2025
811212	Computer & Office Machine Repair & Maintenance	4350		\$ 8,500				0	0	0	0	16	4/22/2025
812331	Parts & Accessories Supply	6410		\$ 22,000				1	1	0	0	3	4/22/2025
	Grand Totals		\$	\$ 1,639,251	\$ 3,900	\$ 11,430	4	4	21	561	582	964	

All firms willing and able, including DBEs and non-DBEs

Total DBEs for estimated contract opportunities

Total DBEs in local area that are willing and able for estimated contract opportunities - FARGO

Total DBEs in local area that are willing and able for estimated contract opportunities - MOORHEAD

Total DBEs for estimated contract opportunities - All firms willing and able including DBEs and non-DBEs

415

370

4

3

CA

Step 1

Step One Base Figure

Ready, willing, and able DBEs

All Firms ready, willing and able (including DBEs and non-DBEs)

0.0058394

0.6 %

Rounded goal

4 (includes DBEs FM Metro Area and ones we are likely to use in the future)

DBEs (includes DBEs and non-DBEs from ND, MN and FM Metro Area)

Market Area: FM (Fargo, ND, Moorhead, MN) Metro Area consists of a population of more than 200,000. We have expanded our market outside the geographic FM Metro area for services such as graphic design.

A. The step one base figure includes DBEs in the FM Metro area and ones we are likely to continue to use in the future

B. We used the NAICS listing to find DBEs in the FM Metro area and in ND and MN

C. The DBEs used in the step one base figure are DBEs that are available and ready and willing.

D. Our local market includes the Fargo/Moorhead area including surrounding communities. Also included are areas in the Twin Cities that have been used in the past and are likely we will use in the future

E. The numerator consists of firms that have been identified and utilized in the past that are DBE's, the denominator includes firms from ND, MN and the FM Area that are DBEs and non-DBEs. Due to the low number of DBEs available in the local area, we have utilized most of the identified DBEs

F. We decided to not use weighting

G. We have accounted for any firms no longer in business in Step One, by doing online searches

H. No adjustments were made based solely on changes in the amount of federal assistance we expect to receive

I. No alternative methods were used in Step One

Step 2

A.

1 We were in compliance with the DBE regulations

2 The previous DBE goal was 64% (2023,2024,2025)

3 Decertifications are not relevant in Step Two

4 Contracts are expected to be similar as in the past

5 Adjustment for past participation

Dates	Fargo DBE %
Actual 2023	0.37
Actual 2024	0.95
Actual 2025	0
Average	0.44

Sa Median Average 0.37

Adjusting the Step One Base Figure with the Median Past Participation

Step One Base Figure	0.60%
Median of past participation (Sa)	0.37% New Step One base figure adjusted for past participation
	0.49% Average of Step One base figure and Median of past participation

5b Final goal will be 49%

6 We used 3 years of past participation (as this is the best indicator of future participation.)

7 Consideration was given when making adjustment for past participation

8 This is not the first time we have had a DBE program

Other factors in Step Two

B No disparity studies have been conducted in our market area that were factored into step 2

We are unable to find other types of evidence or data relative to making further adjustments to our goal

IV

A.

Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split:

Goal was 49%

Need to update when all goals are done 2020-2022

Actual 2023 0.03%

Actual 2024 0.95%

Actual 2025 0.00%

Through March 31, 2025

We did not exceed the goal for 2023

We did exceed the goal for 2024

In the event we exceed the amount from the goals in the past three years determine the RC and RN split.

Summary of any comments received during consultation with the public and what changes, if any, were made to the goal as a result:

Will need to complete this after the comment period in June 2025



Go Green, Ride With Us



DBE Consultation in establishing goals for FY 2026-2028

MATBUS is establishing a new overall goal for Disadvantaged Business Enterprise (DBE) participation in its federally-funded projects scheduled in FY 2026-2028. This includes consultation with general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and assist MATBUS's efforts to establish a level playing field for the participation of DBEs.

The proposed goals will be .49% for City of Fargo Transit, and .44% for City of Moorhead Transit.

On April 16, 2025 we will be available in person at the Metro Transit Garage at 650 23rd St. N. Fargo, ND 58102 or by teleconference from 10:30 AM -11:00 AM, 1:00 PM – 4:00 PM.

We will schedule consultations in half-hour blocks, please contact Shaun Crowell, Mobility Manager at 701-476-5967 or at scrowell@matbus.com to schedule a time. Deadline to schedule a time is April 4, 2025.

Alternative dates for a consultation by teleconference may be scheduled if necessary.

City of Fargo Transit DBE Goal

The City of Fargo Transit has established a DBE goal of .64% utilizing a race-neutral program for the next three years 2023, 2024, 2025. Please contact Shaun Crowell, DBE Coordinator, at MATBUS, 650 23rd Street North, Fargo, ND 58102, via phone at [701.476.5967](tel:7014765967), or via email at [Shaun Crowell, Mobility Manager](mailto:Shaun.Crowell@matbus.com)

City of Moorhead Transit DBE Goal

The City of Moorhead Transit has established a DBE goal of .71% utilizing a race-neutral program for the next three years 2023, 2024, 2025. Please contact Shaun Crowell, DBE Coordinator, at MATBUS, 650 23rd Street North, Fargo, ND 58102, via phone at [701.476.5967](tel:7014765967), or via email at [Shaun Crowell, Mobility Manager](mailto:Shaun.Crowell@matbus.com)

Seeking DBE & SBE Firms to Bid on Federally-Funded Contracts

The Cities of Fargo and Moorhead and MATBUS are seeking Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs) to bid on federally-funded products and services. Firms owned and controlled 51% or more by women,

minorities or other socially and economically disadvantaged individuals or groups are eligible to apply for DBE certification.

Interested vendors should contact: Shaun Crowell, DBE Coordinator, at MATBUS, 650 23rd Street North, Fargo, ND 58102, via phone at [701.476.5967](tel:701.476.5967), or via email at [Shaun.Crowell, Mobility Manager](mailto:Shaun.Crowell@MobilityManager.com)

Type of contract work available

Parts and maintenance for buses,

Radio repair

Janitorial services

Bulk diesel fuel

Insurance (auto, liability and performance bond)

Consultants (transit planning, drug testing, asbestos removal, marketing research, real estate appraisal, environmental review and remediation)

Mowing

Snow removal

Driver training

Cleaning supplies

Lubricants

Laundry services

Contractors to operate fixed route and paratransit transportation services

Firms wishing to sell advertising space on the exterior or interior of buses.

Marketing (design, printing, specialty products)

Office supplies

Construction Contractors

General Contractors

Home Improvement

Building Repairs

Earthwork

Masonry

Carpentry

Structural Steel

Roofing

Fire Protection

Drywall

Painting

Floor Covering

Ceilings

Tile Setters

Window Treatments

Concrete

Electrical

Heating

Windows

Landscaping

Asphalt

Plumbing

Security systems

Fueling systems

Vehicle washing systems

Demolition

Interior/exterior Lighting

Office Furniture

Garage Tools and Equipment

Interested in becoming a DBE in North Dakota?

If your organization is interested in becoming a certified DBE in North Dakota, you can apply for certification at [ND DOT](https://www.nd.gov/nddot/dbecertification). On the DBE certification page, you can create an account to start the process.

If you are currently certified in Minnesota you would just need to submit an interstate application using their online system.

If you have any questions, you can contact the DBE Supportive Services Consultant either through the online system or at 701-527-0931.

Interested in becoming a DBE in Minnesota?

If your organization is interested in becoming a certified DBE in Minnesota, you can find the application and more information to apply for certification with [MnDOT](#).

**NOTICE OF PUBLIC COMMENT ON DBE GOAL FOR 2026-2027-2028
CITY OF FARGO, NORTH DAKOTA – TRANSIT OFFICE**

In accordance with requirements of the U.S. Department of Transportation as set forth in 49 C.F.R. Part 26, as amended, the City of Fargo Transit Office hereby notifies the public that it is recommending the following Disadvantaged Business Enterprise (DBE) goal for applicable professional services and procurement contracts during Fiscal Years 2026-2027-2028, beginning October 1, 2025 and ending September 30, 2028. The overall total City of Fargo Transit DBE goal for fiscal years 2026, 2027, 2028 is .49%. The City of Moorhead Administration goal for fiscal years 2026, 2027, 2028 is .44%.

Information pertaining to this goal and a description of how it was selected is available for inspection from 8:00 a.m. to 4:30 p.m. (central time) at the Metro Transit Garage, 650 23rd Street North, Fargo, ND 58102 for 30 days following the date of this notice. Written comments on this goal will be accepted for 45 days from the date of this notice. The comments are for informational purposes only and may be sent to Julie Bommelman, City of Fargo Transit Director, DBELO and Shaun Crowell, Mobility Manager DBELO for City of Moorhead, Metro Area Transit, 650 23rd Street North, Fargo, ND 58102, or to the Regional Civil Rights Officer, Federal Transit Administration, Region 8, 1961 Stout Street, Suite 13-301, Denver CO 80202

Please publish in *The Forum*
North Dakota Legals
Wednesday, April 16, 2025

Send (2) affidavits of publication.
MATBUS
Attn: Shaun Crowell
650 23rd St. N.
Fargo, ND 58102

Bill:
City of Fargo for North Dakota ad
MATBUS
650 23rd Street North
Fargo, ND 58102



Forum Communications Company

ND Affidavit No. a0R6slcGzkJAO8eMxJX

AFFIDAVIT OF PUBLICATION

State of Florida, County of Broward, ss:

Rachel Cozart, being first duly sworn, deposes and says: That (s)he is a duly authorized signatory of Column Software, PBC and duly authorized agent of the The Forum of Fargo-Moorhead (ND), a newspaper printed and published in the City of Fargo, County of Cass, State of North Dakota.

1. I am the designated agent of The The Forum of Fargo-Moorhead (ND), under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspaper listed on the attached exhibit.

2. The newspaper listed on the exhibit published the advertisement of: **ND General Public Notice Notice**; (1) time: *Wednesday, April 16, 2025*, as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Rachel Cozart

(Signed)



VERIFICATION

State of Florida
County of Broward

Subscribed in my presence and sworn to before me on this: 04/21/2025

S. Smith

Notary Public

Notarized remotely online using communication technology via Proof.

NOTICE OF PUBLIC COMMENT ON DBE GOAL FOR 2026-2027- 2028

**CITY OF FARGO, NORTH DAKOTA
- TRANSIT OFFICE**

In accordance with requirements of the U.S. Department of Transportation as set forth in 49 C.F.R. Part 26, as amended, the City of Fargo Transit Office hereby notifies the public that it is recommending the following Disadvantaged Business Enterprise (DBE) goal for applicable professional services and procurement contracts during Fiscal Years 2026-2027-2028, beginning October 1, 2025 and ending September 30, 2028. The overall total City of Fargo Transit DBE goal for fiscal years 2026, 2027, 2028 is .49%. The City of Moorhead Administration goal for fiscal years 2026, 2027, 2028 is .44%.

Information pertaining to this goal and a description of how it was selected is available for inspection from 8:00 a.m. to 4:30 p.m. (central time) at the Metro Transit Garage, 650 23rd Street North, Fargo, ND 58102 for 30 days following the date of this notice. Written comments on this goal will be accepted for 45 days from the date of this notice. The comments are for informational purposes only and may be sent to Julie Bommelman, City of Fargo Transit Director, DBELO and Shaun Crowell, Mobility Manager DBELO for City of Moorhead, Metro Area Transit, 650 23rd Street North, Fargo, ND 58102, or to the Regional Civil Rights Officer, Federal Transit Administration, Region 8, 1961 Stout Street, Suite 13-301, Denver CO 80202 (Apr. 16, 2025)

June 5, 2025

(35)

City of Fargo Commissioners
225 N 4th Street
Fargo, ND 58102

Dear Commissioners:

The current agreement between the City of Fargo and Via, the Transit Department's paratransit software provider, expires on June 5, 2025. In order to align with another existing contract for Via's transit planning software, Remix, it is requested to approve the attached amendment to extend the Via contract until July 31, 2025 to match the Remix contract's end/renewal date. The amendment has been reviewed and approved by legal staff.

RECOMMENDED MOTION: Approve Amendment #1 to the Contract with Via to extend the contract until July 31, 2025.

Sincerely,



Cole Swingen
City of Fargo Assistant Transit Director – Operations
476-6737

**Amendment # 1
to the
State Contract #283 (Paratransit Software)**

Via Mobility LLC (“**Via**”) and City of Fargo, ND (“**Customer**” and, together with Via, the “**Parties**”) have entered into that certain agreement titled State Contract #283, dated December 27, 2023 (the “**Agreement**”). Upon execution of this Amendment #1 (the “**Amendment**”), the Parties agree to modify the Agreement as follows:

1. **Service Period Extension.** The Parties hereby agree to extend the Term of the Agreement by a further period of 2 months, starting on the Effective Date and ending on July 31, 2025 (inclusive); and such additional term shall be the “Additional Term” for the purposes of the Agreement.

2. **Conflicts, Use of Terms, Governing Law.** Capitalized terms used but not defined herein have the meanings set forth in the Agreement. Except as expressly provided herein, the terms and conditions of the Agreement remain unchanged. This Amendment #1 will be governed by the same law as the Agreement and is effective as of June 1, 2025 (the “Effective Date”).

Via Mobility, LLC

City of Fargo, ND

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:



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June 9, 2025

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

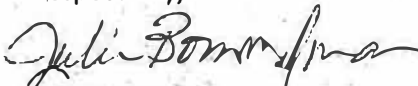
Dear Commissioners:

One of the federal requirements is the adoption and implementation of a Transit Public Comment Process on Fare/Service Changes policy. The proposed policy is attached.

