



West Fargo City Commission Meeting  
Tuesday, September 4, 2018  
Commission Chambers 5:30 PM

- A. Pledge of Allegiance
- B. Approve Order of Agenda
- C. Approval of Minutes – August 20, 2018 **(Pg 2-5)**
- D. Building Permits

**Consent Agenda – Approve the Following:**

- a. Resolution Approving Contract and Contractor’s Bond in Street Improvement District No. 2239 **(Pg 6)**
- b. Schedule a Public Hearing for the Southdale 2<sup>nd</sup> Addition, Replat and Rezoning from R-2: Multiple Dwellings to PUD: Planned Unit Development at 5:30pm on Monday, September 17, 2018 **(Pg 7-8)**
- c. Games of Chance for the North Dakota Hospital Association. Games to be conducted: Raffle from 9/1/18 to 10/11/18 at Doubletree by Hilton, 825 E. Beaton. **(Pg 9-10)**
- d. Games of Chance for the Sheyenne Mustangs Booster Club. Games to be conducted: Raffle and 50/50 Raffle from 8/20/18 to 6/30/19 at Sheyenne High School, 800 40<sup>th</sup> Ave E **(Pg 11)**
- e. Games of Chance for Interested Parents of Packatahnas. Games to be conducted: Raffle from 11/1/18 to 11/30/18 at IPOP, 1462 7 St E **(Pg 12)**

**Regular Agenda**

- 1. 5:30pm Public Hearing and First Reading of Maple Ridge at the Preserve 6<sup>th</sup> Addition – **Tim Solberg (Pg 13-18)**
- 2. Charleswood 33<sup>rd</sup> Final Plat Approval and PUD Amendment Approval - **Tim Solberg (Pg 19-28)**
- 3. Review Updated plans for Dollar General – **Tim Solberg (Pg 29-30)**
- 4. Master Service Agreement with Moore Engineering Discussion and Approval – **Tina Fisk (Pg 31-80)**
- 5. KPH Request for Waiver – **John Shockley (Pg 81-86)**
- 6. Review bid tab for Infrastructure Replacement District No. 3002 – **Dustin Scott (Pg 87-92)**
- 7. City Administrator’s Report
- 8. Correspondence
- 9. Adjourn



West Fargo City Commission Meeting  
Monday August 20, 2018  
Commission Chambers 5:30 PM

The West Fargo City Commission met on Monday August 20, 2018, at 5:30 pm. Those present were Eric Gjerdevig, Mark Simmons, Bernie Dardis, Brad Olson and Mike Thorstad. Commission President Bernie Dardis called the meeting to order.

The Pledge of Allegiance was recited.

Commissioner Simmons moved and Commissioner Olson seconded to approve the order of agenda. No opposition. Motion carried.

Commissioner Gjerdevig moved and Commissioner Olson seconded to approve the minutes of August 6, 2018. No opposition. Motion carried.

The Commission reviewed the Building Department Activity Report dated August 20, 2018 and Building Permits #579-632.

Commissioner Thorstad moved and Commissioner Gjerdevig seconded to approve the following items from the Consent Agenda, with the addition of Scheduling a Public Hearing for a liquor license application for MacKenzie River Pub and Grille and for Hooligan's moving to a different location.

- a. July statement of revenues, expenditures, and fund balances.
- b. Gaming Site Authorization for North Dakota State Council Knights of Columbus. Games Conducted: Raffles on 4/26/19 to 4/28/19 at Holy Cross Catholic Church, 2711 17<sup>th</sup> Street E.
- c. Games of Chance for Dakota Se Chapter of Pheasants Forever Inc. Games Conducted: Raffle on 9/20/18 at Speedway Event Center, 680 Main Avenue.
- d. Schedule a 5:30 pm Public Hearing on Tuesday September 4, 2018, for Maple Ridge at the Preserve 6<sup>th</sup> Addition, Replat and Rezoning from P: Public Facilities to R-1A: Single Family Dwellings.
- e. Approve Plans & Specs for Street Improvement District No. 2250 (Segment 3), Authorize NDDOT to Advertise for Bids for Street Improvement District No. 2250 (Segment 3).
- f. Schedule a 5:30pm Public Hearing on Monday, September 17, 2018 concerning the granting of a new retail on-premises beer, wine and liquor license for MacKenzie River Pub and Grille
- g. Schedule a 5:30pm Public Hearing on Monday, September 17, 2018 concerning the granting of a site relocation for Hooligan's.

No opposition. Motion carried.

Commissioner Gjerdevig brought before the Commission a proposed Special Assessment Community Forum. Commissioner Gjerdevig proposed to schedule forums with key people within areas of the city and county, and the community to have a taxpayer discussion. After discussion, Commissioner Gjerdevig moved and Commissioner Thorstad seconded to continue with planning and implementing proposed forums. No opposition. Motion carried.

Commissioner Gjerdevig brought before the Commission a Red River Fairgrounds Annexation Proposal. Discussion occurred regarding special assessments, annexation effects and cost sharing. Commissioner Simmons requested a review into the Main Avenue project and the agreement with the State to review the cost sharing responsibilities. There were several individuals present and asked to speak before the Commission to address the impact annexation and special assessments would have on the property in question.

- Bryan Schultz – Red River Fairgrounds
- John Lund – Bonanzaville
- Brenda Warren – Bonanzaville
- Frank Lenzmeier

After discussion, Commissioner Gjerdevig moved and Commissioner Simmons seconded to get clarity on the Main Avenue District, visit with parties from the Fairgrounds, Bonanzaville and the County and to table this discussion at this time. No opposition. Motion carried.

Public Works Director Chris Brungardt appeared before the Commission to review the CPM Agreement for the West Fargo Urban Grant. Mr. Brungardt stated that on page 4, item 2, the language regarding double-parking and angle parking will need to be changed. After discussion, Commissioner Olson moved and Commissioner Thorstad seconded to accept the CPM Agreement for the West Fargo Urban Grant with the proposed language changes. No opposition. Motion carried.

Director of Planning & Zoning Tim Solberg appeared before the Commission to discuss the First Reading on the rezoning of The Wilds 11<sup>th</sup> Addition. Developer Jim Bullis also appeared to address questions. After discussion, Commissioner Simmons moved and Commissioner Gjerdevig seconded to place the rezoning of the Wilds 11<sup>th</sup> Addition on first reading. No opposition. Motion carried.

Director of Planning & Zoning Tim Solberg appeared before the Commission to discuss the Second Reading on the Zoning Ordinance Amendment to Section 4-421 of the A: Agricultural Zoning District Regulations. Mr. Solberg indicated there were no changes from the first reading. Commissioner Thorstad moved and Commissioner Simmons seconded to place the Zoning Ordinance Amendment to Section 4-421 of the A: Agricultural Zoning District Regulations on second reading. No opposition. Motion carried.

Director of Planning & Zoning Tim Solberg appeared before the Commission to review the JB Subdivision, a subdivision and conditional use permit to allow for single family dwelling in an agriculturally zoned district. After discussion, Commissioner Simmons moved and Commissioner Olson seconded to approve the JB Subdivision, a subdivision and conditional use permit to allow for single family dwelling in an agriculturally zoned district with the nine recommendations indicated in the staff report. No opposition. Motion carried.

Director of Planning & Zoning Tim Solberg appeared before the Commission to review a development at 425 32nd Avenue West. Director of Economic Development and Community Services Matt Marshall also appeared to answer questions. The Commission discussed concerns regarding the type of building materials suggested in the renderings. The Commission recommended that Mr. Solberg and Mr. Marshall go back to the developer and request building samples or 3D renderings to determine if the materials meet the requirements.

Developer Jim Bullis appeared before the Commission to Review the Developer's Petition to add Wilds 11th Addition improvements to Sewer, Water, Storm and Street Improvement District No. 1305 via a Work Change Directive to the General Contract and Review Engineer's Opinion of Estimated Cost for additional improvements to Sewer, Water, Storm and Street Improvement District No. 1305 per Petition request. The value of the change directive is approximately \$1.6 million. Discussion occurred regarding the threshold allowed with a change order. After discussion, Commissioner Simmons moved and Commissioner Olson seconded to approve a change order up to the 20% threshold, if the amount is over that threshold and cost cannot be negotiated, the change order will be denied. No opposition. Motion carried.

Economic Development Specialist Callie Roth appeared before the Commission to discuss a Renaissance Zone Application for Henco Properties. After discussion, Commissioner Simmons moved and Commissioner Gjerdevig seconded to approve the Renaissance Zone Application for Henco Properties. No opposition. Motion carried.

City Administrator Tina Fisk appeared before the Commission to discuss the West Fargo Events Contract. The contract is for a 6-month period with a potential renewal until December of 2019. After discussion, Commissioner Thorstad moved and Commissioner Olson seconded to approve the West Fargo Events Contract. No opposition. Motion carried.

At this time, Commissioner Simmons moved and Commissioner Gjerdevig seconded to adjourn the meeting into Executive Session.

The Commission reconvened.

City Attorney John Shockley appeared before the Commission to discuss the Resolutions of Just Compensation for Sewer Improvement Project No. 1308. After discussion, Commissioner Simmons moved and Commissioner Gjerdevig

seconded to approve a resolution of Just Compensation for Sewer Improvement Project No. 1308. No opposition. Motion carried.

City Administrator Tina Fisk appeared before the Commission to present the following for the Administrator's Report:

- Everyone will be receiving a letter explaining the mill levy, soon to be mailed out.
- Bernie Dardis will be representing the City of West Fargo on the Legal Advisory Group.
- John Shockley, Tina Fisk and Matt Marshall will be traveling to the City of Minot to discuss downtown development and the P3 process.

There was no correspondence.

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

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Bernie Dardis  
Commission President

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Tina Fisk  
City Auditor

Consent Agenda Item: a

Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING CONTRACT AND CONTRACTOR'S BOND  
IN STREET IMPROVEMENT DISTRICT NO. 2239  
(Diversion Guardrails)

BE IT RESOLVED by the City Commission of the City of West Fargo, North Dakota, that it is hereby found, determined and declared that the contract heretofore entered into by and between the City of West Fargo and Earthwork Services, Inc., is in full conformity with the law, including Section 40-22-36 of the North Dakota Century Code; that the contractor's bond of Earthwork Services, Inc., heretofore received and filed with the City Auditor is in full conformity with the law including Section 48-02-06.2 of the North Dakota Century Code; and that the contract and contractor's bond are hereby approved.

Dated: September 4, 2018.

APPROVED:

\_\_\_\_\_  
President of Board of City Commissioners

ATTEST:

\_\_\_\_\_  
City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner \_\_\_\_\_. On roll call vote, the following commissioners voted aye: \_\_\_\_\_  
\_\_\_\_\_. The following commissioners voted nay: none. The following commissioners were absent and not voting: \_\_\_\_\_.

The majority having voted aye, the motion carried and the resolution was duly adopted.

\*\*\* Consent Agenda \*\*\*

AGENDA ITEM DESCRIPTION  
CITY COMMISSION  
WEST FARGO, NORTH DAKOTA

Agenda # b

\*\*\*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

2. PHONE NUMBER: 433-5320 DATE: August 15, 2018

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

Southdale 2<sup>nd</sup> Addition, Replat and Rezoning from R-2: Multiple Dwellings to PUD:  
Planned Unit Development.

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

Block 2 & 3 of Southdale Addition, City of West Fargo, North Dakota

5. ACTION BEING REQUESTED FROM CITY COMMISSION:

Schedule a public hearing on the Rezoning at 5:30 pm on September 17, 2018.



[www.westfargond.gov](http://www.westfargond.gov)

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

## NOTICE OF PUBLIC HEARING

A public hearing will be held on the 17<sup>th</sup> day of September 2018, 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:

Block 2 & 3 of Southdale Addition, City of West Fargo, North Dakota (Proposed Southdale 2<sup>nd</sup> Addition)

The ordinance is for the purpose of rezoning from an R-2: Limited Multiple Dwelling 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 September 3 and 10, 2018)



**NDHA-State PAC Raffle**

Name: \_\_\_\_\_

Facility: \_\_\_\_\_

Address: \_\_\_\_\_

City/St: \_\_\_\_\_

Phone: \_\_\_\_\_

North Dakota Hospital Association-State PAC

**Two (2) tickets to the November 25, 2018 NFL game  
Green Bay Packers vs. Minnesota Vikings along with  
a Visa gift card for travel & lodging expenses**

*Total Package Value of \$680*

Drawing to be held October 11, 2018 at 11:00am at the  
Double Tree by Hilton, 825 E. Beaton, West Fargo, ND. Need not be present to win.

The purchase of a ticket is not a charitable donation.

This raffle is limited to employees, board members, or members, of NDHA or its affiliates.

Ticket # \_\_\_\_\_ \$10.00 per ticket PERMIT # \_\_\_\_\_





AGENDA ITEM DESCRIPTION  
CITY COMMISSION  
WEST FARGO, NORTH DAKOTA

Agenda # 1

\*\*\*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

2. PHONE NUMBER: 433-5320 DATE: August 30, 2018

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

Maple Ridge at the Preserve 6<sup>th</sup> Addition, Replat and Rezoning from P: Public Facilities to R-1A: Single Family Dwellings

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

Lots 25 & 35, Block 1 of Maple Ridge at the Preserve 2<sup>nd</sup> Addition, City of West Fargo, North Dakota.

5. ACTION BEING REQUESTED FROM CITY COMMISSION:

Hold First Reading and Public Hearing on the Rezoning at 5:30 pm on September 4, 2018.

CITY OF WEST FARGO PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

A18-37		Replat/Rezoning	
Maple Ridge at the Preserve 6 <sup>th</sup> Addition			
Lots 25 & 35, Block 1 of Maple Ridge at the Preserve 2 <sup>nd</sup> Addition, City of West Fargo, North Dakota			
Applicant: City of West Fargo Owners: Jason & Michelle Metzger/City of West Fargo		Staff Contact: Tim Solberg, AICP	
Planning & Zoning Commission Introduction:		08-14-2018	
Public Hearing:		08-14-2018 – Approval	
City Commission Introduction:		08-20-2018	
Public Hearing & 1 <sup>st</sup> Reading:		09-04-2018	
2 <sup>nd</sup> Reading and Final Plat Approval:			

**PURPOSE:**

To replat and rezone to bring an existing single-family property into conformance with the rear yard requirements of the R-1A: Single Family Dwelling district standards.

**STATEMENTS OF FACT:**

Land Use Classification:	G-4A – Core Retrofit Growth Area
Existing Land Use:	Single Family Dwelling and Retention Pond
Current Zoning District(s):	R-1A: Single Family Dwelling & P: Public Facilities
Zoning Overlay District(s):	CO: Corridor Overlay District
Proposed Zoning District(s):	R-1A: Single Family Dwellings
Total area size:	Approximately 15,345 ft <sup>2</sup>
Adjacent Zoning Districts:	North, East & West – R-1A: Single Family Dwellings South – P: Public Facilities & R-1A: Single Family Dwellings East – A: Agricultural West – M: Heavy Industrial
Adjacent street(s):	32 <sup>nd</sup> Ave E (Arterial); 31 <sup>st</sup> Ave E (Local); Claire Dr E (Local); Sheyenne River Way (Private Drive)

**DISCUSSION AND OBSERVATIONS:**

- The property was platted in 2012 and a single family dwelling constructed in 2013.
- Recently it was determined that the home did not meet the rear yard setback requirements of 30' at the time of permitting.
- Although the home does not conform to the zoning requirements of the R-1A District, because the City issued a permit, it could be determined that the property is a legal non-conforming structure.
- Legal non-conforming structures are regulated under Section 4-474 of City Ordinances which state: Such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
  1. No such nonconforming structure may be enlarged or altered in any way which increases its nonconformity, but any structure or portion thereof may be altered to decrease it nonconformity.

STAFF REPORT

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
  3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- Although the property can continue, banks will not typically lend for a property which is legal non-conforming because the second clause which does not allow the property to be rebuilt if damaged.
  - A remedy for the situation exists which is to subdivide additional property from the City, to plat and rezone to bring the property into compliance.
  - The City would maintain the property in an easement so no structure would be able to be constructed on the land and the City could maintain the retention needs of the pond, but the house would now be in compliance with the yard requirements of the R-1A zoning district standards.

**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 proposed application would ensure the structure becomes consistent with the City plans and ordinances. The Comp Plan includes this area in the "Core Retrofit Growth Area", however it is due to proximity and the subdivision is not anticipated to be retrofitted due to the minor lot line change.

**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. An Attorney Title Opinion is received.
2. A signed vacation of the previous plat is received.
3. Signed Final Plat is received with any necessary easements.
4. A certificate is received showing taxes are current.

**PLANNING AND ZONING RECOMMENDATION:**

At their August 14, 2018 meeting, the Planning and Zoning Commission approved the Replat and Rezoning subject to the four conditions listed above, with a change to item #4 to include the new easement. A fifth condition was also added that an actual valuation be performed to calculate the dollar amount of the additional property to ensure a public sale is not required. The City Assessor has researched the value of the property and due to the easements being maintained has determined the value to be \$350 which is far under the City's legal requirements to hold a public sale.



