



West Fargo City Commission Meeting
Tuesday, February 18, 2020
Commission Chambers 5:30 PM

- A. Pledge of Allegiance
- B. Approve Order of Agenda
- C. Approval of Minutes – February 3, 2020 Pg. **(2-4)**
- D. Building Permits

Consent Agenda – Approve the Following:

- a. Bills **(Pg. 5-12)**
- b. Approval of Urban Forestry Committee Members, Michael Opat and Barry Johnson **(Pg. 13-23)**
- c. Quarterly Pledge of Assets as of December 31, 2019 **(Pg. 24-25)**
- d. Preliminary Financial Statement as of December 31, 2019 **(Pg. 26-28)**
- e. Schedule a 5:30 p.m. First Reading and Public Hearing on the rezoning of The Ranch at The Wilds First Addition on March 2, 2020 **(Pg. 29-30)**
- f. Schedule a 5:30 p.m. First Reading and Public Hearing on the Zoning Ordinance Amendment for Section 4-460, Sign Regulations on March 2, 2020 **(Pg. 31-32)**
- g. Gaming Site Authorization for WF Events, LLC. Games to be conducted: Bingo, Raffles, Pull Tab Jar, Electronic Pull Tab Device, Twenty-One, Poker, Calcuttas, Paddlewheel Table from 2/18/2020 to 6/30/2020 at Bar Down, 3150 Sheyenne Street **(Pg. 33-35)**
- h. Gaming Site Authorization for Mule Deer Foundation. Games to be conducted: Raffles on 3/19/2020 at the West Fargo Speedway, 680 Main Avenue West **(Pg. 36-37)**
- i. Games of Chance for Sandhills Archers, Inc. Games to be conducted: Raffle, Raffle Board from 2/19/2020 to 4/23/2020 at the Sandhills Archery Club, 3001 Charyl Avenue NW **(Pg. 38-39)**
- j. Games of Chance for the American Legion Department of ND. Games to be conducted: Raffle on 6/22/2020 at the American Legion Department of ND Headquarters, 405 West Main Avenue, Suite 4-a **(Pg. 40)**
- k. Games of Chance for the West Fargo Sheyenne High School Mustang Booster Club. Games to be conducted: Raffle on 3/21/2020 at the DoubleTree by Hilton, 825 East Beaton Drive **(Pg. 41)**
- l. Games of Chance for the Knights of Columbus Council 9642. Games to be conducted: Raffle on 6/8/2020 at Holy Cross Catholic Church, 2711 7th Street East **(Pg. 42)**

Regular Agenda

- 1. Review Programming Agreement for the Lights at Sheyenne 32 – **Tina Fisk (Pg. 43-56)**
- 2. Second Reading on the Rezoning and Final Plat Approval of Eagle Run Plaza 9th Addition – **Tim Solberg (Pg. 57-62)**
- 3. First Reading on the Rezoning from R-R: Rural Residential District to PUD: Planned Unit Development at 225 40th Avenue West – **Tim Solberg (Pg. 63-69)**
- 4. Review Master Agreement for Professional Services With KLJ – **Dustin Scott (Pg. 70-112)**
- 5. Review Engineer's Report for Project No. 6055 – **Dustin Scott (Pg. 113-142)**
- 6. Review proposed Change Order for District 2250, Sheyenne Street Segment 2 – **Dustin Scott (Pg. 143-147)**
- 7. Review Task Order No. 27 for Sewer, Water, Storm and Street Improvement District No. 1329– **Dustin Scott (Pg. 148-179)**
- 8. Review Access Agreement for Water Improvement Project No. 1327 – **Dustin Scott (Pg. 180-188)**
- 9. Construction Updates – **Dustin Scott**
- 10. City Administrator's Report – **Tina Fisk**
- 11. Correspondence
- 12. Non-Agenda
- 13. Adjourn



**West Fargo City Commission Meeting
Monday, February 3, 2020
Commission Chambers 5:30 PM**

The West Fargo City Commission met on Monday, February 3, 2020, at 5:30 pm. Those present were Bernie Dardis, Eric Gjerdevig, Brad Olson, Mark Simmons, and Mike Thorstad. The President of the Board Bernie Dardis called the meeting to order.

The Pledge of Allegiance was recited.

Commissioner Olson moved and Commissioner Gjerdevig seconded to approve the Order of Agenda as presented. No opposition. Motion carried.

Commissioner Gjerdevig moved and Commissioner Simmons seconded to approve the minutes of January 20, 2020 as presented. No opposition. Motion carried.

The Commission reviewed the Building Department Monthly Comparison Report Dated February 4, 2020, Building Department Activity Report dated February 3, 2020 and Building Permits # 14-30. Commissioner Gjerdevig moved and Commissioner Simmons seconded to approve the Building Permits as presented. No opposition. Motion carried.

Commissioner Gjerdevig moved and Commissioner Olson seconded to approve the following items from the Consent Agenda:

- a. Bills
- b. Games of Chance for the West Fargo Exchange Club. Games to be conducted: Raffle Board on 4/17/2020 at Veterans Memorial Arena, 1201 7th Avenue East
- c. Games of Chance for Pink it Forward. Games to be conducted: Bingo on 2/6/2020 at the Doubletree by Hilton, 825 East Beaton Drive
- d. Five Year Commercial Remodel Exemption for Northern Stone
- e. Indigent Services Contract for Steve Mottinger
- f. Final Plat Approval of Eagle Run Plaza 10th Addition

There was no opposition. Motion carried.

Planner Malachi Petersen appeared before the Commission for a 5:30pm Public Hearing and First Reading on The Wilds 18th Addition, a Replat and Rezoing from R-2: Limited Multiple Dwellings to R-1SM: Mixed One & Two Family Dwellings. The Public Hearing was opened. There was no Public Comment. The Public Hearing was closed. After discussion, Commissioner Thorstad moved and Commissioner Simmons seconded to approve the First Reading. No opposition. Motion carried.

Planning & Zoning Director Tim Solberg appeared before the Commission for a 5:30pm Public Hearing and First Reading on the Rezoning from R-R: Rural Residential District to C: Light Commercial, located at 225 40th Avenue West. The Public Hearing was opened. Applicant Jodi Kallias appeared before the Commission and spoke in favor of the project. The following residents appeared before the Commission and spoke in opposition of the project as presented:

- Jason Opp, 4430 NewPort Lane



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- Matt Sturlaugson, 4519 4th Street West

Developer Jon Youness, 3837 3rd Street East, appeared before the Commission and spoke in favor of the project. There was no other public comment. The Public Hearing was closed. After discussion, there were two motions made by the Commission. Commissioner Simmons moved and Commissioner Thorstad seconded to deny the First Reading. Commissioner Dardis opposed. The majority having voted in favor, the motion carried. Commissioner Simmons moved and Commissioner Thorstad seconded to recommend pursuing a PUD for the project. No opposition. Motion carried.

City Engineer Dustin Scott and Kellen Grubb with AE2S appeared before the Commission to Review the Executive Summary for the Core Area Infrastructure Master Plan. After discussion, no action was requested of the Commission.

City Attorney John Shockley appeared before the Commission for a Presentation regarding Procurement of New City Buildings. After discussion, Commissioner Simmons moved and Commissioner Olson seconded to move forward with the RFI process and bring the results back to the Commission for further discussion. No opposition. Motion carried.

City Engineer Dustin Scott appeared before the Commission to Review two Change Orders for Improvement District No. 2250. After discussion, two motions were made by the Commission. Commissioner Gjerdevig moved and Commissioner Olson seconded to approve the first change order for \$222,708.20. No opposition. Motion carried. Commissioner Olson moved and Commissioner Simmons seconded to approve the second change order for 106,679.20. No opposition. Motion carried.

City Administrator Tina Fisk appeared before the Commission to discuss the Rescheduling of the February 17, 2020 City Commission Meeting due to the President's Day holiday. After discussion, Commissioner Olson moved and Commissioner Simmons seconded to approve moving the City Commission meeting to Tuesday, February 18, 2020. No opposition. Motion carried.

City Engineer Dustin Scott appeared before the Commission to provide construction updates. No action was requested of the Commission.

There was no City Administrator's Report.

Public Works Director Matt Andvik appeared before the Commission and provided a snow removal cost report. No action was requested of the Commission.

There were no non-agenda items.

There was no correspondence.



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Commissioner Simmons moved and Commissioner Gjerdevig seconded to move into a Closed executive session pursuant to N.D.C.C. § 44-04-19.1(9) to receive update and provide direction to the City Attorney regarding potential claims arising out of the issuance of a building permit for the property described as 906 19th Avenue NW, West Fargo, North Dakota 58078. No opposition. Motion carried.

Commissioner Dardis reconvened the regular City Commission meeting at 8:21 p.m.

Commissioner Simmons moved and Commissioner Olson seconded to adjourn the meeting. No opposition. Meeting adjourned.

Bernie Dardis, Commission President

Tina Fisk, City Administrator

Consent Agenda Item: a

02/04/20
14:48:05

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 2/20

Page: 1 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85806	S	2499 FM CONVENTION & VISITORS BUREAU	13132.95	02/04/20			
						CL 88975	13132.95
85807	S	2499 FM CONVENTION & VISITORS BUREAU	6566.49	02/04/20			
						CL 88976	6566.49
85808	S	289 ACME TOOLS	794.35	02/04/20			
						CL 89020	117.46
						CL 89145	676.89
85809	S	2399 ADVANCED AUTO BODY & GLASS	1057.33	02/04/20			
						CL 89113	1057.33
85810	S	3514 AIRE SERV	97.56	02/04/20			
						CL 89122	97.56
85811	S	2544 AIRGAS USA, LLC	289.80	02/04/20			
						CL 89038	289.80
85812	S	2950 ALPHA TRAINING & TACTICS LLC & SALES	11782.50	02/04/20			
						CL 89102	11782.50
85813	S	3490 AMAZON CAPITAL SERVICES	378.15	02/04/20			
						CL 88958	138.07
						CL 88982	57.95
						CL 88993	132.15
						CL 89077	49.98
85814	S	2742 AMBASSADOR INC	7298.59	02/04/20			
						CL 89174	7298.59
85815	S	2775 AMCS GROUP, INC.	500.00	02/04/20			
						CL 89066	500.00
85816	S	3511 ASPEN MILLS	203.93	02/04/20			
						CL 89114	203.93
85817	S	3507 AUKLAND & COMPANY LLC	31445.00	02/04/20			
						CL 89030	23441.25
						CL 89049	8003.75
85818	S	3032 AXON ENTERPRISE INC	15735.00	02/04/20			
						CL 89078	15030.00
						CL 89163	705.00
85819	S	1695 BAKER & TAYLOR	29.30	02/04/20			
						CL 89075	29.30
85820	S	26 BORDER STATES INDUSTRIES INC	357.43	02/04/20			
						CL 88990	273.28
						CL 89080	84.15
85821	S	3512 BOUND TREE MEDICAL, LLC	1268.29	02/04/20			
						CL 89116	1268.29
85822	S	2704 BRAD'S COFFEE SERVICE	123.00	02/04/20			
						CL 89052	123.00
85823	S	652 BRENCO CORPORATION	1272.50	02/04/20			
						CL 89047	99.00
						CL 89067	1100.00
						CL 89115	73.50
85824	S	16 BROKERAGE PRINTING	170.00	02/04/20			
						CL 88987	150.00
						CL 89144	20.00

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Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85825	S	351 BUSINESS ESSENTIALS	2596.99	02/04/20	_____	CL 88978	227.85
						CL 88984	52.95
						CL 89001	733.30
						CL 89002	565.47
						CL 89018	66.27
						CL 89036	258.77
						CL 89037	219.91
						CL 89043	12.15
						CL 89065	287.68
						CL 89081	143.93
85826	S	39 BUTLER MACHINERY	239.82	02/04/20	_____	CL 89181	28.71
85827	S	51 CASS COUNTY ELECTRIC COOP	46842.00	02/04/20	_____	CL 89100	239.82
85828	S	61 CASS COUNTY FINANCE	9720.10	02/04/20	_____	CL 88977	46842.00
						CL 89165	300.00
						CL 89166	8010.00
						CL 89179	1396.15
85829	S	46 CASS RURAL WATER USERS	27.97	02/04/20	_____	CL 89194	13.95
85830	S	1512 CDW GOVERNMENT, INC	2029.61	02/04/20	_____	CL 89046	27.97
						CL 89134	1957.56
85831	S	1623 CENGAGE GALE	713.15	02/04/20	_____	CL 89155	72.05
85832	S	2368 CENGAGE LEARNING	639.00	02/04/20	_____	CL 89085	713.15
85833	S	1669 CENTER POINT LARGE PRINT	23.25	02/04/20	_____	CL 89082	639.00
85834	S	3513 CHRIS LISTON	90.04	02/04/20	_____	CL 89091	23.25
85835	S	3216 CINTAS	89.33	02/04/20	_____	CL 89117	90.04
85836	S	111 CITY OF FARGO	108021.00	02/04/20	_____	CL 89072	89.33
						CL 88968	6000.00
						CL 88974	63491.25
						CL 88979	32529.75
85837	S	3021 CIVICPLUS	75.00	02/04/20	_____	CL 89118	6000.00
85838	S	3245 CORE & MAIN	1586.77	02/04/20	_____	CL 89006	75.00
						CL 89019	111.50
85839	S	3506 COURTNEY ALI	20.34	02/04/20	_____	CL 89087	1475.27
						CL 89031	20.34

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Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85840	S	65 CURT'S LOCK & KEY	349.11	02/04/20			
85841	S	1675 DAKOTA FLUID POWER, INC	737.41	02/04/20		CL 89162	349.11
85842	S	79 DAKOTA HOSE & EQUIP	400.44	02/04/20		CL 88997	35.32
85843	S	90 DAKOTA UNDERGROUND	45084.72	02/04/20		CL 89151	702.09
85844	S	2948 DELTA 54 AVIATION LLC	800.00	02/04/20		CL 89028	400.44
85845	S	999999 DUCKS UNLIMITED, INC	37200.00	02/04/20		CL 89190	45084.72
85846	S	2100 EAGLE RUN CROSSING LLC	2782.95	02/04/20		CL 89180	800.00
85847	S	1502 EIDE BAILLY	525.00	02/04/20		CL 89189	37200.00
85848	S	3410 ENGRAPHIX	15.00	02/04/20		CL 89195	525.00
85849	S	2862 ESSENTIA HEALTH	510.00	02/04/20		CL 88972	2782.95
85850	S	140 F-M AMBULANCE SERVICE	988.50	02/04/20		CL 89195	525.00
85851	S	660 FARGO FREIGHTLINER	42.40	02/04/20		CL 88965	15.00
85852	S	979 FARGO LINE-X	1070.00	02/04/20		CL 88954	510.00
85853	S	131 FARGO TRACTOR	930.59	02/04/20		CL 89129	988.50
85854	S	2098 FBI-LEEDA	695.00	02/04/20		CL 89093	42.40
85855	S	329 FERGUSON WATERWORKS #2516	2901.48	02/04/20		CL 89123	1070.00
85856	S	3347 FIRST INTERNATIONAL INSURANCE	67.00	02/04/20		CL 89062	930.59
85857	S	104 FORUM COMMUNICATIONS	108.30	02/04/20		CL 89106	695.00
85858	S	155 GALLS, LLC	2358.07	02/04/20		CL 89106	695.00
85859	S	156 GENERAL EQUIP & SUPPLIES	450.60	02/04/20		CL 88999	2901.48
85860	S	2864 GOODIN COMPANY	41.03	02/04/20		CL 88999	35.35
85861	S	2558 GOODYEAR COMMERCIAL TIRE	11.00	02/04/20		CL 89103	67.00
						CL 89101	108.30
						CL 89055	143.23
						CL 89058	1453.00
						CL 89112	761.84
						CL 89083	450.60
						CL 88998	35.35
						CL 89011	5.68
						CL 89142	11.00

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Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85862	S	3206 GREAT OUTCOMES CONSULTING LLC	765.00	02/04/20			
						CL 89176	765.00
85863	S	2877 GREATAMERICA FINANCIAL SERVICES	1324.03	02/04/20			
						CL 89010	704.51
						CL 89035	176.63
						CL 89088	442.89
85864	S	3509 GREG MAYNARD	332.99	02/04/20			
						CL 89105	332.99
85865	S	135 HAWKINS WTR TREATMENT	6309.50	02/04/20			
						CL 89017	6309.50
85866	S	3059 HEITH JANKE	28.00	02/04/20			
						CL 89008	28.00
85867	S	1226 HP INC.	19125.42	02/04/20			
						CL 89135	1206.56
						CL 89136	2847.18
						CL 89154	11503.68
						CL 89156	3568.00
85868	S	358 HUBERT OYE-SONS CONST.	1387.50	02/04/20			
						CL 89086	1387.50
85869	S	3340 IAAP	150.00	02/04/20			
						CL 88988	150.00
85870	S	3087 IBM CORPORATION	210.00	02/04/20			
						CL 89175	210.00
85871	S	2346 INFOUSA MARKETING, INC	928.00	02/04/20			
						CL 88985	928.00
85872	S	2500 INLAND TRUCK PARTS & SERVICE	5213.30	02/04/20			
						CL 89044	5205.17
						CL 89053	8.13
85873	S	233 J & L SPORTS	712.85	02/04/20			
						CL 88992	642.85
						CL 89012	70.00
85874	S	3052 JANICE BOBER	6.68	02/04/20			
						CL 88981	6.68
85875	S	811 JASON ANDERSON	1449.70	02/04/20			
						CL 89070	1449.70
85876	S	2750 JIM'S TOWING INC	195.00	02/04/20			
						CL 89015	195.00
85877	S	3515 JOE JOHNSON	827.14	02/04/20			
						CL 89124	827.14
85878	S	999999 JOY TABBERT	12.24	02/04/20			
						CL 88971	12.24
85879	S	3339 K-TECH SPECIALITY COATINGS	8093.06	02/04/20			
						CL 89014	8093.06
85880	S	2735 KADRMAS, LEE & JACKSON, INC	61921.00	02/04/20			
						CL 89108	1176.00
						CL 89131	43343.00
						CL 89132	17402.00

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85881	S	999999 KAK INDUSTRY	2860.89	02/04/20			
						CL 89000	2860.89
85882	S	2122 KEY CONTRACTING	17500.00	02/04/20			
						CL 89150	17500.00
85883	S	693 KPH, INC	11925.00	02/04/20			
						CL 89193	11925.00
85884	S	2508 KYLE HINRICHS	69.00	02/04/20			
						CL 88963	69.00
85885	S	705 LAWSON PRODUCTS	377.76	02/04/20			
						CL 88991	377.76
85886	S	711 LUTHER FAMILY FORD	2802.90	02/04/20			
						CL 89039	441.41
						CL 89125	2361.49
85887	S	999999 LYNN BOSS	9.06	02/04/20			
						CL 88970	9.06
85888	S	3304 MAC'S - FARGO	245.02	02/04/20			
						CL 88996	212.53
						CL 89079	32.49
85889	S	3384 MATHESON TRI-GAS INC	245.42	02/04/20			
						CL 89143	245.42
85890	S	3449 MBN ENGINEERING, INC	1590.50	02/04/20			
						CL 88989	1590.50
85891	S	299 MENARDS	2836.16	02/04/20			
						CL 89033	2836.16
85892	S	2766 MIDCONTINENT COMMUNICATIONS	455.00	02/04/20			
						CL 89064	125.00
						CL 89110	330.00
85893	S	102 MIDSTATES WIRELESS	1328.00	02/04/20			
						CL 88966	653.00
						CL 89023	125.00
						CL 89071	550.00
85894	S	1854 MIDWEST TAPE	349.31	02/04/20			
						CL 88986	87.23
						CL 89089	262.08
85895	S	772 MINNKOTA	75.00	02/04/20			
						CL 88955	75.00
85896	S	298 MVTL LABORATORIES	1214.00	02/04/20			
						CL 89146	1214.00
85897	S	2764 NAPWDA	45.00	02/04/20			
						CL 88964	45.00
85898	S	986 ND CHIEFS OF POLICE ASSOCIATION	300.00	02/04/20			
						CL 89003	300.00
85899	S	333 ND MOTOR VEHICLE DEPT.	23.00	02/04/20			
						CL 88961	11.50
						CL 89104	11.50
85900	S	826 ND RURAL WATER SYSTEMS	2170.00	02/04/20			
						CL 89147	2170.00

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85901	S	370 ND SAFETY COUNCIL	400.00	02/04/20			
						CL 89164	400.00
85902	S	1600 NELSON AUTO CENTER FLEET DEPT	25065.84	02/04/20			
						CL 88960	25065.84
85903	S	364 NELSON INTERNATIONAL	1084.30	02/04/20			
						CL 89024	893.58
						CL 89098	138.94
						CL 89141	51.78
85904	S	271 NETCENTER TECHNOLOGIES	2743.55	02/04/20			
						CL 89111	300.00
						CL 89133	237.00
						CL 89171	2206.55
85905	S	2261 NETWORK CENTER INCORPORATED	28556.87	02/04/20			
						CL 89177	28556.87
85906	S	2812 NORTH DAKOTA HIGHWAY PATROL	564.54	02/04/20			
						CL 88967	564.54
85907	S	328 NORTHERN ENGINE & SUPPL	152.26	02/04/20			
						CL 89045	152.26
85908	S	1028 NORTHERN TRUCK EQUIPMENT CORP.	99.13	02/04/20			
						CL 89076	99.13
85909	S	1350 NORTHWEST SCALE, INC	420.00	02/04/20			
						CL 89159	420.00
85910	S	1715 NORTHWEST TIRE INC	665.01	02/04/20			
						CL 89073	665.01
85911	S	1774 O'REILLY AUTOMOTIVE STORES, INC	2020.40	02/04/20			
						CL 89027	77.67
						CL 89095	1896.57
						CL 89126	46.16
85912	S	3505 OFFICE SIGN COMPANY	192.75	02/04/20			
						CL 88980	192.75
85913	S	353 OHNSTAD TWICHELL	51540.77	02/04/20			
						CL 89172	24652.75
						CL 89173	26888.02
85914	S	352 OK TIRE	330.78	02/04/20			
						CL 89025	24.95
						CL 89051	305.83
85915	S	399 OLYMPIC SALES	255.00	02/04/20			
						CL 89157	255.00
85916	S	276 OSTROMS ACE HARDWARE	716.67	02/04/20			
						CL 89021	257.29
						CL 89097	330.50
						CL 89127	128.88
85917	S	3508 PAUL MONTPLAISIR	150.00	02/04/20			
						CL 89092	150.00
85918	S	563 PETRO SERVE USA	53471.62	02/04/20			
						CL 88973	5383.63
						CL 89198	48087.99

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Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85919	S	1987 PETSMA RT	125.96	02/04/20			
						CL 88959	125.96
85920	S	3180 PHOENIX FABRICATORS AND ERECTORS	3550.00	02/04/20			
						CL 89192	3550.00
85921	S	1483 PITNEY BOWES RESERVE ACCOUNT	500.00	02/04/20			
						CL 89090	500.00
85922	S	1295 PRO-WEST & ASSOCIATES, INC	835.18	02/04/20			
						CL 89128	835.18
85923	S	1166 PRODUCTIVITY PLUS ACCOUNT	25601.24	02/04/20			
						CL 89032	2063.72
						CL 89048	19226.95
						CL 89054	278.00
						CL 89138	166.00
						CL 89149	3785.57
						CL 89158	81.00
85924	S	1253 PROTECTION SYSTEMS, INC	7885.00	02/04/20			
						CL 89109	7885.00
85925	S	1128 R & R PETROLEUM EQUIPMENT	76.00	02/04/20			
						CL 89013	76.00
85926	S	1467 RED RIVER FABRICATING	205.00	02/04/20			
						CL 89042	205.00
85927	S	663 ROAD EQUIPMENT PARTS CENTER	55.20	02/04/20			
						CL 89094	55.20
85928	S	1881 SAM'S CLUB/SYNCHRONY BANK	235.66	02/04/20			
						CL 89121	235.66
85929	S	454 SANITATION PRODUCTS	222.77	02/04/20			
						CL 88995	222.77
85930	S	999999 SHEYENNE MECHANICAL LLC	12100.00	02/04/20			
						CL 89187	12100.00
85931	S	2655 SIMPLIFILE	95.00	02/04/20			
						CL 89178	95.00
85932	S	3510 SP2, LLC	118.14	02/04/20			
						CL 89107	118.14
85933	S	3516 STEIN'S INC	453.19	02/04/20			
						CL 89130	453.19
85934	S	31 STURDEVANT'S AUTO PARTS	541.76	02/04/20			
						CL 89026	502.70
						CL 89074	39.06
85935	S	3436 SUPERIOR ELECTRIC	10297.96	02/04/20			
						CL 89191	10297.96
85936	S	733 SWANSTON EQUIPMENT CORP.	623.79	02/04/20			
						CL 89029	207.06
						CL 89096	340.49
						CL 89140	59.85
						CL 89160	16.39
85937	S	634 SWEENEY CONTROLS COMPANY	506.40	02/04/20			
						CL 89041	506.40

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
85938	S	3487 TEMPLE DISPLAY LTD	21275.30	02/04/20	_____		
						CL 89148	21275.30
85939	S	1419 THE ARTS PARTNERSHIP	60.00	02/04/20	_____		
						CL 88983	60.00
85940	S	1900 THE UPS STORE #5998	132.31	02/04/20	_____		
						CL 88994	64.31
						CL 89040	68.00
85941	S	3482 THUNDER COFFEE, INC	1572.86	02/04/20	_____		
						CL 89188	1572.86
85942	S	1320 TYLER WILLIAMS	265.00	02/04/20	_____		
						CL 89069	265.00
85943	S	2503 WES CHRISTIANSON	82.50	02/04/20	_____		
						CL 88962	82.50
85944	S	648 WEST FARGO AUTO BODY/GLASS	2722.90	02/04/20	_____		
						CL 89016	2722.90
85945	S	566 WEST FARGO PARK DISTRICT	219335.71	02/04/20	_____		
						CL 89197	219335.71
85946	S	2625 WEST FARGO POLICE EXPLORER POST	3300.00	02/04/20	_____		
						CL 89005	3300.00
85947	S	2184 WEST SIDE STEEL	251.68	02/04/20	_____		
						CL 89022	12.52
						CL 89084	184.02
						CL 89161	55.14
85948	S	3121 WINCAN LLC	1500.00	02/04/20	_____		
						CL 89153	1500.00
85949	S	3022 WINDOW TINT PROS AND AUTOMOTIVE ACCESSOR	110.00	02/04/20	_____		
						CL 89063	110.00
85950	S	338 XCEL ENERGY	11506.24	02/04/20	_____		
						CL 89050	196.93
						CL 89167	69.87
						CL 89168	58.18
						CL 89170	179.47
						CL 89182	8332.16
						CL 89183	52.59
						CL 89184	141.15
						CL 89185	63.51
						CL 89186	2412.38
85951	S	582 ZEP MANUFACTURING	147.61	02/04/20	_____		
						CL 89099	147.61

Total for Claim Checks **1013417.42**
Count for Claim Checks 146

* denotes missing check number(s)

of Checks: 146 Total: 1013417.42



City Commission Agenda Item Request

Please Note: The following information must be completed and submitted before noon on the Thursday preceding the City Commission Meeting. Failure to comply may delay action being taken on your request.

Office Use:

Regular Agenda Item #:

Consent Agenda Item #:

Agenda Item Information:

Contact Name: *

Chad Zander - Public Works Department

Phone Number: *

701-306-2646

Email Address:

chad.zander@westfargond.gov

Date *

2/13/2020

Topic for Consent or Regular Agenda?

Please select one option:

Consent Agenda

Regular Agenda

Please Briefly Describe Your Request *

Approval of new Urban Forestry Committee Members - Applicants are already approved by Urban Forestry Committee

Site Address or Legal Description (if applicable)

Urban Forestry Committee

Action Being Requested from City Commission *

Approval of attached applicants for Urban Forestry Committee. Michael Opat is the committee member. Barry Johnson is the educational liaison. 3 year terms.

Upload Additional Documentation (Optional):

Michael Opat.pdf

1.28MB

Barry Johnson.pdf

2.08MB

February 10, 2020

Mr. Chad Zander, Program Coordinator
West Fargo Forestry Committee
City of West Fargo
810 12th Ave NW
West Fargo, ND 58078

RE: West Fargo Forestry Committee Application

Mr. Zander:

Attached you will find a fully completed City of West Fargo application for Boards and Commissions and my resume as my request to be considered for a position on the West Fargo Forestry Committee.

As you are aware, I was instrumental in the success of the Forestry Department from 1993 - 2013 when I was the Public Works Director. I am very pleased with the continuing successes you have fostered and would like to be placed on the Forestry Committee to continue this success.

I have been active in the North Dakota Urban and Community Forestry Association since 2014 and in fact have been on the Outreach Board since 2015. I have been instrumental in receiving numerous grants through the ND Forestry Service for surrounding communities and remain very active in Urban Forestry.

Thank you for your consideration.

Sincerely

A handwritten signature in blue ink, appearing to read "Barry D. Johnson".

Barry D. Johnson, PE
1406 16th Ave E
West Fargo, ND 58078
701-936-3695
bdjohnwf@aol.com



**CITY OF WEST FARGO
APPLICATION FOR BOARDS AND COMMISSIONS**

PLEASE ATTACH A COPY OF YOUR RESUME

Board of Commission for which you are applying: Forestry Committee
 YOUR NAME (Last, First, Middle) Johnson, Barry, Delano County: Cass
 Mailing Address: 1406 16 Ave E City: West Fargo State: ND Zip: 58078
 Business Phone Number: 701-936-3695 Home Phone Number: 701-282-7294
 Employer Name: Bolton & Meak Your Job Title: Senior Project Manager
 Employer Address: 3168 41st St. So., Suite 2 City: Fargo State: ND Zip: 58104

EDUCATION AND GENERAL QUALIFICATIONS:

LEVEL	NAME OF SCHOOL	LOCATION	# YEARS ATTENDING	DID YOU GRADUATE	MAJOR COURSE OF STUDY
HIGH SCHOOL	Bird Island Public	Bird Island MN	4	YES	H.S. Diploma
COLLEGE	South Dakota State Univ	Brookings SD	8	YES	BS & MS Civil Engr.
TRADE/BUSINESS/CORRESPONDENCE					

MEMBERSHIPS IN ORGANIZATIONS AND OFFICES HELD (INDICATE DATES HELD)	APWA - Past President and Current Exec. Board Member WEF, ANWA, ASCE, NDUCFA - Outreach Board
VOLUNTEER ACTIVITIES (INDICATE IF PAST OR PRESENT)	FM Athletics Football coach - Past West Fargo Baseball coach - Past
YOUR SPECIALS SKILLS AND QUALIFICATIONS	Extensive experience in Public Works Urban Forestry Board member ND Urban and Community Forestry Assoc

REFERENCES (List three persons, not related to you, whom you have known for at least one year)

NAME	ADDRESS	PHONE NUMBER	YEARS ACQUAINTED
Chad Zanker	West Fargo Public Works	701-306-2646	20
Dustin Scott	West Fargo City Hall	701-433-5425	20
Eric Odegaard	West Fargo, ND	701-729-9664	20

I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize investigations of all statements contained herein and the references listed above to give you any and all information concerning my qualifications and any pertinent information they may have, personal or otherwise, and release all parties from all liability for any damages that may result from furnishing the same to you.

PLEASE RETURN COMPLETED FORM, RESUME AND COVER LETTER TO:

City of West Fargo ATTN: Boards
800 4th Avenue East, Ste 1
West Fargo ND 58078

SIGNATURE: [Signature]

DATE: 2/10/20

1406 16th Ave E
West Fargo, ND 58078
701-282-7294 (h)
701-936-3695 (c)
bdjohnwf@aol.com

BARRY D. JOHNSON, P.E.

CURRICULUM VITAE Dedicated and client focused Professional Engineer positioned to assist the Public Works and governmental municipal services

SKILLS & ABILITIES Department Management and Administration
Grant and Loan writing
Municipal Client and Staff Relations

EXPERIENCE **SENIOR PROJECT MANAGER, BOLTON & MENK, INC**

FARGO, ND

Oct 2013 - Present

Expertise in marketing, planning, design oversight, scheduling and coordination for municipal projects. Extensive work in public facilitation, design and construction phase services, directing work of other staff, developing less experienced personnel, building and maintaining client relationships, and performing project related work.

One project of personal pride is the six-mile Rails-to-Trails project between the cities of Arthur and Hunter, ND. This project included project formulation, design, financial appropriations (successfully wrote 10 separate state and federal grants exceeding \$1,000,000), construction management and all administrative duties.

Other significant activities include city engineer duties for communities which entail all items associated with municipal services, including interaction with North Dakota Dept of Transportation, North Dakota Dept of Environmental Quality, United States Dept of Agriculture, State Water Commission, North Dakota Dept of Parks and Recreation, North Dakota Forest Service and numerous Federal, State and Local Civic entities.

PUBLIC WORKS DIRECTOR

CITY OF WEST FARGO, ND

August 1993 - October 2013

This was an upper management level position that included supervision and management of all activities associated with Engineering, Wastewater, Water, Streets, Sanitation and Forestry Departments for the City of West Fargo. I was responsible for the development of all the departments during the growth of the City from 12,000 to 30,000 persons during my tenure. This position included the planning and review of over 400 engineering projects ranging from typical developments to major infrastructure improvements. Supervision of

over 40 employees along with a \$8 million yearly operation budget, yearly equipment budget of \$500,000 and a yearly capital improvement budget of \$10 million. Responsible for the Fleet and Facilities in Public Works which included the addition of a new Public Works Department campus and several satellite Public Works buildings throughout the City.

