

FARGO CITY COMMISSION AGENDA
Monday, March 24, 2008 - 5:00 P.M.

CITY COMMISSION MEETINGS ARE BROADCAST LIVE ON TV FARGO (Channel 99). They are rebroadcast at 7 p.m. each Thursday and again at 8:00 a.m. each Saturday following the meeting and are also included in our video archive at www.cityoffargo.com/commission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, March 10, 2008).

* * * Consent Agenda - Approve the Following * * *

- a. 2nd reading, waive reading and final adoption of the following Ordinances; 1st reading, 3/10/08:
 - (1) Relating to Pensions for City Employees Other Than Those in the Police and Fire Pension Systems.
 - (2) Rezoning Certain Parcels of Land Lying in Autumn Fields Addition.
 - (3) Rezoning Certain Parcels of Land Lying in Woodruff's Addition and Rupert's Subdivision - Historic Overlay District.
- b. Receive and file Ordinance Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages (relating to extended stay hotels or motels).
- c. Receive and file Ordinance Relating to Licensing of Re-Roofing Contractors.
- d. Resolution Authorizing Call and Redemption of Lodging Tax Revenue Bonds of 1992.
- e. Resolution Authorizing Call and Redemption of the Refunding Improvement Bond of 1998, Series B.
- f. Precinct inspectors for the June 10, 2008 election.
- g. PEC recommendations.
- h. Memorandum of Understanding with Fargo Catholic Schools Network relative to School Resource Officers.
- i. Employment contract with Greg Anderson as Project Coordinator for the Red River Regional Dispatch Center's CAD/RMS System.
- j. Development and Assessment Agreement with Urban Plains.
- k. Applications for property tax exemptions for improvements made to buildings:
 - (1) Inreit Properties LLLP, 4310 17th Avenue South (3 year).
 - (2) Janis Kirsch, 801 11th Avenue North (5 year).
 - (3) Michael and Tammy Binder, 1527 3rd Avenue South (5 year).
- l. Site Authorization for Delta Waterfowl at the Best Western Doublewood Inn on 4/17/08.

Page 2 Applications for Games of Chance:

- (1) Fargo-Moorhead Cosmopolitan Club for raffles from 8/1/08 to 6/30/09.
 - (2) Fargo-Moorhead Cosmopolitan Club for sports pools from 7/1/08 to 12/21/08.
 - (3) El Zagal Arab Patrol for a raffle on 5/15/08.
 - (4) American Indian Science and Engineering Society for a raffle on 4/24/08.
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- n. Contracts and bonds for general, electrical and mechanical construction on the Police Department remodeling project.
 - o. Agreement with Fred Martin Hector, Jr. for entry and construction for property located along 52nd Avenue South.
 - p. National Fish and Wildlife Foundation Grant Agreement for Project No. 5153-3.
 - q. NDDOT Cost Participation and Maintenance Agreement for Project No. 5691.
 - r. Corps of Engineers Project Partnership Agreement for Improvement District No. 5229.
 - s. Utility Permit Application with SE Cass Water Resource District for Improvement District No. 5314.
 - t. Bid award for Project No. 5809.
 - u. Bid advertisement for Project No. 5812-01.
 - v. Contracts and bonds for Project Nos. 5771 and 5786.
 - w. Bills.
 - x. Final balancing change orders for Project No. 5676 and Improvement District Nos. 5243-1, 5671-2 and 5742.
 - y. Bid award for Improvement District No. 5792.
 - z. Create Improvement District Nos. 5384, 5770, 5780 and 5793.
 - aa. Contract and bond for Improvement District No. 5583.

* * * Regular Agenda * * *

1. Recommendation from the City Auditor to accept the validity and sufficiency of petitions to prohibit smoking in indoor workplaces including all bars and truck stops and place the item on the June 10, 2008 ballot.
2. Recommendations from the City Auditor relative to wording for various questions to be placed on the June 10, 2008 ballot:
 - a. Referred Ordinance prohibiting smoking in all public indoor workplaces except for in all-enclosed bar areas which prohibit entry of any customers under the age of 21; in designated areas of truck stops restricted for use of professional drivers and their adult companions only; and in JT Cigarro Tobacco Bar.
 - b. Initiated Ordinance prohibiting smoking in indoor workplaces including all bars and truck stops.
 - c. Proposed Home Rule amendment regarding initiated or referred Ordinances.
 - d. Question regarding publishing City Commission minutes.

3. Public Hearings - 5:15 p.m.:

- a. WITHDRAWN this was the time and date for a continued hearing on the application to transfer the Class "FA" Alcoholic Beverage License held by Grandma's, Inc. d/b/a Grandma's Saloon & Grill to FTS Fargo, Inc. d/b/a Hooters, 1649 38th Street South.
 - b. Renaissance Zone Project for Charles Homme at 505 Broadway, #309.
 - c. Renaissance Zone Project for B. Joanne Schlanser at 505 Broadway, #306.
 - d. Plat of Country Meadows Second Subdivision (8417 and 8505 25th Street South).
(1) Approval recommended by the Planning Commission on 3/12/08.
 - e. Annexation of 153.38 acres of land in parts of the east half of Section 12, Township 138 North, Range 49 West.
(1) Receive protests.
4. Recommendation to appoint Dr. Nicholas Dorsher to the Board of Health.
 5. Recommendation to reappoint Don Kilander to the Airport Authority.
 6. Consider utilization of electronic vs. paper copies of consent agenda items.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 241-1310 or TDD 241-8258. Please contact us at least three business days in advance of public meetings to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo Web site at www.cityoffargo.com/commission

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 6-0211, 6-0214, 6-0216, 6-0217 and 6-0218
OF ARTICLE 6-02 OF CHAPTER 6 OF THE FARGO MUNICIPAL CODE
RELATING TO PENSIONS FOR CITY EMPLOYEES OTHER
THAN THOSE IN THE POLICE AND FIRE PENSION SYSTEMS

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

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

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

WHEREAS, the board of trustees of the city pension plan for city employees other than those in the police and fire pension systems elected and decided that as of January 1, 2008, existing city employees who participated in said city pension plan could join the North Dakota Public Employees Retirement System pension plan and that individuals who became employed with the city on or after January 1, 2008 would no longer be eligible to join said city pension plan, but would be required to participate in the ND PERS pension plan; said decision being approved by the Board of City Commissioners at their meeting of October 8, 2007, and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement the revisions to said city employees' pension plan by the adoption of this ordinance;

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

Section 1. Amendment.

Section 6-0211 of Article 6-02 of Chapter 6 of the Fargo Municipal Code is hereby amended to read as follows:

6-0211. Persons included in the system--Exception.--Except as hereinafter provided, all persons in the permanent employ of the city of Fargo, except the director of finance, the

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1 director of public works and all employees in the police and fire pension systems, shall be
2 members of the plan. Persons in the permanent employ of the city means those persons
3 classified by the city as employed in a full-time regular position. Membership in the
4 employees' pension plan shall be optional for any person employed by the city prior to
5 November 1, 1986; provided, that any employee who is a member of the plan and has not
6 withdrawn prior to November 1, 1986, shall remain a member for the duration of his or her
7 employment. Any employee who shall have terminated his or her membership between
8 November 1, 1985, and November 1, 1986, may re-enter the plan by reimbursing any refund
9 of contributions which was received by that employee upon his or her termination, and by
10 paying to the plan, the amount of the employee contribution which would have been made if
11 he or she had not withdrawn from the plan. Employees re-entering the plan as hereinabove
12 provided shall be reinstated and given credit for longevity in the same manner as if said
13 employee had never withdrawn from the plan. Any employee who was not a member of the
14 plan on November 1, 1985, or did not re-enter the plan prior to November 1, 1986, as
15 hereinabove provided, may enter the plan at any time and years of service for that employee
16 for purposes of determining pension benefits shall be determined as of the date of entry into
17 the plan. The board of trustees for the city employees' pension fund, with the consent of the
18 board of city commissioners, have elected to permit existing city employees to choose
19 whether to remain as a member of the city employees' pension plan, as governed by this
20 article, or whether to join the North Dakota Public Employees Retirement System pension
21 program, and to make contributions thereto. Further, individuals who become employed by
22 the city on or after January 1, 2008, will be allowed only to join the North Dakota Public
23 Employees Retirement System pension program. As to those city employees who have
joined the North Dakota Public Employees Retirement System pension program, all benefits
accruing as a result of contributions from and after an employee's entry in the North Dakota
Public Employees Retirement System shall be subject to the bylaws, rules and regulations
thereof.

Section 2. Amendment.

Section 6-0214 of Article 6-02 of Chapter 6 of the Fargo Municipal Code is hereby amended to read as follows:

6-0214. Accumulation accounts--Refund upon termination of employment or membership.--There is hereby established for each member of the plan a city accumulation account which shall be comprised of an amount equal to 2.75% of the member's annual salary since January 1, 1990, plus interest thereon at the rate of 5.0% per annum

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1 compounded annually at the end of each calendar year. In addition to the city accumulation
2 account, there is also established for each member an employee accumulation account
3 which shall consist of the total of the member's contributions to the plan during the
4 member's period of city service. Interest on the employee accumulation account shall
5 accrue at the rate of 5% per annum from and after January 1, 1986, compounded annually
6 from the end of each calendar year. Upon termination of employment or membership, a
7 member shall be entitled to payment as follows:

8 A. ~~If the terminating member has less than five years of service with the~~
9 ~~city, such member shall be entitled to receive his employee~~
10 ~~accumulation account, with interest credited to distribution date.~~

11 ~~B. If the terminating member has a minimum of five years of service~~
12 ~~and has not yet reached the age of 55 years, the member may, at his~~
13 ~~or her option, elect to receive:~~

- 14 1. The combined total of the member's city
15 accumulation account and employee accumulation
16 account, with interest credited to the distribution date;
17 or
- 18 2. A single payment in an amount equal to the "actuarial
19 equivalent" value of his or her deferred annuity
20 benefit; or
- 21 3. A deferred retirement annuity.

22 Notwithstanding the foregoing, any member who is displaced through privatization
23 activities, and who is not eligible for early retirement, shall receive 80% of the city's
pension contribution, together with interest compounded annually at 6% per annum. The
city's pension contribution as aforesaid shall be combined with the member's contribution
to the pension, together with interest at 6% per annum as aforesaid and shall be distributed
to the member in one lump sum.

Section 3. Amendment.

Section 6-0216 of Article 6-02 of Chapter 6 of the Fargo Municipal Code is hereby
amended to read as follows:

6-0216. Re-entering system plan.--Any member subject to the provisions of this
article who, after discontinuance of city service or membership in the plan, re-enters such
service as an employee in the permanent employ of the city, subject to the provisions of this
article, may redeposit into the pension fund an amount equal to that which he or she
withdrew therefrom at the preceding termination of his or her membership, plus interest

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1 thereon at the rate of 1% higher than the average annual earnings of the pension fund for the
2 10-year period preceding the date of re-employment, or 1% higher than the current actuarial
3 rate, whichever is higher, and thereupon shall acquire credit for the years of service prior to
4 his or her leaving the employment of the city. If a member upon re-entering the employ of
5 the city after a termination of his or her employment or membership in the plan, shall not
6 make such re-deposit within 60 days of his or her reemployment in the permanent employ of
7 the city, he or she shall re-enter as a new member without credit for any prior service. Any
8 employee who was terminated as a city employee and thereafter re-entered such service as
9 an employee prior to January 1, 1993, and who makes written request on or before January
10 1, 1994, for credit for such prior service shall have 30 days from and after determination of
11 the amount to be paid, to re-deposit the amount withdrawn, plus accrued interest as
12 hereinabove provided, and shall thereupon acquire credit for his or her years of service prior
13 to discontinuance of city service. A member and city employee who has elected to
14 participate in the North Dakota Public Employees Retirement System effective on or after
15 January 1, 2008, shall not be eligible, thereafter, to re-enter the city employee pension plan.

16 Section 4. Amendment.

17 Section 6-0217 of Article 6-02 of Chapter 6 of the Fargo Municipal Code is hereby
18 amended to read as follows:

19 6-0217. Retirement--Application for benefits.--Any member who has reached the
20 age of 55 years or older and has been a member of the plan for a minimum of ten years (for
21 termination of employment or membership prior to July 1, 1994) and five years (for
22 termination of employment or membership on or after July 1, 1994), may draw benefits
23 from the pension plan at any time after termination of his employment with the city or
membership in the plan and become a retiree. From and after January 1, 2008, any member
who has reached the age of 55 years or older may draw benefits from the pension plan at
any time after termination of his employment with the city in the plan and become a retiree.
After January 1, 2000, any member may also terminate his employment with the city and
draw benefits from the pension plan as a retiree at such time as he or she attains at least 90
points while employed by the city in a regular full-time position. Any member attaining 90
points will be eligible to become a retiree with 100% benefits and not be affected by the
factor for age as shown in 6-0218(C) of this chapter. Points will be assigned as follows:
one point will be assigned for each year of the members age and one point will be assigned
for each year of the members service based, however, on the hire date as a full-time
employee. Years of service and age will be calculated to the nearest six months (i.e. six
months or more will constitute a completion of that year of service or that year of the

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1 member's age). Actual benefits for those members attaining 90 points will be based on the
2 number of years paid into the pension plan. Written application for benefits shall be made
3 by the member and submitted to the board of trustees.

4 Section 5. Amendment.

5 Section 6-0218 of Article 6-02 of Chapter 6 of the Fargo Municipal Code is hereby
6 amended to read as follows:

7 6-0218. Determination of monthly benefit.--The monthly benefit payable to a retiree
8 who terminates his employment with the city or his membership in the plan on or before
9 October 22, 1990, shall be determined at the time he or she makes application for benefits
10 and shall be based upon the retiree's age, years of service with the city, subject to the
11 application of section 6-0211, and highest average monthly salary and shall be determined
12 as follows:

- 13 A. Determine the highest average monthly salary received by the
14 member during any consecutive 60-month period during his
15 employment with the city. For purposes of this section, salary shall
16 include base pay plus longevity but shall not include overtime,
17 bonuses or cash payments for sick or annual leave.
- 18 B. Multiply the highest average monthly salary by the member's total
19 years of service, subject to the application of section 6-0211,
20 expressed to the nearest month.
- 21 C. Except as provided in section 6-0217 concerning attaining 90 points,
22 (with respect to a member who terminates his employment with the
23 city or his membership in the plan on or after January 1, 2000),
multiply the total amount determined in accordance with (B) above
by the appropriate age factor (applicable to a member who becomes
a retiree on or after October 22, 1990), as listed below:

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	<u>AGE</u>		<u>FACTOR</u>	<u>AGE</u>		<u>FACTOR</u>
	<u>YEARS</u>	<u>MONTHS</u>		<u>YEARS</u>	<u>MONTHS</u>	
1	55	0	.00700	59	0	.00833
2		1	.00703		1	.00836
3		3	.00708		2	.00839
4		4	.00711		3	.00842
5		5	.00714		4	.00844
6		6	.00717		5	.00847
7		7	.00719		6	.00850
8		8	.00722		7	.00853
9		9	.00725		8	.00856
10		10	.00728		9	.00858
11		11	.00731		10	.00861
12	56	0	.00733	60	11	.00864
13		1	.00736		0	.00867
14		2	.00739		1	.00872
15		3	.00742		2	.00878
16		4	.00744		3	.00883
17		5	.00747		4	.00889
18		6	.00750		5	.00894
19		7	.00753		6	.00900
20		8	.00756		7	.00906
21		9	.00758		8	.00911
22		10	.00761		9	.00917
23	11	.00764	10	.00922		
24	57	0	.00767	61	11	.00928
25		1	.00769		0	.00933
26		2	.00772		1	.00939
27		3	.00775		2	.00944
28		4	.00778		3	.00950
29		5	.00781		4	.00956
30		6	.00783		5	.00961
31		7	.00786		6	.00967
32		8	.00789		7	.00972
33		9	.00792		8	.00978
34		10	.00794		9	.00983
35	11	.00797	10	.00989		

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	58	0	.00800			11	.00994
1		1	.00803	62 and Over	0		.01000
2		2	.00806				
3		3	.00808				
4		4	.00811				
5		5	.00814				
6		6	.00817				
7		7	.00819				
8		8	.00822				
9		9	.00825				
10		10	.00828				
11		11	.00831				

D. Multiply the total amount determined in accordance with (C) above for members who terminated their employment with the city or their membership in the plan on or after October 22, 1990, and who have not attained 90 points as provided in section 6-0217:

1. by 1.10 for members who terminated their employment with the city or their membership in the plan before August 1, 1991,
2. by 1.20 for members who terminated their employment with the city or their membership in the plan on or after August 1, 1991, and before January 1, 1998,
3. by 1.30 for members who terminated their employment with the city or their membership in the plan on or after January 1, 1998, and before January 1, 2000, and
4. by 1.40 for members who terminated their employment with the city or their membership in the plan on or after January 1, 2000 and who have not attained 90 points as provided in section 6-0217, to determine the normal monthly retirement benefit.

E. With respect to a member who terminates his employment with the city or their membership in the plan on or after January 1, 2000 and has attained 90 points as provided in section 6-0217, multiply the total amount determined in accordance with (B) above by .014.

F. In addition to the retirement benefit determined as hereinabove

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provided, a retiree whose combined age and years of plan participation equal or exceed 87, shall be entitled to an additional benefit of \$200 per month, payable for a maximum of three years, or until the retiree is eligible for Medicare benefits, whichever occurs first, provided that upon the death of said retiree, the balance of said additional benefit then remaining unpaid shall be paid in a lump sum to the retiree's beneficiary, spouse, or estate, as the case may be.

G. As of January 1, 2008, with some city employees having elected to join and contribute to the North Dakota Public Employees Retirement System pension plan, those benefits for city employees who are, or have been, contributing members of the city employee pension plan set forth in this article shall not be based upon an employee's years of service with the city while the employee was a contributing member of North Dakota Public Employees Retirement System. An employee's years of service prior to January 1, 2008, will remain eligible for benefits under the terms and conditions of this article.

The normal benefit form for retiring city members shall be a life only annuity with monthly benefit to be determined as hereinabove provided. The monthly benefit shall be payable for the life of the retiree and shall terminate upon such retiree's death; provided, that the retiree may elect to provide for spousal survivor benefits as hereinafter provided.

Section 6. Effective Date.

Upon its passage and approval, this ordinance shall retroactive in its application and shall be effective as of January 1, 2008.

Dennis R. Walaker, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:

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ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN AUTUMN FIELDS ADDITION TO THE CITY OF FARGO

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the proposed rezoning of certain parcels of land lying in the proposed Autumn Fields Addition, Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on January 9, 2008; and,

WHEREAS, the rezoning changes were approved by the City Commission on March 10, 2008,

NOW, THEREFORE,

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

Section 1. The following described property:

Lots Two (2) through Eight (8) and Lots Seventeen (17) through Twenty-two (22), Block One (1); Lots Two (2) through Ten (10), Block Four (4); Lots Two (2) through Ten (10) and Lots Thirteen (13) through Twenty-one (21), Block Five (5); and Lots Two (2) through Nine (9) and Lots Twelve (12) through Eighteen (18), Block Six (6); Autumn Fields Addition to the City of Fargo, County of Cass and State of North Dakota,

is hereby rezoned from "AG", Agricultural, District to "SR-2", Single-Dwelling, District,

and

Lots One (1) through Ten (10), Block Two (2); and Lots One (1) through Ten (10), Block Three (3), Autumn Fields Addition to the City of Fargo, County of Cass and State of North Dakota,

is hereby rezoned from "AG", Agricultural, District to "SR-3", Single-Dwelling, District,

and

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1 Lots Nine (9) through Sixteen (16), Block One (1); Lots One (1) and Eleven (11),
2 Block Four (4); Lots One (1), Eleven (11), Twelve (12) and Twenty-two (22), Block
3 Five (5); Lots One (1), Ten (10), Eleven (11) and Nineteen (19), Block Six (6); and
4 Lots One (1) through Eight (8), Block Seven (7), Autumn Fields Addition to the
5 City of Fargo, County of Cass and State of North Dakota,

6 is hereby rezoned from "AG", Agricultural, District to "SR-4", Single-Dwelling, District;

7 and

8 Lot Nine (9), Block Seven (7); Lots One (1), Block Eight (8); and Lot One (1),
9 Block Nine (9), Autumn Fields Addition to the City of Fargo, County of Cass and
10 State of North Dakota,

11 is hereby rezoned from "AG", Agricultural, District to "GC", General Commercial, District,

12 and

13 Lot One (1), Block One (1), Autumn Fields Addition to the City of Fargo, County of
14 Cass and State of North Dakota,

15 is hereby rezoned from "AG", Agricultural, District to "GO", General Office, District,

16 and

17 Lot Twenty-three (23), Block One (1), Autumn Fields Addition to the City of Fargo,
18 County of Cass and State of North Dakota,

19 is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District.

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

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

Dennis R. Walaker, Mayor

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ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN WOODRUFF'S ADDITION AND RUPERT'S SUBDIVISION
TO THE CITY OF FARGO – HISTORIC OVERLAY DISTRICT

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WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the proposed rezoning of certain parcels of land lying in Woodruff's Addition and Rupert's Subdivision, Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on February 13, 2008; and,

WHEREAS, the rezoning changes were approved by the City Commission on March 10, 2008; and,

WHEREAS, pursuant to Section 20-0804 of the Fargo Land Development Code (LDC) the Historic Preservation Commission has the power, among other powers and duties enumerated therein, to perform functions which may be assigned or delegated to it by the Board of City Commissioners; and,

WHEREAS, the Board of City Commissioners has found and deemed said certain parcels to be an area that has historic or cultural significance and, in accordance with LDC §20-0305, has determined that establishment of an H-O, Historic Overlay District, is appropriate;

NOW, THEREFORE,

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

Section 1. The following described property:

All of Blocks One (1), Two (2), Three (3), Four (4), Five (5) and Eight (8), Lots Eleven (11), Twelve (12), and Thirteen (13) of Block Seven (7), and the North 120 feet of Lots One (1) and Two (2), Block Nine (9), Woodruff's Addition to the City of Fargo, Cass County, North Dakota;

and

Lots D, E, F, G and H of Rupert's Subdivision to the City of Fargo, Cass County, North Dakota,

is hereby rezoned to apply a "H-O", Historic Overlay, District".

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Said property shall be referred to as the "Woodruff's Addition Historic Overlay District".

Pursuant to LDC §20-0305.C, the following special development standards which shall apply to all properties, new and existing, within Woodruff's Addition Historic Overlay District.

Woodruff's Addition Historic Overlay District Special Development Standards

1) Definitions. "Historic Neighborhood Housing" ("HNNH") is housing that was built in the Historic Overlay District area as the original addition was developed. It is assumed that it is the historic neighborhood housing that provides the greatest contribution to historic character of the area. For the Woodruff's Addition Overlay, Historic Neighborhood Housing includes structures in a variety of architectural styles built primarily between 1880 and 1930.