The intention of the policy is to guide the process of making fare and/or service changes to the Transit system and, at the same time, adhere to the Commission's policies and procedures for public hearings, thereby fostering public participation in the process.

Requested motion: Approve the attached Transit Public Comment Process on Fare/Service Changes.

Respectfully,


Julie Bommelman
City of Fargo Transit Director

/attachment

Transit Public Comment Process on Fare/Service Changes

Procedure for fare/route changes

The Transit Department must solicit and consider public comment before implementation of all changes in fares or major changes in service.

Public hearings will be held for all fare and major route changes. Public hearing dates are set and hearing notices appear in the Fargo and/or Moorhead newspaper approximately two weeks prior to the actual hearing. Hearings are held during the Fargo City Commission or Moorhead City Council's regularly scheduled meetings as applicable in the respective City Halls and in accordance with their policies and procedures. Hearings are open to the public; anyone wishing to speak at the hearing is afforded the opportunity. If someone is unable to attend the hearing, written comments are accepted prior to the hearing.

The Transit Director and/or Assistant Transit Director(s) will summarize all comments received prior to the public hearing. The summary and analysis will be provided to the respective governing bodies during the scheduled public hearing for consideration.

Definition of Temporary Service Changes

Temporary service changes are those that are in effect for a limited time period due to road construction, special events, etc., and are not intended to be permanent.

The Transit Director or Assistant Transit Director(s) shall make temporary service changes administratively. If a temporary service change is to become permanent, the Transit Director or Assistant Transit Director(s) will evaluate the change to determine if it is minor or major based on the following.

Definition of Major Service Changes

Route or service changes are considered major if any of the following apply:

1. Elimination or addition of a route;
2. Any change in routes in excess of 25% of the route's mileage and/or annual revenue hours;
3. Changes that would reduce or eliminate service to schools, elderly/public housing, hospitals or social service agencies.

All major route changes will be subject to the public hearing process and implemented after approval by the Fargo City Commission or Moorhead City Council as applicable.

Definition of Minor Service Changes

Route or service changes are considered minor if they are less than 25% of the route's mileage and/or annual revenue hours.

Minor service changes shall be made upon approval of the Fargo City Commission or Moorhead City Council as applicable.

APPROVED BY:

Dr. Tim Mahoney, Mayor

Date

June 9th, 2025

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The Honorable Board of City Commissioners
City of Fargo
225 Fourth Street North
Fargo, North Dakota 58102

RE: Public Transportation Agency Safety Plan Annual Update

Commissioners,

Our safety plan requires an annual update and approval by the City Commission. This is our third annual update to the Safety Plan.

The safety committee reviewed the plan and approved the plan on May 22, 2025 at our bi-monthly committee meeting. Major changes incorporated into this annual update include:

- Updated Safety Targets for 2025
- The addition of a conflict resolution procedure
- The addition of driver assault management and mitigation

RECOMMENDED MOTION: I/we move to approve the attached Public Transportation Agency Safety Plan.

Respectfully Submitted,



Jordan Smith
Assistant Transit Director – Fleet and Facilities

PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP) CITY OF FARGO

REVISED 5/22/2025

Prepared by: Jordan Smith

METRO TRANSIT GARAGE, 650 23rd St. N. Fargo, ND 58102

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TRANSIT AGENCY INFORMATION

Transit Agency Name	City of Fargo (Operating as MATBUS)
Transit Agency Address	650 23 rd St N Fargo, ND 58102
Name and Title of Accountable Executive	Julie Bommelman, Fargo Transit Director
Name of Chief Safety Officer(s) or SMS Executives	Jordan Smith, Fargo Assistant Transit Director - Fleet and Facilities
Mode(s) of Service Covered by This Plan	Fixed Route; Paratransit; On-Demand
List of All FTA Funding Types	5307, 5310, 5339
Mode(s) of Service Provided by the Transit Agency (Directly operated or contracted service)	Modes: Fixed Route and Paratransit. The City of Fargo uses contracted labor to operate the revenue vehicles for both modes.
Does the agency provide transit service on behalf of another transit agency?	The City of Fargo and City of Moorhead have a Joint Powers Agreement (JPA) for the operation of public transit in the metropolitan area. Under that agreement, the City of Fargo provides staff for building maintenance, vehicle maintenance, Fixed Route dispatch, mobility management, and Paratransit Reservationists, with the City of Moorhead paying a portion based on cost-sharing formulas in the JPA. The City of Fargo and the City of Moorhead jointly own the Metro Transit Garage where vehicles are stored, fueled and maintained and where administrative offices are located for City and contract staff. Fargo and Moorhead together select a contracted operator. Revenue vehicles are owned by the respective cities; however, Moorhead leases their vehicles to Fargo for operation of the Public Transportation system. The City of Fargo owns and operates the Ground Transportation Center (GTC) which acts as the main transfer facility for several routes from Fargo and Moorhead; there are also staff members located at the GTC. Moorhead cost shares in the GTC Operations.
Large Urbanized Area	Metropolitan area of Fargo, West Fargo, Horace, Moorhead, Dilworth

ORGANIZATION STRUCTURE AND SYSTEM SAFETY RESPONSIBILITIES

CITY OF FARGO Accountable Executive Julie Bommelman	<p>The Transit Director serves as the City of Fargo Transit Accountable Executive with the following authorities, accountabilities, and responsibilities under this plan:</p> <ul style="list-style-type: none"> • Controls and directs human and capital resources needed to develop and maintain the PTASP and SMS. • Designates an adequately trained Chief Safety Officer who is a direct report. • Ensures that City of Fargo SMS is effectively implemented. • Ensures action is taken to address substandard performance in SMS. • Assumes ultimate responsibility for carrying out City of Fargo PTASP and SMS.
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	<ul style="list-style-type: none"> • Maintains responsibility for carrying out the agency's Transit Asset Management Plan. • May delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.
CITY OF FARGO Chief Safety Officer Jordan Smith	<p>The Fargo Accountable Executive designates the Assistant Transit Director - Fleet and Facilities as the Chief Safety Officer.. The Chief Safety Officer has the following authorities, accountabilities, and responsibilities under this plan:</p> <ul style="list-style-type: none"> • Develops the PTASP and SMS policies and procedures • Holds a direct line of reporting to the Accountable Executive. • Ensures and oversees day-to-day implementation and operation of the SMS. • Chairs the Safety Committee. <ul style="list-style-type: none"> - Coordinates the activities of the committee - Establishes and maintains the Safety Event Log to monitor and analyze trends in hazards, occurrences, incidents, and accidents - Maintains and distributes minutes of committee meetings • Advises the Accountable Executive on SMS progress and status. • Identifies substandard performance in the SMS and develops action plans for approval by the Accountable Executive. • Ensures policies are consistent with safety objectives • Provides Safety Risk Management expertise and supports other personnel who conduct and oversee Safety Assurance activities.
Agency Leadership and Management	<p>Agency Leadership and Management also have authorities and responsibilities for day-to-day SMS implementation and operation of the SMS under this plan. Agency Leadership and Management include:</p> <ul style="list-style-type: none"> • Fargo Assistant Transit Director • Driver Services General Manager (Contracted) • Driver Services Operations Manager (Contracted) • Driver Services Safety Manager (Contracted) • Operations managers and supervisors <p>Leadership and Management personnel have the following authorities, accountabilities, and responsibilities:</p> <ul style="list-style-type: none"> • Participate as members of the Safety Committee (operations managers and supervisors will be rotated through the Safety Committee on a two-year term and other positions are permanent members) • Complete training on SMS and PTASP elements. • Oversee day-to-day operations of the SMS in their departments. • Modify policies in their departments consistent with implementation of the SMS, as necessary • Provide subject matter expertise to support implementation of the SMS as requested by the Accountable Executive or the Chief Safety Officer, including SRM activities, investigation of safety events, development of safety risk mitigation, and monitoring of mitigation effectiveness.
Key Staff and Activities	<p>City of Fargo uses the Safety Committee, as well as the monthly Drivers' Meeting and weekly Team Meeting, to support its SMS and safety programs:</p> <ul style="list-style-type: none"> - Safety Committee: Any safety hazard reported will be jointly evaluated by the Safety Committee and the Chief Safety Officer

	<p>during the Safety Committee Meeting. The Safety Committee is made up of the following members:</p> <ul style="list-style-type: none"> - Fargo Chief Safety Officer (Permanent Member) - City of Fargo Assistant Transit Director – Operations (Permanent Member) - City of Fargo Operations Supervisor (Permanent Member) - Driver Services Safety Manager (Permanent Member) - Valley Senior Services Transportation Manager (Permanent Member) - Dispatcher (Two-Year Term) - Fleet Maintenance Personnel (Two-Year Term) - Facilities Maintenance Personnel (Two-Year Term) - Bus Operator (Two-Year Term) - Bus Operator (Two-Year Term) <p>Safety Committee will meet bimonthly to review issues and make recommendations to improve safety.</p> <ul style="list-style-type: none"> - Drivers' Meetings: A permanent agenda item in all monthly Drivers' Meetings is dedicated to safety. Safety issues are discussed and documented. - All Staff Team Meetings: Hazard reports and mitigations will be shared, safety topics will be brought up for open discussion, further feedback solicited, and hazard self-reporting further encouraged. Information discussed in these meetings will be documented.
Contracted Agencies Covered under this Plan	<p>Valley Senior Services (Metro Senior Ride)</p> <ul style="list-style-type: none"> • Valley Senior Services operates a transportation service call Metro Senior Ride. These services are designed for people age 60 and older. The City of Moorhead leases vehicles to Valley Senior Services to assist them in providing rides for the elderly.

PLAN DEVELOPMENT, APPROVAL AND UPDATES

Name of Person Who Drafted This Plan	Jordan Smith, Assistant Transit Director - Fleet and Facilities		
CITY OF FARGO Signature by the Accountable Executive	Signature	Title	Date
		Transit Director	
	Relevant Documentation (title and location)		
	Approved by Fargo City Commission 6/9/2025		

Safety Committee Approval Date	5/22/2025
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SAFETY POLICIES AND PROCEDURES

1.1 COMMITMENT TO SAFETY

We are committed to Safety Management as a systematic and comprehensive approach to identify safety hazards and risks associated with transit system operations and related maintenance activities. We have adopted a Safety Management System (SMS) framework as an explicit element of the agency's

responsibility by establishing safety policy; identifying hazards and controlling risks; goal setting, planning and measuring performance. We have adopted SMS as means by which to foster agency-wide support for transit safety by establishing a culture where management is held accountable for safety and everyone in the organization takes an active role in securing transit safety.

To ensure transit safety and in order to comply with Federal Transit Administration (FTA) requirements, we have developed and adopted this Public Transit Agency Safety Plan (PTASP) to comply with FTA regulations established by section 5329(d) of the Moving Ahead for Progress in the 21st Century (MAP-21) Act.

The Fargo Transit Director, Moorhead City Manager, Metropolitan Council of Governments and City of Fargo Commission/City of Moorhead Council, in cooperation with the North Dakota Department of Transportation and Minnesota Department of Transportation, have reviewed the PTASP and assures that the content has met the requirements of Section 5329 (d) of MAP-21 through the establishment of a comprehensive Safety Management System (SMS) framework. Fundamental safety beliefs guiding our approach include:

- Safety is a core business value
- Safety excellence is a key component of our mission
- Safety is a source of our competitive advantage; our business will be strengthened by making safety excellence an integral part of all our public transportation activities; and
- Accidents and serious incidents are preventable; they are often preceded by precursors (events, behavior, and conditions) that can be identified, assessed and mitigated.

Basic elements of our safety approach include:

- Top Management Commitment to Safe Operations
- Responsibility and Accountability of all Employees
- Clearly Communicate Safety Goals
- Safety Assurance and Performance Measurement for Improvement

1.2 ANNUAL PTASP REVIEW AND UPDATE

Our Fargo-Moorhead management will review the PTASP annually, update the document as necessary and implement the changes within a timeframe that will allow the agency to timely submit the annual self-certification of compliance to the Federal Transit Administration (FTA). Annual self-certification will consist of the Fargo Transit Director and Moorhead City Manager signing and dating this document and submitting to FTA for review and approval. The annual review of the PTASP will be conducted by the safety committee as part of the PTASP review to be conducted no later than **June 30th** of each calendar year. Necessary updates outside the annual update window will be handled as PTASP addendums which will be incorporated in the body of the PTASP. Reviews of the PTASP by the local agency, any subsequent updates and addendums, adoption and distribution activities will be documented in the PTASP Document Activity Log.

1.3 SAFETY PROMOTION, CULTURE AND TRAINING

We believe safety promotion is critical to the success of SMS by ensuring that the entire organization fully understands and trusts the SMS policies, procedures and structure. It involves establishing a culture that recognizes safety as a core value, training employees in safety principles and allowing open communications of safety issues.

1.4 SAFETY CULTURE

Positive safety culture must be generated from the top-down. The actions, attitudes and decisions at the policy-making level must demonstrate a genuine commitment to safety. Safety must be recognized as the responsibility each employee with the ultimate responsibility for safety resting with the Fargo Transit

Director and Moorhead City Manager. Employees must trust that they will have management support for decisions made in the interest of safety while recognizing that intentional breaches of safety will not be tolerated.