The following is a list of my personal achievements while with the City of West Fargo:

- Developed the City's Pavement Management System
- Created the new standard for lift stations within the city and implemented a capital improvements plan to replace the existing station with the new standard.
- Instituted a City-wide SCADA system for the 100+ lift stations, wells and buildings
- Repurposed the KX4 concrete building into the current Public Works Department and Conference Center. This included the site location study, interior design and space requirement study and construction management of the project.
- Repurposed the Camelot Cleaners site cleanup building into cold storage building located on the Public Works site. This included the construction management of the project.
- Construction Management of the Sanitation Facilities which included bid and specification package for demolition of the old cinder block wing and construction of new sanitation building
- Developed and instituted the water tower lease program for wireless antennae systems
- Developed and administered the City Industrial Pretreatment Program
- Developed and administered the City Inert Landfill
- Instituted the NDPDES Stormwater Program (MS4)
- Developed the City sign and pavement markings Retro-Reflectivity program
- Developed the City Asset Management Program for all departments
- Instituted the City-wide safety program (for City Employees)
- Developed the Wellhead Protection Program
- Operation of the 9 cell, 400-Acre Wastewater Stabilization Lagoons which included the designated signature official for all quarterly and yearly reports
- Wrote and published the annual water report as required by the Dept of Health
- Sheyenne River Diversion Operation and Maintenance which included 15.2 miles of Diversion Channel, 12.7 miles of Tie-Back Protection Levees and several Pumping Stations. This included the intimate partnership with the US Army Corp of Engineers and the development of an operation and maintenance manual for the project.
- Developed the Stormwater Management Program which consisted of 39 Wet and Dry Stormwater retention Areas
- Operation, Maintenance and Administration of the City's 8 Municipal Wells and 4 elevated water towers
- Charter member of Lake Agassiz Water Authority
- Obtained the following FEMA Certifications: IS-00100, IS-00200, IS-00700, IS-00800.b and IS-00803

**SENIOR PROJECT ENGINEER, SEH/PAULY OLSEN BETTENDORF EASTWOOD
ST. CLOUD, MN**

October 1987 - August 1993

Senior design engineering responsibilities for municipal projects including all aspects of city engineering duties for various Minnesota communities. Projects of note include the design and inspection of 1,500 onsite septic systems, designated City Engineer for six municipalities and Project Lead/Design engineer for several MNDOT highway projects

**PROJECT ENGINEER, WESTWOOD PLANNING AND ENGINEERING
WAYZATA, MN**

April 1987 - October 1987

Project engineering duties. Achieved my professional engineering certification while at Westwood. My significant project while at Westwood was the Shakopee MN Downtown Reconstruction Project. I worked directly with the City Engineer, Mr. Ken Ashfeld (Mr. Ashfeld is now the Public Works Director/City Engineer of Maple Grove, MN)

**PROJECT ENGINEER, MEYER-ROHLIN, INC.
BUFFALO, MN**

August 1984 - April 1987

Project engineering duties including design, administration and inspection of municipal projects. City Engineering duties at select Minnesota communities. Projects of personal satisfaction included the construction of the Dassel Wastewater Treatment Facility which consisted of Stabilization Ponds with a solid set effluent irrigation system, and the Albertville Wastewater Treatment Facility which consisted of Stabilization ponds with a phosphorus removal system.

**GRADUATE ASSISTANT, SOUTH DAKOTA STATE UNIVERSITY
BROOKINGS, SD**

January 1983 - June 1984

Nighttime and weekend operator at the Brookings, SD advanced mechanical wastewater treatment facility. This was required as part of the graduate assistantship program at SDSU. Operations also included highly specialized laboratory work.

ENGINEER/SURVEYOR, LARSON ENGINEERING

MILBANK, SD

August 1982 - January 1983

Engineering design, surveying and inspection at a small municipal engineering firm in Milbank, SD

EDUCATION

SOUTH DAKOTA STATE UNIVERSITY – B.S. / CIVIL ENGINEERING – BROOKINGS, SD

SOUTH DAKOTA STATE UNIVERSITY – M.S./ CIVIL ENGINEERING – BROOKINGS, SD

LEADERSHIP

Current State Director American Public Works Assoc. - ND Chapter

Past President American Public Works Assoc. – ND Chapter

Member Water Environment Federation

Member American Water Works Association – 25 Silver Water Drop Award

Member American Society of Civil Engineers

Member and Outreach Director North Dakota Urban and Community

Forestry Association

Michael M. Opat, PE, CFM

775 Homestead Court
West Fargo, ND 58078
507-251-7847
mikeopat8@gmail.com

January 21, 2020

Mr. Chad Zander
Program Coordinator
City of West Fargo
800 4th Avenue East
West Fargo, ND 58078

Dear Mr. Zander:

After communicating with you recently it is my understanding that there will be an opening on the City of West Fargo's Forestry Committee. As we have discussed, I am very interested in filling that position and I have enclosed my application and resume for consideration. I am applying because I have had a lifelong interest in forestry and as a current resident of West Fargo I see this opportunity as an ideal way for me to support our community. I attended the Committee's most recent meeting and that further cemented my interest in serving on the Committee.

My first job as a teenager was working on a tree farm planting and trimming trees and that led to managing trees and forests on my own property, including the forest I currently own and manage near Frazee, Minnesota. My appreciation for trees and forests is something I enjoy sharing with other people and I believe that serving on the Forestry Committee would be a great way for me to do that here in West Fargo. I also believe that my knowledge and experience, in addition to my organizational and leadership skills, would be an asset to the Committee. The enclosed resume highlights my relevant background and experience and I would gladly discuss this further with the Committee at any time.

If you have any questions or require any additional information, please feel free to contact me at any time. I look forward to hearing from you soon and I hope that I will have the opportunity to work with you and the Forest Committee for years to come.

Sincerely,



Michael M. Opat



**CITY OF WEST FARGO
APPLICATION FOR BOARDS AND COMMISSIONS**

PLEASE ATTACH A COPY OF YOUR RESUME

Board of Commission for which you are applying: Forestry Committee
 YOUR NAME (Last, First, Middle) Opat, Michael County: _____
 Mailing Address: 775 Homestead Ct City: West Fargo State: ND Zip: 58078
 Business Phone Number: _____ Home Phone Number: 507-251-7847
 Employer Name: Houston Engineering Your Job Title: Sr. Project Manager
 Employer Address: 1401 21st Ave. N. City: Fargo State: ND Zip: 58102

EDUCATION AND GENERAL QUALIFICATIONS:

LEVEL	NAME OF SCHOOL	LOCATION	# YEARS ATTENDING	DID YOU GRADUATE	MAJOR-COURSE OF STUDY
HIGH SCHOOL	Chowan Valley	Chaff: ebl, nwr	4	Yes	
COLLEGE	MOSU	Fargo	4	Yes	Civil Engineering
	Univ. of Mary	Fargo/Bismarck	2	Yes	M.B.A.
TRADE/BUSINESS/ CORRESPONDENCE					

MEMBERSHIPS IN ORGANIZATIONS AND OFFICES HELD (INDICATE DATES HELD)	See attached resume ↓
VOLUNTEER ACTIVITIES (INDICATE IF PAST OR PRESENT)	
YOUR SPECIALS SKILLS AND QUALIFICATIONS	

REFERENCES (List three persons, not related to you, whom you have known for at least one year)

NAME	ADDRESS	PHONE NUMBER	YEARS ACQUAINTED
Dustin Scott	West Fargo City Hall	701-433-5430	10
Marty Wiley	15368 Sunset Hill Drive, ^{District} Lakus	218-849-6095	3
Paul Zunker	6043 Wildflower Drive S Fargo, ND	701-269-4621	10

I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize investigations of all statements contained herein and the references listed above to give you any and all information concerning my qualifications and any pertinent information they may have, personal or otherwise, and release all parties from all liability for any damages that may result from furnishing the same to you.

PLEASE RETURN COMPLETED FORM, RESUME AND COVER LETTER TO:
 City of West Fargo ATTN: Boards
 800 4th Avenue East, Ste 1
 West Fargo ND 58078

SIGNATURE: [Signature]
 DATE: 1-21-20

Michael M. Opat, PE, CFM

Education

B.S. CIVIL ENGINEERING | NORTH DAKOTA STATE UNIVERSITY

M.B.A- MANAGEMENT | UNIVERSITY OF MARY

Registrations

LICENSED PROFESSIONAL ENGINEER (PE) IN MINNESOTA & NORTH DAKOTA

CERTIFIED FLOODPLAIN MANAGER (CFM)

Skills & Qualifications

- Excellent written and verbal communication skills
- Strong organizational and planning skills
- Successful client management and business development experience
- Skilled at managing budgets and schedules
- Adept at identifying problems before they happen
- Strong supervisory and training skills
- Corporate strategic planning and standardization experience

Experience

SENIOR PROJECT MANAGER | HOUSTON ENGINEERING, INC | 2019-PRESENT

SENIOR PROJECT MANAGER | MOORE ENGINEERING, INC. | 2011-2019

SENIOR DESIGN ENGINEER | MOORE ENGINEERING, INC. | 2009-2011

DESIGN ENGINEER | G-CUBED ENGINEERING, INC. | 2003-2009

INTERN | G-CUBED ENGINEERING, INC. | 1998-2003

LABORER | GRIFFIN HARDWOOD TREE FARMS | 1996-1998

Community Involvement

PROFESSIONALLY PAIRED (NON-PROFIT)- CO-FOUNDER AND BOARD MEMBER

VOLUNTEER HUNTER EDUCATION INSTRUCTOR

DISTRICT CHAIRMAN FOR DUCKS UNLIMITED (PAST)

VOLUNTEER ASSISTANT VARSITY BASEBALL COACH (PAST)

Awards

2014 YOUNG ENGINEER OF THE YEAR; FARGO-MOORHEAD ENGINEERS CLUB

2018 CHAMBER FARGO-MOORHEAD-WEST FARGO LEADERSHIP PROGRAM GRADUATE

2019 PRAIRIE BUSINESS 40 UNDER 40 HONOREE

EAGLE SCOUT

Professional Affiliations

FM ENGINEERS CLUB- NDSPE CHAPTER 4

ASSOCIATION OF DAM SAFETY OFFICIALS

ASSOCIATION OF STATE FLOODPLAIN MANAGERS

ASCE

Hobbies & Interests

HOBBY/TREE FARMING

HUNTING & FISHING

NDSU BISON ATHLETICS



City Commission Agenda Item Request

Please Note: The following information must be completed and submitted before noon on the Thursday preceding the City Commission Meeting. Failure to comply may delay action being taken on your request.

Office Use:

Regular Agenda Item #:

Consent Agenda Item #:

Agenda Item Information:

Contact Name: *

Jim Larson

Phone Number: *

701-433-5302

Email Address:

Jim.Larson@westfargond.gov

Date *

2/13/2020

Topic for Consent or Regular Agenda?

Please select one option:

Consent Agenda

Regular Agenda

Please Briefly Describe Your Request *

Quarterly Pledge of Assets as of December 31, 2019

Site Address or Legal Description (if applicable)

Action Being Requested from City Commission *

Approve the pledge of assets

Upload Additional Documentation (Optional):

Pledging 12.31.19.pdf

133.6KB



**Pledging of Securities Collateral
December 31, 2019**

Bank Accounts	Account #	Bank Balance	FDIC Covered	Amount to be Covered by Pledging	Bank Actual Pledged	Pledged %	Source
1st International Bank							
Money Market Checking		\$0.00	\$0.00	\$0.00	\$0.00	0%	FDIC
Escrow Account	3232	22,423.80	22,423.80	0.00	0.00	0%	FDIC
ICS Savings	057	84,927,430.25	84,927,430.25	0.00	0.00	0%	FDIC
ICS Savings	323	22,346,065.51	22,346,065.51	0.00	0.00	0%	FDIC
Water and Sewer Bonds	3323	587.25	587.25	0.00	0.00	0%	FDIC
Alerus Financial							
Money Market Checking	0005	624,909.90	250,000.00	374,909.90	412,400.89	110%	BND Pledge Pool
ICS MMKT	005	14,081,690.34	14,081,690.34	0.00	0.00	0%	FDIC
Bell State Bank	0239	5,391,475.45	250,000.00	5,141,475.45	6,000,000.00	117%	BND Irrevocable LOC's 6823 & 6800
Choice Financial		2,360,201.30	250,000.00	2,110,201.30	2,321,221.43	110%	BND Pledge Pool LOC #7016
Totals		\$129,754,783.80	\$122,128,197.15	\$7,626,586.65	\$8,733,622.32		

Prepared by: Tracy Johnson, Accountant



City Commission Agenda Item Request

Please Note: The following information must be completed and submitted before noon on the Thursday preceding the City Commission Meeting. Failure to comply may delay action being taken on your request.

Office Use:

Regular Agenda Item #:

Consent Agenda Item #:

Agenda Item Information:

Contact Name: *

Jim Larson

Phone Number: *

701-433-5302

Email Address:

Jim.Larson@WestFargoND.gov

Date *

2/13/2020

Topic for Consent or Regular Agenda?

Please select one option:

Consent Agenda

Regular Agenda

Please Briefly Describe Your Request *

Preliminary Financial Statement as of December 31, 2019

Site Address or Legal Description (if applicable)

Action Being Requested from City Commission *

Information Only

Upload Additional Documentation (Optional):

Commissioner Financial Report 2019.pdf

541.87KB



Budgeted Funds		Revenue/Transfers			Expenditure/Transfers			Net			Cash
		Actual	Annual Budget	Variance	Actual	Annual Budget	Variance	Actual	Annual Budget	Variance	
1000	General Fund	\$ 15,198,978	\$ 16,994,838	\$ (1,795,860)	\$ 17,604,838	\$ 17,004,838	\$ (600,000)	\$ (2,405,860)	\$ (10,000)	\$ (2,395,860)	\$ 22,274,445
2030	Share of Specials	127,371	130,000	(2,629)	196,765	130,000	(66,765)	(69,393)	-	(69,393)	(47,790)
2060	Fire Dept	1,915,752	1,978,205	(62,453)	2,311,448	2,128,405	(183,043)	(395,696)	(150,200)	(245,496)	(217,334)
7000	Library	935,732	972,550	(36,818)	1,371,931	1,264,200	(107,731)	(436,199)	(291,650)	(144,549)	549,623
7050	Airport	255,503	205,000	50,503	245,336	205,000	(40,336)	10,167	-	10,167	462,777
Total Government		\$ 18,433,337	\$ 20,280,593	\$ (1,847,256)	\$ 21,730,318	\$ 20,732,443	\$ (997,875)	\$ (3,296,982)	\$ (451,850)	\$ (2,845,132)	\$ 23,021,722
2000	Sales Tax	\$ 11,255,728	\$ 10,010,000	\$ 1,245,728	\$ 10,376,455	\$ 10,000,000	\$ (376,455)	\$ 879,273	\$ 10,000	\$ 869,273	\$ 3,499,175
2970	Capital Improvements	7,981,159	7,653,300	327,859	303,020	7,620,000	7,316,980	7,678,139	33,300	7,644,839	20,188,166
2960	Economic Development	2,857,824	2,502,000	355,824	1,231,741	2,060,500	828,759	1,626,083	441,500	1,184,583	3,582,249
2130	Municipal Highway	1,681,729	1,600,000	81,729	2,187	1,600,000	1,597,813	1,679,542	-	1,679,542	2,028,314
2110	Gaming	3,200	12,000	(8,800)	-	60,000	60,000	3,200	(48,000)	51,200	66,520
2140	Tourism & Events	1,519	51,000	(49,481)	14,916	73,500	58,584	(13,397)	(22,500)	9,103	41,735
2200	Vector Control	97,100	100,000	(2,900)	128,584	100,000	(28,584)	(31,484)	-	(31,484)	(2,790)
2210	Forestry	100,255	102,500	(2,245)	370,190	342,750	(27,440)	(269,936)	(240,250)	(29,686)	(259,572)
2230	City Utility	139,027	106,000	33,027	219,108	150,000	(69,108)	(80,081)	(44,000)	(36,081)	235,089
2500	Police Special Funds	82,155	5,500	76,655	49,192	5,500	(43,692)	32,963	-	32,963	(150,578)
2950	Assets Forfeitures	26,924	50,000	(23,076)	77,026	50,000	(27,026)	(50,102)	-	(50,102)	67,643
2980	South Facility Hookup	267,561	-	267,561	27,720	50,000	22,280	239,841	(50,000)	289,841	3,170,688
Total Special Funds		\$ 24,494,180	\$ 22,192,300	\$ 2,301,880	\$ 12,800,138	\$ 22,112,250	\$ 9,312,112	\$ 11,694,042	\$ 80,050	\$ 11,613,992	\$ 32,466,638
3000	Total Debt Service	\$ 60,020,422	\$ 24,613,600	\$ 35,406,822	\$ 35,856,562	\$ 27,601,195	\$ (8,255,367)	\$ 24,163,860	\$ (2,987,595)	\$ 27,151,455	\$ 62,696,571
6010	Sanitation	\$ 4,767,791	\$ 3,217,500	\$ 1,550,291	\$ 3,763,663	\$ 3,462,750	\$ (300,913)	\$ 1,004,127	\$ (245,250)	\$ 1,249,377	\$ 2,380,309
6020	Water	13,492,757	8,442,000	5,050,757	13,669,624	7,533,100	(6,136,524)	(176,866)	908,900	(1,085,766)	6,185,847
6025	Sewer	1,624,997	3,200,000	(1,575,003)	1,818,619	3,171,250	1,352,631	(193,622)	28,750	(222,372)	695,133
6050	Sewage Surcharge	6,346	8,000	(1,654)	-	-	-	6,346	8,000	(1,654)	321,488
Total Enterprise		19,891,891	14,867,500	5,024,391	19,251,906	14,167,100	(5,084,806)	639,985	700,400	(60,415)	\$ 9,582,778
5000	Tree Fund	84,000	61,000	23,000	24,430	40,000	15,570	59,570	21,000	38,570	619,935
2050	Park Funds	851,249	680,000	171,249	851,249	680,000	(171,249)	-	-	-	-
2141	FM CVB	320,564	210,000	110,564	320,564	210,000	(110,564)	-	-	-	-
Total Agency		\$ 1,255,813	\$ 951,000	\$ 304,813	\$ 1,196,243	\$ 930,000	\$ (266,243)	\$ 59,570	\$ 21,000	\$ 38,570	\$ 619,935
Total All Budgeted Funds		\$ 124,095,643	\$ 82,904,993	\$ 41,190,650	\$ 90,835,168	\$ 85,542,988	\$ (5,292,180)	\$ 33,260,475	\$ (2,637,995)	\$ 35,898,470	\$ 128,387,644



Non-Budgeted Funds	Revenue/Transfers			Expenditure/Transfers			Net			Cash Balances
	Actual	Annual Budget	Variance	Actual	Annual Budget	Variance	Actual	Annual Budget	Variance	
4000 Construction	\$ 39,688,632	\$ -	\$ 39,688,632	\$ 38,787,036	\$ -	\$ (38,787,036)	\$ 901,596	\$ -	\$ 901,596	\$ (1,439,185)
2085 Equipment Reserve	26,250	-	26,250	52,423	-	(52,423)	(26,173)	-	(26,173)	(26,173)
2170 Clerk of Court Bond Fund	-	-	-	880	-	(880)	-	-	-	112,156
2600 Future Building	2,450	-	2,450	168,181	-	(168,181)	(165,731)	-	(165,731)	(17,769)
2962 Pioneer Place Improvements	50,000	-	50,000	150,000	-	(150,000)	(100,000)	-	(100,000)	-
2XXX Misc. Special Funds	707,563	-	707,563	266,200	-	(266,200)	441,363	-	441,363	746,869
7XXX Agency Funds	54,852	-	54,852	50,688	-	(50,688)	4,164	-	4,164	395,445
8600 Park District Special Assessment	410,979	-	410,979	449,249	-	(449,249)	(38,270)	-	(38,270)	2,629
Total Non-Budgeted Funds	\$ 40,940,726	\$ -	\$ 40,940,726	\$ 39,924,657	\$ -	\$ (39,924,657)	\$ 1,016,948	\$ -	\$ 1,016,948	\$ (226,030)
All Funds Combined	\$ 165,036,369	\$ 82,904,993	\$ 82,131,376	\$ 130,759,825	\$ 85,542,988	\$ (45,216,837)	\$ 34,277,423	\$ (2,637,995)	\$ 36,915,418	\$ 128,161,614

Notes to the Financials

1	This report is a preliminary 2019 financial statement. There are yearend transfers and accruals that have not been entered. The transfers will provide funding from special funds to budgeted funds.
2	The above represents the year end 2019 financial position of the City of West Fargo. Overall the City is on budget. The higher than normal snow fall in 1st quarter impacted our snow plow operations overtime, chemical to treat the roads (brine) and gas/oil are higher than normal and budgeted. These over budget variances could be offset this fall/early winter depending on weather.
3	Property Taxes - 97% of budgeted property taxes. The uncollected property taxes represents the uncollected and 5% discount available.
4	Police department salary expense is higher than budget but are offset by higher than budgeted grant revenue for the additional salary expense.
5	Debt Service (bond payments) and construction are shown as a separate line each. These funds are systematic (debt service) or managed with separate budgets maintained as part of the project files (construction).
6	Water revenues are under budget and lower than prior year. 2019 was a wet year and the lower utilization is consistent with our neighboring communities.
7	The Debt Service fund appears high to budget. This is due to the refinancing of debt with the receipt of bond proceeds. The expenses are higher to budget for the payment of prior bonds that were refinanced with new bonds.



www.westfargond.gov

*Larry M. Weil, Community Development Director
Tim Solberg, Director of Planning and Zoning, AICP
Malachi Peterson, Planner
Lisa Sankey, Planner*

NOTICE OF PUBLIC HEARING

A public hearing will be held on the 2nd Day of March 2020, at 5:30 P.M. at the City Hall of West Fargo, North Dakota, concerning the enactment of a proposed zoning ordinance. The proposed ordinance involves the following:

Parcel located in the S $\frac{1}{2}$ of Section 31, T139N, R49W, City of West Fargo, North Dakota (Proposed The Ranch at the Wilds Addition)

The ordinance is for the purpose of rezoning from an A: Agricultural District to a PUD: Planned Unit Development District

A copy of the proposed ordinance is available for public inspection and copying at the office of the City Auditor between the hours of 8:00 A.M.-5:00 P.M. all days except weekends and holidays.

BY ORDER OF THE CITY COMMISSION OF THE CITY OF WEST FARGO, NORTH DAKOTA

Bernie L. Dardis
President of the Board of City
Commissioners of the City of
West Fargo, North Dakota

(Please Publish February 17 and 24, 2020)

*** Consent Agenda ***

AGENDA ITEM DESCRIPTION
CITY COMMISSION
WEST FARGO, NORTH DAKOTA

Agenda # f

***Please Note: The following information must be completed and submitted to the West Fargo City Auditor's Office by the Thursday noon preceding the City Commission meeting. Failure to comply may result in no action being taken on your request.

1. CONTACT PERSON: Tim Solberg, AICP

2. PHONE NUMBER: 433-5321 DATE: February 12, 2020

3. PLEASE **BRIEFLY** DESCRIBE YOUR REQUEST:

Zoning Ordinance Amendment for proposed changes to Section 4-460. Sign Regulations.

4. SITE ADDRESS OR LEGAL DESCRIPTION (if applicable):

N/A.

5. ACTION BEING REQUESTED FROM CITY COMMISSION:

Schedule First Reading and Public Hearing on the Zoning Ordinance Amendment at 5:30 pm on March, 2, 2020.



www.westfargond.gov

*Larry M. Weil, Community Development Director
Tim Solberg, Director of Planning and Zoning, AICP
Malachi Peterson, Planner
Lisa Sankey, Planner*

NOTICE OF PUBLIC HEARING

A public hearing will be held on the 2nd Day of March 2020, at 5:30 P.M. at the City Hall of West Fargo, North Dakota, concerning the enactment of a proposed zoning ordinance. The proposed ordinance involves the following:

Zoning Ordinance Amendment to review proposed changes to Section 4-460
Sign Regulations

A copy of the proposed ordinance is available for public inspection and copying at the office of the City Auditor between the hours of 8:00 A.M.-5:00 P.M. all days except weekends and holidays.

BY ORDER OF THE CITY COMMISSION OF THE CITY OF WEST FARGO, NORTH DAKOTA

Bernie L. Dardis
President of the Board of City
Commissioners of the City of
West Fargo, North Dakota

(Please Publish February 17 and 24, 2020)



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

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

Full, Legal Name of Gaming Organization **WF Events LLC**

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

Name of Location Bar Down			
Street 3150 Sheyenne St	City West Fargo	ZIP Code 58078	County Cass
Beginning Date(s) Authorized 2-18-20		Ending Date(s) Authorized 6-30-2021	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) Identified on bar layout. SW corner			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted) 7	Hours of gaming (if restricted) 4pm-1am
--	--

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 checked="" type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input checked="" type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input checked="" type="checkbox"/> Calcuttas
<input checked="" type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input checked="" type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device		

APPROVALS

Attorney General	Date
Signature of City/County Official	Date
PRINT Name and official position of person signing on behalf of city/county above	

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

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

*CHK# 001122
 Pd 2-3-20
 \$100.00*

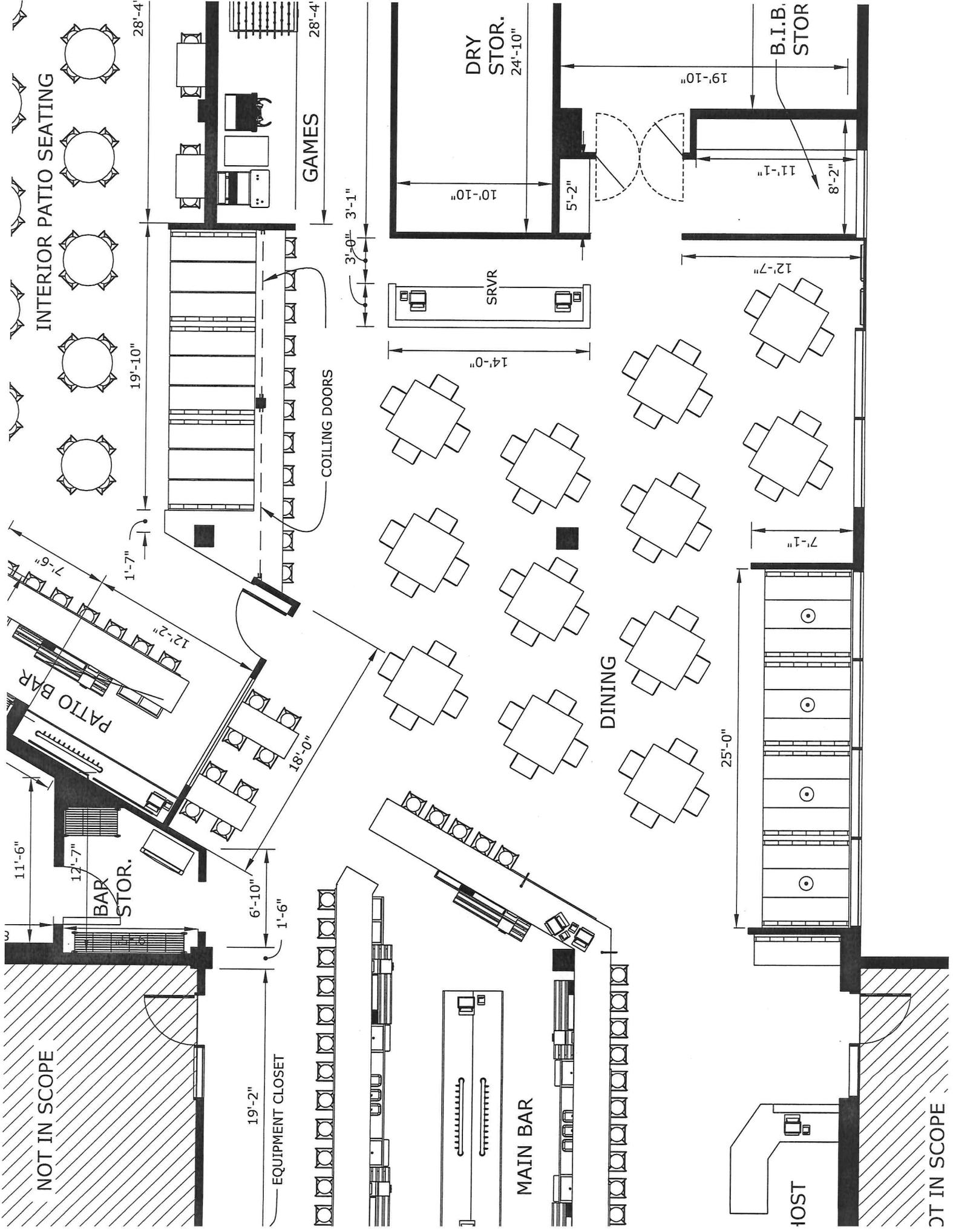


RENTAL AGREEMENT
OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
 SFN 9413 (Rev. 08-2019)

License Number (Office Use Only)

Site Owner (Lessor) <i>Bar Down ND LLC</i>		Site Name <i>Bar Down</i>		Site Phone Number <i>701-261-3556</i>	
Site Address <i>3150 Sheyene St #100</i>		City <i>West Fargo</i>	State <i>ND</i>	Zip Code <i>58078</i>	County <i>Cass</i>
Organization (Lessee) <i>West Fargo Events</i>			Rental Period to <i>6/30/2021</i>		Monthly Rent Amount
1. Is Bingo going to be conducted at this site? 1a If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts					
					<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
					<input type="checkbox"/> No <input type="checkbox"/> Yes
2. Is Twenty-One conducted at this site?					\$
Number of Tables with wagers up to \$5 _____		X Rent per Table \$ _____		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
Number of Tables with wagers over \$5 _____		1 X Rent per Table \$ 300.00		\$	
3. Is Paddlewheels conducted at this site?					\$ 300.00
Number of Tables _____		X Rent per Table \$ 200.00		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site?					\$ 200.00
Please check: <input checked="" type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes					\$ 175.00
<input checked="" type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices 3					\$ 300.00
Total Monthly Rent					\$ 975.00
5. If the only gaming activity to be conducted at this site is a raffle drawing, please check here. <input type="checkbox"/>					
TERMS OF RENTAL AGREEMENT:					
This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance					
The LESSOR agrees that no game will be directly operated as part of the lessor's business					
The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.					
The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed					
If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.					
The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.					
The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee					
The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.					
At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked					
Signature of Lessor <i>[Signature]</i>		Title <i>President</i>		Date <i>1-23-2020</i>	
Signature of Lessee <i>[Signature]</i>		Title <i>Executive Director</i>		Date <i>1-22-2020</i>	

(over)



INTERIOR PATIO SEATING

GAMES

COILING DOORS

DRY STOR.
24'-10"

B.I.B.
STOR

SRVR

DINING

MAIN BAR

NOT IN SCOPE

NOT IN SCOPE

28'-4"

28'-4"

19'-10"

14'-0"

19'-10"

11'-1"

8'-2"

12'-7"

25'-0"

7'-1"

7'-6"

1'-7"

12'-2"

18'-8"

11'-6"

12'-7"

6'-10"

1'-6"

19'-2"

EQUIPMENT CLOSET

HOST



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

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

Full, Legal Name of Gaming Organization Mule Deer Foundation

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

Name of Location <u>West Fargo Speedway</u>			
Street <u>680 Main Ave W</u>	City <u>West Fargo</u>	ZIP Code <u>58078</u>	County <u>Cass</u>
Beginning Date(s) Authorized <u>3-19-20</u>	Ending Date(s) Authorized <u>3-19-20</u>	Number of twenty-one tables if zero, enter "0": <u>0</u>	
Specific location where games of chance will be conducted and played at the site (required) <u>Event Center</u>			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known <u>3-19-2020</u>			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted) <u>3-19</u>	Hours of gaming (if restricted) <u>5hrs</u>
---	---

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

<input 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 type="checkbox"/> Twenty-One
<input checked="" 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 type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input type="checkbox"/> ELECTRONIC Pull Tab Device		

APPROVALS

Attorney General	Date
Signature of City/County Official	Date
PRINT Name and official position of person signing on behalf of city/county above	

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

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

*\$100.
 pd 2/7/20
 AK # 1042*



RENTAL AGREEMENT
 OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9413 (Rev. 05-2018)

License Number (Office Use Only)

Site Owner (Lessor) <i>West Fargo Speedway</i>	Site Name <i>Event Center</i>	Site Phone Number <i>701-388-4617</i>
Site Address <i>680 Main Ave W</i>	City <i>West Fargo</i>	State <i>ND</i>
	Zip Code <i>58078</i>	County <i>Cass</i>
Organization (Lessee) <i>Mule Deer Foundation</i>	Rental Period <i>3.19.20 to 3.19.20</i>	Monthly Rent Amount <i>0</i>
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$
2. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____ Number of Tables with wagers over \$5 _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ \$
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: <input type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device <input type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices _____ No additional rent is allowed for electronic pull tabs. Rent must be based on dispensing device requirements per NDCC 53-06.1-11 (5)(a)(b)		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$
Total Monthly Rent		\$ <i>-0-</i>

5. If the only gaming activity to be conducted at this site is a raffle drawing, please check here.

TERMS OF RENTAL AGREEMENT:

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.

The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor <i>[Signature]</i>	Title <i>GM</i>	Date <i>1-9-20</i>
Signature of Lessee <i>[Signature]</i>	Title <i>President / CEO</i>	Date <i>1-9-20</i>



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

Application for: Local Permit * Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to <i>Sandhill Archers, Inc</i>	Date(s) of Activity <i>2/19/20 to 4/23/20</i>	For a raffle, provide drawing date(s): <i>April, 23, 2020</i>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Odin Helgeson</i>	Title <i>Treasurer</i>	Business Phone Number <i>201-241-9002</i>	
Business Address <i>3001 Cheryl Ave NW</i>	City <i>West Fargo</i>	State <i>ND</i>	Zip Code <i>58078</i>
Mailing Address (if different) <i>PO Box 1022</i>	City <i>Fargo</i>	State <i>ND</i>	Zip Code <i>58107</i>
Name of Site Where Game(s) will be Conducted <i>Sandhills Archery Club</i>	Site Address <i>3001 Cheryl Ave NW</i>		
City <i>West Fargo</i>	State <i>ND</i>	Zip Code <i>58078</i>	County <i>Cass</i>

Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.
 Bingo Raffle Raffle Board Calendar Raffle Sports Pool Poker * Twenty-one * Paddlewheels *

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
	<i>See attached list</i>				
Total:					(Limit \$40,000 per year) \$

Intended uses of gaming proceeds: *To provide archery education, safety and practice to all ages.*

Does the organization presently have a state gaming license? No Yes - 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.

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

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

Signature of Organization or Group's Top Official <i>Odin Helgeson</i>	Date <i>2-11-2020</i>	Title <i>Treasurer</i>	Business Phone Number <i>201-241-9002</i>
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1#1078, \$25.00

SAC Banquet 2020 raffle prize list.

Scheels Bow Package	\$1,000
Sandhills Logo clothing	\$140
Bacon slabs	\$120
Racks of ribs	\$90
Scheels Gift Cards	\$400
Bolt action rifle	\$650
Air rifle	\$200
Two oil changes	\$100
Taxidermy Certificates	\$100
Various general raffle items	<u>\$550</u>
TOTAL	<u><u>\$3,350</u></u>

JAN 31 2020



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

Application for: Local Permit * Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to American Legion Department Of Nd		Date(s) of Activity to		For a raffle, provide drawing date(s): 06/22/2020	
Person Responsible for the Gaming Operation and Disbursement of Net Income Ronald Matthews		Title Adjutant		Business Phone Number (701) 293-3120	
Business Address 405 West Main Ave Suite 4-a		City West Fargo		State ND	Zip Code 58078
Mailing Address (if different) Po Box 5057		City West Fargo		State ND	Zip Code 58078
Name of Site Where Game(s) will be Conducted American Legion Department of ND Headquarters		Site Address 405 West Main Ave, Suite 4-a			
City West Fargo		State ND	Zip Code 58078	County Cass	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.					
<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 *					

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle-Sweepstake	1st Place	\$2,000.00	Raffle-Sweepsatke	10th Plac	\$100.00
Raffle-Sweepstake	2nd Place	\$1,000.00			
Raffle-Sweepstake	3rd Place	\$200.00			
Raffle-Sweepstake	4th Place	\$200.00			
Raffle-Sweepstake	5th Place	\$100.00			
Raffle-Sweepstake	6th Place	\$100.00			
Raffle-Sweepstake	7th Place	\$100.00			
Raffle-Sweepstake	8th Place	\$100.00			
Raffle-Sweepstake	9th Place	\$100.00			
Total:					(Limit \$40,000 per year) \$ 4,000.00

Intended uses of gaming proceeds: to fund activities of the American Legion which support ND communities, veterans, americanism and children/youth

Does the organization presently have a state gaming license? No Yes - 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.