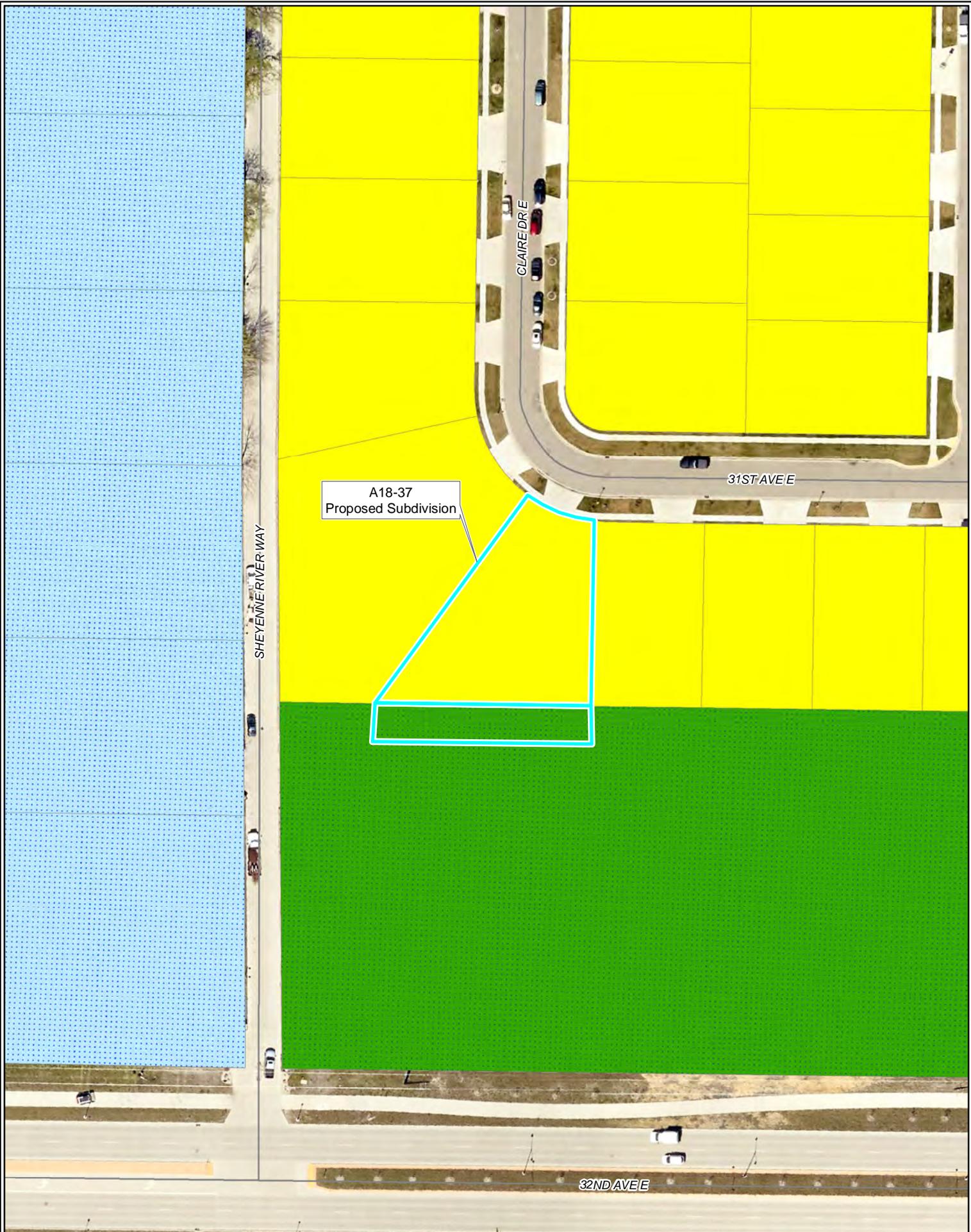
A18-37  
Proposed Subdivision

SHEYENNE RIVER WAY

CLAIRE DRE

31ST AVE E

32ND AVE E



A18-37  
Proposed Subdivision

SHEYENNE RIVER WAY

CLAIRE DRE

31ST AVE E

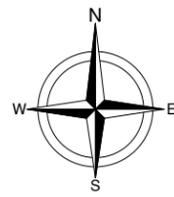
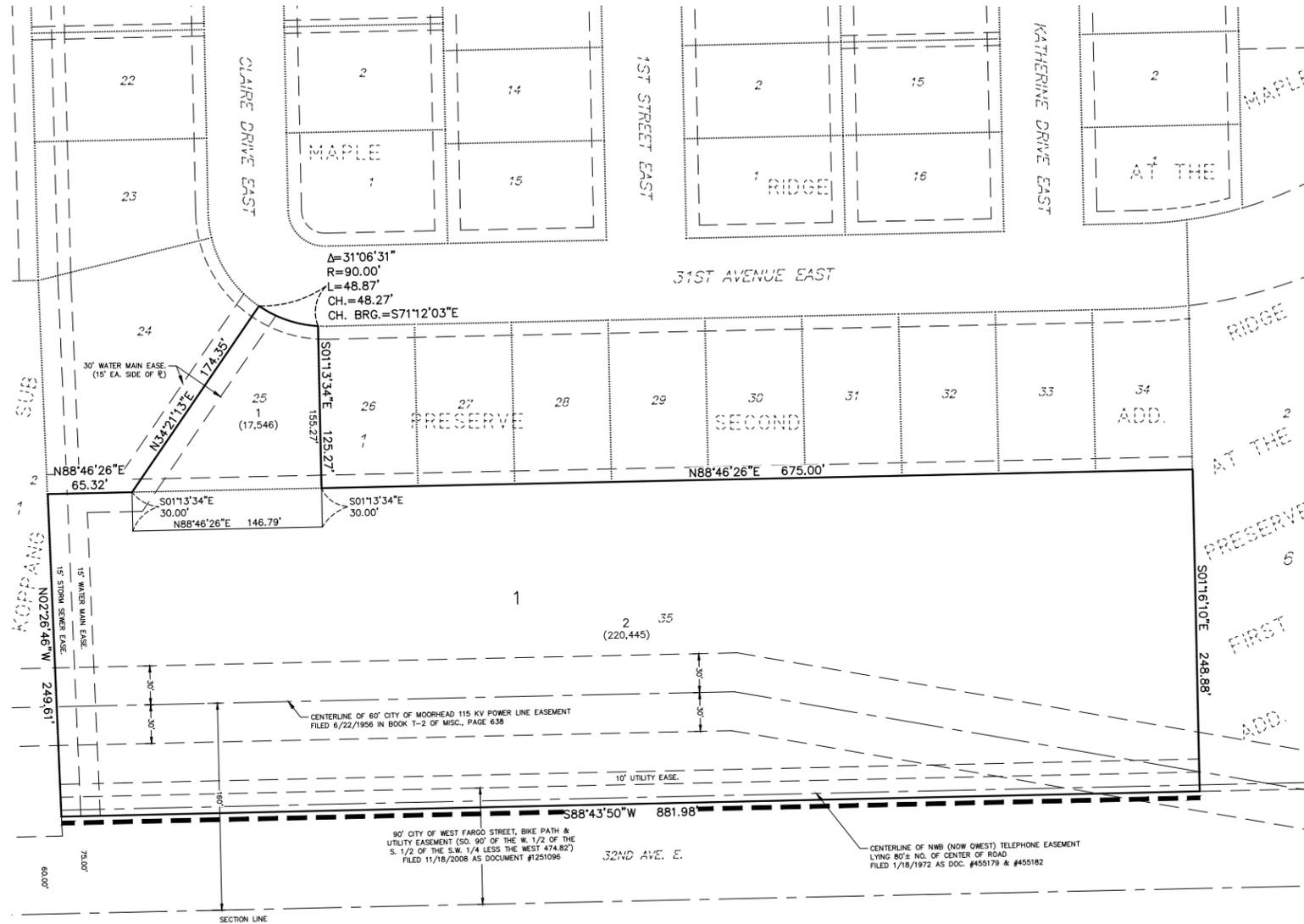
32ND AVE E



- |                                  |                                 |   |  |                                    |
|----------------------------------|---------------------------------|---|--|------------------------------------|
| A: Agricultural                  | HC: Heavy Commercial            | P-PUD: PUD in Public                    | R-1SM: Mixed One and Two Family Dwelling | R-5: Manufactured Home Subdivision |
| C: Light Commercial              | LI: Light Industrial            | R-L1A: Large Lot Single Family Dwelling | R-2: Limited Multiple Dwelling           | R-1E: Rural Estate                 |
| C-PUD: PUD in General Commercial | CM-PUD: PUD in Light Industrial | R-1A: Single Family Dwelling            | R-3: Multiple Dwelling                   | R-R: Rural Residential             |
| C-OP: Commercial Office Park     | M: Heavy Industrial             | R-1: One and Two Family Dwelling        | R-4: Mobile Home                         | R-PUD: PUD in Residential          |
| C-OP-PUD: PUD in Office Park     | P: Public                       |   |  |                                    |



**PLAT OF  
MAPLE RIDGE AT THE PRESERVE SIXTH ADDITION  
TO THE CITY OF WEST FARGO, A REPLAT OF LOT 25 AND LOT 35, BLOCK 1, MAPLE RIDGE AT  
THE PRESERVE SECOND ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA.**



0 60  
Scale in Feet

**LEGEND**

- IRON MONUMENT FOUND
- SET 5/8"x18" REBAR WITH YELLOW PLASTIC CAP #6571
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- L ARC LENGTH
- R RADIUS LENGTH
- Δ CENTRAL ANGLE
- CH. BRG. CHORD BEARING
- ACCESS CONTROL

BASIS OF BEARINGS: THE WILDS SEVENTH ADDITION TO THE CITY OF WEST FARGO ACCORDING TO THE RECORDED PLAT THEREOF.

**CERTIFICATE**

STEVEN W. HOLM, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "MAPLE RIDGE AT THE PRESERVE SIXTH ADDITION" TO THE CITY OF WEST FARGO, A REPLAT OF LOT 25 AND LOT 35, BLOCK 1, MAPLE RIDGE AT THE PRESERVE SECOND 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:

ALL OF LOT 25 AND LOT 35, BLOCK 1, MAPLE RIDGE AT THE PRESERVE SECOND 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 34.25 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.

STEVEN W. HOLM  
REGISTERED LAND SURVEYOR  
REG. NO. LS-6571

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED STEVEN W. HOLM, 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

**DEDICATION**

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "MAPLE RIDGE AT THE PRESERVE SIXTH ADDITION" TO THE CITY OF WEST FARGO, A REPLAT OF LOT 25 AND LOT 35, BLOCK 1, MAPLE RIDGE AT THE PRESERVE SECOND 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 STEVEN W. HOLM, REGISTERED LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT. WE HEREBY DEDICATE ALL STREETS, AVENUES, DRIVES, LANES, UTILITY, POND ACCESS AND STORM WATER STORAGE EASEMENTS SHOWN ON SAID PLAT TO THE USE OF THE PUBLIC.

OWNER: LOT 1, BLOCK 1

JASON J. METZGER MICHELLE K. METZGER

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JASON J. METZGER AND MICHELLE K. METZGER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

OWNER: LOT 2, BLOCK 1: CITY OF WEST FARGO

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

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, 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

**CITY ENGINEER'S APPROVAL**

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

DUSTIN T. SCOTT, CITY ENGINEER

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, 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 PLANNING COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

TOM MCDUGALL, CHAIRMAN

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, 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

**WEST FARGO CITY COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, 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

**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 \_\_\_\_\_, 2018.

JOHN T. SHOCKLEY, CITY ATTORNEY

STATE OF NORTH DAKOTA )  
COUNTY OF CASS )

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, 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

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

2. PHONE NUMBER: 433-5320 DATE: August 29, 2018

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

Charleswood 33<sup>rd</sup> Addition, a Replat and Planned Unit Development Amendment for proposed office building.

---

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

Lots 4 & 5, Block 1 of Charleswood 29<sup>th</sup> Addition, City of West Fargo, North Dakota

---

5. ACTION BEING REQUESTED FROM CITY COMMISSION:

Final Plat Approval and Approval of Planned Unit Development Amendment subject to recommended conditions listed in the staff report.

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STAFF REPORT

A18-35		REPLAT AND PLANNED UNIT DEVELOPMENT AMENDMENT	
Charleswood 33 <sup>rd</sup> Addition			
Lots 4 & 5, Block 1 of Charleswood 29 <sup>th</sup> Addition, City of West Fargo, North Dakota			
Owner: CIG Investments Fargo LLP/9 <sup>th</sup> Street Properties, LLC		Staff Contact: Tim Solberg, AICP	
Applicant: Roers Development			
Planning & Zoning Commission Introduction:		08-14-2018	
Public Hearing:		08-14-2018 – Approval	
City Commission Final Approval:			

**PURPOSE:**

Replat to split lot and allow for development of a dental office in approved Planned Unit Development.

**STATEMENTS OF FACT:**

Land Use Classification:	G-2 Sub-Urban Growth Sector
Existing Land Use:	Parking Lot
Current Zoning District(s):	PUD: Planned Unit Development
Zoning Overlay District(s):	CO: Corridor Overlay; CO-I: Interstate Corridor Overlay
Proposed Zoning District(s):	PUD: Planned Unit Development
Proposed Lot size(s) or range:	L1, B1: 86,102 ft <sup>2</sup> ; L2, B1: 28,621 ft <sup>2</sup>
Total area size:	114,723 ft <sup>2</sup>
Adjacent Zoning Districts:	North - P: Public Facilities South - Interstate Right of Way East and West - PUD: Planned Unit Development
Adjacent street(s):	9 <sup>th</sup> St E (arterial); 19 <sup>th</sup> Ave E (collector)
Adjacent Bike/Pedestrian Facilities:	Existing Sidewalk on 19 <sup>th</sup> Ave E (6')
Available Parks/Trail Facilities:	Burlington, Arbor Woods, and Maplewood Parks within ½ mile with sidewalk access.
Park Dedication Requirements:	Provided with previous subdivision.

**DISCUSSION AND OBSERVATIONS:**

- The applicant has submitted a preliminary plat, site, elevation and floor plans for a 5,300 ft<sup>2</sup> building finished with EIFS, Stone, and other materials which would house a dental office and additional office tenant space.
- The existing development on proposed Lot 1, Block 1 meets the yard and open space requirements of the CO: Corridor Overlay and CO-I: Interstate Corridor Overlay districts.
- Property access will be limited and only available on existing private drive via 19<sup>th</sup> Ave E.
- In 2015, a PUD Amendment was approved on this site to construct a 105-space parking lot for additional parking for the Blarney Stone to the north. At the time, the restaurant site plan showed 88 parking spaces on site, which exceeded the required 75; however, they saw the need for additional parking.

STAFF REPORT

- The applicant is showing 28 parking spaces for the proposed dental office based on general office space requirements of one space per 200 square feet of gross floor area. Under the 4-450 Off-Street Parking and Loading Requirements, Medical Offices and Clinics require five spaces per doctor, plus one space per employee on the largest shift. At first occupancy, there will be one doctor and six employees. A shared parking agreement will be developed with the adjacent property to the north to accommodate additional parking needs when a third doctor is added.
- Within the CO district when the property abuts the designated streets (i.e. 9th St E) a minimum of 20 feet of landscaped open space is required to separate parking areas and the front lot line, which was provided with the previous application.
- Trees were also placed on the east boundary of the parking lot, with the previous application. The site plan shows additional trees and landscaping for the property, which follow 4-449-A. Landscaping Standards.
- A 35' high pylon sign and an off-premise monument sign for the development is shown on the NE corner of the property and should follow section 4-460 Sign Regulations.
- Construction is anticipated to begin on September 10, 2018 and expected to be completed by April 1, 2019.

**NOTICES:**

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

Comments Received:

- The Sanitation Manager has asked for a detailed drawing/measurement of the dumpster enclosure for this building and is in discussions with the applicant.

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

- The underlying land use classification of this property is G-2 Sub-Urban Growth Sector. The Sub-Urban Growth Sector includes existing residential neighborhoods and developed commercial areas that are not likely to see much change in the next decades. There may be a few undeveloped tracts of land still available for development.
- Maintaining compatibility with surrounding uses will provide consistency with City Plans and Ordinances. Increasing employment opportunities within this district is consistent with the Comprehensive Plan.

**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. Development of Lot 2, Block 1 will be subject, but not limited to CO: Corridor Overlay, 4-440 Supplementary District Regulations, 4-449-A. Landscaping Standard, 4-450 Off-Street Parking and Loading Requirements, and 4-460 Sign Regulations.
2. A signed PUD Agreement is received.
3. An Attorney Title Opinion is received.
4. An updated drainage plan is received and approved by the City Engineer.
5. A signed Final Plat is received with any necessary easements.
6. A certificate is received showing taxes are current.

STAFF REPORT

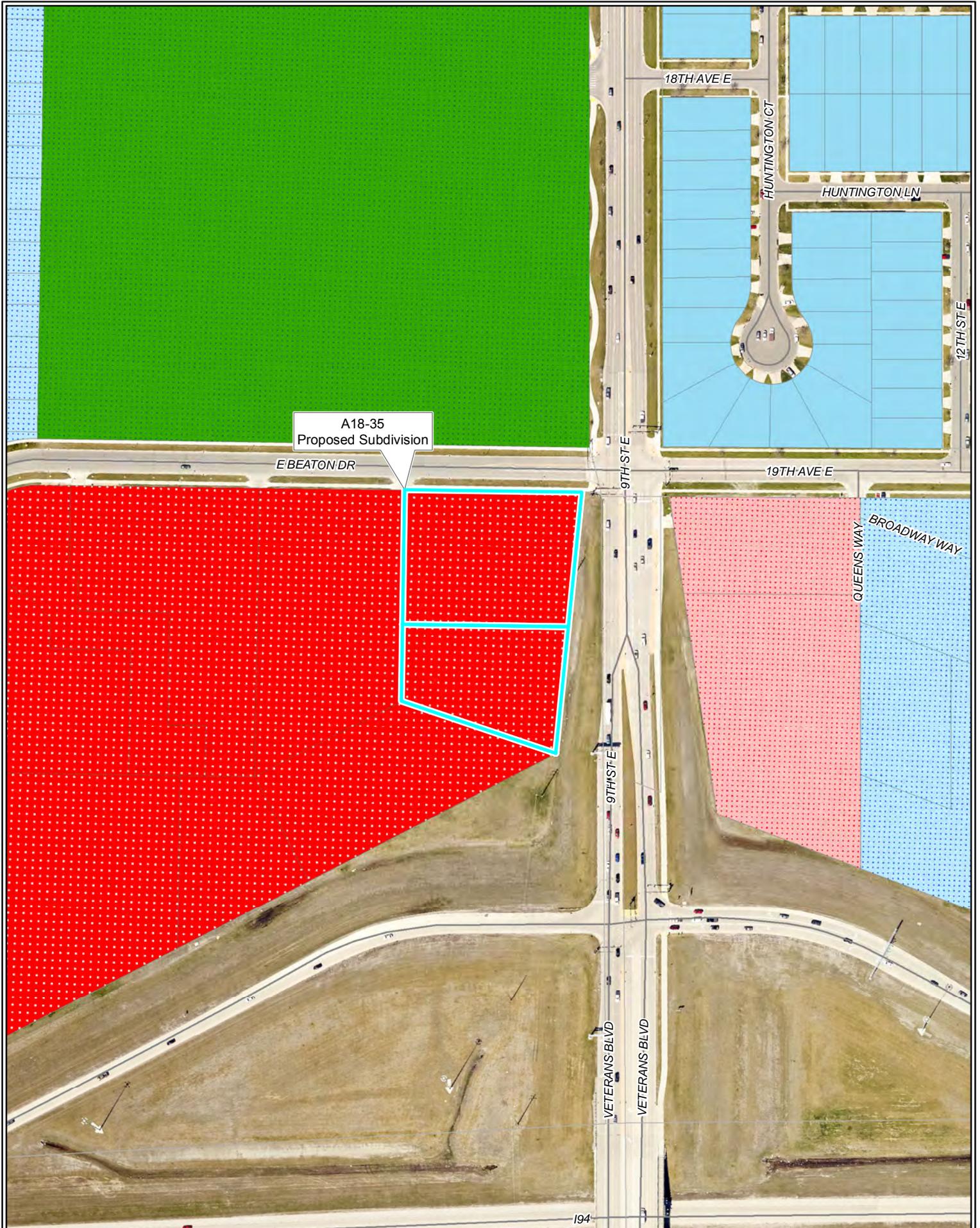
**PLANNING AND ZONING RECOMMENDATION:**

At their August 14, 2018 meeting, the Planning and Zoning Commission approved the Replat and Planned Unit Development Amendment subject to the six conditions listed above.