The primary goal of safety promotion is to develop a positive safety culture that allows SMS to succeed. A positive safety culture is defined as one which is:

- **An Informed Culture**
 - Employees understand the hazards and risks involved in their areas of operation
 - Employees are provided with the necessary knowledge, training, and resources
 - Employees work continuously to identify and overcome threats to safety
- **A Just Culture**
 - Employees know and agree on what is acceptable and unacceptable behavior
 - Human errors must be understood but negligence and willful violations cannot be tolerated
- **A Reporting Culture**
 - Employees are encouraged to voice safety concerns and to share critical safety information without the threat of punitive action
 - When safety concerns are reported they are analyzed, and appropriate action is taken
- **A Learning Culture**
 - Learning is valued as a lifetime process beyond basic skills training
 - Employees are encouraged to develop and apply their own skills and knowledge to enhance safety
 - Employees are updated on safety issues by management and safety reports are fed back to staff so that everyone learns the pertinent lessons

1.5 TRAINING

During the initial implementation of the SMS, specific training will be required for all employees, including contract staff, to explain the agency's safety culture and describe how SMS works. The Safety Officer is the resource person for providing a corporate perspective on our approach to safety management. Once the SMS is implemented, safety training needs will depend on the safety responsibilities of the individual staff members and the nature of tasks performed.

- **Level One Training**
 - **Initial Safety Training for All Staff**
 - Basic Principles of safety management including the integrated nature of SMS, risk management, safety culture, etc.
 - Corporate safety philosophy, safety goals and objectives, safety policy and safety standards
 - Importance of complying with the safety policy and SMS procedures, and the approach to disciplinary actions for different safety issues
 - Organizational structure, roles, and responsibilities of staff in relation to safety
 - Current safety record, including areas of weakness
 - Reporting accidents, incidents, and perceived hazards
 - Feedback and communication methods for the dissemination of safety information
 - Safety promotion and information dissemination
- **Level Two Training**
 - **Safety Training for Operations Personnel – In Addition to Level One Training**
 - Unique hazards facing operational personnel
 - Seasonal safety hazards and procedures
 - Procedures for hazard reporting

- Procedures for reporting accidents and incidents
- Emergency procedures
- **Level Three Training**
 - **Safety training program for all employees and contractors directly responsible for safety.**
 - Bus vehicle operators (Driver Training Performed by Driver Services Contractor)
 - Dispatchers
 - Maintenance technicians
 - Managers and supervisors
 - Leadership and Executive Management
 - Chief Safety Officers

Resources will be dedicated to conduct a comprehensive safety training program, as well as training on SMS roles and responsibilities. The scope of the safety training, including annual refresher training, is appropriate to each employee's individual safety-related job responsibilities and their role in the SMS.

Operations safety-related skill training may include the following:

The following training is performed by the Driver Services Contractor. Reference Exhibit A

- New-hire bus vehicle operator classroom and hands-on skill training
- Bus operator refresher training
- Bus operator retraining (recertification or return to work)
- Classroom and on-the-job training for operations supervisors and managers
- Accident investigation training for operations supervisors and managers

Vehicle maintenance safety-related skill training includes the following:

The following training is performed by the City of Fargo

- Ongoing vehicle maintenance technician skill training
- Ongoing skill training for vehicle maintenance supervisors
- Accident investigation training for vehicle maintenance supervisors
- Ongoing hazardous material training for vehicle maintenance technicians and supervisors
- Training provided by vendors.

1.6 INFECTIOUS DISEASE MITIGATION

Minimizing the spread of an infectious disease is a priority of the Safety Plan. To minimize the spread of infectious diseases, we will rely on physical barriers, air and surface purification systems, hand sanitizing stations and routine cleanings. All vehicles operated in revenue service will be equipped with an air and surface purification system and have a minimum of one hand sanitation station on board. Vehicles operated on the fixed-route system will be equipped with physical operator barriers that create a separation between the operators and the riding public. Deep cleanings will be performed on all revenue vehicles on a routine basis. We will follow any Federal, State or local guidance on mitigating an infectious disease.

SAFETY RISK MANAGEMENT

2.1 HAZARD IDENTIFICATION

Establishing effective hazard identification programs is fundamental to safety management. Hazard identification can be reactive or proactive in nature. Occurrence reporting, incident investigation and trend monitoring are essentially reactive. Other hazard identification methods actively seek feedback by observing and analyzing day-to-day operations. Common hazard identification activities include:

- Safety assessments
- Trend monitoring
- Hazard and incident reporting
- Safety surveys
- Safety audits
- Evaluation of customer suggestions and complaints

The number of near-miss incidents, known as precursors, is significantly greater than the number of accidents for comparable types of events. The practice of reporting and learning from accident precursors is a valuable complement to other hazard identification practices. To be successful, hazard identification must take place within a non-punitive and just safety culture. We will employ systematic safety improvements by discovering and learning of potential weaknesses in the system's safety. We will utilize the FTA's Resource Library to help identify potential sources of hazard information.

The Chief Safety Officer(s) or their designee is responsible for the risk assessment. The Chief Safety Officers may conduct further analyses of hazards and consequences to collect information and identify additional consequences and to inform which hazards should be prioritized for safety risk assessment.

Safety risks are recorded and tracked in SharePoint. This will allow for any recorded safety risks to be searched and reports to be generated when necessary.

2.1 NON-PUNITIVE REPORTING POLICY

We are committed to the safest transit operating standards possible. To achieve this, it is imperative that we have uninhibited reporting of all incidents and occurrences which may compromise the safe conduct of our operations. To this end, every employee is responsible for the communication of any information that may affect the integrity of transit safety. Such communication must be completely free of any form of reprisal.

We will not take disciplinary action against any employee who discloses an incident or occurrence involving transit safety. This policy shall not apply to information we receive from a source other than the employee, or which involves an illegal act, or deliberate or willful disregard of safety regulations or procedures.

The primary responsibility for transit safety rests with the Transit Operator and Safety Officers, however transit safety is everyone's concern.

Our method of collection, recording and disseminating information from transit safety reports, has been developed to protect the identity of any employee who provides transit safety information. We urge all staff to practice the SMS transit safety procedures outlined in the PTASP to help us become a leader in providing transit riders and employees with the highest level of transit safety.

2.2 RISK ASSESSMENT

Once hazards have been identified, we will conduct an assessment to determine their potential consequences. Factors to be considered are the likelihood of the occurrence, the severity of the consequences should there be an occurrence and the level of exposure to the hazard. We will assess risks subjectively by experiences personnel using a Risk Assessment Matrix (RAM). We will use the RAM

to measure the level of safety risk in terms of severity and likelihood. This will allow us to combine the assessment of severity and likelihood to determine the overall risk rating of the potential consequence of the hazard.

Results of the risk assessment process will help determine whether the risk is being appropriately managed or controlled. If the risks are acceptable, the hazard will simply need monitoring. If the risks are unacceptable, steps will be taken to lower the risk to an acceptable or tolerable level, or to remove or avoid the hazard.

2.3 RISK MITIGATION

The assessment process may indicate that certain hazards have an acceptable level of risk, while others require mitigation to an acceptable or tolerable level. The level of risk can be lowered by reducing the severity of the potential consequences, by reducing the likelihood of occurrence and/or by reducing the exposure to that risk. In general, we will take the following safety actions to mitigate risk. These actions can be categorized into three broad categories, including:

- **Physical Defense**
 - These include objects and technologies that are engineered to discourage, or warn against, or prevent inappropriate action or mitigate the consequences of events. (e.g. traffic control devices, fences, safety restraining systems)
- **Administrative Defenses**
 - These include procedures and practices that mitigate the likelihood of an accident or incident. (e.g. safety regulations, standard operating procedures, supervision inspection, training)
- **Behavioral Defenses**
 - These include behavioral interventions through education and public awareness campaigns aimed at reducing risky and reckless behavior of motorists, passengers and pedestrians; factors outside the control of our agency.

2.4 PRIORITIZE SAFETY RISKS

Once hazards have been identified and risk levels assessed, we will prioritize safety risks. A Prioritized Safety Risk Log will be used to organize the system safety risks. The Prioritized Safety Risk Log will identify the priority level for safety risks, a description of the risk, planned mitigation strategies to address the risk, the outcome of the planned mitigation strategies, responsible staff, timeline of the planned mitigation strategies and the status of the prioritized safety risk. We will update the Prioritized Safety Risk Log to ensure continual progress towards risk reduction.

2.5 SAFETY ASSURANCE

Safety Assurance provides the necessary feedback to ensure that the SMS is functioning, and we are meeting or exceeding its safety objectives. Safety assurance requires a clear understanding of how safety performance will be evaluated and what metrics will be used to assess system safety and determine if the safety management system is working properly. Having decided on the metrics by which success will be measured; safety management requires embedding these metrics in the organizational culture and encouraging their use for ongoing performance improvement.

2.6 CONFLICT RESOLUTION

Initial Resolution – Safety Committee

When a safety concern results in conflicting opinions or proposed actions, the issue must first be brought to the Safety Committee for resolution. The Safety Committee will:

- Review the nature of the concern and any associated safety data;

- Facilitate discussion among relevant parties to understand perspectives and potential impacts;
- Strive to reach a consensus on corrective actions or risk mitigations;
- Document the issue, proposed solutions, and final outcome of discussions.

If the Safety Committee is unable to reach a consensus or if the issue remains unresolved, it will be escalated.

Final Resolution – MATBUS Coordination Committee

If a safety concern cannot be resolved through the Safety Committee process, it will be referred to the MATBUS Coordination Committee for final resolution. The Committee will:

- Review all documentation and input from the Safety Committee;
- Consider system-wide safety policies, operational standards, and agency agreements;
- Make a final determination on the appropriate course of action;
- Communicate the final decision to all involved parties and ensure implementation;
- Retain documentation of the resolution as part of the safety management records.

The decision of the MATBUS Coordination Committee will be considered final in the resolution of safety-related conflicts.

2.7 DRIVER ASSAULT MANAGEMENT AND MITIGATION

This section outlines strategies to prevent, mitigate, and respond to incidents of driver/operator assault within the transit system. The objective is to enhance operator safety, reduce workplace violence, and maintain service continuity.

Definitions

- Driver/Operator Assault: Any act of physical violence, threats of violence, harassment, or intimidation directed at a transit operator while on duty.
- Mitigation: Measures taken to reduce the likelihood or impact of an assault.
- Management: Procedures for reporting, responding to, and investigating assaults, as well as supporting affected staff.

Risk Assessment

The Safety Risk Management (SRM) process will include:

- Identification of routes, times, or scenarios with elevated assault risk.
- Evaluation of past incident reports and operator feedback.
- Collaboration with local law enforcement for crime data analysis.

Mitigation Strategies

The agency will implement and periodically evaluate the following measures:

- Operator Barriers/Enclosures: Installation of protective shields in vehicles.
- Video Surveillance: Ensure active and functioning onboard camera systems.

- Training: Regular de-escalation, conflict resolution, and personal safety training for all operators.
- Public Awareness Campaigns: Promote zero-tolerance messaging regarding assault on operators.
- Design Modifications: Adjusting farebox placements, lighting, or driver seating for increased security.

Reporting and Response

- Operators must report any incidents immediately through the agency's incident reporting protocol.
- Supervisors will respond to incidents and coordinate with law enforcement if needed.
- Assaults will be documented, investigated, and analyzed for trends.

Post-Incident Management

- Provide support services, including medical care and counseling, to affected employees.
- Allow for time off and alternative duties if necessary.
- Conduct a debriefing with the operator and review possible safety improvements.

SAFETY PERFORMANCE MONITORING AND MEASUREMENT

3.1 MONITORING THE SYSTEM FOR COMPLIANCE WITH PROCEDURES FOR OPERATIONS AND MAINTENANCE

We have many processes in place to monitor our entire transit system for compliance with operations and maintenance procedures including:

- Safety audits,
- Informal inspections,
- Regular review of onboard camera footage to assess drivers and specific incidents,
- Investigation of safety occurrences,
- Safety review prior to the launch or modification of any facet of service,
- Daily data gathering and monitoring of data related to the delivery of service, and
- Regular vehicle inspections and preventative maintenance.

Results from the above processes are compared against recent performance trends periodically by the Chief Safety Officers to determine where action needs to be taken. The Chief Safety Officers enter any identified non-compliant or ineffective activities, including mitigations, into the tracking system in SharePoint for reevaluation by the Safety Committee.

3.2 MONITORING OPERATIONS TO IDENTIFY ANY SAFETY RISK MITIGATIONS THAT MAY BE INEFFECTIVE, INAPPROPRIATE, OR WERE NOT IMPLEMENTED AS INTENDED

We monitor safety risk mitigations to determine if they have been implemented and are effective, appropriate, and working as intended. The Chief Safety Officers maintain a list of safety risk mitigations. The mechanism for monitoring safety risk mitigations varies depending on the mitigation

The Chief Safety Officers establish one or more mechanisms for monitoring safety risk mitigations as part of the mitigation implementation process and assigns monitoring activities to the appropriate director, manager, or supervisor. These monitoring mechanisms may include tracking a specific metric on daily, weekly, or monthly logs or reports; conducting job performance observations; or other activities. The Chief Safety Officer will endeavor to make use of existing processes and activities before assigning new information collection activities.

The Chief Safety Officers and Safety Committee review the performance of individual safety risk mitigations during periodic Safety Committee meetings, based on the reporting schedule determined for each mitigation, and determine if a specific safety risk mitigation is not implemented or performing as intended. If the mitigation is not implemented or performing as intended, the Safety Committee will propose a course of action to modify the mitigation or take other action to manage the safety risk. The Chief Safety Officers will approve or modify this proposed course of action and oversee its execution.

The Chief Safety Officers and Safety Committee also monitor operations on a large scale to identify mitigations that may be ineffective, inappropriate, or not implemented as intended by:

- Reviewing results from accident, incident, and occurrence investigations;
- Monitoring employee safety reporting;
- Reviewing results of internal safety audits and inspections; and
- Analyzing operational and safety data to identify emerging safety concerns. The Chief Safety Officers work with the Safety Committee and Accountable Executive to carry out and document all monitoring activities.