2) Existing Buildings

a. Primary Structure

1. Historic porches are encouraged. Reconstruction of an open or screened (not an enclosed porch which provides year-round living space) historic porch shall be allowed to violate current LDC setback requirements if the homeowner can provide proof that the porch was part of the original structure and that the reconstruction is consistent with the historic feature.
2. New dormers added to existing structures shall be consistent with existing historic dormers on HNNH or consistent with the style of the building if there are no existing dormers.
3. Skylights shall be designed to have minimum visual impact and are prohibited on roofs facing the street.
4. Original window openings and trim profile must be preserved, and replacement windows shall match original design.
5. New chimneys shall be clad with materials consistent with HNNH (i.e., brick or stucco).

b. Accessory Structure

Accessory structures must be compatible with the style of the primary structure, and should be subordinate to the primary structure.

3) New Construction

a. Primary Structure and Additions to existing buildings

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1. New primary structures shall be designed to have at least four steps to the bottom of the front entrance door; or a number of steps that is similar to adjacent properties.
2. The front entrance of the primary structure shall face the street.
3. Roof form of an addition shall be consistent with the roof design and pitch of the primary structure.
4. All gable roofs must have a minimum pitch of 6:12. All hip roofs must have a minimum pitch of 4:12. Flat roofs and shed roofs are prohibited, except on porches.
5. Height of new construction shall relate to overall scale of HNH with a maximum eave height of 25 feet.
6. Height of an addition to the primary structure shall not be greater than the height of the primary structure, except in the case of a second story addition to a single story primary structure, the result of which is the creation of a two-story primary structure consistent with HNH.
7. New chimneys shall be clad with materials consistent with HNH (i.e., brick or stucco).
8. Skylights shall be designed to have minimum visual impact and are prohibited on roofs facing the street.
9. Major windows on the front of the house shall be vertical in their orientation.
10. Windows shall be placed in a balanced configuration. When a window is comprised of multiple components, the components should be configured in a balanced manner consistent with HNH. The term "balanced" means a harmonious or satisfying arrangement or proportion of parts or elements.

b. Accessory Structure

1. Garages must be located in the rear yard.
2. Accessory structures must be compatible with the style of the primary structure, and should be subordinate to the primary structure.
3. An existing accessory structure that does not meet the LDC setback requirements can be reconstructed (and enlarged up to 40%) in a location that maintains the existing "non-conforming" setback as long as the property line is verified by a registered land surveyor and the new structure is one-story in height with a maximum 10 foot sidewall.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

4. Any garage door that is visible from the street can be no wider than ten feet.

1 **4) Streetscape/Landscape/Fencing**

- 2 a. At least 70% of a parcel's front yard must be maintained as open space, as defined
- 3 in the Land Development Code.
- 4 b. No parking shall be permitted in front yards, except for a vehicle that may be
- 5 parked in a driveway that runs through the front yard leading to a garage.
- 6 c. With respect to interior and street side yard fencing within the Woodruff's
- 7 Addition Historic Overlay District, LDC §20-0403.B.6.c.(1)(b) shall be amended
- 8 to read as follows:

- 9 (b) in any street side yard or interior sideyard from the front property
- 10 line extending the length of the front-yard setback distance or to a
- 11 point that is two feet beyond the front of any existing house or
- 12 other principal building, whichever length is greater, no fence, wall
- 13 or hedge shall exceed 3 feet in height, provided however, that
- 14 fences that are at least 75% light-permeable may exceed 3 feet, but
- 15 may not exceed 4 feet in height;

- 16 d. All other fencing must be in compliance with the LDC.

17 **5) Historic Preservation Commission Limited Power to Grant Exception or Variance**
18 **from More Restrictive Overlay Standards.**

19 The Historic Preservation Commission shall be authorized to consider and approve or
20 deny an application requesting that an exception be granted releasing an owner from the
21 restrictions of the Woodruff's Addition Historic Overlay District, said authority being
22 limited to those restrictions that are more restrictive than the requirements of the LDC.
23 The Historic Preservation Commission is not authorized to grant an exception or release a
restriction or regulation contained in Woodruff's Addition Historic Overlay District that
is less restrictive than the LDC. In considering such an application, the same procedure
and review criteria shall be used for such application as set forth for Zoning Map
Amendments, LDC §20-0906, except that the role of the Planning Commission in §20-
0906 shall be performed by the Historic Preservation Commission.

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

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

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Dennis R. Walaker, Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:



6

OFFICE OF THE CITY ATTORNEY

March 19, 2008

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

Re: Ordinance Enacting Section 25-1509(O)

Dear Commissioners:

Delivered with this letter will be an ordinance enacting Section 25-1509(O) relating to additional restrictions on those licensees holding a license allowing dispensing of alcoholic beverages in an extended stay hotel or motel. This relates to hotels, motels or such extended stay facilities having more than 50 lodging rooms but less than 100 rooms. This matter has been approved by the Liquor Control Committee and is submitted for your approval.

RECOMMENDED MOTION: I/we hereby move that Ordinance Enacting Section 25-1509(O) of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages allowing certain extended stay hotels or motels to dispense alcohol be approved as submitted.

Yours very truly,

OFFICE OF THE CITY ATTORNEY

Garylle B. Stewart
Assistant City Attorney

GBS/amc
Enclosure

cc: Steve Sprague
Erik Johnson

F:\US\ORD\LETTERS\alcohol - ltr to commission re enacting 25-1509(o).doc



OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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AN ORDINANCE ENACTING SECTION 25-1509(O) OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE
RELATING TO RESTRICTIONS ON SALE, SERVICE OR DISPENSING
OF ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Enactment.

Section 25-1509(O) of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby enacted to read as follows:

25-1509. Restrictions on sale, service or dispensing of alcoholic beverages.--
* * *

O. Any licensee holding a valid license under Article 25-15 of the Fargo Municipal Code which allows the licensee to dispense alcoholic beverages in an extended stay hotel or motel (not entitled to licensed as an Class ABH or ABHRZ license) may dispense such alcoholic beverages in accordance with the license issued. The following additional restrictions, however, will apply:

1. Such licenses will only be available to the hotels, motels, or such extended stay facilities that have more than 50 lodging rooms but less than 100 rooms.
2. No off-sale of any kind shall be allowed by such licensees.
3. No in-room service will be allowed.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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- 4. All alcoholic beverages will be opened, mixed or poured in a room separate from the room in which they are to be consumed.
- 5. Alcoholic beverages shall be consumed only at tables or booths. No alcoholic beverages shall be consumed at a counter or bar.
- 6. Food must be available and service of alcoholic beverages shall be only available to hotel or motel patrons or their guests.
- 7. Hours of service shall be limited to a period from 4:00 p.m. to 8:00 p.m.
- 8. The food to alcohol ratio (50 percent) requires that food purchases exceed alcohol purchases.

It is the intention that the alcoholic beverage license be used in extended stay hotels or motels so as to allow "managers social" subject to the foregoing restrictions.

Section 2. Effective Date.

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

Dennis R. Walaker, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Reading:



Office of the City Attorney

March 20, 2008

City Attorney
Erik R. Johnson
Assistant City Attorney
Robert L. "Butch" McConn, Jr.

City Prosecutors
Gordon A. Dexheimer
Scott O. Diamond

City Commission
City Hall
200 North Third Street
Fargo, ND 58102

Re: Ordinance Enacting Article 25-36 of Chapter 25

Dear Commissioners:

At a recent meeting you directed me to prepare an ordinance that would require the licensing of contractors who are engaging in replacing roofs on residential buildings. The concept proposed was to require contractors to obtain a license. In order to obtain a license they will have to have obtained a contractor's license from the state of North Dakota and provide a certificate that they general liability insurance and that they provide worker's compensation coverage for their employees. Finally, the proposal stated that re-roofing contractors should make available to their customers a performance bond that would allow the customer to place a claim against the bond in the event the re-roofing contractor failed to complete the project. I have prepared such an ordinance and it is enclosed.

SUGGESTED MOTION: I move to waive the requirement of an ordinance being received and filed for consideration at least one week prior to first reading and to waive the first reading of the Ordinance Enacting Article 25-36 of Chapter 25 of the Fargo Municipal Code Relating to Licensing of Re-Roofing Contractors.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Johnson", written in a cursive style.

Erik R. Johnson

ERJ/jmf
Attachment

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

ORDINANCE ENACTING ARTICLE 25-36
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE
RELATING TO LICENSING OF RE-ROOFING CONTRACTORS

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

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

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

WHEREAS, the city finds that licensing of re-roofing contractors for residential buildings and structures doing business within the city is necessary and appropriate;

NOW, THEREFORE,

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

Section 1. Enactment.

Article 25-36 of Chapter 25 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 25-36

RE-ROOFING CONTRACTORS

25-3601. Definitions. -- In this article, unless the context or subject matter otherwise requires:

1. "Re-roofing Contractor" means any contractor engaged in the business of replacement with shingles of an existing roof covering on a building or structure used for residential purposes, including without limitation single-family and multi-family residential purposes.

2. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports,

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil,
2 gas, or water pipelines, and every other type of structure, project, development, or improvement
3 coming within the definition of real or personal property, including the construction, alteration,
4 or repair of property to be held either for sale or rental, and shall include subcontractor, public
5 contractor, and nonresident contractor.

6 3. "Person" includes any individual, firm, co-partnership, association, corporation, limited
7 liability company, or other group or combination thereof acting as a unit, and the plural as well
8 as the singular number, unless the intent to give a more limited meaning is disclosed clearly by
9 the context thereof.

10 25-3602 License required – fee and expiration period. -- A person may not engage
11 in the business nor act in the capacity of a re-roofing contractor within the city of Fargo when the
12 cost, value or price of any job exceeds the sum of five hundred dollars without first having a
13 license as provided in this article. The fee and period of expiration for a re-roofing contractor
14 license shall be established by resolution of the board of city commissioners.

15 25-3603 License - How obtained - Failure to grant. --
16 A. To obtain a license under this article, an applicant who is eighteen years of age or older
17 shall submit, on forms the city auditor prescribes, an application under oath containing the
18 address and telephone number of the re-roofing contractor's principal place of business and a
19 statement of the applicant's experience and qualifications as a re-roofing contractor. The
20 applicant must establish that the applicant has a valid North Dakota state contractor's license,
21 pursuant to N.D.C.C. Chapter 43-07. The applicant must provide a certificate of general
22 liability insurance including products and completed operations coverage with an insurance
23 carrier licensed in the state of North Dakota in the amount of at least \$500,000 and a
statement from North Dakota Workforce Safety and Insurance that the re-roofing contractor
has secured workforce safety and insurance coverage satisfactory to the North Dakota
Department of Workforce Safety and Insurance. The application must contain a statement that
the applicant desires the issuance of a license under this article.

B. The city auditor may refuse to grant a license if the city auditor determines the application
contains false, misleading, or incomplete information. The city auditor shall notify the
applicant in writing if the city auditor does not grant the license and shall provide the
applicant an opportunity to respond to or cure the defect in the application for a period of ten
days from the date of the written notification. An applicant aggrieved by a decision of the city
auditor not to grant the license may appeal the decision to the board of city commissioners.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 25-3604 Performance Bond. -- A re-roofing contractor shall inform and make
2 available to its customers within the city an option that a contractor's performance bond may
3 be provided for the project in such amount equal to the price or cost of the project that would
4 allow the customer to place a claim against the bond in the event the re-roofing contractor, or
5 subcontractors of the re-roofing contractor, fails to perform work required under the contract.
Nothing herein shall prevent a re-roofing contractor from charging for, or recouping the cost
of, such performance bond from the customer so long as such cost is disclosed in writing to
the customer.

6 25-3605 Revocation. -- No sooner than twenty days after sending written notice
7 to a re-roofing contractor at the re-roofing contractor's last-known address, the city auditor
8 shall classify as not in good standing the license of any re-roofing contractor who fails to
9 maintain liability insurance as required by N.D.C.C. Section 43-07-04 or 43-07-10, fails to
10 comply with any of the requirements of N.D.C.C. Section 43-07-04 sub. 3, or fails to inform
11 and make available to its customers a contractor's performance bond for a project. Any re-
12 roofing contractor who has been notified by the city auditor that the re-roofing contractor's
13 license is not in good standing shall cease soliciting or entering new re-roofing contract
projects. If the re-roofing contractor fails to correct the deficiency specified in the notice by
evidence satisfactory to the city auditor within thirty days of the date of the notice or if the re-
roofing contractor solicits or enters new re-roofing contract projects while the re-roofing
contractor's license is not in good standing, the city may revoke or forfeit the license of the re-
roofing contractor as provided in article 25-01.

14 Section 2. Penalty.

15 Every person, firm or corporation violating an ordinance which is punishable as
16 an infraction shall be punished by a fine not to exceed \$500.00; the court to have power
17 to suspend said sentence and to revoke the suspension thereof.
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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 Section 3. Effective Date.

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

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5 Attest:

Dennis R. Walaker, Mayor

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7 _____
Steven Sprague, City Auditor

8 First Reading:

9 Second Reading:

10 Final Passage:

11 Publication:

12 F:\CITY\Planning Department\Inspections\Roofing Contractors - licensing Maurer Grady-- enact Article 25-36
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Finance Office

P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

(d)

TO: BOARD OF CITY COMMISSION

FROM: KENT COSTIN, DIRECTOR OF FINANCE 

**RE: RESOLUTION AUTHORIZING THE EARLY REDEMPTION OF
LODGING TAX REVENUE BONDS, SERIES 1992**

DATE: MARCH 20, 2008

You have previously approved an early redemption of the Lodging Tax Revenue Bonds, Series 1992 as of May 1, 2008. Bond council is recommending approval of a call notice and a resolution authorizing the early redemption of this bond issue.

Suggested Motion:

Approve a resolution authorizing the early redemption and related notice of bond call for the Lodging Tax Revenue Bonds, Series 1992.



COMMISSIONER _____ introduced the following resolution and moved
its adoption:

RESOLUTION AUTHORIZING CALL AND REDEMPTION OF
LODGING TAX REVENUE BONDS OF 1992 OF THE
CITY OF FARGO

BE IT RESOLVED by the governing body of the City of Fargo, Cass County, North Dakota (the "Issuer"), that all actions heretofore taken by the City Auditor and others relating to the call for redemption of the Lodging Tax Revenue Bonds of 1992 dated October 1, 1992 having stated maturity dates of October 1, 2008 through October 1, 2009, and totaling \$245,000 in principal amount, plus interest is hereby authorized and approved; and the City Auditor is authorized to issue notice of call for redemption of said bonds, a form of which is to be substantially similar to that which is attached as Appendix A; that the Mayor and City Auditor are authorized and directed to make and execute all documents necessary on the part of the Issuer for the call and redemption of the said bonds.

Mayor

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof:

COMMISSIONERS _____ AND _____.

The following were absent and not voting: _____, and the following voted against the same: _____, whereupon the resolution was declared duly passed and adopted.

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the resolution adopted by the governing body of the City of Fargo at the meeting of the governing body held on the _____ day of _____, 2008, and that such resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this _____ day of _____, 2008.

City Auditor

(SEAL)

NOTICE OF CALL FOR REDEMPTION
LODGING TAX REVENUE BONDS OF 1992
CITY OF FARGO
CASS COUNTY, NORTH DAKOTA

NOTICE IS HEREBY GIVEN that by order of the City Commission of the City of Fargo, Cass County, North Dakota, there have been called for redemption and prepayment on

MAY 1, 2008

outstanding bonds of the City designated as Lodging Tax Revenue Bonds of 1992, dated October 1, 1992, having stated maturity dates of October 1, 2008 through October 1, 2009, and totaling \$245,000 in principal amount, as set forth below.

<u>Maturity</u> <u>Year</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>CUSIP</u> <u>Number</u>
2008	\$120,000	6.500%	307483AR8
2009	\$ 125,000	6.500%	307483AS6

The entire outstanding amount of the issue maturing after 2007 is being called. The Bonds are being called at a price of par, plus accrued interest to October 1, 2008, on which date all interest on said Bonds will cease to accrue. Registered Owners of the Bonds hereby called for redemption are requested to present their Bonds for payment at the office of the Bond Registrar, the City of Fargo Director of Finance, City of Fargo, 200 North Third Street, Fargo, North Dakota 58102 on or before October 1, 2008

Important Notice: Under the Interest and Dividend Compliance Act of 1983, 31% will be withheld if tax identification number is not properly certified.

Dated: _____, 2008.

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

Steven Sprague, City Auditor,
as Bond Registrar



TO: BOARD OF CITY COMMISSIONERS

FROM: KENT COSTIN, DIRECTOR OF FINANCE 

**RE: RESOLUTION AUTHORIZING EARLY REDEMPTION OF
REFUNDING IMPROVEMENT BONDS, SERIES 1998B**

DATE: MARCH 20, 2008

The Finance Division in conjunction with our Financial Advisors, Springsted, Inc. actively monitors our municipal debt issues. Opportunities to refinance arise because of favorable municipal bond markets and redemptions (early payoff) are possible based upon the availability of resources dedicated for this purpose.

An analysis of one outstanding issue, Refunding Improvement Bonds, Series 1998B indicates that resources are available to pay off this bond issue prior to its normal maturity schedule.

Your approval of an early redemption for this issue is recommended for cusip numbers 30747MFJO, 30747MFK7, and 30747MFL5.

Suggested Motion:

Approve a resolution approving a bond redemption as of May 1, 2008 for all remaining maturities of Refunding Improvement Bond, Series 1998B in the amount of \$ 1,330,000.

COMMISSIONER _____ introduced the following resolution and moved

its adoption:

RESOLUTION AUTHORIZING CALL AND REDEMPTION OF
THE REFUNDING IMPROVEMENT BONDS OF 1998, SERIES B,
OF THE CITY OF FARGO

BE IT RESOLVED by the governing body of the City of Fargo, Cass County, North Dakota (the "Issuer"), that all actions heretofore taken by the City Auditor and others relating to the call for redemption of the Refunding Improvement Bonds of 1998, Series B, dated March 1, 1998 having stated maturity dates of May 1, 2008 through May 1, 2011, and totaling \$5,710,000 in principal amount, plus interest is hereby authorized and approved; and the City Auditor is authorized to issue notice of call for redemption of said bonds, a form of which is to be substantially similar to that which is attached as Appendix A; that the Mayor and City Auditor are authorized and directed to make and execute all documents necessary on the part of the Issuer for the call and redemption of the said bonds.

Mayor

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER _____, and upon roll call vote, the following voted in favor thereof:

COMMISSIONERS _____ AND _____.

The following were absent and not voting: _____, and the following voted against the same: _____, whereupon the resolution was declared duly passed and adopted.

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the resolution adopted by the governing body of the City of Fargo at the meeting of the governing body held on the _____ day of _____, 2008, and that such resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this _____ day of _____, 2008.

City Auditor

(SEAL)



Finance Office

P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

A handwritten signature in black ink, appearing to be a stylized letter 'F' enclosed in a circle.

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Precinct Inspectors

DATE: March 16, 2008

Attached is the listing of precinct inspectors for the June 10th City of Fargo Election. Please approve the list of precinct inspectors.

Recommended Motion:

Approve the list of precinct inspectors.

City Election City of Fargo
2008 Inspectors

New Precinct	Old Precincts	New Location	Inspector	Phone	Alternate Inspector	Phone
11-01	11-01 & 11-04	Olivet Lutheran	Wes Myhre 446 Elmwood	232-0213		
11-02	11-02, 11-03 & 11-05	Doublewood Inn	Jan McLean 1434 W Gateway Cir	293-5912		
21-01	21-01, 21-03 & 21-04	Roger D Johnson Center	Barbara Booth 916 7th St S	232-4035		
21-02	21-02, 21-05 & 21-06	Fargo Civic Center	Donna McLaren 706 26th St N	232-4060	Carolyn McKay 823 7th St S	297-0689
27-01	27-01, 27-02 & 27-04	West Acres - Main Entrance	LuAnne Vetter 18 Birch Lane	232-8420		
27-03	27-05 N of 32nd Ave	Southwest Hockey Arena	Dean Hashbarger 3519 Taylor	293-6209		
27-04	27-05 S of 32nd Ave	Calvary United Methodist	Shannon Riemann 1001 44th St S	476-7882 PSJ		
27-05	27-06	Riverview Place	Annette Sprague 1301 4th St N	298-3923		
41-01	41-01, 41-02 & 41-03	Bethel Evangelical Free	Geraldine Kranzler 2929 Wheatland	271-9045		
41-02	41-04 & 41-05	First Assembly of God	Bob Staloch 3514 41st Ave S	282-6200		
44-01	44-01, 44-02 & 44-03	EI Zagel Shrine	Nona Berg 1140 N Broadway	peterbuilt 232-6677		
44-02	44-04, 44-05 & 44-06	Trollwood Village	Gib Bromenschelkel 509 21st Ave N	235-1975		
45-01	45-01 & 45-02	Fargo Dome	Martha Berryhill 1354 12th St N	235-9165		
45-02	45-03 & 45-04	Knollbrook Covenant Church	Ed Stalheim 3745 10th St N	235-8134		
46-01	46-01, 46-02 & 46-03	Prairie Rose Inn	Pat Beck 2519 W Country Club	232-8195		
46-02	46-04, 46-05 & 46-06	Atonement Lutheran	Nancy Smith 1507 36th Ave S	293-8047 212-0123		

LM = Left Message



OFFICE OF HUMAN RESOURCES

200 3RD STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: 701-241-1321
FAX: 701-476-6707

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To: Board of City Commissioners

From: Jill Minette
Director of Human Resources

Re: PEC Recommendations

Date: March 19, 2008

The Position Evaluation Committee recommends approval of the changes as outlined in the enclosed PEC Notes from the February 27 and March 19, 2008 PEC. The recommended market adjustments are summarized below:

Effective July 1, 2008, approve market adjustments in the form of out-of-grade pay with the incumbents receiving a minimum of a 3% increase for the following positions:

- Assistant Fire Chiefs
- Equipment Operator II
- Equipment Operator III
- Police Sergeant
- Police Lieutenant
- Police Captain

Effective July 1, 2008, approve market adjustments in the form of reclassification with the incumbents receiving a minimum of a 3% increase for the following positions:

- Chief Chemist
- Library Branch Manager

Suggested Motion:

Approve the recommendations of the PEC as indicated above



**POSITION EVALUATION COMMITTEE
MEETING NOTES**

**FEBRUARY 27, 2008 (8:30 – 10:30 AM)
MARCH 19, 2008 (10:00 – 11:00 AM)**

Present: Dennis Walaker, Pat Zavoral, Brad Wimmer, Kurt Losee, Jill Minette

1. 2007 City of Fargo Salary Survey Review – PEC reviewed the 2007 City of Fargo Compensation and Benefits Survey

- **PEC recommends approval for the following positions to receive a market adjustment in the form of out-of-grade pay effective July 1, 2008. The incumbents would receive a minimum of a 3% increase.**

<u>Position Title</u>	<u># of positions</u>	<u>New pay grade</u>
Assistant Fire Chiefs	4	D64 and X64
Equipment Operator II	54	B24
Equipment Operator III	25	B25
Police Sergeant	15	C53
Police Lieutenant	5	D62
Police Captain	2	D64

2008 Budget Impact: \$3986

- **PEC recommends approval for the following positions to receive a market adjustment in the form of reclassification effective July 1, 2008. The incumbents would receive a minimum of a 3% increase.**

<u>Position Title</u>	<u># of positions</u>	<u>New pay grade</u>
Chief Chemist	1	C52
Library Branch Manager	1	C51

2008 Budget Impact: \$113,562

- **PEC recommends the positions in the E83 and E91 classification be reviewed as part of the reclassification process in April 2008 along with other submitted reclassification requests.**

Annual Cost of Market Adjustment 2008

Department	Position	Market Adjustment	Annual Salary Cost	FICA	medicare	pension	Total
Fire	Assistant Chiefs	D62 (X62) to D64 (X64)	\$15,663		\$227	\$2,137	\$18,017
Health	Chief Chemist	C43 to C52	\$3,426	\$212	\$50	\$206	\$3,894
Streets, Solid Waste, Water - Mains & Hydrants	EO II	B23 to B24	\$78,396	\$4,861	\$1,137	\$4,704	\$89,097
	EO III	B24 to B25	\$37,311	\$2,313	\$541	\$2,239	\$42,404
Library	Library Branch Manager	C41 to C51	\$3,589	\$223	\$52	\$215	\$4,079
Police	Sergeants	C52 to C53	\$48,362		\$701	\$5,900	\$54,963
	Lieutenants	D61 to D62	\$13,508		\$196	\$1,648	\$15,352
	Captains	D63 to D64	\$6,416		\$93	\$783	\$7,292
TOTALS			\$206,661	\$7,609	\$2,997	\$17,831	\$235,097

Annual Total Salary Cost \$206,661
 PD Pension \$8,331
 Fire Pension \$2,137
 City Pension/NDPERS \$7,363
 FICA \$7,609
 Medicare \$2,997
 Total Annual Cost \$235,097

Cost of Market Adjustments effective 7-1-08 to 12-31-08 \$117,549



Office of the Chief of Police

March 19, 2008

Board of City Commissioners
200 3rd Street North
Fargo, ND 58102

Re: Memorandum of Understanding between Fargo Catholic Schools Network and Fargo Police Department relative to School Resource Officers

Dear Commissioners:

Please find attached a memorandum of Understanding (MOU) between the Fargo Catholic Schools Network and the Fargo Police Department, which describes the terms associated with having a School Resource Officer (SRO) assigned to Shanley High School and Sullivan Middle School. At the last city commission meeting, you approved a similar MOU with the Fargo Public School District. That MOU specifically describes how the school district will reimburse the City of Fargo for a portion (50%) of the "base costs" associated with having SRO's assigned to the city's public middle schools and high schools.