A18-35  
Proposed Subdivision





A18-35  
Proposed Subdivision

E BEATON DR

18TH AVE E

HUNTINGTON CT

HUNTINGTON LN

12TH STE

9TH STE

19TH AVE E

QUEENS WAY  
BROADWAY WAY

9TH STE

VETERANS BLVD

VETERANS BLVD

194



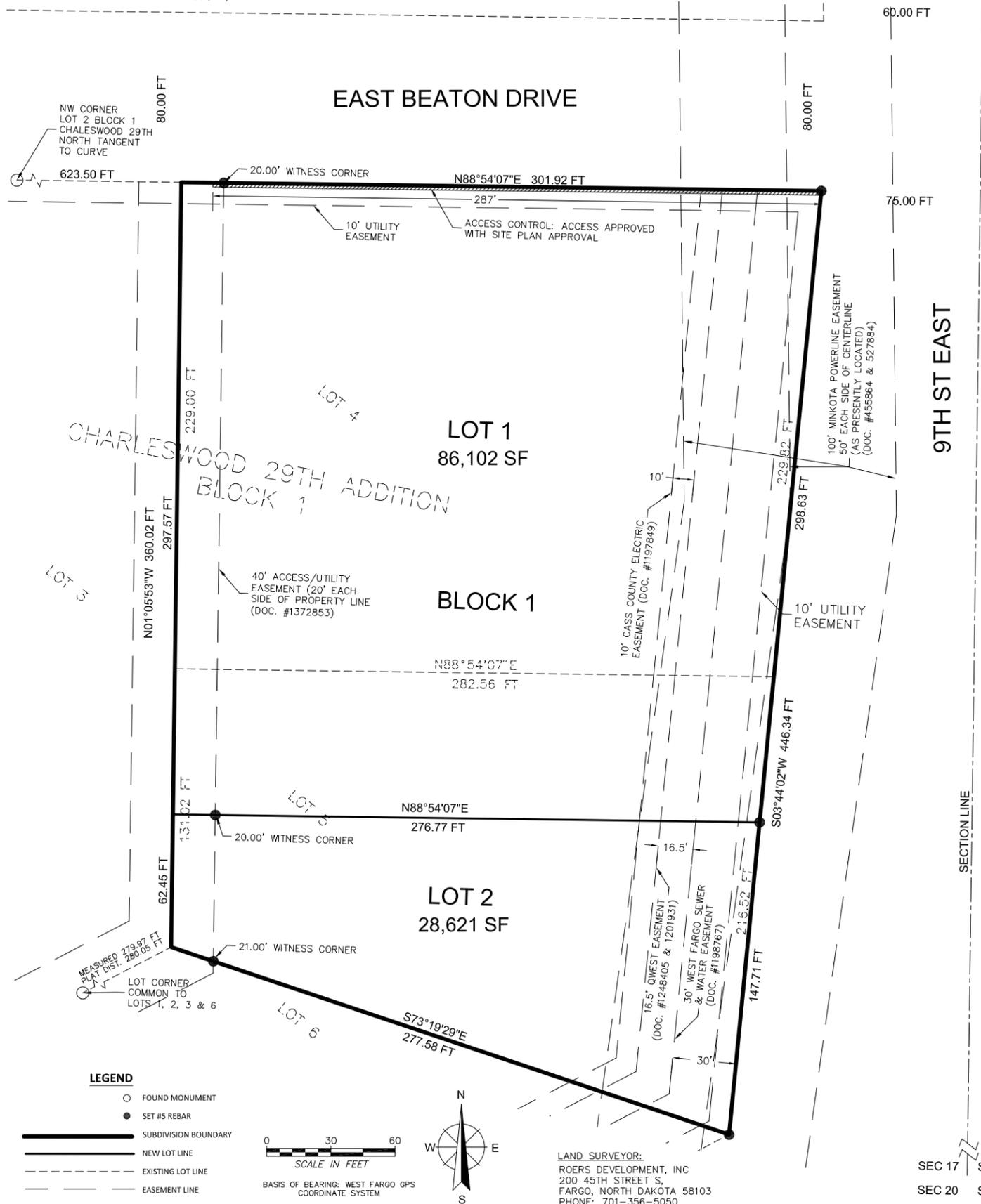
- |                                  |                                 |  |  |                                    |
|----------------------------------|---------------------------------|--|--|------------------------------------|
| A: Agricultural                  | HC: Heavy Commercial            | P-PUD: PUD in Public                     | R-1SM: Mixed One and Two Family Dwelling | R-5: Manufactured Home Subdivision |
| C: Light Commercial              | LI: Light Industrial            | R-4L1A: Large Lot Single Family Dwelling | R-2: Limited Multiple Dwelling           | R-1E: Rural Estate                 |
| C-PUD: PUD in General Commercial | CM-PUD: PUD in Light Industrial | R-1A: Single Family Dwelling             | R-3: Multiple Dwelling                   | R-R: Rural Residential             |
| C-OP: Commercial Office Park     | M: Heavy Industrial             | R-1: One and Two Family Dwelling         | R-4: Mobile Home                         | R-PUD: PUD in Residential          |
| C-OP-PUD: PUD in Office Park     | P: Public                       |  |  |                                    |



# PLAT OF CHARLESWOOD 33RD ADDITION

TO THE CITY OF WEST FARGO, A REPLAT OF LOTS 4 & 5 BLOCK 1,  
CHARLESWOOD 29TH ADDITION TO THE CITY OF WEST FARGO  
WITHIN THE SE 1/4 SECTION 17, T. 139 N., R. 49 W. CASS COUNTY ND

CHARLESWOOD SCHOOL ADDITION  
LOT 1 BLOCK 1



**OWNER'S DESCRIPTION AND DEDICATION**

KNOW ALL MEN BY THESE PRESENTS, THAT CIG INVESTMENTS-FARGO,LLP, A NORTH DAKOTA LIMITED LIABILITY PARTNERSHIP AS OWNER OF TRACTS OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 139 NORTH, RANGE 49 WEST OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
LOTS 4 & 5 BLOCK 1 OF THE CHARLESWOOD 29TH ADDITION TO THE CITY OF WEST FARGO, CASS COUNTY NORTH DAKOTA. SAID TRACT OF LOTS CONTAIN 114,723 SF, MORE OR LESS AND IS SUBJECT TO EASEMENTS AS MAY BE OF RECORD.  
SAID OWNER HAS CAUSED THE ABOVE DESCRIBED TRACT OF LAND TO BE SURVEYED AND PLATTED AS "CHARLESWOOD 33RD ADDITION" TO THE CITY OF WEST FARGO, CASS COUNTY, NORTH DAKOTA, AND DO HEREBY DEDICATE TO THE PUBLIC, FOR PUBLIC USE, ALL UTILITY EASEMENTS AS SHOWN ON THIS PLAT.

CIG INVESTMENTS-FARGO, LLP  
BY: JAMES A. POOLMAN - VICE PRESIDENT CIG INVESTMENTS-FARGO, LLP

STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, IN THE YEAR OF 2018, BEFORE ME PERSONALLY APPEARED JAMES A. POOLMAN, VICE PRESIDENT OF CIG INVESTMENTS-FARGO, LLP KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC

**CONSENT OF MORTGAGEE**  
DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.  
FIRST INTERNATIONAL BANK & TRUST

TROY OTT - VICE PRESIDENT  
STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED TROY OTT, VICE PRESIDENT OF FIRST INTERNATIONAL BANK AND TRUST, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC

**WEST FARGO CITY ENGINEER'S APPROVAL**  
THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

DUSTIN T. SCOTT, CITY ENGINEER  
STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018 BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED DUSTIN T. SCOTT, CITY ENGINEER, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS THE CITY ENGINEER

NOTARY PUBLIC

**WEST FARGO CITY ATTORNEY APPROVAL**

I DO 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 \_\_\_\_\_, 2018.

JOHN T. SHOCKLEY, CITY ATTORNEY  
STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018 BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOHN T. SHOCKLEY, CITY ATTORNEY, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS THE CITY ATTORNEY

NOTARY PUBLIC

**SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT**

I, DOUGLAS W. KUMMER, PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT I HAVE SURVEYED AND PLATTED "CHARLESWOOD 33RD ADDITION" TO THE CITY OF WEST FARGO, CASS COUNTY, NORTH DAKOTA; THAT THIS PLAT IS A CORRECT REPRESENTATION OF SAID SURVEY; THAT ALL MONUMENTS ARE OR WILL BE INSTALLED CORRECTLY IN THE GROUND AS SHOWN.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

DOUGLAS W. KUMMER, PROFESSIONAL LAND SURVEYOR  
NORTH DAKOTA LICENSE NO. 1225  
STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED DOUGLAS W. KUMMER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

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 \_\_\_\_\_, 2018.

TOM MCDUGALL, CHAIRMAN

STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED TOM MCDUGALL, CHAIRMAN OF THE WEST FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC

**WEST FARGO COMMISSION APPROVAL**

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

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

TINA FISK, CITY AUDITOR

STATE OF NORTH DAKOTA )  
COUNTY OF CASS ) ss

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018 BEFORE ME, A NOTARY PUBLIC WITHIN 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 THAT THEY EXECUTED THE SAME IN THE NAME OF THE WEST FARGO CITY COMMISSION

NOTARY PUBLIC

SEC 17 SEC 16  
SEC 20 SEC 21

**LEGEND**

- FOUND MONUMENT
- SET #5 REBAR
- SUBDIVISION BOUNDARY
- NEW LOT LINE
- - - EXISTING LOT LINE
- - - EASEMENT LINE



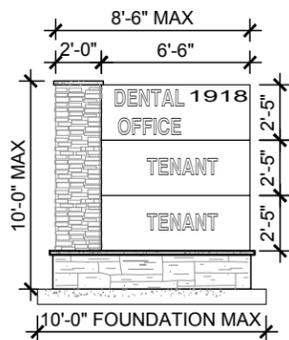
BASIS OF BEARING: WEST FARGO GPS COORDINATE SYSTEM



LAND SURVEYOR:  
ROERS DEVELOPMENT, INC  
200 45TH STREET S,  
FARGO, NORTH DAKOTA 58103  
PHONE: 701-356-5050

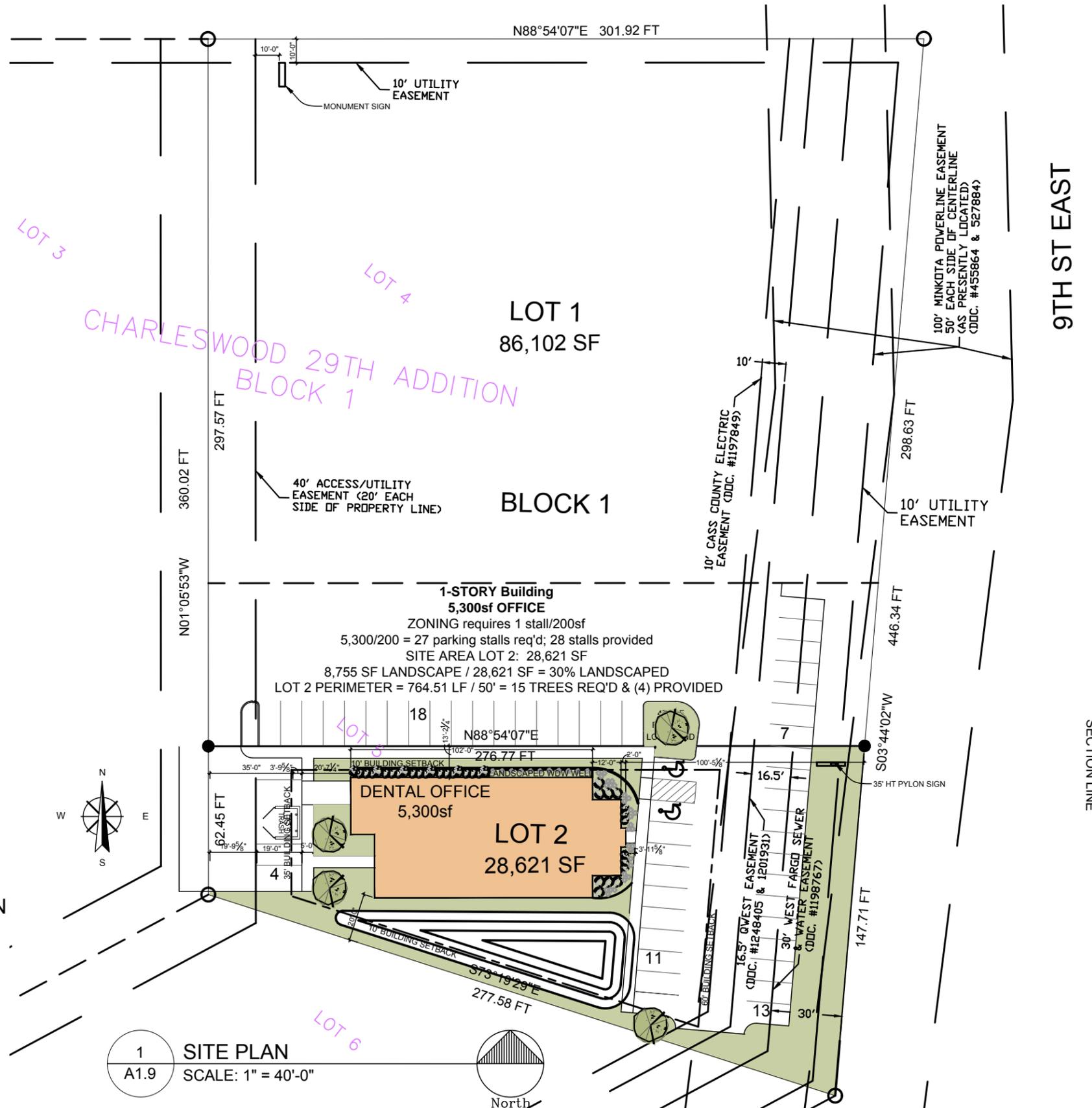
# DENTAL OFFICE

(150 SF MAX SIGN AREA)



2  
A1.0 PYLON & OFF-PREMISE MONUMENT SIGN  
SCALE: 1/8" = 1'-0"

1  
A1.9 SITE PLAN  
SCALE: 1" = 40'-0"



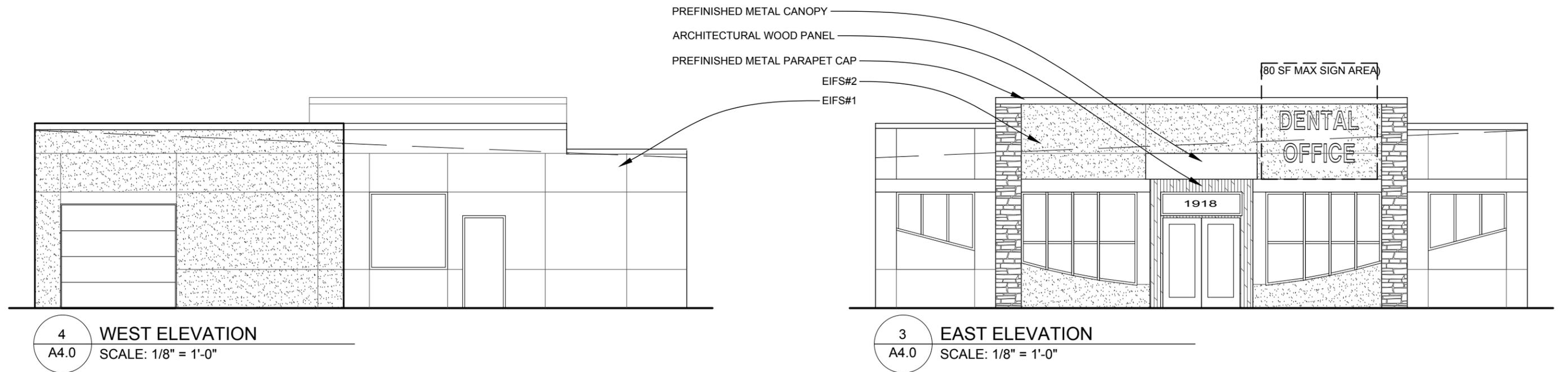
9TH ST EAST

SECTION LINE



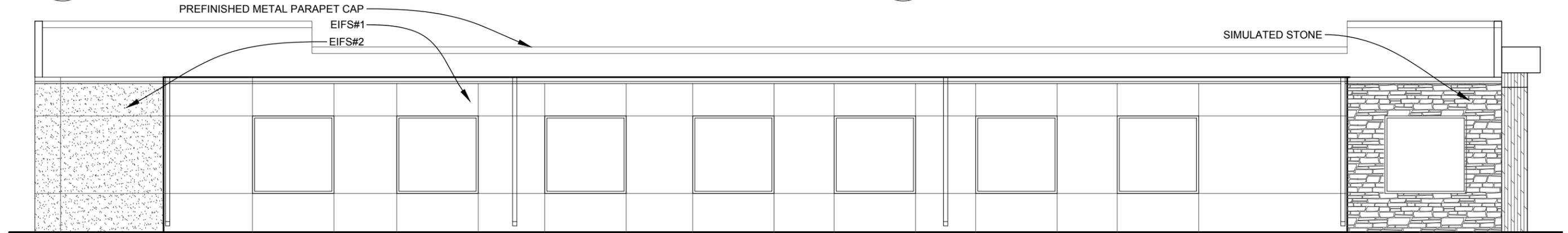
**DENTAL OFFICE**  
1918 9TH STREET EAST  
West Fargo, ND