3.3 INVESTIGATIONS OF SAFETY EVENTS TO IDENTIFY CAUSAL FACTORS

We maintain documented procedures for conducting safety investigations of events (accidents, incidents, and occurrences, as defined by FTA) to find causal and contributing factors and review the existing mitigations in place at the time of the event. These procedures also reflect all traffic safety reporting and investigation requirements established by the state of North Dakota and Minnesota Department of Motor Vehicles.

The Chief Safety Officers maintain all documentation of investigation policies, processes, forms, checklists, activities, and results. An investigation report is prepared and sent to the Safety Committee for integration into their analysis of the event.

- The accident was preventable or non-preventable;
- Personnel require discipline or retraining;
- The causal factor(s) indicate(s) that a safety hazard contributed to or was present during the event; and
- The accident appears to involve underlying organizational causal factors beyond just individual employee behavior.

3.4 MONITORING INFORMATION REPORTED THROUGH THE INTERNAL SAFETY REPORTING PROGRAM

The Chief Safety Officers and Safety Committee routinely review safety data captured in employee safety reports, safety meeting minutes, customer complaints, and other safety communication channels. When necessary, the Chief Safety Officers and Safety Committee ensure that the concerns are investigated or analyzed through the Safety Risk Mitigation (SRM) process.

The Chief Safety Officers and Safety Committee also review internal and external reviews, including audits and assessments, with findings concerning safety performance, compliance with operations and maintenance procedures, or the effectiveness of safety risk mitigations.

3.5 SAFETY COMMUNICATION

The Chief Safety Officers coordinate the safety communication activities for the SMS. Activities focus on the three categories of communication activity established in 49 CFR Part 673 (Part 673):

- Communicating safety and safety performance information throughout the agency: Communicates information on safety and safety performance monthly during all regular Team Meetings and contractor Driver Safety Meetings. A permanent agenda item in all monthly Driver Safety Meetings dedicated to safety. Information typically conveyed during these meetings includes safety performance statistics, lessons learned from recent occurrences, upcoming events that may impact service or safety performance, and updates regarding SMS implementation. Information is requested from drivers during these meetings, which is recorded in meeting minutes. Finally, the Safety Officer posts safety bulletins and flyers on the bulletin boards located in all bus operator and maintenance technician break rooms, advertising safety messages and promoting awareness of safety issues.
- Communicating information on hazards and safety risks relevant to employees' roles and responsibilities throughout the agency: As part of new-hire training, safety policies and procedures are distributed to all employees. Training on these policies and procedures and discusses them during safety talks between supervisors and bus operators and vehicle technicians. For newly emerging issues or safety events at the agency, the Chief Safety Officers issue bulletins or messages to employees that are reinforced by supervisors in one-on-one or group discussions with employees.
- Informing employees of safety actions taken in response to reports submitted through the ESRP: Provides targeted communications to inform employees of safety actions taken in response to reports submitted through the ESRP, including handouts and flyers, safety talks, updates to bulletin boards, and one-on-one discussions between employees and supervisors, including contract operator employees and supervisors.

DEFINING SAFETY GOALS AND OBJECTIVES/OUTCOMES

Setting safety goals and objectives is part of strategic planning and establishing safety policy. Clearly defining safety goals is the first part in creating a safety performance measurement system. Safety goals are general descriptions of a desirable long-term impact. Whereas safety objectives or outcomes are more specific statements that define measurable results.

The safety objectives and outcomes will be measured by defining specific performance metrics, including baseline and targets that we will determine as reasonable.

4.1 DEFINING SAFETY PERFORMANCE MEASURES

We will utilize these basic principles of performance measurement:

- Stakeholder involvement and acceptance
- Focus on agency goals and activities
- Clarity and precision
- Credibility
- Forward-looking measures
- Integration into agency decision-making
- Timely reporting
- Realism of goals and targets

4.2 METRICS

Defining safety performance measures includes the use of safety related metrics. There are some general safety related metrics that can be used to measure transit safety performance. The following is a list of performance target areas and metrics that we will use.

- Major Events
- Major Event Rate
- Collision Rate
- Pedestrian Collision Rate
- Vehicular Collision Rate
- Fatalities
- Fatality Rate
- Transit Worker Fatality Rate
- Injuries
- Injury Rate
- Transit Worker Injury Rate
- Assaults on Transit Workers
- Assaults on Transit Workers Rate
- System Reliability

4.3 TARGETS

Measuring safety performance metrics includes targets or goal we strive to accomplish. The following lists are the targets we will set for our agency. The Cities of Fargo, ND and Moorhead, MN will officially transmit its targets to the States of North Dakota and Minnesota by July 31 of each year. The following targets are based on a five year rolling average of NTD reportable safety events.

Fixed Route

Major Events	Major Event Rate	Collision Rate	Pedestrian Collision Rate	Vehicular Collision Rate	Fatalities	Fatalities Rate
4	.31	.31	.05	.27	0	0

Transit Worker Fatality Rate	Injuries	Injury Rate	Transit Worker Injury Rate	Assault	Assault Rate
0	0	0	0	.2	.01

Demand Response

Major Events	Major Event Rate	Collision Rate	Pedestrian Collision Rate	Vehicular Collision Rate	Fatalities	Fatality Rate
.2	.06	.06	0	.06	0	0

Transit Worker Fatality Rate	Injuries	Injury Rate	Transit Worker Injury Rate	Assault	Assault Rate
0	0	0	0	0	0

Mean distance between major mechanical failures (Fixed Route)	Mean distance between major mechanical failures (On Demand)	Percentage of PM completed within 10% of scheduled mileage
9000	12000	90

Safety Performance Target Coordination

The Accountable Executive shares our PTASP, including safety performance targets, with the ND DOT and MN DOT in our service area each year after its formal adoption by the City of Fargo Commission and the City of Moorhead City Council. Personnel are available to coordinate with ND DOT and MN DOT and the MPO in the selection of ND DOT and MN DOT and MPO safety performance targets upon request.

Targets Transmitted to the State	ND DOT	Date Targets Transmitted
Targets Transmitted to the State	MN DOT	Date Targets Transmitted

4.4 INTEGRATING RESULTS INTO AGENCY DECISION-MAKING PROCESS

We are committed to using the data collected and information learned to inform decision making and instill positive change. The main objective is the continuous improvement of transit system safety. When performance goals are not met, we will identify why such goals were not met and what actions can be taken to minimize the gap in achieving defined goals. However, when goals are easily achieved, action will be taken to exceed expectations and re-establish a reasonable baseline.

Uses of Performance Results include:

- Focus attention on performance gaps and trigger in-depth investigations of what performance problems exists
- Help make informed resource allocation decisions
- Identify needs for staff training or technical assistance
- Help motivate employees to continue making program improvements
- Support strategic planning efforts by providing baseline information for tracking purposes
- Identify best practices through benchmarking
- Respond to elected officials and the public's demand for accountability

4.5 SUSTAINING A SAFETY MANAGEMENT SYSTEM

In order to sustain a safety management system, we will ensure that particular processes are employed to instill an organizational foundation. Examples of actions taken to sustain SMS include:

- **Create measurement-friendly culture**
 - All staff, including management, should be actively engaged in creating measurement-friendly culture by promoting performance measurement as a means of continuous improvement. Management will also lead by example and utilize performance metrics in decision making processes
- **Build organization capacity**
 - Investment in developing skilled human resources capacity is essential to sustaining an SMS. Both technical and managerial skills will be needed for data collection and analysis, and goal setting. We are committed to providing the financial resources required for organizational capacity and maintaining an SMS on a continuous basis.
- **Reliability and transparency of performance results**
 - The SMS will be able to produce and report results, both good and bad. Performance information should be transparent and made available to all stakeholders. Messengers should be protected to preserve the integrity of the measurement system. The focus should be on opportunities for improvement rather than allocating blame.
- **Demonstrate continuous commitment to measurement**
 - Visible commitment to using metrics is a long-term initiative. We will demonstrate a commitment to performance measurement by establishing a formal process of reporting performance results, such as including Transit Safety and Performance measurement as a standing agenda item at Transit Board, City Commission and City Council meetings.

SUPPORTING DOCUMENTATION

We will maintain documentation related to the implementation of its SMS; the programs, policies, and procedures used to carry out this PTASP; and the results from its SMS processes and activities for three years after creation. Documentation will be maintained in SharePoint and will be available to the FTA or other Federal or oversight entity upon request.

5.1 DEFINITIONS OF TERMS USED IN THE SAFETY PLAN

We incorporate all of FTA's definitions that are in 49 CFR § 673.5 of the Public Transportation Agency Safety Plan regulation.

- Accident means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; an evacuation for life safety reasons.

- **Accountable Executive** means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan, in accordance with 49 U.S.C. 5326.
- **Equivalent Authority** means an entity that carries out duties similar to that of a Board of Directors for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.
- **Event** means any Accident, Incident, or Occurrence.
- **Hazard** means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.
- **Incident** means an event that involves any of the following: a personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.
- **Investigation** means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.
- **National Public Transportation Safety Plan** means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.
- **Occurrence** means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.
- **Operator of a public transportation system** means a provider of public transportation as defined under 49 U.S.C. 5302.
- **Performance measure** means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.
- **Performance target** means a quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the FTA.
- **Public Transportation Agency Safety Plan (PTASP or Agency Safety Plan)** means the documented comprehensive Agency Safety Plan for a transit agency that is required by 49 U.S.C. 5329 and Part 673.
- **Risk** means the composite of predicted severity and likelihood of the potential effect of a hazard.
- **Risk mitigation** means a method or methods to eliminate or reduce the effects of hazards.

- Safety Assurance means processes within a transit agency's Safety Management System that function to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.
- Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.
- Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.
- Safety performance target means a performance target related to safety management activities.
- Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.
- Safety risk Assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risks.
- Safety Risk Management (SRM) means a process within a transit agency's Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.
- Serious injury means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date when the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.
- Transit agency means an operator of a public transportation system.
- Transit Asset Management Plan (TAMP) means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR Part 625

5.2 COMMONLY USED ACRONYMS

Acronym	Word or Phrase
ADA	American's with Disabilities Act of 1990

ASP	Agency Safety Plan (also referred to as a PTASP in part 673)
CFR	Code of Federal Regulations
ESRP	Employee Safety Reporting Program
FTA	Federal Transit Administration
MATBUS	Fargo-Moorhead Metropolitan Area Transit Public Bus System
MNDOT	Minnesota Department of Transportation
MPO	Metropolitan Planning Organization
NDDOT	North Dakota Department of Transportation
Part 673	49 CFR Part 673 (Public Transportation Agency Safety Plan)
PTASP	Public Transportation Agency Safety Plan
RAM	Risk Assessment Matrix
SMS	Safety Management System
SRM	Safety Risk Management
TAMP	Transit Asset Management Plan
U.S.C.	United States Code
VRM	Vehicle Revenue Miles

5.3 EXHIBIT A – ACTIVITY LOG

City of Fargo and City of Moorhead Transit Safety Plan

Date	Activity (Review/Update/Addendum/ Adoption/Distribution)	Person Making Changes	Remarks
11/18/2020	MAT Coordinating Board – Review and Recommend Adoption of Safety Plan to Fargo City Commission and Moorhead City Council		
11/30/2020	Fargo City Commission - Adoption of Plan		
12/10/2020	Metropolitan Council of Governments (MPO) Transportation Technical Committee - Review and Recommend Approval of Safety Plan to Policy Board		
12/14/2020	Moorhead City Council - Adoption of Plan		Resolution #2020-1214-P
12/17/2020	Metropolitan Council of Government (MPO) Policy Board - Approval of Plan		
3/01/2021	Revision	Jordan Smith	Removed Assistant Transit Director, Contractor GM and Road Supervisor from Safety Committee. Added Valley Senior Services Transportation Manager. Add Valley Senior Services as Contracted Agencies Covered Under this Plan
2/8/22	Revision	Jordan Smith	Added City of Fargo Assistant Transit Director to safety committee.

6/8/2022	Revision	Jordan Smith	<p>Add Infectious Disease Mitigation</p> <p>Add Safety Committee Approval Date</p> <p>Remove Safety Culture targets as they are not a required element of the plan</p> <p>Removed work days lost target as it is not a required element of the plan</p> <p>Updated Safety Targets</p> <p>Move audit log to be an Exhibit to the plan</p>
7/13/2022	MAT Coordinating Board – Review and Recommend Adoption of 2022 Updated Safety Plan to Fargo City Commission and Moorhead City Council		
7/25/2022	Fargo City Commission – Adoption of 2022 Updated Safety Plan		
7/25/2022	Moorhead City Council – Adoption of 2022 Updated Safety Plan		Resolution 2022-0725-F
8/30/2023	Revision	Jordan Smith	Update Targets. Annual Review and Safety Committee Approval.
10/4/2023	MAT Coordinating Board – Review of 2023 Updated Safety Plan		
2/12/2024	Moorhead City Council – Adoption of 2023 Updated Safety Plan		Resolution 2024-2012-P

2/20/2024	Fargo City Commission – Adoption of 2023 Updated Safety Plan		
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Risk Assessment Matrix

Identified Risk:	
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Impact of Risk						Probability of Risk				
Severity	Cost (Thousands)	People	Asset	Environment	Quality	< 1% Very Low (1)	1% - 10% Low (2)	10% - 50% Medium (3)	50% - 90% High (4)	> 90% Very High (5)
Very High 5	>50	Multiple Fatalities	Major Damage, multiple units	Massive Effect	Complete discontinuation of service	5	10	15	20	25
High 4	25-50	Permanent total disability or one fatality	Major Damage, unit level	Major Effect	Substantial disruption of service	4	8	12	16	20
Medium 3	10-25	Serious injury, hospitalization	Moderate Damage	Moderate Effect	Slight disruption of service	3	6	9	12	15
Low 2	1-10	Slight injury, medical treatment	Minor Damage	Minor Effect	Minimal disruption of service	2	4	6	8	10
Very Low 1	<1	First aid or no injury	No/Slight Damage	No/Slight Effect	No disruption of service	1	2	3	4	5
Risk Value										

Assessed Risk Value:	
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Instructions

1. Estimate potential consequences and severity (thought of as what could happen if hazard actually occurred)
2. Estimate likelihood of such consequences occurring (using historical evidence, data and experiences)
3. Multiply the severity for each consequence by the likelihood of that consequence occurring. This is the risk value.
4. Sum the risk values for a total assessed risk. (out of 125)

Prioritized Safety Risk Log

This Prioritized Safety Risk Log is used to organize identified safety risks facing the MATBUS system. The log should be updated frequently to demonstrate continual progress towards risk reduction through mitigation strategies. A timeline is used to highlight projected completion dates.