The Fargo Catholic Schools Network is also interested in having an SRO assigned to Shanley High School and Sullivan Middle School. The one SRO would provide police services to both schools in the same manner and under the same terms as the SRO's assigned to the public schools. However, due to Shanley High School and Sullivan Middle School being "private" institutions, the Fargo Catholic Schools Network has agreed to pay 100% of the "base costs" associated with this SRO position.

The attached MOU with Fargo Catholic Schools Network was drafted by the city attorney and signed by Mr. Kyle Edgerton, superintendent for FCSN. With your approval, I will sign the MOU and return a copy to Mr. Edgerton.

Recommended Motion:

Approve the attached Memorandum of Understanding with Fargo Catholic Schools Network relative to School Resource Officers.

Please contact me if you have any questions or concerns regarding the attached MOU.

Sincerely,

Keith A. Ternes
Chief of Police

Enclosure

Cc: City Attorney's Office

**MEMORANDUM OF UNDERSTANDING
REGARDING SCHOOL RESOURCE OFFICERS**

This Memorandum of Understanding (MOU) is entered into this ___ day of _____, 2008, by and between the City of Fargo Police Department (hereinafter "Department") and Fargo Catholic Schools Network (hereinafter "FCSN").

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

WHEREAS, FCSN provides educational services within the City of Fargo, North Dakota; and

WHEREAS, Department is desirous to locate police officers within several instructional buildings of the FCSN; and

WHEREAS, FCSN is desirous to have police officers present within several of its instructional buildings.

NOW THEREFORE, the parties hereto agree as follows:

1. The Department will assign school resource officers (hereinafter "SRO" or "SROs") to the FCSN within locations mutually agreed upon by the Department and the FCSN. The SROs will provide general police services at the locations so assigned.
2. The SROs will remain employees of the Department and not employees of the FCSN and will provide general police services within their assigned location. The FCSN shall not be responsible for, and the Department agrees to indemnify and hold FCSN harmless from liability for the withholding of any taxes related to the assignment of SROs by the Department to the FCSN, including but not limited to State and Federal income tax, social security taxes, worker's compensation benefits, or unemployment compensation premiums.
3. Although the Department will make every effort to provide SROs at the locations and times requested by the FCSN, the Department retains the ability to assign SROs as available due to restraints such as military call-ups, medical leaves or other circumstances beyond the Department's control.
4. The current base cost of a full-time SRO, as agreed upon by the Department and the FCSN, including initial training is \$67,545 per calendar year. The base cost for a full-time SRO will be increased annually to reflect the increase in salary, benefits and other compensable items for comparable positions within the Department.

5. For the 2008-2009 school year the FCSN will reimburse the Department one hundred (100%) percent of the base cost for each full-time SRO assigned to the FCSN. The FCSN is responsible only for the percentage of the base cost of the actual time that each SRO performs its assigned duties for the FCSN. Payment shall occur on or before June 30, 2009.
6. Beginning with the 2009-2010 school year the FCSN will reimburse the Department the base cost for each full-time SRO assigned to the FCSN, plus any increase in salary for comparable positions in the Department. The FCSN is responsible only for the base cost, plus any increase as noted in this paragraph, of the actual time that each SRO performs its assigned duties for the FCSN. Payment shall occur on or before June 30th of each year.
7. The payments to be made under this agreement are subject to the annual appropriations of the majority of the board members of the FCSN on or before August of each calendar year.
8. The term of this MOU shall remain in effect until either party notifies the other in writing of its intent to terminate the Memorandum. This Memorandum can be terminated by either party for any reason, or no reason. Such notice shall be given at least one hundred and twenty (120) days prior to the effective date of the termination and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the recipient thereof at the address set forth below or at such other address as may subsequently designated in writing by either party:

If to the FCSN:

Superintendent
Fargo Catholic Schools Network
5600 25th St. S.
Fargo, ND 58104

With a copy to:

Business Manager
Fargo Catholic Schools Network
5600 25th St. S.
Fargo, ND 58104

If to the Department:

Chief of Police
Fargo Police Department
222 4th Street North
Fargo, ND 58102

With a copy to:

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

9. The Department shall indemnify, defend, and hold harmless the FCSN, its officers and its employees from and against all claims, losses, costs, damages and expenses (including reasonable attorney's fees and costs) which result from or arise in connection with any action, negligence or omission of the Department and its employees.

10. The FCSN shall indemnify, defend, and hold harmless the Department, its officers and its employees from and against all claims, losses, costs, damages and expenses (including reasonable attorney's fees and costs) which result from or arise in connection with any action, negligence or omission of the FCSN, and its employees.
11. This indemnifications provided herein shall survive the termination of this MOU.
12. If it is determined that the FCSN is governed by the provisions of the Family Educational Right to Privacy Act ("FERPA"), both the FCSN and the Department agree that all information regarding a student that is considered an educational record will be held in confidence and will not be divulged to any unauthorized person without prior written consent of the student and/or parent, except for access required by law, regulation, and third party agreements. The FCSN and the Department agree that the Department will have access to educational records as the Department is considered a school official who the FCSN has determined to have a legitimate educational interest and right to have access to educational records, under 34 C.F.R. § 99.31, the Family Educational Right to Privacy Act ("FERPA"), and FERPA's privacy regulations, 34 C.F.R. § 99, et seq., and each party shall comply with all requirements with respect to protected educational records as defined in FERPA. The provisions of this paragraph shall survive the termination of this Agreement.
13. No waiver by either party of any term or provision of this Agreement shall be deemed to be a waiver of any other term or provision.
14. Any term or provision of this Agreement which now or hereafter is determined to be invalid or unenforceable shall not impair the validity of the remainder of this Agreement.
15. The goals, objectives, expectations and other details of the School Resource Officer Program shall be reviewed at least annually between the members of the Department and members of the FCSN. Following such review the Department and FCSN may reduce to writing their understanding of the Program. The failure to follow the guidelines prepared under this paragraph 14 shall not give rise to any claim for relief by one party against the other, other than the ability to terminate this MOU as provided for in paragraph 7 above.
16. This Agreement is not assignable by either party without the prior written consent of the other party.
17. This Agreement may not be amended or modified orally at any time, but only by the written agreement of the parties hereto.

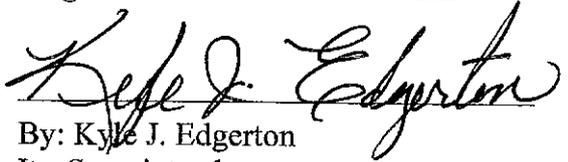
Fargo Police Department

Dated: _____

By: Keith Ternes
Its: Chief of Police

Fargo Catholic Schools Network

Dated: 3-13-08



By: Kyle J. Edgerton
Its: Superintendent



i

Office of the Chief of Police

March 20, 2008

Board of City Commissioners
City Hall
Fargo, ND 58102

RE: Project Manager Contract for Computer Aided Dispatch and Records
Management System (CAD/RMS) Project

Dear Commissioners:

As you may recall, the City of Fargo applied for and received a federal grant last year in the amount of three million dollars to upgrade the Red River Regional Dispatch Center's CAD/RMS systems. Although the City of Fargo is identified as the grant recipient, all users of the regional dispatch center, to include Cass and Clay Counties and the cities of Fargo, Moorhead and West Fargo, are contributing matching funds to this project.

Due to the overall scope and magnitude of this project, which is expected to take nearly three years to complete, the grant includes funding to allow for the hiring of a project manager. Identifying someone to oversee this project is crucial as it ensures the various aspects of the project are managed appropriately and completed in a timely manner.

For several weeks, representatives from each of the joint dispatch centers users have been engaged in a selection process for a project manager. The Red River Regional Dispatch Center's Board of Authority recently agreed to offer the position to Mr. Greg Anderson, a retiring deputy chief with the Moorhead Police Department. Mr. Anderson has agreed to accept the project manager's position under the terms described in the attached employment contract, which was drafted by the Fargo City Attorney's office.

If you approve, Mr. Anderson will fill the position of project manager while serving as a City of Fargo contract employee. He would report directly to a member of my command staff, Captain Tod Dahle, and would work from an office at the City's Public Safety Building. All other issues concerning his employment are outlined in the attached contract.

Recommended Motion:

Approve the hiring of Mr. Greg Anderson as the project coordinator for the CAD/RMS project under the terms described in the attached employment contract.

Please contact me if you have any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith A. Ternes". The signature is stylized and written in a cursive-like font.

Keith A. Ternes
Chief of Police

Cc: Pat Zavoral – City Administrator
Kent Costin – Finance Director
Jill Minette – Human Resources Director

Attachment: Employment Contract

EMPLOYMENT AGREEMENT

THIS AGREEMENT made this 20th day, of March, 2008 between the City of Fargo, North Dakota, a Municipal Corporation, (hereinafter "City"), and Greg Anderson, residing at 210 65th Ave. N. Moorhead, MN 56560 (hereinafter "Employee").

WITNESSETH:

WHEREAS, the City desires to employ the Employee, and the Employee desires to be employed by the City, on the terms and conditions contained herein,

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements as hereinafter set forth, the parties agree as follows:

1. *Employment.* The City hereby employs the Employee, and the Employee hereby accepts employment with the City as the CAD/RMS/JMS project manager (hereinafter "Project Manager"), upon the terms and conditions hereinafter set forth. **Employee acknowledges that he/she is not a civil servant of the City, and as a result is not entitled to the protections and benefits afforded civil servants under Chapter Seven (7) of the Fargo Municipal Code.**

2. *Duties.* The Employee shall perform his/her duties as the Project Manager at the City's place of business or at other locations at the direction of the City. The Employee shall be responsible for all duties commensurate with his/her position as Project Manager as directed, established and assigned by the City from time to time. Employee's primary duties and responsibilities are outlined in Attachment "A".

3. *Compensation.* During the term of this Agreement, the Employee shall receive as full compensation for services rendered, payable in accordance with the prevailing payroll practices of the City, a base salary of \$ 82,800.00 per year. Said amount shall be paid in accordance with the City's payroll policy.

a) *Vehicle Allowance.* In addition to the annual base salary noted above, the Employee shall also receive a vehicle allowance of \$ 2,400.00 per year. Said amount shall be paid in equal amounts per pay period. The vehicle allowance covers travel within Cass and Clay County. When necessary, a vehicle will be provided for travel outside the two county area, or appropriate mileage will be billed by the Employee.

b) *Annual Salary Adjustment.* The Employee shall be entitled to receive a six (6%) percent increase in his/her base salary each year, beginning on the Employee's first anniversary date.

c) *COLA.* The Employee acknowledges that he/she will not be part of the City's pay band system and as a result will not receive step increases or annual Cost of Living Allowance (COLA) adjustments to his/her base salary.

4. *PTO Hours, General Benefits.* The Employee shall be entitled to twenty (20) working days of Paid Time Off (PTO) each 12 month period, beginning on the Employee's anniversary date. The initial twenty (20) PTO days shall be placed in Employee's PTO account following the Employee's first month of employment. Thereafter, twenty (20) additional days of PTO will be placed in Employee's PTO account upon his/her anniversary date.

In addition to the PTO days noted above, the Employee also shall be entitled to other general benefits afforded employees of the City such as contributions to the North Dakota Public Employees Retirement System (NDPERS), and health, dental and vision insurance coverage.

5. *Death or Disability.* If the Employee dies or becomes disabled so that he/she cannot perform his/her duties under this Agreement in a manner satisfactory to the City, in its discretion, the City may terminate this Agreement, and thereupon the City shall pay to the representative of the Employee's estate or to the Employee any compensation which would otherwise be payable to the Employee up to the end of the month in which such termination occurs.

6. *Covenant Not to Disclose Information; Exclusive Employment, Remedies.* The parties hereto recognize that Proprietary Information (as hereinafter defined) is important, material and confidential. Accordingly, the Employee shall not, directly or indirectly, during the term of this Agreement or at any time thereafter, without the prior written consent of the City, disclose, use or permit any other business, firm, corporation, person or other entity to disclose, use or have access to Proprietary Information. As used in this Agreement, "Proprietary Information" means information disclosed to or obtained by the Employee as a result of or related to his relationship with the City, whether or not acquired during business hours, including, but not limited to, information concerning the City's business, operations, and services. During the course of the Employee's employment under this Agreement and at all times thereafter, the Employee shall not, without the prior written consent of the City, directly or indirectly, record, photograph, photocopy or by any other means copy or cause to be copied for his/her personal use any document, list or other writing or material, that embodies or relates to Proprietary Information.

Immediately upon the termination of this Agreement and the Employee's employment under this Agreement, the Employee shall return to the City everything in the Employee's possession or custody or under the Employee's control including any items noted on Exhibit A.

The covenants contained in this paragraph 6 shall be construed as an agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action of the Employee against the City, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the City of this independent agreement in this paragraph 6.

In the event of an actual or threatened breach by the Employee of any of the covenants contained in this paragraph 6, the City shall be entitled to an injunction restraining the Employee from such action or threatened action. In addition, the City

may pursue any other remedies available for such actual or threatened breach, including recovery of damages from the Employee.

7. *Work Product.* Except as specifically set forth in writing and signed by the City and Employee, the Red River Regional Dispatch Center (hereinafter "RRRDC") shall have all copyright and patent rights with respect to all software or other materials developed during Employee's employment with the City. Employee acknowledges he/she is an employee for hire as defined by United States Copyright Laws. Upon completion or termination of this Agreement, all software, hardware, or other electronic data owned by the RRRDC or developed by Employee during the term of this Agreement shall be returned to the RRRDC, and Employee shall delete from his/her computers or other data storage media, all copies of the RRRDC's CAD/RMS software or other material developed by Employee during the term of this Agreement, if any, or in the alternative the media shall be returned to the RRRDC.

8. *Termination.* The Employee or the City may terminate this Agreement and the Employee's employment hereunder at any time, upon thirty (30) days prior written notice, for any reason, or no reason, without cause. The City may terminate this Agreement and the Employee's employment hereunder at any time, without prior notice, for cause. Subsequent to any termination hereunder, the Employee shall have no right to receive any further compensation from the City whatsoever beyond that which has become due and payable to the Employee, pursuant to the terms of this Agreement, as of the date of such termination, provided, however, that the agreements contained in paragraph 6 shall survive any termination of this Agreement.

9. *Assignment.* The rights of this Agreement, including paragraph 6 of this Agreement, may be assigned, conveyed or sold by the City and shall be binding upon the Employee, his/her heirs and permitted assigns. The City has entered into this Agreement in reliance upon the Employee's specific personal qualities including ability, skill, trust, experience, character and judgment, and this Agreement is not assignable by the Employee to any entity or person without the express consent in writing of the City.

10. *Notices.* Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or mailed by first class, certified mail, return receipt requested, addressed to the party to whom the notice is directed at its address appearing above, or at such other addresses as the parties may designate from time to time.

11. *Severability.* If any provision of this Agreement shall be held or deemed to be invalid, such circumstance shall not have the effect of rendering any other provision of this Agreement invalid, inoperative or unenforceable, but such invalid provision shall, to the extent possible, be modified to render it valid, and if such provision is not capable of being so modified, this Agreement shall be construed as if such invalid, inoperative or unenforceable provision had never been contained herein so as to give full force and effect to the remaining such terms and provisions.

12. *Entire Agreement; Amendment.* This writing constitutes the entire agreement of the parties with respect to the subject matter hereof and may not be modified,

amended or terminated except by written agreement specifically referring to this Agreement signed by all of the parties hereto.

13. *Waiver.* No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such written waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

14. *Binding Agreement.* This Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and permitted assigns.

15. *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one agreement.

16. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, delivered and effective as of the day and year first above written.

CITY OF FARGO, a Municipal Corporation

EMPLOYEE

By: Dennis Walaker
Its: Mayor



Attachment A

Employee's primary responsibility for coordinating the selection, acquisition, and implementation of the CAD/RMS system

- Ensure vendors meet all RFP requirements
- Assist in the creation of detailed RFP documents
- Coordinate efforts of working committees assisting in RFP development, product selection, and product development
- Assisting in contract negotiations
- Manages, coordinates, integrates and facilitates the efforts of individuals and Committees and other resources associated with the project.
- Prepares written correspondence, including progress reports, meeting agendas and minutes, proposals and project summaries to project leadership, committees, stakeholders and staff.
- Manage the project budget including grant funds and prepare necessary reports
- Compile and maintain all project files and documentation
- Schedule and monitor the installation of hardware and software components
- Act as a liaison between participating agencies and vendor
- Schedule and conduct training for users upon product installation
- Direct and lead meetings
- Develop and maintain a workload management plan (resource planning) organizing and forecasting personnel allocation and assignments
- Coordinate the purchase and acquisition of hardware, software, and other items related to the project
- Perform additional duties as assigned to ensure the completion of the project



Office of the City Attorney

March 20, 2008

City Attorney
Erik R. Johnson
Assistant City Attorney
Robert L. "Butch" McConn, Jr.

City Prosecutors
Gordon A. Dexheimer
Scott O. Diamond

City Commission
City Hall
200 North Third Street
Fargo, ND 58102

Re: Urban Plains – Development and Assessment Agreement

Dear Commissioners:

I am enclosing a form of Agreement between the City of Fargo, Urban Plains Land Company, LLC and Urban Plains Arena Land, LLC. The purpose for this agreement is to authorize and direct that certain special assessments for improvements installed and constructed by the city in the Urban Plains development will be removed from the two lots that will contain the Metro Sports event facility and reallocated to certain surrounding commercial lots. For your reference I have enclosed a plat map. The two lots shaded in yellow and entitled "Metro Sports Facility" denote the location of the event facility. The surrounding lots colored in blue are those commercial lots that will absorb the special assessments that would otherwise be levied against the Metro Sports Facility lots.

This agreement has been reviewed by the Finance Committee which has recommended approval.

SUGGESTED MOTION: I move to approve the Development and Assessment Agreement regarding Urban Plains development.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Johnson", written over a circular stamp.

Erik R. Johnson

ERJ/jmf
Attachments

**DEVELOPMENT AND ASSESSMENT AGREEMENT
URBAN PLAINS - CITY OF FARGO**

This Agreement is made and entered into effective the 1st day of January, 2008 by and between **Urban Plains Land Company LLC**, a North Dakota limited liability company, whose address is 1400 Radisson Tower, 201 5th Street North, Fargo, ND 58102 [hereinafter "UP Land"]; **Urban Plains Arena Land LLC**, a North Dakota limited liability company, whose address is 1400 Radisson Tower, 201 5th Street North, Fargo, ND 58102 [hereinafter "UP Arena"]; and the **City of Fargo**, North Dakota, a municipal corporation, whose address is 200 North Third Street, Fargo, North Dakota 58102 [hereinafter "City"].

RECITALS:

1. UP Land owns certain land in the city of Fargo, North Dakota. Attached hereto as Exhibit A is a depiction of certain lots owned by UP Land that are to be affected and burdened as a result of this Agreement, said lots depicted and outlined on the said Exhibit A are referred to herein as the "UP Land Lots";

2. Attached hereto as Exhibit B is a depiction of certain lots currently owned by UP Arena, upon which is being constructed a multi-sheet ice hockey, ice skating and sports facility, along with related facilities, which has been commonly referred to as the Metro Sports Foundation Building ["MSF Building"]. The said lots depicted on Exhibit B are referred to herein as the "MSF Lots";

3. UP Land wishes to assist in the development, construction and operations of the MSF Building by relieving some of the burden of certain special assessments from the MSF Lots that have been levied upon the MSF Lots;

4. UP Land is desirous of taking on and assuming the obligation, burden and lien of certain special assessments that would otherwise be levied against the MSF Lots, by agreeing that such special assessments will instead be levied and applied upon the UP Land Lots;

5. The City is willing to accommodate the request by UP Land and UP Arena to apportion and levy special assessments that would otherwise be apportioned and levied upon MSF Lots (currently owned by UP Arena) to the UP Land Lots, on the condition that UP Land and UP Arena, and their successors in interest, provide adequate assurance and security to City that special assessments that would have been applied and levied against the MSF Lots will be paid and that the City and County of Cass (which acts to collect special assessments certified for collection) will not be disadvantaged as a result of this reapportionment and assessment as contemplated herein;

The parties wish to enter into a written agreement to memorialize the terms of such understanding;

NOW, THEREFORE, IT IS HEREBY AGREED:

1. The subjects of this agreement are the UP Land Lots and the MSF Lots above described, and the apportionment and levy against the UP Land Lots, of certain special assessments now spread against the MSF Lots for Special Improvement Districts 5744, 5748, 5749, 5740 and 5530 [hereinafter cumulatively described as the "SIDs"],

2. At the request of UP Land, UP Arena and its predecessors in interest and its authorized agents [hereinafter UP Land and UP Arena may be referred to collectively hereafter as the "Applicant"] the City has installed certain infrastructure and improvements including, without limitation, sanitary sewer, water main, storm sewer, paving, incidentals, concrete curb and gutter, asphalt pavement, street lights and sidewalks as part of the standard and typical method for installing such improvements and the City has created certain Special Improvement Districts under the authority set forth in Chapter 40-22 N.D.C.C. The Applicants, in making said request for improvements, have waived their right to a resolution of necessity and have waived protest thereof as contemplated in N.D.C.C. §§ 40-22-15 through 40-22-18. The City's Board of City Commissioners did, by resolution, cause certain improvements, described more fully below, to be made, and authorized the construction and installation of said improvements and the levy and collection of assessments therefore. Applicants hereby ratify and consent to all actions taken by the City, including the Board of City Commissioners, in establishing the SIDs.