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? No Yes-If "Yes," indicate the total value of all prizes previously awarded: \$ 8,000.00 . This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official <i>Ronald Matthews</i>	Date 1/29/2020	Title Adjutant	Business Phone Number (701) 293-3120
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CK# 34456
pd 25.00
1-31-20

FEB -7 2020



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

Application for: Local Permit * Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to West Fargo Sheyenne High School Mustang Booster Club		Date(s) of Activity 3/21/2020 to 3/21/2020		For a raffle, provide drawing date(s): 3/21/2020	
Person Responsible for the Gaming Operation and Disbursement of Net Income Amy Beaton		Title President		Business Phone Number (701) 936-5051	
Business Address P O Box 511		City West Fargo		State ND	Zip Code 58058-0511
Mailing Address (if different) P O Box 511		City West Fargo		State ND	Zip Code 58058-0511
Name of Site Where Game(s) will be Conducted Double Tree by Hilton		Site Address 825 E Beaton Drive			
City West Fargo		State ND	Zip Code 58078	County Cass	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.					
<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 *					

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffles and games	money & merchandise electronics, etc.	up to \$7,500.00			
Total:					(Limit \$40,000 per year) \$ 7,500.00

Intended uses of gaming proceeds: Income to the 501c3 organization. The money is used to support West Fargo Sheyenne High School organizations.

Does the organization presently have a state gaming license? No Yes - 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.

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? No Yes-If "Yes," indicate the total value of all prizes previously awarded: \$ 2,000. This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official <i>Amy Beaton</i>	Date 1/28/2020	Title President	Business Phone Number (701) 936-5051
--	--------------------------	---------------------------	--

10.00/ cash
2/7/20

FEB - 7 2020



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2019)

Application for: Local Permit * Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to <i>Knights of Columbus Council 9642</i>	Date(s) of Activity <i>6-8-20 to 6-8-20</i>	For a raffle, provide drawing date(s): <i>6-8-20</i>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Matthew Klamon</i>	Title	Business Phone Number <i>701-630-1568</i>	
Business Address <i>2711 7th St E</i>	City <i>West Fargo</i>	State <i>ND</i>	Zip Code <i>58078</i>
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted <i>Holy Cross Catholic Church</i>	Site Address <i>2711 7th St E West Fargo</i>		
City <i>West Fargo</i>	State <i>ND</i>	Zip Code <i>58078</i>	County <i>Cass</i>
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit. <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 *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>Raffle</i>	<i>Cash</i>	<i>\$2300⁰⁰</i>			
Total:					(Limit \$40,000 per year) <i>\$ 2300⁰⁰</i>

Intended uses of gaming proceeds: *Charitable Donations*

Does the organization presently have a state gaming license? No Yes - 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.

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

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

Signature of Organization or Group's Top Official <i>Matthew Klamon</i>	Date <i>2-7-20</i>	Title <i>Grand Knight</i>	Business Phone Number <i>701-630-1568</i>
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AK# 5917 pd 2-7-20 \$10.⁰⁰



PROGRAMMING AGREEMENT

**BY AND BETWEEN
CITY OF WEST FARGO, NORTH DAKOTA
AND
EPIC EVENTS, LLC**

Dated as of _____, 2020

Relating to:

**An agreement relating to the programming of the video board located
in the Lights at Sheyenne 32.**

This instrument was drafted by:
Ohnstad Twichell, P.C.
P.O. Box 458
West Fargo, North Dakota 58078

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EXHIBIT A – MAP OF VIDEO BOARD
EXHIBIT B – LEGAL DESCRIPTION FOR TENANTS

PROGRAMMING AGREEMENT

THIS PROGRAMMING AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2019 (the “Effective Date”), by and between the City of West Fargo, North Dakota, a North Dakota municipal corporation, having an address of 800 4th Avenue East, Suite 1, West Fargo, North Dakota 58078 (the “City”), and EPIC Events, LLC, a North Dakota limited liability company, having an address of 400 10th Street Southeast, Minot, North Dakota 58701 (“EPIC”).

WHEREAS, the City, along with private developers, are engaging in the development of the Lights at Sheyenne 32; and

WHEREAS, one component of the Lights at Sheyenne 32 complex is a City-owned plaza (the “Plaza”); and

WHEREAS, the intended purpose of the Plaza is to facilitate community engagement, involvement, and events; and

WHEREAS, EPIC is the owner of a large video board located near the Plaza in the Entertainment District (the “Video Board”); and

WHEREAS, EPIC intends that the Video Board will be used as a means to promote the Plaza, tenants in the Entertainment District, and events and sponsors of events occurring within the Plaza in addition to promoting sponsors of the City Plaza and Ramp; and

WHEREAS, the City and EPIC now desire to enter into this Agreement to define the type of programming and content EPIC can display on the Video Board.

NOW THEREFORE, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, the City and EPIC agree as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

“Applicable Law” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations, guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and,

with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to (a) the City, (b) EPIC, or (c) the Video Board.

“Best Efforts” means an entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with Applicable Law.

“City” means the City of West Fargo, North Dakota, a North Dakota municipal corporation, having an address of 800 4th Avenue East, Suite 1, West Fargo, North Dakota 58078.

“Effective Date” means the date provided for herein.

“Entertainment District” means the mixed use entertainment district adopted by the City on January 20, 2020.

“EPIC” means EPIC Events, LLC, a North Dakota limited liability company, having an address of 400 10th Street Southeast, Minot, North Dakota 58701.

“Event of Default” means as defined in Section 3.01 hereof.

“Good Faith” means the observance of reasonable commercial standards of fair dealing in a given trade or business.

“Party” means either the City or EPIC, as the context requires, and its representatives, successors, and assigns.

“Plaza” means the plaza located within the Lights at Sheyenne 32 development.

“Sponsor” means a Person who provides monetary support or an in-kind product or service to support an event held in the Plaza or to support the Plaza generally.

“State” means the State of North Dakota.

“Video Board” means the video board, measuring approximately 19.2 feet by 46.8 feet, located in the location as indicated on Exhibit A attached hereto.

Section 1.02 INTERPRETATION.

(a) The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. Any and all exhibits to this Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as

“shall.” Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (ii) any reference herein to any person shall be construed to include such person’s permitted assigns, (iii) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and sections to, this Agreement, and (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”

(b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it or because that Party relies on a provision of this Agreement to protect itself. The Parties acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm’s length and careful negotiation, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it.

ARTICLE II. PROGRAMMING AND CONTENT

Section 2.01 USE OF VIDEO BOARD. EPIC may only use the Video Board as described in this Agreement. Prior to utilizing the Video Board for any reason not described herein, EPIC must secure written approval from the City. EPIC plans to use the Video Board 24 hours a day, 7 days a week for the purpose its intended unless otherwise agreed upon in writing with the City.

Section 2.02 LIGHT AND NOISE POLICY. EPIC intends on utilizing the Video Board as outlined in Section 2.01 unless otherwise agreed upon in writing with the City.

Section 2.03 PLAZA EVENTS. EPIC may utilize the Video Board prior to and during events that occur within the Plaza as a means of promoting the event or by incorporating the Video Board into the event.

Section 2.04 ADVERTISING. EPIC may only enter into contracts for advertisements on the Video Board with tenants of the real property located in the Entertainment District as described on Exhibit B attached hereto, with Sponsors of the Plaza or Ramp or with Sponsors of events taking place or being held within the Plaza. In addition, EPIC and its affiliated companies shall be allowed to advertise on the Video Board.

Section 2.05 MANAGEMENT CONTRACTS. Any and all management contracts entered by EPIC for the management of the Video Board must abide by the requirements of this Agreement.

**ARTICLE III.
DEFAULTS AND REMEDIES**

Section 3.01 EVENT OF DEFAULT. The occurrence of the following event will constitute an Event of Default by a Party pursuant to this Agreement: a Party fails to comply with, perform, or observe any material obligation, covenant, agreement, term, or condition in this Agreement.

Section 3.02 REMEDIES. Under the occurrence of an Event of Default under this Agreement, a non-breaching party may give the defaulting Party notice declaring the defaulting Party in default and may do any or all of the following in its discretion:

(a) If the defaulting Party is EPIC, the City may treat such default as an infraction and EPIC shall be subject to the penalties set forth in City of West Fargo Ordinance Section 1-0211. The City may, in its discretion, treat each day in which such violation continues as a separate offense.

(b) In the case of a default by any Party, the non-defaulting Party may exercise any other rights and remedies provided for hereunder or under Applicable Law.

**ARTICLE IV.
TERM AND TERMINATION**

Section 4.01 TERM. This Agreement will take effect on the Effective Date and will remain in effect for a term of ten (10) years (the “Initial Term”). Following the Initial Term, this Agreement will automatically renew for (10) year terms unless a Party provides the other Party at least one hundred eighty (180) days written notice of termination prior to the end of the respective term.

Section 4.02 AGREEMENT. The Parties may agree, in writing, to terminate this Agreement.

Section 4.03 TERMINATION. In the event this Agreement terminates, EPIC is prohibited from operating the Video Board for events and other sponsor related items however, EPIC is allowed to continue to operate the sign for on premise businesses and/or tenants or until further agreement or direction from the City.

**ARTICLE V.
DISPUTE RESOLUTION**

Section 5.01 INTENT AND PROCEDURE. The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in

accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the Parties will use the following procedure.

Section 5.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, each Party will propose two (2) potential individuals to serve as mediator, for a total of four (4) individuals. The Parties will then select a mediator by alternatively striking the names of the proposed individuals, with the City striking first, followed by EPIC. The Parties will each pay fifty percent (50%) of any costs for mediation services.

Section 5.03 LITIGATION. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to the prior Section, the Parties may litigate the matter.

Section 5.04 VENUE. All litigation between the Parties arising out of or pertaining to this Agreement or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 5.05 WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

ARTICLE VI. MISCELLANEOUS

Section 6.01 ASSIGNMENT. Neither Party may assign this Agreement without the prior written consent of the other Party. The Parties' rights and obligations under this Agreement will be passed to the assignees to which those rights and obligations have been permissibly assigned.

Section 6.02 MODIFICATION. This Agreement may be amended or modified only by the written mutual consent of both Parties unless otherwise provided herein.

Section 6.03 GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of North Dakota.

Section 6.04 SEVERABILITY. In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and

enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

Section 6.05 WAIVER. No waiver of any Party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent of one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 6.06 NO THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement is intended or will be construed as creating or conferring any right, benefits, or remedies upon, or creating any obligations of the Parties hereto toward, any person or entity not a party to this Agreement, except those rights expressly contained herein.

Section 6.07 ENTIRE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter, except as otherwise provided herein.

Section 6.08 SURVIVAL. The limitations, releases, obligations, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

Section 6.09 AUTHORIZED REPRESENTATIVES.

(a) The City and EPIC each hereby designate the following individual as its initial representatives, respectively, to administer this Agreement on its respective behalf:

- (1) City Representative: City Administrator
- (2) EPIC Representative: Todd Berning or Lance Johnson

(b) The representatives will be reasonably available to each other during the term of this Agreement and will have the authority to issue instructions and other communications on behalf of the City and EPIC, respectively, and will be the recipients of notices and other written communications from the other Party pursuant to this Agreement, except to the extent expressly authorized by the City or EPIC, as the case may be, in writing.

(c) In the event either the City or EPIC designates a different representative, it will give the other Party written notice of the identity of and contact information for the new representative, as the case may be.

Section 6.10 NOTICE.

(a) All notices under this Agreement shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or

courier service, with delivery receipt requested; and (iv) sent by email communication followed by a hard copy, to the following addresses.

(b) All notices to the City shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the City Representative:

City of West Fargo
Attn: City Representative
800 4th Avenue East, Suite 1
West Fargo, ND 58078

(c) All notices to EPIC shall be marked as regarding this Agreement and shall be delivered to the following address or as otherwise directed by the EPIC Representative:

EPIC Events, LLC
Attn: EPIC Representative
745 31st Ave E, Ste. 105
West Fargo, ND 58078

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private courier, or other person making the delivery. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. CDT and all other notices received after 5:00 p.m. shall be deemed received on the first calendar day following delivery.

Section 6.11 FORCE MAJEURE. Neither Party will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances: war, civil war, invasion, violent act of foreign enemy, or armed conflict; nuclear, chemical, or biological contamination; ionizing radiation; or any act of terrorism. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

IN WITNESS WHEREOF, the City and EPIC caused this Agreement to be executed.

(Remainder of page intentionally left blank.)

Signature Page for the City of West Fargo, North Dakota

The governing body of the City of West Fargo, North Dakota, approved this Agreement on the ____ day of _____, 2020.

CITY OF WEST FARGO, NORTH
DAKOTA, a municipal corporation

By: _____
Bernie Dardis, President of the Board of
City Commissioners

ATTEST:

Tina Fisk, City Auditor

Signature Page for EPIC Events, LLC

EPIC EVENTS, LLC, a North Dakota
limited liability company

By: _____

Its: _____

Date: _____

**EXHIBIT A –
MAP OF VIDEO BOARD**

(See the following page.)

**EXHIBIT B –
LEGAL DESCRIPTION FOR TENANTS**

1. All of Eagle Run Plaza 6th Addition and any subsequent platting thereof; and
2. Lot 1, Block 2, of Eagle Run Plaza 5th Addition.

AGENDA ITEM DESCRIPTION
CITY COMMISSION
WEST FARGO, NORTH DAKOTA

Agenda # 2

***Please Note: The following information must be completed and submitted to the West Fargo City Auditor's Office by the Thursday noon preceding the City Commission meeting. Failure to comply may result in no action being taken on your request.

1. CONTACT PERSON: Tim Solberg, AICP

2. PHONE NUMBER: 433-5321 DATE: February 12, 2020

3. PLEASE **BRIEFLY** DESCRIBE YOUR REQUEST:

Eagle Run Plaza 9th Addition, a Replat & Rezoning from PUD: Planned Unit Development to C: Light Commercial.

4. SITE ADDRESS OR LEGAL DESCRIPTION (if applicable):

608 33rd Ave W (Lot 9, Block 1 Eagle Run 8th Addition), City of West Fargo, North Dakota.

5. ACTION BEING REQUESTED FROM CITY COMMISSION:

Second First Reading on the Rezoning and Final Plat Approval based on the conditions listed in the staff report.

CITY OF WEST FARGO PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT

A19-30		REPLAT AND REZONING
Eagle Run Plaza 9 th Addition		
Lot 9, Block 1 of Eagle 8 th Addition		
Applicant: Travis Olson Owner: Four Horsemen, LLC	Staff Contact: Tim Solberg, AICP	
Planning & Zoning Commission Introduction:	09-10-2019	
Public Hearing:	09-10-2019 – Approval	
City Commission Introduction:	09-16-2019	
1 st Reading & Public Hearing:	10-07-2019	
2 nd Reading & Final Plat Approval	02-18-2020	

PURPOSE:

Replat and Rezone for future development.

STATEMENTS OF FACT:

Land Use Classification:	G-4A Core-Retrofit Growth Sector
Existing Land Use:	Vacant
Current Zoning District:	PUD: Planned Unit Development
Proposed Zoning District:	C: Light Commercial
Zoning Overlay District(s):	CO: Corridor Overlay District
Proposed Lot size(s) or range:	42,256 – 50,379 ft ²
Total area size:	9.33 Acres
Adjacent Zoning Districts:	North , South & East - PUD: Planned Unit Development West – R-3: Multiple Dwellings and P: Public Facilities
Adjacent street(s):	6 th Street West (Local); 9 th Street West (Collector); 32 nd Avenue West (Arterial)
Adjacent Bike/Pedestrian Facilities:	Sidewalks along 6 th & 9 th Street West; Multi-Use Path along 32 nd Avenue West & 9 th Street West
Available Parks/Trail Facilities:	Rendezvous Park Facility accessible within ½ mile by sidewalks and path
Park Dedication Requirements:	Provided with previous subdivision

DISCUSSION AND OBSERVATIONS:

- This area was platted and zoned as part of a larger PUD: Planned Unit Development in 2002.
- The applicant has submitted a preliminary plat which consists of splitting the one platted lots into 9 smaller lots with cross access and utility easements to provide access and infrastructure to each individual lot.
- The applicant is requesting a rezoning to C: Light Commercial to allow for development to be paced by request. It is believed that the use restrictions of the C district and increased site and building construction standards of the CO: Corridor Overlay district are adequate to ensure desirable development at this location.

STAFF REPORT

- The proposed lot sizes will adequately meet yard requirements for development in the C: Light Commercial District as well as the CO: Corridor Overlay district regulations.
- Access is proposed to 32nd Avenue West and 6th and 9th Streets West through cross access easements within the plat. Access to 9th Street West and 32nd Avenue West will require Commission approval.
- The cross easement is a relatively standard width on the preliminary plat to provide for public utilities and road. A revision which provides adequate width for a multi-use path to ensure connectivity for all users should be considered. Alternatively, within a subdivision agreement it could be reflected that each lot will be required to include connectivity via sidewalk to the cross access easements.

NOTICES:

Sent to: Property owners within 150' and applicable agencies and departments

Comments Received:

- None to date.

CONSISTENCY WITH COMPREHENSIVE PLAN AND OTHER APPLICABLE CITY PLANS AND ORDINANCES:

- The plan envisions that most mixed-use development would occur in the G-4A Core-Retrofit Growth Sectors. The zoning district proposed along with the requirements to review development within this area of the CO: Corridor Overlay district could provide oversight by the City Commission for development which is consistent with West Fargo 2.0.

RECOMMENDATIONS:

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. Sidewalk or multi-use path connectivity within the subdivision is addressed in a signed improvement agreement.
2. An updated drainage plan is received and approved by the City Engineer.
3. A signed Final Plat is received with any necessary easements.
4. An Attorney Title Opinion is received
5. A certificate is received showing taxes are current.

PLANNING AND ZONING RECOMMENDATION:

At their September 10, 2019 meeting, the Planning and Zoning Commission recommended approval of the replat and rezoning, subject to the five conditions listed above.



30TH AVE W

30TH AVE W

7TH ST W

6TH ST W

31ST AVE W

32ND AVE W

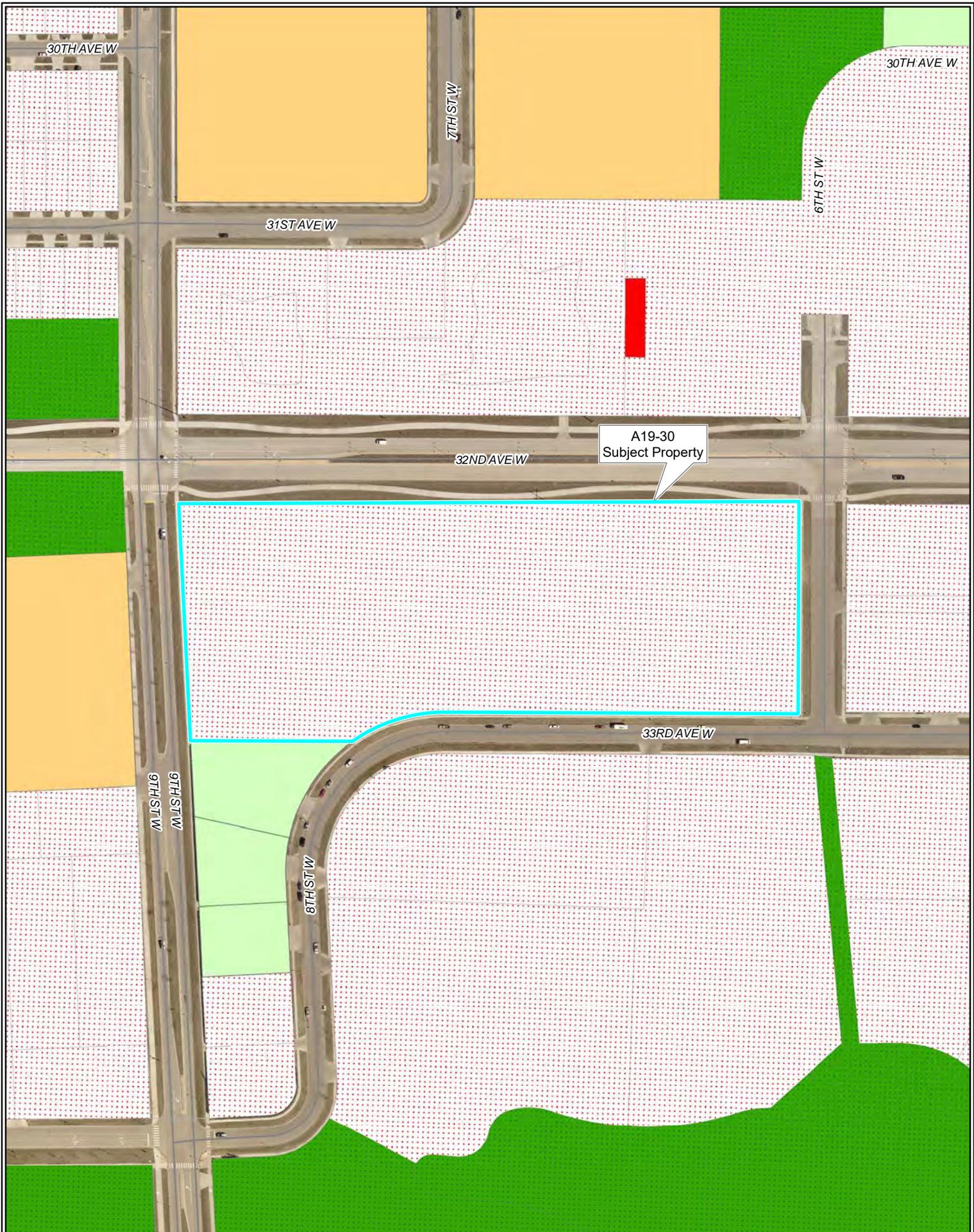
A19-30
Subject Property

33RD AVE W

9TH ST W

9TH ST W

8TH ST W

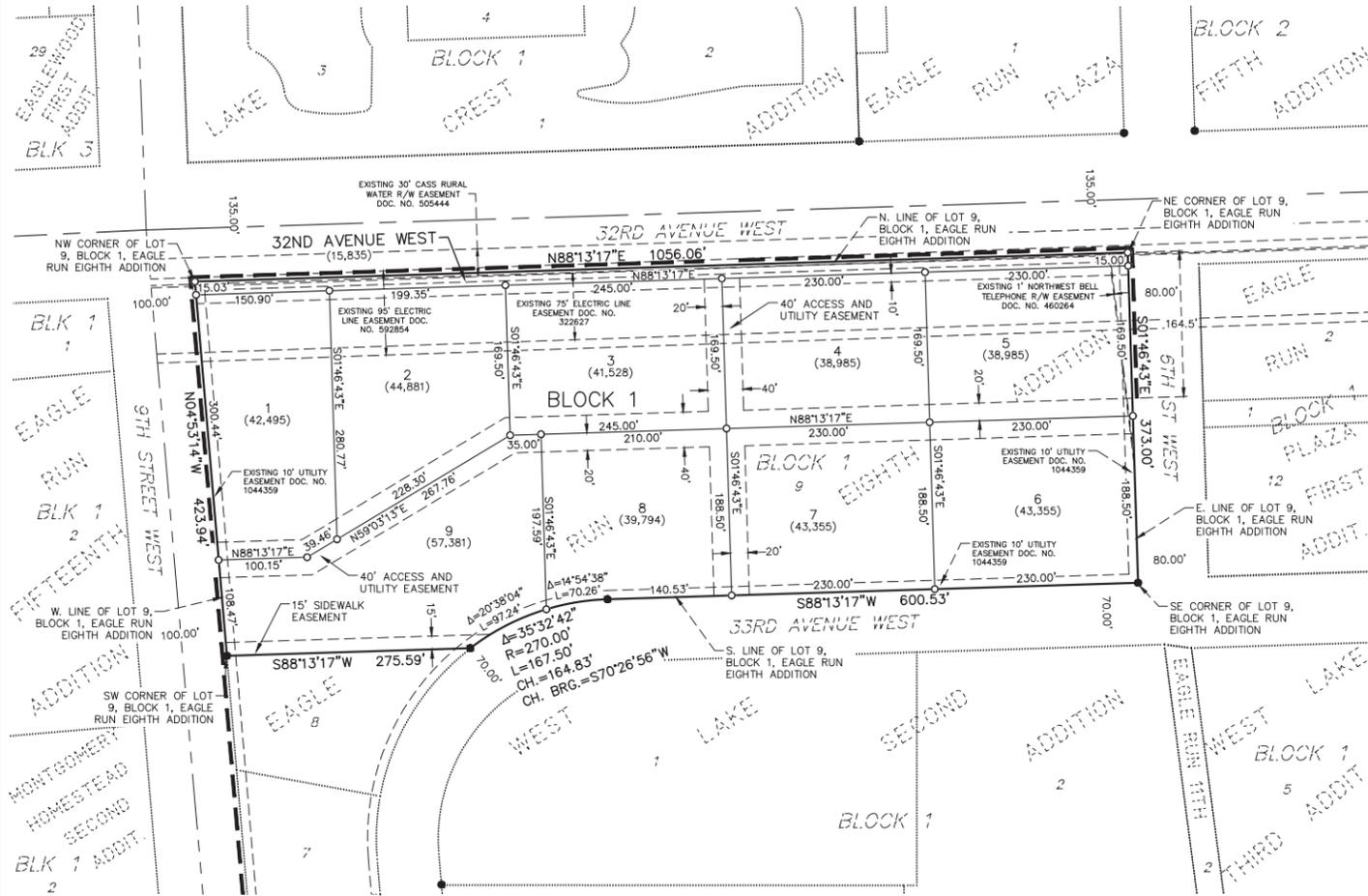


A19-30
Subject Property

City of
WEST FARGO

<ul style="list-style-type: none"> A: Agricultural C: Light Commercial C-OP: Commercial Office Park HC: Heavy Commercial 	<ul style="list-style-type: none"> LI: Light Industrial M: Heavy Industrial P: Public PUD: Planned Unit Development 	<ul style="list-style-type: none"> R-1: One and Two Family R-1A: Single Family R-1B: Special Single Family R-1E: Rural Estate 	<ul style="list-style-type: none"> R-1S: Special One and Two Family R-1SM: Mixed One and Two Family R-2: Limited Multiple Dwelling R-3: Multiple Dwelling 	<ul style="list-style-type: none"> R-4: Mobile Home R-5: Manufactured Home R-L1A: Large Lot Single Family R-R: Rural Residential
--	---	---	---	--

PLAT OF EAGLE RUN PLAZA NINTH ADDITION TO THE CITY OF WEST FARGO, A REPLAT OF LOT 9, BLOCK 1, EAGLE RUN EIGHTH ADDITION TO THE CITY OF WEST FARGO, CASS COUNTY, NORTH DAKOTA.



DEDICATION

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "EAGLE RUN PLAZA NINTH ADDITION" TO THE CITY OF WEST FARGO, A REPLAT OF LOT 9, BLOCK 1, EAGLE RUN EIGHTH ADDITION TO THE CITY OF WEST FARGO, CASS COUNTY, NORTH DAKOTA; THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF SHAWN M. THOMASSON, REGISTERED LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT. WE HEREBY DEDICATE ALL AVENUES, UTILITY, ACCESS AND SIDEWALK EASEMENTS SHOWN ON SAID PLAT TO THE USE OF THE PUBLIC.

OWNER: LOTS 1 THROUGH 9
FOUR HORSEMEN, LLC

BY: _____
TITLE: _____

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME IN THE NAME OF FOUR HORSEMEN, LLC.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

OWNER: 32ND AVENUE WEST
CITY OF WEST FARGO

BERNIE L. DARDIS, MAYOR

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BERNIE L. DARDIS, CITY OF WEST FARGO MAYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF THE CITY OF WEST FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

CERTIFICATE

SHAWN M. THOMASSON, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "EAGLE RUN PLAZA NINTH ADDITION" TO THE CITY OF WEST FARGO, A REPLAT OF LOT 9, BLOCK 1, EAGLE RUN EIGHTH ADDITION TO THE CITY OF WEST FARGO, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF THE SURVEY THEREOF; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT SAID ADDITION IS DESCRIBED AS FOLLOWS, TO WIT:

LOT 9, BLOCK 1, EAGLE RUN EIGHTH ADDITION TO THE CITY OF WEST FARGO, ACCORDING TO THE RECORDED PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA.

SAID TRACT CONTAINS 9.33 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.

SHAWN M. THOMASSON
REGISTERED LAND SURVEYOR
NO. LS-5900

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED SHAWN M. THOMASSON, REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

WEST FARGO CITY ATTORNEY APPROVAL

I HEREBY CERTIFY THAT PROPER EVIDENCE OF TITLE HAS BEEN EXAMINED BY ME AND I APPROVE THE PLAT AS TO FORM AND EXECUTION THIS _____ DAY OF _____, 2020.

JOHN T. SHOCKLEY, CITY ATTORNEY

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOHN T. SHOCKLEY, CITY ATTORNEY, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS THE CITY ATTORNEY.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

WEST FARGO PLANNING COMMISSION APPROVAL

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS _____ DAY OF _____, 2020.

TOM MCDUGALL, CHAIRMAN

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TOM MCDUGALL, CHAIRMAN OF THE WEST FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF THE WEST FARGO PLANNING COMMISSION.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

MORTGAGEE: LOTS 1 THROUGH 9
FIRST INTERNATIONAL BANK AND TRUST

BY: _____
TITLE: _____

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED _____, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE/SHE EXECUTED THE SAME IN THE NAME OF FIRST INTERNATIONAL BANK AND TRUST.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

CITY ENGINEER'S APPROVAL

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS _____ DAY OF _____, 2020.

DUSTIN T. SCOTT, CITY ENGINEER

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED DUSTIN T. SCOTT, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

WEST FARGO CITY COMMISSION APPROVAL

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS _____ DAY OF _____, 2020.

BERNIE L. DARDIS, PRESIDENT OF
THE WEST FARGO CITY COMMISSION

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2020, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BERNIE L. DARDIS, PRESIDENT OF THE WEST FARGO CITY COMMISSION, AND TINA FISK, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF THE CITY OF WEST FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA



AGENDA ITEM DESCRIPTION
CITY COMMISSION
WEST FARGO, NORTH DAKOTA

Agenda # 3

***Please Note: The following information must be completed and submitted to the West Fargo City Auditor's Office by the Thursday noon preceding the City Commission meeting. Failure to comply may result in no action being taken on your request.

1. CONTACT PERSON: Tim Solberg, AICP

 2. PHONE NUMBER: 433-5320 DATE: February 12, 2020

 3. PLEASE **BRIEFLY** DESCRIBE YOUR REQUEST:
Rezoning from R-R: Rural Residential District to PUD: Planned Unit Development.

 4. SITE ADDRESS OR LEGAL DESCRIPTION (if applicable):
Located at 225 40th Avenue West (Lot 1, Block 1 of Nelson Acres 5th Addition),
City of West Fargo, North Dakota.

 5. ACTION BEING REQUESTED FROM CITY COMMISSION:
Hold 1st Reading on the rezoning. Public Hearing and 2nd Reading would be
scheduled for 5:30 pm on March 2, 2020.
-

CITY OF WEST FARGO PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

A20-5		REZONING
225 40 th Avenue West		
Lot 1, Block 1 of Nelson Acres 5 th Addition		
Applicant; Jodi Kallias, Greenworks Properties Owner: Duwane Engness	Staff Contact: Lisa Sankey	
Planning & Zoning Commission Introduction:	01-14-2020	
Public Hearing:	01-14-2020 – Approved	
City Commission Introduction:	01-20-2020	
1 st Reading and Public Hearing:	02-03-2020 - Denied	
Review of PUD Detailed Development Plans by Planning Commission:	02-11-2020 - Approval	
1 st Reading to Planned Unit Development:	02-18-2020	
2 nd Reading and Public Hearing:	03-02-2020	

PURPOSE:

Rezone in order to develop the property for a landscaping business.

STATEMENTS OF FACT:

Land Use Classification:	G-2: Sub-Urban – Growth Sector
Existing Land Use:	Single Family Dwelling
Current Zoning District(s):	R-R: Rural Residential District
Proposed Zoning District:	C: Light Commercial
Zoning Overlay District(s):	CO: Corridor Overlay District
Total area size:	2.5 Acres
Adjacent Zoning Districts:	North: R-1A: Single Family Dwelling; West & South: R-R: Rural Residential; East: R-1E: Rural Estate District
Adjacent street(s):	40 th Avenue West (Arterial); Sheyenne Street (Arterial)
Adjacent Bike/Pedestrian Facilities:	Multi-use path along 40 th Avenue West
Available Parks/Trail Facilities:	Eagle Run Park on the north side of 40 th Avenue West

DISCUSSION AND OBSERVATIONS:

- The applicant has provided a site plan, which proposes converting the home into offices and boutique/gift shop for a landscaping business, as well as an area for garden stock, mulch and decorative rock.
- The property is surrounded by a City Shop and water tower to the west with retention ponds to the south and is located at the intersection of two arterial streets. The applicant believes the site would be an ideal location for this type of business (see attached letter).
- The existing access will require further review and consideration by the City Engineer. Although this would be an item handled at time of permitting, it would be prudent to review at this time to avoid any future issues with development of the property.
- Rezoning the property to C: Light Commercial would open the property up to any of the uses allowed within the district; however, the City’s landscaping regulations would require buffering

STAFF REPORT

between uses of lower intensity and the City's CO: Corridor Overlay will require increased yard and building requirements lending to the compatibility of any of those uses within the area.

NOTICES:

Sent to: Property owners within 150' and applicable agencies and departments.

Comments Received:

- None to date.

CONSISTENCY WITH COMPREHENSIVE PLAN AND OTHER APPLICABLE CITY PLANS AND ORDINANCES:

- The application is a mix of commercial for the neighborhood and section that is otherwise completely developed with residential and therefore the application would be strongly supported by the Comprehensive Plan by providing a mix of uses.

RECOMMENDATIONS:

It is recommended that the City approve the proposed application on the basis that it is consistent with City plans and ordinances with recommended conditions of approval as follows:

1. Consideration of any public comment regarding the proposed change.
2. Review and recommendation of the existing access or any proposed changes by the City Engineer.

PLANNING AND ZONING RECOMMENDATION:

At their January 14, 2020 meeting, the Planning and Zoning Commission recommended approval of the rezoning, subject to the two conditions listed above.

UPDATE:

At their February 3, 2020 meeting, the City Commission denied the 1st Reading on Rezoning to C: Light Commercial and encouraged the applicant to pursue a PUD: Planned Unit Development.

The applicant has submitted Detailed Development Plans to provide for the desired use as described by the applicant to develop "a nursery and garden center that includes a retail boutique, landscaping sales showroom and design offices. Other incorporated spaces may include such things as: an annual greenhouse, a shade structure (for trees, shrubs, perennials and grasses) within a secure fenced area, mini bins for retail landscaping materials with loading area, garden plot, bakery cart and farmers market, workshop and storage areas, Little Free Library with designated children play space, landscape recreation area, and employee and customer parking." A public hearing at City Commission on the rezoning to PUD has been scheduled for March 2, 2020.