Completed by:	Last Updated:
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Priority	Risk Description	Planned Mitigation Strategies	Outcomes of Planned Mitigation Strategies	Responsible Staff	Timeline	Status
1						
2						
3						
4						
5						
6						
7						

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TRANSIT OFFICE

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June 9th, 2025

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Board of City Commissioners
225 4th St N
Fargo, ND 58102

Dear Commissioners:

The Federal Transit Administration, ND Department of Transportation and MN Department of Transportation require the Transit Department to have a Transit Asset Management Plan (TAM) specific to Transit. The Plan is attached and specifies applicability to the Transit Department.

The requested motion is to approve the attached Transit Asset Management Plan.

Sincerely,

Jordan Smtih
Assistant Transit Director – Fleet and Facilities
City of Fargo

MATBUS Transit Asset Management Plan City of Fargo



Updated: June 2025

Purpose

Transit asset management (TAM) is a strategic and systematic process through which an organization procures, operates, maintains, rehabilitates, and replaces transit assets to manage their performance, risks, and costs over their lifecycle to provide safe, cost-effective, and reliable service to current and future customers.

MATBUS's TAM plan will be reviewed and updated annually.

Audience

The primary intended audience for this document is agencies with 100 revenue vehicles or less. They are able to choose whether or not to participate in a group plan or a separate TAM plan they have created. City of Fargo MATBUS has chosen a separate TAM Plan.

The Metropolitan Planning Organization's (MPO) role in the TAM process is to develop annual targets in cooperation with the NDDOT while the responsibility for follow-through of the TAM Plan lies with the public transit agency. MPOs may establish new TAM targets when they update their Transportation Improvement Plan (TIP) and Metropolitan Transportation Plan (MTP) on their four-year cycle. This process is documented in an agreement between the public transit agency, MPO, MNDOT and NDDOT in the Memo of Agreement on Performance Based Planning.

Background

The National Transit Asset Management System Final Rule (49 U.S.C. 625) requires that all agencies who receive federal financial assistance under 49 U.S.C. Chapter 53 and own, operate, or manage capital assets used in the provision of public transportation create a TAM plan. Agencies are required to fulfill this requirement through an individual or group plan. Group plans are designed to collect TAM information about groups (typically smaller subrecipients of 5311 or 5310 grant programs) that do not have a direct financial relationship with FTA.

Accountability and Oversight

The development, implementation, and continuous improvement of the Transit Asset Management (TAM) Plan is the responsibility of the Accountable Executive, who for the City of Fargo is the Transit Director.

As the Accountable Executive, the Transit Director holds the ultimate authority and responsibility for ensuring that the TAM Plan aligns with federal regulations and supports the City's strategic objectives for transit asset performance, safety, and sustainability. This includes:

- Overseeing the development and annual updates of the TAM Plan;
- Ensuring that appropriate resources are allocated to implement asset management strategies;
- Approving the annual TAM performance targets in accordance with FTA guidelines;
- Approving investment prioritization decisions informed by the TAM Plan;
- Promoting a culture of accountability and data-driven decision-making;
- Coordinating with internal departments and external partners to maintain compliance with FTA requirements.

The Transit Director also ensures that key staff are engaged in the TAM process, including operations, maintenance, and finance personnel, and that asset management practices are integrated across all relevant functions within the organization.

FTA oversight is completed through the Triennial and State Management Reviews. Fargo will certify that they are compliant with FTA rules and regulations via the certification and assurance process which occurs annually as part of the grant application process.

The records will include the accountable executive signature for an approval of TAM plan.

Definition

Asset management addresses the following two concepts:

1. Customer Level of Service – Asset management can affect levels of service by improving on-time performance and vehicle cleanliness, by reducing missed trips, by reducing downtime and late or slow service, and service shutdowns. It can also improve safety, security, and risk management. Asset management provides accountability and communicates performance and asset condition.
2. Lifecycle Management – The core of asset management is understanding and minimizing the total cost of ownership of an asset while still maximizing its performance. Transit asset management integrates activities in a transit agency to optimize resource allocations by providing quality information and well-defined business objectives to support decision making within and between classes of assets.

State of Good repair (SOGR) – Is defined as the condition at which a capital asset is able to operate at a “full level of performance”, that is, the asset can perform its designed function and does not pose unacceptable safety risk to users.

Asset Inventory

The asset inventory defines the assets used by MATBUS in the plan. The inventory will include all assets the transit agencies own, as well as third party assets used in the provision of public transportation, broken into these categories: Equipment (non-revenue vehicles), Rolling Stock (revenue vehicles), and Facilities.

MATBUS will monitor these assets through two software programs. The FASTER TAM system will not only track the categories of equipment, rolling stock and facilities but will also track any maintenance performed on the capital assets. Transit agencies are expected to update maintenance performed on their assets in the FASTER system on a regular basis. This maintenance tracking documents specific activities and maintenance projects to maintain a state of good repair.

The second tracking software program will be through the NDDOT and MNDOT BlackCat systems. This program will maintain a current list of assets along with all required NTD reporting data for asset inventories and condition assessments. Data collected includes manufacturer, year, mileage, vehicle length, seating capacity, etc. Transit agencies are required to update this data regularly but, at a minimum, annually with the grant application process.

These programs will enable the state to group assets together and report a summary of inventory and condition of inventory at a state level. In addition, they will provide the ability to report on individual transit agency fleets, equipment and facilities.

MATBUS will report on all rolling stock, equipment valued at \$50,000 or greater, and all facilities for which they have direct capital responsibility.

Condition Assessment

Facilities - MATBUS will submit TERM scale-based condition assessments annually to the NTD. MATBUS inspects all facilities every other year to assess the condition of our facilities. MATBUS will manage their facility assets through a Facility Maintenance Plan, Asset Management Plan and conduct regular facility inspections.

Rolling stock and non-revenue service vehicles (equipment) – MATBUS submits the age relative to the Useful Life Benchmark (ULB) as the performance measure annually to the NTD.

Useful Life Benchmark is not the same as Useful Life which represents FTA's minimum life for vehicle funding replacement.

The ULB is reported by fleet and is defined by type and age of vehicle. Depending on the differences in operating environments of group plan participants, agencies are allowed to customize ULBs for different fleets within the same class of vehicles or may choose to default to the NDDOT determined ULB.

MATBUS inspects all transit fleets purchased with federal funds every other year. Transit agencies must assign a condition to each of their rolling stock assets. This process is completed at a minimum, annually with the grant application process. Each transit agency is required to manage their vehicle assets through a Fleet Maintenance Plan, Asset Management Plan, and conduct a pre or post vehicle inspections with every trip provided.

Decision Support Tools

Various reports can be requested through both the FASTER and BlackCat systems. These reports can provide information on asset conditions, asset expenditure forecasts, asset maintenance history, assets over age, maintenance costs, delinquent maintenance by assets, etc. that will aid in making asset replacement decisions.

In addition to reports available through the FASTER and BlackCat systems that may be used to interpret data and condition assessment, each transit agency submits a 3 – 5 Year Operational and Capital Plan. This Plan reviews their current economic situation and forecasts their future position based on current and expected expenses and revenues while taking into account any predicted trends in their local communities. These 3-5 Year Plans allow both the agency and NDDOT to more accurately plan future capital assets replacement costs.

These tools will help inform and guide the transit agencies, NDOT and NDDOT on investment prioritization and possible funding decisions, as well as annual target setting. It is vital that transit agencies record accurate and timely data regarding their inventory and conditions in order to make well-informed and appropriate decisions.

Along with reports, 3-5 Year Plans, and ULB, transit agencies will need to take into consideration all available funding sources (Federal, State, and Local) when developing their decisions to determine which and when assets should be replaced or rehabbed, or expansion projects implemented.

Investment Prioritization

There are several factors MATBUS will consider when setting investment priorities including information gained from the asset inventories, condition assessments, safety and accessibility, weather resiliency, grant committee recommendations, and anticipated project funding.

When ranking the list of projects MATBUS may find it necessary to balance many tradeoffs when determining the optimal priorities for Fargo. Some of the considerations include tradeoffs between asset condition and costs of projects, balancing funding and needs among diverse participants, balancing of projects or funds among asset categories and classes, and the ability to impact condition of varying assets with available funding.

Annual Target Setting

While plans are completed every four years, targets are set annually. There is no penalty for not meeting the annual targets. MATBUS has uploaded public transit approved TAM targets and Useful Life Benchmarks through the NTD reporting systems.

Useful Life (UL) – is defined as the expected lifetime of property, or the acceptable period of use in service. UL is defined in terms of years or mileage. This is the threshold that needs to be met before the asset can be requested to be replaced. Once an asset has met UL and no longer has FTA interest (\$5,000), the asset becomes ownership of the public transit agency.

Useful Life Benchmark (ULB) - is defined as the expected lifecycle of a capital asset for a particular public transit agency's operating environment. Transit agencies are able to set their own ULB taking into account its local environment to include weather resiliency, local geography, frequency of service, passenger load, etc. ULB cannot be less than UL.

City of Fargo MATBUS State of Good Repair Transit Asset Management Performance Targets

The City of Fargo, ND, operating jointly with the City of Moorhead as MATBUS, has established State of Good Repair (SGR) transit performance targets for MATBUS operations as follows:

Performance Management for all Assets -- Table 1

Assets	Performance Measure	
	TAM Target; No More Than	TAM System Target to Meet
<i>Equipment: All revenue and non-revenue service vehicles & equipment assets >\$20,000</i>	10% exceed Useful Life Benchmark	90%
<i>Rolling Stock: All revenue vehicles</i>	10% exceed Useful Life Benchmark	90%
<i>Facilities: Maintenance, administrative, passenger</i>	10% exceed Useful Life Benchmark	90%

Useful Life Benchmark for transit vehicles -- Table 2

Category	Typical Characteristics				FTA Minimum Life		MATBUS Useful Life Benchmark	
	Length	Approx. GVW	Seats	Average Cost 2017	(Whichever comes first)		(Whichever comes first)	
					Years	Miles	Years	Miles
Heavy-Duty Large Bus Class 700	35 to 60 ft.	33,000 to 40,000	27 to 40	\$471,000 - 524,000	12	500,000	12	500,000
Light-Duty Mid-Sized Bus Class 400	25 to 35 ft.	10,000 to 16,000	16 to 25	\$79,000 to \$206,000	5	150,000	5	150,000
Non-Revenue Automobile		10,000 to 20,000	3 to 12	\$20,000 to \$55,000	4	100,000	10	150,000
Revenue Automobile		<10,000	3 to 12	\$20,000 to \$55,000	4	100,000	4	100,000

Useful Life Benchmark for transit facilities -- Table 3

Category	Usage	Useful Life Benchmark (Years)
Garage-Operations-Admin. Facility – Metro Transit Garage	Administrative Offices/Storage/Wash/Dispatch/Training & Maintenance	40
Transfer Facility – Ground Transportation Center	Administrative Offices/Restrooms/Passenger Seating/Dispatch	40
Shelters	Structure/Seating	20

Asset Condition Rating and Remaining Useful Life:

Per the FTA, "it is expected that all assets used in the provision of public transit will be included in the TAM Plan asset inventory. This includes (with the exception of equipment) assets that are owned by a third party or shared resources. The inventory must include all service vehicles, and any other owned equipment assets over \$50,000 in acquisition value. Agencies only need to include condition assessment for assets for which they have direct capital responsibility."

ASSET CONDITION MEASUREMENT EXAMPLE- Table 1
Asset Criteria and Scoring System – vehicles and facilities

Asset Rating Score	Asset Age	Asset Condition	Asset Performance	Level of Maintenance	Asset Condition Rating	
	Percent of Useful Life Remaining	(Quality, Required Maintenance)	(Reliability, Ambience, Safety)	Level of PM and CM *	Rating	Scoring range
5	Asset new or nearly new	Asset new or like new; no visible defects	Asset meets or exceeds all performance and reliability metrics, industry standards	Only routine PM needed.	Excellent	4.8 to 5.0
4	Asset just under new or nearly new	Asset showing minimal signs of wear; some slight defects or deterioration	Asset generally meets performance and reliability metrics, industry standards	Good working order; requires infrequent CM (more than 6 months between repairs)	Good	4.0 to 4.7
3	Asset nearing or at its midlife point	Some moderately defective or deteriorated components	Occasional performance and reliability issues; may be sub-standard in some areas	Requires frequent minor CM or infrequent > 6 mos. major CMs	Adequate	3.0 to 3.9
2	Asset nearing or at end of its useful life	Increasing number of defects; deteriorating components; growing maintenance needs	Performance and reliability problems becoming more serious; sub-standard elements	Requires frequent CM (less than 6 months between repairs)	Marginal	2.0 to 2.9
1	Asset is past useful life	Asset in need of replacement; may have critically damaged components	Frequent performance and reliability problems; does not meet industry standards	Continued use present excessive CM costs and potential service interruption	Poor	1.0 to 1.9
0	Asset non-operable	Asset non-operable	Asset non-operable	Asset non-operable	Asset non-operable	

In SGR
>2.5

SGR
2.5

Not in SGR
< 2.5

*PM- preventative maintenance and CM – corrective maintenance (repairs)

NTD Reporting

MATBUS will report inventory and condition data to NTD as part of the A-90 report.