3. Applicants acknowledge and agree that said Special Improvement Districts were lawfully created and authorized.

4. Applicants hereby acknowledge and agree that the award of bids for installation and construction of the improvements represented by the SIDs were lawfully approved by the City's Board of City Commissioners.

5. The City's Special Assessment Commission, duly empowered and authorized, did determine the particular lots that are especially benefited by the construction of work for the above-described SIDs and the assessments against said lots pursuant to the provisions of N.D.C.C. § 40-43-07.

6. The City's Special Assessment Commission has prepared an assessment list, as authorized by N.D.C.C. § 40-23-09.

7. The parties hereto acknowledge and agree that the procedures of N.D.C.C. § 40-23-10 regarding notice of assessments and notice of hearing for objections have been followed by the City and the Applicants hereby waive any notice of hearing and notice of right to object to any assessments relative to the SIDs.

8. Applicants hereby request the Special Assessment Commission and the Board of City Commissioners alter the assessment as to the SIDs so that the assessment

that would otherwise have been levied and assessed the MSF Lots, will be re-allocated, assessed and levied against the UP Land Lots, all in the manner as set forth on Exhibit C attached hereto and incorporated as if fully set forth herein. The parties recognize and agree that at the time of approval and execution of this agreement the final construction, and related, costs that comprise the various special improvement districts described herein and on the attached Exhibit C are not yet known and that Exhibit C is based upon estimated construction costs, and that when the final such costs become known the re-allocation of the assessments shall be done in the same manner as set forth on Exhibit C and, therefore, the re-allocation shall be in the same proportion as is set forth in Exhibit C.

9. Applicants hereby agree and consent to the assessment as set forth in the preceding paragraph, waive any objection thereto, waive any appeal thereof to the Board of City Commissioners, as may be contemplated under N.D.C.C. §§ 40-23-14 and 40-23-15, authorize the Board of City Commissioners to confirm and approve the assessment list, authorize the City Auditor to attach to the approved and agreed assessment list the City Auditor's Certificate that the list is correct as confirmed by the governing body, and authorize that such Certificate and list be filed in the City Auditor's office, all as authorized and provided under Chapter 40-23 N.D.C.C. and do hereby authorize and direct that said assessments, together with all interest and penalties which accrue thereon, shall serve as a lien against the property upon which the assessment is levied until the assessment is paid fully and that such lien shall have precedence over all other liens except general tax liens and shall not be divested by any judicial sale, all as allowed and authorized by N.D.C.C. § 40-24-01.

10. The City Auditor is authorized to certify to the County Auditor all uncertified installments of assessments which are to be extended upon the tax lists of the City for the current year, as described in N.D.C.C. §§ 40-24-11 and 40-24-12.

11. To the extent there may be, in the future, a division of property of the UP Land Lots following the original assessments contemplated herein, the City Auditor is authorized to make, or cause to be made, with assistance and advice of the Special Assessment Commission, the proper division and allocation of the special assessments on the lots as the same are divided and assessed for the general taxes as furnished by the County Auditor, all as set forth in N.D.C.C. § 40-24-12. It is agreed that the City Auditor shall be authorized, with the assistance and advice of the Special Assessment Commission, to make such division including the allocation of the additional assessments appropriated and assessed to the UP Land Lots from the MSF Lots, as is contemplated by this agreement.

12. The County Auditor and County Treasurer are hereby authorized to extend, assess and collect all special assessments as provided herein in the same manner as the County Auditor is authorized under statutory authority with respect to all other special assessments, including all authority to add to special assessments the same interest and penalties that are added in the case of general taxes and at the same time, all as authorized by Chapter 40-24, N.D.C.C.

13. Although the Applicants hereby approve, consent and ratify the transfer and re-application of special assessments from the MSF Lots to the UP Land Lots as stated

herein, to the extent any lawsuit is ever brought to contest the same, the parties and their successors in interest, hereby authorize and direct that any re-assessment, as contemplated by Chapter 40-26, N.D.C.C., may be applied against the MSF Lots and well as UP Land Lots, so that the full amount of assessment for the SIDs may be collected by the County on behalf of the City.

14. Applicants hereby waive any claim, demand, argument or lawsuit to challenge the special assessments as described in the preceding paragraph.

15. UP Land hereby represents and warrants that it is the owner of the UP Land Lots in fee simple absolute, subject only to the following encumbrances:

- (a) A mortgage in the original principal sum of \$1,950,000 from Ace A. Brandt and Tyler Brandt to Metropolitan Life Insurance Company, dated January 16, 2006 and recorded January 17, 2006 as Document No. 1161464.
- (b) A mortgage in the original principal sum of \$2,600,000 from Ace A. Brandt and Tyler Brandt to Metropolitan Life Insurance Company, dated March 24, 2006 and recorded March 31, 2006 as Document No. 1167046, and a mortgage modification (cross default) cross collateralization agreement, dated March 24, 2006 and recorded March 31, 2006 as Document No. 1167047.
- (c) A combination mortgage, security agreement and fixture financing statement in the original principal sum of \$4,000,681 from Urban Plains Land Company LLC to State Bank & Trust, dated February 22, 2007 and recorded March 12, 2007 as Document No. 1196917.
- (d) An assignment of rents by Urban Plains Land Company LLC to State Bank & Trust, dated February 22, 2007 and recorded March 13, 2007 as Document No. 1197000.
- (e) An assignment of rents by Urban Plains Land Company LLC to State Bank & Trust, dated February 22, 2007 and recorded March 13, 2007 as Document No. 1197001.
- (f) A fixture financing statement by Urban Plains Land Company LLC in favor of State Bank & Trust, recorded March 13, 2007 as Document No. 1197007.

UP Arena hereby represents and warrants that it is the owner, in fee simple absolute, of the MSF Lots, except for the following encumbrances:

- (a) A mortgage in the original principal sum of \$3,000,000 from Urban Plains Arena Land LLC and Metro Sports Foundation, Inc. to Kinetic Leasing, Inc., dated October 24, 2007 and recorded October 29, 2007 as Document No. 1217911.

- (b) A mortgage in the original principal sum of \$500,000 from Urban Plains Arena Land LLC and Metro Sports Foundation, Inc. to Ronald D. Offutt, dated January 8, 2008 and recorded January 8, 2008 as Document No. 1223507.

UP Land and UP Arena will provide to the City attorneys' opinions of title to the UP Land Lots and the MSF Lots to allow the City Attorney to confirm record ownership in the Applicants as represented herein.

16. Applicants agree to reimburse the City for any costs incurred by the City in drafting this agreement, conducting due diligence associated with this agreement, and performing the closing of this agreement, including reimbursement for any recording costs and all related expenses.

17. Applicants shall provide to the City an opinion from an attorney of its choosing, to the effect that this agreement is authorized and legally enforceable under local, state and federal law, and constitutes a binding agreement among the parties.

18. Applicants hereby agree, jointly and severally, to indemnify and hold harmless the City of Fargo from any demands, claims, lawsuits or causes of action brought against the City as a result of the entry into this agreement by the City, the application of special assessments against UP Land Lots as contemplated herein, and any other demands or claims or lawsuits brought against the City that are the proximate result of the City entering into this agreement.

19. Prior to any purchase of UP Land Lots by prospective purchasers, UP Land agrees to inform prospective purchasers of the UP Land property described herein of the existence of this agreement and the terms hereof.

20. UP Land agrees, for and on behalf of itself and its successors and assigns, to pay or cause to be paid, on or before March 1 of each year, the then-current annual installment of special assessments and any accrued penalties on each and every unimproved lot located in the UP Land Lots. It is understood and agreed that a transfer of said lots from UP Land to third parties shall not relieve UP Land of its obligations to pay annual installments of special assessments, but UP Land shall be called upon to pay such defaulted special assessment and accrued penalties only after any third-party transferee shall fail to pay the special assessment as to which the City's demand is made..

21. The existing letter of credit, previously furnished as security by Applicants, shall continue in effect, as additional assurance of Applicants' performance hereunder.

22. In the event that Applicants, or their respective successors, fail to pay on or before March 1 of each year, annual installments of special assessments and any accrued penalties as provided in paragraph 20 above, City may utilize any cash or other security which has been furnished to City, or may draw upon the letter of credit, and apply said funds to pay all or part of the special assessments and accrued penalties which have been

levied against said property but have not been certified for collection. Any amount remaining after payment of all uncertified special assessments may, in the discretion of City, be retained for future use pursuant to this Agreement or may be applied to current annual installments of special assessments. Provided, that City shall not utilize the cash or other security, or draw upon the letter of credit without first giving Applicants 30 days' written notice of its intent to do so.

23. In the event that Applicants fail to pay on or before March 1 of each year, annual installments of special assessments as provided in paragraph 20 above, and if the amount of cash or other security which has been furnished to City is not sufficient to pay all special assessments which have been levied against said property, whether or not said assessments have been certified for collection, City shall have a cause of action against Applicants and any guarantor of Applicants, for the balance of all unpaid special assessments on all unimproved lots located among the UP Land Lots, or so many of said Lots as to which the City may elect to pursue the applicable remedies available to it under this agreement.

Applicants acknowledge and agree that this Agreement is made as an inducement for the reallocation of the costs of installation of utilities and other improvements for the UP Land Lots made by City at the request of the Applicants, and that the remedies provided herein are in addition to any and all statutory remedies provided for collection of delinquent taxes and special assessments.

24. The cash or other security which has been furnished to City, or any remaining and unused portion thereof, shall be returned to Applicants, or the letter of credit may be reduced, proportionately, as improvements are made to the UP Land lots based upon the actual or estimated market valuation for the improvement as determined by the City Assessor. It is specifically understood and agreed that "improvement" means construction of a building such as a house, apartment building, office building or commercial structure or other principal building reflecting the intended use of the property. Construction of a garage, storage building or other accessory-type structure shall not constitute "improvement" of a lot pursuant to this Agreement. Such returns or reductions shall be made no more frequently than on an annual basis (timed to the renewal of any letter of credit or maturity of any certificate of deposit, as the case may be).

25. If any lots in the UP Land Lots are not improved or if all special assessments are not paid, all as set forth in paragraph 23 above, then, and in that event, City may draw upon the letter of credit and the proceeds thereof shall be applied first toward unpaid special assessments levied against said property which have not been certified for collection. Any amount remaining after application of funds to uncertified special assessments shall be applied to special assessments which have been certified for collection. It shall be in the sole discretion of City whether any remaining funds shall be applied uniformly to all unimproved lots among said UP Land Lots, or selectively to any particular lot or lots. If the amount of cash available from the letter of credit is not sufficient to pay all special assessments on all unimproved lots among the UP Land Lots, City shall have a cause of action against Applicants or any guarantor of Applicants, for the deficiency, all as provided in paragraph 23 hereof.

26. Applicants hereby jointly and severally agree to indemnify the City for any expenses involved in the enforcement of this Agreement, including, but not limited to, reasonable attorneys fees and costs.

27. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. Transfer or conveyance of any or all of the lots within the UP Land Lots shall not relieve Applicants of any of their responsibilities under the terms of this Agreement.

28. The terms and conditions of this Agreement shall be interpreted in accordance with and governed by the laws of the State of North Dakota.

29. The parties will execute and perform the obligations under this agreement in due course following execution hereof, including the delivery of title opinions to the City evidencing marketable record title to the respective properties as represented herein, Applicant counsel opinion as called for in paragraph 17, above, and delivery of any deposit, certificate of deposit or letter of credit, as the case may be, called for in paragraph 19, *et sequitur*.

30. If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid or enforceable, then such provision shall be deemed to be written, construed and may be enforced as so limited.

31. The failure of any party to enforce any provisions of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

32. Each exhibit delivered pursuant to the terms of this Agreement shall be in writing and shall constitute a part of this Agreement.

33. This Agreement shall be binding on and inure to the benefit of the parties hereto and the assigns, personal representatives and successors in interest of the parties hereto.

34. The parties agree to execute a Memorandum of Agreement, suitable for recording with the Cass County Recorder, for the purpose of placing any successors in interest to the subject properties on notice as to the terms hereof.

35. The parties acknowledge the accuracy of the Recitals to this Agreement and agree that they are incorporated into this Agreement by reference.

36. The effective date of this Agreement shall be the date and year first above written. However, this Agreement is not binding upon the City until the existing mortgagees of the affected Lots consent to all provisions of this Agreement, including subordination of their interests hereto.

URBAN PLAINS LAND COMPANY, LLC,
a North Dakota limited liability company,

By: _____

Its: _____

URBAN PLAINS ARENA LAND, LLC,
a North Dakota limited liability company,

By: _____

Its: _____

CITY OF FARGO, NORTH DAKOTA,
a municipal corporation,

By: _____

Dennis R. Walaker, Mayor

ATTEST:

Steve Sprague, City Auditor

CONSENT OF MORTGAGEES

Metropolitan Life Insurance Company, a mortgagee of the UP Land Lots, consents and agrees to the foregoing Development and Assessment Agreement, this ___ day of _____, 2008, and hereby subordinates its mortgages to the provisions thereof.

Metropolitan Life Insurance Company

By: _____

Its: _____

State Bank of Fargo, a mortgagee of the UP Land Lots, consents and agrees to the foregoing Development and Assessment Agreement, this ____ day of _____, 2008, and hereby subordinates its mortgages, assignments of rent and fixture-financing statement to the provisions thereof.

State Bank of Fargo

By: _____

Its: _____

Kinetic Leasing, Inc., an existing and proposed mortgagee of the MSF Lots, consents and agrees to the foregoing Development and Assessment Agreement, this ___ day of _____, 2008, and hereby subordinates its mortgage and any future mortgage to the provisions thereof.

Kinetic Leasing, Inc.

By: _____

Al Hintz, President

Ronald D. Offutt, a mortgagee of the MSF Lots, consents and agrees to the foregoing Development and Assessment Agreement, this ___ day of _____, 2008, and hereby subordinates it mortgage to the provisions thereof.

Ronald D. Offutt

Bremer Bank, National Association, a proposed mortgagee of the MSF Lots, consents and agrees to the foregoing Development and Assessment Agreement this _____ day of _____, 2008, and hereby subordinates its intended mortgage and other intended real-estate security to the provisions thereof.

Bremer Bank, National Association

By: _____

Its: _____

F:\USERS\AAL\Bremer Bank\Metro Sports Arena\Specials\Development and Assessment Agreement v4.doc

EXHIBIT A

UP Land Lots - Description

Lots 1 and 2, Block 2, Urban Plains Center Addition to the City of Fargo, Cass County, North Dakota.

-AND-

Lots 1, 2, 3 and 6, Block 3, Urban Plains Center Addition to the City of Fargo, Cass County, North Dakota.

-AND-

Lot 1, Block 4, Urban Plains Center Addition to the City of Fargo, Cass County, North Dakota.

-AND-

Lots 1 and 2, Block 4, Urban Plains By Brandt First Addition to the City of Fargo, Cass County, North Dakota.

-AND-

Lots 1, 2, 3 and 4, Block 5, Urban Plains By Brandt First Addition to the City of Fargo, Cass County, North Dakota.

EXHIBIT B

MSF Lots - Description

Lots Four (4) and Five (5), Block Three (3), Urban Plains Center
Addition to the City of Fargo, Cass County, North Dakota

EXHIBIT C

Allocation of Special Assessments

[See attached page]

Exhibit C

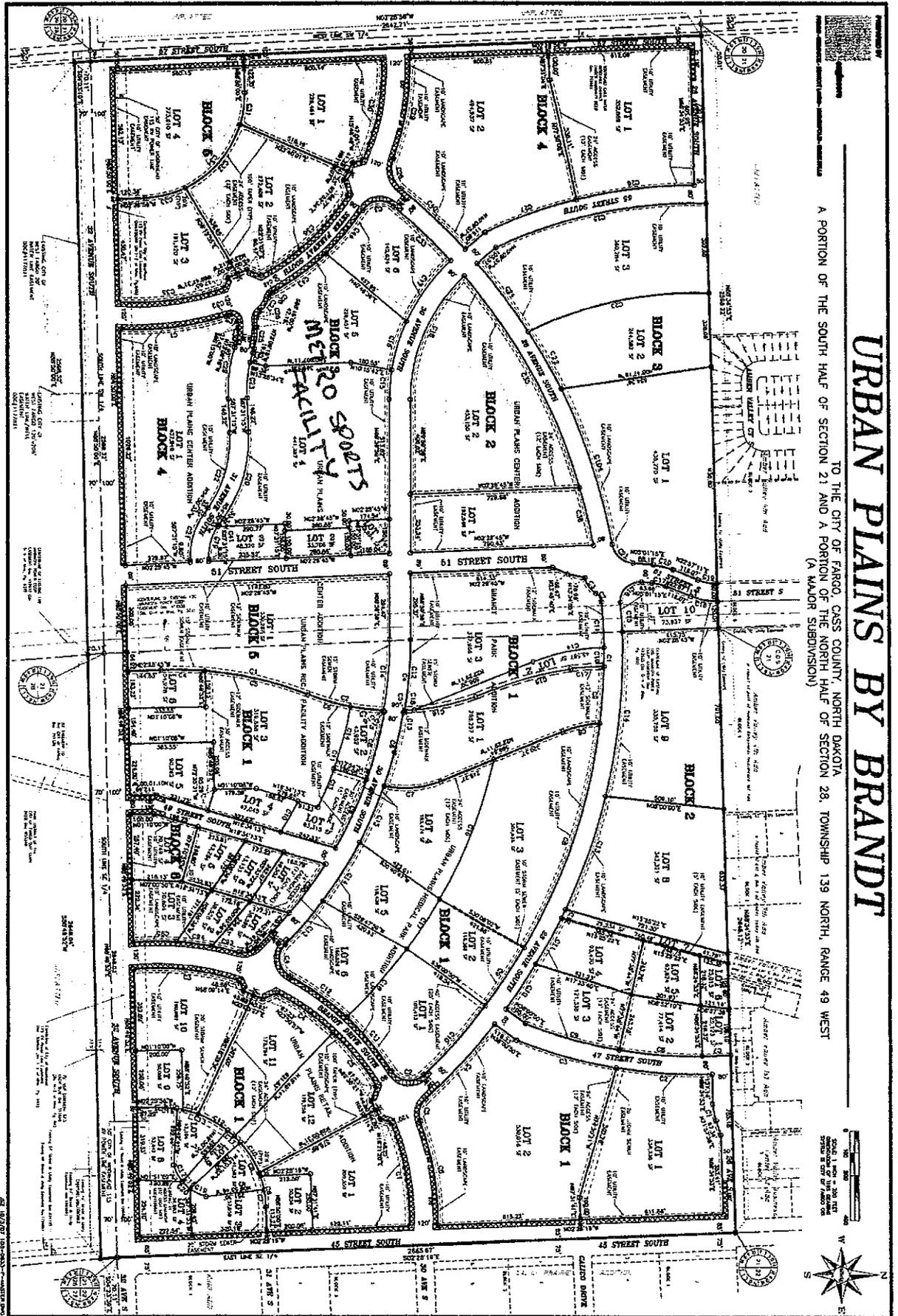
SID # 4846
SID # 5008

ESTIMATE ONLY

Exhibit C

PARCEL #	DEFERRAL	ORIG. #5744	%	COMBINED	ORIG. #5748	%	COMBINED	ORIG. #5749	%	COMBINED	3RD AVE. ARTERIAL	%	COMBINED	5TH ST. ARTERIAL	%	COMBINED
8300 0070 000	\$ 59,249.48	\$ 24,493.67	-	-	\$ 218,530.50	-	-	\$ 286,432.31	-	-	\$ 34,596.00	-	-	\$ 21,551.00	-	-
8300 0060 000	\$ 28,620.29	\$ 95,456.88	-	-	\$ 39,859.77	-	-	-	-	-	-	-	-	-	-	-
8300 0010 000	\$ 8,896.96	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0016 000	\$ 5,332.19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0018 000	\$ 7,298.28	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0019 000	\$ 10,094.37	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0018 000	\$ 4,443.49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0019 000	\$ 5,332.19	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0020 000	\$ 4,443.49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8010 0020 000	\$ 4,443.49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0030 000	\$ 4,443.49	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0030 000	\$ 9,775.67	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0040 000	\$ 888.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0050 000	\$ 888.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0060 000	\$ 888.70	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0090 000	\$ 2,866.08	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8300 0100 000	\$ 8,959.99	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	\$ 88,869.77	\$ 349,341.19	119,962.55	\$ 349,341.19	\$ 552,747.10	\$ 298,390.27	\$ 552,747.10	\$ 509,778.76	\$ 298,432.31	\$ 808,217.06	\$ 812,024.45	\$ 561,147.00	\$ 812,024.45	\$ 561,147.00	\$ 877,140.80	

ESTIMATE ONLY
FOR THE PURPOSES OF THE
ESTIMATE ONLY
WITH THE UNDERSTANDING THAT



URBAN PLAINS BY BRANDT

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA
A PORTION OF THE SOUTH HALF OF SECTION 21 AND A PORTION OF THE NORTH HALF OF SECTION 28, TOWNSHIP 139 NORTH, RANGE 49 WEST
(A MAJOR SUBDIVISION)

SCALE 1" = 200' FEET
DATE OF PLAT: 11/11/2011
BY: [Signature]





K1

ASSESSMENT DEPARTMENT

March 4, 2008

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements as submitted Inreit Properties LLLP. A description of the property involved, type of improvements to be made and assessment information is indicated on the application.

It is my opinion that the value of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2008, 2009, 2010.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$61,200 with the City of Fargo's share being \$7,950.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Hushka".

Ben Hushka
City Assessor

tla

attachment



K2

ASSESSMENT DEPARTMENT

March 10, 2008

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements as submitted Janis Kirsch. A description of the property involved, type of improvements to be made and assessment information is indicated on the application.

It is my opinion that the value of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2008, 2009, 2010, 2011, 2012. The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$325 with the City of Fargo's share being \$45.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Hushka".