DATE: 7-20-18

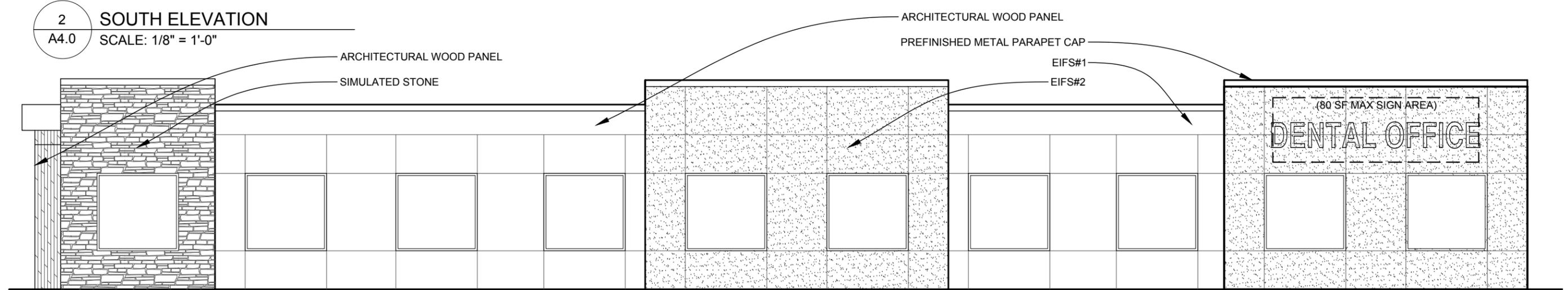


4 WEST ELEVATION  
A4.0 SCALE: 1/8" = 1'-0"

3 EAST ELEVATION  
A4.0 SCALE: 1/8" = 1'-0"



2 SOUTH ELEVATION  
A4.0 SCALE: 1/8" = 1'-0"



1 NORTH ELEVATION  
A4.0 SCALE: 1/8" = 1'-0"



1 FLOOR PLAN - 5,300 SF  
 A3.0 SCALE: 1/8" = 1'-0"  
 North



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

**- Memorandum -**

TO: West Fargo City Commission  
FROM: Tim Solberg, AICP, Director of Planning and Zoning  
RE: August 20, 2018 City Commission Agenda  
DATE: August 16, 2018

The CO: Corridor Overlay District standards require a higher construction standard than other areas of the City (section 4-431.5.2). In areas of the Corridor Overlay District, which is zoned Light Commercial, any exposed metal or fiberglass on all buildings shall be limited to no more than thirty (30) percent of any wall which fronts on a public street, provided that it is coordinated into the architectural design. Seventy percent (70%) of any wall (facade area) which fronts on a public street shall be constructed of glass, brick, wood, stone, architectural concrete cast in place or precast concrete panels, or, as approved by the Commission(s), other integrated materials per the architectural design.

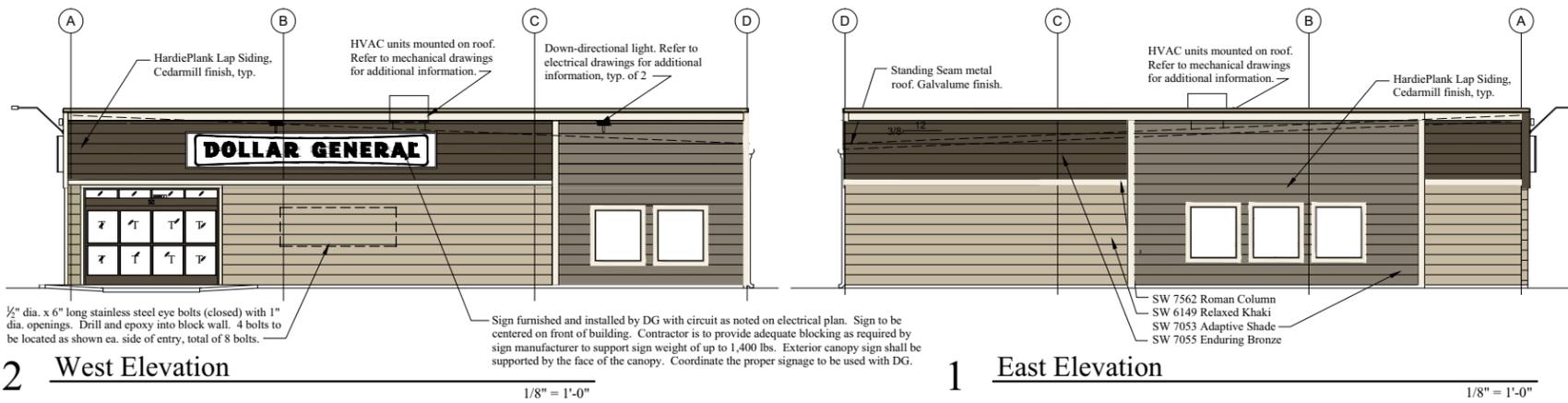
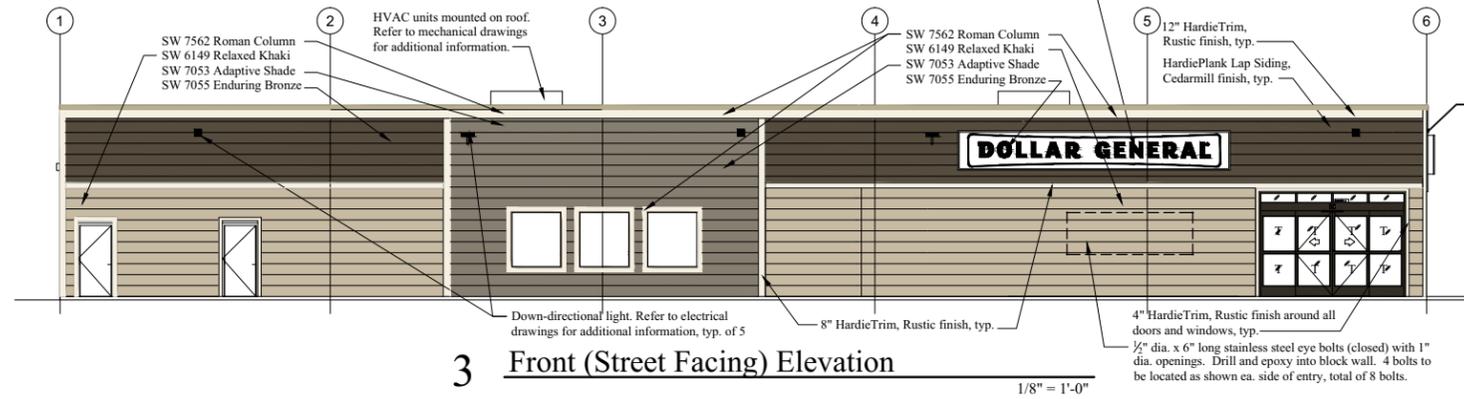
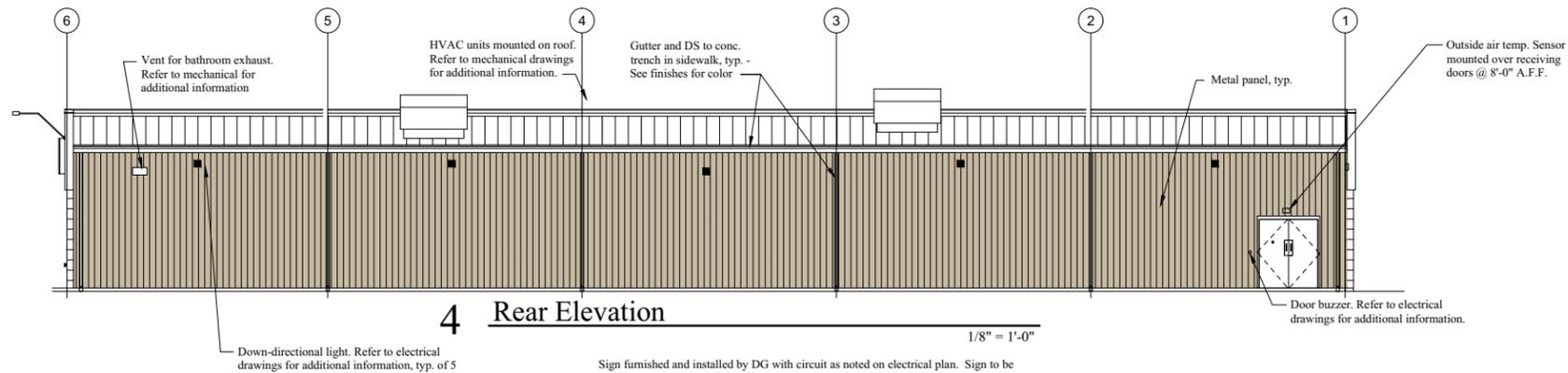
Building plans have been submitted for review to the City for a Dollar General located along the south side of 32<sup>nd</sup> Ave W at 425 32<sup>nd</sup> Ave W. The building is faced with HardiePlank Lap Siding with a "Cedarmill" finish on two elevations, and simple metal panel on the other two elevations. Staff believes Commission consideration is required because the proposed siding type is not identified within the requirements stated above. HardiePlank lap siding is more typical of residential structures, and staff does not feel it is a material included in the requirements of the CO district standards.

This is the company's first revision to the original permit. The previous submittal was faced primarily with metal panel and was returned by staff to be revised.

Staff sought a motion regarding the interpretation from the Planning and Zoning Commission to the City Commission for their consideration. At their August 14, 2018 meeting, the Planning and Zoning Commission indicated that HardiePlank does not meet requirements as presented; however, could be acceptable with changes to the architectural design to break up the façade.

TPS

enclosures



11827 W. 12th Street  
Suite 102  
Overland Park, Kansas 66210

**Abeln & Associates**  
Architects, P.A.

(913) 345-8833

HLH/MLA

**DOLLAR GENERAL**  
425 32nd Ave. W  
West Fargo, North Dakota

Project # - 1747

**DATE**

May 18, 2018
revisions
▲ July 09, 2018
▲ August 16, 2018
▲ August 23, 2018

SHEET NUMBER  
**A-301**  
Elevations

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**MASTER AGREEMENT FOR PROFESSIONAL SERVICES**

**Related to:**

**ENGINEERING CONSULTATION SERVICES**

**BY AND BETWEEN**

**CITY OF WEST FARGO**

**and**

**MOORE ENGINEERING, INC.**

**Dated as of May 7, 2018**

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*Approved by the West Fargo City Commission on May \_\_\_\_, 2018*

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

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**ATTACHMENTS:**

- Task Order 1 (General Engineering Services)
- Task Order 2 (Supplemental General Engineering Services)
- Task Order 3 (Building Inspections)
- Flow Chart of Project Approval
- Exhibit A – General Project Services
- Exhibit B – Hourly Rates

## **MASTER AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES**

**THIS AGREEMENT** is made effective this 7<sup>th</sup> day of May, 2018 (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 4<sup>th</sup> Avenue East, Suite 2, West Fargo, North Dakota 58078; and Moore Engineering, Inc. ( “MEI”), a North Dakota corporation, whose principal address is 925 10<sup>th</sup> Avenue East, West Fargo, North Dakota 58078-5211, (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 selected and appointed MEI to provide the City with engineering and related municipal services, subject to the oversight of the City Administrator; and

**WHEREAS**, the City desires to enter into a master agreement for professional engineering services with MEI, 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 MEI.

**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 MEI, which accepts the hiring with the City pursuant to this Agreement. MEI is an independent contractor under this Agreement. Nothing in this Agreement shall be construed to create an employer-employee relationship between the parties.
2. **DEFINITIONS.** All capitalized terms used and not otherwise defined herein shall 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 Moore Engineering, Inc.

“*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 MEI'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 MEI.

*"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 MEI to proceed with work set forth in a duly authorized Task Order, unless otherwise provided for in this Agreement. Engineer shall 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 MEI shall, upon execution of this Agreement, be terminated and have no further force and effect. Any existing Task Order shall be governed by the agreement in effect at the time the Task Order was approved.
5. SCOPE OF SERVICES. MEI'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 shall 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 MEI's cost of or time required for performance of the Services, an equitable adjustment will be made through an amendment to this Agreement.

7. RESPONSIBILITY FOR ERRORS OR DELAYS FROM INACCURATE DATA. MEI and the City acknowledge that the reliability of MEI's services depends upon the accuracy and completeness of the data supplied to MEI. The City accepts sole responsibility for errors or delays in services resulting from inaccurate or incomplete data supplied to MEI, and the City acknowledges and agrees that any additional services thereby necessitated will result in additional fees payable by the City to MEI. MEI 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 MEI's services.
8. TASK ORDERS. MEI shall receive assignments for work under this Agreement through Task Orders authorized and provided by the City directly or through its City Administrator. The City shall compensate MEI only for work contained within the Task Orders. MEI shall not be obligated to perform any work or services unless such services are set forth in a Task Order executed by both parties. If MEI engages in work beyond the scope of a Task Order, the City shall not compensate MEI 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 Task.
  - (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.
9. AUTHORIZATION FOR TASK ORDERS. Requests for Engineer to engage in services shall be made by the Public Works Director, City Engineer, Finance Director, City Administrator and the City Commission. Upon receiving a request, Engineer shall then 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 \$150,000. Any Task Order exceeding \$150,000 of value must be approved by the West Fargo City Commission. Engineer shall not be compensated for any work not done pursuant to a duly approved and fully-executed Task Order. Task Orders 1, 2, and 3 are hereby incorporated into this Agreement.
10. PERSONNEL. All persons assigned by MEI to perform services as set forth in Task Orders issued under this Agreement shall be fully qualified to perform the work assigned to them. MEI 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 MEI in any given Task Order. MEI must endeavor to minimize turnover of personnel performing services under this Agreement. If the City is dissatisfied with any of MEI's personnel, the City reserves the right to require removal of those personnel from the Task Order. The City shall provide MEI with a written statement, including reasonable detail, outlining its reasons for desiring removal. Replacement personnel for the removed

person shall be fully qualified for the position. MEI shall endeavor to honor the City's request contingent upon having a fully qualified replacement under the employment of MEI.

11. PERSONNEL IDENTIFIED FOR SERVICE DELIVERY. Engineer agrees and acknowledges that the following specifically identified individuals shall be assigned the following roles for this Agreement (hereinafter "Key Personnel"):

<u>Individual</u>	<u>Position</u>	<u>Compensation Position<sup>1</sup>*</u>	<u>Hourly Rate<sup>1</sup>*</u>
Dustin Scott	City Engineer*		
Kevin Bucholz	City Liaison*		
Jay Sandvig	Building Code Inspector**		

Engineer shall use its Best Efforts to assure that Key Personnel are available to provide services to the Project and as points of contact for the City Administrator and General Counsel of the City. In the event that any of the Key Personnel are not available for the Project, Engineer shall notify the City Administrator of the City within ten (10) days of the Key Personnel's non-availability. Engineer shall provide the resumes of the individual(s) it is proposing to replace the non-available Key Personnel, and the City will review the resume and may approve the new Key Personnel. The City will act in Good Faith and in a reasonable manner when reviewing and approving new Key Personnel. In the event that the City determines that the new Key Personnel are not acceptable, Engineer will propose new Key Personnel.

12. SUBCONTRACTORS. MEI 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 MEI'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.
13. TERM. Unless terminated under Section 39, this Agreement shall remain in full force and effect for a period of approximately five (5) years from the Execution Date, through December 31, 2022. This Agreement shall take full force and effect on the Effective Date upon approval by the City Commission and execution by the City. Pursuant to Section 14 of this Agreement and upon expiration of the initial term, this Agreement may be renewed by mutual agreement of the parties.
14. EXTENSION OF TERM. This Agreement may be extended by written amendment or renewed as set forth in Section 13 of this Agreement. If this Agreement expires before the completion of a Task Order, the Agreement shall be deemed to have been extended until the completion of services under the applicable Task Order.

<sup>1</sup> Engineer to provide information.

\* When performing Task Order 1 services, Task Order 1 rates/fees shall apply.

\*\* When performing Task Order 3 services, Task Order 3 rates/fees shall apply.

15. COMPENSATION. For all services rendered by MEI, the City will pay MEI for the lump sum or based on the time spent by those Engineer team members working on the project and the hourly charging rates applicable to those Engineer team members, plus direct expenses to include, but not be limited to, fees associated with subcontract with non-Engineer-affiliated companies and outside services and reimbursable expenses. MEI shall attach a compensation rate schedule as Exhibit B to this Agreement which consists of compensation rates for the five (5) year term of this Agreement. Thereafter, the compensation rate schedule shall be submitted annually, on or before January 1, based on the calendar year it is submitted.

MEI shall also attach a reimbursable expenses schedule to this Agreement which consists of reimbursable expenses for the five (5) year term of this Agreement. Thereafter, the reimbursable expenses schedule shall be submitted annually, with the compensation rate schedule, based on the calendar year it is submitted. Travel expenses will be determined based on the North Dakota Department of Transportation's travel reimbursement policy.

The City will compensate MEI 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 MEI. Such labor will be billed to the City under the same billing terms applicable to MEI's employees.

The compensation is payable following the end of each month upon submission by MEI of a monthly invoice setting forth the services performed in that month on behalf of the City. Invoices shall be sent as required in Section 14 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 MEI 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. MEI 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. MEI 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 MEI beyond these limits. When any budget has been increased, MEI'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 MEI'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.