Agencies that submit traditional financial and operating data directly to NTD should also submit TAM asset inventory and condition data directly to NTD, reports A-15 and A-30. MATBUS will complete all TAM-related NTD reporting forms independently.

Data that is reported to NTD includes basic TAM information including; Agency profile, asset inventory and facility condition assessment.

In addition to the A-90 data report of SGR performance targets and current assessment of condition and performance there's a Narrative reporting requirement. This report provides any necessary description of condition changes in the transit system and may comment on progress towards meeting the targets.

Performance Measures

The Performance measures as identified in 49 CFR 625.43 are below.

Asset Category	Performance Measure	Performance Target
Rolling Stock	Age	10% of revenue vehicles within any particular asset class that have met or exceeded their ULB
Equipment	Age	10% of non-revenue vehicles that have met or exceeded their ULB
Facilities	Condition	0% of facilities with a condition rating below 3.0 on the FTA Transit Economic Requirement Model Scale

MATBUS's as part of the TAM Plan shall maintain

- Account executive assigned (See Exhibit A)
- Current list of Inventory in BlackCat
- Condition of assets in BlackCat
- Regularly data entry of performed and scheduled preventive maintenance in the FASTER Fleet Management system or other maintenance tracking system
- Project prioritization included in Agency 3 -5 Year Plan

MPO role in TAM Plan

- Develop targets for each performance measure annually in cooperation with MNDOT, NDDOT and the public transit agency
- Coordinate with MNDOT and NDDOT and the public transit agency on the establishment of targets to ensure consistency to the maximum extent practicable

Exhibit A

Julie Bommelman, Transit Director, confirm that I am the Accountable Executive for City of Fargo Metro Area Transit (MATBUS).

I certify that my transit agency is in compliance with the TAM Rule.

My agency has met the TAM Plan requirements by

☐ Participating in a Group Plan sponsored by MnDOT or NDDOT

☒ Completing our own TAM Plan and keeping it up-to-date. I have provided an updated copy of our TAM Plan to *the State of North Dakota Department of Transportation and the State of Minnesota Department of Transportation*.

We confirm that we are implementing the TAM plan at our property.

Signed,

Accountable Executive

Date (Annually)

Exhibit B

City of Fargo Metro Area Transit

ASSET MANAGEMENT PLAN

Mission Statement

City of Fargo Metro Area Transit's mission is to effectively and efficiently provide safe, clean, and reliable vehicles for use by its customers and operators, and to maintain transit vehicles, facilities and equipment in such condition as to operate at a full level of performance.

Graduated Preventative Maintenance Program

The emphasis of City of Fargo Metro Area Transit System's maintenance program is preventive rather than reactive maintenance. A strong preventive maintenance program effectively reduces overall maintenance costs, increases reliability and performance and reduces the high cost of unpredictable repairs caused by reactive maintenance. City of Fargo Metro Area Transit uses a graduated preventative maintenance program (PM) that is based on the manufacturer's recommendations and modified based on our experience and the local conditions we deal with in urban Cass County. Solid PM practices maximize useful life, are cost efficient over the life of the vehicle, facility and equipment, and ensures that our assets remain in safe operating condition.

City of Fargo Metro Area Transit has an aggressive preventive maintenance program that schedules vehicle inspections based on a variety of categories. The PM schedule established is based upon usage and vehicle type. The schedule is progressive. Vehicles are inspected based on mileage and time. In addition, each vehicle receives an annual comprehensive inspection.

City of Fargo Metro Area Transit conducts regular facility maintenance condition assessments. These inspections include components such as roof, shell, interior, plumbing, HVAC, fire protection, electrical, equipment and site inspections.

City of Fargo Metro Area Transit's staff continually review our maintenance practices to identify potential improvements to the program. This assures optimum benefits from the scheduled inspections.

On-time vehicle inspection variance

The allowable variance with all preventive maintenance vehicle inspections is a minus 500 miles to a plus 500 miles. Any inspection completed within this parameter is considered on time. Sample inspection sheets are attached.

(Please attach all pre/post inspection sheets along with any other inspections sheets utilized by your agency. Also include facility inspection sheets. Add these to back of your plan.)

Local Conditions

Local conditions have a direct impact on the level of PM needed. City of Fargo Metro Area Transit provides service throughout Cass County urban area. The following conditions are considered when developing a PM program for a vehicle or group of vehicles:

- Service Design
 - Urban Service – Fixed route and complimentary paratransit/demand service. Due to the frequency of the stops and traffic congestion in the urban area, vehicles used for this service require a higher level of PM
 - Rural Area – Infrequent stops in a long distance corridor
- Topography and Weather – Salt and gravel from the winter roads may cause premature wear on certain parts of the vehicles. Those parts are inspected more frequently than the manufacturer recommends. Buildup of snow and ice may cause additional cleaning of vehicles.
- Local Policies:
 - The City of Fargo Metro Area Transit requires that all vehicles be equipped with seating for 14 including the driver
 - Seat belt and securement extenders must be kept in vehicle at all times.
 - Fire suppression systems are required in every vehicle
 - Pre and post trips are required every time a vehicle is used
 - All vehicles must be stored in the Metro Transit Garage
 - Vehicles are swapped out any time there is a biohazard on board the vehicle
 - Cleanliness – All vehicles must be cleaned and vacuumed daily
 - Lift and ramp usage – cycle lifts regularly during pre-trip inspections
 - A complete list of requirements is located in the attached Vehicle and Facility Maintenance Plan

Authorize, Direct, and Control Maintenance Activities and Costs

The Fleet and Facilities Manager is responsible for developing the PM schedule for each vehicle fleet, and facility and ensuring that all PM activities are completed in a timely manner and consistent with the manufacturer's recommendations.

Throughout the PM and repair process the tasks performed are reviewed by the Fleet and Facilities Manager and staff.

This constant review is designed to ensure that review and decisions are made at the proper level of management.

Regularly the PM tracking report is printed and reviewed to identify which vehicles or facility component are due or coming due for Preventative/Preservation Maintenance. The identified vehicles are removed from service and scheduled for work.

Work orders are created and appointments are made to complete the identified work.

City of Fargo Metro Area Transit maintains PM inspection process data for specific vehicle component systems such as wheelchair lifts, video security systems, HVAC systems, wheel chair securements and fare collection systems.

These component systems each have their own PM schedules, forms, and tracking reports. A shop supervisor is charged with the task to review the tracking reports and generates the work orders to perform the tasks.

Other needed repairs may be identified during the PM inspection. These are referred to as "PM write ups". In addition, drivers may report vehicle problems.

The Supervisor reviews the PM write-ups and driver reports. The repairs are then scheduled into the repair shop and completed before the vehicle returns to service. A separate work order may be issued for this type of repair.

Identify, Track, and Record Maintenance Activities and Costs

City of Fargo Metro Area Transit uses a system of manual and computerized forms and reports to schedule and perform preventative/preservation maintenance (PM) and repairs to its fleet of vehicles or facilities. These documents include:

- Work orders
- Service orders
- Purchase orders
- Parts requests
- PM Tracking report
- PM Inspection forms

After a vehicle or facility is identified as needing PM, a work order is prepared that describes the work to be done, the account codes to be charged, and instructions as to which level of PM is to be performed. All the PM labor and costs are captured under the PM code on the work order. When there is a PM write-up, a new work order or multiple work orders are then generated listing those repairs. All repair labor and parts are charged to the work orders under the specific coding applicable to the individual repairs.

The required parts and supplies are charged to the work order updated to the PM Tracking Report to show when the PM was completed.

If a repair is determined to be covered under the warranty, the appropriate coding will be identified on the work order. A warranty claim is submitted to the applicable manufacturer/vendor. (See warranty Recovery Program section of this plan for more details).

Process to oversee work done by contractors

City of Fargo Metro Area Transit intermittently contracts with a private company for repair and/or maintenance of vehicles as needed (post-accident, engine replacement) owned by City of Fargo Metro Area Transit. The contractor is required to maintain the vehicles in accordance with our plan. To ensure compliance, City of Fargo Metro Area Transit requires the contractor to submit all work orders for

preventative maintenance and repairs. In addition, Maintenance Department staff oversees and conducts a physical inspection of all Transit agency vehicles maintained by the private company.

Warranty Recovery System

City of Fargo Metro Area Transit operates a warranty recovery program to ensure that cost of parts and repairs on warranty-covered items are recovered.

- **Failed Components**
Authorization for warranty return and labor claims, if applicable, are obtained from the manufacturer or vendor. Information is supplied to the vendor on the circumstances of the failure, if known. The item is then returned to the vendor warranty department for repair or replacement. City of Fargo Metro Area Transit retains copy of the warranty claim form for tracking purposes.
- **Receipt from manufacturer/vendor**
When a unit is received at City of Fargo Metro Area Transit, it is entered into the inventory system via an Inventory Adjustment form that is coded as a warranty replacement. A Journal Voucher form is completed and forwarded to the Accounting Department to make the necessary accounting adjustments. Labor credit if received is applied to the appropriate cost center via a credit entry applied to the work order used when the defective part was removed.

Cost Analysis Tool

City of Fargo Metro Area Transit uses a life cycle cost analysis tool as part of its decision-making process when establishing and making changes to preventative maintenance intervals. Factors included in the decision-making include useful life benchmark; age (for vehicles both mileage and age of vehicle), maintenance cost, and available funding. This enables our agency to analyze the cost effects of alternative practices over the life of the asset.

Additional References

This asset management policy is additional to the most recently approved data and policy requirements of the State approved City of Fargo Metro Area Transit's Fleet and Facility Maintenance Policies.



FEDERAL TRANSIT ADMINISTRATION

National Transit Database Narrative Report

Under the FAST-Act and MAP-21, “transit providers are required to submit an annual narrative report to the NTD that provides a description of any change in the condition of its transit system from the previous year and describes the progress made during the year to meet the targets previously set for that year.”

Agency Information

- Agency Name: City of Fargo
- NTD ID: 80003
- Contact Information:
 - Name of Point of Contact: Jordan Smith
 - Job Title of Point of Contact: Assistant Transit Director – Fleet and Facilities
 - Email Address: jmsmith@matbus.com
 - Phone Number: 701-476-5940
 - Address: 650 23rd St N, Fargo, ND 58102
- Reporting Year: 2024
- Date This Narrative Was Prepared: 04/29/2025

Targets

Please provide your agency’s targets and vehicle ULBs for the asset classes below that are relevant to your system. You may delete the rows that are not relevant. ULBs can be copied from vehicle asset inventory files and targets can be copied from the performance measure and target form (A-90) in the NTD reporting package.

Rolling Stock-Revenue Service	2024 Target	Default ULB	System ULB	Performance	2025 Target
Bus	0%	14	14	36.84 %	22.5%
Cutaway	0%	10	5	28.57%	16.66
Van	0%	8	5	0%	0%
Equipment-Service vehicles					
Automobiles	0%	10	10	0%	0%
Trucks and Other Rubber Tire Vehicles	0%	14	10	16.67%	0%



FEDERAL TRANSIT ADMINISTRATION

National Transit Database Narrative Report

Under the FAST Act and MAP-21, "transit providers are required to submit an annual narrative report to the NTD that provides a description of any change in the condition of its transit system from the previous year and describes the progress made during the year to meet the targets previously set for that year."

Agency Information

- Agency Name: City of Moorhead
- NTD ID: 50026
- Contact Information:
 - Name of Point of Contact: Jordan Smith
 - Job Title of Point of Contact: Assistant Transit Director – Fleet and Facilities
 - Email Address: jmsmith@matbus.com
 - Phone Number: 701-476-5940
 - Address: 650 23rd St N, Fargo, ND 58102
- Reporting Year: 2024
- Date This Narrative Was Prepared: 04/29/2025

Targets

Please provide your agency's targets and vehicle ULBs for the asset classes below that are relevant to your system. You may delete the rows that are not relevant. ULBs can be copied from vehicle asset inventory files and targets can be copied from the performance measure and target form (A-90) in the NTD reporting package.

Rolling Stock- Revenue Service	2024 Target	Default ULB	System ULB	Performance	2025 Target
Bus	0%	14	14	0%	0%
Minivan	0%	8	4	0%	0%
Equipment- Service vehicles					
Trucks and Other Rubber Tire Vehicles	0%	14	10	60%	0%



Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

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June 5, 2025

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

Subject: Advertisement for Bid – Project WA2403 – Lead Service Line Replacement – Phases 1 through 4

Dear Commissioners:

Water Utility staff is seeking approval for advertising bidding of Project WA2403, Lead Service Line Replacement (LSLR) for Phases 1 through 4. Since there are over 2,000 Lead Services Lines in Fargo, the overall project will broke into Phases (manageable chunks for contractors to bid on and complete construction in a calendar year). There will be several Phases bid each year. It is anticipated that approximately four phases will be bid each calendar year. It is intended that the LSLR program will be completed in 5 to 7 years. At this time, there are no specific project codes assigned to the individual phases.