Ben Hushka
City Assessor

tla

attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**
North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner JANIS KIRSCH Phone No. _____

2. Address of Property 801 11 AVE N
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed, PT LT 11, BLK 4, CHAPINS

4. Parcel Number 01-0440-00600-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner SAME
City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). REMODEL EXISTING BATHROOM

7. Building Permit No. 72085 8. Year Built 1914

9. Date of Commencement of making the improvement 12/3/07

10. Estimated market value of property before improvement \$ 75,000

11. Cost of making the improvement (all labor, material and overhead) \$ 156,322.23

12. Estimated market value of property after improvement \$ _____

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
Applicant's Signature _____ Date _____

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 5 YEARS
Assessor's Signature [Signature] Date 3/10/08

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____

K3



ASSESSMENT DEPARTMENT

March 10, 2008

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements as submitted Michael & Tammy Binder. A description of the property involved, type of improvements to be made and assessment information is indicated on the application.

It is my opinion that the value of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2009, 2010, 2011, 2012, 2013. The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$485 with the City of Fargo's share being \$65.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Hushka".

Ben Hushka
City Assessor

tla

attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Michael & Tammy Binder Phone No. 701-541-3199

2. Address of Property 1527 3 Ave S
 City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed, E 1/2 of Lot 9
in block 8 of Fuller's addition

4. Parcel Number 01-0980-01310-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner 1527 3 Ave S
 City Fargo State ND Zip Code 58103

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). New siding + windows + doors

7. Building Permit No. BL30030318 8. Year Built 1936

9. Date of Commencement of making the improvement 3/4/08

10. Estimated market value of property before improvement \$ 101,400 (Total for 10% increase in value)

11. Cost of making the improvement (all labor, material and overhead) \$ 23,531 (Installation property taxes)

12. Estimated market value of property after improvement \$ 8

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
 Applicant's Signature Tammy Binder Date 3/4/08

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 25 YEARS
 Assessor's Signature [Signature] Date 3/10/08

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved
 Approval subject to the following conditions: _____
 Chairman of Governing Body _____ Date _____



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2005)

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

(2)

22 3-14-08
25th
(1)

Delta Waterfowl is hereby authorized to conduct games of
(Name of Organization)

chance under the license granted by the Attorney General of the State of North Dakota
at the following location: Best Western Doublewood Inn the address of which is:

3333 13th Ave S Force ND 58103 Cass
(Street) (City) (Zip Code) (County)

Date(s) authorized: Beginning 4-17-08 Ending 4-17-08

Specific location of gaming within facility (required): Woodland complex

Number of twenty-one tables (required)(if zero, enter "0"): 0

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)
1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Bingo, Pull Tabs, Club Specials, Tip Boards, Seal Boards, Prize Boards, PUNCH Boards, Sports Pools, Twenty-One, Poker, Calcutta, Paddle-Wheels

Attorney General Date Signature of City/County Auditor Date
Steven Sprague, City Auditor 03-24-08
PRINT Name / Official Position

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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

130/09
Phone Number
3484
Zip Code
58102
Zip Code

Retail Value of Prize
\$
1 Diamonds
No
of the
are
in
A will
(Limit \$12,000 per year)

nit and should call
 Yes - If "Yes,"

for a state license

Phone Number
2-3484

3-14-08
 25.00
 M 2

Name of Non-profit Organization <i>Fargo-Moorhead Cosmopolitan Club</i>		Date(s) of Activity <i>2/1/08</i> to <i>12/31/08</i>	
Person Responsible for the Gaming Operation <i>Jay Titus</i>		Title	Business Phone Number <i>282-3484</i>
Business Address <i>P.O. Box 1544</i>	City <i>Fargo</i>	State <i>ND</i>	Zip Code <i>58102</i>
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted <i>Fryin' Pan - Fargo Cosmo Meeting Room</i>		Site Address <i>302 Main Ave.</i>	
City <i>Fargo</i>	State <i>ND</i>	Zip Code <i>58102</i>	County <i>Cass</i>
Check the Game(s) to be Conducted: <input type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input checked="" type="checkbox"/> Sports Pool			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>Monday Night Football Pool</i>	<i>Cash</i>	<i>\$50⁰⁰ per</i>	<i>100 Books</i>	<i>sold = 14/wk x</i>	<i>\$50 = \$720</i>
	<i>may sell</i>	<i>550 - 650</i>	<i>books</i>		
Total:					(Limit \$12,000 per year) <i>\$ 720⁰⁰</i>

Intended uses of gaming proceeds: *Various local charities*

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

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: *\$ 3000*. This amount is part of the total prize limit of \$12,000 per year.

PRIZE RESTRICTIONS:
 A single cash prize cannot exceed \$2,500 and total cash prizes for a raffle cannot exceed \$4,000 in one day.
 The retail value of a merchandise prize cannot exceed \$2,500.
 The total of all cash prizes and retail value of all merchandise prizes for all games cannot exceed \$12,000 per year.
 If the value of the planned cash and merchandise prizes exceeds \$12,000, the organization must reduce the prizes to this limit or apply for a state license with the Office of Attorney General.

Signature of Top Executive Official <i>Jay Titus</i>	Date <i>3/13/08</i>	Title <i>FM Cosmo Charity Chairman</i>	Daytime Phone Number <i>282-3484</i>
---	------------------------	---	---

NDSU STUDENT ORGANIZATION APPLICATION FOR A LOCAL PERMIT TO CONDUCT GAMING

Page 77

City of Fargo
Auditors Office - Gaming
200 N 3rd Street
Fargo, ND 58102
Phone: 701-241-1304

Pd CASH
3-20-08

MIP

Name of Student Organization <i>American Indian Science and Engineering Society</i>		Date(s) of Activity <i>4-24-08</i> to	
Name of Contact Person <i>Chris Pettier</i>		Time of Event <i>12:00</i> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	
Street Address of Student Organization <i>1401 Admin Ave</i>		City <i>Fargo</i>	State <i>ND</i>
		Zip Code <i>58105</i>	
Name of Site Where Game(s) will be Conducted <i>Multicultural Student Services Center</i>		Street Address <i>1401 Admin Ave</i>	
City <i>Fargo</i>	State <i>ND</i>	Zip Code <i>58105</i>	County <i>Cass</i>
Describe the Intended Use of the Net Income from the Gaming Activity: <i>Funding for regional conference in Rapid City, SD.</i>			
Check the Game Types to be Conducted: <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>Raffle</i>	<i>Star Quilt</i>	<i>\$ 250.00</i>			\$
Total:					(Limit \$12,000 per year) <i>\$ 250.00</i>

Intended uses of gaming proceeds: *Fund region conference trip to Rapid City, SD.*

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes

If "Yes," indicate the total value of all prizes previously awarded: \$ _____. This amount is part of the total prize limit of \$12,000 per year.

ACKNOWLEDGEMENT BY NDSU - Must be signed by the Associate Director of Memorial Union or Coordinator of Greek Life and Student Organizations located in the Student Activities Office - Room 360 in Memorial Union.

I acknowledge that the *American Indian Science and Engineering Society* student organization is registered by the Administration of North Dakota State University.

Signature 	Title <i>Coordinator of Greek Life</i>	Date <i>3-20-08</i>	Business Phone Number <i>701-231-8565</i>
---------------	---	------------------------	--

The policy of North Dakota State University requires that a student organization obtain a signed acknowledgment by its administration that the applicant is a registered student organization of NDSU.

Signature of Contact Person 	Title <i>AISES PRESIDENT</i>	Date <i>3-20-08</i>	Business Phone Number <i>701-740-0397</i>
---------------------------------	---------------------------------	------------------------	--



March 18, 2008

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

Dear Commissioners:

Accompanying for the City Commission review and approval is the following agreement with Fred Martin Hector, Jr. regarding right of entry.

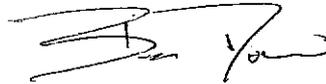
Agreement for Entry and Construction

RECOMMENDED MOTION:

Approve agreement for entry and construction with Fred Martin Hector, Jr. for property located along 52nd Avenue South.

Please return the signed original.

Respectfully submitted,



Ben Dow
Engineering Technician

BJD/jmg
Attachment

C: Gary Stewart
Mark Bittner
Cody Eilertson

AGREEMENT FOR ENTRY AND CONSTRUCTION

THIS AGREEMENT, made and entered into this ___ day of _____, 2007, by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as “City”, and the undersigned, hereinafter “Owner”,

WITNESSETH:

WHEREAS, City will be purchasing and paying Owner for a permanent easement and/or a temporary construction easement in the property hereinafter described; and,

WHEREAS, City is engaged in the reconstruction of 52nd Avenue South in Fargo, North Dakota; and,

WHEREAS, it is necessary to have and City desires the right of access to the property to facilitate work on the project; and,

WHEREAS, it is necessary to have and City desires the right of access to the property to facilitate work on the project in advance of receiving City ordered appraisal and negotiating an acceptable price for a permanent and/or temporary construction easement or having such price established through eminent domain proceedings if agreement is not reached; and,

WHEREAS, Owner is agreeable to the same and the parties wish to commit their agreement to writing.

NOW, THEREFORE, it is hereby agreed as follows:

1. Owner does hereby release to City the right to enter upon and to have the right of access to Owner’s property for the purpose of construction of 52nd Avenue South in Fargo, North Dakota. Said parcels of land are described on Exhibit “A” attached hereto and incorporated herein by reference.

2. It is further agreed between City and Owner that the terms of this instrument shall in no way affect the amount of just compensation or damages to be awarded to the Owner, nor shall it be in any way construed as limiting or restricting the right of Owner to negotiate for or appeal from any offer for said easements which may be made if negotiations regarding just compensation are not successful and eminent domain proceedings become necessary.

3. In consideration of Owners allowing City to proceed prior to determination, by negotiation or otherwise, City agrees to pay interest on the amount finally determined to be just compensation or damages, whether such determination is negotiated or determined in an eminent domain proceeding. Interest shall be calculated at 6% per annum and shall commence running from date of City entry on Owner's said parcels. City and Owner agree that this agreement shall not be recorded or put of record in any manner.

4. City agrees to indemnify and hold Owner harmless from any and all claims, demands, or suits that may result from City's use of the property arising out of this agreement for entry and right of access agreement.

DATED this ____ day of _____, 2007.

THE CITY OF FARGO, NORTH DAKOTA
a municipal corporation

By _____
Dennis R. Walaker, Mayor

ATTEST:

Steven Sprague, City Auditor

OWNER: 

Fred M. Hector, Jr. a/ka Fred Martin Hector, Jr.

EXHIBIT "A"

Permanent Easement Description:

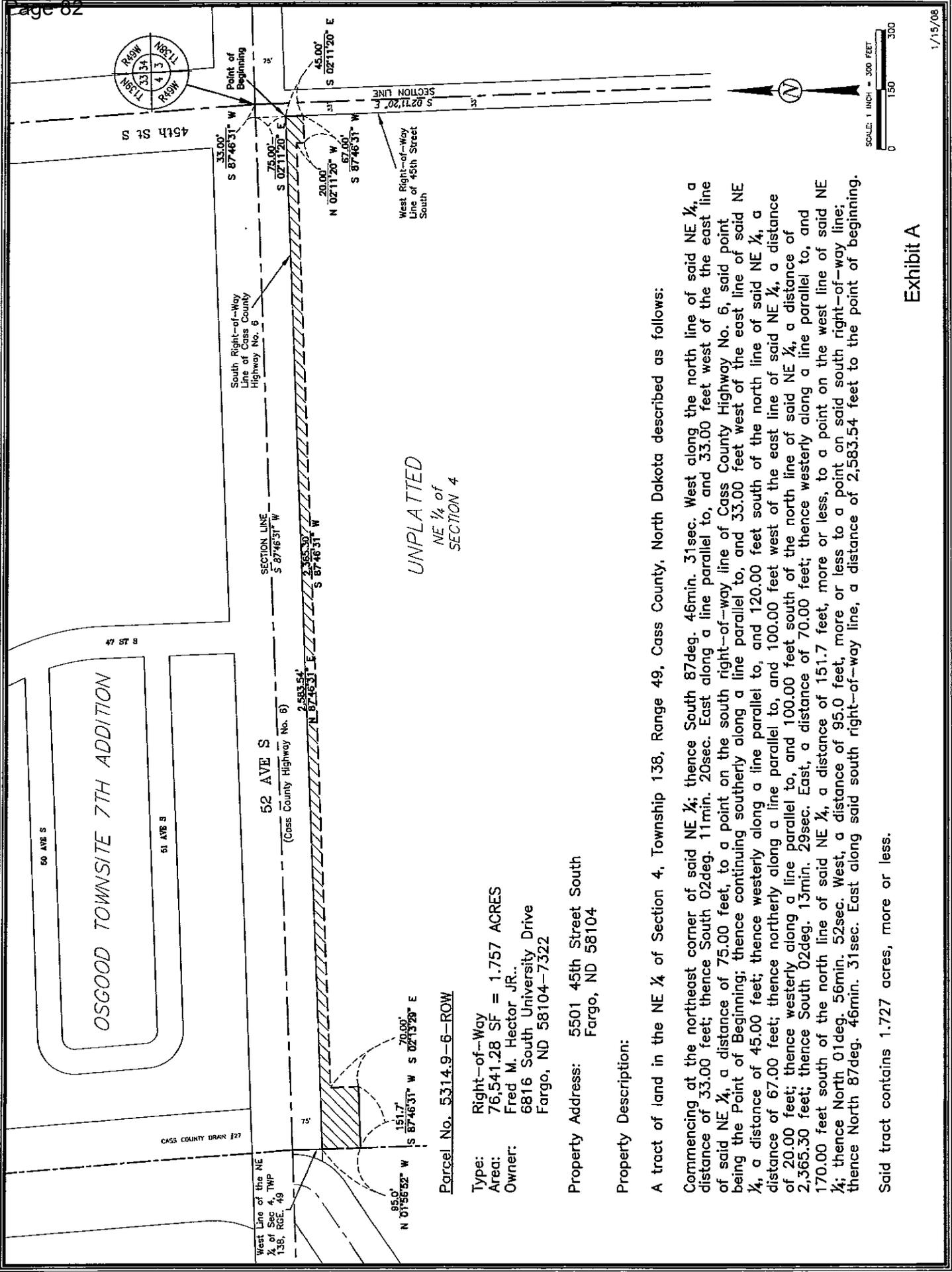
A tract of land in the NE 1/4 of Section 4, Township 138, Range 49, Cass County, North Dakota described as follows:

Commencing at the northeast corner of said NE 1/4; thence South 87deg. 46min. 31sec. West along the north line of said NE 1/4, a distance of 33.00 feet; thence South 02deg. 11min. 20sec. East along a line parallel to, and 33.00 feet west of the east line of said NE 1/4, a distance of 75.00 feet, to a point on the south right-of-way line of Cass County Highway No. 6, said point being the Point of Beginning; thence continuing southerly along a line parallel to, and 33.00 feet west of the east line of said NE 1/4, a distance of 45.00 feet; thence westerly along a line parallel to, and 120.00 feet south of the north line of said NE 1/4, a distance of 67.00 feet; thence northerly along a line parallel to, and 100.00 feet west of the east line of said NE 1/4, a distance of 20.00 feet; thence westerly along a line parallel to, and 100.00 feet south of the north line of said NE 1/4, a distance of 2,365.30 feet; thence South 02deg. 13min. 29sec. East, a distance of 70.00 feet; thence westerly along a line parallel to, and 170.00 feet south of the north line of said NE 1/4, a distance of 151.7 feet, more or less, to a point on the west line of said NE 1/4; thence North 01deg. 56min. 52sec. West, a distance of 95.0 feet, more or less to a point on said south right-of-way line; thence North 87deg. 46min. 31sec. East along said south right-of-way line, a distance of 2,583.54 feet to the point of beginning. Said tract contains 1.727 acres, more or less.

Temporary Construction Easement Description:

A 75.00' wide easement for Temporary Construction purposes in the NE 1/4 of Section 4, Township 138, Range 49, Cass County, North Dakota bound to the north by the following described line:

Commencing at the northeast corner of said NE 1/4; thence South 87deg. 46min. 31sec. West along the north line of said NE 1/4, a distance of 33.00 feet; thence South 02deg. 11min. 20sec. East along a line parallel to, and 33.00 feet west of the east line of said NE 1/4, a distance of 120.00 feet, to the Point of Beginning of the line to be described; thence westerly along a line parallel to, and 120.00 feet south of the north line of said NE 1/4, a distance of 67.00 feet; thence northerly along a line parallel to, and 100.00 feet west of the east line of said NE 1/4, a distance of 20.00 feet; thence westerly along a line parallel to, and 100.00 feet south of the north line of said NE 1/4, a distance of 2,365.30 feet; thence South 02deg. 13min. 29sec. East, a distance of 70.00 feet; thence westerly along a line parallel to, and 170.00 feet south of the north line of said NE 1/4, a distance of 151.7 feet, more or less, to a point on the west line of said NE 1/4 and there terminating. The south line of said easement shall be lengthened or shortened to terminate at the west right-of-way line of 45th street south and the west line of said NE 1/4. Said tract contains 4.522 acres, more or less.



UNPLATTED
NE 1/4 of
SECTION 4

Parcel No. 5314.9-6-ROW

Type: Right-of-Way
Area: 76,541.28 SF = 1.757 ACRES
Owner: Fred M. Hector JR.,
6816 South University Drive
Fargo, ND 58104-7322

Property Address: 5501 45th Street South
Fargo, ND 58104

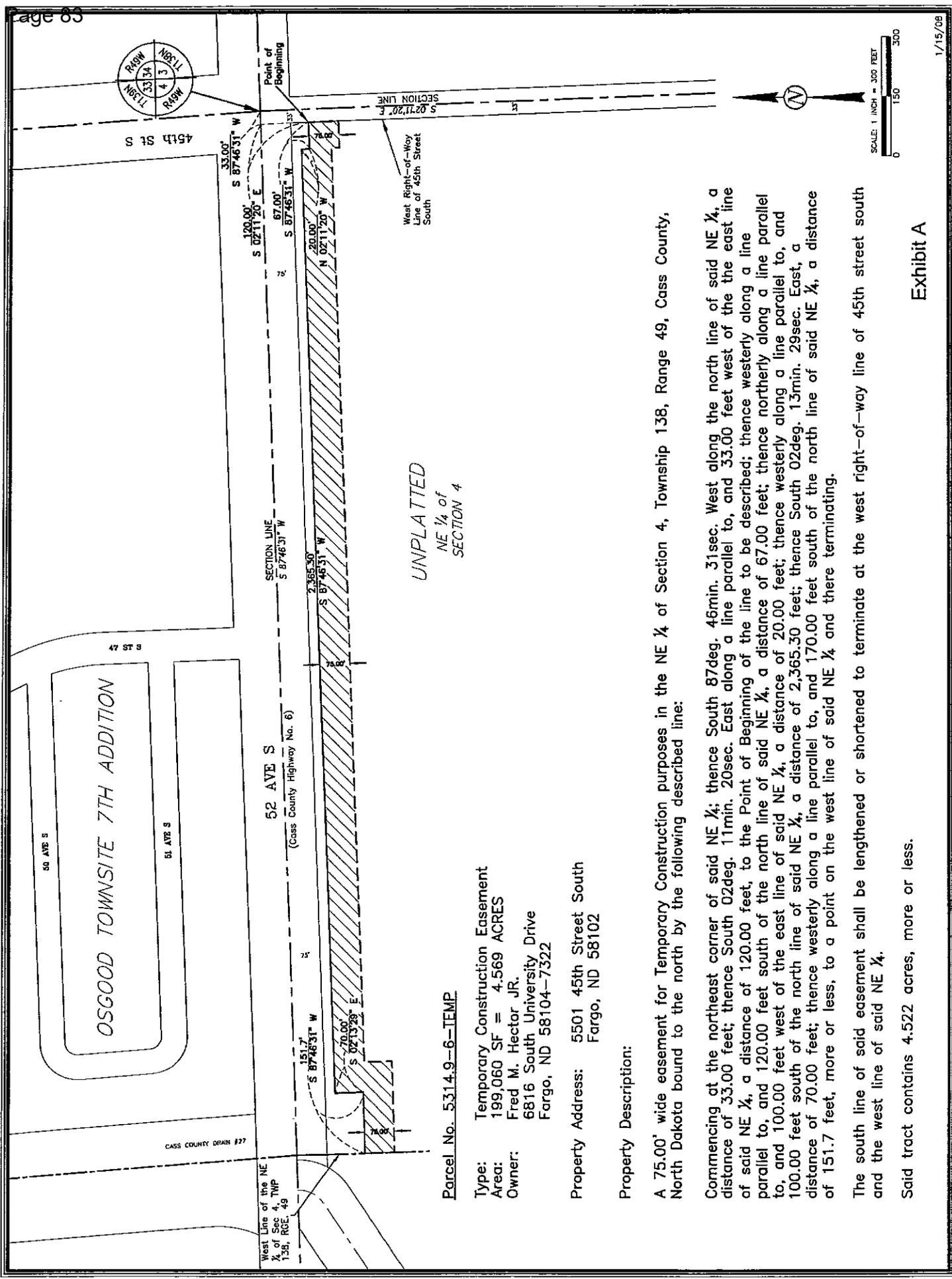
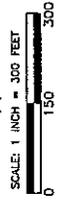
Property Description:

A tract of land in the NE 1/4 of Section 4, Township 138, Range 49, Cass County, North Dakota described as follows:

Commencing at the northeast corner of said NE 1/4; thence South 87deg. 46min. 31sec. West along the north line of said NE 1/4, a distance of 33.00 feet; thence South 02deg. 11min. 20sec. East along a line parallel to, and 33.00 feet west of the the east line of said NE 1/4, a distance of 75.00 feet, to a point on the south right-of-way line of Cass County Highway No. 6, said point being the Point of Beginning; thence continuing southerly along a line parallel to, and 33.00 feet west of the east line of said NE 1/4, a distance of 45.00 feet; thence westerly along a line parallel to, and 120.00 feet south of the north line of said NE 1/4, a distance of 67.00 feet; thence northerly along a line parallel to, and 100.00 feet west of the east line of said NE 1/4, a distance of 20.00 feet; thence westerly along a line parallel to, and 100.00 feet south of the north line of said NE 1/4, a distance of 2,365.30 feet; thence South 02deg. 13min. 29sec. East, a distance of 70.00 feet; thence westerly along a line parallel to, and 170.00 feet south of the north line of said NE 1/4, a distance of 151.7 feet, more or less, to a point on the west line of said NE 1/4; thence North 01deg. 56min. 52sec. West, a distance of 95.0 feet, more or less to a point on said south right-of-way line; thence North 87deg. 46min. 31sec. East along said south right-of-way line, a distance of 2,583.54 feet to the point of beginning.

Said tract contains 1.727 acres, more or less.