Staff believes that because the property is surrounded by the right of way of arterial roadways to the north and east and large areas of City owned property for water retention and uses which are of higher intensity than that of the C: Light Commercial District to the west that the rezoning to C: Light Commercial is appropriate. Due however to concern from the neighborhood expressed at the Public

STAFF REPORT

Hearing before the City Commission with regard to the potential uses within the C: Light Commercial district not being compatible with the surrounding area the applicant is forced to pursue the development as a PUD. There does not appear to be a major reason to include the detail provided by the applicant and would rather simply recommend that the City approve of the PUD with the specific permitted use called out in the C: Light Commercial district of "Greenhouses and plant nurseries." This approach is acceptable to the applicant and would allow for future development consistent with the proposal.

RECOMMENDATIONS

Staff recommends approval of the Detailed Development Plans subject to the two conditions listed above, as well as the following:

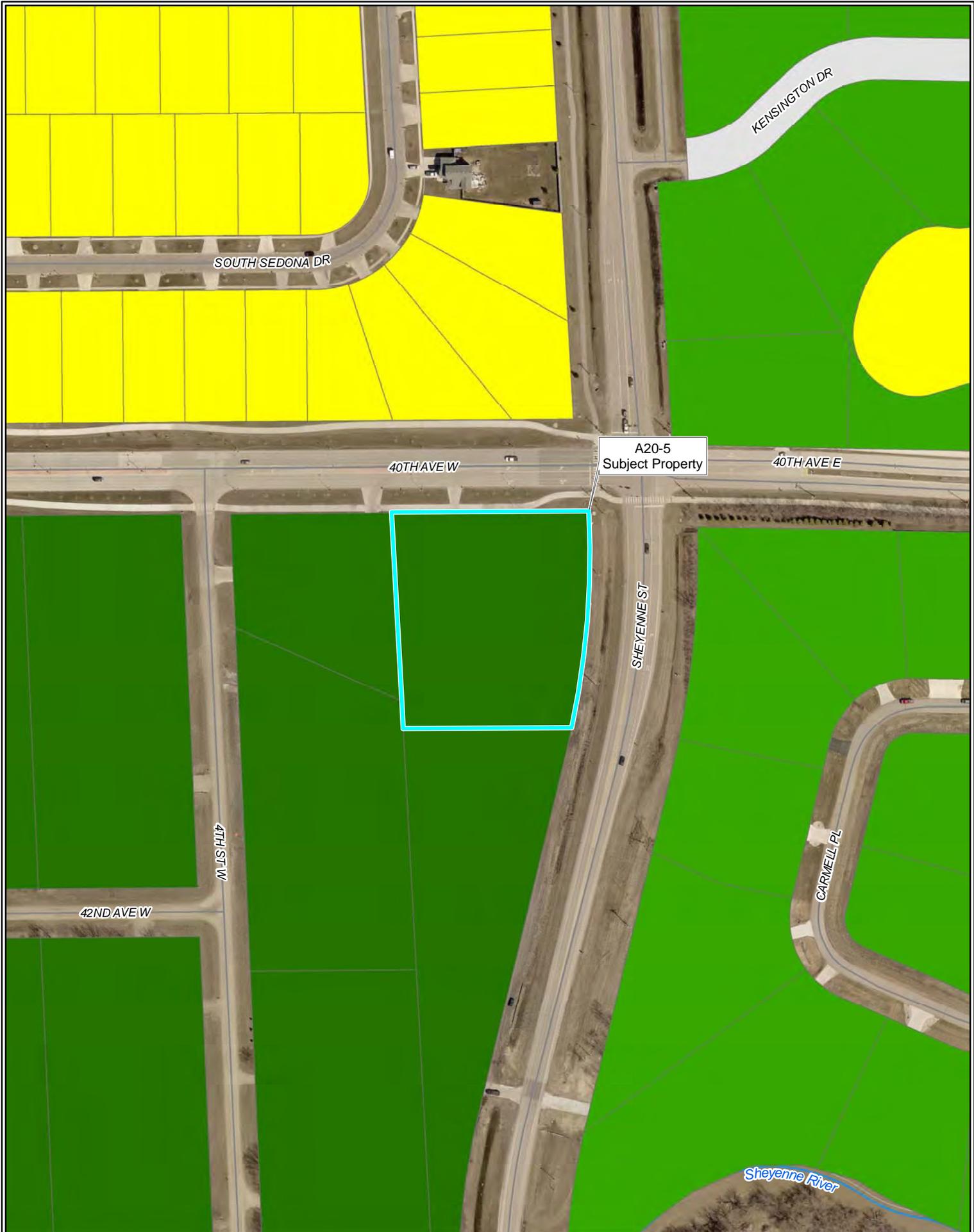
1. Allow for the property to develop only as the permitted use of greenhouses and plant nurseries currently found in 4-427.2.14 of City Ordinances.
2. Regard the PUD within the same category as C: Light Commercial district for required buffering within Section 4-449-A landscaping standards.
3. Detailed Development Plans will be subject, but not limited to 4-440 Supplementary District Regulations, Section 4-449-A Landscaping Standards, 4-450 Off-Street Parking and Loading Requirements, and 4-460 Sign Regulations.
4. A signed PUD Agreement is received.

PLANNING AND ZONING RECOMMENDATION:

At their February 11, 2020 meeting, the Planning and Zoning Commission recommended approval of the Detailed Development Plans subject to the four conditions listed above.



A20-5
Subject Property



A20-5
Subject Property



- | | | | | |
|--|---|---|---|--|
| <ul style="list-style-type: none"> ■ A: Agricultural ■ C: Light Commercial ■ C-OP: Commercial Office Park ■ HC: Heavy Commercial | <ul style="list-style-type: none"> ■ LI: Light Industrial ■ M: Heavy Industrial ■ P: Public ■ PUD: Planned Unit Development | <ul style="list-style-type: none"> ■ R-1: One and Two Family ■ R-1A: Single Family ■ R-1B: Special Single Family ■ R-1E: Rural Estate | <ul style="list-style-type: none"> ■ R-1S: Special One and Two Family ■ R-1SM: Mixed One and Two Family ■ R-2: Limited Multiple Dwelling ■ R-3: Multiple Dwelling | <ul style="list-style-type: none"> ■ R-4: Mobile Home ■ R-5: Manufactured Home ■ R-L1A: Large Lot Single Family ■ R-R: Rural Residential |
|--|---|---|---|--|





www.westfargond.gov

*Larry M. Weil, Community Development Director
Tim Solberg, Director of Planning and Zoning, AICP
Malachi Peterson, Planner
Lisa Sankey, Planner*

NOTICE OF PUBLIC HEARING

A public hearing will be held on the 2nd Day of March 2020, at 5:30 P.M. at the City Hall of West Fargo, North Dakota, concerning the enactment of a proposed zoning ordinance. The proposed ordinance involves the following:

225 40th Avenue West (Lot 1, Block 1 of Nelson Acres 5th Addition), City of West Fargo, North Dakota

The ordinance is for the purpose of rezoning from an R-R: Rural Residential District to a PUD: Planned Unit Development District

A copy of the proposed ordinance is available for public inspection and copying at the office of the City Auditor between the hours of 8:00 A.M.-5:00 P.M. all days except weekends and holidays.

BY ORDER OF THE CITY COMMISSION OF THE CITY OF WEST FARGO, NORTH DAKOTA

Bernie L. Dardis
President of the Board of City
Commissioners of the City of
West Fargo, North Dakota

(Please Publish February 17 and 24, 2020)



Dustin T. Scott - City Engineer
Jerry Wallace – Civil Engineer
Andrew Wrucke – Transportation Engineer
Kayla Volness – Engineering Office Manager

Engineering Department
800 4th Ave E
West Fargo, ND 58078
701-433-5330
www.westfargond.gov

AGENDA ITEM REQUEST

BOARD OF CITY COMMISSIONERS
WEST FARGO, NORTH DAKOTA

OFFICE USE:

AGENDA ITEM # 4

** "Consent" or "Regular" Agenda Item? **Regular** **

1. CONTACT PERSON(s):

- Dustin T. Scott, City Engineer (433-5425)

2. DATE OF MEETING: **February 17, 2020**

3. DESCRIPTION OF REQUEST:

- Review Master Agreement for Professional Services between the City of West Fargo and Kadrmas, Lee and Jackson

4. LOCATION (address; legal; etc.):

- N/A

5. ACTION(S) REQUESTED:

- Approve Master Agreement for Professional Services

ADDITIONAL INFORMATION:

- Attached are Task Orders #1-3 that were previously approved by the Commission on November 18, 2019 Meeting.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

Related to:

ENGINEERING CONSULTATION SERVICES

BY AND BETWEEN

CITY OF WEST FARGO

and

KADRMAS, LEE & JACKSON, INC.

Dated as of _____

Approved by the West Fargo City Commission on _____, 2020

This instrument was drafted by:
Ohnstad Twichell, P.C.
P.O. Box 458
West Fargo, North Dakota 58078-0458

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ATTACHMENTS:

- Task Order 1 – Veterans Boulevard Study
- Task Order 2 – 32nd Avenue and 9th Street W Study
- Task Order 3 – City-Wide Signal Timing Updates

**MASTER AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES**

THIS AGREEMENT is made effective this ___ day of _____, 2020 (the “Effective Date”), by and between the City of West Fargo (the “City”), a political subdivision and municipal corporation of the State of North Dakota, whose principal address is 800 4th Avenue East, Suite 2, West Fargo, North Dakota 58078; and Kadrmass, Lee & Jackson (“KLJ”), a North Dakota domestic business corporation, whose principal address is 4585 Coleman Street, Bismarck, North Dakota 58503, (collectively, the “parties”).

RECITALS

WHEREAS, the City Engineer is an appointive officer of the City pursuant to Chapter 1-04 of the Revised Ordinances of 1990 of the City of West Fargo; and

WHEREAS, the City has a City Engineer on staff, but occasionally requires the use of another engineer for certain projects, subject to the oversight of the City Administrator; and

WHEREAS, the City desires to enter into a master agreement for professional engineering services, when needed, with KLJ, commencing on the Effective Date, that establishes the conditions of service for Task Orders that will be approved for specific projects or components of projects during the life of this Agreement; and

WHEREAS, the City Administrator is authorized to oversee projects or components of projects and has authority to manage the professional services provided by KLJ.

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **EMPLOYMENT.** The City hires KLJ, which accepts the hiring with the City pursuant to this Agreement. KLJ is an independent contractor under this Agreement. Nothing in this Agreement will be construed to create an employer-employee relationship between the parties.
2. **DEFINITIONS.** All capitalized terms used and not otherwise defined herein will have the meanings given to them in this Agreement as defined in this Section, unless a different meaning clearly applies from the context:

“*Agreement*” means this Master Agreement for Professional Engineering Services by and between the City and KLJ.

“*Best Efforts*” means that the parties to this Agreement will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with applicable federal and state laws,

regulations, and rules; however, the obligation to use Best Efforts does not mean a duty to take action that would be in violation of ENGINEER's professional ethics and standards.

"*City of West Fargo*" means the City of West Fargo and/or the West Fargo City Commission, a political subdivision of the State of North Dakota.

"*City's Authorized Representative*" means the City Administrator and his/her representatives.

"*City's Governing Body*" means the West Fargo City Commission.

"*Engineer*" means the individual or entity with which the City has contracted for performance of the professional services as set forth in this Agreement.

"*Engineer's Representative*" means the person(s) with the authority to act on behalf of Engineer.

"*Good Faith*" means observance of reasonable commercial standards of fair dealing in a given trade or business.

"*Person*" means any natural or legal person, county, city, municipality, political subdivision, public benefit corporation, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority, or other entity.

"*Project*" means the services for which a Task Order has been or will be prepared.

"*Task Order*" means an assignment for a specific project or scope of work.

3. AUTHORIZATION TO PROCEED. Execution of this Agreement by the City will be authorization for KLJ to proceed with work set forth in a duly authorized Task Order, unless otherwise provided for in this Agreement. KLJ will not be compensated for any work not set forth and specifically authorized in a Task Order.
4. PRIOR AGREEMENTS. Any prior master agreements between the City and KLJ will, with the exception of agreements already in place between the parties related to Sheyenne Street Improvement Districts 2244 and 2250, upon execution of this Agreement, be terminated and have no further force and effect. Any existing Task Order will be governed by the agreement in effect at the time the Task Order was approved.
5. SCOPE OF SERVICES. KLJ's detailed scope of services, work schedule, and cost budget will be mutually agreed upon in writing and set forth in Task Orders issued by the City under this Agreement. Each Task Order will specifically refer to and incorporate this Agreement by reference, and the provisions of this Agreement will apply to all Task Orders entered into subsequent to the Effective Date of this Agreement.
6. CHANGES TO SCOPE OF SERVICES. The City may make or approve changes within the general scope of services in this Agreement. If such changes affect KLJ's cost of or time required for performance of work under the Task Order, an equitable adjustment will be made through an amendment to this Agreement.
7. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. KLJ and the City acknowledge that the reliability of KLJ's services depends upon the accuracy and

completeness of the data supplied to KLJ. The City accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to KLJ, and the City acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the City to KLJ. KLJ must promptly receive the information to deliver the services as well as the City's prompt updates to any information where there has been a material change that may affect the scope or delivery of the services, such as a change in the nature of the City's products or equipment, systems, and/or processes that are the focus of KLJ's services.

8. TASK ORDERS. KLJ will receive assignments for work under this Agreement through Task Orders authorized and provided by the City directly or through its City Administrator. The City will compensate KLJ only for work contained within the Task Orders. KLJ will not be obligated to perform any work or services unless such services are set forth in a Task Order executed by both parties. If KLJ engages in work beyond the scope of a Task Order, the City will not compensate KLJ for that work, unless agreed to in writing by the City prior to the work being completed. All amendments to Task Orders must be authorized and provided by the City in writing. Task Orders shall include the following information:

- A. Term.
- B. Maximum amount to be charged for the project.
- C. Scope of work.
- D. Special conditions.
- E. Schedule.
- F. Budget.
- G. Identification of sub-consultants and material to be used.
- H. Owner's representative for contact.

NOTE: When necessary, additional documentation shall be attached and incorporated with Task Orders as a customized "Exhibit(s)" (i.e. itemized task-hour tables, maps, rate schedules, etc.)

9. AUTHORIZATION FOR TASK ORDERS. Requests for KLJ to engage in services may be made by the Public Works Director, City Engineer, City Administrator and the City Commission. Upon receiving a request, KLJ will prepare a proposed Task Order and submit the proposed Task Order to the City Administrator. The City Administrator may approve Task Orders having a value less than \$50,000. Any Task Order exceeding \$50,000 of value must be approved by the West Fargo City Commission. KLJ will not be compensated for any work unless there exists a duly approved and fully-executed Task Order. Task Orders 1, 2 and 3, attached, are incorporated with this Agreement and have been duly authorized by the City Commission.
10. PERSONNEL. All persons assigned by KLJ to perform services as set forth in Task Orders issued under this Agreement shall be qualified to perform the work assigned to them. KLJ shall devote such personnel and resources, time, attention, and energies to the City's business as are necessary to fulfill the duties and responsibilities required by the City and agreed to by KLJ in any given Task Order. If the City is dissatisfied with any of KLJ's personnel, the City reserves the right to require removal of those personnel from the Task Order. The City will provide KLJ with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed person shall be qualified for the position. KLJ shall endeavor to honor the City's request contingent upon having a qualified replacement under the employment of KLJ.

11. SUBCONTRACTORS. KLJ may enter into agreements with subcontractors in furtherance of their services under this Agreement, as approved by the City Administrator, which approval shall not be unreasonably withheld. If rejection of subcontractors affects ENGINEER's cost of or time required for performance of the services as set out in any applicable Task Order, then an equitable adjustment will be made through an amendment to the applicable Task Order or this Agreement. The City will not unreasonably withhold approval of said amended Task Order.
12. TERM. Unless terminated under the provisions of this Agreement, this Agreement will remain in full force and effect for a period of approximately five (5) years from the Execution Date, through December 31, 2024. This Agreement will take full force and effect on the Effective Date upon approval by the City Commission and execution by the City. This Agreement may be renewed by mutual agreement of the parties.
13. EXTENSION OF TERM. This Agreement may be extended by written amendment or renewed as set forth above. If this Agreement expires before the completion of a Task Order, the Agreement will be deemed to have been extended until the completion of services under the applicable Task Order.
14. COMPENSATION. For all services rendered by KLJ, the City will pay KLJ a lump sum amount or a value based on the time spent by those KLJ team members working on the Project and the hourly charging rates applicable to those KLJ team members, plus direct expenses to include, but not be limited to, fees associated with subcontracts for non-KLJ-affiliated companies and outside services and reimbursable expenses.

The City will compensate KLJ as set forth above and in accordance with each Task Order. Work performed under this Agreement may be performed using labor from affiliated companies of KLJ. Such labor will be billed to the City under the same billing terms applicable to KLJ's employees.

The compensation is payable following the end of each month upon submission by KLJ of a monthly invoice setting forth the services performed in that month on behalf of the City. Invoices must be sent as required in Section 16 of this Agreement. Invoices are due and payable within thirty (30) days of receipt. If a Task Order issued under this Agreement contains a not-to-exceed compensation amount, the City will only pay compensation to KLJ for fees and/or expenses that are less than or equal to the not-to-exceed amount stated on the Task Order, unless the Task Order has been amended pursuant to Section 8 of this Agreement.

- A. Budget. Budgetary amounts, excluding taxes, will be established for each Task Order executed under this Agreement. KLJ will make reasonable efforts to complete the work within the budget and will keep the City informed of progress toward that end so that the budget or work effort can be adjusted if found necessary. KLJ is not obligated to incur costs beyond the indicated budgets for satisfactory performance, based on industry standards, of its obligations under this Agreement and/or any Task Order, as may be adjusted, nor is the City obligated to pay KLJ beyond these limits. When any budget has been increased, KLJ's costs expended prior to such increase will be allowable to the same extent as if such costs had been incurred after the approved increase.
- B. Hourly Rates. Hourly rates are those hourly rates charged for work performed on the Project by KLJ's employees of the indicated classifications. These rates include all

allowances for salaries, overhead, fees, and all expenses, but do not include allowances for subcontracts or outside services allowed by this Agreement.

15. INVOICING AND PAYMENT.

- A. KLJ must submit invoices to the City on or before the fifteenth (15th) day of each month for all services provided and allowed expenses incurred during the preceding month. KLJ's Representative must personally review each invoice before it is sent to the City to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement.
- B. KLJ must submit each original invoice to:
- City of West Fargo
Attn: City Engineer
800 4th Avenue East, Suite 2
West Fargo, North Dakota 58078
- C. KLJ's invoices must be detailed and precise. KLJ's invoices must clearly indicate fees and expenses incurred for the current billing period month and include at least the following information:
- (1) Engineer's name and address;
 - (2) Engineer's federal employer identification number;
 - (3) Unique invoice number;
 - (4) The City project number and project name;
 - (5) The applicable Task Order number;
 - (6) The authorized budget for the project in accordance with the Task Order, along with a notation as to whether the authorized amount is Hourly-Estimated, Hourly Not-To-Exceed, Lump Sum, or some other approved method;
 - (7) Total amount of fees and costs "billed to date," including the preceding month;
 - (8) Budget remaining in accordance with the Task Order;
 - (9) Billing period;
 - (10) Daily summary generally describing services performed;
 - (11) Name, billing rate, and hours worked by each person involved in the project, in accordance with the Task Order Budgetary Breakdown;
 - (12) Preferred remittance address, if different from the address on the invoice's coversheet; and
 - (13) All of the work performed during that billing period, in accordance with the Task Order Budgetary Breakdown.
- D. If any invoice contains a request for expense reimbursement, KLJ must include copies of the corresponding invoices and receipts with that invoice.
- E. After the City receives KLJ's invoice, the City will either process the invoice for payment or give KLJ specific reasons, in writing within fifteen (15) business days, why part or all of the City's payment is being withheld and what actions KLJ must take to receive the withheld amount.

- F. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the City shall pay the undisputed portion. The City will exercise reasonableness in disputing any bill or portion thereof. No interest will accrue on any disputed portion of the billing until mutually resolved.
- G. Payment does not imply acceptance of services, that expenses are allowable, or that the invoice is accurate. In the event an error is identified within six (6) months of receipt of payment, KLJ must credit any payment in error from any payment that is due or that may become due to KLJ under this Agreement.
- H. The City will be charged interest at the rate of one-half percent (1/2%) per month, or that permitted by law if lesser, on all past-due amounts starting thirty (30) days after receipt of invoice. Payments will be first credited to interest and then to principal.
- I. If the City fails to make payment in full within thirty (30) days of the date due for any undisputed billing, KLJ may, after giving seven (7) days' written notice to the City, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, KLJ will have no liability to the City for delays or damages caused by the City because of such suspension.
- J. Without waiving any rights to recover payment for reimbursable taxes, fees, or other costs per the provisions of Paragraph 15 herein, KLJ must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.

16. RELATIONSHIP BETWEEN PARTIES. KLJ is retained by the City only for the purposes and to the extent set forth in this Agreement, and its relationship to the City shall, during the period or periods of services under this Agreement, be that of an independent contractor. KLJ will be free to use such portion of KLJ's entire time, energy, and skill during the course of this Agreement to meet its contractual obligation to the City. Neither KLJ, nor its personnel, will be considered to be employed by the City or entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any benefits accorded the City's regular employees. The City will not be financially responsible to KLJ except for the payment of compensation specifically set forth in this Agreement, and will not be responsible for the payment of any cost of living allowances, merit increases, medical insurance, employee's retirement, life or disability coverage, sick leave, or holiday pay or vacation pay, or any benefit of any kind not specifically set forth in this Agreement. Likewise, the City will not be responsible for wage or salary withholding to the federal or any state government.

17. REPRESENTATIONS. KLJ represents that the following statements are true:

- A. KLJ has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any representative of the City with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- B. KLJ's personnel performing the work hereunder have no interest that would constitute a conflict of interest with the City during the term of the Project. This does not preclude or prohibit other KLJ employees or representatives from working with other parties who may participate on the Project and have potential or actual adverse interest to the City.

- C. This Agreement does not constitute a conflict of interest or default under any of KLJ's other agreements.
- D. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect KLJ's ability to perform under this Agreement.
- E. KLJ is in compliance with all laws, rules, and regulations applicable to its business, including rules of professional conduct (the "Laws and Regulations").
- F. During the term of this Agreement, KLJ must not knowingly take any action, or omit to perform any act, that may result in a representation becoming untrue. KLJ must immediately notify the City if any representation and warranty becomes untrue.

THE REPRESENTATIONS ABOVE SHALL BE IN LIEU OF ANY IMPLIED OR EXPRESS WARRANTIES AND ENGINEER MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE IN CONNECTION WITH ITS SERVICES.

- 18. WORKING RELATIONSHIP. KLJ's Representative will be the individual(s) that will engage with the City Commission and the City's Representatives. KLJ's Representative shall be identified on each Task Order. KLJ shall work in close cooperation and coordinate with the City Engineer and their designated staff.
- 19. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by KLJ in accordance with the independent professional judgment of each of its employees. KLJ will perform the services rendered in accordance with accepted principals and standard of care of its profession. KLJ's personnel are subject to the rules and regulations of any and all licensing and professional organizations or associations to which those personnel may from time to time belong, and the Laws and Regulations in North Dakota.
- 20. STANDARD OF CARE. The standard of care applicable to KLJ's services will be the degree of skill and diligence normally employed by professional consultants or consultants performing the same or similar services at the time said services are performed. KLJ will re-perform any services not meeting this standard without additional compensation.
- 21. SUBSURFACE INVESTIGATIONS. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution. These conditions and cost/execution effects are not the responsibility of KLJ.
- 22. ENGINEER'S PERSONNEL AT CONSTRUCTION SITE.
 - A. KLJ and KLJ's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or

reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except KLJ's own personnel.

- B. The presence of KLJ's personnel at a construction site is for the purpose of providing to the City a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). KLJ neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.
- C. The presence of KLJ's personnel, subcontractors, or subconsultants at a construction site whether as on-site representative or otherwise do not make KLJ or KLJ's personnel, subcontractors, or subconsultants liable for any duties belonging to either the City or its contractor(s) except as specifically outlined in a Task Order. KLJ will not at any time supervise, direct, control, or have authority over any contractor work, nor will KLJ have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at any project site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- D. KLJ neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform work at a project in accordance with any plans, specifications, drawings, details, or other construction or design documents prepared by KLJ for the Project.
- E. For each service or design performed or furnished, KLJ will be responsible only for those construction phase services that have been itemized and expressly required of KLJ in the authorizing Task Order. With the exception of such expressly required services, KLJ will have no design, shop drawing review, or other obligations during construction and the City assumes all responsibility for the application and interpretation of the contract documents, contract administration, construction observation and review, and all other necessary construction phase Engineering and professional services. KLJ will not be liable to the City for any construction phase Engineering or professional services except for those services that are expressly required of KLJ in the authorizing Task Order.

23. OPINIONS OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES.

- A. KLJ has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, KLJ makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from any opinions of project costs, financial analyses, economic feasibility projections, or schedules for the Project included in KLJ's services work or deliverables for the Project.

- B. If the City wishes greater assurance as to any element of project cost, feasibility, or schedule, the City will employ an independent cost estimator, contractor, or other appropriate advisor.
24. CONSTRUCTION PROGRESS PAYMENTS. Recommendations by KLJ to the City for periodic construction progress payments to the construction contractor(s) will be based on KLJ's knowledge, information, and belief from selective observations that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by KLJ to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that KLJ has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to the City free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between the City and the construction contractors that affect the amount that should be paid.
25. RECORD DRAWINGS. Record drawings, if required, will be prepared in a format as specified in the applicable Task Order, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed. To the extent that KLJ prepares, compiles, and furnishes information to be incorporated into the Record Drawings, KLJ will be responsible for damages that are incurred by the City to the extent caused by any negligent errors or omissions by KLJ in preparing, compiling, and furnishing such information. KLJ is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.
26. ENGINEER'S INSURANCE. KLJ must maintain throughout this Agreement the following insurance:
- A. KLJ must purchase and maintain throughout this Agreement such insurance as is required by this Agreement in the categories and amounts set forth below:
- (1) Claims under Workers' Compensation, disability benefits, and other similar employee benefit acts;
 - (2) Claims for damages because of bodily injury, occupational sickness or disease, or death of KLJ's employees;
 - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than KLJ's employees;
 - (4) Claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - (a) by any person as a result of an offense directly or indirectly related to the employment of such person by KLJ, or
 - (b) by any other person for any other reason;

- (5) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- (6) Claims for damages because of bodily injury or death of any person or property damage arising out of KLJ's ownership, maintenance, or use of any motor vehicle.

B. The policies of insurance required by this Section will:

- (1) With respect to insurance required by above paragraphs 25(A)(3) through 25(A)(6) inclusive, be written on an occurrence basis, included as additional insureds (subject to any customary exclusion regarding Professional Liability and Worker's Compensation) the City, and any other individuals or entities identified, all of whom will be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insured, and the insurance afforded to these additional insureds will provide primary coverage for all claims covered in the General Liability and Automobile Liability Policies;
 - (a) All insurance policies required under this Agreement, including the Excess or Umbrella Liability policies must be from insurers rated "A-" or better by the A.M. Best Company, Inc.
- (2) Include at least the specific coverages and be written for not less than the limits of liability specified or required by Laws or Regulations, whichever is greater;
- (3) Contain a provision or endorsement that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days prior written notice has been given to the City and to each other additional insured identified to whom a certificate of insurance has been issued (and the certificates of insurance furnished by KLJ pursuant to this Section will so provide);
- (4) Remain in effect at least until final payment and at all times thereafter when KLJ may be correcting, removing, or replacing defective work;
- (5) Include completed operations coverage:
 - (a) Such insurance will remain in effect for two (2) years after final payment.
 - (b) KLJ will furnish the City and each other additional insured identified, to whom a certificate of insurance has been issued, evidence satisfactory to the City and any such additional insured of continuation of such insurance at final payment and one (1) year thereafter.
- (6) Not limit in any way KLJ's duties to defend, indemnify, and hold harmless the City and its officers, employees, agents, consultants, subcontractors, and representatives;
- (7) Either in the policies or in endorsements, contain a "waiver of subrogation" (except for in the Professional Liability Policy and Worker's Compensation policy) that

waives any right to recovery any of KLJ's insurance companies might have against the City;

- (8) Either in the policies or in endorsements, contain a provision that KLJ's insolvency or bankruptcy will not release the insurers from payment under the policies, even when KLJ's insolvency or bankruptcy prevents KLJ from meeting the retention limits under the policies;
- (9) Either in the policies or in endorsements, contain cross liability/severability of interests, to ensure that all additional parties are covered as if they were all separately covered (with the exception of Worker's Compensation and Professional Liability policies);
- (10) Either in the policies or in endorsements, contain a provision that the legal defense provided to the City must be free of any conflict of interest, even if retention of separate legal counsel is necessary; and
- (11) Either in the policies or in endorsements, contain a provision that KLJ's policies will be primary and noncontributory regarding any other insurance maintained by or available to the City and that any insurance maintained by the City will be in excess of KLJ's insurance and will not contribute with it (except for Worker's Compensation and Professional Liability Policies).

C. The limits of liability for the insurance required by this Section will provide coverage for not less than the following amounts or greater where required by Laws and Regulations. These amounts may be modified by Task Orders:

- (1) Worker's Compensation, and related coverages under Paragraphs 25(A)(1) and 25(A)(2):
 - (a) State: Statutory;
 - (b) Applicable Federal (e.g. Longshoreman's): Statutory;
 - (c) Employer's Liability: \$1,000,000.
- (2) General Liability under Paragraphs 25(A)(3) through 25(A)(6) which will include premises or operations coverage, completed operations and product liability coverages, and will eliminate the exclusion with respect to property under the care, custody, and control of KLJ:
 - (a) General Aggregate: \$2,000,000
 - (b) Products – Completed Operations Aggregate: \$1,000,000
 - (c) Personal and Advertising Injury: \$1,000,000
 - (d) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - (e) Property damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
 - (f) Excess or Umbrella liability:
 - i. General Aggregate: \$5,000,000
 - ii. Each Occurrence: \$4,000,000

(3) Automobile Liability under Paragraph 25(A)(6) (which will include coverage for any auto, including owned, non-owned, and hired):

- (a) Bodily injury:
 - i. Each person: \$1,000,000
 - ii. Each accident: \$1,000,000
- (b) Property Damage:
 - i. Each accident: \$1,000,000
- OR
- (c) Combined Single
 - i. Limit of: \$1,000,000

(4) Professional Liability coverage will provide coverage for not less than the following amounts:

- (a) Each claim made: \$2,000,000
- (b) Annual Aggregate: \$2,000,000

(5) The following will be included as additional insured on all of KLJ's general liability and automobile insurance policies required under this Agreement:

- (a) City of West Fargo; and
- (b) Any party identified in a specific Task Order.

D. KLJ will ensure that any subcontractor purchases and maintains the same insurance policies and endorsements required of KLJ under the Contract Documents, with the same conditions and terms required of KLJ and its insurers.

E. If any required policy is written on a "claims made" form, KLJ must maintain the coverage continuously throughout the term of this Agreement, and, without lapse, for five (5) years beyond the termination or expiration of this Agreement and the City's acceptance of all services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that services commence under this Agreement.

F. Before KLJ begins performing services, KLJ must send the City certificates of insurance and any applicable endorsements attesting to the existence of coverage. KLJ will not allow its policies to be cancelled, lapse, and/or terminate, or be amended to reduce coverage below the minimums called for in this Agreement without thirty (30) days' notice to the City. The certificates of insurance issued to confirm KLJ's compliance must reference this Agreement.

G. If required insurance lapses during the term of this Agreement, the City is not required to process invoices after such lapse until KLJ provides evidence of reinstatement that is effective as of the lapse date.

H. The City shall have no specific responsibility to provide any general liability coverage or Worker's Compensation coverage for the benefit of KLJ's employees during the terms of this Agreement.

27. THIRD PARTY DESIGNERS. The City and KLJ acknowledge and agree that some of the design services for any specific project will be separately engaged by the City through retention of separate design professionals. Independent design professionals engaged in different aspects of a project shall use Best Efforts to cooperate in completing the project in a timely and professional manner. Notwithstanding any provision to the contrary, KLJ will have no responsibility for the accuracy or sufficiency of documentation prepared by those independent design professionals. KLJ will notify the City of errors, discrepancies, and inconsistencies it may discover in such documents. If such errors, discrepancies, or inconsistencies cause an increase in cost or the time for performance, KLJ will be entitled to an equitable adjustment. In the event KLJ performs constructability reviews, value Engineering, or any other reviews or tasks involving the design for the work contemplated by the project, it is understood that such reviews will not render KLJ liable in any manner for the duties of the City's separately-retained design professionals.
28. OPEN RECORDS. KLJ will cooperate with the City in responding to any request for documents by any third party to the extent such documents may be required to be disclosed under North Dakota Statutes regarding open records laws.
29. DATA FURNISHED BY THE CITY. The City will provide to KLJ all data in the City's possession relating to KLJ's services on a project. KLJ may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.
30. ADVERTISEMENTS, PERMITS, AND ACCESS. Unless otherwise agreed to in the scope of services or a Task Order, the City will obtain, arrange, and pay for all advertisements for bids; permits and licenses required by local, state, or federal authorities; and land, easements, rights-of-way, and access necessary for KLJ's services or project construction.
31. TIMELY REVIEW. The City will examine KLJ's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as the City deems appropriate; and render in writing decisions required by the City in a timely manner.
32. PROMPT NOTICE. The City will give prompt written notice to KLJ whenever the City observes or becomes aware of any development that affects the scope or timing of KLJ's services, or of any suspected or actual defect in the work of KLJ or their third party designers or construction contractors.
33. ASBESTOS OR HAZARDOUS SUBSTANCES. If asbestos or hazardous substances in any form are encountered or suspected, KLJ will stop its own work in the affected portions of a project to permit testing and evaluation. If asbestos is suspected, KLJ will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated. If hazardous substances other than asbestos are suspected, KLJ will, if requested, conduct tests or request a qualified subcontractor to conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated. The City recognizes that KLJ assumes no

risk and/or liability for a waste or hazardous waste site originated by other than KLJ. Under no circumstances shall KLJ be considered to be a generator, storer, or transporter of hazardous substances or materials with regard to services provided under this Agreement or the initial Agreement.

34. CONTRACTOR INDEMNIFICATION AND CLAIMS.

- A. The City agrees to include in all construction contracts the provisions of Section 23, KLJ's Personnel at Construction Site, and provisions providing contractor indemnification of the City and KLJ for contractor's negligence.
- B. The City shall require construction contractor(s) to name the City, KLJ, and its subcontractors as additional insureds on the contractor's general liability insurance policy.
- C. The City agrees to include the following clause in all contracts with construction contractors, and equipment or materials suppliers: "Contractors, subcontractors, and equipment and material suppliers on the project, or their sureties, shall maintain no direct action against ENGINEER, ENGINEER's officers, employees, affiliated corporations, and subcontractors for any claim arising out of, in connection with, or resulting from the consulting services performed. The City will be the only beneficiary of any undertaking by ENGINEER."