Currently, the LSLR project bidding is on hold while we are waiting for a review process that will complete the required Facility Plan. We cannot bid or begin actual LSLR until the review is completed by an external agency. Approval for bidding of Phases 1 through 4 allow advertising as soon as the Facility Plan is completed and approved by the Drinking Water State Revolving Fund program (DWSRF).

Funding for Project WA2403 is included in the 2025 budget. The project will be funded with 66.5 percent loan forgiveness (grant) and a DWSRF loan with 0.5% interest for the local share.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Approve the Advertisement for Bid of Phases 1 through Phase 4 in Project WA2403, Lead Service Line Replacement.



Water Treatment Plant

435 14th Avenue South

Fargo, ND 58103

Office: 701.241.1469 | Fax: 701.241.8110

www.FargoND.gov

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June 5, 2025

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

Subject: Employer Acceptance Agreement with North Dakota Rural Water Association (Apprenticeship)

Dear Commissioners:

Water Utility staff is seeking approval of the attached Employer Acceptance Agreement with the North Dakota Rural Water Association. This will allow the Water Utility to utilize an Apprenticeship training program for Water Treatment Plant (WTP) personnel.

We would initially use the apprenticeship program for our existing WTP Operators that are already employed by the City of Fargo. We have several newer operators that have not had any formal training in water system operation. We are not able to attract experienced operators to apply for our operator position openings. Through the Apprenticeship Program, our employed WTP Operators would do self-paced course work relevant to water system operation. It would be an on-the-job training opportunity. The City of Fargo (water utility) would use training-related budget lines to pay for the courses for WTP Operators.

There is another scenario when we do have an operator opening in which the North Dakota Rural Water Association may have a pool of potential applicants for our positions. The applicants would need to apply with Fargo and be hired through our normal HR process if they are the best candidate.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

SUGGESTED MOTION:

Authorize the Water Utility to adopt an Employer Acceptance Agreement with North Dakota Rural Water Association to utilize an Apprentice Program for training Water Treatment Plant personnel.



Appendix E

EMPLOYER ACCEPTANCE AGREEMENT

ADOPTED BY

NORTH DAKOTA RURAL WATER ASSOCIATION

**DEVELOPED IN COOPERATION WITH THE
U. S. DEPARTMENT OF LABOR
OFFICE OF APPRENTICESHIP**

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PARTICIPATING EMPLOYER ACCEPTANCE AGREEMENT

SPONSORING EMPLOYER								
1. Employer Name								
2. Street Address								
3. City				4. State		5. Zip Code		
6. Name of CEO/Pres./Owner			7. Title					
8. Apprenticeship Contact Name			9. Title		10. Phone #		11. Email	
12. Employer ID# (EIN)			13. Total # Employees		# of Skilled Operators: # of Female Operators: # of Minority Operators:			
APPRENTICE WAGE SCHEDULE								
	Period 1	Period 2	Period 3	Period 4	Period 5	Period 6	Period 7	Period 8
Term Hrs	1000	1000	1000	1000	NA	NA	NA	NA
Percentage	55%	65%	80%	95%	NA	NA	NA	NA
Completion Hourly Wage Rate Apprentice Wage will be based on: TBD								

I have been furnished a copy of the **North Dakota Rural Water Association** U.S. Department of Labor approved Registered Apprenticeship Standards, and have read and understand them and hereby request certification to train apprentices in the occupation classification identified under the provisions of these Standards, with all attendant rights and benefits thereof, until canceled voluntarily or revoked for good cause by the **North Dakota Rural Water Association** or U.S. Department of Labor, Office of Apprenticeship.

The first year of program registration shall be on a provisional basis after which program approval may be made permanent, continued as provisional, or rescinded following a program performance review by the Registration Agency.

The recruitment, selection, employment, and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, genetic information, or because they are an individual with a disability or a person 40 years of age or older. The **North Dakota Rural Water Association** and Sponsoring Employers will take affirmative action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required under 29 CFR § 30.



I hereby agree to carry out the intent and purpose of the **North Dakota Rural Water Association** Registered Apprenticeship Standards and to abide by the rules and decisions of the Apprenticeship and Training Committee established under the Standards.

Title _____ Signature

Date _____ Printed Name

Approved by the **North Dakota Rural Water Association** Apprenticeship and Training Advisory Committee:

Title _____ Signature

Date _____ Printed Name



Water Treatment Plant
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www.FargoND.gov

(41)

June 5, 2025

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

Subject: Request for Consideration of Ordinance Change to Article 16-09

Dear Commissioners:

I am writing to request your consideration of an ordinance change to Article 16-09.

The current Drought Response measures in Article 16-09 are outdated, referring to an older Drought Response Plan that is not in use. The Drought and Water Management Plan now has four drought phases instead of five in the older plan. There are also other items needing to be addressed in Article 16-09 such as organizational structure changes in the Enterprise Utilities. For these reasons, we are requesting the Commission's authorization for the Water Utility to collaborate with the City Attorney's office to amend Article 16-09.

The Drought and Water Management Plan is now being updated again. There were lessons learned in the 2021 drought that will be incorporated into the plan. Also, the new Advanced Metering Infrastructure (AMI) project with real-time water use data will likely be used for analysis during future droughts.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

RECOMMENDED MOTION: Move to direct the City Attorney's office to work with the Water Utility to review and update Article 16-09.



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June 3rd, 2025

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

Re: Temporary Construction Easement
Water Tower Demolition – WA2502

Dear Commissioners:

Accompanying for City Commission review and approval is a Temporary Construction Easement with the **Fargo Public School District No. 1** in association with the water tower demolition project.

RECOMMENDED MOTION:

Approve Temporary Construction Easement with the **Fargo Public School District No. 1**.

Please return a copy of the signed original.

Respectfully submitted,

Dan Portlock, PE
Assistant Water Utility Director

C: Troy Hall

EASEMENT

(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **City of Fargo for Use of the Schools aka Fargo Public School District No. 1**, 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”, temporary construction easements under, over, upon and in the lands hereinafter described for the purpose of storage of materials and job site layout for demolition of water tower #8, together with the customary appurtenances, said tracts being described as follows:

Easement Exhibit “C”

Tower 8:

(Temporary Easement)

A Temporary easement, over under, and across that part of Lot 1, Block 1, FARGO SOUTH ADDITION to the City of Fargo, situated in the County of Cass and the State of North Dakota described as follows:

Commencing at the southwest corner of said Lot 1; thence east along the south line of said Lot 1, a distance of 300.00 feet to the point of beginning; thence north, parallel with the west line of said Lot 1, a distance of 520.00 feet; thence east, parallel with the south line of said Lot 1, a distance of 60.00 feet; thence south, parallel with the west line of said Lot 1, a distance of 230.00 feet; thence west, parallel with the south line of said Lot 1, a distance of 20.00 feet, thence south, parallel with the west line of said Lot 1, a distance of 80.00 feet; thence east parallel with the south line of said Lot 1, a distance of 90.00 feet; thence

south, parallel with the west line of said Lot 1, a distance of 210.00 feet to the south line of said Lot 1; thence west along said south line, a distance of 130.00 feet to the point of beginning. Said parcel contains 44,300 square feet, more or less, and is subject to all existing easements of record.

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 parcels of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grants are made.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said parcels to be used for storage of materials and job site layout 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 parcels so as to interfere in any manner with the said parcels during the construction phase. Grantee, at its own expense, shall leave the premises in as good condition as they were prior to the time construction activities began.

This Easement shall terminate on August 27, 2025.

[Signature pages to follow]

IN WITNESS WHEREOF, Grantor has set his hand and caused this instrument to be executed this 27th day of May, 2025.

GRANTORS:

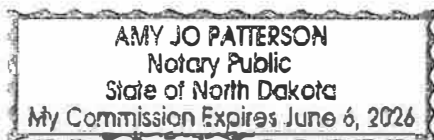
City of Fargo for Use of the Schools aka Fargo Public School District No. 1

Jacqueline S. Gapp
By: Jacqueline S. Gapp
Its: CFO

STATE OF NORTH DAKOTA)
)
COUNTY OF CASS)

On this 27th day of May, 2025, before me, a notary public in and for said county and state, personally appeared Jackie Gapp, to me known to be the CFO of City of Fargo for Use of the Schools aka Fargo Public School District No. 1, and who executed the foregoing instrument, and acknowledged to me that he/she executed the same on behalf of City of Fargo for Use of the Schools aka Fargo Public School District No. 1.

(SEAL)



Amy Jo Patterson
Notary Public
My Commission Expires: 6/6/2026

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

The legal description was prepared by:

This document prepared by:

June 9th, 2025

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

**Re: Project WW1707 Time Extension to Modify Period of Performance
Water Reclamation Facility Flood Protection Project (PDMC-PJ-08-ND-2018-023)**

Dear Commissioners:

On January 22nd, 2025 the Fargo Water Reclamation Utility submitted a request to the North Dakota Department of Emergency Services (NDDDES) for a time extension of the the period of performance (POP) for the WRF Flood Protection Project WW1707 for the following reasons:

- The construction phase for the Fargo WRF Flood Protection project commenced in May of 2024 with a Final Completion date of December 15, 2024. Around mid-August 2024, the Contractor informed the WRF of procurement issues related to the floodwall sheet piling. The Contractor's schedule slipped farther into the fall due to this procurement issue. This issue resulted in the Contractor not being able to complete required work in accordance with the original contract dates.
- A key component included in the project is the addition of a large gate well structure to an existing 72-inch storm sewer line. The Contractor had scheduled for the gate well structure to be installed prior to December 15th, 2024, but again encountered delays with procurement of the equipment.
- The Contractor also submitted a change order to extend the Final Completion date to June 20, 2025 to complete all required work for the project.

Project Status and Updated Schedule: The updated completion date for Project WW1707 is now April 1, 2026, established by the attached Hazard Mitigation Grant Program (HMGP) Subgrant Agreement between the City of Fargo and the North Dakota Department of Emergency Services (NDDDES).

Recommended Motion

Approve the Hazard Mitigation Grant Program Subgrant Agreement for PDM 2018 between the North Dakota Department of Emergency Services and the City of Fargo for a time extension of the Period of Performance to April 1, 2026.

Sincerely,



James Hausauer,
Water Reclamation Utility Director

Attachments

CC: Brenda Derrig, Assistant City Administrator
Mark Miller, Water Reclamation Utility Superintendent
Ryan Grubb, PE (AE2S)
Matthew Mazourek, PE (AE2S)

**Hazard Mitigation Grant Program Subgrant Agreement for PDM 2018
Between The North Dakota Department of Emergency Services
And
The City of Fargo**

Amendment No. 3

To Contract Dated: 4 May 2020

ATTACHMENT A is replaced in its entirety by the following:

ATTACHMENT A

Approved Project Data

CFDA Title and Number: Disaster Grants – Pre-Disaster Mitigation Program, 97.047

Non-Disaster Grant Fiscal Year: 2018

Subrecipient: City of Fargo

Project Number: PDMC-PL-08-ND-2018-023

Project Cost: 100% - \$4,400,947.49

Federal Funding: 75% - \$3,300,710.61

Local Funding: 25% - \$1,100,236.88

Work Schedule: 4 March 2020 – 1 April 2026

Scope of Work:

The scope of work for this project is to provide permanent flood protection for the City of Fargo's Waste Water Treatment Plant (WWTP) above the 500-year level of protection. The elevation for the Red River at the WWTP based on the Fargo-Moorhead (F-M) Diversion model for Existing Conditions – 500 year is 898 feet (NAVD 88) and the majority of the WWTP campus is below this elevation. The project proposes the use of levees, floodwalls and a road grade raise to provide protection around the facility. The project has integrated standards from the City of Fargo, State and FEMA to develop the design. The top of levees will be constructed to 899 feet to include one (1) foot of freeboard and the top of floodwalls will be constructed to 901 feet to include two (2) feet of freeboard. Areas where minor regrading can achieve protection will simply be regraded to a minimum of 898 feet. Portions of the site to both the south and northeast are elevated above the 500-year floodplain, which the project proposes to tie into. The line of protection and respective scope of work descriptions for each area are as follows

- A sheet pile flood wall will be constructed along the northeast corner of the site due to space limitations between the street right-of-way, existing utilities and existing plant infrastructure.
- A Clay levee will be constructed from the floodwall along the north side of the campus. The levee will turn south to the west of the central generation station and end at the east-west access road located to the north of the drying beds. This road will need to be raised to a minimum of 898 feet at the levee tie-in location.
- The road to the east of the drying beds will be regraded to provide a continuous 898 foot contour. Once south of the drying beds, the road is already at or above 898 feet. The remaining portions on the south side of the campus are above 898 feet. Re-grading of the road may result in the need for additional storm system improvements as it will impact site drainage. While this leaves the drying beds on the wet side of the line of protection, it was determined with WWTP staff that flooding of the drying beds would not result in any significant interruption to operation of the plant.

Once completed, the project will provide flood protection to the Fargo WWTP to a 500-year flood elevation.