Exhibit A



UNPLATTED
NE 1/4 of
SECTION 4

Parcel No. 5314.9--6--TEMP

Type: Temporary Construction Easement
Area: 199,060 SF = 4.569 ACRES
Owner: Fred M. Hector JR.
6816 South University Drive
Fargo, ND 58104-7322

Property Address: 5501 45th Street South
Fargo, ND 58102

Property Description:

A 75.00' wide easement for Temporary Construction purposes in the NE 1/4 of Section 4, Township 138, Range 49, Cass County, North Dakota bound to the north by the following described line:

Commencing at the northeast corner of said NE 1/4; thence South 87deg. 46min. 31sec. West along the north line of said NE 1/4, a distance of 33.00 feet; thence South 02deg. 11min. 20sec. East along a line parallel to, and 33.00 feet west of the the east line of said NE 1/4, a distance of 120.00 feet, to the Point of Beginning of the line to be described; thence westerly along a line parallel to, and 120.00 feet south of the north line of said NE 1/4, a distance of 67.00 feet; thence northerly along a line parallel to, and 100.00 feet west of the east line of said NE 1/4, a distance of 20.00 feet; thence westerly along a line parallel to, and 100.00 feet south of the north line of said NE 1/4, a distance of 2,365.30 feet; thence South 02deg. 13min. 29sec. East, a distance of 70.00 feet; thence westerly along a line parallel to, and 170.00 feet south of the north line of said NE 1/4, a distance of 151.7 feet, more or less, to a point on the west line of said NE 1/4 and there terminating.

The south line of said easement shall be lengthened or shortened to terminate at the west right-of-way line of 45th street south and the west line of said NE 1/4.

Said tract contains 4.522 acres, more or less.

Exhibit A

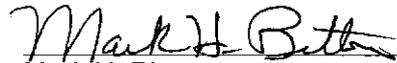
PWPEC ROA
#5153-3 Grant Application
03/19/08 -- Page 2

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials		<u>N/A</u>
Agreement for payment of specials required of developer		<u>N/A</u>
30% escrow deposit required		<u>N/A</u>

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Pat Zavoral, City Administrator				<u>X</u>
Jim Gilmour, Planning Director	<u>X</u>	<u>X</u>		
Bruce Hoover, Fire Chief	<u>X</u>	<u>X</u>		
Mark Bittner, City Engineer	<u>X</u>	<u>X</u>		
Bruce Grubb, Enterprise Director	<u>X</u>	<u>X</u>		
Al Weigel, Public Works Operations Manager				
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		

ATTEST:



Mark H. Bittner
City Engineer



Memorandum

To: PWPEC
From: April E. Walker, Storm Sewer Utility Engineer *AEW*
CC: File 5153-3
Date: 3/17/08
Re: National Fish and Wildlife Foundation Grant Agreement

The City of Fargo has been working with a number of entities (Metro Cog, Minnesota DNR, and North Dakota Department of Fish and Game) to put together a project for the retrofit of the Hickson and Christine dams. These dams are owned by the City of Fargo. They were built in the 1930's and remain the responsibility of the City to maintain. An issue has been raised over the safety of the structures and the City, working in concert with the entities named above, would like to resolve this issue. The dams will be converted to rock arch rapid dams. This is the same design that was applied to the dams within the City in the past several years. This will allow for fish passage and alleviate the safety concern that currently exists.

A funding package for this project has been put together through various grants. Attached you will find an agreement with the National Fish and Wildlife Foundation. They have agreed to contribute \$250,000. Please review the attached document. At this time I would request that PWPEC recommend approval of this agreement to the City Commission.

~~WFK~~

Joan
Please send
to April Walker
W/ Fargo Eyering



RECEIVED

FEB 13 2008

F-M Metropolitan
Council of Governments

February 6, 2008

Mr. Wade Kline
Metropolitan Council of Governments
Case Plaza, One North 2nd St., Suite 232
Fargo, ND 58102

Re: Red River of the North Fish Habitat Restoration #2007-0108-000

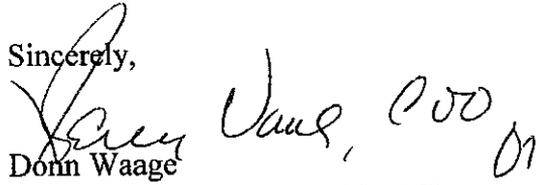
Dear Mr. Wade Kline:

The Board of Directors of the National Fish and Wildlife Foundation (NFWF) approved an award of \$250,000 in federal funds to the City of Fargo, North Dakota to support the *Red River of the North Fish Habitat Restoration* project. This award was made on the condition that these funds be matched by \$440,000 in additional non-federal funds raised by the City of Fargo, North Dakota specifically for this project. Please be sure to review the enclosed Matching Funds Eligibility and Documentation guidance and note the requirements of the Certification of Matching Funds that you will be required to submit upon completion of the Project, to ensure that the contributions you receive are eligible as matching funds.

Enclosed please find two copies of the Grant Agreement, as well as one copy of the additional enclosures listed below. Since this Award involves federal funds, please note specifically Section A13 FEDERAL FUNDS - FEDERAL REGULATIONS of Appendix A, and provide for your Chief Financial Officer, Treasurer, or legal counsel to review the Agreement and enclosures. If the terms and conditions of the Agreement are acceptable, please sign and return both copies of the Agreement to the Foundation; you should retain the additional enclosures for your files. The Foundation will then countersign both copies of the Agreement and return one copy to you for your files. Signing this Agreement indicates an understanding of, and intent to comply with, all of its terms and conditions and those of the additional enclosures. Failure to return two signed copies of the Agreement within 60 days may result in funds being released to other conservation projects.

On behalf of the Board of Directors and the staff of the National Fish and Wildlife Foundation, I wish you success with your project. Please contact Teal Edelen with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Donn Waage", with the initials "DWW" and a date "01" written to the right.

Donn Waage
Director, Central Partnership Office

- Enclosures:
- Grant Agreement *(two copies)*
 - Matching Funds Eligibility and Documentation Guidance *(Version 02.17.06)*
 - Certification of Matching Funds Form *(Version 02.17.06)*
 - Request for Payment Form *(Version 02.17.06)*
 - Project Phase Reporting Form *(Version 02.17.06)*
 - Annual Reporting Form *(Version 02.17.06)*
 - Final Financial Reporting Form *(Version 02.17.06)*
 - Final Programmatic Report *(Version 02.17.06)*

**NATIONAL FISH AND WILDLIFE FOUNDATION
GRANT AGREEMENT**

PROJECT: Red River of the North Fish Habitat Restoration (2007-0108-000)

☞ **Please reference project title and number on all correspondence** ☜

NFWF RECIPIENT: City of Fargo, North Dakota

RECIPIENT TYPE: Local Government

PERIOD OF PERFORMANCE: November 1, 2006 to March 1, 2008

AWARD: \$250,000 in federal funds is provided in consideration for the National Fish and Wildlife Foundation (NFWF) Recipient's agreement to perform the Project in accordance with Section 1 below, and the NFWF Recipient's agreement that it will raise and spend at least \$440,000 in Matching Contributions on the Project.

FUNDING SOURCE AND NUMBER:

Natural Resources Conservation Service (FR.2135)	\$125,000
U.S. Fish and Wildlife Service (FA.2104)	\$125,000

CFDA Number:

Natural Resources Conservation Service	10.902
U.S. Fish and Wildlife Service	15.608

☆☆☆☆

Defined Terms. All capitalized terms used in this Agreement shall have the meanings attributed to such terms in the 2006 Glossary found on NFWF's website <www.nfwf.org/glossary.htm>, which is incorporated in this Agreement by this reference.

Section 1. PROJECT PURPOSE

NFWF agrees to provide the Award to the NFWF Recipient for the purposes of satisfactorily performing the Project described in a Full Proposal received by NFWF on October 31, 2006, and as approved as amended on April 19, 2007, and incorporated into this Agreement by reference.

1.1. PROJECT DESCRIPTION.

Project Abstract:	Reconnect segments of Red River of the North (Red River) by eliminating two fish passage barriers. Project will convert Christine and Hickson dams from low-head impoundments into rock arch rapids negotiable by migrating fish.
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Project Phase 1:	<ul style="list-style-type: none"> Design rock arch rapids, bid and let contract for construction 	Budget Category	NFWF Funds	
		Salaries:	\$0	
		Equipment:	\$0	
		Other:	\$2,500	
Matching Contributions allocated to Phase 1:		\$100,000	TOTAL	\$2,500

Project Phase 2:	<ul style="list-style-type: none"> Convert dams to rock arch rapids including materials purchasing, material staging and equipment operation 	Budget Category	NFWF Funds	
		Salaries:	\$0	
		Equipment:	\$0	
		Other:	\$247,500	
Matching Contributions allocated to Phase 2:		\$340,000	TOTAL	\$247,500

NFWF PROJECT TOTAL	\$250,000
---------------------------	-----------

1.2. PROJECT DELIVERABLES.

- Reconnect Red River of the North by eliminating fish passage barriers to enable migrating fish access to suitable habitats
- Connect downstream habitat to 37 miles of Upper Red River, 34 miles of Lower Otter Tail River, and 34 miles of Bois de Sioux River, thus improving or creating spawning and rearing habitats for riffle spawning species, such as Walleye, Sauger, and Lake Sturgeon
- Eliminate dangerous, life threatening back currents produced by each dam
- Enhance recreational boating opportunities through the project area, which is a State of Minnesota designated Canoe and Boating Route

1.3. DILIGENCE AND COMMUNICATION REQUIRED. The NFWF Recipient agrees to pursue completion of the Project diligently and to communicate with the Project Administrator on a regular basis with respect to the status of the Project, including but not limited to providing the reports discussed in Section 5 below. Failure to so pursue completion of the Project according to the timetable associated with the Phases described above and, in any event, within the Period of Performance and/or failure to so communicate with the Project Administrator will be deemed a material default in this Agreement, entitling NFWF, in its discretion, to terminate this Agreement in accordance with Section A4 "DEFAULT; TERMINATION" of the Standard Provisions set forth below by written notice to the NFWF Recipient and to pursue all other legal remedies to which NFWF may be entitled.

Section 2. RESTRICTION ON FUNDS

No Funds provided by NFWF pursuant to this Agreement or Matching Contributions may be used to support litigation expenses, lobbying activities, terrorist activities or activities in violation of the Foreign Corrupt Practices Act.

Section 3. TERM; PERIOD OF PERFORMANCE

The Term of this Agreement shall be the Period of Performance set forth above, unless sooner terminated in accordance with Section A4 “DEFAULT;TERMINATION” of the Standard Provisions set forth below.

Section 4. PAYMENT OF FUNDS and ADMINISTRATION PROCEDURES

4.1 NFWF FUNDS. Payments of the NFWF Funds for this Award will be made in 2 installments.

- Project Phase One installment will be disbursed to the NFWF Recipient when NFWF has received a fully executed agreement and a Request for Payment (via mail, fax, or e-mail) from the NFWF Recipient certifying that it is ready to begin project activities for the first Phase described in Section 1.1 immediately upon receipt of the funds.
- Subsequent Phase installments will be disbursed to the NFWF Recipient when NFWF receives and approves a completed Project Phase Reporting Form certifying that (i) the NFWF Recipient has completed the previous Project Phase as described in Section 1.1 and (ii) the NFWF Recipient has expended NFWF Funds and Matching Contributions consistent with the Project Phase Budget as described in Section 1.1; and the NFWF Recipient provides NFWF a Request for Payment (via mail, fax, or e-mail) certifying that it is ready to begin Project activities for the next Phase immediately upon receipt of the funds.
- Payment for the Final Phase of the Project will be made in arrears, upon the receipt and approval by NFWF of all required reporting for this Agreement.
- Under no circumstances will any payment under this Agreement be made if any Financial or Programmatic Reports are due and outstanding.

4.2 BUDGET CHANGES. In the event the NFWF Recipient determines that the amount of the Budget is going to change in any one Budget Category by an amount that exceeds more than 10% of the NFWF Project Total (see Section 1.1), the NFWF Recipient must seek approval from the Project Administrator. If approval is received, both parties must sign a written amendment to this Agreement reflecting the new Budget.

Section 5. REPORTING REQUIREMENTS

5.1 PHASE FINANCIAL AND PROGRAMMATIC REPORT. Upon completion of each Phase, the NFWF Recipient will submit, via mail, fax, or e-mail, a Project Phase Report on Project accomplishments and financial expenditures incurred during the Phase.

5.2. ANNUAL FINANCIAL AND PROGRAMMATIC REPORT. The NFWF Recipient will submit an Annual Financial and Programmatic Report, via mail, fax, or e-mail, no later than October 31st of each year during the Period of Performance, summarizing all of the activities accomplished and expenditures made between and including the immediately preceding October 1st and September 30th of the current year.

5.3. FINAL REPORT. No later than 90 days after the completion of the Project, the NFWF Recipient shall submit two copies (one hard copy and one electronic file) of a Final Financial and Programmatic Report to NFWF, that includes: 1) a Final Phase Report, 2) a Final Financial

Reporting Form accounting for all receipts of Project funds, Project expenditures, and Budget variances (if any) compared to the approved Budget; 3) the Certification of Matching Contributions Form, certifying Match secured and expended by the NFWF Recipient for the Project; and 4) the Final Programmatic Report summarizing the accomplishments achieved during the term of the Agreement. A representative number of **digital photos (preferred) or color 35mm** slides depicting the Project and copies of all publications, press releases and other appropriate "products" resulting from the Project should also be provided to NFWF as part of the Final Report. Any requests for extensions of this Final Report submission date must be made in writing to NFWF Project Administrator and approved by NFWF in advance.

Section 6. STANDARD PROVISIONS

This Agreement is also subject to the terms and conditions set forth in Appendix A "2006 STANDARD PROVISIONS FOR AWARDS," each of which is incorporated in this Agreement by this reference.

Section 7. CONTACT INFORMATION

For NFWF Recipient: Wade Kline

Metropolitan Council of Governments
Case Plaza, One North 2nd St., Suite 232
Fargo, ND 58102

Phone:

(701) 232-3242

Fax:

(701) 232-5043

E-mail:

kline@fmmetrocog.org

April Walker

Senior Engineer

City of Fargo

200 3rd St N.

Fargo, ND 58102

701/241-1545

701/241-8101

* awalker@cityoffargo.com

Unless from the e-mail address set forth above, electronic mails will be deemed unauthorized. If multiple users are authorized to send electronic mails on behalf of the NFWF Recipient, please list all authorized sources.

For NFWF:

Teal Edelen
Project Administrator
National Fish and Wildlife Foundation
1120 Connecticut Ave., NW Suite 900
Washington, DC 20036

Phone:

(202) 857-0166

Fax:

(202) 857-0162

E-mail:

Teal.Edelen@nfwf.org

[Signature page to Grant Agreement for NFWF Project No. 2007-0108-000]

IN WITNESS WHEREOF, the parties have executed this Agreement, intending to be bound legally.

NATIONAL FISH AND WILDLIFE FOUNDATION

By: _____
Donn Waage
Director, Central Partnership Office

Date: _____

CITY OF FARGO, NORTH DAKOTA

By: _____
Signature

Dennis R. Walaker, Mayor
(Print name and title legibly)

Date: 3/24/08

Appendix A. 2006 STANDARD PROVISIONS FOR AWARDS

This Award is subject to the following terms and conditions, as indicated by .

Section A1. ASSIGNMENT; SUBAWARDS AND SUBCONTRACTS

A1.1 The NFWF Recipient may not assign this Agreement, in whole or in part, to any other individual or other legal entity without the prior written approval of NFWF.

A1.2 The NFWF Recipient may not provide subawards nor enter into subcontracts without the prior written approval of NFWF. Subawards and subcontracts with known parties disclosed in the Proposal Budget are deemed to be approved.

Section A2. UNEXPENDED FUNDS

Any funds provided by NFWF and held by the NFWF Recipient and not expended at the end of the Period of Performance will be returned to NFWF within ninety (90) days after the end of the Period of Performance.

Section A3. AMENDMENTS

This Agreement can only be amended by a written amendment, signed by both parties. Counterpart originals, emails with PDF formatted documents, and/or facsimile copies of amendments are acceptable.

Section A4. DEFAULT; TERMINATION

A4.1 Failure by the NFWF Recipient to comply with any material term of this Agreement shall be deemed to be a default in this Agreement and constitute cause for NFWF to terminate this Agreement by written notice to the NFWF Recipient and to pursue any legal remedy to which NFWF may be entitled.

A4.2 The NFWF Recipient may terminate this Agreement by written notice to NFWF. In the event of termination of this Agreement prior to Project completion, the NFWF Recipient shall immediately (unless otherwise directed by NFWF in its notice if NFWF initiated the termination) undertake all reasonable steps to wind down the Project cooperatively with NFWF, including but not limited to the following:

a. Stop any portion of the Project's work that is incomplete (unless work to be completed and a different date for termination of work are specified in NFWF's notice).

b. Place no further work orders or enter into any further subawards or subcontracts for materials, services or facilities, except as necessary to complete work as specified in NFWF's notice.

- c. Terminate all pending Project work orders, subawards, and subcontracts for work that has not yet commenced.
- d. With the prior written consent of NFWF, promptly take all other reasonable and feasible steps to minimize and/or mitigate any damages that may be caused by the failure to complete the Project, including but not limited to reasonable settlements of any outstanding claims arising out of termination of Project work orders, subawards, and subcontracts.
- e. Deliver or make available to NFWF all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the NFWF Recipient under this Agreement, whether completed or in progress.
- f. Return to NFWF any unobligated portion of the Award.

Section A5. ADDITIONAL SUPPORT

In making this Award, NFWF assumes no obligation to provide further funding or support to the NFWF Recipient beyond the terms stated in this Agreement.

Section A6. ARBITRATION; CHOICE OF LAW; JURISDICTION

A6.1 All claims, disputes, and other matters in question arising out of, or relating to this Agreement, its interpretation or breach, shall be decided through arbitration by a person or persons mutually acceptable to both NFWF and the NFWF Recipient. Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. The award rendered by the arbitrator or arbitrators shall be final.

A6.2 This Agreement shall be subject to and interpreted by the laws of the District of Columbia, without regard to choice of law principles. By entering into this Agreement, the NFWF Recipient agrees to submit to the jurisdiction of the courts of the District of Columbia.

A6.3 The terms of this Section will survive termination of this Agreement.

Section A7. COMPLIANCE WITH LAWS; INSURANCE; INDEMNIFICATION

A7.1 In conducting its activities relating to the Project, the NFWF Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances and to secure all appropriate necessary public or private permits and consents.

A7.2 The NFWF Recipient agrees to obtain and maintain all appropriate insurance against liability for injury to persons or property from any and all activities undertaken by the NFWF Recipient and associated with this Award in any way.

A7.3 The NFWF Recipient shall indemnify and hold harmless NFWF, any Funding Source, their respective officers, directors, agents, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and expenses including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions arising from or in connection with the Project.

A7.4 The terms of this Section will survive termination of this Agreement.

Section A8. COMMUNICATIONS

All notices required or allowed to be given by this Agreement shall be by first-class mail (postage prepaid), facsimile (with telephone call required to confirm that fax has been received), by e-mail, or overnight mail delivery by a nationally known courier and addressed using the contact information provided in this Agreement. Each party agrees to notify the other within ten (10) days after the change in named representative, address, telephone, or other contact information.

Section A9. PUBLICITY; POSTING OF FINAL REPORTS.

A9.1 The NFWF Recipient agrees to give appropriate credit to NFWF and any Funding Sources for their financial support in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding this Agreement or any of the Project Deliverables associated with this Agreement. The NFWF Recipient must obtain prior NFWF approval for the use of the NFWF logo and any public information releases concerning this Award.

A9.2 The NFWF Recipient gives NFWF the right and authority to publicize NFWF's financial support for this Agreement and the Project in press releases, publications and other public communications. The NFWF Recipient hereby acknowledges its consent for NFWF and any Funding Source for the Project to post its Final Reports on their respective websites. In the event that the NFWF Recipient intends to claim that its Final Report contains material that does not have to be posted on such websites because it is protected from disclosure by statutory or regulatory provisions, the NFWF Recipient shall so notify NFWF and the Funding Source and clearly mark all such potentially protected materials as "PROTECTED," providing an accurate and complete citation to the statutory or regulatory source for such protection.

Section A10. DISCLAIMERS

Payments made to the NFWF Recipient under this Agreement do not by direct reference or implication convey NFWF's endorsement nor the endorsement by any other entity that provides funds to the NFWF Recipient through this Agreement, including the U.S. Government, for the Project. All information submitted for publication or other public releases of information regarding this Agreement shall carry the following disclaimer:

"The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government

or the National Fish and Wildlife Foundation. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government or the National Fish and Wildlife Foundation."

Section A11. WEBSITE LINKS

The NFWF Recipient agrees to permit NFWF to post a link on any or all of NFWF's websites to any websites created by the NFWF Recipient in connection with the Project.

Section A12. EVALUATION

The NFWF Recipient agrees to cooperate with NFWF by providing timely responses to all reasonable requests for information to assist in evaluating the accomplishments of the Project for a period of five (5) years after the date on which the Final Financial and Programmatic Reports are provided.

Section A13. FEDERAL FUNDS - FEDERAL REGULATIONS

A13.1 If all or a part of the Award consists of Federal funds, the text box at the beginning of this Section should contain an X and, before proceeding with its Project, **the NFWF Recipient must read and understand certain Federal regulations, including but not limited to, those identified below which may be located on the Internet at <www.whitehouse.gov/omb/circulars/index.html>**. If a NFWF Recipient does not have access to the Internet, it should ask its NFWF Project Administrator for copies. Many Federal agencies have agency-specific regulations that govern the issuance of awards and subawards with their funds; it is the obligation of the NFWF Recipient to review and comply with any such regulations issued by its Federal agency Funding Source(s).

A13.2 If the NFWF Recipient is a non-profit organization, it will need to understand and comply with (i) OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" and, (ii) depending on what kind of organization it is, either (a) OMB Circular A-21 "Cost Principles for Educational Institutions" or (b) OMB Circular A-122 "Cost Principles for Non-Profit Organizations," in addition to other applicable Federal regulations.

A13.3 If the NFWF Recipient is a State, Local or Tribal Government, it will need to understand and comply with OMB Circulars A-102 "Grants and Cooperative Agreements with State and Local Governments" and A-87 "Cost Principles for State, Local, and Indian Tribal Governments," in addition to other applicable Federal regulations.

A13.4 If the NFWF Recipient is any type of U.S. organization and it expends an aggregate of \$500,000 or more from all Federal sources, it is subject to a special kind of audit as detailed in OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations,"

which it will need to understand and comply with, in addition to other applicable Federal regulations.

A13.5 DEBARMENT AND SUSPENSIONS

The NFWF Recipient shall enter into no contract or subcontract using Federal funds provided by NFWF with any party listed on the General Services Administration's Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689 (Debarment and Suspension). If this Award exceeds One Hundred Thousand Dollars (\$100,000) in Federal funds, the NFWF Recipient must provide certification of its exclusion status and that of its employees on a form provided on NFWF's website.

A13.6 INTEREST

Any interest earned in any one year on Federal funds advanced to the NFWF Recipient that exceeds \$250 must be reported to NFWF, and the disposition of those funds negotiated with NFWF.

A13.7 DAVIS-BACON

The NFWF Recipient shall be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provision Applicable to Contracts Governing Federally Financed and Assisted Construction").

A13.8 RIGHTS TO INVENTIONS

The NFWF Recipient shall abide by the provisions of 37 CFR Part 401 (Rights to Inventions Made by Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements) and any implementing regulations issued by the Federal agency(ies) that provide funds for this Agreement.