35. OWNER'S INSURANCE.

- A. The City will maintain property insurance on all pre-existing physical facilities associated in any way with the project.
- B. The City will provide for a waiver of subrogation as to all City-carried property damage insurance, during construction and thereafter, in favor of KLJ, KLJ's officers, employees, affiliates, and subcontractors.
- C. The City is not responsible for the payment of deductibles owed under KLJ's insurance policies.
- D. The City will provide (or have the construction contractor(s) provide) a Builder's Risk All Risk insurance policy for the full replacement value of all project work including the value of all onsite City-furnished equipment and/or materials associated with KLJ's services. Such policy will include coverage for loss due to defects in materials and workmanship and errors in design, and will provide a waiver of subrogation as to KLJ and the construction contractor(s) (or the City), and their respective officers, employees, agents, affiliates, and subcontractors. The City will provide KLJ a copy of such policy.
- E. The City reserves the right to enter into a program-wide insurance plan at its expense. KLJ agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

36. LITIGATION ASSISTANCE. Services required or requested of KLJ by the City to support, prepare, document, bring, or assist in litigation undertaken or defended by the City, except for

suits or claims between the parties to this Agreement, will be defined in an authorized Task Order and reimbursed as mutually agreed.

37. INDEMNIFICATION. Under the scope of this Agreement, KLJ will defend, indemnify, and hold harmless the City and its officers, employees, agents, subcontractors, and representatives, from and against any and all claims, losses, liabilities, damages, expenses, demands, suits, fines, judgments, costs, expenses, and reasonable fees (including all fees and charges of attorneys, Engineers, architects, and other professionals and all court, arbitration, mediation, or other resolution costs) arising out of or relating to claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by any negligent act or omission of KLJ, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by KLJ to perform any of the work, and including all costs, expenses, and fees incurred by the City in establishing and litigating the existence, scope, or any other matters relating to KLJ's obligations to defend, indemnify, and hold harmless. KLJ's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. KLJ's duties to defend, indemnify, and hold harmless include anything in excess of any minimum insurance requirements described in the contract documents, and anything in excess of any of KLJ's insurance policy limits. KLJ's obligations to defend, indemnify, and hold harmless will continue for a period of not less than six (6) years following completion of the project or any termination or expiration of the contract documents.

The indemnified party shall provide notice to KLJ after obtaining knowledge of any claim that it may have pursuant to this Section. In the event the indemnified party pursues a claim pursuant to this Section, the indemnified party will also provide relevant information and assistance to KLJ.

38. LIMITATION OF LIABILITY. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of KLJ and KLJ's officers, directors, members, partners, agents, guarantors, subconsultants, subcontractors, and employees, to the City, its members, and anyone else claiming by, through, or resulting from, or in any way related to a project or Task Order, from any negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of KLJ or KLJ's officers, directors, members, partners, agents, subconsultants, subcontractors, or employees shall not exceed the total amount, individually, collectively, or in the aggregate of four million dollars (\$4,000,000) per year per Task Order for project-related work unless a lesser amount is agreed to by both parties, and one million dollars (\$1,000,000) per year for building inspections as set forth in Task Order 3. Notwithstanding the foregoing, KLJ's maximum amount of liability for project-related work shall be limited to twenty million dollars (\$20,000,000) per year. This article takes precedence over any conflicting article of this Agreement or any document incorporated into it or referenced by it. This limitation of liability will apply whether KLJ's liability arises under breach of contract or warranty, tort, including negligence, strict liability, statutory liability, or any other cause of action, and shall include KLJ's officers, affiliated corporations, employees, and subcontractors. The City further agrees that its sole and exclusive remedy, and any claim, demand, or suit arising from or related to the services under this Agreement shall be directed and/or asserted only against KLJ and not against any of KLJ's individual employees, officers, shareholders, affiliated firms, or directors. The City knowingly waives all such claims against KLJ's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to KLJ.

39. BREACH AND REMEDIES.

- A. A breach exists under this Agreement if either party:
 - (1) Makes a material misrepresentation in writing; or
 - (2) Fails or is unable to meet or perform any material promise in this Agreement, and
 - (a) Is incapable of curing the failure, or
 - (b) Does not cure the failure within twenty (20) days following notice (or within a longer period if specified in the notice).
- B. KLJ must give the City notice immediately if KLJ breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.
- C. The parties will use their Best Efforts to resolve amicably any dispute, including use of alternative dispute resolution options. Mediation, an alternative dispute resolution option, is further described below.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

40. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within twenty (20) days of written notice and diligently completes the correction thereafter.
- B. The City may terminate this Agreement, in whole or in part, or modify or limit KLJ's services, and proportionately, KLJ's compensation, if:
 - (1) The City determines that having KLJ provide services has become infeasible due to changes in applicable laws or regulations, or
 - (2) Expected or actual funding to compensate KLJ is withdrawn, reduced, or limited.
- C. Either party may terminate this Agreement, in whole or in part, for any or no reason upon thirty (30) days' written notice to the other party.
- D. On termination, KLJ will be paid for all authorized services performed up to the termination date plus termination expenses, such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.
- E. In the event a federal or state tax or employment agency concludes that an independent contractor relationship does not exist, either KLJ or the City may terminate this Agreement immediately upon written notice.

- F. Upon receipt of any termination notice from the City related to any specific Task Order, KLJ must promptly discontinue all affected services under the Task Order unless the parties mutually agree otherwise.
- G. Upon the end date of this Agreement, which is the date when this Agreement as a whole, along with any pending Task Orders, expires or are terminated pursuant to their terms:
- (1) The City will be released from compensating KLJ for services other than those KLJ satisfactorily performed, pursuant to industry standard, prior to the end date.
 - (2) KLJ must submit KLJ's final invoice for payment within sixty (60) days of the end date. The City will not pay any Engineer invoice received after this period.
 - (3) The Engineer will be released from performing services, except for services in any non-terminated portion of this Agreement.
- H. All rights and duties with respect to services performed prior to the expiration or termination of this Agreement, and continuing obligations specified in this Agreement to be performed following expiration or termination of this Agreement, will survive the expiration or termination of this Agreement.
- I. In the event of termination, expiration, or removal/withdrawal, KLJ must terminate its services as soon as it is reasonably possible to do so without (1) prejudice to the City's interests (or the interest of any person represented on the City's behalf) or (2) violation of KLJ's statutory or ethical duties. KLJ must notify the City of any further services, prior to withdrawal or substitution, which KLJ believes are necessary to avoid prejudice to the City's interests (or the interest of any person represented on the City's behalf), and obtain the City's consent prior to performing such services.

41. ADDITIONAL PAYMENT. Nothing contained in this Agreement shall obligate the City to make any payment for services rendered in any period after the termination of KLJ's retention by the City.
42. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The City may suspend, delay, or interrupt the services of KLJ for the convenience of the City. In such event, ENGINEER's contract price and schedule shall be equitably adjusted.
43. NOTICE. Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (1) delivered personally, or (2) mailed by United States certified mail, return receipt requested, postage prepaid and in any case properly addressed as follows:

If to KLJ: Kadrmas, Lee & Jackson, Inc.
 Attn: Mike Bittner
 728 East Beaton Drive, Suite 101
 West Fargo, 58078

If to City: City of West Fargo
Attn: City Engineer
800 4th Avenue East, Suite 2
West Fargo, ND 58078

Each such mailed notice or communication will be deemed to have been given on the date that is three (3) days after the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

44. PROHIBITION AGAINST ASSIGNMENT. This is a bilateral professional services agreement. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable.
45. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the City and KLJ and has no third-party beneficiaries.
46. CONSEQUENTIAL DAMAGES. To the maximum extent permitted by law, KLJ and KLJ's affiliated corporations, officers, employees, and subcontractors shall not be liable for the City's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect KLJ against indirect liability or third-party proceedings, the City will indemnify KLJ for any such damages.
47. MATERIALS AND SAMPLES. Any items, substances, materials, or samples removed from a project site for testing, analysis, or other evaluation will be returned to the project site within sixty (60) days of project close-out unless agreed to otherwise. The City recognizes and agrees that KLJ is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.
48. ENGINEER'S DELIVERABLES. A party may rely on data or information that the party receives from the other party by hard copy or electronic media. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents. KLJ's deliverables are for the City or others' convenience. Any conclusions or information derived or obtained from these files will be at user's sole risk.
49. ACCESS TO ENGINEER'S ACCOUNTING RECORDS / AUDIT RIGHTS.
 - A. KLJ must allow the City and its designees to review and audit KLJ's financial documents and records relating to this Agreement. KLJ will maintain accounting records, in accordance with generally accepted accounting principles. These records will be available to the City for a period of one (1) year after KLJ's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The City may only audit accounting records applicable to cost-reimbursable type compensation. Upon finalization of the audit, the City will submit to KLJ a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to KLJ at the completion of an audit.

- B. Within one hundred eighty (180) days after the date of the Notice of Audit Results, KLJ will respond, in writing, to the City indicating (a) whether it concurs with the audit report, (b) clearly explaining the nature and basis for any disagreement as to a disallowed item of expense, and (c) providing a written explanation as to any questioned or no opinion expressed item of expense (the "Response"). The Response will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, KLJ may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the City at times and dates mutually agreed upon by both parties. The Response will refer to and apply the language of this Agreement. KLJ agrees that failure to submit a Response within the one hundred eighty (180) day period constitutes agreement with any disallowance of an item or expense and authorizes the City to finally disallow any items of questioned or no opinion expressed cost.
- C. The City will make its decision with regard to any Notice of Audit Results and Response within one hundred twenty (120) days after the date of the Notice of Audit Results. If it is determined by a court of competent jurisdiction or by mutual agreement that an overpayment has been made to KLJ, KLJ will repay the amount to the City or reach an agreement with the City on a repayment schedule within thirty (30) days after the date of an invoice from the City. If KLJ fails to repay the overpayment or reach an agreement with the City on a repayment schedule within the thirty (30) day period, KLJ agrees that the City will deduct all or a portion of the overpayment from any funds then or thereafter payable by the City to KLJ for the Project. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be the interest rate on judgments in North Dakota as calculated by the North Dakota State Court Administrator pursuant to North Dakota law. The rate of interest will be reviewed annually by the City and adjusted as necessary. KLJ expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit to contest the City's decision.

50. OWNERSHIP. Ownership of work product and inventions created by KLJ will be as follows:

- A. Pre-Existing Consultant Materials. The City acknowledges and agrees that in the performance of the services, KLJ will utilize its proprietary data, concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software, works of authorship, software and hardware architecture, databases, tools, other background technologies and standards of judgment that developed or licensed from third parties prior to the effective date of this Agreement (the "Pre-Existing Consultant Materials") and that KLJ will retain all right, title, and interest, including intellectual property rights in the Pre-existing Consultant Materials. Subject to the terms and conditions of this Agreement, KLJ hereby grants to the City a non-exclusive, non-transferable, royalty-free license, fully assignable to the City, to utilize the Pre-Existing Consultant Materials for the purpose of the City's Task Order or project.
- B. Derivative Consultant Materials. The City acknowledges and agrees that in the performance of the services, KLJ will utilize and develop customization, enhancements, improvements, modifications, and adaptations of and to the Pre-Existing Consultant

Materials (the “Derivative Consultant Materials”). KLJ will retain all right, title, and interest, including intellectual property rights in the Derivative Consultant Materials. Subject to the terms and conditions of this Agreement, KLJ hereby grants to the City a non-exclusive, non-transferable, royalty-free license, fully assignable to the City, to utilize the Derivative Consultant Materials.

- C. New Consultant Materials. The City acknowledges and agrees that in the performance of the services, KLJ may utilize and develop new software, hardware, and other technology or processes that do not utilize or incorporate, or are not based upon, the Pre-Existing Consultant Materials (“New Consultant Materials”). Between the parties, subject to the license grant-back set forth below, the City will retain rights, title, and interest, including without limitation intellectual property rights, in and to the New Consultant Materials. The City and KLJ will have ownership of such New Consultant Materials without any limitation or restriction.
- D. License Grant Back. Subject to the terms and conditions of this Agreement, the City hereby grants to KLJ a non-exclusive, transferable, royalty-free license to utilize the concepts, methods, techniques, processes, protocols, ideas, inventions, know-how, trade secrets, algorithm, software and hardware architecture, and other background technologies that are newly developed by KLJ under this Agreement and assigned to the City under this Agreement, to make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, import, and otherwise disposed of any products, technologies, and services and for any purposes without restriction.
- E. License Restrictions. Except as otherwise permitted above, the City shall not, and shall not allow any third party to: (i) modify or otherwise create derivative works of the Pre-Existing, Derivative, or New Consultant Materials; (ii) use the Pre-Existing, Derivative, or New Consultant Materials for any other purpose, other than the City’s Task Order or project; (iii) make, have made, use, reproduce, license, display, perform, distribute, sell, offer for sale, service, support, or import any product that incorporates, embodies and/or is based upon the Pre-Existing, Derivative, or New Consultant Materials; (iv) sublicense, distribute or otherwise transfer to a third party any of the Pre-Existing, Derivative, or New Consultant Materials by itself or as incorporated in the services; or (v) reverse engineer, disassemble, decompile or attempt to derive the source code or underlying ideas or algorithms of the Pre-Existing, Derivative, or New Consultant Materials. Any additional use of the Pre-Existing, Derivative, or New Consultant Materials shall require a separate written license agreement.
- F. Miscellaneous. Nothing contained in this Agreement shall be construed as conferring to the City or any third party any license or right by implication, estoppel, or otherwise to any intellectual property rights of KLJ, other than the rights expressly granted under this Agreement. The City may use said work products for the specific purpose for which the work product was intended. Any other use or reuse, without written verification or adaptation by KLJ will be at the user’s sole risk.
- G. City Material. As between the parties, the City is the exclusive owner of all material KLJ collects from the City in connection with the services under this Agreement, including copyrights. Within thirty (30) days of the end date of this Agreement, or upon the City’s notice at any time, KLJ must give all materials collected to the City (or to another party at

the City's direction). Unless the City specifies otherwise, all files must be saved in the appropriate formats (Microsoft Word and Excel, CAD, PDF, GIS data files, etc.), as applicable. KLJ must maintain its records relating to services under this Agreement and KLJ's invoices, and all other materials, in an accessible location and condition for a period of not less than one (1) year after the later of:

- (1) The date when KLJ receives final payment under this Agreement; or
- (2) The date when the City resolves with KLJ the findings of any final audit.

KLJ may retain copies of any original documents KLJ provides to the City and a copy of any material collected from the City in KLJ's confidential files for the purpose of complying with applicable laws or established company procedure regarding the preservation of business records.

51. REUSE OF PROJECT DOCUMENTS. Services and deliverables are for the exclusive use of the City and are not to be relied upon by third parties. All reports, drawings, specifications, documents, and other deliverables of KLJ, whether in hard copy or in electronic form, are instruments of service for a Task Order, whether the Task Order is completed or not. Upon full payment for services due under this Agreement, KLJ agrees to grant to and hold harmless the City an irrevocable license to the instruments of service, the City agrees to indemnify KLJ and KLJ's officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees arising out of or related to the City's related entities' unauthorized reuse, change, or alteration of these Task Order or project documents. Nothing in this Agreement shall constitute a waiver of the statutory limits of liability set forth in N.D.C.C. § 32-12.1-03, as may be amended, or a waiver of any available immunities or defenses.
52. MODIFICATION. This Agreement, including its attachments, schedules, and Task Orders, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment approved by the City and executed by KLJ and the City's Representative on behalf of the City. It may be modified as to terms and conditions from time to time upon the mutual consent of the parties; however, such modification shall be reduced to writing, signed by the parties, and the document appended to and made a part of this Agreement.
53. FORCE MAJEURE. KLJ is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of KLJ. In any such event, KLJ's contract price and schedule shall be equitably adjusted.
54. WAIVER. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

The City waives all claims against KLJ, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to KLJ, whichever is earlier.

55. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the City, its successors and assigns, and any such successor shall be deemed substituted for the City under the terms of this Agreement. This Agreement shall likewise be binding upon KLJ, its successors and

assigns. As used in this Agreement, the term “successor” shall include any person, firm, corporation or other business entity which at any time whether by merger, purchase or otherwise acquires all or substantially all of the assets or business of the corporation.

56. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
57. SEVERABILITY AND SURVIVAL. If any court of competent jurisdiction declares, for any reason, any provision or part of this Agreement to be invalid, illegal, or unenforceable, all remaining terms and provisions of this Agreement will remain binding and enforceable. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.
58. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THIS AGREEMENT AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS BY OR ON BEHALF OF THE PARTIES FOR PROJECT PROPERTY ACQUISITION AND/OR CONSTRUCTION CONTRACT CLAIMS AND DEFENSES.
59. DISPUTE RESOLUTION. The City and KLJ shall endeavor to resolve claims, disputes, and other matters in question between them by non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for non-binding mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the non-binding mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, non-binding mediation will proceed in advance of binding dispute resolution proceedings, which shall be stayed pending non-binding mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties will share the mediator’s fee and any filing fees equally. The non-binding mediation will be held in the City, unless another location is mutually agreed upon. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof.

If the parties do not resolve a dispute through non-binding mediation pursuant to this Section, then the method of binding dispute resolution will be via formal claims filed in a court of competent jurisdiction.

60. CONTROLLING LAW AND VENUE. This Agreement, its interpretation and performance, and any other claims related to it will be controlled by the laws of the State of North Dakota. Any

action brought as a result of any claim, demand, or cause of action arising under the terms of this Agreement must be brought in a court of competent jurisdiction within Cass County, North Dakota.

IN WITNESS WHEREOF, this Agreement is executed the day and year above noted.

(Signatures appear on the following pages.)

TASK ORDER 1

(4 pages)



Scope of Services

Exhibit A

Yearly Traffic Signal Maintenance Agreement - West Fargo, ND

October 17, 2019



Background

The purpose of this document is to describe the scope of services and responsibilities required to maintain and update efficient traffic signal timing plans in West Fargo, ND. Details of the scope of services along with associated fees and timelines are detailed below.

Scope of Services

1. Routine Maintenance

This task involves adjustments to current timing plans based on citizen complaints or intersection specific changes in traffic patterns. KLJ budgeted for 10 Hours in 2019 and 80 hours for 2020. This does not include the development of any formal documentation and does not include coordination with citizens. This task does include detailed e-mail summaries for each work order completed and time for regular coordination with City of West Fargo staff, including quarterly meetings.

Cost: \$15,450

Schedule: Ongoing through the end of 2020.

2. Data Collection

KLJ will collect data at the following intersections during AM, Mid-day, PM and off-peak periods for the purposes of updating timing plans. 1.5 hours of data will be collected for each timeframe, totaling 6 hours of data at each site. Two intersections locations will include an additional hour of traffic during school release times. They are noted with an asterisk (*) below.

- Sheyenne Street:
 - 13th Avenue
 - 17th Avenue
 - 19th Avenue
 - Beaton Drive

- I-94 (North Half)
- I-94 (South Half)
- 21st Avenue/Christianson Drive
- 26th Avenue
- 29th Avenue
- 32nd Avenue
- 38th Avenue
- 40th Avenue
- Veterans Boulevard
 - 13th Avenue
 - 17th Avenue*
 - Beaton Drive
 - 19th Avenue/Beaton Drive
 - I-94 North Ramp
 - I-94 South Ramps
 - 23rd Avenue
 - 26th Avenue
 - 32nd Avenue
 - 36th Avenue*
 - 40th Avenue

The following locations will have data collected from 7 AM to 7 PM for the purposes of traffic signal warrant analysis and later used for signal timing if traffic signals are warranted.

- Seter Parkway/31st Avenue
- 33rd Avenue
- 38th Avenue

KLJ will budget to collect 24-hour radar counts at the following locations to calibrate models. This data will provide traffic speed information, daily traffic pattern information and traffic distribution information;

- Sheyenne Street
 - Between 13th Avenue and 19th Avenue
 - Between 21st Avenue and 32nd Avenue
 - Between 32nd Avenue and 40th Avenue
- Veterans Boulevard
 - Between 13th Avenue and 19th Avenue
 - Between I-94 and 32nd Avenue
 - Between 32nd Avenue and 40th Avenue



Cost: \$20,140

Schedule: Data will be collected in the fall of 2019 as soon as the section of Sheyenne Street between 32nd Avenue and 40th Avenue is open for travel.

3. Timing Plan Updates

In the anticipation that peak hour timing plans may need to be reconfigured for longer cycle lengths, KLJ will update timing plans throughout the entire City for four different timing plans. This will include the following tasks

- New AM Peak, Midday Peak, PM Peak and Off-peak timing plans City-wide.
- New School release time timing plans at three intersections where these plans are already in effect.
- Programming new timing plans into Centrac.
- Coordination with NDDOT to verify new timing plans are acceptable at the I-94 junctions.
- One week of field validation and calibration to ensure the timing plans are operating effectively.

Models and clearance intervals are still current and will not be reassessed.

Cost: \$31,440

Schedule: Implement new timing plans in the spring of 2020 when roadway conditions are optimal and pedestrian activity and school activity converge. If weather is poor in the spring or other unexpected delays occur, timing plan implementation will occur in the fall of 2020.

4. Interconnection with City of Fargo

KLJ will work with City of West Fargo and Fargo staff to identify opportunities to interconnect and coordinate the following corridors; Main Avenue, 13th Avenue, 32nd Avenue, 40th Avenue and Veterans Boulevard. KLJ will complete the following tasks;

- Coordinate with City of Fargo Staff.
- Evaluate opportunities to share information on Centrac systems.
- Review City of Fargo Synchro Files and Develop Recommendations.
- Develop signal timing and offset changes based on findings.
- Field implement and calibrate revised timing and coordination plans.



Note: there is the possibility that cycle lengths differ enough that the scope of this task may require city-wide changes. This will be evaluated prior to implementing new city-wide timing plans.

Cost: \$4,950

Schedule: implementation by the end of the year 2020.

Fee

The total fee for this project is \$74,830 and will be billed out as an “hourly not to exceed” contract. There is currently \$15,578 left on the existing signal timing maintenance agreement that can be repurposed to this contract, resulting in an additional cost of \$59,252.

Not Included in Scope of Services

This contract does not include hardware specific adjustments (i.e. detection, signal heads, etc.) or maintenance fieldwork (i.e. signal incurs damage and goes into flash).

TASK ORDER 2

(4 pages)



370 Wabasha Street, Suite 300
Saint Paul, MN 55102-1323
651 222 2176
KLJENG.COM

Memorandum

Date: 10/18/2019
To: Mr. Dustin Scott
From: John Crawford P.E., PTOE
RE: Proposed Scope of Services for Traffic Impact Study

Remarks

This memorandum presents a proposed scope of services to complete an Intersection Control Evaluation (ICE) Study at 9th Street West and 32nd Avenue and Traffic Impact Study (TIS) for a site development in the southeast quadrant of this intersection.

KLJ will analyze development characteristics that will be provided by Magnum Electric. The site plan is anticipated to request two full access points, one each on 9th Street W and 32nd Avenue W. KLJ will also evaluate traffic operations for up to 3 alternatives at 9th Street W and 32nd Avenue W.

Our progress will be dependent upon receiving a site plan from the developer, demonstrating site characteristics of the access point, development size, type and quantity, and anticipated date of completion of each development component.

1. Traffic and Crash Data Collection

KLJ will collect 12-hour (7:00 am to 7:00 pm) intersection turning movement data at the intersections of 9th Street W and 32nd Avenue W.

Data collection will include auto, pedestrian, bicycle, and truck activity movements, as well as intersection crash data (5 recent years of data to be provided by City).

Existing average daily traffic data near the site will be obtained from the NDDOT online Transportation Information Map.

2. Existing, Future No Build and Future Development Build Conditions Evaluation

Trip Generation, Distribution and Assignment

- a. KLJ will estimate the number of daily, AM peak hour and PM peak hour trips associated with the proposed development. Trip generation assumptions will be based on data in the Institute of Transportation Engineers' (ITE's) *Trip Generation Manual*. If any specific truck percentage data is known through potential tenants, KLJ will incorporate that information rather than use ITE rates.
- b. The origins and destinations of development-related trips will be based on existing traffic data, surrounding land uses and engineering judgment.
- c. The routes used to access the development will be based on existing traffic patterns and engineering judgment.



- d. Future background traffic growth will be developed through review of FM Metro COG's travel demand model outputs.

Traffic Operations Impact Analysis

The site development is anticipated to occur in some undetermined phases. For purposes of this scope, we are assuming the site will partially open in Year 2020, and that full build will occur in approximately ten years, or Year 2030. This Full Build of Year 2030 may be adjusted as phasing details emerge from the developer's plans. Analyses will be conducted for 2020 (Opening Year), 2030 (Full Build), and 2045 (to be in alignment with the Metro COG's future forecasts).

KLJ will evaluate AM and PM peak hour traffic operations at study intersections for the following scenarios:

- 2020 Opening Year No-Build
- 2020 Opening Year Build
- 2030 No Build
- 2030 Full Build
- 2045 No Build
- 2045 Full Build for comparison to Metro COG's future forecasts.

This analysis will help identify if any operational deficiencies occur under existing conditions, or if deficiencies would be triggered by development-generated traffic.

Traffic operations analysis will be completed using the Synchro/SimTraffic software which implements delay and level of service analysis methodologies based on those in the *Highway Capacity Manual*. Traffic operations analysis will also consider calculated 95th percentile queues in the peak hours.

Operations at intersection LOS "E" or worse will be considered deficient, with potential mitigation strategies identified for such instances.

For the 2020 No-Build Scenario, the following intersections will be evaluated:

- 9th Street W and 32nd Avenue W

For each future Site Development Scenario, the following intersections will be evaluated:

- The intersection of 9th Street W and 32nd Avenue W
- The proposed access points to the proposed development along 32nd Avenue W and 9th St. W.

The site access point evaluation will include the appropriate level of access that could be developed. Scenarios will include whether two locations are appropriate, and whether access point(s) should be full access, $\frac{3}{4}$ access, right-in/right-out, or no access.

3. Alternatives Development and Assessment

KLJ will develop up to three intersection concept alternatives for the intersection of 9th Street W and 32nd St W, and will evaluate traffic operations for the 2020, 2030, and 2045 Build Scenarios:



- a. Traffic control analysis will be conducted for the intersection alternatives. This analysis will evaluate opportunities for revised traffic control. These opportunities may include the addition of roadway and/or turn lanes, All Way Stop Control (AWSC) traffic signals (completed through a signal warrant analysis), roundabouts or a specific pedestrian crossing treatment, such as a Rectangular Rapid Flash Beacons (RRFB).
- b. CADD layouts and cost estimates for each alternative.
- c. Evaluation matrix comparing Traffic Operations, Safety, Cost and Impacts.
- d. KLJ will develop an implementation strategy considering both interim and long-term needs of the two study intersections.

4. Deliverables

KLJ will prepare a report that discusses all analyses described above. This report will include figures to help illustrate concepts from the report.

Draft Report

KLJ will provide analysis results within 3 weeks of notice to proceed, and a draft report within 8 weeks of notice to proceed, and receipt of the site development plans. Once completed, this report will be submitted to the City of West Fargo for review.

Final Report

Upon receipt of any comments on the draft report, KLJ will incorporate these comments into a final report within seven days. The report will then be submitted to the City of West Fargo for final review.

5. Fee

The contract will be billed hourly not to exceed \$29,590.

KLJ Project Name:	9th & Main Business Park Traffic Study
KLJ Project Number:	1923-00452

ect Bu

		Job Classification:				
		Engineer V	Engineer II	Engineer I	Project Assistant II	
Task Code	Description	Crawford, John Frederick	Devore, Joseph Scott	Khan, Osama Habib	To Be Determined	DIRECT LABOR Subtotal
	Project Management	\$ 205.00	\$ 115.00	\$ 100.00	\$ 80.00	
	Project Scoping	1				\$ 205.00
	Project Administration	4			4	\$ 1,140.00
		5			4	\$ 1,345.00
1	Traffic Data Collection	\$ 205.00	\$ 115.00	\$ 100.00	\$ 80.00	
	Peak Hour Turning Movement Counts at 32nd Ave W./Sheyenne St.			4		\$ 400.00
	12-Hour Turning Movement Counts at 32nd Ave W./9th St W.			4		\$ 400.00
				8		\$ 800.00
2	Conditions Evaluation	\$ 205.00	\$ 115.00	\$ 100.00	\$ 80.00	
	Summarize Turning Movement Counts, Daily Traffic Counts and Traffic Speed Information	1	2	4		\$ 835.00
	Trip Generation, Distribution and Assignment	2	10	10		\$ 2,560.00
	Traffic Forecasts	4		15		\$ 2,320.00
	Develop Synchro Models	1	3	15		\$ 2,050.00
	Traffic Operations Analysis	2	6	25		\$ 3,600.00
	Review Summary Crash Reports	1	4			\$ 665.00
		11	25	69		\$ 12,030.00
3	Alternate Development, Assessment and Timings	\$ 205.00	\$ 115.00	\$ 100.00	\$ 80.00	
	Traffic Control Analysis	1	4	2		\$ 865.00
	Cadd Layouts and Cost Estimates	4	10	8		\$ 2,770.00
	Evaluation Matrix	1	3			\$ 550.00
	Implementation Strategy					\$ -
		6	17	10		\$ 4,185.00
4	Report and Meetings	\$ 205.00	\$ 115.00	\$ 100.00	\$ 80.00	
	Draft Report	6	10	30		\$ 5,380.00
	Draft Report Meeting	12				\$ 2,460.00
	Final Report	2	12	16		\$ 3,390.00
		20	22	46		\$ 11,230.00
		42	64	133	4	243
						\$ 29,590.00

TASK ORDER 3

(3 pages)



728 East Beaton Drive, Suite 101
West Fargo, ND 58078-2650
701 232 5353
KLJENG.COM

Scope of Work Options

Date: 10/18/2019
To: City of West Fargo
From: Mike Bittner, PE, PTP, PTOE, PMP, IMSA II; Bethany Brandt-Sargent, AICP, PTP
RE: Veterans Boulevard Study

Remarks

The City of West Fargo requested a scope and fee for a Veterans Boulevard corridor study. The study area would be Veterans Boulevard from 13th Avenue to 40th Avenue and 23rd Avenue South from Veterans Boulevard to 4th Street E.

Study intersections would include;

- Veterans Boulevard;
 - 13th Avenue
 - 17th Avenue
 - 19th Avenue/Beaton Drive
 - I-94 North Ramps
 - I-94 South Ramps
 - 23rd Avenue
 - 26th Avenue
 - Seter Parkway/31st Avenue
 - 32nd Avenue
 - 33rd Avenue
 - 36th Avenue
 - 38th Avenue
 - 40th Avenue
- 23rd Avenue;
 - 6th Street
 - 8th Street
 - East Costco Driveway.

The study could be completed with a not to exceed contract of \$50,000. This will include the following tasks;

TASK 1. TRAFFIC VOLUMES

Task 1.1. Turning Movement Counts at Each Signalized Intersection. KLJ will collect AM, PM, mid-day, and off-peak hour turning movement counts at each of the three 23rd Avenue study intersections. Data for Veterans Boulevard will be collected from other concurrent studies.

Task 1.3. Generate Short-Term (5-Year) Traffic Projections. KLJ will use the travel demand model, historic growth rates, and trip generation rates to develop ADTs for 2025.

Task 1.4. Generate Mid-Term (10-Year) Traffic Projections. KLJ will use the travel demand model, historic growth rates, and trip generation rates to develop ADTs for 2030.

TASK 2. TRAFFIC ANALYSIS

Task 2.1. Review Existing Traffic Operations. KLJ will complete traffic operations analysis for the AM, PM, mid-day, and off-peak time periods.



Task 2.2. Evaluate Signal Warrant Analysis. KLJ will review signal warrant analysis under existing and future scenarios at 31st Avenue, 33rd Avenue and 38th Avenue.

Task 2.2. Review Crash Data. KLJ will request the most recent 5-years of crash data from NDDOT to perform a safety analysis of the study intersections and segments.

Task 2.3. Field Review. KLJ will perform a field review of each study intersection to identify deficiencies not emerging through data (queueing issues, conflicts, etc.).

TASK 3. IMPROVEMENT PLAN

Task 3.1. Development of Short-Term Improvements. Based on the Task 2 traffic and safety analysis, KLJ will identify potential short-term improvements to address any deficiencies.

Task 3.2. Identify Timing and Phasing of Widening/Major Improvements. KLJ will develop timing and phasing of potential widening needs on each segment of Veterans Boulevard, focusing on I-94 to 32nd Avenue.

Task 3.3. Implement Signal Timing and Phasing Improvements. KLJ will implement and field calibrate necessary signal timing and phasing enhancements.

TASK 4. REPORTING AND MEETINGS

Task 4.1. Technical Memorandum. KLJ will summarize the findings of the traffic analysis into a short 10-15-page technical memorandum with appendices.

Task 4.2. Meetings with West Fargo Staff. KLJ will budget to meet with West Fargo staff on four occasions throughout the process.

Task 4.3. Coordination with Developers. KLJ will budget for two meetings with developers throughout the process to better understand potential inputs into the study and communicate findings.

Task 4.4. Public Input Meeting. KLJ will budget for one public input meeting to present the findings of the study.

Out of Scope

This scope does not include the following tasks:

- Concept Drawings and Layouts
- Detailed Cost Estimates
- City Commission Presentations

KLJ Project Name:	Veterans Boulevard Study
KLJ Project Number:	1904-01778

ect Bu

Job Classification:		Engineer IV	Engineer III	Engineer II	Project Assistant II		DIRECT LABOR Subtotal
Task Code	Description	Bittner, Mike H	Mackey, Kevin D	Sletmoe, Traci K	Quibell, Cindy A		
1	Traffic Volumes	\$ 190.00	\$ 145.00	\$ 115.00	\$ 80.00		
1.1	TMCs			8	18		\$ 2,360.00
1.2	Generate Short-Term Projections	2	30	4			\$ 5,190.00
1.3	Generate Mid-Term Projections	2	20	4			\$ 3,740.00
		4	50	16	18		\$ 11,290.00
2	Traffic Analysis	\$ 190.00	\$ 145.00	\$ 115.00	\$ 80.00		
2.1	Review Existing Traffic Operations	2	12	12			\$ 3,500.00
2.2	Warrant Analysis	1	8	12			\$ 2,730.00
2.2	Review Crash Data	8	8	8			\$ 3,600.00
2.3	Field Review	4		8			\$ 1,680.00
		15	28	40			\$ 11,510.00
3	Improvement Plan	\$ 190.00	\$ 145.00	\$ 115.00	\$ 80.00		
3.1	Short-Term Improvements	8	15	20			\$ 5,995.00
3.2	Widening/Major Improvements	1	4	8			\$ 1,690.00
		9	19	28			\$ 7,685.00
4	Reporting	\$ 190.00	\$ 145.00	\$ 115.00	\$ 80.00		
4.1	Technical Memorandum	4	20				\$ 3,660.00
4.2	Meetings with West Fargo Staff	15	10				\$ 4,300.00
4.3	Coordination with Developers	4	4				\$ 1,340.00
4.4	Public Input Meeting	20		20			\$ 6,100.00
		43	34	20			\$ 15,400.00
5	Project Management	\$ 190.00	\$ 145.00	\$ 115.00	\$ 80.00		
5.1	Project Management	20					\$ 3,800.00
		20					\$ 3,800.00
		91	131	104	18		344
							\$ 49,685.00



Dustin T. Scott - City Engineer
Jerry Wallace – Civil Engineer
Andrew Wrucke – Transportation Engineer
Kayla Volness – Engineering Office Manager

Engineering Department
800 4th Ave E
West Fargo, ND 58078
701-433-5330
www.westfargond.gov

AGENDA ITEM REQUEST
BOARD OF CITY COMMISSIONERS
WEST FARGO, NORTH DAKOTA

OFFICE USE:
AGENDA ITEM # 5

** "Consent" or "Regular" Agenda Item? **[Regular]** **

1. CONTACT PERSON(s):
 - Dustin T. Scott, City Engineer (433-5425)
2. DATE OF MEETING: **February 17th, 2020**
3. DESCRIPTION OF REQUEST:
 - Review Engineer's Report for Project No. 6055 – Drain 45 Multi-Use Path – Phase I (7th to 13th Ave).
4. LOCATION (address; legal; etc.):
 - Drain 45 – 13th Ave E to 7th Ave E.
5. ACTION(S) REQUESTED:
 - Approve the Engineer's Report and direct the Engineer to prepare detailed plans and specifications for the construction of Project No. 6055 – Drain 45 Multi-Use Path – Phase I (7th to 13th Ave).