16. INVOICING AND PAYMENT.

A. MEI must submit invoices to the City on or before the fifteenth (15<sup>th</sup>) day of each month for all services provided and allowed expenses incurred during the preceding month. MEI'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. MEI must submit each original invoice to:

City of West Fargo  
Attn: City Administrator  
800 4<sup>th</sup> Avenue East, Suite 2  
West Fargo, North Dakota 58078

C. MEI's invoices must be detailed and precise. MEI'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. MEI's invoice must be printed on a printed bill head and signed by MEI's Representative or other authorized signatory.
- E. If any Engineer invoice contains a request for expense reimbursement, MEI must include copies of the corresponding invoices and receipts with that invoice.
- F. After the City receives MEI's invoice, the City will either process the invoice for payment or give MEI specific reasons, in writing within fifteen (15) business days, why part or all of the City's payment is being withheld and what actions MEI must take to receive the withheld amount.
- G. 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.
- H. 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, MEI must credit any payment in error from any payment that is due or that may become due to MEI under this Agreement.
- I. 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.
- J. If the City fails to make payment in full within thirty (30) days of the date due for any undisputed billing, MEI 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, MEI will have no liability to the City for delays or damages caused by the City because of such suspension.
- K. Without waiving any rights to recover payment for reimbursable taxes, fees, or other costs per the provisions of Paragraph 13 herein, MEI must pay in the first instance all fees, fines, taxes, or other costs of doing business related to the services.
17. RELATIONSHIP BETWEEN PARTIES. MEI 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. MEI shall be free to use such portion of MEI's entire time, energy, and skill during the course of this Agreement to meet its contractual obligation to the City. Neither MEI, nor its personnel, shall 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 shall not be financially responsible to MEI except for the payment of compensation specifically set forth in this Agreement, and shall 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 shall not be responsible for wage or salary withholding to the federal or any state government.

MEI shall endeavor to honor the City's request contingent upon having a fully qualified replacement under the employment of MEI.

If rejection of subcontractors affect MEI'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.

18. NON-EXCLUSIVITY. City and Engineer recognize and agree that Engineer is providing the services set forth in Task Order 1 and Task Order 3 at a reduced and discounted rate. In consideration for Engineer's reduced rates for Task Orders 1 and 3, Engineer will have the first opportunity to bid on proposed projects requiring engineering services including design, construction management/inspections, and project management. In order to qualify for this option, Engineer must provide evidence to City that it is qualified to perform the work. City reserves the right to request other engineering firms to perform the work if Engineer's fees are above market rates.
19. REPRESENTATIONS. MEI represents that the following statements are true:
  - A. MEI 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. MEI'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 Engineer 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 MEI'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 MEI's ability to perform under this Agreement.
  - E. MEI 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, MEI must not knowingly take any action, or omit to perform any act, that may result in a representation becoming untrue. MEI 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 MEI MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE IN CONNECTION WITH ITS SERVICES.

20. WORKING RELATIONSHIP. MEI's Representative shall be the individual(s) that will engage with the City Commission and the City's Representatives. MEI's Representative shall be identified on each Task Order. MEI shall work in close cooperation and coordinate with the City and City Administrator.
21. INDEPENDENT PROFESSIONAL JUDGMENT. Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by MEI in accordance with the independent professional judgment of each of its employees. MEI shall perform the services rendered in accordance with accepted principals and standard of care of its profession. MEI'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.
22. STANDARD OF CARE. The standard of care applicable to MEI'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. MEI will re-perform any services not meeting this standard without additional compensation.
23. 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 MEI.
24. ENGINEER'S PERSONNEL AT CONSTRUCTION SITE.
  - A. MEI and MEI'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 MEI's own personnel.
  - B. The presence of MEI'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). MEI 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 MEI's personnel, subcontractors, or subconsultants at a construction site whether as on-site representative or otherwise do not make MEI or MEI'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. MEI shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall MEI 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. MEI 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 MEI for the project.
- E. For each service or design performed or furnished, MEI shall be responsible only for those construction phase services that have been itemized and expressly required of MEI in the authorizing Task Order. With the exception of such expressly required services, MEI shall 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. MEI shall not be liable to the City for any construction phase engineering or professional services except for those services that are expressly required of MEI in the authorizing Task Order.

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

- A. MEI 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, MEI 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 MEI'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.

26. CONSTRUCTION PROGRESS PAYMENTS. Recommendations by MEI to the City for periodic construction progress payments to the construction contractor(s) will be based on MEI'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 MEI 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 MEI 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.

27. 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 MEI prepares, compiles, and furnishes information to be incorporated into the Record Drawings, MEI will be responsible for damages that are incurred by the City to the extent caused by any negligent errors or omissions by MEI in preparing, compiling, and furnishing such information. MEI is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.
28. ENGINEER'S INSURANCE. MEI shall maintain throughout this Agreement the following insurance:
- A. MEI shall 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 MEI's employees;
  - (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than MEI'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 MEI, 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 MEI'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 MEI pursuant to this Section will so provide);
- (4) Remain in effect at least until final payment and at all times thereafter when MEI 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) MEI 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 MEI's duties to defend, indemnify, and hold harmless the City and its officers, employees, agents, consultants, subcontractors, and representatives in accordance with Section 36;
- (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 MEI's insurance companies might have against the City;

- (8) Either in the policies or in endorsements, contain a provision that MEI's insolvency or bankruptcy will not release the insurers from payment under the policies, even when MEI's insolvency or bankruptcy prevents MEI 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 MEI'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 MEI'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) The Engineer's 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 MEI:
  - (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 MEI'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. The Engineer will ensure that any subcontractor purchases and maintains the same insurance policies and endorsements required of Engineer under the Contract

Documents, with the same conditions and terms required of Engineer and its insurers.

- E. If any required policy is written on a “claims made” form, MEI 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 MEI begins performing services, MEI must send the City certificates of insurance and any applicable endorsements attesting to the existence of coverage. The Engineer 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 MEI’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 MEI 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 MEI’s employees during the terms of this Agreement.
29. THIRD PARTY DESIGNERS. The City and MEI 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, MEI shall have no responsibility for the accuracy or sufficiency of documentation prepared by those independent design professionals. The Engineer 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, MEI shall be entitled to an equitable adjustment. In the event MEI 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 MEI liable in any manner for the duties of the City’s separately-retained design professionals.
30. OPEN RECORDS. The Engineer 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.
31. DATA FURNISHED BY THE CITY. The City will provide to MEI all data in the City’s possession relating to MEI’s services on a project. The Engineer may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the City.

32. 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 MEI's services or project construction.
33. TIMELY REVIEW. The City will examine MEI'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.
34. PROMPT NOTICE. The City will give prompt written notice to MEI whenever the City observes or becomes aware of any development that affects the scope or timing of MEI's services, or of any suspected or actual defect in the work of MEI or their third party designers or construction contractors.
35. ASBESTOS OR HAZARDOUS SUBSTANCES. If asbestos or hazardous substances in any form are encountered or suspected, MEI will stop its own work in the affected portions of a project to permit testing and evaluation. If asbestos is suspected, MEI 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, MEI 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 MEI assumes no risk and/or liability for a waste or hazardous waste site originated by other than MEI. Under no circumstances shall MEI 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.
36. CONTRACTOR INDEMNIFICATION AND CLAIMS.
  - A. The City agrees to include in all construction contracts the provisions of Section 21, MEI's Personnel at Construction Site, and provisions providing contractor indemnification of the City and MEI for contractor's negligence.
  - B. The City shall require construction contractor(s) to name the City, MEI, 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 MEI, MEI'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 MEI."

37. 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 MEI, MEI's officers, employees, affiliates, and subcontractors.
- C. The City is not responsible for the payment of deductibles owed under MEI'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 MEI'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 MEI and the construction contractor(s) (or the City), and their respective officers, employees, agents, affiliates, and subcontractors. The City will provide MEI a copy of such policy.
- E. The City reserves the right to enter into a program-wide insurance plan at its expense. The Engineer agrees to participate in such a program if named as an insured party and if commercially reasonable terms are available.

38. LITIGATION ASSISTANCE. Services required or requested of MEI 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.

39. INDEMNIFICATION. Under the scope of this Agreement, MEI 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 MEI, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by MEI 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 MEI's obligations to defend, indemnify, and hold harmless. The Engineer's obligations to defend will be free of any conflicts of interest, even if retention of separate legal counsel is necessary. The Engineer'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 MEI's insurance policy limits. The Engineer'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 MEI 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 MEI.

40. 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 MEI and MEI'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 MEI or MEI'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, two million dollars (\$2,000,000) per year for general engineering services as set forth in Task Order 1, and one million dollars (\$1,000,000) per year for building inspections as set forth in Task Order 3. Notwithstanding the foregoing, Engineer'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 MEI'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 MEI'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 MEI and not against any of MEI's individual employees, officers, shareholders, affiliated firms, or directors. The City knowingly waives all such claims against MEI's individual employees, officers, shareholders, directors in their individual capacity or any affiliated companies to MEI.

41. 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. The Engineer must give the City notice immediately if MEI 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 in Section 58.
- D. All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

42. 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 MEI's services, and proportionately, MEI's compensation, if:
  - (1) The City determines that having MEI provide services has become infeasible due to changes in applicable laws or regulations, or
  - (2) Expected or actual funding to compensate MEI 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, MEI 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 MEI 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, MEI 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 MEI for services other than those MEI satisfactorily performed, pursuant to industry standard, prior to the end date.
- (2) The Engineer must submit MEI'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, MEI 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 MEI's statutory or ethical duties. The Engineer must notify the City of any further services, prior to withdrawal or substitution, which MEI 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.

43. 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 MEI's retention by the City.

44. SUSPENSION, DELAY, OR INTERRUPTION OF WORK. The City may suspend, delay, or interrupt the services of MEI for the convenience of the City. In such event, MEI's contract price and schedule shall be equitably adjusted.

45. 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 Engineer: Moore Engineering, Inc.  
Attn: Dustin Scott  
925 10th Avenue East  
West Fargo, ND 58078-5211

If to City: City of West Fargo  
Attn: City Administrator  
800 4<sup>th</sup> 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.

46. 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.
47. NO THIRD PARTY BENEFICIARIES. This Agreement gives no rights or benefits to anyone other than the City and MEI and has no third-party beneficiaries.
48. CONSEQUENTIAL DAMAGES. To the maximum extent permitted by law, MEI and MEI'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 MEI against indirect liability or third-party proceedings, the City will indemnify MEI for any such damages.
49. 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 MEI is acting as a bailee and at no time assumes title to said items, substances, materials, or samples.
50. 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. The Engineer'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.
51. ACCESS TO ENGINEER'S ACCOUNTING RECORDS / AUDIT RIGHTS.
  - A. The Engineer must allow the City and its designees to review and audit MEI's financial documents and records relating to this Agreement. The Engineer 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 MEI'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 MEI a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to MEI at the completion of an audit.

- B. Within one hundred eighty (180) days after the date of the Notice of Audit Results, MEI 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, MEI may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the City. The Response will refer to and apply the language of this Agreement. The Engineer 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 MEI, MEI 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 MEI fails to repay the overpayment or reach an agreement with the City on a repayment schedule within the thirty (30) day period, MEI agrees that the City will deduct all or a portion of the overpayment from any funds then or thereafter payable by the City to MEI for this 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. The Engineer 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.
52. OWNERSHIP. Ownership of work product and inventions created by MEI shall be as follows:
- A. Pre-Existing Consultant Materials. The City acknowledges and agrees that in the performance of the services, MEI 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 MEI shall 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, MEI 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, MEI will utilize and develop customization, enhancements, improvements, modifications, and adaptations of and to the Pre-Existing Consultant Materials (the "Derivative Consultant Materials"). The Engineer shall retain all right, title, and interest, including intellectual property rights in the Derivative Consultant Materials. Subject to the terms and conditions of this Agreement, MEI 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, MEI 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 MEI shall 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 MEI 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 MEI 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 MEI, 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 MEI will be at the user's sole risk.
- G. City Material. As between the parties, the City is the exclusive owner of all material MEI 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, MEI 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. The Engineer must maintain MEI's records relating to services under this Agreement and MEI'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 MEI receives final payment under this Agreement; or
  - (2) The date when the City resolves with MEI the findings of any final audit.

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

53. 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 MEI, 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, MEI agrees to grant to and hold harmless the City an irrevocable license to the instruments of service, the City agrees to indemnify MEI and MEI'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 or a waiver of any available immunities or defenses.
54. 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 MEI 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.

55. FORCE MAJEURE. The Engineer is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of MEI. In any such event, MEI's contract price and schedule shall be equitably adjusted.
56. 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 MEI, including those for latent defects, which are not brought within six (6) years of substantial completion of the facility designed or final payment to MEI, whichever is earlier.

57. 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 MEI, 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.
58. NEGOTIATED AGREEMENT. This Agreement has been arrived at through negotiation between the parties.
59. 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.
60. 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.
61. DISPUTE RESOLUTION. The City and MEI 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 shall 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 shall share the mediator's fee and any filing fees equally. The non-binding mediation shall be held in the City, unless another location is mutually agreed upon. Agreements reached in mediation shall 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 shall be via formal claims filed in a court of competent jurisdiction.

62. CONTROLLING LAW AND VENUE. This Agreement, its interpretation and performance, and any other claims related to it shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Agreement shall be brought in a court of competent jurisdiction within the State of North Dakota.

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

*[Signatures appear on the following pages.]*





## TASK ORDER

This is Task Order No. 1  
consisting of 4 pages.

### Task Order 1

---

In accordance with Paragraph 8 of the Master Agreement for Professional Services, dated May 1, 2018 ("Agreement"), the City of West Fargo ("City") and Moore Engineering, Inc. ("Engineering Consultant") agree as follows:

#### 1. Background Data

- A. Effective Date of Task Order: May 1, 2018
- B. City: City of West Fargo
- C. Engineering Consultant: Moore Engineering, Inc.
- D. Specific Project (title): Engineering Services
- E. Specific Project (description): General Engineering Services and Consulting

#### 2. Services of Engineering Consultant

- A. The Engineering Consultant will act as the City Engineer on behalf of the City. Dustin Scott will act as the City Engineer. Dustin's primary office location will be located at the West Fargo City Hall and he will be reasonably available at City Hall during regular city office hours for convenience of the City and the general public served by the City. The designated representative located at Moore Engineering, Inc., will be Matt Welle.
- B. The specific services to be provided or furnished by the Engineering Consultant under this Task Order are:
  - 1. Regularly prepare for and attend the following city meetings:
    - a. City Commission (scheduled on first and third Monday of each month; 8 hours/month) Dustin Scott will attend and Matt Welle will be attend in his place if needed.
    - b. Planning & Zoning Commission (scheduled on second Tuesday of each month; 4 hours/month) Dustin Scott or Matt Welle will attend.
    - c. City Staff (scheduled weekly; includes Department Heads, DCC, Public Works; 20 hours/month) Dustin Scott and Matt Welle will regularly attend.
    - d. Other meetings as requested (4 hours/month)
      - 1) Includes preparation and presentation of engineering-related reports to the City Commission, other commissions, boards, committees and the public as requested.
  - 2. Serve as liaison for outside agencies. (approximately 20 hours/month estimated)
    - a. Attend and participate in professional group meetings (i.e., FM Metro COG).

- b. Upon authorization, act as City's representative in local, regional, state and federal engineering-related matters, and advise City regarding said matters.
- 3. Provide professional and technical guidance to the City Administrator, Public Works Director, and other City departments as outlined. (approximately 100 hours/month estimated)
  - a. Develop, implement and support the City's policies, goals, objectives and priorities in relation to public infrastructure maintenance and improvement projects. Coordinate the City's engineering service needs.
  - b. Provide technical assistance for communication with the general public including direct communication as deemed appropriate.
    - 1) Respond to difficult and sensitive public inquiries and complaints.
  - c. Identify opportunities for public improvements, including financial resources as they become available, and review with the City Administrator and City Commission.
  - d. Coordinate and maintain the City's Project Priority List.
  - e. Participate in initiating all capital improvement projects or programs, including defining the project scope, identifying financial resources, identifying internal and external stakeholders and developing the project objectives; recommend additional task/work orders as necessary for the development of capital improvement projects or programs.
  - f. Be knowledgeable about City Standards/Ordinances relating to streets and utilities improvement projects and maintenance, and advise Owner accordingly.
  - g. Recommend engineering policy, practices and standards relating to construction of public infrastructure.
  - h. Monitor changes in laws, regulations and technology, and recommend changes in the City's policies and/or procedures as required.
    - 1) Stay abreast of new trends and innovations in engineering, public works and other types of public services as they relate to the area of assignment.
    - 2) Research emerging products and enhancements and their applicability to City's needs.
  - i. Provide engineering expertise and guidance regarding other outside entities' local and regional projects that impact, or could potentially impact, the City.

### **3. Additional Services**

Additional Services that may be authorized or necessary under this Task Order are:

None.

### **4. City's Responsibilities**

City shall have those responsibilities set forth in the Agreement, subject to the following:

None.

### **5. Task Order Schedule**

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

- A. The services covered by this Task Order shall be provided on a continuous basis throughout the full term of the Agreement.

## **6. Payments to Engineering Consultant**

- A. City shall pay Engineering Consultant for services rendered under this Task Order as follows:
  - 1. City shall pay Engineering Consultant \$ 10,000 per month as a fixed flat rate for the services described in this Task Order No. 1. The total estimated hours for the tasks outlined is 156 hours/month which, if billed at hourly billing rates, would equate to over \$25,000/month.
  - 2. Services provided by Engineering Consultant to City outside of the scope of this Task Order shall be provided in a separate Task Order under the Master Agreement for Professional Services, dated May 1, 2018.
- B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

## **7. Consultants retained as of the Effective Date of the Task Order**

None.

## **8. Other Modifications to Agreement and Exhibits**

Insurance and Indemnification modification for this Task Order.

## **9. Attachments**

None.

## **10. Other Documents Incorporated by Reference**

None.

## **11. Terms and Conditions**

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

## **12. Termination**

This Task Order No. 1 may be terminated by City with 30 days' written notice to Engineering Consultant.

The Effective Date of this Task Order is May 1, 2018.

CITY: \_\_\_\_\_

ENGINEERING CONSULTANT: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Tina Fisk

Name: Dustin Scott

Title: City Administrator

Title: Sr. Project Manager and City Engineer

Address: 800 4th Ave E, West Fargo ND 58078

Address: 925 10<sup>th</sup> Ave East, West Fargo ND 58078

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

E-Mail Address: dscott@mooreengineeringinc.com

Phone: 701-433-5300

Phone: 701-282-4692

# TASK ORDER

This is Task Order No. 2  
consisting of 4 pages.