A13.9 The NFWF Recipients agrees, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

A13.10 If one of the Funding Sources for the Award is the National Oceanic and Atmospheric Administration, the Award also is subject to the Department of Commerce's Financial Assistance Standard Terms and Conditions, which may be located on the Internet at: <http://oamweb.osec.doc.gov/docs/GRANTS/pdf/ST&C-rev-1002.pdf>

A13.11 If one of the Funding Sources for the Award is the Environmental Protection Agency, the Award also is subject to the Agency's Guidance for Utilization of Small, Minority, and Women's Business Enterprise in Procurement Under Assistance Agreements - 6010, which may be located on the Internet at <http://www.epa.gov/osdbu/pubs.htm>.

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

ITEM 7

Federal Award Information—To be provided by NDDOT

CFDA No.: 20.205

CFDA Title: Highway Planning and Construction

Award Name: Federal Aid Highway Program

Awarding Fed. Agency: Federal Highway Administration

NDDOT Program Mgr.: Bennett Kubishta

Telephone: 701-328-3555

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

Project No. TEU-8-984(106)109 City of Fargo

Type of Improvement: Shared Use Path

The state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and Fargo, North Dakota, hereinafter referred to as the City, hereby agree that:

It is in the best interest of both parties to have the City construct and maintain this project according to the terms and conditions set forth in this agreement. NDDOT will assist the City with the preparation and distribution of the bid documents and include the project in a scheduled bid opening.

The City agrees to the terms and conditions required for this project by the Federal Highway Administration (FHWA).

NDDOT will procure federal funds for the construction of the project, pursuant to Title 23 of the United States Code. Federal funds obligated for this project shall not exceed 80.93 percent of the total eligible project construction cost up to a maximum of \$294,000.

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

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

PART I

City Obligation:

1. To comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.
2. To comply with the requirements of 23 CFR Part 633, Required Contract Provisions, and 23 CFR Part 635, Construction and Maintenance.
3. To construct the project in conformity with the construction contract. Changes to the plans shall meet the requirements of 23 CFR.

Page 102 construct the project in conformity with the approved environmental documents and provide for the implementation of any measures mitigating the environmental impact of the project.

5. The City will be responsible for any consideration, avoidance, and minimization of impacts upon real property related to this project, such as changes in the grades of streets, inconvenience to property or business, and any loss of light, air, view, access, egress, drainage, support, or nuisance.

PART II

Contracting and Construction:

1. Ten weeks before the bid opening date the City will:
 - a. Submit the final plans to NDDOT.
 - b. Certify that the right of way has been acquired in its name and at its sole expense, and in conformity with state and federal law and NDDOT's current edition of *Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects*.
 - c. Provide NDDOT with the permit or agreement authorizing utility facilities to be installed or continued on, under or over the right of way.
 - d. Provide NDDOT with all permits or clearances required for the construction of the project by state or federal law.
2. NDDOT will:
 - a. Evaluate the bids as to the sufficiency of DBE participation and the bidder's good faith efforts in satisfying the requirements of the current edition of special provision, *Utilization of Disadvantaged Business Enterprises* (Race Neutral or Race Conscious) and 49 CFR Part 26, participation by Disadvantaged Business Enterprises in DOT Programs. NDDOT shall have exclusive authority in evaluating the adequacy of DBE participation.
 - b. Concur in the award of the contract for the sole purpose of enabling the City to procure federal aid for the construction of the project.
3. The City will:
 - a. Prepare the bid proposals, print and distribute the proposals and plans, solicit proposals, and include the project in a scheduled bid opening as provided in the North Dakota Century Code, Chapter 24-02.
 - b. Tabulate the bids for determination of the lowest responsible bidder and execution of the contract.
 - c. Distribute copies of the executed contract, plans, and contract documents to the parties.
4. During the construction of the project, the City will:
 - a. Provide engineering services, material testing, and inspection of the work as required by the contract documents and the current editions of NDDOT's *Sampling and Testing Manual* and *Construction Manual*.
 - b. Make all records available to NDDOT and FHWA for inspection upon request. The City will submit all documents and records to NDDOT for review before final payment is made. NDDOT

Page 103 will maintain the project records for three years from the final voucher date of FHWA and then return them to the City.

- c. Be responsible for any changes in plan, character of work, quantities, site conditions, or any claim for extra compensation. NDDOT will review all contract adjustments to determine if the adjustments are eligible for federal aid. Federal aid shall be limited to the amount stated on page one of this agreement.

PART III

Post Construction:

After the project is completed the City agrees to:

1. Maintain the signing and marking of the project according to the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*, as supplemented and amended.
2. Provide maintenance to the completed project at its own cost and expense.
3. Prohibit access and encroachments upon the right of way pursuant to 23 CFR Part 1.23, Rights of Way, and Part 710 Subpart D, Right of Way, Real Property Management.

PART IV

General:

1. The City will make all contract payments. No costs will be incurred by NDDOT for the construction and maintenance of this project. NDDOT will reimburse the City for the amount paid by FHWA. Payment will be made upon receipt of the engineer's estimate.
2. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.
3. No official, employee, or other person performing services for the City who is authorized to negotiate or approve any contract or subcontract in connection with the project shall have any financial or other personal interest in any such contract or subcontract. No officer or employee of such person retained by the City shall have any financial or other personal interest in any real property acquired for the project unless such interest is openly disclosed upon public records of NDDOT and of the City, and such officer, employee, or person has not participated in such acquisition for and in behalf of the City.
4. The failure of the State to enforce any provisions of this contract shall not constitute a waiver by the State of that or any other provision.
5. NDDOT requires contracts executed with counties, cities, other state agencies, and Indian tribes to comply with OMB Cir. A-133.

6. All notices, certificates, or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth below or at a place designated hereafter in writing by the parties.

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

Mark Bittner
City Engineer
200 N 3rd Street
Fargo ND 58102

7. This agreement constitutes the entire agreement between the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The City, by the signature below of its authorized representative, hereby acknowledges that the City has read this agreement, understands it, and agrees to be bound by its terms and conditions.
8. The City is advised that its signature on this contract or agreement, certifies that any person associated therewith is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily

Page 105
excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.

Executed by the city of Fargo, at Fargo, North Dakota, the date last below signed.

APPROVED:

CITY ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

City of Fargo

Dennis R. Walaker
NAME (TYPE OR PRINT)

SIGNATURE

* Mayor
TITLE

3/24/08
DATE

ATTEST:

CITY AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

Executed for the North Dakota Department of Transportation by the Director at Bismarck, North Dakota, the date last below signed.

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

*Mayor or President City Commission

DOT 1019 (Div. 38)
L.D. Approved 8-05-03; 5-05

Risk Management Appendix

Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

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

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

Governments – State and Government Entity, as defined above

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

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

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

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

(r)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

District No. 5229 Type: Corps of Engineer Agreement

Location: Ridgewood Flood Control Project Date of Hearing: 3/18/08

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/24/08</u>
PWPEC File	<u>X</u>
Project File	<u>April Walker</u>
Petitioners	<u> </u>
David W. Johnson	<u> </u>

The Committee reviewed the Project Partnership Agreement for construction of the Ridgewood Flood Control Project.

On a motion by Steve Sprague, seconded by Jim Gilmour, the Committee voted to recommend approval of the Agreement.

RECOMMENDED MOTION

Approve Corps of Engineers Project Partnership Agreement for the Ridgewood Flood Control Project, District No. 5229.

PROJECT FINANCING INFORMATION: 50% Federal
 Recommended source of funding for project: 25% State
 25% Local

Developer meets City policy for payment of delinquent specials	<u>Yes</u> <u>No</u>
Agreement for payment of specials required of developer	<u>N/A</u>
30% escrow deposit required	<u>N/A</u>

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Pat Zavoral, City Administrator				<u>X</u>
Jim Gilmour, Planning Director	<u>X</u>	<u>X</u>		
Bruce Hoover, Fire Chief	<u>X</u>	<u>X</u>		
Mark Bittner, City Engineer	<u>X</u>	<u>X</u>		
Bruce Grubb, Enterprise Director	<u>X</u>	<u>X</u>		
Al Weigel, Public Works Operations Manager				
Steve Sprague, City Auditor	<u>X</u>	<u>X</u>		

ATTEST:


 Mark H. Bittner
 City Engineer



DEPARTMENT OF THE ARMY
ST PAUL DISTRICT, CORPS OF ENGINEERS
SIBLEY SQUARE AT MEARS PARK
190 FIFTH STREET EAST, SUITE 401
ST. PAUL MN 55101-1638

MAR 12 2008

Planning, Programs and Project Management Division
Project Management and Development Branch

SUBJECT: Fargo-Ridgewood Flood Damage Reduction Project, Fargo, North Dakota

Mr. Mark Bittner
City Engineer
City of Fargo
200 North Third Street
Fargo, North Dakota 58102

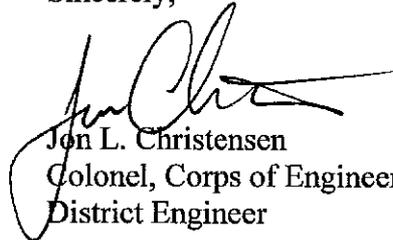
Dear Mr. Bittner:

Enclosed are four copies of the Project Partnership Agreement (PPA) for the subject project, which have been approved for signing. Please ensure that the mayor signs all four copies of the PPA and the Certification Regarding Lobbying. In addition, we ask that you have the City Attorney complete and sign the Certificate of Authority. Please return all signed documents to us as soon as possible. Once we receive the signed copies, I will fill in the agreement date on page 1 and sign. We will retain two copies and return two copies of the executed PPA to you for your records.

You may return the signed copies to the address in the letterhead above, marked "Attention: PM-B, Joe Mose."

If you have any questions concerning the PPA or the project, please contact the project manager, Mr. Joe Mose, at (651) 290-5567 or joseph.h.mose@usace.army.mil.

Sincerely,



Jon L. Christensen
Colonel, Corps of Engineers
District Engineer

Enclosure (4 copies)

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF FARGO, NORTH DAKOTA
FOR
DESIGN AND CONSTRUCTION
OF THE
FARGO-RIDGEWOOD FLOOD DAMAGE REDUCTION PROJECT
FARGO, NORTH DAKOTA

THIS AGREEMENT is entered into this _____ day of _____, 2008, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, St. Paul District and the City of Fargo, North Dakota (hereinafter the "City"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, design and construction of the Fargo-Ridgewood Flood Damage Reduction Project, at Fargo, North Dakota was approved for construction by the Chief of the District Support Team, Mississippi Valley Division, on September 8, 2005, pursuant to the authority contained in Section 205 of the Flood Control Act of 1948, as amended, (33 U.S.C. 701s) to provide flood protection for the Ridgewood area;

WHEREAS, the Army and the Department of Veterans Affairs (VA) entered into a Memorandum of Agreement on May 16, 2006 and a Support Agreement on May 26, 2006, as amended, for the design and construction of the VA Medical Center Flood Control Project in Fargo, North Dakota;

WHEREAS, the City desires to enter into a Project Partnership Agreement for the design and construction of the approved locally preferred plan for flood damage reduction to protect the Ridgewood area, Fargo, North Dakota (hereinafter the "*Project*") as defined in Article I.A of this Agreement;

WHEREAS, the Secretary of the Army is authorized by Section 205 to allot from certain appropriations an amount not to exceed \$55,000,000 per *fiscal year* for the implementation of small structural and nonstructural projects for flood control and related purposes; provided that no more than \$7,000,000 shall be allotted for a project at any single locality;

WHEREAS, the Government and the City desire to enter into a Project Partnership Agreement (hereinafter the "Agreement") for design and construction of the *Project*;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, the City does not qualify for a reduction of the non-Federal cost share for flood control pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(m));

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and the City have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the City, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the City through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the City, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the City agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean design and construction of the locally preferred plan consisting of approximately 1,200 linear feet of floodwalls constructed to elevations ranging from 903.5 feet to 903.6 feet above mean sea level, approximately 1,600 linear feet of levees constructed to a final levee grade ranging from 902.3 feet to 902.6 feet above mean sea level, approximately 2,200 linear feet of bank protection features, one 9,000 gallon per minute pump station, and other appurtenant features., as generally described in the Section 205 Detailed Project Report, Feasibility Study and Environmental Assessment for Fargo, North Dakota (Ridgewood Addition), Red River of the North, dated June 2005, approved by the Chief of the District Support Team, Mississippi Valley Division, on September 8, 2005, and amended by Errata Sheets dated January 2006 and October 2007.

B. The term "*NED Plan*" for the purposes of this Agreement shall mean providing a flood barrier to protect the Ridgewood area in Fargo, North Dakota, consisting of approximately 1,200 linear feet of floodwalls constructed to elevations ranging from 899.3 feet to 899.5 feet above mean sea level, approximately 1,600 linear feet of levees

constructed to a final levee grade ranging from 899.3 feet to 899.5 feet above mean sea level, approximately 2,200 linear feet of bank protection features, one 9,000 gallon per minute pump station, and other appurtenant features, as generally described in the Section 205 Detailed Project Report, Feasibility Study and Environmental Assessment for Fargo, North Dakota (Ridgewood Addition), Red River of the North, dated June 2005, approved by the Chief of the District Support Team, Mississippi Valley Division on September 8, 2005, and amended by Errata Sheets dated January 2006 and October 2007.

C. The term “*total cost of design and construction of the Project*” shall mean the sum of all costs incurred by the Government and the City in accordance with the terms of this Agreement directly related to design and construction of the *Project* and the design costs of the *Project* incurred by the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s design costs; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government’s engineering and design costs during construction; the City’s and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government’s actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the Government’s supervision and administration costs; the City’s and the Government’s costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government’s costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. or Article II.D.3. of this Agreement for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines, pursuant to Article III of this Agreement, to be required or necessary for the *Project*; and the City’s and the Government’s costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.I.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government’s costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the City’s costs of negotiating this Agreement.

D. The term “*total cost of design and construction of the NED Plan*” shall mean the estimated costs, as determined by the Government, that the Government and the City would have incurred had the *NED Plan* been constructed. Such estimated costs would include but not necessarily be limited to: the Government’s design costs; the Government’s costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government’s engineering and

design costs during construction; the City's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's estimated construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the Government's supervision and administration costs; the City's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines, pursuant to Article III of this Agreement, to be required or necessary for the *NED Plan*; and the City's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.I.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the City's costs of negotiating this Agreement.

E. The term "*incremental costs*" shall mean the difference between *total cost of design and construction of the Project* and *total cost of design and construction of the NED Plan*.

F. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

G. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total cost of design and construction of the Project* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*.

H. The term "*non-Federal proportionate share*" shall mean the ratio of the City's total contribution of funds required by Article II.B.1., Article II.B.3., Article II.C.2. and Article II.D.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

I. The term “*highway*” shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

J. The term “*relocation*” shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

K. The term “*functional portion of the Project*” shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, St. Paul District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

L. The term “*betterment*” shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

M. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Government, plus any non-Federal contribution required as a matching share therefor.

N. The term “*Section 205 Project Limit*” shall mean the \$7,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the *NED Plan* as specified in Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s).

O. The term “*Section 205 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual allotment for planning, design, and construction of all projects implemented pursuant to Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s). As of the effective date of this Agreement, such limitation is \$55,000,000.

P. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE CITY

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the City, expeditiously shall design and construct the *Project* (including alteration, lowering,

raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government's own forces until the City has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347; hereinafter "NEPA"). However, the Government shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government's own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Government shall afford the City the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations for the *Project*. To the extent possible, the Government shall afford the City the opportunity to review and comment on all proposed contract modifications, including change orders for the *Project*. In any instance where providing the City with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the City the opportunity to review and comment on all contract claims for the *Project* prior to resolution thereof. The Government shall consider in good faith the comments of the City, but the contents of solicitations, award of contracts or commencement of design or construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the City.

B. The City shall contribute a minimum of 35 percent, but not to exceed 50 percent, of total cost of design and construction of the *NED Plan* in accordance with the provisions of this paragraph.

1. The City shall provide a contribution of funds equal to 5 percent of *total cost of design and construction of the NED Plan* in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the City shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *NED Plan*.

3. The City shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the City's required minimum share of 35 percent of *total cost of design and construction of the NED Plan* if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to the *NED Plan* will be less than such required minimum share: (a) the value of the City's contributions under paragraph B.1. of this Article; (b) the value of the City's contributions under paragraph B.2. of this Article as determined in accordance with Article IV of this Agreement; and (c) the value of the City's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

4. The Government, subject to the availability of funds and as limited by the *Section 205 Project Limit* and the *Section 205 Annual Program Limit*, shall refund or reimburse to the City any contributions in excess of 45 percent of *total cost of design and construction of the NED Plan* if the Government determines at any time that the collective value of the following contributions has exceeded 45 percent of *total cost of design and construction of the NED Plan*: (a) the value of the City's contributions under paragraph B.2. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the City's contributions under paragraph B.3. of this Article; and (c) the value of the City's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *NED Plan*, perform any remaining *relocations* necessary for the *NED Plan*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *NED Plan* on behalf of the City. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the City shall be responsible, as between the Government and the City, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *NED Plan* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *NED Plan* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *NED Plan* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total cost of design and construction of the NED Plan* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the City in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *NED Plan* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *NED Plan*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

2. In accordance with Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s), the Government's total financial obligations for planning, design, and construction of the *NED Plan* (except for costs incurred on behalf of the City in accordance with paragraph J. of this Article) shall not exceed the *Section 205 Project Limit*. Notwithstanding any other provision of this Agreement, the City shall be responsible for all costs in excess of this limit and shall pay any such costs in accordance with Article VI.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for all projects implemented pursuant to Section 205 has reached the *Section 205 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *NED Plan* within the *Section 205 Annual Program Limit* will not be sufficient to meet the Federal share of *total cost of design and construction of the NED Plan* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement, the Government shall notify the City in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *NED Plan* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *NED Plan* within the *Section 205 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

4. As of the effective date of this Agreement, \$ 3,770,000 of Federal funds is currently projected to be available for the *NED Plan*. The Government makes no commitment to request Congress to provide additional Federal funds for the *NED Plan*. Further, the Government's financial participation in the *NED Plan* is limited to the Federal funds that the Government makes available to the *NED Plan*.

D. The City shall contribute 100 percent of the *incremental costs* during the *period of design and construction* in accordance with this paragraph.

1. In accordance with Article III of this Agreement, the City shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project* that are not otherwise required or necessary for the *NED Plan*.

2. The City shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the City's required share of 100 percent of *incremental costs* if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to the *Project* but not the *NED Plan* will be less than such required share: (a) the value of the City's contributions under paragraph D.1. of this Article, as determined in accordance with Article IV of this Agreement; and (b) the value of the City's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds, shall refund or reimburse to the City any contributions that are determined by the Government to be attributable to the *Project* but not the *NED Plan* that are in excess of 100 percent of *incremental costs* if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to the *Project* but not the *NED Plan* has exceeded 100 percent of *incremental costs*: (a) the value of the City's contributions under paragraph D.2. of this Article; (b) the value of the City's contributions under paragraph D.1. of this Article, as determined in accordance with Article IV of this Agreement; and (c) the value of the City's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

E. When the District Engineer determines that the *Project*, or a *functional portion thereof*, is complete, the District Engineer shall so notify the City in writing and furnish the City with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") for the *Project* or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the *Project* or such completed portion. Upon such notification, the Government also shall furnish to the City a copy of all final as-built drawings for the *Project* or such completed portion. Not later than 6 months after such notification by the Government that the *Project* is complete, the Government shall furnish the City with the final OMRR&R Manual and all final as-built drawings for the *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the City, as applicable, and the Government and the City shall negotiate, as applicable, an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the City.

F. Upon notification from the District Engineer in accordance with paragraph E. of this Article, the City shall operate, maintain, repair, rehabilitate, and replace the *Project*, or the *functional portion thereof* as the case may be, in accordance with Article VIII of this Agreement.

G. Upon conclusion of the *period of design and construction*, the Government shall conduct an accounting of the *Project*, in accordance with Article VI.C. of this Agreement, and furnish the results to the City.

H. The City shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

I. The City may request the Government to perform or provide, on behalf of the City, one or more of the services (hereinafter the "additional work") described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the City in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The City shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the City shall be responsible, as between the Government and the City, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement. In the event the Government elects to acquire lands, easements, and rights-of-way; perform *relocations*; or construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, the Government shall determine how much of the costs of such work would be allocated to the *total cost of design and construction of the NED Plan* and how much would be allocated to *incremental costs*.

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the features that include *betterments* between *total cost of design and construction of the Project*, as determined by the Government, and the costs of the *betterments*.

J. Not less than once each year the City shall inform affected interests of the extent of protection afforded by the *Project*.

K. The City agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

L. The City shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The City shall provide an information copy of the plan to the Government upon its preparation.

M. The City shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Project*.

N. The City shall prevent obstructions or encroachments on the *Project* (including the City prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY,
RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND
COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the City shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the City with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the City must provide, in detail sufficient to enable the City to fulfill its obligations under this paragraph, and shall provide the City with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. The Government in the general written description provided to the City shall also delineate which of the required lands, easements, and rights-of-way are necessary for the *NED Plan* and which are necessary for the *Project* but not the *NED Plan*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project*

using the Government's own forces, the City shall acquire all lands, easements, and rights-of-way the Government determines the City must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the City shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The City shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the City are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the City shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the City with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the City to fulfill its obligations under this paragraph, and shall provide the City with a written notice to proceed with such *relocations*. The Government in the general written description provided to the City shall also delineate which of the required *relocations* are necessary for the *NED Plan* and which are necessary for the *Project* but not the *NED Plan*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the City shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the City shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the City, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the City with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the City to fulfill its obligations under this paragraph, and shall provide the City with a written notice to proceed with construction of such improvements. The Government in the general written description shall also delineate which of the required lands, easements, and rights-of-way are required for the *NED Plan* and which are necessary for the *Project* but not the *NED Plan*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the City shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the

period of design and construction, the City shall provide all improvements set forth in such descriptions

D. The City shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total cost of design and construction of the Project* and *total cost of design and construction of the NED Plan* and afford credit toward the City's share of *total cost of design and construction of the NED Plan* for the value of the lands, easements, and rights-of-way that the City must provide pursuant to Article III.A. of this Agreement for the *NED Plan*; for the value of the *relocations* that the City must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for the *NED Plan*; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the City must provide pursuant to Article III.C. of this Agreement for the *NED Plan*. The Government also shall include in *total cost of design and construction of the Project* and allocate to the City's *incremental costs* the value of the lands, easements, and rights-of-way that the City must provide pursuant to Article III.A. of this Agreement for the *Project* but not the *NED Plan*; for the value of the *relocations* that the City must perform or for which they must ensure performance pursuant to Article III.B. of this Agreement for the *Project* but not for the *NED Plan*; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the City must provide pursuant to Article III.C. of this Agreement for the *Project* but not for the *NED Plan*. However, no amount shall be included in *total cost of design and construction of the NED Plan*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total cost of design and construction of the Project* or *total cost of design and construction of the NED Plan*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law.