925 10th Avenue East
West Fargo, ND 58078

P: 701.282.4692
F: 701.282.4530



February 11, 2020

Mr. Dustin Scott
City of West Fargo - City Engineer
800 4th Ave E, Ste 1
West Fargo, ND 58078

RE: Project No. 6055
Drain 45 Multi-Use Path - Phase I (7th to 13th Ave)
Moore Project No. 20829

Dear Mr. Scott,

We are submitting the attached Engineer's Report for the aforementioned project. Please review and provide comment at your earliest convenience. If you do not have any questions or comments, and the report is acceptable to you, please present it to the West Fargo City Commission. To meet the project's proposed schedule, this report needs to be approved by the City Commission by February 18, 2020.

We will wait for your response and the City Commission before taking further action. Please contact me with your questions or comments. Thank you for your time and consideration.

Sincerely,

Dylan Dunn, EI
Project Engineer

Enclosure(s): Engineer's Report

City of West Fargo, North Dakota

Project No. 6055

Drain 45 Multi-Use Path - Phase I

(7th to 13th Ave)

Engineer's Report

This document was originally issued and sealed by Kevin J. Knott, Registration No. PE-5679, on 02/11/2020 and the original document is stored at Moore Engineering, Inc., West Fargo, N.D.



February 2020
Project No. 20829

Table of Contents

1. INTRODUCTION.....	3
2. PROPOSED IMPROVEMENTS.....	3
3. ALTERNATIVE SELECTION.....	4
4. ENVIRONMENTAL DOCUMENT.....	5
5. FUNDING.....	5
6. CONCLUSION.....	5

APPENDIX A

- Exhibit 1: Proposed Improvements Exhibit
- Exhibit 2: Engineer’s Opinion of Probable Cost
- Exhibit 3: Categorical Exclusion by Definition
- Exhibit 4: Original Transportation Alternative Program Application

1. INTRODUCTION

The City of West Fargo, North Dakota (“City”) believes there is a need for a North/South bikeway route along Drain 45 from Main Avenue to 13th Avenue. A multi-use path at this location would provide a connection between the two arterial corridors of Main Avenue and 13th Avenue through residential neighborhoods providing access to many users with close proximity to numerous schools, public and recreational facilities, and commerce.

A storm water project was completed to enclose Drain 45 by placing an arch culvert in the bottom of the concrete ditch and installing topsoil above it, turning it in to greenspace. The intent of this project is to construct a concrete bike path above the arch pipe to be used as a pedestrian path. A structural analysis is currently being conducted to confirm the assumption that the arch pipe can support the proposed concrete path and the potential of maintenance vehicles.

The City applied for funds available through the North Dakota Department of Transportation (NDDOT) Transportation Alternatives Program. On May 6, 2019, the NDDOT selected the City for a portion of these funds up to a maximum amount of \$232,000 for Drain 45 Multi-Use Path Phase One, from 7th Avenue to 13th Avenue.

The purpose of this preliminary engineer’s report is to establish the general nature, purpose, and an estimate of the probable costs of the improvements. Additionally, this report will include the proposed improvements, environmental documents, and funding related to the Improvements.

2. PROPOSED IMPROVEMENTS

The proposed Improvements are summarized as follows:

- Path Items
 - 10’ Multi-Use Path from 7th Avenue to 13th Avenue
 - Speed Tables at 10th Avenue and 12th Avenue
 - Rectangular Rapid Flashing Beacons (RRFB) at street crossings
 - Street and path signage and pavement markings
- Utility Item
 - Minor Storm Sewer drainage modifications

The proposed Multi-Use Path section currently proposed to be constructed is the West Fargo City Standard 10' wide and 5" thick concrete over 4" aggregate base. Moore Engineering was directed to solicit a structural engineer to confirm that such a proposed section is acceptable over the arch pipe in regards to the bearing capacity of the pipe. It is possible that the structural engineer will determine that a wider or thicker section may be required for distributing the load differently. The structural analysis will also determine if vehicular traffic is to be allowed over the pipe or if vehicular traffic is to be restricted by the use of bollards at street access points.

The use of speed tables, RRFBs, and continental crosswalk striping at 10th Avenue and 12th Avenue are proposed to provide a safer street crossing for the path, with a secondary result of reducing traffic speed on the local street, one of which crosses in front of an elementary school.

Minor storm sewer extensions are required to redirect existing surface drainage patterns after the introduction of the proposed path and speed tables. Catch basins will be added in areas that will no longer naturally drain.

3. ALTERNATIVE SELECTION

Two alignment alternatives were developed. Alternative one was aligned over the center of the previously enclosed concrete lined channel, and alternative two was aligned to the east side of the previously enclosed concrete lined channel. They are as follows:

- Alternative one best fits the existing drainage pattern as the previously enclosed concrete lined channel in the center of the drain Right-of-Way is now crowned, providing natural drainage away from the path to the catch basins near the edges of the drain Right-of-Way.
- Alternative two was explored due to the unknown bearing capacity of the arch pipe used to enclose Drain 45. The concept of shifting the path away from the arch pipe would reduce the risk of arch pipe failure. The results of the shifted alignment were conflicts with the previously installed catch basins which would have to be relocated, increasing the project cost.

Assuming the structural analysis results demonstrated that the arch pipe is acceptable in supporting the proposed path, the selected alternative is alternative one.

4. ENVIRONMENTAL DOCUMENT

Due to the federal funding, the Improvements must follow procedures as required by the NDDOT, which includes an Environmental Document consisting of a Categorical Exclusion by Definition (CED). The CED expresses the environmental issues and estimated cost for the project. The Final Categorical Exclusion by Definition is found in Appendix A.

5. FUNDING

The total estimated construction cost of the project to install the Improvements is estimated to be \$739,600. The Engineer's Opinion of Probable Cost can be found in Appendix A. The Improvements are intended to be funded by a combination of the Transportation Alternative Program funds and City sales tax revenue. The estimated project construction costs have increased from the original application estimate by \$118,000 as a result of the following:

- Speed tables and storm sewer extensions were added to the crossings at 10th Avenue and 12th Avenue
- RRFBs were added to the scope of the project
- The cost above includes both a 20% construction and a 20% design contingency due to having not received proposed design requirements from the structural engineer the at the time of this report.
- The cost above includes engineering, materials testing, legal and administration costs not funded by the TAP funds.

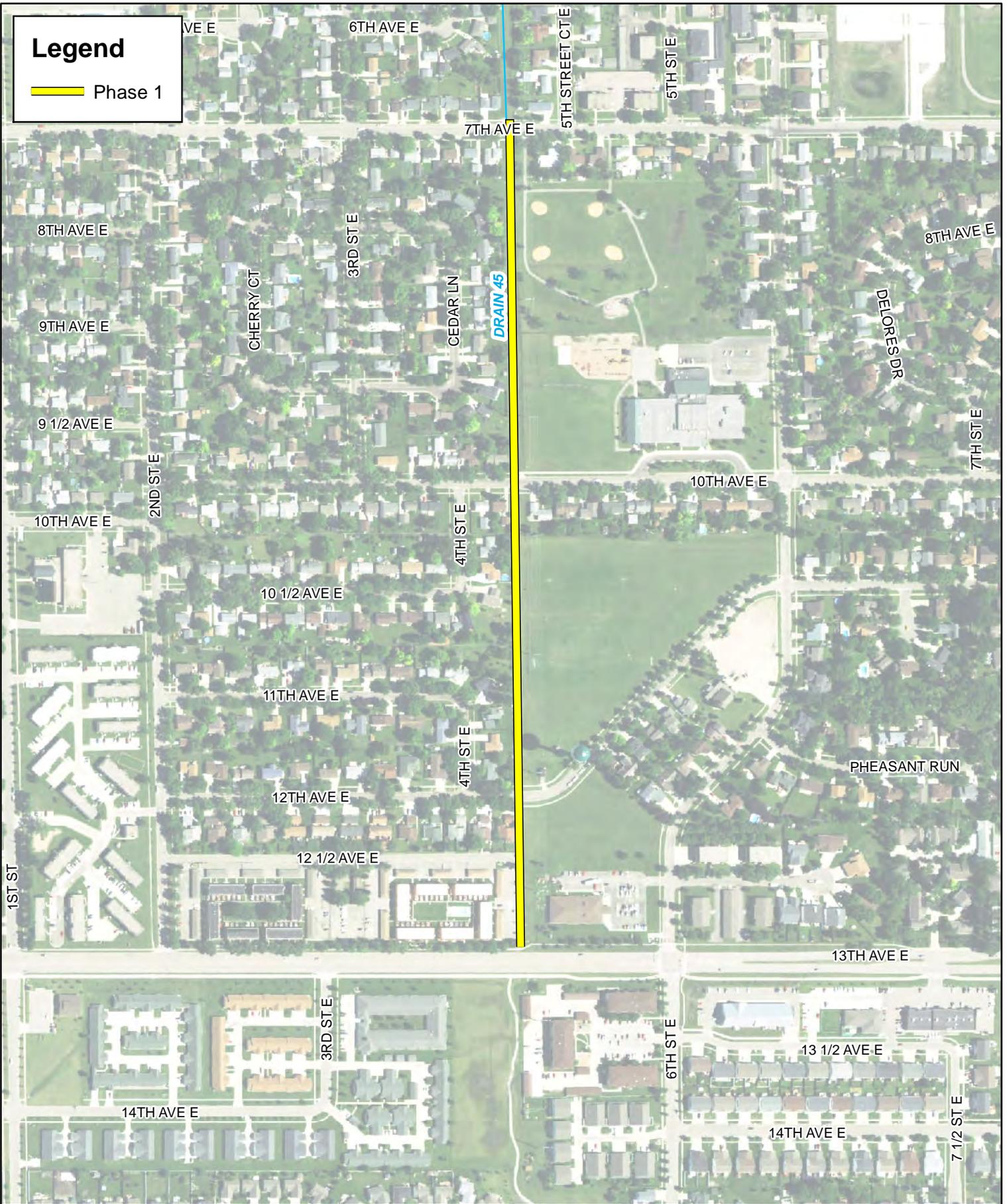
6. CONCLUSION

The proposed Improvements would provide the intended connectivity from neighborhoods to numerous schools, public and recreational facilities, and commerce. The selected alternative of the proposed improvements are to fulfill the intent of the Transportation Alternatives Program and would be in accordance with the City of West Fargo and NDDOT design standards for public improvements.

APPENDIX A

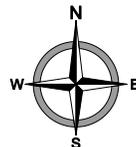
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 Phase 1



**EXHIBIT 1 - PROJECT NO. TAU-8-984(042) PCN 22578
CITY OF WEST FARGO - DRAIN 45 MULTI-USE PATH - PHASE 1
CASS COUNTY, NORTH DAKOTA**

Created By: GZ Date Created: 10/17/18 Date Saved: 12/02/19 Date Plotted: 10/18/18 Date Exported: 12/02/19
Plotted By: tanner.schmidt Parcel Date: NA Aerial Image: 2017 County NAIP SIDS Elevation Data: Lidar
Horizontal Datum: NAD 1983 UTM Zone 14N Vertical Datum: NA
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DRAIN 45 MULTI-USE PATH IMPROVEMENTS
7th Avenue to 13th Avenue Connection (Phases I)
WEST FARGO ND

Exhibit 2

Engineer's Opinion of Probable Cost

ITEM	UNIT	QUANTITY	UNIT PRICE	TOTAL	
PHASE I - 17TH AVENUE EAST TO 13TH AVENUE EAST					
103	100 CONTRACT BOND	LSum	1	\$6,000.00	\$6,000.00
202	114 REMOVAL OF CONCRETE PAVEMENT	SY	75	\$15.00	\$1,125.00
202	130 REMOVAL OF CURB & GUTTER	LF	175	\$7.50	\$1,312.50
202	132 REMOVAL OF BITMINOUS SURFACING	SY	250	\$7.50	\$1,875.00
202	210 REMOVAL OF MANHOLE	EA	1	\$1,000.00	\$1,000.00
202	231 REMOVE & RESET INLETS	EA	7	\$1,500.00	\$10,500.00
203	109 TOPSOIL	CY	3,000	\$7.50	\$22,500.00
216	100 WATER	MGAL	100	\$20.00	\$2,000.00
251	200 SEEDING CLASS II	ACRE	3.5	\$700.00	\$2,450.00
253	201 HYDRAULIC MULCH	ACRE	3.5	\$1,500.00	\$5,250.00
260	100 SILT FENCE SUPPORTED	LF	4,800	\$2.50	\$12,000.00
260	101 REMOVE SILT FENCE SUPPORTED	LF	4,800	\$1.00	\$4,800.00
261	112 FIBER ROLL 12IN	EA	300	\$3.00	\$900.00
261	113 REMOVE FIBER ROLL 12IN	EA	300	\$1.00	\$300.00
265	100 STABILIZED CONSTRUCTION ACCESS	EA	5	\$2,000.00	\$10,000.00
265	101 REMOVE STABILIZED CONSTRUCTION ACCESS	EA	5	\$1,000.00	\$5,000.00
302	120 AGGREGATE BASE COURSE CL 5	TON	600	\$35.00	\$21,000.00
302	314 TEMPORARY TRAFFIC SURFACE AGGREGATE	TON	250	\$15.00	\$3,750.00
430	500 COMMERICAL GRADE HOT MIX ASPHALT	TON	25	\$90.00	\$2,250.00
550	112 8IN NON-REINF CONCRETE PAVEMENT CL AE	SY	200	\$100.00	\$20,000.00
702	100 MOBILIZATION	LSum	1	\$16,000.00	\$16,000.00
704	1100 TRAFFIC CONTROL	LSum	1	\$5,000.00	\$5,000.00
708	1540 INLET PROTECTION - SPECIAL	EA	8	\$200.00	\$1,600.00
708	1541 REMOVE INLET PROTECTION - SPECIAL	EA	8	\$50.00	\$400.00
709	151 GEOSYNTHETIC MATERIAL TYPE R1	SY	100	\$2.00	\$200.00
714	210 PIPE CONC REINF 15IN CL III - STORM DRAIN	LF	30	\$75.00	\$2,250.00
714	4097 PIPE CONDUIT 15IN- STORM DRAIN	LF	100	\$50.00	\$5,000.00
714	5010 PIPE CORR STEEL .064IN 15IN	LF	100	\$40.00	\$4,000.00
722	100 MANHOLE 48IN	EA	2	\$2,000.00	\$4,000.00
722	1100 MANHOLE 48IN RISER	LF	12	\$250.00	\$3,000.00
722	3500 INLET - TYPE 1	EA	2	\$4,000.00	\$8,000.00
722	3510 INLET - TYPE 2	EA	2	\$2,500.00	\$5,000.00
722	3700 INLET SPECIAL - TYPE 1 48IN	EA	1	\$4,000.00	\$4,000.00
748	140 CURB & GUTTER - TYPE I	LF	175	\$25.00	\$4,375.00
750	115 SIDEWALK CONCRETE 4IN	SY	100	\$45.00	\$4,500.00
750	120 SIDEWALK CONCRETE 5IN REINF	SY	2,800	\$50.00	\$140,000.00
750	2115 DETECTABLE WARNING PANELS	SF	80	\$50.00	\$4,000.00
754	110 FLAT SHEET FOR SIGNS - TYPE XI REFL SHEETING	SF	130	\$25.00	\$3,250.00
754	206 STEEL GALV POST - TELESCOPING PERFORATED TUBE	LF	250	\$20.00	\$5,000.00
754	592 RESET SIGN PANEL	EA	1	\$250.00	\$250.00
754	7005 BLINKER SIGN - SOLAR	EA	4	\$13,000.00	\$52,000.00
762	1325 PREF PATT PVMT MK 24IN LINE - GROOVED	LF	260	\$30.00	\$7,800.00
				Construction Subtotal	\$413,637.50
				Construction Contingencies (≈20%)	\$83,181.25
				Design Contingencies (≈20%)	\$83,181.25
				Construction Subtotal	\$580,000.00
				Study & Report	\$16,000.00
				Engineering (12%)	\$69,600.00
				Additional Consultanting Services	\$45,000.00
				Legal & Administration	\$29,000.00
				TOTAL PROJECT COST	\$739,600.00

Exhibit 3

Categorical Exclusion by Definition Checklist

Project Number: TAU-8-984(042)	PCN: 22578	Date: 02/07/2020
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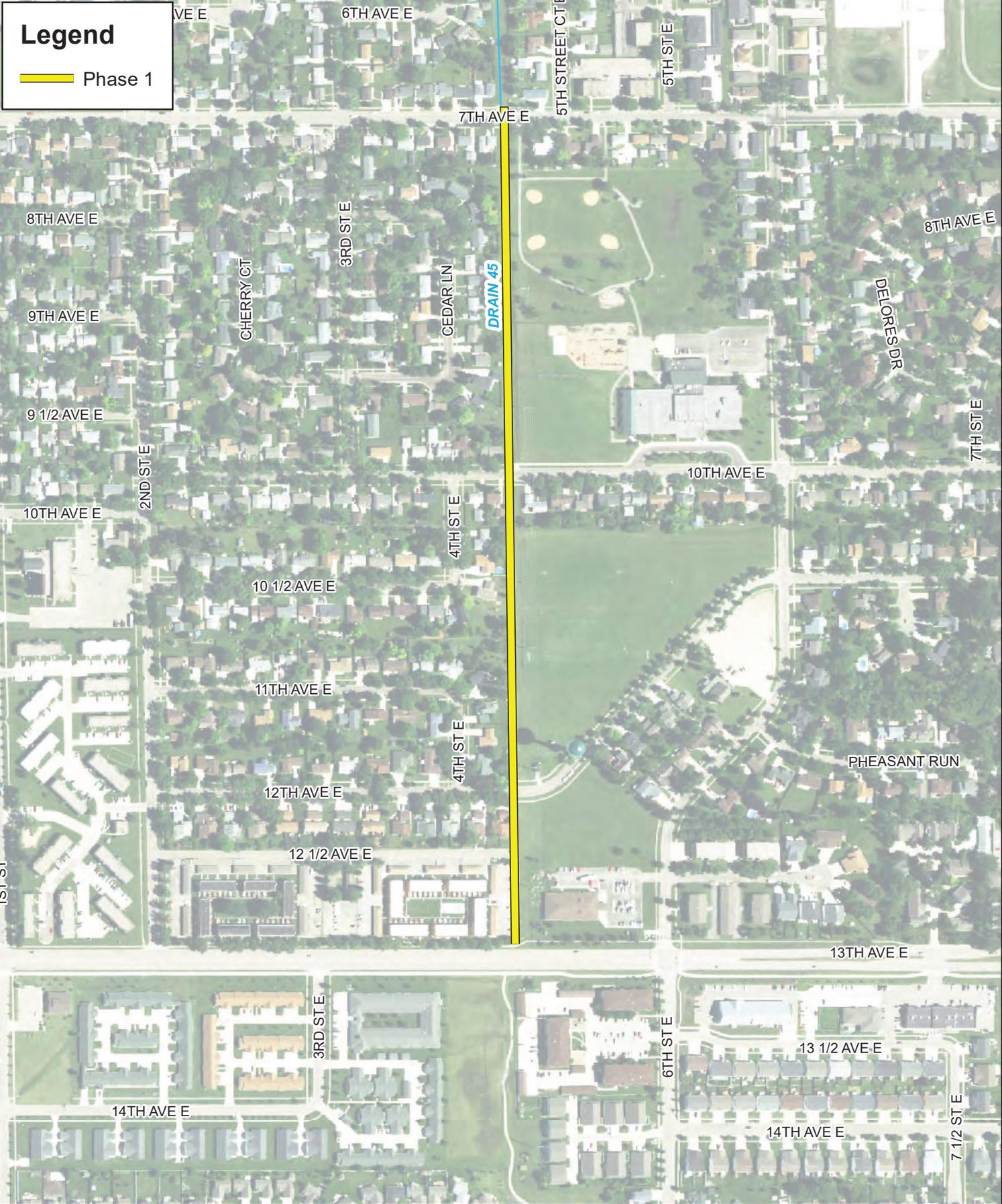
Estimated Cost (Construction & CE): \$475,000

Although no further NEPA approval is required for this action, the checklist below and *Categorical Exclusion by Definition Checklist (CED) Instructions* are intended to identify any additional consultation, coordination, notifications, or permitting that may be required. If the answer is **Yes** to any of the questions below, additional documentation of that Subject Area is required, and shall be added to this CED Checklist, and incorporated into the design where applicable. For any questions contact your NDDOT Environmental Reviewer. An overall project map is required to be included with the CED package.

Subject Area	Questions	Yes	No	Documentation added to the Project File
Right of Way	Is temporary right of way required? <i>If Yes, then attach a figure showing the location(s) and amount(s) needed at each location.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Is permanent right of way is required? <i>If Yes, then attach a figure showing the location(s) and amount(s) needed at each location.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	If permanent right of way is required, will any right of way thresholds be exceeded? -See right of way thresholds in the instructions. <i>If Yes, then a higher level NEPA document is required.</i>		<input checked="" type="checkbox"/>	
Historic/ Archeological	Does the project involve any of the following? <ul style="list-style-type: none"> - Work on a Historic Bridge - Work in a Historic District - Environmental Mitigation - Landscaping - Work within Reservation Boundaries - Disposal or Early Acquisition of Right of Way - Trenching for wires or power for any of the following: ITS, ATR, Destination Lighting, or Signals - Disturbance of existing ground outside of the existing roadway foreslope <i>If Yes, to any of these items, then a Class III Survey and consultation may be required. Contact ETS Division, Cultural Resource Section for further guidance.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SHPO Concurrence Letter. SPHO Ref.: 20-5364

Subject Area	Questions	Yes	No	Documentation added to the Project File
Section 4(f)	<p>Are there any impacts to Section 4(f) properties such as:</p> <ul style="list-style-type: none"> - Historic Site or Historic District - Publicly owned parks and recreation areas - Wildlife & waterfowl refuges <p><i>If Yes, then the applicable documentation and agency coordination is required.</i></p>		X	
Threatened or Endangered Species	<p>Does the project occur within 0.5 mile of designated critical habitat; require the adjustment of above ground utilities in rural areas; or involve tree removals or structure (bridge, box culvert, cattle pass, or outbuilding) work?</p> <ul style="list-style-type: none"> - See link to designated critical habitat map in the instructions. <p><i>If yes, see the "Section 7 ESA Guidance" document for further information on how to complete this Subject Area.</i></p>		X	<p>NDDOT Threatened, Endangered, Proposed, Candidates Species and Critical Habitat Affect Determination Table and Map Attached</p>
Floodplain Permitting and Floodway Authorization	<p>Will the project occur within a 100-year floodplain and/or Zone X Area Of Special Consideration?</p> <ul style="list-style-type: none"> - See link for FEMA FIRM in the instructions. <p><i>If Yes, then a floodplain permit may be required.</i></p>		X	<p>FIRM Map Attached Map 38017C0757G</p>
	<p>Will the project occur within a floodway?</p> <ul style="list-style-type: none"> - See link for FEMA FIRM in the instructions. <p><i>If Yes, then a floodway authorization may be required.</i></p>			
Airports	<p>Does the project intersect the glide path of an airport?</p> <ul style="list-style-type: none"> - See link for a map of airport locations in the instructions <p><i>If Yes then a Notification may need to be provided to the FAA. See Design Manual Section III-17.</i></p>		X	
Local Public Agencies	<p>Do any Local Public Agencies have an interest in the project?</p> <p><i>If Yes, then ensure proper coordination/communication has occurred.</i></p>		X	<p>City of West Fargo Led Project</p>

Subject Area	Questions	Yes	No	Documentation added to the Project File
Migratory Bird	<p>Does your project involve work on bridges, box culverts, or Structural Plate Pipes?</p> <p><i>If Yes, then see the Migratory Bird section in the instructions.</i></p>		X	
Wetlands	<p>Does your project involve work beyond the roadway foreslope, or other work that could result in earth work?</p> <p><i>If Yes, an aquatic resource delineation, jurisdictional determination, mitigation, and permitting may be required with the project. If an aquatic resource delineation was completed, then attach the "Appendix A5 Wetland and OW Impact Table" and ensure the aquatic resource delineation is added to FileNet.</i></p>		X	National Wetlands Inventory Map Attached

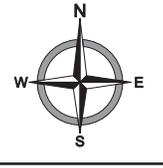


Legend

 Phase 1

PROJECT NO. TAU-8-984(042) PCN 22578
CITY OF WEST FARGO - DRAIN 45 MULTI-USE PATH - PHASE 1
CASS COUNTY, NORTH DAKOTA

Created By: GZ Date Created: 10/17/18 Date Saved: 12/02/19 Date Plotted: 10/18/18 Date Exported: 12/02/19
 Plotted By: tanner.schmidt Parcel Date: NA Aerial Image: 2017 County NAIP SIDS Elevation Data: Lidar
 Horizontal Datum: NAD 1983 UTM Zone 14N Vertical Datum: NA
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Cost Estimate

Project Number:	TAU-8-984(042)	Bid Opening:	6/12/2020
PCN:	22578	Estimate Scope:	ENV
Length	0.5	Tied Project(s):	
City:	West Fargo		
County:	Cass	Prepared By:	<i>Dylan Dunn</i>
Work Description:	Bikepath/Walkway		

Location: **Main Avenue to 7th Avenue Connection (Phase I)**

Spec	Code	Item Description	Unit	Quantity	Unit Cost	Total Cost
103	0100	CONTRACT BOND	L SUM	1	\$6,000.00	\$6,000.00
202	0114	REMOVAL OF CONCRETE PAVEMENT	SY	75	\$15.00	\$1,125.00
202	0130	REMOVAL OF CURB & GUTTER	LF	175	\$7.50	\$1,312.50
202	0132	REMOVAL OF BITUMINOUS SURFACING	SY	250	\$7.50	\$1,875.00
202	0210	REMOVAL OF MANHOLES	EA	1	\$1,000.00	\$1,000.00
202	0231	REMOVE & RESET INLETS	EA	7	\$1,500.00	\$10,500.00
203	0109	TOPSOIL	CY	3000	\$7.50	\$22,500.00
216	0100	WATER	M GAL	100	\$20.00	\$2,000.00
251	0200	SEEDING CLASS II	ACRE	3.5	\$700.00	\$2,450.00
253	0201	HYDRAULIC MULCH	ACRE	3.5	\$1,500.00	\$5,250.00
260	0100	SILT FENCE UNSUPPORTED	LF	4800	\$2.50	\$12,000.00
260	0101	REMOVE SILT FENCE UNSUPPORTED	LF	4800	\$1.00	\$4,800.00
261	0112	FIBER ROLLS 12IN	LF	300	\$3.00	\$900.00
261	0113	REMOVE FIBER ROLLS 12IN	LF	300	\$1.00	\$300.00
265	0100	STABILIZED CONSTRUCTION ACCESS	EA	5	\$2,000.00	\$10,000.00
265	0101	REMOVE STABILIZED CONSTRUCTION ACCESS	EA	5	\$1,000.00	\$5,000.00
302	0120	AGGREGATE BASE COURSE CL 5	TON	600	\$35.00	\$21,000.00
302	0314	TEMPORARY TRAFFIC SURFACE AGGREGATE	TON	250	\$15.00	\$3,750.00
430	0500	COMMERCIAL GRADE HOT MIX ASPHALT	TON	25	\$90.00	\$2,250.00
550	0112	8IN NON-REINF CONCRETE PAVEMENT CL AE	SY	200	\$100.00	\$20,000.00
702	0100	MOBILIZATION	L SUM	1	\$16,000.00	\$16,000.00
704	1100	TRAFFIC CONTROL	LSUM	1	\$5,000.00	\$5,000.00
708	1540	INLET PROTECTION - SPECIAL	EA	8	\$200.00	\$1,600.00
708	1541	REMOVE INLET PROTECTION - SPECIAL	EA	8	\$50.00	\$400.00
709	0151	GEOSYNTHETIC MATERIAL TYPE R1	SY	100	\$2.00	\$200.00
714	0210	PIPE CONC REINF 15IN CL III-STORM DRAIN	LF	30	\$75.00	\$2,250.00
714	4097	PIPE CONDUIT 15IN-STORM DRAIN	LF	100	\$50.00	\$5,000.00
714	5010	PIPE CORR STEEL .064IN 15IN	LF	100	\$40.00	\$4,000.00
722	0100	MANHOLE 48IN	EA	2	\$2,000.00	\$4,000.00
722	1100	MANHOLE RISER 48IN	LF	12	\$250.00	\$3,000.00
722	3500	INLET-TYPE 1	EA	2	\$4,000.00	\$8,000.00
722	3510	INLET-TYPE 2	EA	2	\$2,500.00	\$5,000.00
722	3700	INLET SPECIAL-TYPE 1 48IN	EA	1	\$4,000.00	\$4,000.00
748	0140	CURB & GUTTER-TYPE I	LF	175	\$25.00	\$4,375.00

Spec	Code	Item Description	Unit	Quantity	Unit Cost	Total Cost
750	0115	SIDEWALK CONCRETE 4IN	SY	100	\$45.00	\$4,500.00
750	0120	SIDEWALK CONCRETE 5IN REINF	SY	2800	\$50.00	\$140,000.00
750	2115	DETECTABLE WARNING PANELS	SF	80	\$50.00	\$4,000.00
754	0110	FLAT SHEET FOR SIGNS-TYPE XI REFL SHEETING	SF	130	\$25.00	\$3,250.00
754	0206	STEEL GALV POSTS-TELESCOPING PERFORATED TUBE	LF	250	\$20.00	\$5,000.00
754	0592	RESET SIGN PANEL	EA	1	\$250.00	\$250.00
754	7005	BLINKER SIGN-SOLAR	EA	4	\$13,000.00	\$52,000.00
762	1325	PREFORMED PATTERNED PVMT MK 24IN LINE-GROOVED	LF	260	\$30.00	\$7,800.00

Subtotal \$413,637.50

Estimate Summary and Totals

Engineering Percent: 15.00%

Subtotal:

\$413,637.50 + 15.00% Engineering = \$475,683.13

January 29, 2020

Ms. Claudia J. Berg
ND State Historic Preservation Officer
ND Heritage Center
612 East Boulevard Avenue
Bismarck, ND 58505-0830

Attn: Lisa Steckler, Project Review Coordinator

CONSULTATION ON NDDOT PROJECTS, STATE HIGHWAY SYSTEM

We are initiating consultation on the following project. This letter is intended to give you information on the proposed project and how we intend to proceed to meet our responsibilities under Section 106 of the National Historic Preservation Act of 1966 (as revised 1992). Further, it is intended to solicit your views pursuant to Section 102(2) (D) (IV) of the National Environmental Policy Act of 1969. We would appreciate your comment on the project and our planned cultural resource work, and discussion of any concerns you may have regarding historic properties which may be affected by the project.

NDDOT Project #: 8-984(042) **PCN:** 22578
Legal Location: Cass County T139N R49W Section: 8

Project Type: Shared-use path placed on an existing culvert

Purpose and Need: The City of West Fargo believes a shared-use path would provide a connection between the arterial corridors of Main Avenue and 13th Avenue. This path would facilitate access to numerous schools, residential neighborhoods, public and recreational facilities, and commercial centers.

Project Description: This north-south shared-use path would run between 9th Street East and 8th Street West for a distance of 1.5 miles. A previous stormwater project completed to enclose *drain 45* installed an arch culvert to allow for a future path to be constructed on its top surface. Hence, there will be no additional soil disturbance, and no structures will be affected.

APE: The area of potential effect is the footprint of the project.

Justification: All project effects will be confined to the proposed APE.

Proposed Cultural Resource Work: No further work needed.

Justification: The path will be built on top of the culvert so there will be no additional soil disturbance and no structures will be affected. No additional right of way will be required.

Other Consulting Parties: The TCC is consulted on all NDDOT projects.

Plan for Public Involvement: Currently, there are no plans for public input on this project.

We are requesting your concurrence with a finding of *No Historic Properties Affected* for the proposed project. If you need further information regarding the proposed project, please contact me or the other NDDOT cultural resource staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Demers". The signature is written in a cursive, flowing style.

Paul A. Demers, Ph.D., RPA
Archaeologist II, ETS-CRS

Map attachment



February 4, 2020

Mr. Paul Demers
NDDOT
608 East Boulevard Avenue
Bismarck, ND 58505-0700

ND SHPO Ref.: 20-5364, NDOT 8-984(042) PCN 22578, Shared Use Path, in portions of [T139N R49W Section 8], West Fargo, Cass County, North Dakota

Dear Mr. Demers,

We reviewed ND SHPO Ref.: 20-5364, NDOT 8-984(042) PCN 22578, Shared Use Path, in portions of [T139N R49W Section 8], West Fargo, Cass County, North Dakota and we concur with a determination of "No Historic Properties Affected" for this project provided it takes place in the location and in the manner described in the documentation and provided all borrow comes from an approved source.