## Task Order 2

---

In accordance with Paragraph 8 of the Master Agreement for Professional Services, dated May 1, 2018 ("Agreement"), the City of West Fargo ("City") and Moore Engineering, Inc. ("Engineering Consultant") agree as follows:

### 1. Background Data

- A. Effective Date of Task Order: May 1, 2018
- B. City: City of West Fargo
- C. Engineering Consultant: Moore Engineering, Inc.
- D. Specific Project (title): Engineering Services
- E. Specific Project (description): Additional General Engineering Support Tasks

### 2. Services of Engineering Consultant

- A. The Engineering Consultant will act as the City Engineer on behalf of the Owner. The specific services to be provided or furnished by the Engineer under this Task Order are:
  - 1. Review proposed plats, drainage plans and lot plans (applies to plats not being completed by Moore Engineering).
    - a. Coordinate with Planning & Community Development Department in reviewing all proposed plats and drainage plans. This shall include an engineering review as well as review by a PLS.
    - b. File new plats with the county and ensure all other city departments receive a copy of the filed plat as needed.
    - c. Update drainage plans related to replats, changes due to constructed conditions, or other modifications to existing drainage plans.
    - d. Review lot plans for new residential homes and check final lot grades to verify consistency with the approved lot plan.
  - 2. Reallocate open assessment districts for replatted property.
    - a. At the direction of the City of West Fargo Finance Director, provide historical analysis, calculations and data for reallocation based on the original allocation of special assessments on properties that are being replatted.
  - 3. Provide GIS services as needed by the City.
    - a. Create and maintain general city GIS map documents as requested.
    - b. Manage GIS parcel data that is not otherwise managed by Cass County, and produce maps as requested.

- c. Manage survey data and any other GIS data as requested
4. Provide public relations services as needed.
  - a. Assist in the development of communications plans and the preparation of materials, exhibits, etc. to address upcoming and current projects, the CIP and impacts on the community resulting from private or other agency sponsored projects within the City upon request.
5. Provide design/plan review for permits (submitted by other consultants).
  - a. Review all civil site plans for ordinances and code compliance, based on the requirements set forth by the City.
6. Provide site construction observation services as requested.
  - a. Perform construction observation in the field during construction if the installation of city infrastructure is involved in private projects.
7. Project coordination for City projects contracted with other consultants.
8. Provide surveying services as requested.
9. Land Acquisition Services –as requested
  - a. Prepare any necessary legal descriptions, plats, or other land surveying documents for document preparation, assist in document preparation, assist in determining options for determining land value, 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. This task is intended to be used for land acquisition necessary for projects that are not associated with a separate task order.
10. Field services – as requested
  - a. Providing information to assist in the location of City owned utilities
  - b. Support public works staff in operation and maintenance of City infrastructure

### **3. Additional Services**

Additional Services that may be authorized or necessary under this Task Order are:

None.

### **4. City's Responsibilities**

City shall have those responsibilities set forth in the Agreement, subject to the following:

None.

### **5. Task Order Schedule**

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

- A. The services covered by this Task Order shall be provided on a continuous basis throughout the full term of the Agreement.

## **6. Payments to Engineer**

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

1. Compensation for services shall be on a Time and Material basis in accordance with the Special Hourly Rates shown in Exhibit 1 of this task order.

B. The terms of payment are set forth in Section 14 of the Agreement.

## **7. Consultants retained as of the Effective Date of the Task Order:**

None.

## **8. Other Modifications to Agreement and Exhibits:**

Insurance and Indemnification modifications for this TO.

## **9. Attachments:**

Exhibit 1, Special Hourly Rates

## **10. Other Documents Incorporated by Reference:**

None

## **11. Terms and Conditions**

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

## **12. Termination**

This Task Order No. 2 may be terminated by City with 30 days' written notice to Engineering Consultant.

**13. The Effective Date of this Task Order is May 1, 2018.**

CITY: \_\_\_\_\_

ENGINEERING CONSULTANT: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Tina Fisk

Name: Dustin Scott

Title: City Administrator

Title: Sr. Project Manager and City Engineer

Address: 800 4th Ave E, West Fargo ND 58078

Address: 925 10<sup>th</sup> Ave East, West Fargo ND 58078

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

E-Mail Address: dscott@mooreengineeringinc.com

Phone: 701-433-5300

Phone: 701-282-4692

# TASK ORDER

This is Task Order No. 3  
consisting of 4 pages.

## Task Order 3

---

In accordance with Paragraph 8 of the Master Agreement for Professional Services, dated May 1, 2018 ("Agreement"), the City of West Fargo ("City") and Moore Engineering, Inc. ("Engineering Consultant") agree as follows:

### 1. Background Data

- A. Effective Date of Task Order: May 1, 2018
- B. City: City of West Fargo
- C. Engineering Consultant: Moore Engineering, Inc.
- D. Specific Project (title): Building Code Administrator
- E. Specific Project (description): Building Inspection Services

### 2. Services of Engineering Consultant

- A. Engineering Consultant will be responsible for the following
  - 1. Providing computers and copiers for use in carrying out the duties set forth in this Agreement;
  - 2. Reviewing building permit applications and building plans;
  - 3. Ensuring the accuracy and completeness of all requirements, data, and other information furnished by the City or by the applicant to MEI pursuant to this Agreement;
  - 4. Conduct a general review of construction documents for compliance with zoning regulations (this review does not ensure compliance with the City's zoning code);
  - 5. Conducting building inspections, per code. The inspections will include:
    - 1. Footings and foundation
    - 2. Framing
    - 3. Insulation
    - 4. All HVAC appliances, gas lines & duct work
    - 5. Sewer and water service connections
    - 6. Driveways and approaches
  - 6. Reviewing basement flood proof certificates if necessary;
  - 7. Reviewing elevation certificates if necessary;
  - 8. City approaches and sidewalks, if necessary;
  - 9. Final inspection;
  - 10. Inspection of accessory structures such as decks, outbuildings;
  - 11. Inspection of appliance replacements requiring a permit;
  - 12. Providing the City with a report regarding work done;
  - 13. Creation of Certificate of Occupancy for the City to review and sign; and

14. Floodplain administration: review floodplain certification, review pre-construction basement certification, review floodplain development forms.

B. Exclusions. Engineering Consultant will not be responsible for the following:

1. Inspection of appliance replacements that do not require a permit; or
2. Electrical or plumbing inspections; or
3. Locating property boundaries as part of fence permits; fence permits provide ONLY informational guidelines.

C. Time for Review.

1. Engineering Consultant will review the plans for code compliance within five (5) business days of receipt. Any required survey or request for survey, including benchmark and set back stakes, will require a forty-eight (48) hour notice. All inspection requests will be addressed in a reasonable time frame, but not later than five (5) days following receipt of the request, unless extenuating circumstances exist

D. Inspections.

1. All inspection requests will be addressed by Engineering Consultant within a reasonable time from the receipt of the request, but not later than seven (7) days following receipt of the request, unless extenuating circumstances require otherwise.

### **3. Additional Services**

Additional Services that may be authorized or necessary under this Task Order are:

None.

### **4. City's Responsibilities**

City shall have those responsibilities set forth in the Agreement, subject to the following:

- A. Providing all items necessary for Engineering Consultant to carry out the duties set forth in this Agreement, including, but not limited to, approximately 1,637 square feet of office space, equipment, vehicle parking, desks, and computer software and maintenance;
- B. Providing necessary utilities;
- C. Collecting all fees associated with building permit applications
- D. Coordinating all building permit submissions and routing them to Engineering Consultant;
- E. Designating an individual to sign off on building permits after reviewed by Engineering Consultant;
- F. Provide for Engineering Consultant's right to enter property, City owned or otherwise, in order for Engineering Consultant to fulfill its services;
- G. Promptly notifying Engineering Consultant of any deficiencies or suspected deficiencies in Engineering Consultant's work or services of which the City becomes aware; upon notice to Engineering Consultant, Engineering Consultant will correct such deficiencies without additional compensation

except to the extent such action is attributable to deficiencies in City-furnished or applicant-furnished information;

- H. Notifying Engineering Consultant of any changes to the City's building code; and
- I. Signing off on Certificates of Occupancy created by Engineering Consultant.

## **5. Task Order Schedule**

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

- A. The services covered by this Task Order shall be provided on a continuous basis for one (1) year. This Task Order will automatically renew each year unless notice of termination, in accordance with the requirements set forth in the Agreement, is provided to the other party pursuant to the terms of the Agreement. The parties agree to meet annually to review the terms of this Task Order and make any necessary amendments.

## **6. Payments to Engineer**

- A. City shall pay Engineering Consultant for services rendered under this Task Order as follows:
  - 1. City shall pay Engineering Consultant \$ 87,500 per month as a fixed flat rate for the services described in this Task Order No. 3.
  - 2. Services provided by Engineering Consultant to City outside of the scope of this Task Order shall be provided in a separate Task Order under the Master Agreement for Professional Services, dated May 1, 2018.
- B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

## **7. Consultants retained as of the Effective Date of the Task Order:**

None.

## **8. Other Modifications to Agreement and Exhibits:**

Insurance and Indemnification modifications for this TO.

## **9. Attachments:**

None

## **10. Other Documents Incorporated by Reference:**

None

## **11. Terms and Conditions**

Execution of this Task Order by City and Engineering Consultant shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineering Consultant 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 is May 1, 2018.

CITY: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ENGINEERING CONSULTANT: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Tina Fisk

Title: City Administrator

Address: 800 4th Ave E, West Fargo ND 58078

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

Phone: 701-433-5300

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Dustin Scott

Title: Sr. Project Manager and City Engineer

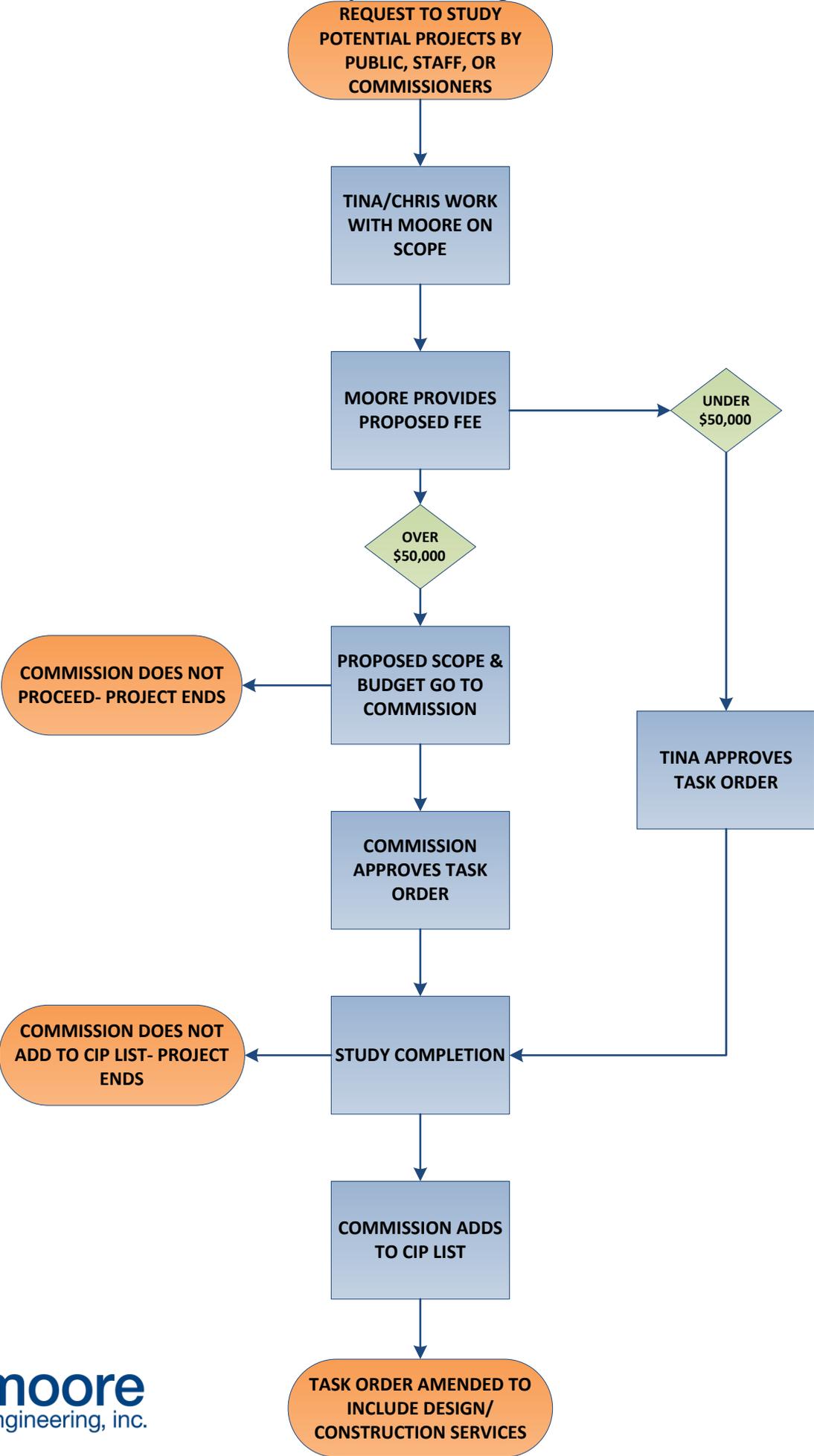
Address: 925 10<sup>th</sup> Ave East, West Fargo ND 58078

E-Mail Address: dscott@mooreengineeringinc.com

Phone: 701-282-4692

# Project Flow Chart

## City of West Fargo



**Exhibit A**  
**MOORE ENGINEERING, INC.**  
**West Fargo 2018 BILLING SCHEDULE - Task Order 2 (Max \$140)**  
Effective January 1, 2018

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2018. After December 31, 2018, Hourly Billing Rates will be escalated annually and direct expenses may be adjusted to meet market conditions.

	<u>Description</u>	<u>Billing Rate</u> <u>Per Hour</u>	
1	Principal	\$140.00	
2	Senior Project Manager	\$140.00	
3	Senior Professional Engineer	\$140.00	
4	Senior Technical Advisor	\$140.00	
5	Grants and Funding Specialist	\$140.00	
6	Project Manager	\$140.00	
7	Professional Engineer II	\$140.00	
8	Professional Engineer I	\$140.00	
9	Project Coordinator	\$140.00	
10	Municipal Administrative Specialist	\$140.00	
11	Project Engineer	\$135.00	
12	Senior Construction Engineer/Specialist	\$140.00	
13	Construction Engineer/Specialist II	\$130.00	
14	Construction Engineer/Specialist I	\$120.00	
15	Graduate Engineer	\$120.00	
16	Senior Engineering Designer	\$135.00	
17	Engineering Designer II	\$120.00	
18	Engineering Designer I	\$115.00	
19	Expert Witness	\$140.00	
20	Building Codes Administrator	\$120.00	
21	Project Manager Assistant	\$115.00	
22	Engineering Technician III	\$105.00	
23	Engineering Technician II	\$95.00	
24	Engineering Technician I	\$85.00	
25	CADD Technician III	\$110.00	
26	CADD Technician II	\$105.00	
27	CADD Technician I	\$100.00	
28	Communications Manager	\$140.00	
29	Communications Specialist	\$120.00	
30	GIS Manager	\$140.00	
31	GIS Developer	\$135.00	
32	GIS Programmer III	\$125.00	
33	GIS Programmer II	\$115.00	
34	GIS Programmer I	\$110.00	
35	GIS Technician III	\$110.00	
36	GIS Technician II	\$105.00	
37	GIS Technician I	\$100.00	
38	Senior Land Surveyor	\$140.00	
39	Land Surveyor	\$140.00	
40	Survey Manager	\$125.00	
41	Survey Crew Chief II	\$120.00	
42	Survey Crew Chief I	\$110.00	
43	Survey Technician III	\$85.00	
44	Survey Technician II	\$75.00	
45	Survey Technician I	\$70.00	
46	Human Resources Generalist	\$100.00	
47	Administrative Assistant	\$70.00	
Travel Expenses	Project Mileage	\$0.65	per mile
	Lodging	At Cost	
	Meals	At Cost	
	Per Diem	\$60.00	per day
Survey Supplies	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
	Motorized Offroad Vehicles	\$75.00	per day
Miscellaneous	Project Expenses	At Cost	
	Sub Consultants	At Cost	

## EXHIBIT B

### MOORE ENGINEERING, INC. 2018 BILLING SCHEDULE

Effective January 1, 2018

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2018.

Description		Billing Rate Per Hour			
		Task Order 1	Task Order 2	Task Order 3	Other Task Orders
		City Engineer	Engineering Support	Building Inspection	
1	Principal	N/A - flat fee	\$140.00	N/A - flat fee	\$200.00
2	Senior Project Manager	N/A - flat fee	\$140.00	N/A - flat fee	\$180.00
3	Senior Professional Engineer	N/A - flat fee	\$140.00	N/A - flat fee	\$175.00
4	Senior Technical Advisor	N/A - flat fee	\$140.00	N/A - flat fee	\$175.00
5	Project Manager	N/A - flat fee	\$140.00	N/A - flat fee	\$170.00
6	Professional Engineer II	N/A - flat fee	\$140.00	N/A - flat fee	\$165.00
7	Professional Engineer I	N/A - flat fee	\$140.00	N/A - flat fee	\$150.00
8	Project Coordinator	N/A - flat fee	\$140.00	N/A - flat fee	\$150.00
9	Project Engineer	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
10	Senior Construction Engineer/Specialist	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
11	Construction Engineer/Specialist II	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
12	Construction Engineer/Specialist I	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
13	Graduate Engineer	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
14	Senior Engineering Designer	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
15	Engineering Designer II	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
16	Engineering Designer I	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
17	Expert Witness	N/A - flat fee	\$140.00	N/A - flat fee	\$290.00
18	Building Codes Administrator	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
19	Project Manager Assistant	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
20	Engineering Technician III	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
21	Engineering Technician II	N/A - flat fee	\$95.00	N/A - flat fee	\$95.00
22	Engineering Technician I	N/A - flat fee	\$85.00	N/A - flat fee	\$85.00
23	CADD Technician III	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
24	CADD Technician II	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
25	CADD Technician I	N/A - flat fee	\$100.00	N/A - flat fee	\$100.00
26	Communications Manager	N/A - flat fee	\$140.00	N/A - flat fee	\$150.00
27	Communications Specialist	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
28	GIS Manager	N/A - flat fee	\$140.00	N/A - flat fee	\$150.00
29	GIS Developer	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
30	GIS Programmer III	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
31	GIS Programmer II	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
32	GIS Programmer I	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
33	GIS Technician III	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
34	GIS Technician II	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
35	GIS Technician I	N/A - flat fee	\$100.00	N/A - flat fee	\$100.00
36	Senior Land Surveyor	N/A - flat fee	\$140.00	N/A - flat fee	\$155.00
37	Land Surveyor	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
38	Survey Manager	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
39	Survey Crew Chief II	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
40	Survey Crew Chief I	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
41	Survey Technician III	N/A - flat fee	\$85.00	N/A - flat fee	\$85.00
42	Survey Technician II	N/A - flat fee	\$75.00	N/A - flat fee	\$75.00
43	Survey Technician I	N/A - flat fee	\$70.00	N/A - flat fee	\$70.00
44	Administrative Assistant	N/A - flat fee	\$70.00	N/A - flat fee	\$70.00

Travel Expenses	Project Mileage	\$0.65	per mile
	Lodging	N/A	
	Meals	N/A	
	Per Diem	N/A	per day
Survey Supplies	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
	Motorized Offroad Vehicles	\$75.00	per day
Miscellaneous	Project Expenses	At Cost	
	Sub Consultants	At Cost	

**MOORE ENGINEERING, INC.**

**2019 BILLING SCHEDULE**

Effective January 1, 2019

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2019.