Work Schedule:

Environmental Permitting	2 Months
Final Design	8 Months
Bidding	2 Month
Construction	18 Months
Project Closeout	5 Months
Total:	35 Months

Cost Estimate:

Safety Fence	Construction And Project Improvement	3,500.00	Linear Foot	\$ 3.50	\$ 12,250.00
Remove & Replace Chain Link Fence	Construction And Project Improvement	700.00	Linear Foot	\$ 65.00	\$ 45,500.00
F&I Fence Ornamental	Construction And Project Improvement	420.00	Linear Foot	\$ 200.00	\$ 84,000.00
F&I 24' Gate Opening 6' Ornamental Cantiever	Construction And Project Improvement	1.00	Each	\$ 51,000.00	\$ 51,000.00
Remove pipe all sizes and types	Construction And Project Improvement	350.00	Linear Foot	\$ 30.00	\$ 10,500.00
Remove Concrete Pavement	Construction And Project Improvement	500.00	Square Yard	\$ 15.00	\$ 7,500.00
Raising Internal road	Construction And Project Improvement	2,000.00	Square Yard	\$ 16.00	\$ 32,000.00
Remove and F&I Hydrant Assembly	Construction And Project Improvement	1.00	Each	\$ 8,000.00	\$ 8,000.00
F&I Gate Well (10'x4', 5'x4' Box)	Construction And Project Improvement	1.00	Each	\$ 210,000.00	\$ 210,000.00
F&I Sluice Gates 24", 36", 90" Dia SS	Construction And Project Improvement	1.00	Each	\$ 235,500.00	\$ 235,500.00
F&I Valve 8" Dia	Construction And Project Improvement	1.00	Each	\$ 7,500.00	\$ 7,500.00
Vault K Modifications	Construction And Project Improvement	1.00	Unknown	\$ 90,000.00	\$ 90,000.00
F&I 27" Dia Round Inlet RDI	Construction And Project Improvement	1.00	Each	\$ 2,500.00	\$ 2,500.00
Erosion Control	Construction And Project Improvement	1.00	Each	\$ 42,960.00	\$ 42,960.00

F&I Concrete Pavement and Preparation and Geotexti	Construction And Project Improvement	188.89	Square Yard	\$ 105.00	\$ 19,833.45
Top Soil Strip and Haul	Construction And Project Improvement	1,018.52	Cubic Yard	\$ 24.00	\$ 24,444.48
Topsoil (Haul and Spread)	Construction And Project Improvement	1,203.70	Cubic Yard	\$ 36.00	\$ 43,333.20
Seeding	Construction And Project Improvement	11,873.33	Cubic Yard	\$ 1.50	\$ 17,810.00
Topsoil -Strip Stockpile and Spread	Construction And Project Improvement	2,500.00	Cubic Yard	\$ 14.00	\$ 35,000.00
excavation inspect trench and haul	Construction And Project Improvement	3,732.00	Cubic Yard	\$ 44.00	\$ 164,208.00
Remove Tree	Construction And Project Improvement	1.00	Each	\$ 500.00	\$ 500.00
impervious fill import	Construction And Project Improvement	8,232.00	Cubic Yard	\$ 36.00	\$ 296,352.00
embankment levee	Construction And Project Improvement	4,500.00	Cubic Yard	\$ 12.00	\$ 54,000.00
Contingency	Contingencies	1.00	Each	\$ 175,238.52	\$ 175,238.52
Project Management Fees	Other Architectural Engineering Basic Fees	1.00	Each	\$ 175,238.52	\$ 175,238.52
subgrade preparation levee	Construction And Project Improvement	7,222.22	Square Yard	\$ 6.00	\$ 43,333.32
F&I Sheet Pile	Construction And Project Improvement	6,700.00	Square Foot	\$ 175.00	\$ 1,172,500.00
F&I Tank Wall vertical extension	Construction And Project Improvement	125.00	Linear Foot	\$ 370.00	\$ 46,250.00
F&I Fence Modular deco 8'Tall	Construction And Project Improvement	315.00	Linear Foot	\$ 310.00	\$ 97,650.00
F&i ence Modular deco 8' Tall Curved	Construction And Project Improvement	125.00	Linear Foot	\$ 350.00	\$ 43,750.00
F&I Tank tie-in concrete pier, deco, clad to match	Construction And Project Improvement	2.00	Each	\$ 32,000.00	\$ 64,000.00
F&I Cladding Ledger sheet pile	Construction And Project Improvement	333.00	Linear Foot	\$ 72.00	\$ 23,976.00

Engineering and Construction	Architectural Engineering Basic Fees	1.00	Unknown	\$ 452,000.00	\$ 452,000.00
F&I Cladding at sheet pile and curved tank	Construction And Project Improvement	1.00	Unknown	\$ 123,600.00	\$ 123,600.00
F&I sheet Pile Cap steel and stone cap	Construction And Project Improvement	333.00	Linear Foot	\$ 290.00	\$ 96,570.00
Pre-Award Engineering Fees	Preliminary Expense	1.00	Each	\$ 93,700.00	\$ 93,700.00
Mobilization	Construction And Project Improvement	1.00	Unknown	\$ 102,100.00	\$ 102,100.00
Misc Flood Wall components	Construction And Project Improvement	1.00	Unknown	\$ 26,900.00	\$ 26,900.00
Paint dry side sheet pile and rock mulch edge stri	Construction And Project Improvement	1.00	Unknown	\$ 66,650.00	\$ 66,650.00
F&I Sheet Trimming, mobilization and setup	Construction And Project Improvement	1.00	Unknown	\$ 87,800.00	\$ 87,800.00
Traffic Control	Construction And Project Improvement	1.00	Each	\$ 15,000.00	\$ 15,000.00
				Total Cost	\$ 4,400,947.49

Other Conditions:

Environmental requirements, as noted below and in the attached FEMA award letter dated 4 March 2020 must be met and documented. The attached environmental form must be completed and submitted before grant can be closed out:

Source of Condition: Executive Order 11988 – Flood Plains

The current footprint of the wastewater treatment plant does not encroach on a FEMA-identified 1 %-chance floodplain. However, be advised that floodplains (Zone AE) and regulatory flood way are directly adjacent to the facility as it currently exists. Any encroachment on the 1 %-chance floodplain will require a floodplain development permit from the City of Fargo. In addition, development in the regulatory floodway carries additional requirements per NDCC § 61-16.2-14. Before authorizing any development, the community responsible for permitting such use shall request a floodway review from the State Engineer. The application form may be downloaded from our website under "Regulation & Appropriation, Floodplain Management." Please contact Dionne Haynes with any questions regarding this process. The Floodplain Administrator for the City of Fargo is Jody Bertrand (Floodplain Administrator), 701-241-1548, jbertrand@cityoffargo.com. The NFIP map used to make this determination is Panel I/38017C0591G, Date: 1/16/2015.

Source of Condition: Clean Water Act

The City shall consult with the USACE to determine final project requirements. The City is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, pre-construction notification requirements, and regional conditions as provided by the Army Corps of Engineers. The City is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre- Construction Notification (PCN) conditions of applicable nationwide permits.

Source of Condition: National Historic Preservation Act

All borrow material and/or rip rap must come from a ND SHPO approved source. If the applicant chooses to use a borrow source that is not NDDOT Certified and/or from an existing stockpile, the following must occur prior to digging:

1. State Historical Preservation Office (SHPO) approval including completion and FEMA approval of required archeological surveys.
2. The applicant shall notify the FEMA Regional Environmental Officer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work until notified by the FEMA Regional Environmental Officer that the requirements of the Endangered Species Act have been satisfied.
3. Applicant is required to coordinate borrow pit locations with the USFWS Wetland District Manager to avoid project impacts to easements or public lands.
4. Applicant is responsible for ensuring that no borrow pit activity occurs in Waters of the United States, wetlands or a river listed on the Nationwide Rivers Inventory (NRI). Borrow pit activity occurring in a floodplain must not affect pre-existing hydrological profiles. If activities occur in prime farmland ground disturbance must be temporary, one time use, and no permanent loss of farmland may occur.

Source of Condition: State Water and Soil Laws

1. Applicant shall comply with proper construction practices and environmental disturbance requirements as outlined in the NDDOH letter dated 8/29/17.
2. Care is to be taken during construction activity near any water of the state to minimize adverse effects on a water body. This includes minimal disturbance of stream beds and banks to prevent excess siltation, and the replacement and revegetation of any disturbed area as soon as possible after work has been completed. Caution must also be taken to prevent spills of oil and grease that may reach the receiving water from equipment maintenance, and/or the handling of fuels on the site. Guidelines for minimizing degradation to waterways during construction must be followed.
3. Projects disturbing one or more acres are required to have a permit to discharge storm water runoff until the site is stabilized by the re-establishment of vegetation or other permanent cover. Further information on the storm water permit may be obtained from the Department's website or by calling the Division of Water Quality (701-328-5210). Also, cities may impose additional requirements and/or specific best management practices for construction affecting their storm drainage system. Check with the local officials to be sure any local storm water management considerations are addressed.

4. The proposed construction project is located near the West Fargo aquifer. Care should be taken to avoid spills of any materials that may have an adverse effect on groundwater quality. All spills must be immediately reported to this Department and appropriate remedial actions performed.

5. Per the NDSWC, initial review indicates the project does not require a conditional or temporary permit for water appropriation. However, if surface water or groundwater will be diverted for construction of the project, a water permit will be required per North Dakota Century Code (NDCC) § 61-04-02. Please consult with the Water Appropriations Division of the Office of the State Engineer (OSE) at 701-328-2754 or waterpermits@nd.gov if you have questions.

6. A Sovereign Land Permit will be required for any work below the ordinary high water mark of the Red River. Please contact Ashley Persinger, OSE Sovereign Land Specialist, at 701-328-4988 or apersinger@nd.gov if you have questions.

7. It is likely that the levee proposed, including both temporary and permanent levees and floodwalls, requires or will require a construction permit from the OSE. The OSE requests more information regarding the temporary and permanent levees, including plans and specifications for the levees and floodwalls. Additional information may be necessary to submit with a construction permit application to ensure the levee and floodwall design can be adequately reviewed. For further information on the OSE's permitting requirements, please visit the Regulation & Appropriation tab on the OSE's website (swc.nd.gov). Please contact the OSE Engineering and Permitting Section at 701-328-2752 if you have questions.

8. All necessary measures must be taken to minimize fugitive dust emissions created during construction activities. Any complaints that may arise are to be dealt with in an efficient and effective manner.

Standard Conditions:

1. Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.
2. This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.
3. If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

FOR THE SUBGRANTEE:

Name and Title

Signature

Date

FOR THE GRANTEE:

DEPARTMENT OF EMERGENCY SERVICES



6/2/25

Todd Joersz – State Hazard Mitigation Officer

Date



**WATER
RECLAMATION**

**REGIONAL WATER
RECLAMATION FACILITY**

3400 North Broadway

Fargo, ND 58102

Phone: 701.241.1454 | Fax: 701.241.8159

FargoND.gov

January 22, 2025

N.D. Department of Emergency Services
Justin Messner,
Disaster Recovery Chief
Fraine Barracks Lane, Bldg. 35
Bismarck, ND 58504-5511

**Re: Request to Modify Period of Performance –
City of Fargo WWTP Flood Protection Project (PDMC-PJ-08-ND-2018-023)**

Dear Mr. Messner:

The City of Fargo is providing this letter as a formal request to extend the period of performance (POP) for the WWTP Flood Protection Project from April 1, 2025 until October 1, 2025 (six (6) months). The main reasons for this extension request include the following items:

- The construction phase for the Fargo WWTP Flood Protection project commenced in May of 2024 with a substantial Completion date of October 15, 2024 and Final Completion date of December 15, 2024. Around mid-August 2024, Park Construction (Contractor) informed the City of Fargo (Owner) of procurement issues related to the floodwall sheet piling. The Contractor's schedule continuously slipped farther into the fall due to this procurement issue. The floodwall's sheet piling procurement issue resulted in the Contractor not being able to complete all required work in accordance with the original contract dates.
- One key component included in the project is the addition of a large gate well structure to an existing 72-inch storm sewer line. The Contractor had scheduled for the gate, gate assembly, and gate well lid to be installed prior to December 15th, 2024, but encountered delays with procurement of the equipment, pushing the installation into 2025.
- The Contractor submitted a change order to extend Substantial Completion date to November 26, 2024 and the Final Completion date to June 20, 2025 to complete all required work for the project. In addition to the completion dates being extended, the contract amount increased due to floodwall items and unexpected site utility findings. A short description of the contract price changes are shown below:

N.D. Department of Emergency Services
 Request to Modify Period of Performance
 City of Fargo WWTP Flood Protection Project (PDMC-PJ-08-ND-2018-023)
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Description	Amount (\$)
Original Construction Contract Value	\$3,720,432.80
Current Construction Contract Value	\$3,842,804.19
Value of Work Completed To-Date	\$3,404,484.37
Value of Work Remaining on Contract (includes 10% retainage)	\$438,319.82

Project Status and Updated Schedule

The project is now anticipated to be completed by June 20, 2025, which is the current Final Completion date following Owner approval of Contractor submitted change orders. A summary of the remaining work items includes the following:

- Installation of gate well gate, gate assembly, and lid (February 2025)
- Applying sealer to Floodwall brickwork (May 2025)
 - Temperature/weather sensitive item
- Painting of Floodwall sheet piling (May 2025)
 - Temperature/weather sensitive item
- Finish grading on the exterior side of the Floodwall (May 2025)
- Concrete paving on the interior side of the Floodwall (May/June 2025)
 - Temperature/weather sensitive item
- Placement of rock mulch on the interior side of the Floodwall (May/June 2025)
- Final punch-list work items (June 2025)

The Owner and the Engineer (AE2S) met with representatives from North Dakota Department of Emergency Services (NDDes) on January 14, 2025 to provide a Project update and discuss the POP date. The NDDes representatives recommended to request to have the POP extended six (6) months to provide some additional time beyond the anticipated project completion date in the event any additional delays are experienced with the remaining work items.

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The City of Fargo appreciates the opportunity to continue to work with the NDDDES and FEMA towards constructing improvements to protect critical infrastructure within the City. Questions regarding this extension request or any request for additional information can be directed via email to jhausauer@fargoND.gov or by phone at (701) 241-1454.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James Hausauer', with a horizontal line extending to the right.

James Hausauer,
Water Reclamation Utility Director

Attachments

CC: Ryan Grubb, PE (AE2S)
Matthew Mazourek, PE (AE2S)