Thank you for the opportunity to review this project. Please include the ND SHPO Reference number listed above in further correspondence for this specific project. If you have any questions please contact Lisa Steckler, Historic Preservation Specialist at (701) 328-3577 or lsteckler@nd.gov

Sincerely,

for Claudia J. Berg
State Historic Preservation Officer
(North Dakota)

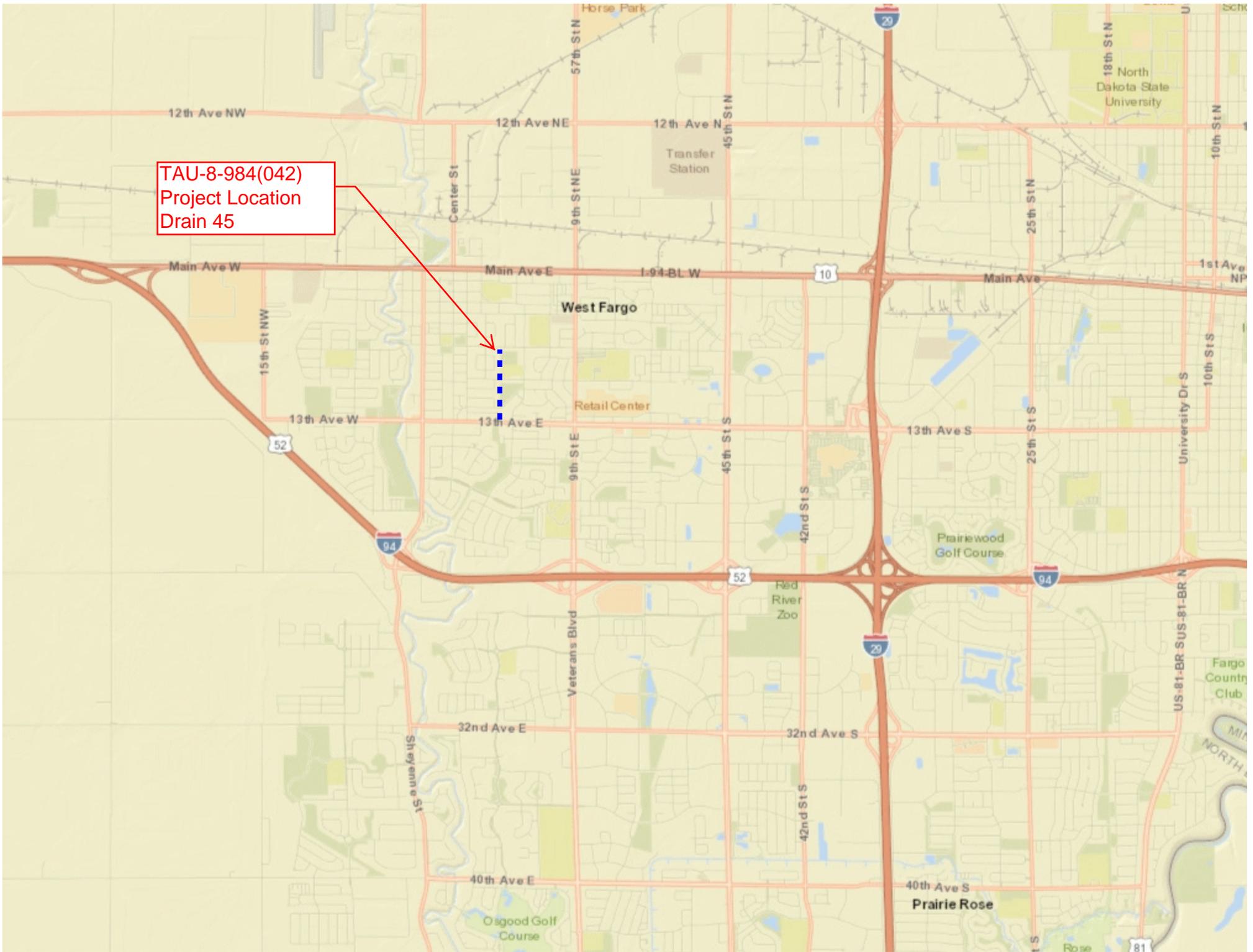
20-5364

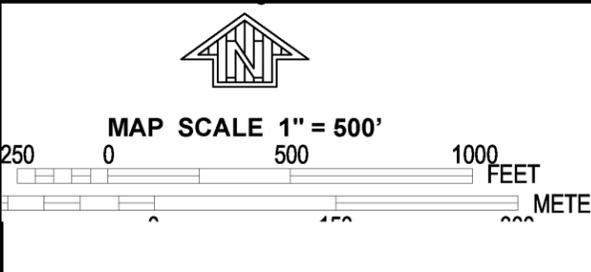
NDDOT Threatened, Endangered, Proposed, Candidate Species and Critical Habitat Affect Determination Table

Project:		PCN:	Location:	County:			
Species	Listing	Guidance	NDDOT Biologist Review Required?		Determination		Additional Documentation Included
			Yes	No	Not Present	No Effect	
Interior Least Tern	E	NDDOT Biologist Review required for construction activities within ½ mile of the shoreline of the Missouri River System including Lake Oahe and Lake Sakakawea from April 15 through August 31.					
Whooping Crane <i>(species range includes all of North Dakota)</i>	E	NDDOT Biologist Review required for the adjustment (raising, relocating) of existing above-ground utility lines; or for newly placed poles/towers that require overhead lines/guy wires; unless the adjustments or new installations are located in a highly developed or urban area. Review also required for projects requiring major earthwork (i.e. roadway widening) in rural areas within ½ mile of cropland/wetland associations that are located within the whooping crane migration corridor. See references and forms page for a map of the whooping crane migration corridor.					
Black-footed Ferret	E	NDDOT Biologist Review required for ground disturbing activities within 100 feet of active prairie dog towns of at least 80 acres in size.					
Pallid Sturgeon	E	NDDOT Biologist Review required for work in or along the shoreline of the Missouri River (including reservoirs) and Yellowstone River Systems. Review also required for in-water work for any direct tributary (within 0.5 mile) to the Missouri River (including reservoirs) and Yellowstone River Systems.					
Gray Wolf <i>(species range includes all of North Dakota)</i>	E	NDDOT Biologist Review Required for work activities in rural areas within 1 mile of forested areas of the Turtle Mountains (Bottineau and Rolette Counties) or Pembina Gorge (Cavalier and Pembina Counties), or for new roadway construction projects (i.e. construction of a new 2 or more lane highway). Note - The gray wolf may be found throughout the state of North Dakota; however, there are no known populations and confirmed sightings are extremely rare. All projects requiring a biological assessment, either programmatic or project specific, will cease construction activities in the event any threatened or endangered species is observed near a project site. See programmatic biological assessment for more information.					
Poweshiek Skipperling	E	NDDOT Biologist Review required for work occurring outside of the right of way in Richland and Sargent Counties within undisturbed native tall grass prairie and wet swales. If ground disturbing activities occur outside the ROW in these counties, ETS or a consultant will need to conduct a habitat assessment for this species.					
Piping Plover	T	NDDOT Biologist Review required for construction activities within ½ mile of designated piping plover critical habitat or known nesting sites from April 15 through August 31. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					

Species	Listing	Guidance	NDDOT Biologist Review Required?		Determination		Additional Documentation Included
			Yes	No	Not Present	No Effect	
Western Prairie Fringed Orchid	T	NDDOT Biologist Review required for all ground disturbing activities on non-flooded, undisturbed ground, known habitat, and native prairie. The species may also be found in roadside ditches with a high probability of the species occurring in or near the Sheyenne National Grasslands. If ground-disturbing activities will be required in Ransom or Richland counties, a survey by ETS or consultant for this species must be completed prior to ground-disturbance.					
Dakota Skipper	T	NDDOT Biologist Review required for work occurring outside of the right of way in high quality native prairie containing a high diversity of wildflowers and grasses. If ground disturbing activities occur outside the ROW in counties where the Dakota skipper may be present, ETS or a consultant will need to conduct a habitat assessment for this species.					
Rufa Red Knot	T	NDDOT Biologist Review required for construction activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Northern Long-Eared Bat <i>(species range includes all of North Dakota)</i>	T	NDDOT Biologist Review required for work involving the removal of trees or buildings, ground disturbance in areas with caves, mines, and rock crevices, or work on structures. Refer to NDDOT Guidance for the NLEB – Appendix D within the Section 7 ESA Guidance document.					
Rusty Patched Bumblebee	E	Species is not known to exist in North Dakota at this time. Until more information becomes available for this species in North Dakota, no project-level review is required.					
Piping Plover Critical Habitat	D	NDDOT Biologist Review required for ground disturbing activities within ½ mile of designated piping plover critical habitat or known nesting sites. See link for piping plover designated critical habitat maps: http://www.fws.gov/mountain-prairie/species/birds/pipingplover/					
Poweshiek Skipperling Critical Habitat	D	NDDOT Biologist Review required for ground disturbing activities within 0.6 mile of proposed Poweshiek Skipperling critical habitat. See link for Poweshiek Skipperling proposed critical habitat maps: http://www.fws.gov/midwest/Endangered/insects/posk/CHmaps/poskNDchUnitMaps.pdf					
Dakota Skipper Critical Habitat	D	NDDOT Biologist Review required for ground disturbing activities within 0.6 mile of proposed Dakota Skipper critical habitat. See link for Dakota Skipper proposed critical habitat maps: http://www.fws.gov/midwest/Endangered/insects/dask/CHmaps/daskNDCHmaps24Oct2013.pdf					

TAU-8-984(042)
Project Location
Drain 45





PANEL 0757G

**FIRM
FLOOD INSURANCE RATE MAP
CASS COUNTY,
NORTH DAKOTA
(ALL JURISDICTIONS)**

PANEL 757 OF 995
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
FARGO, CITY OF	385364	0757	G
WEST FARGO, CITY OF	380024	0757	G

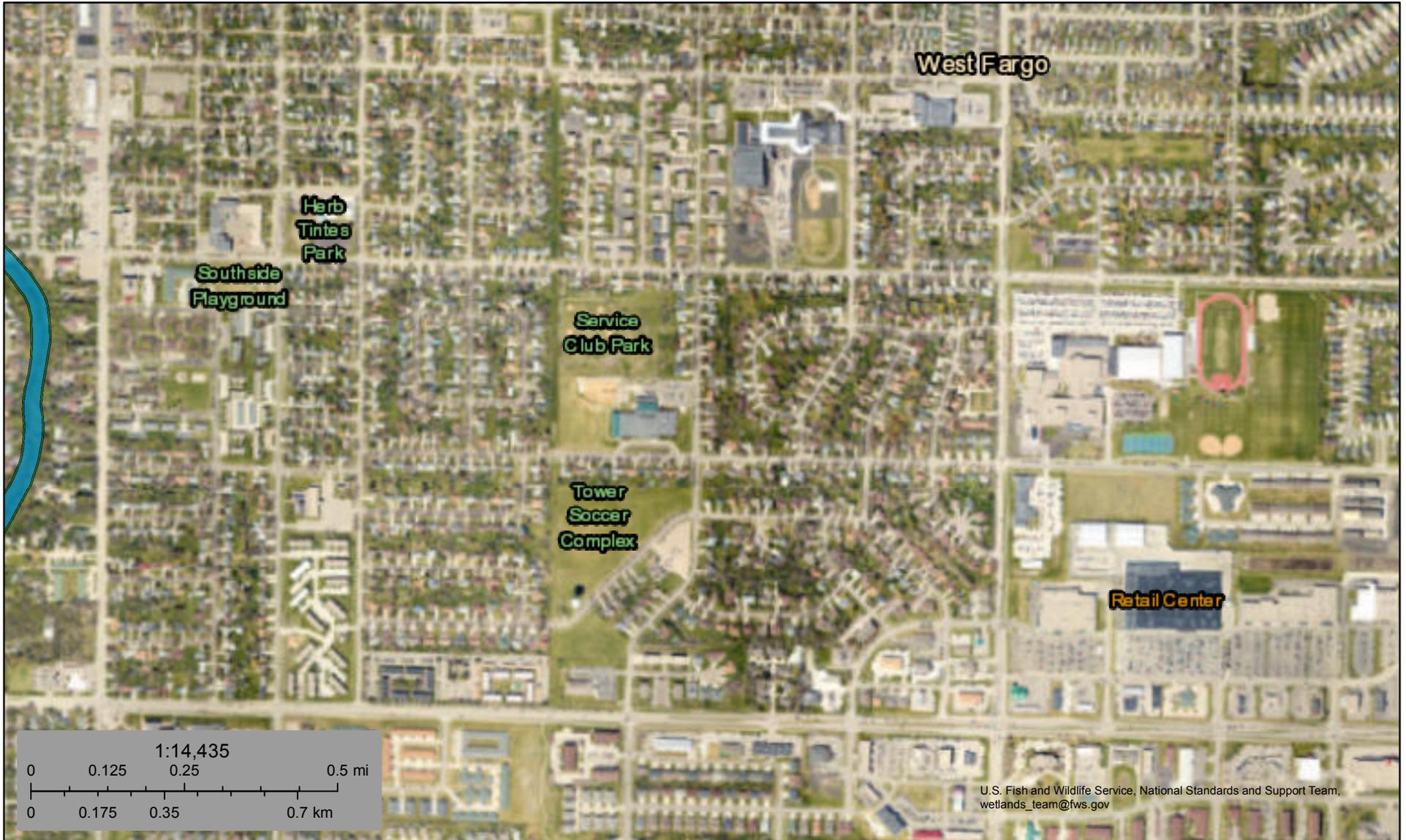
Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.



**MAP NUMBER
38017C0757G
EFFECTIVE DATE
JANUARY 16, 2015**

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



December 2, 2019

Wetlands

-  Estuarine and Marine Deepwater
-  Estuarine and Marine Wetland
-  Freshwater Emergent Wetland
-  Freshwater Forested/Shrub Wetland
-  Freshwater Pond
-  Lake
-  Other
-  Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Exhibit 4

CITY OF WEST FARGO

Drain 45 Multi-Use Path

Phase One

Main Avenue to 13th Avenue Connection
Phase One – 7th Avenue to 13th Avenue

TRANSPORTATION ALTERNATIVE PROGRAM APPLICATION

1. Project Name

Drain 45 Multi-Use Path; Main Avenue to 13th Avenue Connection - Phase One

2. Project Location

On the enclosed portion of Drain 45 (4th St E.) from Main Avenue to 13th Avenue East. Please refer to the attached map. Phase one will consist of the portion between 13th Ave E. and 7th Ave E. Phase Two will consist of the portion between 7th Ave E and Main Ave E to be completed at a later date.

3. Project Contact

West Fargo Public Works

4. Contact Person

Chris Brungardt, Director
West Fargo Public Works
810 12th Avenue Northwest
West Fargo ND 58078
701.433.5400
Chris.brungardt@westfargond.gov

5. Project Sponsor

City of West Fargo

6. Sponsoring Official

Chris Brungardt, Director
West Fargo Public Works
810 12th Avenue Northwest
West Fargo ND 58078
701.433.5400
Chris.brungardt@westfargond.gov

7. Project Description

The City of West Fargo believes there is a need for a North/South bikeway route between 9th Street East and 8th Street West, a full 1 ½ miles. A storm water project was completed to enclose drain 45 using an arch culvert. This storm water project was designed in a manner to allow for a future bikeway to be constructed on top. A multi-use path at this location would provide a connection between the two arterial corridors of Main Avenue and 13th Avenue

through residential neighborhoods providing access to many users with close proximity to numerous schools, public and recreational facilities, and commerce.

8. Project Cost

The total opinion of probable cost for construction of this Phase One is \$324,775. Cost breakdown as proposed under an 80% Federal and 20% local funding ratio would be **\$259,820 Federal share** and \$64,955 local share. The detailed estimate completed by Dustin Scott of Moore Engineering is attached. All planning, preliminary engineering, and construction engineering will be paid with local funds.

9. What TAP category best fits your project?

A. Construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.

10. Supporting Data

1. *Is your project part of an identified recreation or transportation plan? If so, explain.*

This project is identified in the 2016 Fargo-Moorhead Metropolitan Bicycle and is being included in the West Fargo Comprehensive Plan – West Fargo 2.0.

2. *Is your project tied to another project? If so, please explain.*

No

3. *How does your project fit with similar projects in your community and/or region?*

This project would provide increased options for mobility and access to trails and park amenities throughout town.

4. *Provide documentation of governmental agencies that are in support of this project.*

Letters of support from City of West Fargo and West Fargo Park District are attached.

11. Public Accessibility

This project is proposed to be constructed within city owned and maintained property. It will access several other existing bikeways on Main, 4th, 7th, and 13th Avenues East.

12. Matching Funds Provided By

City of West Fargo will be providing the matching funds for this project.

13. Will Right of Way For This Project Be Needed?

No additional property or right of way will be needed for this project.

14. Maintenance of This Project Will Be Provided By:

West Fargo Public Works will be responsible for providing maintenance of this project.

15. Environmental Impacts

- Land Use – No impact.
- Farmland – No impact.
- Social – positive impacts through the reinforcement of livable walkable neighborhoods and encouragement of an active healthy lifestyle.
- Economic – No impact.
- Relocation – No impact.
- Wetlands – Impact during construction expected to be minimal. City is prepared to obtain necessary clearance and permitting if necessary.
- Flood plain – No impact – City is prepared to obtain necessary clearance and permitting if necessary.
- Threatened or Endangered Species – No impact.
- Cultural Resources – No impact.
- Hazardous Waste – No impact.

16. Signatures

Contact Person / Responsible Official

Chris Brungardt, Director West Fargo Public Works

Date

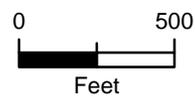
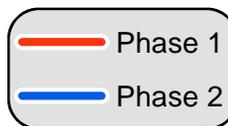
MPO Official

Michael Maddox, Interim Director FM Metro COG

Date



**Proposed Drain 45 Multi-Use Path
Main Avenue to 13th Avenue Connection
City of West Fargo Application for
Transportation Alternatives Program**



IMPROVEMENT PROJECT NO. 17631B
Drain 45 Multi Use Path 7th to 13th Avenue East
WEST FARGO ND

Engineer's Opinion of Probable Cost

<i>ITEM</i>	<i>UNIT</i>	<i>QUANTITY</i>	<i>UNIT PRICE</i>	<i>TOTAL</i>
<u>7TH AVENUE EAST TO 13TH AVENUE EAST</u>				
1. Temporary Haul Road	SY	4,350	\$8.00	\$34,800.00
2. Curb & Gutter - Remove	LF	90	\$5.00	\$450.00
3. Curb & Gutter	LF	90	\$20.00	\$1,800.00
4. Curb Ramp - 6" Concrete	Each	6	\$350.00	\$2,100.00
5. Detectable Warning Panel	SF	120	\$40.00	\$4,800.00
6. Multi-Use Path - 5" Concrete	SY	3,000	\$60.00	\$180,000.00
7. Sign	Each	6	\$250.00	\$1,500.00
8. Striping - 24" White Grooved Plastic	LF	160	\$30.00	\$4,800.00
9. Cleaning	LSum	1	\$3,000.00	\$3,000.00
10. Storm Water Management	LSum	1	\$3,000.00	\$3,000.00
11. Traffic Control	LSum	1	\$3,000.00	\$3,000.00
12. Inlet Protection Device	Each	15	\$100.00	\$1,500.00
13. Sedimentation Control Fence	LF	1,000	\$3.00	\$3,000.00
14. Rock Construction Entrance	Each	3	\$1,000.00	\$3,000.00
15. Topsoil Stripping - 6"	CY	10,000	\$4.00	\$40,000.00
16. Seeding - Type II	SY	5,000	\$0.30	\$1,500.00
17. Mulch - Type B - Hydromulch	SY	5,000	\$0.40	\$2,000.00
18. Mowing	Each	5	\$500.00	\$2,500.00
19. Watering	Each	5	\$500.00	\$2,500.00
			Construction Subtotal	\$295,250.00
			Contingencies	\$29,525.00
			Total Construction	\$324,775.00
			Engineering	\$35,725.25
			Legal & Administration	\$32,477.50
			TOTAL PROJECT	\$392,977.75



Dustin T. Scott - City Engineer
Jerry Wallace – Civil Engineer
Andrew Wrucke – Transportation Engineer
Kayla Volness – Engineering Office Manager

Engineering Department
800 4th Ave E
West Fargo, ND 58078
701-433-5330
www.westfargond.gov

AGENDA ITEM REQUEST
BOARD OF CITY COMMISSIONERS
WEST FARGO, NORTH DAKOTA

OFFICE USE: AGENDA ITEM # <u> 6 </u>

** "Consent" or "Regular" Agenda Item? **Regular** **

1. CONTACT PERSON(S):
 - Dustin T. Scott, City Engineer (433-5425)
2. DATE OF MEETING: **February 17th, 2020**
3. DESCRIPTION OF REQUEST:
 - Review attached information regarding a proposed Change Order for additional costs associated with District 2250 – Sheyenne St. Segment 2.
4. LOCATION (address; legal; etc.):
 - Sheyenne St. 0.5 miles south of I-94 Interchange.
5. ACTION(S) REQUESTED:
 - Approve Change Order in the amount of **\$160,588.35**.

ADDITIONAL INFORMATION:

- Current Contract Price:
 - \$22,037,686.77
- New Contract Price: (Including this Change Order):
 - \$22,198,275.12
- Percentage increase from the Completed Contract Price to the New Contract Price:
 - 0.73%
- Engineering Department staff and the North Dakota Department of Transportation have reviewed and support KLJ's recommendations outlined in the attached memorandum. This document references attachments such as invoices, external communications, and summary tables which are available at the City Engineering Department.



3203 32nd Avenue South, Suite 201
Fargo, ND 58103-6242
701 232 5353
KLJENG.COM

Memorandum

Date: 2/10/2020
To: Dustin Scott, Jerry Wallace – City of West Fargo
Copy to: Justin Oss, Joe Peyerl – NDDOT
From: Scott Middaugh – KLJ
RE: **IBI Winter Construction Cost Justifications – FOR INTERNAL USE ONLY – REVISED 2/10/20**

Remarks

Per the original contract, the proposed southbound Sheyenne Diversion bridge was to be completed by November 15, 2018. Because of issues described below, the bridge construction was not started until fall of 2018, which was not enough time for the November 15, 2018 completion. It was determined by the City of West Fargo to pay additional costs to have the bridge constructed over the winter opposed to extending the overall completion date of the project. Change Order 5 was executed in December of 2018 to remove the interim completion date for the bridge along with revisions to the traffic control phasing.

Prior to beginning construction of the new southbound Sheyenne Diversion bridge, the existing sanitary forcemain through the diversion had to be relocated. In the spring of 2018, the Sheyenne Diversion channel was dredged out as part of a separate project. The existing ground surface (surveyed in 2016) shown on the sanitary forcemain plan and profile sheet was developed prior to this work, showing more ground cover over the sanitary line than what existed at the time of bidding. These two issues are explained in Notice of Intent to File a Claim (NOI) #1 and #2. These issues caused a delay to the start of the work and increased the timeframe to complete the work. Due to these circumstances, it delayed the relocation of the sanitary sewer line. The delay in schedule of the sanitary sewer line relocation impacted the construction schedule of the southbound Sheyenne Diversion structure. The structure could not be completed prior to winter suspension.

This memo serves as internal communications regarding justifications to the costs submitted by Industrial Builders, Inc. (IBI) in the letters dated:

- August 24, 2018
- November 12, 2018
- December 18, 2018
- January 14, 2019
- June 10, 2019
- September 17, 2019
- November 7, 2019
- January 13, 2020



Prior to the construction, IBI estimated between \$100,000-\$125,000 to construct the Sheyenne Diversion bridges through the winter of 2018-2019. After completion in 2019, IBI submitted a total cost of \$151,179.12. Upon further review of the costs, the price increased to \$152,227 (not including prime contractor markup). KLJ has analyzed the costs for the items shown below:

Heated Ready Mix/Water – Updated per 9/17/19 Submittal

IBI originally submitted a cost of \$6,000 for the additional costs of using heated water for the ready mix. In their September 17, 2019 resubmittal, they requested \$7,198.20 for the heated ready mix and water. KLJ has reviewed the invoices submitted for the ready mix and calculated an actual cost of \$7,191.75. Please see the *Attachment 1* for additional details regarding the heated water costs. Based on the invoices submitted, we feel that **\$7,191.75** is justified for heated water and ready mix.

Enclosure Materials

IBI submitted invoices totaling \$889.70 for wood and poly materials that were used to build enclosures for the bridges during the winter months. Per 109.03 E 3 of the Standard Specification, the markup for materials permanently incorporated into the project is 15%. These materials were not permanently incorporated into the project and IBI has proposed a markup of 10%, for a total of \$988.57. Please see *Attachment 2* for the enclosure material invoices. Based on these invoices, we feel that **\$988.57** submitted by IBI is justified.

Labor, Payroll Tax, Fringes – Updated per 1/13/20 Submittal

IBI is requesting \$32,973.88 for cost related to:

- Snow removal
- Enclosure construction/removal
- Maintaining Thawzalls
- Digging through snow to retrieve forms and rebar

Per letters from IBI dated November 12, 2018 and December 18, 2018 a cost of \$3,000 was estimated for snow removal over the winter and \$20,300 was estimated to construct/remove and maintain enclosures. IBI has claimed that due to colder temperatures and higher snowfall than years' past, these costs escalated from the \$23,300 that was originally estimated to the \$32,973.88 that has been requested. Based on average and historical snowfall and temperature data, KLJ has estimated that the winter of 2018-2019 was 30% harsher than typically observed in Fargo. Please see the *Attachment 3* for temperature and snowfall data. If you increase IBI's estimated costs by 30%, a total of \$30,290 is calculated.

KLJ also calculated the cost for this work per Section 109.03 E 2 *Force Account* based on hours submitted by IBI. Using certified payrolls, KLJ has determined that it would have cost \$40,217.20 using the hours and employees submitted by IBI. Please see *Attachment 4* for the cost summary of this analysis. Because of these two factors, we feel that the **\$32,973.88** submitted by IBI is justified.



Thawzall – Rental – 2 Each – 5 Months – Updated per 9/17/19 Submittal

IBI is requesting \$60,000 for Thawzall rental on the project. Based on KLJ's construction records, heating began on November 9, 2018 and ended on March 1, 2019. During that timeframe, four different types of heaters were used. Including the entire months of November and March, this totals five months of heating. Per documentation submitted by IBI, Prairie Supply, Inc. charges \$6,000/month to rent heaters with a five-month contract. Please see *Attachment 5* for Prairie Supply's rental costs. Based on the information provided by IBI, we feel that the **\$60,000** is justified.

Thawzall – Fuel – 70% of Lileks Invoices = 9,180 Gals

IBI submitted their invoices from Lileks Oil and estimated that 70% of the invoice total was used for the ground heaters. They have submitted a price of \$27,172.80 for the fuel costs. KLJ tracked the days that heaters were used on site for the southbound diversion bridge. In total 124 days of heating took place with four different types of heaters. KLJ reviewed the spec sheets for the heaters that were used to determine fuel consumption. Please see *Attachment 6* for more details related to the heating days, heater types, and fuel consumption. Assuming that the heaters were operated at 85% duty, the total cost of the fuel would be \$28,439.86 using \$2.96/gal. Based on that, we feel IBI's price of **\$27,172.80** is justifiable.

2019 Increase Labor Rates

IBI has requested \$5,000 due to pay increases effective April 1, 2019. Based on conversations held with IBI in the fall of 2018, they give their employees pay raises every year on April 1. In a letter from IBI dated December 18, 2018, they indicate an average increase of 2.4%. KLJ compared IBI's payrolls from March of 2019 to April of 2019 and found that the average base pay increased by 2.73% after March of 2018. Please see *Attachment 7* for the labor rate increase comparison.

KLJ has totaled all IBI payrolls from April of 2019 through June of 2019 to determine how much IBI paid in labor. Within that date range, IBI has paid \$355,244.32 in labor and fringe benefits. Our inspectors have determined that approximately 75% of IBI's labor force has been used for the southbound diversion bridge, the remaining has been used on the northbound diversion bridge. This totals \$266,433.24 worth of labor for the southbound bridge as of June 8, 2019. Using an average pay increase of 2.74%, that is an additional \$7,105.58 paid during that time frame, which is higher than the \$5,000 that IBI submitted. Based on this, we feel that that IBI's cost of **\$5,000** is justifiable.

Lost Labor and Equipment Efficiency

IBI has requested \$18,900 due to lost labor and equipment efficiency. The northbound bridge construction began full time in November of 2018. The bridge was completed on June 28, 2019.

Based on the original schedule submitted on May 2, 2018, the southbound bridge was estimated to start on May 22, 2018 and be completed on October 24, 2018, a total of 155 days. Actual construction was between November 1, 2018 to June 28, 2019, except for December 22, 2018 to January 7, which totals an actual work time of 223 days. This is a 33% increase in construction duration. Based on inspector diaries the work force can be broken down into two time frames:



- November 2018 through April 2019 – Based on inspector diaries, approximately 50% of IBI’s work force was dedicated to the southbound bridge. The remainder was at the 32nd Avenue pedestrian underpass.
 - IBI paid \$633,966.36 on the project based on payrolls. This includes gross pay and fringes. This equates to \$316,983.18 paid for the southbound bridge.
- May 2019 to June 2019 – Based on inspector diaries, approximately 75% of IBI’s work force was dedicated to the southbound bridge. The remainder was at the Sheyenne Diversion northbound bridge.
 - IBI paid \$236,329.95 on the project based on payrolls. This includes gross pay and fringes. This equates to \$177,247.47 paid for the southbound bridge.

IBI paid approximately \$494,230.65 in labor costs to construct the southbound bridge. \$18,900 is 3.8% of the cost of this labor, which is substantially less than the percent time increase it took to construct the bridge. Based on this, we feel that IBI’s cost of **\$18,900** is justifiable.

Please refer *Attachment 8* for additional information used to justify the above costs.

Prime Contractor Markup

All the costs submitted were completed by IBI, Northern Improvements subcontractor. Per Specification 109.03 E 5, a prime contractor markup of **\$8,361.35** has been calculated.

Summary

In summary, KLJ has reviewed and justified the following costs:

Item	Cost Justified
Heated Ready Mix/Water	\$7,191.75
Enclosure Materials	\$988.57
Labor, Payroll Tax, Fringes	\$32,973.88
Thawzall Rental	\$60,000.00
Thawzall Fuel	\$27,172.80
2019 Labor Increase	\$5,000.00
Lost Labor and Equipment Efficiency	\$18,900.00
Subtotal	\$152,227.00
Prime Contractor Markup	\$8,361.35
Total	\$160,588.35



Dustin T. Scott - City Engineer
Jerry Wallace – Civil Engineer
Andrew Wrucke – Transportation Engineer
Kayla Volness – Engineering Office Manager

Engineering Department
800 4th Ave E
West Fargo, ND 58078
701-433-5330
www.westfargond.gov

AGENDA ITEM REQUEST
BOARD OF CITY COMMISSIONERS
WEST FARGO, NORTH DAKOTA

OFFICE USE:
AGENDA ITEM # 7

** "Consent" or "Regular" Agenda Item? **Regular** **

1. CONTACT PERSON(s):
 - Dustin T. Scott, City Engineer (433-5425)
2. DATE OF MEETING: **February 17th, 2020**
3. DESCRIPTION OF REQUEST:
 - Review Task Order No. 27 along with Amendments 1 and 2 for professional services relating to Sewer, Water, Storm and Street Improvement District No. 1329 - Eagle Run Plaza 9th Addition.
4. LOCATION (address; legal; etc.):
 - Eagle Run Plaza 9th - Between 6th St W and 9th St W just south of 32nd Ave W.
5. ACTION(S) REQUESTED:
 - Approve Task Order No. 27 along with Amendments 1 and 2 with the estimated fee of **\$151,036.00**

ADDITIONAL INFORMATION:

- This task order will be executed in accordance with the "Master Service Agreement" between the City of West Fargo and Moore Engineering, Inc. dated May 1, 2018.

TASK ORDER

This is Task Order No. 27
consisting of 4 pages.

Task Order 27

In accordance with Paragraph 8 of the Master Agreement for Professional Services, dated May 1, 2018 and approved by the West Fargo City Commission ("Commission) on September 4, 2018 ("Agreement"), the City of West Fargo ("City") and Moore Engineering, Inc. ("Engineer" or "MEI") agree as follows:

1. Background Data

- a. Effective Date of Task Order: January 2, 2020
- b. City: City of West Fargo
- c. Engineer: Moore Engineering, Inc. ("MEI")
- d. Specific Project (title): Sewer, Water, Storm and Street Improvement Dist. No. 1329
- e. Specific Project (description): Eagle Run Plaza 9th Addition

2. Services of Engineer

The specific services to be provided or furnished by Engineer under this Task Order are as follows:

A. Study and Report Services

- 1. Improvements funded by Special Assessment District – Coordinate with City Engineer to establish benefitting area (boundary) and provide legal description along with an illustrative map for the Owner to use in creating the Special Assessment District per ND Century Code requirements.
- 2. Develop and Evaluate Project Alternatives
- 3. Prepare Engineer's Report
- 4. Prepare Preliminary Assessment Allocations

3. City's Responsibilities

City shall have those responsibilities as follows:

- A. City shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to unreasonably delay or interfere with the services of MEI
- B. City shall be responsible for, and MEI may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City to MEI pursuant to this Agreement. MEI may use such requirements, reports, data, and information in performing or furnishing

services under this Agreement. Nothing in this paragraph shall be construed to require MEI to affirmatively determine the accuracy of information that is prepared for City by other licensed professionals (including, but not limited to, land surveyors, geotechnical engineers, accountants, insurance and surety professionals, and attorneys) who are not engaged directly by MEI.

- C. City shall provide for MEI's right to enter the property owned by City and/or others in order for MEI to fulfill its services.

4. Task Order Schedule

In addition to any schedule provisions provided in the Services of Engineer or elsewhere, the parties shall meet the following schedule:

- B. The anticipated start date for these services is upon execution of the Task Order or as specified below.
- C. The anticipated completion for these services is as follows:
 - 1. January 2020 with the intent of Final Design to follow.

5. Payments to Engineer

- A. City shall pay Engineer for services rendered under this Task Order as follows:
 - 1. Compensation for services defined in the Scope of Work shall be on a Time and Material basis in accordance with the Standard Hourly Rates shown in Exhibit B of the Agreement.
 - 2. Estimates for the Compensation for the applicable Scope of Work are as follows:
 - i. Exhibit A

Subtask	Billing Phase	Current Budget (\$)	Maximum Fee (\$)
Engineering Report	110	8,865	
Special Assessment Administration - Initial	140	3,100	
TOTAL		11,965	12,000

Handwritten: **SJS**
1/6/20

- B. The terms of payment are set forth in Paragraphs 15 and 16 of the Agreement.

6. Consultants retained as of the Effective Date of the Task Order:

- A. Sub-Consultants as mentioned here within.

7. Other Modifications to Agreement and Exhibits: None

8. Attachments:

- A. None.

9. Other Documents Incorporated by Reference: None

10. Terms and Conditions

Execution of this Task Order by City and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement 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 27 is January 2, 2020.