	<u>Description</u>	Billing Rate Per Hour			
		Task Order 1	Task Order 2	Task Order 3	Task Order 4
		City Engineer	Engineering Support	Building Inspection	Other Task Orders
1	Principal	N/A - flat fee	\$145.00	N/A - flat fee	\$205.00
2	Senior Project Manager	N/A - flat fee	\$145.00	N/A - flat fee	\$185.00
3	Senior Professional Engineer	N/A - flat fee	\$145.00	N/A - flat fee	\$180.00
4	Senior Technical Advisor	N/A - flat fee	\$145.00	N/A - flat fee	\$180.00
5	Project Manager	N/A - flat fee	\$145.00	N/A - flat fee	\$175.00
6	Professional Engineer II	N/A - flat fee	\$145.00	N/A - flat fee	\$170.00
7	Professional Engineer I	N/A - flat fee	\$145.00	N/A - flat fee	\$155.00
8	Project Coordinator	N/A - flat fee	\$145.00	N/A - flat fee	\$155.00
9	Project Engineer	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
10	Senior Construction Engineer/Specialist	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
11	Construction Engineer/Specialist II	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
12	Construction Engineer/Specialist I	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
13	Graduate Engineer	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
14	Senior Engineering Designer	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
15	Engineering Designer II	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
16	Engineering Designer I	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
17	Expert Witness	N/A - flat fee	\$145.00	N/A - flat fee	\$295.00
18	Building Codes Administrator	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
19	Project Manager Assistant	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
20	Engineering Technician III	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
21	Engineering Technician II	N/A - flat fee	\$100.00	N/A - flat fee	\$100.00
22	Engineering Technician I	N/A - flat fee	\$90.00	N/A - flat fee	\$90.00
23	CADD Technician III	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
24	CADD Technician II	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
25	CADD Technician I	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
26	Communications Manager	N/A - flat fee	\$145.00	N/A - flat fee	\$155.00
27	Communications Specialist	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
28	GIS Manager	N/A - flat fee	\$145.00	N/A - flat fee	\$155.00
29	GIS Developer	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
30	GIS Programmer III	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
31	GIS Programmer II	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
32	GIS Programmer I	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
33	GIS Technician III	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
34	GIS Technician II	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
35	GIS Technician I	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
36	Senior Land Surveyor	N/A - flat fee	\$145.00	N/A - flat fee	\$160.00
37	Land Surveyor	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
38	Survey Manager	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
39	Survey Crew Chief II	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
40	Survey Crew Chief I	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
41	Survey Technician III	N/A - flat fee	\$90.00	N/A - flat fee	\$90.00
42	Survey Technician II	N/A - flat fee	\$75.00	N/A - flat fee	\$75.00
43	Survey Technician I	N/A - flat fee	\$70.00	N/A - flat fee	\$70.00
44	Administrative Assistant	N/A - flat fee	\$70.00	N/A - flat fee	\$70.00

Travel Expenses	Project Mileage	\$0.65	per mile
	Lodging	N/A	
Survey Supplies	Meals	N/A	
	Per Diem	N/A	per day
	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
Miscellaneous	Motorized Offroad Vehicles	\$75.00	per day
	Project Expenses	At Cost	
	Sub Consultants	At Cost	

**MOORE ENGINEERING, INC.**

**2020 BILLING SCHEDULE**

Effective January 1, 2020

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2020.

	<u>Description</u>	Billing Rate Per Hour			
		Task Order 1	Task Order 2	Task Order 3	Task Order 4
		City Engineer	Engineering Support	Building Inspection	Other Task Orders
1	Principal	N/A - flat fee	\$150.00	N/A - flat fee	\$210.00
2	Senior Project Manager	N/A - flat fee	\$150.00	N/A - flat fee	\$190.00
3	Senior Professional Engineer	N/A - flat fee	\$150.00	N/A - flat fee	\$185.00
4	Senior Technical Advisor	N/A - flat fee	\$150.00	N/A - flat fee	\$185.00
5	Project Manager	N/A - flat fee	\$150.00	N/A - flat fee	\$180.00
6	Professional Engineer II	N/A - flat fee	\$150.00	N/A - flat fee	\$175.00
7	Professional Engineer I	N/A - flat fee	\$150.00	N/A - flat fee	\$160.00
8	Project Coordinator	N/A - flat fee	\$150.00	N/A - flat fee	\$160.00
9	Project Engineer	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
10	Senior Construction Engineer/Specialist	N/A - flat fee	\$150.00	N/A - flat fee	\$150.00
11	Construction Engineer/Specialist II	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
12	Construction Engineer/Specialist I	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
13	Graduate Engineer	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
14	Senior Engineering Designer	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
15	Engineering Designer II	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
16	Engineering Designer I	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
17	Expert Witness	N/A - flat fee	\$150.00	N/A - flat fee	\$300.00
18	Building Codes Administrator	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
19	Project Manager Assistant	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
20	Engineering Technician III	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
21	Engineering Technician II	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
22	Engineering Technician I	N/A - flat fee	\$95.00	N/A - flat fee	\$95.00
23	CADD Technician III	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
24	CADD Technician II	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
25	CADD Technician I	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
26	Communications Manager	N/A - flat fee	\$150.00	N/A - flat fee	\$160.00
27	Communications Specialist	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
28	GIS Manager	N/A - flat fee	\$150.00	N/A - flat fee	\$160.00
29	GIS Developer	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
30	GIS Programmer III	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
31	GIS Programmer II	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
32	GIS Programmer I	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
33	GIS Technician III	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
34	GIS Technician II	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
35	GIS Technician I	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
36	Senior Land Surveyor	N/A - flat fee	\$150.00	N/A - flat fee	\$165.00
37	Land Surveyor	N/A - flat fee	\$150.00	N/A - flat fee	\$150.00
38	Survey Manager	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
39	Survey Crew Chief II	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
40	Survey Crew Chief I	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
41	Survey Technician III	N/A - flat fee	\$95.00	N/A - flat fee	\$95.00
42	Survey Technician II	N/A - flat fee	\$80.00	N/A - flat fee	\$80.00
43	Survey Technician I	N/A - flat fee	\$75.00	N/A - flat fee	\$75.00
44	Administrative Assistant	N/A - flat fee	\$75.00	N/A - flat fee	\$75.00

Travel Expenses	Project Mileage	\$0.65	per mile
	Lodging	N/A	
Survey Supplies	Meals	N/A	
	Per Diem	N/A	per day
	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
Miscellaneous	Motorized Offroad Vehicles	\$75.00	per day
	Project Expenses	At Cost	
	Sub Consultants	At Cost	

**MOORE ENGINEERING, INC.**

**2021 BILLING SCHEDULE**

Effective January 1, 2021

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2021.

	<u>Description</u>	Billing Rate Per Hour			
		Task Order 1	Task Order 2	Task Order 3	Task Order 4
		City Engineer	Engineering Support	Building Inspection	Other Task Orders
1	Principal	N/A - flat fee	\$155.00	N/A - flat fee	\$215.00
2	Senior Project Manager	N/A - flat fee	\$155.00	N/A - flat fee	\$195.00
3	Senior Professional Engineer	N/A - flat fee	\$155.00	N/A - flat fee	\$190.00
4	Senior Technical Advisor	N/A - flat fee	\$155.00	N/A - flat fee	\$190.00
5	Project Manager	N/A - flat fee	\$155.00	N/A - flat fee	\$185.00
6	Professional Engineer II	N/A - flat fee	\$155.00	N/A - flat fee	\$180.00
7	Professional Engineer I	N/A - flat fee	\$155.00	N/A - flat fee	\$165.00
8	Project Coordinator	N/A - flat fee	\$155.00	N/A - flat fee	\$165.00
9	Project Engineer	N/A - flat fee	\$150.00	N/A - flat fee	\$150.00
10	Senior Construction Engineer/Specialist	N/A - flat fee	\$155.00	N/A - flat fee	\$155.00
11	Construction Engineer/Specialist II	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
12	Construction Engineer/Specialist I	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
13	Graduate Engineer	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
14	Senior Engineering Designer	N/A - flat fee	\$150.00	N/A - flat fee	\$150.00
15	Engineering Designer II	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
16	Engineering Designer I	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
17	Expert Witness	N/A - flat fee	\$155.00	N/A - flat fee	\$305.00
18	Building Codes Administrator	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
19	Project Manager Assistant	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
20	Engineering Technician III	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
21	Engineering Technician II	N/A - flat fee	\$110.00	N/A - flat fee	\$110.00
22	Engineering Technician I	N/A - flat fee	\$100.00	N/A - flat fee	\$100.00
23	CADD Technician III	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
24	CADD Technician II	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
25	CADD Technician I	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
26	Communications Manager	N/A - flat fee	\$155.00	N/A - flat fee	\$165.00
27	Communications Specialist	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
28	GIS Manager	N/A - flat fee	\$155.00	N/A - flat fee	\$165.00
29	GIS Developer	N/A - flat fee	\$150.00	N/A - flat fee	\$150.00
30	GIS Programmer III	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
31	GIS Programmer II	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
32	GIS Programmer I	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
33	GIS Technician III	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
34	GIS Technician II	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
35	GIS Technician I	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
36	Senior Land Surveyor	N/A - flat fee	\$155.00	N/A - flat fee	\$170.00
37	Land Surveyor	N/A - flat fee	\$155.00	N/A - flat fee	\$155.00
38	Survey Manager	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
39	Survey Crew Chief II	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
40	Survey Crew Chief I	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
41	Survey Technician III	N/A - flat fee	\$100.00	N/A - flat fee	\$100.00
42	Survey Technician II	N/A - flat fee	\$85.00	N/A - flat fee	\$85.00
43	Survey Technician I	N/A - flat fee	\$80.00	N/A - flat fee	\$80.00
44	Administrative Assistant	N/A - flat fee	\$80.00	N/A - flat fee	\$80.00

Travel Expenses	Project Mileage	\$0.65	per mile
	Lodging	N/A	
	Meals	N/A	
Survey Supplies	Per Diem	N/A	per day
	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
Miscellaneous	Motorized Offroad Vehicles	\$75.00	per day
	Project Expenses	At Cost	
	Sub Consultants	At Cost	

**MOORE ENGINEERING, INC.**

**2022 BILLING SCHEDULE**

Effective January 1, 2022

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2022.

	Description	Billing Rate Per Hour			
		Task Order 1	Task Order 2	Task Order 3	Task Order 4
		City Engineer	Engineering Support	Building Inspection	Other Task Orders
1	Principal	N/A - flat fee	\$160.00	N/A - flat fee	\$220.00
2	Senior Project Manager	N/A - flat fee	\$160.00	N/A - flat fee	\$200.00
3	Senior Professional Engineer	N/A - flat fee	\$160.00	N/A - flat fee	\$195.00
4	Senior Technical Advisor	N/A - flat fee	\$160.00	N/A - flat fee	\$195.00
5	Project Manager	N/A - flat fee	\$160.00	N/A - flat fee	\$190.00
6	Professional Engineer II	N/A - flat fee	\$160.00	N/A - flat fee	\$185.00
7	Professional Engineer I	N/A - flat fee	\$160.00	N/A - flat fee	\$170.00
8	Project Coordinator	N/A - flat fee	\$160.00	N/A - flat fee	\$170.00
9	Project Engineer	N/A - flat fee	\$155.00	N/A - flat fee	\$155.00
10	Senior Construction Engineer/Specialist	N/A - flat fee	\$160.00	N/A - flat fee	\$160.00
11	Construction Engineer/Specialist II	N/A - flat fee	\$150.00	N/A - flat fee	\$150.00
12	Construction Engineer/Specialist I	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
13	Graduate Engineer	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
14	Senior Engineering Designer	N/A - flat fee	\$155.00	N/A - flat fee	\$155.00
15	Engineering Designer II	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
16	Engineering Designer I	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
17	Expert Witness	N/A - flat fee	\$160.00	N/A - flat fee	\$310.00
18	Building Codes Administrator	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
19	Project Manager Assistant	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
20	Engineering Technician III	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
21	Engineering Technician II	N/A - flat fee	\$115.00	N/A - flat fee	\$115.00
22	Engineering Technician I	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
23	CADD Technician III	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
24	CADD Technician II	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
25	CADD Technician I	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
26	Communications Manager	N/A - flat fee	\$160.00	N/A - flat fee	\$170.00
27	Communications Specialist	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
28	GIS Manager	N/A - flat fee	\$160.00	N/A - flat fee	\$170.00
29	GIS Developer	N/A - flat fee	\$155.00	N/A - flat fee	\$155.00
30	GIS Programmer III	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
31	GIS Programmer II	N/A - flat fee	\$135.00	N/A - flat fee	\$135.00
32	GIS Programmer I	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
33	GIS Technician III	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
34	GIS Technician II	N/A - flat fee	\$125.00	N/A - flat fee	\$125.00
35	GIS Technician I	N/A - flat fee	\$120.00	N/A - flat fee	\$120.00
36	Senior Land Surveyor	N/A - flat fee	\$160.00	N/A - flat fee	\$175.00
37	Land Surveyor	N/A - flat fee	\$160.00	N/A - flat fee	\$160.00
38	Survey Manager	N/A - flat fee	\$145.00	N/A - flat fee	\$145.00
39	Survey Crew Chief II	N/A - flat fee	\$140.00	N/A - flat fee	\$140.00
40	Survey Crew Chief I	N/A - flat fee	\$130.00	N/A - flat fee	\$130.00
41	Survey Technician III	N/A - flat fee	\$105.00	N/A - flat fee	\$105.00
42	Survey Technician II	N/A - flat fee	\$90.00	N/A - flat fee	\$90.00
43	Survey Technician I	N/A - flat fee	\$85.00	N/A - flat fee	\$85.00
44	Administrative Assistant	N/A - flat fee	\$85.00	N/A - flat fee	\$85.00

Travel Expenses	Project Mileage	\$0.65	per mile
	Lodging	N/A	
Survey Supplies	Meals	N/A	
	Per Diem	N/A	per day
	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
Miscellaneous	Motorized Offroad Vehicles	\$75.00	per day
	Project Expenses	At Cost	
	Sub Consultants	At Cost	



Regular Agenda Item #5

Offices in West Fargo, Hillsboro, Casselton and  
Page, North Dakota, and Barnesville, Minnesota

August 24, 2018

Manfred R. Ohnstad 1914 - 1987  
Bradley J. Burgum 1952 - 2010  
Daniel R. Twichell 1927 - 2013  
Brian D. Neugebauer 1951 - 2014

Eric Merhiy  
KPH, Inc.  
9530 39<sup>th</sup> Street S  
Fargo, ND 58104

Lukas D. Andrud\*  
Katie J. Bertsch\*  
Brent T. Boeddeker\*  
Calley B. Campbell  
Andrew D. Cook\*  
Lukas W. Croaker\*  
Susan L. Ellison\*  
Sean M. Fredricks\*  
Jacob L. Geiermann\*  
Alexander B. Gruchala  
Stephen R. Hanson II\*  
Robert G. Hoy\*  
John A. Juelson  
Keven J. Kercher\*  
Tyler J. Leverington\*  
Delvin J. Losing\*  
Marshall W. McCullough\*  
Christopher M. McShane\*  
Elle M. Molbert  
Robert E. Rosenvold\*\*  
John T. Shockley\*  
Michael P. Sly\*  
Sara K. Sorenson\*  
Michel W. Stefonowicz  
Jeffrey R. Strom  
David L. Wanner  
Sarah M. Wear\*

RE: Infrastructure Replacement District No. 3002

Dear Mr. Merhiy:

Thank you for your company's recent bid for Infrastructure Replacement District No. 3002 ("District 3002"), related to improvements for Pioneer Alley Utility Improvements. As you may know the City of West Fargo (the "City") recently enacted Sections 1-0107 and 1-0108 of the Revised Ordinances of 1990 of the City of West Fargo relating to withholding approvals because of delinquencies or defaults. A copy of the ordinance is attached for your review as Exhibit 1. Pursuant to Section 1-0107 and 1-0108, prior to awarding a contract or granting an approval by the City, the City's staff and engineers now review the current status of all contracts, taxes, and other conditions of an individual or entity who is making a request to enter into a contract with the City. Upon review of your firm's historical activity relating to prior contracts and ongoing contracts, the following issues were discovered and must be addressed:

- (1) As you are aware, KPH is currently in default for its failure to honor its bid relating to Sewer Improvement Project No. 1308 ("District 1308"). On April 2, 2018, KPH was awarded the bid/contract for Sewer Improvement Project No. 1310 ("District 1310") and KPH failed to return an accepted contract and notified the City that it was unable to honor its bid for District 1310. Notice of Default was sent to your company and your bid bond company, Western Surety Company, on June 5, 2018.
- (2) Furthermore, as you are aware, KPH has failed to achieve satisfactory final completion of the work for which it was contracted to undertake in Infrastructure Replacement District 3001 ("District 3001") after having requested and been given time extensions. As you are aware, corrective work consisting of those items, set forth in Exhibit 2, is ongoing, which shall be completed one (1) year from the date of Substantial Completion or final payment, as applicable per the project contract.

Both items (1) and (2) are unacceptable and pursuant to Section 1-0107 of the City of West Fargo Ordinances your firm is in default of its contractual obligations to the City. As a result, the City cannot award you the bid for District 3002, **unless**

\*Also licensed in Minnesota

^ Of counsel

**and until** you can provide the West Fargo City Commission with sufficient safeguards regarding items (1) and (2) that demonstrate your company's commitment to take corrective action regarding District 1308 to remedy the harm incurred by the City. You must provide assurance to the City of West Fargo that items (1) and (2) are not going to occur in the future, should the City Commission choose to waive the requirements of Section 1-0107 of the City of West Fargo Ordinances by invoking Section 1-0108, specifically:

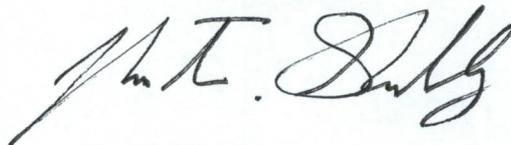
- (a) What safeguards or assurances can KPH provide to the City to demonstrate that it will honor its recent bid for District No. 3002, given its historical failure to honor its bid for District 1308? The City would consider additional security deposits by KPH to assure that it will honor its bid for district 3002 and/or if KPH takes corrective action regarding District 1308, including but not limited to, satisfying the payout of its bid bond for District 1308.
- (b) What safeguards or assurances can KPH provide to the West Fargo City Commission to demonstrate that it will timely complete the work in District 3001, free from defects and without the requirement of additional corrective work, given KPH's historical failure to complete work in a timely manner and acceptable condition regarding District 3001?

The City Commission will provide you an opportunity to respond to requests (a) and (b) at its meeting on September 4, 2018, with evidence and tangible, robust solutions to correct KPH's historical failures. Please note that it is KPH's burden to demonstrate to the City Commission's satisfaction that it can provide sufficient safeguards to assure that items (1) and (2) do not occur in the future. Please note that if KPH chooses not to provide evidence and/or proposed safeguards to the City Commission on September 4, 2018, it will be deemed a waiver of KPH's ability to seek relief under Section 1-0108 of the City of West Fargo Ordinances, and KPH will not be awarded the bid for District 3002.

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

Sincerely,

OHNSTAD TWICHELL, P.C.



John T. Shockley

:ajm  
Encl  
cc:

Dustin Scott, City Engineer  
Matt Marshall, Economic Development & Community Services Director  
West Fargo Board of City Commissioners

## EXHIBIT 1

### ORDINANCE NO. 1120

AN ORDINANCE TO CREATE AND ENACT SECTIONS 1-0107 AND 1-0108 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO WITHHOLDING APPROVALS BECAUSE OF DELINQUENCIES OR DEFAULTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, NORTH DAKOTA:

SECTION 1. Sections 1-0107 and 1-0108 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, are hereby created and enacted to read as follows:

1-0107. **REQUIREMENTS FOR CITY APPROVALS.** A license, permit, or other City approval or authorization of any kind may be granted only to an applicant who:

1. has complied with all relevant statutory, charter and ordinance requirements;
2. has paid all fees, charges, taxes, special assessments and other debts or obligations that are due from the applicant and payable to the City regarding any matter; and
3. is in compliance with all ordinance requirements and attached conditions regarding other City approvals that have been granted to the applicant for any matter.

1-0108. **REQUIREMENTS FOR CITY APPROVALS - EXCEPTIONS.** The requirements of Section 1-0107(2) and (3) may be waived by the City Commission in the following circumstances:

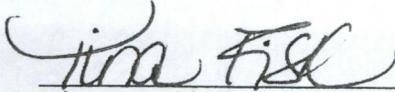
1. the applicant has provided sufficient safeguards to assure payment of debts or compliance with City requirements within a reasonable time after the City approval; or
2. enforcement of the requirements would result in a significant hardship to the applicant through no fault of his/her own or would result in an otherwise unfair situation.

SECTION 2. Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.



\_\_\_\_\_  
President of Board of City  
Commissioners of the City of  
West Fargo, North Dakota

ATTEST:



\_\_\_\_\_  
City Auditor

Date of First Reading: April 16, 2018

Date of Second Reading: ~~May~~ 21, 2018

Date of Publication: June 11, 2018

## EXHIBIT 2



## Punchlist Items Form

Form: RPR4-7  
Revised: 4-8-13

To: KPH, Inc.

CC: City of West Fargo

From: Moore Engineering, Inc.

Date: 05/22/18

RE: Infrastructure Replacement District No. 3001

Project Number: 19548

### REMAINING WORK UNDER CONTRACT

- Provide black single gang bank at festoon opening in poles.
- Repair LU #12 luminaire which is not operational.
- Install permanent striping.
- Install decorative colored concrete in the NE & NW corners of 5<sup>th</sup> St intersection as indicated on sheet C-212.
- Install sign for lift station.

### CLEANUP ITEMS

- Clean hydromulch off all hydrants, utility pedestals, buildings, and other exposed structures.
- Remove all utility locate flags after their use is no longer required.
- Restore Brookwood gravel parking lot, 6<sup>th</sup> St E and adjacent gravel lot to pre-construction conditions. Install additional gravel as necessary to achieve pre-construction drainage.
- Cleanly saw broken tree branch at Sta 6+80, RT. Coordinate with City of West Fargo Forestry department, Chad Zander – 701-433-5403.

### CORRECTIVE WORK

- Adjust LU #14 pole to plumb.
- Replace damaged LU #4.
- Patch interior coating on S9.
- Repair east flare of lift station driveway.
- Replace west half of the east post office driveway.
- Route and seal uncontrolled cracking at CB10.
- Cleanly saw pipe and install flexible marker for Wyum realty sump pump drainage pipe.
- Repair north driveway flare for Wyum realty.
- Route and seal uncontrolled cracking locations marked with green paint.
- Grout inlet pipe connections on M7.
- Grout inlet pipe connections on M12.
- Remove bolts from floating casting on S8.
- Install concrete patch over exposed wire mesh in M6.

- Locate anode leader wire and connect to trace wire access box – 525 1<sup>st</sup> Ave E.
- Remove floating casting bolt assembly from floor of S7.
- Midway Office Park trace wire access box – remove anode leader wire and sanitary sewer trace wire from water service access box; install separate access box for sanitary sewer service.
- Replace curb box at Sta 17+00 – unable to access curb stop.
- Locate trace wire and anode wire; connect to trace wire access box at Sta 18+75.
- Connect trace wire access box for Brookwood.
- Install new top for curb boxes for Border town and Brookwood – unable to remove cap.
- Install asphalt in gaps between concrete driveways and asphalt tie-ins.
- Expose M2 casting.
- Expose gate valve on 1<sup>st</sup> Ave E at approx. Sta. 1+50.
- Repair all mechanical damage to sidewalk.
- Fine grade topsoil behind sidewalks to provide a smooth transition to existing topsoil at property lines.
- Repair damaged curb by EX-M54 on 4<sup>th</sup> St.
- Repair all uncontrolled cracking around catch basins.
- Grade boulevards to provide a smooth uniform surface from property line to back of curb in accordance with 329119 3.4
- Reseed boulevards in accordance with 329219 3.3E

**NOTES**

- 1) *All Items listed under "Remaining Work under Contract" and "Cleanup Work" and shall be completed to establish the date the project is ready for Final Payment.*
- 2) *A plan for correction shall be submitted to the Engineer for review and approval for all items listed under "Corrective Work", prior to the work being corrected.*

**THIS IS NOT A FINAL PUNCHLIST**

**NOTIFY MOORE ENGINEERING WHEN YOU SCHEDULE THE ABOVE**

**CALL: Dylan 701-360-3649**

Agenda # 6  
Agenda Code Regular  
Project # 20289

**AGENDA ITEM DESCRIPTION**  
**CITY COMMISSION**  
**WEST FARGO, NORTH DAKOTA**

\*\*\*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: Dustin Scott
  
2. PHONE NO. 282-4692 DATE: September 4, 2018
  
3. PLEASE BRIEFLY DESCRIBE YOUR REQUEST: \_\_\_\_\_  
Review bid tab for Infrastructure Replacement District No. 3002  
\_\_\_\_\_  
\_\_\_\_\_
  
4. SITE ADDRESS OR LEGAL DESCRIPTION (if applicable):  
Pioneer Place Alley Utility Improvements  
\_\_\_\_\_
  
5. ACTION BEING REQUESTED FROM CITY COMMISSION: \_\_\_\_\_  
Award contract for Infrastructure Replacement District No. 3002  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



925 10th Avenue East  
West Fargo, ND 58078

P: 701.282.4692  
F: 701.282.4530



August 30, 2018

Board of Commissioners  
800 4th Avenue East  
West Fargo ND 58078

Re: Infrastructure Replacement District No. 3002  
Pioneer Place Alley Utility Improvements  
West Fargo, ND

Dear Commissioners:

Attached is the bid tab for your review of the above referenced project.

I hereby recommend award of contract to either of the following contractors. The award should be dependent on the response of KPH, Inc. to the City Commission in reply to the letter recently sent to them by the City Attorney.

1) KPH, Inc. for their Base Bid + Alternate 1 Bid of \$174,598.00 received on August 9, 2018.

OR

2) Dirt Dynamics, LLC for their Base Bid + Alternate 1 Bid of \$184,690.40 received on August 9, 2018.

Our Engineer's Opinion of Probable Cost with the Engineer's Report was \$262,415.50. Our final engineer's estimate was \$175,000.00.

If the contract is awarded by the Commission, please sign, date, and return the applicable Notice of Award.

Sincerely,

Hugh Velt, PE  
Project Engineer

Infrastructure Replacement District No. 3002  
 Pioneer Place Alley Utility Improvements  
 West Fargo ND  
 Project No. 20289  
 Bid Date: August 9, 2018

KPH, Inc.  
 9530 39th St S  
 Fargo, ND 58104

Dirt Dynamics, LLC  
 4206 3rd Ave N  
 Fargo, ND 58102

Dakota Underground Company  
 4001 15th Ave NW  
 Fargo, ND 58102

BID ITEM NO. & DESCRIPTION	UNIT	ESTIMATED QUANTITY	BID UNIT PRICE	BID PRICE	BID UNIT PRICE	BID PRICE	BID UNIT PRICE	BID PRICE
<b>Base Bid</b>								
1. 202.0114 Removal Of Concrete Pavement	SY	25	\$1.00	\$25.00	\$10.00	\$250.00	\$20.00	\$500.00
2. 202.0130 Removal Of Curb & Gutter	LF	1,370	\$1.00	\$1,370.00	\$8.00	\$10,960.00	\$5.00	\$6,850.00
3. 202.0132 Removal Of Bituminous Surfacing	SY	1,030	\$1.00	\$1,030.00	\$10.00	\$10,300.00	\$15.00	\$15,450.00
4. 202.0174 Removal Of Pipe All Types And Sizes	LF	833	\$10.00	\$8,330.00	\$6.00	\$4,998.00	\$25.00	\$20,825.00
5. 202.0210 Removal Of Manholes	EA	2	\$500.00	\$1,000.00	\$500.00	\$1,000.00	\$1,500.00	\$3,000.00
6. 202.0230 Removal Of Inlets	EA	1	\$500.00	\$500.00	\$500.00	\$500.00	\$1,000.00	\$1,000.00
7. 265.0100 Stabilized Construction Access	EA	1	\$500.00	\$500.00	\$1,500.00	\$1,500.00	\$1,000.00	\$1,000.00
8. 302.0120 Aggregate Base Course CI 5	TON	200	\$23.00	\$4,600.00	\$22.00	\$4,400.00	\$25.00	\$5,000.00
9. 401.0050 Tack Coat	GAL	3	\$10.00	\$30.00	\$6.00	\$18.00	\$20.00	\$60.00
10. 430.0042 Superpave FAA 42	TON	17	\$250.00	\$4,250.00	\$310.00	\$5,270.00	\$300.00	\$5,100.00
11. 704.1100 Traffic Control	LSUM	1	\$2,000.00	\$2,000.00	\$1,250.00	\$1,250.00	\$2,500.00	\$2,500.00
12. 714.0210 Pipe Conc Reinf 15In CI III-Storm Drain	LF	31	\$73.00	\$2,263.00	\$42.00	\$1,302.00	\$70.00	\$2,170.00
13. 714.0315 Pipe Conc Reinf 18In CI III-Storm Drain	LF	161	\$80.00	\$12,880.00	\$45.00	\$7,245.00	\$80.00	\$12,880.00
14. 722.0100 Manhole 48In	EA	2	\$2,600.00	\$5,200.00	\$2,600.00	\$5,200.00	\$4,500.00	\$9,000.00
15. 722.3295 Abandon Storm Sewer Manhole	EA	1	\$1,150.00	\$1,150.00	\$750.00	\$750.00	\$1,500.00	\$1,500.00
16. 722.3510 Inlet-Type 2	EA	2	\$2,400.00	\$4,800.00	\$2,400.00	\$4,800.00	\$3,600.00	\$7,200.00
17. 744.0050 Insulation Board	CF	25	\$8.00	\$200.00	\$4.00	\$100.00	\$5.00	\$125.00
18. 748.0140 Curb & Gutter-Type I	LF	20	\$40.00	\$800.00	\$40.00	\$800.00	\$40.00	\$800.00
19. 990.0230 Temporary Access	LSUM	1	\$1,000.00	\$1,000.00	\$1,500.00	\$1,500.00	\$5,000.00	\$5,000.00
20. 012000 Private Service Contingency Allowance	ALLOW	1	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00
21. 150000 Storm Water Management	LSUM	1	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$2,500.00	\$2,500.00
22. 330130.11 Televis - Mainline	LF	684	\$2.50	\$1,710.00	\$1.60	\$1,094.40	\$2.50	\$1,710.00
23. 330561 Sanitary Sewer - Connect to Existing Manhole	EA	1	\$1,250.00	\$1,250.00	\$500.00	\$500.00	\$7,000.00	\$7,000.00
24. 330561 Sanitary Sewer Manhole	EA	2	\$4,100.00	\$8,200.00	\$4,000.00	\$8,000.00	\$6,600.00	\$13,200.00
25. 333111 Sanitary Sewer - 8"	LF	684	\$40.00	\$27,360.00	\$47.00	\$32,148.00	\$70.00	\$47,880.00
26. 333111 Sanitary Sewer Service - 6"	LF	159	\$50.00	\$7,950.00	\$45.00	\$7,155.00	\$55.00	\$8,745.00

Infrastructure Replacement District No. 3002  
 Pioneer Place Alley Utility Improvements  
 West Fargo ND  
 Project No. 20289  
 Bid Date: August 9, 2018

KPH, Inc.  
 9530 39th St S  
 Fargo, ND 58104

Dirt Dynamics, LLC  
 4206 3rd Ave N  
 Fargo, ND 58102

Dakota Underground Company  
 4001 15th Ave NW  
 Fargo, ND 58102

BID ITEM NO. & DESCRIPTION	UNIT	ESTIMATED QUANTITY	BID UNIT PRICE	BID PRICE	BID UNIT PRICE	BID PRICE	BID UNIT PRICE	BID PRICE
27. 333111 Sanitary Sewer Service Connection	EA	14	\$1,000.00	\$14,000.00	\$900.00	\$12,600.00	\$1,500.00	\$21,000.00
<b>Total Base Bid</b>				<b>\$163,398.00</b>		<b>\$174,640.40</b>		<b>\$251,995.00</b>
<b><u>Alternate 1 - 201 Morrison Street Sanitary Service</u></b>								
1. 202.0114 Removal Of Concrete Pavement	SY	30	\$15.00	\$450.00	\$10.00	\$300.00	\$30.00	\$900.00
2. 251.00001 Seeding Class III	SY	125	\$10.00	\$1,250.00	\$8.00	\$1,000.00	\$7.00	\$875.00
3. 750.1016 Driveway Concrete 6In Reinforced	SY	30	\$50.00	\$1,500.00	\$85.00	\$2,550.00	\$80.00	\$2,400.00
4. 333111 Sanitary Sewer Service - 6"	LF	100	\$50.00	\$5,000.00	\$45.00	\$4,500.00	\$95.00	\$9,500.00
5. 333111 Sanitary Sewer Service Connection	EA	1	\$1,000.00	\$1,000.00	\$900.00	\$900.00	\$2,000.00	\$2,000.00
6. 333111 Sanitary Sewer Cleanout	EA	2	\$1,000.00	\$2,000.00	\$400.00	\$800.00	\$1,000.00	\$2,000.00
<b>Total Alternate 1</b>				<b>\$11,200.00</b>		<b>\$10,050.00</b>		<b>\$17,675.00</b>
<b>TOTAL OF ALL BID PRICES</b>				<b>\$174,598.00</b>		<b>\$184,690.40</b>		<b>\$269,670.00</b>

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## NOTICE OF AWARD

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Date of Issuance: September 4, 2018

Owner: City of West Fargo

Owner's Contract No.:

Engineer: Moore Engineering, Inc.

Engineer's Project No.: 20289

Project: Pioneer Place Alley Utility Improvements

Contract Name: Infrastructure Replacement District No.  
3002

Bidder: KPH, Inc.

Bidder's Address: 9530 39th St S, Fargo, ND 58104

### TO BIDDER:

You are notified that Owner has accepted your Bid dated August 9, 2018 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for: Infrastructure Replacement District No. 3002.

The Contract Price of the awarded Contract is: \$174,598.00

3 unexecuted counterparts of the Agreement accompany this Notice of Award, and three copies of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

3 sets of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner 3 counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*e.g., performance and payment bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

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Owner: City of West Fargo

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Authorized Signature

By: Bernie L. Dardis

Title: President of the Board of City Commissioners

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Copy: Engineer

## NOTICE OF AWARD

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Date of Issuance: September 4, 2018

Owner: City of West Fargo

Owner's Contract No.:

Engineer: Moore Engineering, Inc.

Engineer's Project No.: 20289

Project: Pioneer Place Alley Utility Improvements

Contract Name: Infrastructure Replacement District No.  
3002

Bidder: Dirt Dynamics, LLC

Bidder's Address: 4206 3rd Ave N, Fargo, ND 58102

### TO BIDDER:

You are notified that Owner has accepted your Bid dated August 9, 2018 for the above Contract, and that you are the Successful Bidder and are awarded a Contract for: Infrastructure Replacement District No. 3002.

The Contract Price of the awarded Contract is: \$184,690.40

3 unexecuted counterparts of the Agreement accompany this Notice of Award, and three copies of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

3 sets of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 10 days of the date of receipt of this Notice of Award:

1. Deliver to Owner 3 counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security [*e.g., performance and payment bonds*] and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

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Owner: City of West Fargo

---

Authorized Signature

By: Bernie L. Dardis

Title: President of the Board of City Commissioners

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Copy: Engineer