CITY:

By:



ENGINEER:

By:



Print Name: Tina Fisk

Print Name: Lee Beauvais

Title: City Administrator

Title: Chief Operations Officer

Engineer License or Firm's Certificate No. (if required): 011C

State of: North Dakota

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Tina Fisk

Name: Daniel R. Hanson, PE

Title: City Administrator

Title: Project Manager

Address: 800 4th Ave E. Suite #1 West Fargo, ND 58078

Address: 925 10th Avenue East, West Fargo, ND

E-Mail Address: Tina.Fisk@westfargond.gov

E-Mail Address: dan.hanson@mooreengineeringinc.com

Phone: (701) 433-5301

Phone: (701) 282-4692



Project Name: WF Imp. Dist 1329 - Eagle Run Plaza 9th Addition (TO 27)

Project Number: 20932

Date: 1/2/2020

Client: City of West fargo

v6.12-13-2019

NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 654

CHOOSE BILLING RATE IN C192 . DEFAULT IS STANDARD

TASK NO.	WORK TASK DESCRIPTION	Group Name	Defined Limits	SR PROJECT MANAGER		PROJECT MANAGER		PE II	PE I	CADD TECH III	LABOR TOTAL (W/P)	TASK TOTAL
110 Engineering Study												
110.001	Review Meeting/Correspondence with the Owner		1 meeting	4	4				5		\$2,215	\$2,215
110.002	Internal Meeting(s)		1 meeting	1	1				1		\$615	\$615
110.003	Cover Letter											
110.004	Introduction											
110.005	Existing Facility Summary											
110.006	Sanitary Sewer								1	1	\$270	\$270
110.007	Watermain								1	1	\$270	\$270
110.008	Storm Sewer								1	1	\$270	\$270
110.009	Drainage & Grading								1	1	\$270	\$270
110.010	Streets								1	1	\$270	\$270
110.011	Proposed Facilities											
110.012	Sanitary Sewer								2	1	\$425	\$425
110.013	Watermain								2	1	\$425	\$425
110.014	Storm Sewer								2	1	\$425	\$425
110.015	Drainage & Grading								2	1	\$425	\$425
110.016	Streets								2	1	\$425	\$425
110.017	Alternatives								2		\$310	\$310
110.018	Evaluating & Selecting Alternative								1		\$155	\$155
110.019	Feasibility & Purpose								1		\$155	\$155
110.020	Compiling & Writing Report								4		\$620	\$620
110.021	Conclusion & Recommendations								1		\$155	\$155
110.022	Appendices											
110.023	Vicinity Map											
110.024	General Layout, Exhibit, Prelim Plat, etc.											
110.025	Engineer's Opinion of Cost											
110.026	QC/QA											
110.027	Finalize Report & Send to Owner			1							\$185	\$185



Project Name: WF Imp. Dist 1329 - Eagle Run Plaza 9th Addition (TO 27)

Project Number: 20932

Date: 1/2/2020

Client: City of West fargo

v6.12-13-2019

NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 664

CHOOSE BILLING RATE IN C192 - DEFAULT IS STANDARD

TASK NO.	WORK TASK DESCRIPTION	Group Name	Defined Limits	SR PROJECT MANAGER	PROJECT MANAGER	PE II	PE I	CADD TECH III	LABOR TOTAL (WIP)	TASK TOTAL
110.028	Update Owner CIP based on Report			1	1				\$360	\$360
110.029	Update Owner CIP based on Bid results			1	1				\$360	\$360
110.030	Update Owner CIP based on Final Project Costs			1	1				\$360	\$360
110.031										
	SUBTOTAL - PHASE 110			9	8		30	10		\$8,865
140	Special Assessment Administration - Initial									
140.001	Preliminary coordination and planning meeting or correspondence			2		4			\$1,050	\$1,050
140.002	Prepare assessment boundary map and legal description					4		6	\$1,370	\$1,370
140.003	Prepare preliminary special assessment allocation					4			\$680	\$680
140.004										
	SUBTOTAL - PHASE 140			2		12		6		\$3,100
	Phase			SR PROJECT MANAGE	PROJECT MANAGE	PE II	PE I	CADD TECH III	LABOR TOTAL (WIP)	TOTAL HOURLY ESTIMATE
	Preferred Billing Rates - 2020		COST/HOUR	\$185	\$175	\$170	\$155	\$115	N/A	
	Engineering Study	110 HOURS	COST	9	8		30	10	57	\$8,865
	Special Assessment Administration - Initial	140 HOURS	COST	2		12		6	20	\$3,100
				\$370		\$2,040		\$690	\$3,100	
	TOTALS		HOURS	11	8	12	30	16	77	\$11,965
			COST	\$2,035	\$1,400	\$2,040	\$4,650	\$1,840	\$11,965	\$35
								Contingencies		
										\$12,000

Note: All items that contain no hours are EXCLUDED from the Proposal.

Q:\Projects\20000\20900\20932 WF Imp. Dist 1329 Eagle Run Plaza 9th Addition - Bid and Proposal\02-Engineering Agreement (Rp)\20932_TO27_TaskHours_AdditionalServices.xlsx 1/6/2020

EXHIBIT A to MSA
Task Order “Template” for Design & Construction Services

This is Task Order No. 27 Amendment 1 consisting of 20 pages.

Task Order 27 – Amendment 1

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated May 1, 2018 and approved by the West Fargo City Commission on September 4, 2018 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: January 30, 2020
- b. Owner: City of West Fargo
- c. Engineer: Moore Engineering, Inc.
- d. Specific Project (title): Sewer, Water, Storm and Street Improvement Dist. No. 1329
- e. Specific Project (description): Eagle Run Plaza 9th Addition

2. Services of Engineer

The specific services to be provided or furnished by Engineer under this Task Order are as follows:

A. *Preliminary Design Phase – Prior to Preliminary Design, the city will complete any studies, reports, and/or any other work necessary to evaluate project alternatives and estimated costs. Services under this phase will begin once a preferred alternative is determined and the corresponding “Engineer’s Report” has been approved by the Board of City Commissioners.*

1. Engineer shall:

- a. Coordinate a meeting with the Owner to review the project and task order to ensure mutual understanding of the objectives, requirements, schedule, etc. prior to starting work.
- b. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project. This shall include coordination as necessary with Engineer’s “Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any deliverables executed by other Owner consultants, such as technical data, reports, drawings and specifications, etc. shall be provided to Engineer.
- c. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner’s instructions. This shall include coordination as necessary with Engineer’s “Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any deliverables executed by other Owner consultants, such as technical data, reports, drawings and specifications, etc. shall be provided to Engineer.

- d. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data." If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
 - e. Visit the Site as needed to prepare the Preliminary Design Phase documents.
 - f. Advise Owner if additional reports, data, information, or services are necessary and assist Owner in obtaining such reports, data, information, or services.
 - g. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
 - h. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
 - i. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2018 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 - j. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 - k. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
2. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables

B. *Final Design Phase*

1. Engineer shall:

- a. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any deliverables executed by other Owner consultants, such as technical data, reports, drawings and specifications, etc. shall be provided to Engineer.
- b. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
- c. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any deliverables executed by other Owner consultants, such as technical data, reports, drawings and specifications, etc. shall be provided to Engineer.
- d. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
- e. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
- f. After consultation with Owner, identify extent of final rights of way, both temporary and permanent, needed for construction of the project.
- g. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
- h. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
- i. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
- j. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
- k. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or

requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.

2. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
3. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one.

C. *Bidding or Negotiating Phase*

1. Engineer shall:
 - a. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 - b. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any addenda from other Owner consultants shall be provided to Engineer.
 - c. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 - d. Consult with Owner as to the qualifications of prospective contractors.
 - e. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 - f. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work.
 - g. Attend the bid opening as needed, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 - h. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

- i. Coordinate execution of Contract by assembling contract documents for review by Owner, Owner's Attorney, and Contractor and assist in routing contracts between entities to obtain necessary signatures.
2. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

D. *Construction Phase*

1. Engineer shall:

- a. *General Administration of Construction Contract*: Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
- b. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth below. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth below.
 - 1) Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - 2) Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in in this Task Order, are applicable.

- 3) The duties and responsibilities of the RPR are as follows:
- a) *General*: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - b) *Schedules*: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - c) *Conferences and Meetings*: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
 - d) *Safety Compliance*: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
 - e) *Liaison*
 - Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
 - f) *Clarifications and Interpretations*: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
 - g) *Shop Drawings and Samples*
 - Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
 - h) *Proposed Modifications*: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
 - i) Review of Work; Defective Work

- Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
 - Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
- j) Inspections, Tests, and System Start-ups
- Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
 - Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
- k) Records
- Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
 - Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
 - Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

- Maintain records for use in preparing Specific Project documentation.
 - Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- l) Reports
- Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
- m) *Payment Requests*: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- n) *Certificates, Operation and Maintenance Manuals*: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
- o) Completion:
- Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
 - Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit A.1).
- 4) Resident Project Representative shall not:
- a) Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - b) Exceed limitations of Engineer's authority as set forth in this Agreement.
 - c) Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - d) Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

- e) Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - f) Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - g) Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - h) Authorize Owner to occupy the Specific Project in whole or in part
- c. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
- d. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
- e. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
- f. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- g. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
- h. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
- 1) Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner for observations requiring their expertise.

- 2) The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
- i. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
 - j. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
 - k. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner. Any clarifications, interpretation, or decision shall be provided by the Owner's applicable consultant.
 - l. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
 - m. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
 - n. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings,

conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner. Any reviews, obtaining of information, and preparation of findings, conclusions, and recommendations shall be provided by the Owner's applicable consultant.

- o. *Non-reviewable matters*: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
- p. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
- q. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- r. *Inspections and Tests*:
 - 1) Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - 2) As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - 3) Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- s. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. This shall include coordination as necessary with Engineer's "Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any pertinent information shall be provided to Engineer.

- t. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - 1) Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract.
- u. *Contractor's Completion Documents*: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph 2.D.1.p. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
- v. *Substantial Completion*: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
- w. *Final Notice of Acceptability of the Work*: Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit A.1 ("Notice of Acceptability of Work") to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
- x. *Standards for Certain Construction-Phase Decisions*: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- y. *Construction Staking*: Engineer will provide the following upon request of the Contractor
 - 1) Water Mains/ Force Mains
 - a) Centerline with offsets at 50' intervals
 - b) Cut stakes to top of pipe with hubs, if plan calls for specified grades
 - c) Curb Stop Locations
 - 2) Storm-Sanitary Sewers
 - a) Centerline stakes with offsets and cuts to inverts at 50' intervals
 - b) Manholes with offsets
 - c) Inlets with offsets
 - d) Wye locations

- e) Service ends with grades
- 3) Streets
 - a) Initial dirt grade stakes with lath every 100' and at high and low
 - b) Subgrade blue tops for centerline and curb and gutter areas if so specified in construction contract
 - c) Centerline gravel blue tops if so specified in construction contract
 - d) Curb & gutter flow line stakes with offsets every 25'
 - e) Concrete Paving grade stakes with offset at 25' intervals plus high and low points
- 4) Lift Stations (without buildings)
 - a) Location & elevation of rim and invert centerline of wet well, dry well, and/or check valve manhole
- 5) Buildings
 - a) Location & elevation of corners of first floor with offsets
- 6) Sidewalks/Multi-Use Paths
 - a) Elevation & location of "Outside" finished edge (one edge) of Sidewalk or Multi-Use Path @ 25' stationing
- 7) Channels/Embankments
 - a) Centerline cut/fill, daylights, and temporary construction easement limits (every 200')
 - b) Culvert alignment, lengths, and invert elevations with offsets
 - c) Structure locations and invert elevations with offsets
- 8) Ponds/Lakes
 - a) Location and elevation of bottom of lake/pond every 200'
 - b) Location and elevation of changes in slopes (i.e. hinges) every 200'
 - c) Location and elevation of contour defining bottom of planting area used to protect slopes every 200'
 - d) Topsoil stripping location every 200'
 - e) Five elevation control points.

2. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph 2.B.3, then Construction Phase services may be rendered at different times in respect to the separate contracts.

E. *Post-Construction Phase*

1. Engineer shall:
 - a. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 - b. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
2. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified, will terminate twelve months after the commencement of the Construction Contract's correction period.

F. *Commissioning Phase*

1. Engineer shall:
 - a. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
 - b. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
 - c. Prepare operation and maintenance manuals.
 - d. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
2. Prepare and furnish to Owner Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor. Record Drawings shall include significant changes made during construction along with survey ("gps") points on significant surface infrastructure features including manholes, catch basins, curb stops, valves, hydrants, and street lights. Record Drawings will be supplied in DWG and PDF format and survey ("gps") points will be supplied in CSV format.

3. Additional Services

Additional Services authorized or necessary under this Task Order are:

A. *Study and Report Services*

1. Improvements funded by Special Assessment District – Coordinate with City Engineer to establish benefitting area (boundary) and provide legal description along with an illustrative map for the Owner to use in creating the Special Assessment District per ND Century Code requirements.
2. Develop and Evaluate Project Alternatives
3. Prepare Engineer's Report
4. Prepare Preliminary Assessment Allocations

B. *Additional Design Related Services*

1. Right-of-Way Administration – For right-of-way required for construction and maintenance of the Project, prepare any necessary legal descriptions, plats, or other land surveying documents to provide to the Owner's attorney for document preparation, participate in negotiation of terms of easement or land acquisition with landowners, participate in coordination of land acquisition process, and install monuments as required upon completion of the Project.
2. Utility Administration – Coordinate relocation, if necessary, of existing private utilities, determine existing easements and utility permits to identify the party responsible for utility relocation costs. Coordinate relocation agreements with each utility company and the City.
3. Permitting – Prepare appropriate applications, including necessary supporting documentation, to submit and secure all local, state, and federal permits, environmental clearance documents, and any railroad agreements.

C. *Additional Bidding Services*

1. Rebidding
 - a. Engineer shall perform all tasks outlined in Section 2.C in the case that the project is either stopped prior to bidding or, once bid, a contract is not awarded and the City subsequently determines to start the advertising (or obtaining proposals) process again.
2. Special Assessments – Revise preliminary assessments based on the bid results and prepare “pending assessments” in applicable format for the Owner to import into property database software.

D. *Additional Construction Services*

1. Restaking
 - a. Construction staking services required due to actions of the Contractor, whether due to destruction of existing stakes or due to changes in construction schedule requiring re-staking.
2. Defective Work
 - a. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
3. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.

E. Funding Administration

1. Provide services related to administration of any requirements identified specifically by funding sources.
2. Special Assessment Districts
 - a. Compute final assessment allocations based on Owner’
 - b. As directed by the Owner, prepare documents and attend meetings with the Special Assessment Commission and/or Board of City Commissioners.
 - c. Provide public communications as needed regarding special assessments for the improvement(s) related to this Task Order.

4. City's Responsibilities

City shall have those responsibilities as follows:

- A. City shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to unreasonably delay or interfere with the services of MEI
- B. City shall be responsible for, and MEI may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City to MEI pursuant to this Agreement. MEI may use such requirements, reports, data, and information in performing or furnishing services under this Agreement. Nothing in this paragraph shall be construed to require MEI to affirmatively determine the accuracy of information that is prepared for City by other licensed professionals (including, but not limited to, land surveyors, geotechnical engineers, accountants, insurance and surety professionals, and attorneys) who are not engaged directly by MEI.

- C. City shall provide for MEI's right to enter the property owned by City and/or others in order for MEI to fulfill its services.

5. Task Order Schedule

In addition to any schedule provisions provided elsewhere, the parties shall meet the following schedule:

- A. The services covered by this Task Order will terminate twelve months after the commencement of the Construction Contract's correction period

6. Payments to Engineer

- A. City shall pay Engineer for services rendered under this Task Order as follows:

- i. Compensation for services outlined in Section 3 shall be on a Time and Material basis in accordance with the Standard Hourly Rates shown in Exhibit B of the Agreement.

Task	Budget (\$)
Engineer's Report	\$8,865
Special Assessment Administration - Initial	\$3,100
Special Assessment Administration – Bid Results	\$1,000
Special Assessment Administration – Projected/Final	\$1,500
ADDITIONAL SERVICES SUBTOTAL	\$14,165 ✓

[Handwritten signature]
1/30/20

- ii. Compensation for services outlined in the Preliminary Design, Final Design, Bidding or Negotiation, Construction, Post-Construction, and Commissioning Phases shall be made according the following table.

Project Type	Preliminary Design, Final Design, Bidding or Negotiation Phases (% of Final Construction Contract Value plus value of any alternates designed but not constructed)	Construction, Post-Construction, and Commissioning Phases (% of Final Construction Contract Value)
All other projects	5.5%	5.5%
Estimated Value of Final Construction Contract		\$1,100,000
Estimated Compensation based on 11% of Construction		\$121,000 ✓

[Handwritten signature]
1/30/20

- iii. Compensation for services referenced in 6.A.i (Additional Services) and 6.A.ii (Basic Services) are summarized in the following table.

Services to be Provided	Estimated Compensation
Additional Services Subtotal	\$14,165 ✓
Estimated Compensation based on 11% of Construction	\$121,000 ✓
TOTAL ESTIMATED COMPENSATION UNDER THIS TASK ORDER	\$135,165 ✓

[Handwritten signature]
1/30/20

B. The terms of payment are set forth in Article 4 of the Agreement.

7. Consultants retained as of the Effective Date of the Task Order: None

a.

8. Other Modifications to Agreement and Exhibits: None.

9. Attachments: None.

10. Other Documents Incorporated by Reference: None.

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by City.

The Effective Date of this Task Order No. 27 is January 30, 2020

OWNER:

By:

Tina Fisk

ENGINEER:

By:

Lee Beauvais

Print Name: Tina Fisk

Print Name: Lee Beauvais

Title: City Administrator

Title: Vice President

Engineer License or Firm's Certificate No. (if required): 011C
State of: North Dakota

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Tina Fisk

Name: Daniel Hanson, PE

Title: City Administrator

Title: Senior Project Manager

Address: 800 4th Ave E. Suite #1 West Fargo, ND 58078

Address: 925 10th Avenue East, West Fargo, ND

E-Mail Address: Tina.Fisk@westfargond.gov

E-Mail Address: dan.hanson@mooreengineeringinc.com

Phone: (701)433-5301

Phone: (701)499-5840

Exhibit A.1



NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
OWNER

And To: _____
CONTRACTOR

From: _____
ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the following terms and conditions of this Notice.

Exhibit A.1 cont'd

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

TASK ORDER

This is Task Order No. 27,
Amendment 2 consisting of 3
pages.

Task Order 27 – Amendment 2

In accordance with Paragraph 8 of the Master Agreement for Professional Services, dated May 1, 2018 and approved by the West Fargo City Commission ("Commission") on September 4, 2018 ("Agreement"), the City of West Fargo ("City") and Moore Engineering, Inc. ("Engineer" or "MEI") agree as follows.

The parties agree that in the event of a conflict between prior versions of this Task Order No. 27 and this Amendment, the terms and conditions in this Amendment shall prevail, provided however, nothing herein shall preclude Engineer from invoicing for work authorized under prior versions of this Task Order and performed prior to effective date of this Amendment, even to the extent such prior work was revised by this Amendment. All other terms and conditions shall remain the same and are hereby ratified and affirmed by the parties.

1. Background Data

- a. Effective Date of Task Order: February 10, 2020
- b. City: City of West Fargo
- c. Engineer: Moore Engineering, Inc. ("MEI")
- d. Specific Project (title): Sewer, Water, Storm and Street Improvement Dist. No. 1329
- e. Specific Project (description): Eagle Run Plaza 9th Addition

2. Services of Engineer

ADD the following to Paragraph 2.A Services of Engineer:

- 2. Exhibit B – Scope of Work
 - i. Topographically survey existing catch basin rims in the area shown on the attached exhibit for the purpose of comparing those rim elevations to the proposed rim elevations.

4. Task Order Schedule

ADD the following to Paragraph 4.B Task Order Schedule:

- 2. Exhibit B – Anticipated completion of this work is within one week of approval of this Task Order.

5. Payments to Engineer

ADD the following to 5.A.2 Payments to Engineer:

ii. Exhibit B

Subtask	Billing Phase	Current Budget (\$)	Change in Budget (\$)	Revised Budget (\$)	Maximum Fee (\$)
Area Storm Sewer Survey	910	0	3,906		
Total		0	3,906		4,000

8. Attachments:

ADD the following to Paragraph 8 Attachments:

B. Project Area Exhibit

185
2/11/20

9. The Effective Date of this TO 27 Amendment 2 is February 10, 2020

CITY: _____
By: Tina Fisk

ENGINEER: _____
By: _____

Print Name: Tina Fisk

Print Name: Lee Beauvais

Title: City Administrator

Title: Chief Operations Officer

Engineer License or Firm's Certificate No. (if required): 011C
State of: North Dakota

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Tina Fisk

Name: Daniel R. Hanson, PE

Title: City Administrator

Title: Project Manager

Address: 800 4th Ave E. Suite #1 West Fargo, ND 58078

Address: 925 10th Avenue East, West Fargo, ND

E-Mail Address: Tina.Fisk@westfargond.gov

E-Mail Address: dan.hanson@mooreengineeringinc.com

Phone: (701) 433-5301

Phone: (701) 499-5840



Project Name: WF Imp Dist 1329 - Eagle Run Plaza 9th (Task Order 27-2)

Project Number: 20932

Date: 2/7/2020

Client: City of West Fargo

v6.12-12-2019
NOTE: YOU MAY UNPROTECT THIS WORKSHEET USING PASSWORD: 664
CHOOSE BILLING RATE IN C192 - DEFAULT IS STANDARD

Defined Limits

TASK NO. WORK TASK DESCRIPTION

910 Survey

910.001 Storm Sewer Manhole Rim Shots (approx. 75 MH)

910.002 Draft Exhibit

910.003 Meeting with Owner

910.004 Enter in GIS

SUBTOTAL - PHASE

LABOR TOTAL (W/P) \$2,970 \$505 \$185 \$230 \$3,906

MARKUP % (15% default for STANDARD billing rates) 15% \$16

MARKUP % (15% default for STANDARD billing rates) 15% \$16

MARKUP % (15% default for STANDARD billing rates) 15% \$16

PRICE PER MILE (\$0.65 default) \$0.65

MISC EXPENSE

SUBCONSULTANT

LABOR TOTAL (W/P)

SURVEY TECH III

SURVEY CREW CHIEF II

SURVEY MANAGER

GIS TECH II

CADD TECH III

PROJECT ENGINEER

PROJECT MANAGER

SR PROJECT MANAGER

Task Hours

Task Cost

Task Total

Task Description

Task Hours

Task Cost

Task Total

Note: All items that contain no hours are EXCLUDED from the Proposal.
Q:\Projects\2020\2090020932 WF Imp Dist 1329\EgaleRunPlaza\Additional02_Bid and Proposal\02-Engineering Agreement (Rp)\Task Order 27 Amendment 2\20932_TO27_TaskHours_AdditionalServices_Amend



Dustin T. Scott - City Engineer
Jerry Wallace – Civil Engineer
Andrew Wrucke – Transportation Engineer
Kayla Volness – Engineering Office Manager

Engineering Department
800 4th Ave E
West Fargo, ND 58078
701-433-5330
www.westfargond.gov

AGENDA ITEM REQUEST
BOARD OF CITY COMMISSIONERS
WEST FARGO, NORTH DAKOTA

OFFICE USE: AGENDA ITEM # <u> 8 </u>

** "Consent" or "Regular" Agenda Item? **Regular** **

1. CONTACT PERSON(s):
 - Dustin T. Scott, City Engineer (433-5425)
2. DATE OF MEETING: **February 17th, 2020**
3. DESCRIPTION OF REQUEST:
 - Review the "Access Agreement" between Southeast Cass Water Resource District and the City of West Fargo for Water Improvement Project No. 1327 – Water Distribution Loop
4. LOCATION (address; legal; etc.):
 - 9th St NW – Main Avenue to north Right-Of-Way line of BNSF.
5. ACTION(S) REQUESTED:
 - Approve "Access Agreement" for Water Improvement Project No. 1327.

ADDITIONAL INFORMATION:

- This agreement grants the City of West Fargo temporary access on and over portions of Cass County Drain 21 and associated Right of Way for the purposes of installation and construction of Improvement Project No. 1327 – Water Distribution Loop 9th St NW.

ACCESS AGREEMENT

THIS AGREEMENT is by the Southeast Cass Water Resource District, a North Dakota political subdivision, whose post office address is 1201 Main Avenue West, West Fargo, North Dakota 58078-1301 (the “District”); and the City of West Fargo, a North Dakota municipal corporation, whose post office address is 800 Fourth Avenue East, Suite 1, West Fargo, North Dakota 58078 (the “City”).

RECITALS

A. The District owns, operates, and maintains CASS COUNTY DRAIN NO. 21 (the “Drain”), a legal assessment drain.

B. The City plans to construct, install, operate, and maintain a water main replacement project on 9th Street Northwest, including installation of a 12” PVC water main across the Drain, between Main Avenue and BNSF Railway right of way in the City’s municipal boundaries (the “Water Main”), a project the City refers to as Improvement District Project No. 1327 (the “Project”).

C. The City has requested temporary access on and over certain portions of the Drain and the Drain right of way for purposes of installation and construction of the Project.

D. The District is willing to grant the City temporary access across portions of the Drain and the District’s Drain right of way, subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

AGREEMENT

1. **The License Property.** The District grants and conveys to the City a temporary, non-exclusive, revocable license for purposes of access rights described in this Agreement upon, over, and across the District’s Drain right of way in Cass County, North Dakota, as depicted in the map attached as **Exhibit A**; the property depicted in **Exhibit A** is the “License Property.” The rights granted to the City by the District under this Agreement constitute a license, revocable at will by the District for cause or for protection of the Drain or its other property under the terms of this Agreement, and the license does not create for or on behalf of the City any interest or estate of any kind in the License Property, either by virtue of this Agreement or by the City’s entry upon or use of the License Property.

2. **Access Rights.** The City’s access rights are limited to access, ingress, and egress rights upon, over, and across the License Property for purposes of constructing and installing the Project. The Project will include removal of approximately 30 feet of existing concrete channel liner along the Drain, open excavation of the Drain embankment, and installation of the Water Main across the Drain, as depicted in **Exhibit A**. The City will maintain a bypass pumping operation during the course of the Project to ensure proper operation of the Drain during construction. Following installation of the Water Main, the City will re-install concrete channel

liner in the Drain in accordance with the original design regarding the Drain concrete channel liner. The City may not use the License Property or any of the District's facilities or right of way for any other purpose, and the City's use, access, ingress, and egress rights regarding the License Property will not disrupt or interfere with the Drain or the District's use of the License Property for purposes of the Drain. The City's rights are revocable by the District in accordance with the terms of this Agreement.

3. **Drainage Priority and Use.** The parties understand and agree the Drain is a public facility that provides drainage benefits and other important public benefits to residents of Cass County, including the City, and further agree the District's use of the Drain, including the License Property, for purposes of a public drainage facility takes priority over any other use of the License Property, including the City's use of the License Property for purposes of the Project. The parties further understand and agree the District and the Drain are subject to certain laws, rules, regulations, requirements, and directives under the jurisdiction of various federal and state agencies, and the City's use of the Drain for purposes of the Project is subject to any applicable laws, rules, regulations, requirements, or directives from or regarding any applicable federal or state agencies; the District does not have any control over, and does not make any representations or warranties regarding, the State of North Dakota or any federal agencies, or the City's use of, or inability to use, the License Property for purposes of the Project. The District will not unreasonably interfere with the Project or the City's rights under this Agreement. However, the District's priority use of the Drain for public drainage purposes may require and include disruptions or interference with the Project or the City's use of the License Property. The District has not made any warranties, express or implied, that the License Property is now, or will be in the future, suitable for the Project, and the District has not made any other representations, warranties, or promises regarding the License Property. The District will use reasonable care to avoid any disruptions or damages to the Project or related appurtenances; however, the District will not be liable or responsible for any damages resulting from any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of the Drain by the District, its officers, employees, agents, representatives, contractors, consultants, subcontractors, licensees, or other invitees. The District may, in the District's sole discretion, impose restrictions or limitations on the City's access rights as necessary for drainage purposes or otherwise as necessary to protect the integrity of the Drain or the License Property.

4. **Improvements to the License Property.** The City's rights under this Agreement are subject to the following:

a. With the exception of the installation of the Water Main, the City will not construct any improvements in, upon, under, over, or across any portion of the Drain or the License Property; the City will not place any fixtures, equipment, or other personal property on any portion of the License Property; the City will not construct or install, nor allow construction or installation of, any utility facilities, lines, structures, or associated appurtenances on, over, in, under, through, or across the License Property; the City will

not encumber any portion of the License Property; and the City will not otherwise alter any portion of the License Property without prior consent from the District.

b. The City will promptly cease any activity and remove any structure or obstruction that interferes with the Drain or the District's use of the License Property, at the City's sole cost.

5. **Duty to Repair and Remedies.** The City will repair the License Property and will repair or replace any of the District's other structures, facilities, right of way, or any other property owned by the District, including the Drain, damaged as a result of the City's construction, operation, inspection, maintenance, alteration, repair, replacement, reconstruction, or removal of the Project or otherwise damaged as a result of any entry upon or use, access, ingress, or egress upon or over the License Property by the City or any of its officers, employees, agents, representatives, contractors, consultants, subcontractors, licensees, or other invitees. The City will otherwise repair and return the License Property as nearly as practicable to its original condition following any disturbance or damages, at the City's sole cost, with the exception of the new Water Main. If the City fails to repair or replace within a reasonable time following request or demand from the District, or if the City otherwise fails to perform any of the City's obligations under this Agreement within a reasonable time following request or demand from the District, the District may perform the City's obligations and the City will reimburse the District for all of the District's costs and expenses. The District's remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any and all other remedies available to the District under North Dakota law. The City will reimburse the District for all of the District's costs and expenses, including reasonable attorneys' fees, incurred in enforcing, collecting, or attempting to collect under this Agreement, or incurred in litigating the terms or validity of this Agreement.

6. **Term.** The City's rights under this Agreement will terminate upon the completion of construction and installation of the Project. The District may also terminate this Agreement if the District concludes termination is necessary to protect the integrity of the Drain; as necessary to comply with any laws, rules, regulations, requirements, or directives of any applicable federal or state agency with regulatory jurisdiction over the Drain; or in the event of any default by the City not remedied within a reasonable time. In no event will this Agreement extend beyond two years from its effective date, unless the parties approve an extension in writing. Upon completion of the Project or any termination or expiration of this Agreement, the City will repair and return the License Property as nearly as practicable to its original condition, at the City's sole cost, with the exception of the new Water Main.

7. **Compliance with Laws.** The City, at its own cost, is solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations, and obtaining all necessary licenses, permits, registrations, and/or approvals, from all applicable federal, state, county, and municipal governments and any other applicable governmental entities or political subdivisions, and their appropriate departments, commissions, boards, and officers,

regarding the Project, the Water Main, or the City's other permissible use, access, ingress, and egress rights upon, over, or across any of the License Property.

8. **Forbearance.** The failure or delay of the District to insist on the timely performance of 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. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law.

10. **Interpretation.** This Agreement will be construed as if prepared by both parties.

11. **Severability.** 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; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.

12. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes all other previous oral or written agreements between the parties.

13. **Assignment.** Neither party may transfer or assign this Agreement, nor any rights or obligations under this Agreement, without the express written consent of the other party.

14. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' heirs, successors, and assigns.

15. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by the District and the City.

16. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

17. **Effective Date.** This Agreement will become effective upon the execution by the last party to sign.

(Signatures appear on the following pages.)

*Southeast Cass Water Resource District
City of West Fargo - Water Improvement Project No. 1327
Access Agreement*

SOUTHEAST CASS WATER
RESOURCE DISTRICT

By: _____
Dan Jacobson, Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer

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

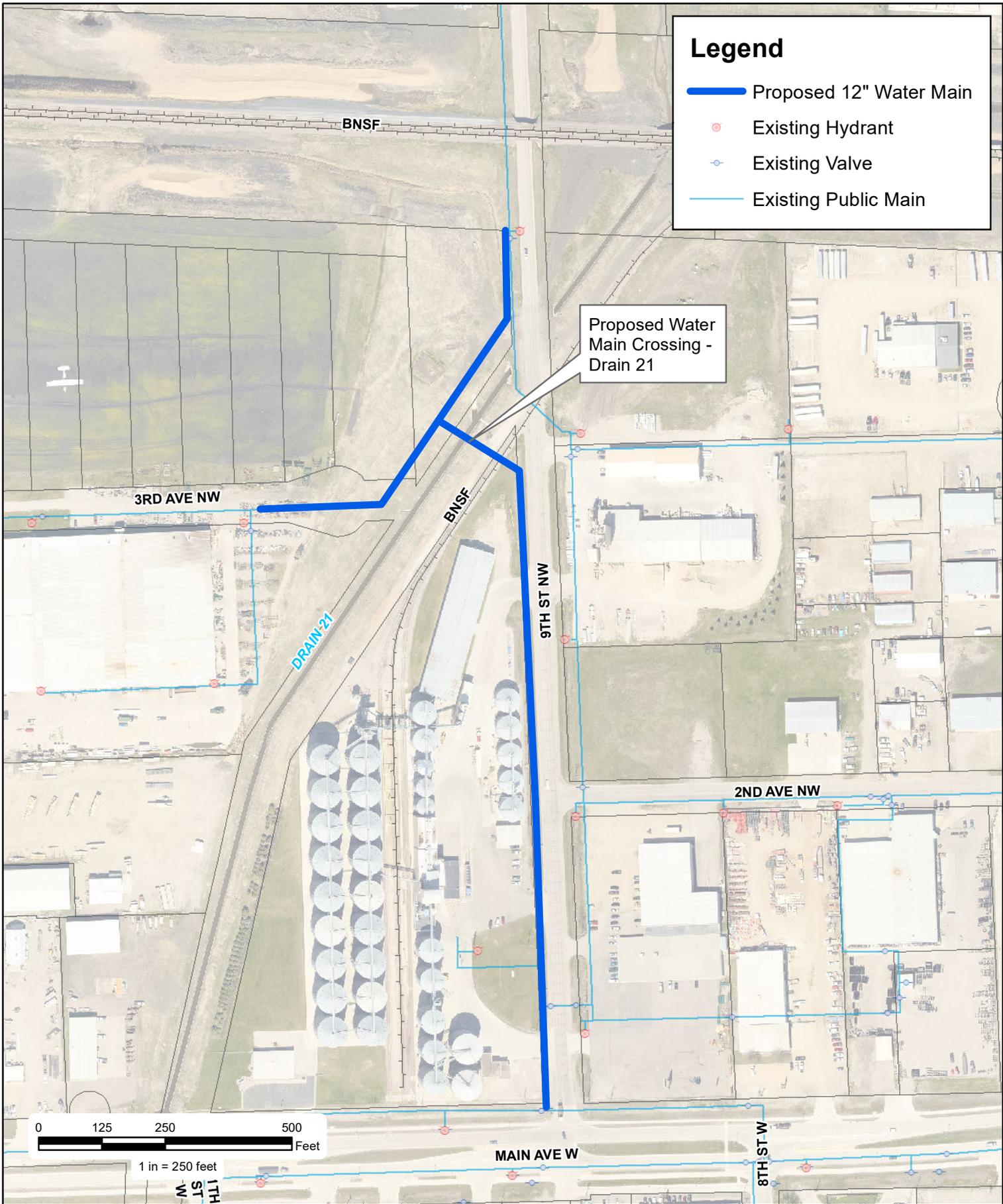
On this ____ day of _____, 2020, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, to me known to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument, and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.

Notary Public, Cass County, ND

(SEAL)

EXHIBIT A

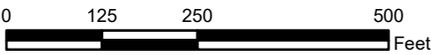
Map of the License Property and the Project



Legend

- Proposed 12" Water Main
- Existing Hydrant
- Existing Valve
- Existing Public Main

Proposed Water Main Crossing - Drain 21



**EXHIBIT A - PROPOSED WATER MAIN CROSSING - SE CASS DRAIN 21
 WATER IMPROVEMENT DIST. NO. 1327
 WEST FARGO, NORTH DAKOTA**

Created By: TJS Date Created: 01/22/20 Date Saved: 01/22/20 Date Plotted: NEVER Date Exported: 01/22/20
 Plotted By: tanner.schmidt Parcel Date: 08/08/19 Aerial Image: 2017 Metro COG Elevation Data: Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
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