B. The City in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total cost of design and construction of the Project* and *total cost of design and construction of the NED Plan*, as applicable, and for determining the amount of credit to be afforded or reimbursement to be provided to the City in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total cost of design and construction of the Project* and *total cost of design and construction of the NED Plan*, as applicable, and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the City on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the City provides the authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the City after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The City shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the City and the Government. The City shall provide the Government with the appraisal no later than 6 months after the City provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the City's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the City's appraisal, the City may obtain a second appraisal, and the fair market value shall be the amount set forth in the City's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the City's second appraisal, the City chooses not to obtain a second appraisal, or the City does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the City. In the event the City does not approve the Government's appraisal, the Government, after consultation with

the City, shall consider the Government's and the City's appraisals and determine an amount based thereon, which shall be deemed to be the fair market.

b. Where the amount paid or proposed to be paid by the City for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the City, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the City, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the City, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the City, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the City shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the City shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the City agree as to an appropriate amount, then the City shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the City cannot agree as to an appropriate amount, then the City may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value of the real property interests taken for the *Project* shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project* for which the Government allocates to the *NED Plan*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing and fair market value for the *NED Plan* shall be either the court award for the real property interests taken, to the

extent the Government determined such interests are required for construction, operation, and maintenance of the *NED Plan*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing and allocates to the *NED Plan*.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the City within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the City for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the City in accordance with Article III.A. of this Agreement also shall include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the City must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the City, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of North Dakota would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *NED Plan* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the City's failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the City pursuant to Article II.I.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total cost of design and construction of the NED Plan* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the City in accordance with Article VI.D. of this Agreement for which the Government allocates to the *NED Plan*. In addition, the value to be included in *total cost of design and construction of the NED Plan* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the City in accordance with the terms and conditions agreed upon in writing pursuant to Article II.I.1. of this Agreement subject to an audit in accordance with Article X.C. of

this Agreement to determine reasonableness, allocability, and allowability of such costs to the *NED Plan*.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the City and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the City shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the City's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the City.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the *Project*, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The City's costs of participation in the Project Coordination Team shall be included in *total cost of design and construction of the Project*, and allocated, as determined by the Government, to *total cost of design and construction of the NED Plan* and *incremental costs*, and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Project Coordination Team shall be allocated to the *total cost of design and construction of the NED Plan*, *incremental costs*, and *total cost of design and construction of the Project*, as determined by the Government, and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the City current projections of costs, financial obligations, contributions provided by the parties and the value included in *total cost of design and construction of the Project* and the value included in *total cost of design and construction of the NED Plan*, as applicable, for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total cost of design and construction of the Project* are projected to be \$7,942,000; *total cost of design and construction of the NED Plan* are projected to be \$7,442,000; *incremental costs* are projected to be \$500,000; the City's contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement is projected to be \$372,000; the City's contribution of funds required by Article II.C.2. of this Agreement is projected to be \$ 0; the City's total contribution of funds for the *incremental costs* required by Article II.D.2. of this Agreement is projected to be \$500,000; the *non-Federal proportionate share* is projected to be 18.8 percent; the City's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$ 0; the value included in *total cost of design and construction of the NED Plan* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement for the *NED Plan* is projected to be \$3,300,000; the value included in *total cost of design and construction of the Project* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement for the *Project* but not the *NED Plan* is projected to be \$0; the Government's total financial obligations for the additional City work to be incurred and the City's contribution of funds for such costs required by Article II.I. of this Agreement are projected to be \$ 0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the City, and are not to be construed as the total financial responsibilities of the Government and the City.

2. By 1 October and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the City with a report setting forth all contributions provided to date and the current projections of the following: *total cost of design and construction of the Project*; *total cost of design and construction of the NED Plan*; *incremental costs*; the City's total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement; the City's contribution of funds required by Article II.C.2. of this Agreement; the *non-Federal proportionate share*; the City's total contribution of funds required by Article XVII.B.3. of this Agreement; the City's total contribution of funds for the *incremental costs* required by Article II.D.2. of this Agreement; the value included in *total cost of design and construction of the NED Plan* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement for the *NED Plan*; the value included in *total cost of design and construction of the Project* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determines in accordance with Article IV of this Agreement for the *Project* but not for the *NED Plan*; and the Government's total financial obligations for additional work incurred and the City's contribution of funds for such costs required by Article II.I. of this Agreement.

B. The City shall provide the contributions of funds required by Article II.B.1., Article II.B.3., Article II.C.2., Article II.D.2., and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for the *Project* or commencement of construction of the *Project* using the Government's own forces, the Government shall notify the City in writing of such scheduled date and the funds the Government determines to be required from the City to meet its projected share under Article II.B.1., Article II.B.3., Article II.C.2., Article II.D.2., and Article XVII.B.3. of this Agreement. Not later than such scheduled date, the City shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, ST. PAUL (B6)" to the District Engineer, or verifying to the satisfaction of the Government that the City has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the City, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the City such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal*

proportionate share of financial obligations for design and construction as financial obligations for design and construction are incurred; and (c) the City's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the City to cover the City's share of such financial obligations, the Government shall notify the City in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the City shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the City with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the City with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the City with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine the *total cost of design and construction of the Project*, the *total cost of design and construction of the NED Plan*, the *incremental costs*, and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the City's total required share of *total cost of design and construction of the NED Plan*, *incremental costs*, and the costs of any data recovery activities associated with historic preservation exceed the City's total contributions provided thereto, the City, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, ST. PAUL (B6)" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the City for *total cost of design and construction of the NED Plan*, *incremental costs*, and the costs of any data recovery activities associated with historic preservation exceed the City's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 205 Project Limit* and the *Section 205 Annual Program Limit*, shall refund or reimburse the excess amount to the City within 90 calendar days of the date of completion of such accounting. However, the City shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.B.1. of this Agreement. In the event the City is due a refund

or reimbursement and funds are not available to refund or reimburse the excess amount to the City, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The City shall provide the contribution of funds required by Article II.I. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the City in writing of such scheduled date and of the full amount of funds the Government determines to be required from the City to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the City shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the City such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the City must provide additional funds to pay for such additional work, the Government shall notify the City in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the City shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for additional work and furnish the City with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such financial obligations for additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of such financial obligations for additional work and furnish the City with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of such financial obligations for additional work to complete the final accounting of such financial obligations for additional work and furnish the City with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the City's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the Government's total financial obligations for additional work exceed the total contribution of funds provided by the City for such additional work, the City, no later than 90 calendar days after receipt of written notice from the Government, shall make a

payment to the Government in an amount equal to the difference by delivering a check payable to “FAO, USAED, ST. PAUL (B6)” to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the City for additional work exceeds the Government’s total financial obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the City within 90 calendar days of the date of completion of such accounting. In the event the City is due a refund and funds are not available to refund the excess amount to the City, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party involved in the dispute shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.E. of this Agreement and for so long as the *Project* remains authorized, the City, pursuant to Article II.F. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the *Project* or *functional portion of the Project* that is part of the *Project*, at no cost to the Government. The City shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project’s* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The City hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the City now or hereafter owns or controls for access to the *Project* for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the City for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the City. If, after 30 calendar days from receipt of such written notice by the Government,

the City continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the City now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the City of its responsibility to meet the City's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX – HOLD AND SAVE

The City shall hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the City shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the City shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the City shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the City is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the City and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the City and independent auditors any information necessary to enable an audit of the City's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *NED Plan* and the *Project* shall be included in *total cost of design and construction of the Project* and, as determined by the Government included in *total cost of design and construction of the NED Plan* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the City is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits conducted on the *Project* shall be conducted in accordance with Federal Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be allocated by the Government between the *Project* and the *NED Plan* and included in *total cost of design and construction of the Project* and, as determined by the Government included in *total cost of design and construction of the NED Plan* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the City and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Government Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Government"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the City each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the City fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on

the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the City in writing that sufficient Federal funds are available to meet the Federal share of *total cost of design and construction of the Project* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the City elects to terminate this Agreement.

C. In the event that the Government and the City determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the City agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the City on whether to proceed or to terminate this Agreement, or the failure of the City to provide funds to pay for cleanup and response costs or to otherwise discharge the City's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and City reach agreement on how to proceed or to terminate this Agreement; 2) the City provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available by the Government for the *Project* and an equal percentage of the total funds contributed by the City in accordance with Article II.B.1., Article II.B.3., Article II.C.2., Article II.D.2., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications related to the *Project*.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the City shall be charged interest at a rate, to be

determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the City shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the City determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675; hereinafter "CERCLA"), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the City with prior specific written direction, in which case the City shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the City for such investigations for hazardous substances shall be included in the *total cost of design and construction of the Project* and, as determined by the Government included in *total cost of design and construction of the NED Plan*, and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Any actual costs incurred by the City for investigations for hazardous substances not allocated by the Government to the *NED Plan* shall be included as *incremental costs* with the City paying for 100 percent of such costs in accordance with Article II.D. of this Agreement.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total cost of design and construction of the Project* and, as determined by the Government included in *total cost of design and construction of the NED Plan*, and shared in accordance with the provisions of this Agreement. Any actual costs incurred by the Government for investigations for hazardous substances not allocated by the Government to the *NED Plan* shall be included as *incremental costs* with the City paying for 100 percent of such costs in accordance with Article II.D. of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the City and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the City shall not

proceed with the acquisition of the real property interests until the parties agree that the City should proceed.

C. The Government and the City shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the City determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the City shall be responsible, as between the Government and the City, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs related to the *Project* shall not be considered a part of the *total cost of design and construction of the Project* or *total cost of design and construction of the NED Plan*. In the event the City does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide the funds necessary to pay for cleanup and response costs for the *Project* or to otherwise discharge the City's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The City and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the City, the City shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the City shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the City:	Mayor City of Fargo 200 North 3 rd Street Fargo, North Dakota 58102
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If to the Government: District Engineer
US Army Corps of Engineers, St. Paul
190 Fifth Street East, Suite 401
St. Paul, Minnesota 55101-1638

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties for the *Project*. Any costs incurred by the Government for such work shall be included in *total cost of design and construction of the Project* and, as determined by the Government included in *total cost of design and construction of the NED Plan* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government related to the *Project* for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total cost of design and construction of the Project* and, as determined by the Government included in *total cost of design and construction of the NED Plan* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation on the *Project* shall be borne entirely by the Government and shall not be included in *total cost of design and construction of the Project* or *total cost of design and construction of the NED Plan*, up to the statutory limit of one percent of the *Section 205 Project Limit*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total cost of design and construction of the Project* or *total cost of design and construction of the NED Plan* but shall be shared between the City and the Government consistent with the minimum cost sharing requirements for flood damage reduction, as follows: 35 percent will be borne by the City and 65 percent will be borne by the Government for the *NED Plan*; and 100 percent will be borne by the City for data recovery activities that are determined by the Government to be *incremental costs*.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the City discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the City shall provide prompt written notice to the Government of such discovery. The City shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the City that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF FARGO, NORTH DAKOTA

BY: _____
JON L. CHRISTENSEN
COLONEL, CORPS OF ENGINEERS
DISTRICT ENGINEER

BY: _____
DENNIS R. WALAKER
MAYOR

DATE: _____

DATE: 3/24/08

CERTIFICATE OF AUTHORITY

I, Erik Johnson, do hereby certify that I am the principal legal officer of the City Of Fargo, that the City Of Fargo is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City Of Fargo in connection with the Fargo-Ridgewood Flood Damage Reduction Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the City Of Fargo have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
_____ day of _____ 2008.

ERIK JOHNSON
CITY ATTORNEY
CITY OF FARGO, NORTH DAKOTA

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DENNIS R. WALAKER
MAYOR
CITY OF FARGO, NORTH DAKOTA

DATE: 3/24/08

CASS COUNTY WATER RESOURCE DISTRICT
UTILITY PERMIT

City of Fargo ("Applicant"), hereby
applies for a permit to install Storm Sewer on the Water Resource
District right-of-way, as shown on the attached plans.

Applicant will install its utilities on, through, and under the real estate described in the attached exhibit.

Installation and maintenance of Applicant's utilities on Water Resource District right-of-way shall conform to the following provisions:

1. Applicant shall complete construction and maintenance at Applicant's sole expense.
2. Applicant shall place its utilities at the designated depth below the original design grade as set forth in the plans submitted.
3. Within thirty days after construction, maintenance, relocation, or removal of Applicant's utilities, Applicant shall remove any right-of-way scars, Applicant shall restore any disturbed areas to original condition, and Applicant shall reseed the vicinity disturbed by Applicant's activities. Applicant shall maintain the area for a period of one year from the date of completion.
4. Applicant shall install marker posts at all crossings on the right-of-way line, or at any other point as designated by the Water Resource District.
5. Applicant shall complete installation, maintenance, relocation, and/or removal of Applicant's utilities on the Water Resource District's right-of-way in a manner satisfactory to the Water Resource District.
6. The Water Resource District shall not be liable for damage to Applicant's utilities resulting from reconstruction or maintenance of the Water Resource District's facilities or right-of-way. Applicant hereby releases the Water Resource District, and shall defend, indemnify, and hold harmless the Water Resource District, and all of the Water Resource District's employees, officers, and agents, from and against any and all claims, demands, causes of action, or demands for relief, including costs, expenses, and attorneys' fees, that may arise out of or result from any acts or omissions regarding this permit or Applicant's installation or maintenance of its utilities under this permit, or any accident, injury, or damage to person, property, or equipment as a result of Applicant's entry upon or use of the Water Resource District's right-of-way or property.

7. Applicant, at its own cost, shall repair or replace the Water Resource District's structures, facilities, right-of-way, or any other property owned by the Water Resource District, as well as any existing utilities located on, over, or under the Water Resource District's right-of-way, which may be damaged or affected as a result of Applicant's installation and maintenance of Applicant's utilities on the Water Resource District's right-of-way, or otherwise as a result of Applicant's entry upon or use of the Water Resource District's right-of-way.
8. Applicant shall promptly remove Applicant's utilities from the Water Resource District's right-of-way, or shall relocate or adjust Applicant's utilities, all at Applicant's sole cost and expense when requested to do so by the Water Resource District.
9. Applicant shall be solely responsible for promptly complying with all present and future laws, ordinances, rules, and regulations of any other federal, state, county, or local governments or governmental entities, which may be applicable regarding Applicant's activities. Further, Applicant shall be solely responsible for obtaining all applicable licenses, permits, or other approvals necessary, if any, regarding Applicant's activities under this permit.
10. Applicant shall be solely responsible for all costs and expenses associated with complying with its obligations under this Permit.
11. Special Conditions:

Applicant hereby agrees to the above terms and conditions. This application shall become effective as a permit to do the work described when both the applicant and the Water Resource District sign below.

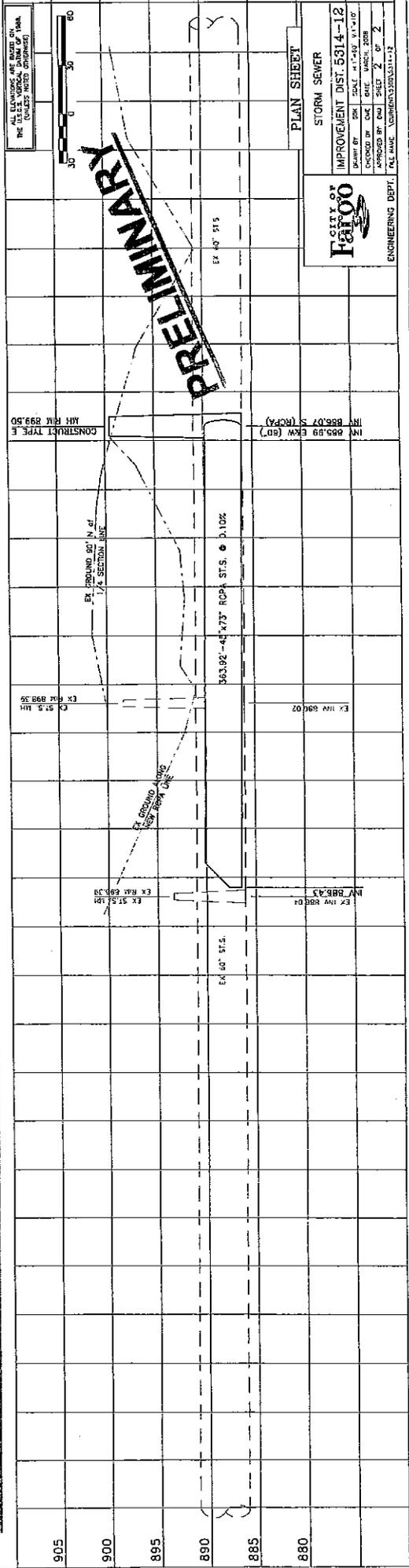
Applicant Signature Dennis R. Walaker

Mayor
Title

WATER RESOURCE DISTRICT

By: _____
Its: _____

Date Approved



CITY OF FARGO
 ENGINEERING DEPT.
 PLAN SHEET
 STORM SEWER
 IMPROVEMENT DIST. 5314-12
 DRAWN BY: [Name] DATE: [Date]
 CHECKED BY: [Name] DATE: [Date]
 APPROVED BY: [Name] DATE: [Date]
 FILE NO.: [Number]

ALL ELEVATIONS ARE BASED ON
 THE U.S.C. VERTICAL DATUM OF 1988
 (UNLESS NOTED OTHERWISE)



March 17, 2008

(7)

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. 5809

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, March 5, 2008, for Tree Planting & Incidentals, Project No. 5809, located at Brandt Drive South, 45th to 32nd Avenue South; and 30th Avenue South, Brandt Drive to 49th Street South.

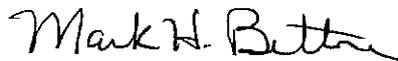
The bids were as follows:

Luxury Landscaping	\$31,915.53
S & S Landscaping Co., Inc.	\$36,614.50
Opp Construction Co., Inc.	\$37,204.00
Merritt Landscape Design	\$39,038.00
Engineer's Estimate	\$35,520.00

The special assessment escrow is not required.

This office recommends award of the contract to Luxury Landscaping in the amount of \$31,915.53 as the lowest and best bid.

Sincerely,



Mark H. Bittner
City Engineer

MHB/bem

u

ENGINEER'S REPORT
 STREET RECONSTRUCTION & INCIDENTALS
 PROJECT NO. 5812-01

Nature & Scope

This project calls for the addition of a 3rd westbound lane on 13th Avenue South from 47th Street to 52nd Street. This project was a recommendation in the 13th Avenue South corridor study that was completed in 2008 by Ulteig Engineers.

Purpose

This project will improve the traffic flow along 13th Avenue in the westbound direction, as it will provide another lane of traffic to the retail centers adjacent to the avenue.

Feasibility

The estimated construction cost of the project is \$211,649.35. The project is to be funded by Sales Tax.

Estimated Construction Cost:	\$211,649.35
Plus 20% Engineering & Administration fees:	<u>42,329.87</u>
Total Project Cost:	\$253,979.22

We believe this project to be cost effective.



Jeremy M. Gorden

 Jeremy M. Gorden, P.E.
 Senior Engineer – Transportation

March 2008

(CB) (X)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. 5676 Location: Various Locations
 District No. 5243-1 Downtown Area
 5671-2 Osgood Townsite 7th Addition
 5742 South Forty at Osgood 2nd Addition

Type: Final Balancing Change Orders Date of Hearing: 3/18/08

<u>Routing</u>	<u>Date</u>
City Commission	3/24/08
PWPEC File	X
Project File	X
Petitioners	
David W. Johnson	

The Committee reviewed the following change orders:
 District No. 5243-1 – Strata Corporation
 District No. 5671-2 – Asplin Excavating, Inc.
 District No. 5742 – Shermans, LLC
 Project No. 5676 – Adelman Concrete & Excavating

Mark Bittner stated that these final balancing change orders are in compliance with the most recent revisions to the Fargo Change Order Policy.

On a motion by Jim Gilmour, seconded by Steve Sprague, the Committee voted to recommend approval of the change orders.

RECOMMENDED MOTION

Approve the following final balancing change orders:
 District No. 5243-1 in the amount of \$98,728.34
 District No. 5671-2 in the amount of \$171,958.74
 District No. 5742 in the amount of \$2,402.52
 Project No. 5676 in the amount of \$10,379.43

PROJECT FINANCING INFORMATION:

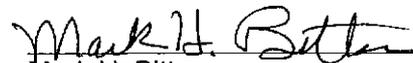
Recommended source of funding for project: As Shown

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials		N/A
Agreement for payment of specials required of developer		N/A
30% escrow deposit required		N/A

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Pat Zavoral, City Administrator	X	X		X
Jim Gilmour, Planning Director	X	X		
Bruce Hoover, Fire Chief	X	X		
Mark Bittner, City Engineer	X	X		
Bruce Grubb, Enterprise Director	X	X		
Al Weigel, Public Works Operations Manager				
Steve Sprague, City Auditor	X	X		

ATTEST:


 Mark H. Bittner
 City Engineer

DATE: 3/5/2008 3:23:48 PM

CITY OF FARGO ENGINEERING DEPARTMENT

COMP: fgo - City of Fargo

Impr Dist No: 5243-1
 Date Entered: 03/05/2008
 Date Printed: 03/05/2008

Final Chg Ord No: 1
 For: Strata Corporation

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

1-Medians needed to be lengthened after original installation due to FRA's final ruling on median lengths. 2-BNSF railing on ramp did not meet City Code and required further modification. 3- Access steps and railing at MeriCare Bldg.(4th St/Proper) required relocation/reconstruction because of pedestrian maze conflict. 4-Addition curb and gutter, asphalt roadwork, milling and sidewalk was required due to poor existing conditions.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
6	3991	Storm Water Management	LS	1.00	0.00	1.00	-1.00	0.00	3,500.00	-3,500.00
6	4066	Gravel Base (Class 5) - 8"	SY	120.00	0.00	120.00	-38.48	81.52	8.00	-307.84
6	4100	Concrete Curb & Gutter (Type I)	LF	1,210.00	0.00	1,210.00	-1,210.00	0.00	20.00	-24,200.00
6	4104	Concrete Curb & Gutter (Type II)	LF	300.00	0.00	300.00	1,117.40	1,417.40	20.00	22,348.00
6	4109	10" Wide Concrete Fence Curb	LF	39.00	0.00	39.00	-35.20	3.80	46.00	-1,619.20
6	4112	7" Reinforced PC Concrete Pavement	SY	325.00	0.00	325.00	127.00	452.00	47.00	5,969.00
6	4132	7" RC Driveway	SY	355.00	0.00	355.00	-92.34	262.66	38.00	-3,508.92
6	4137	4" RC Sidewalk w/Tooled Joint	SY	175.00	0.00	175.00	-112.05	62.95	42.00	-4,706.10
6	4138	4" RC Sidewalk	SY	670.00	0.00	670.00	354.22	1,024.22	40.00	14,168.80
6	4154	Sidewalk Brick Pavers	SF	110.00	0.00	110.00	-110.00	0.00	36.00	-3,960.00
6	4310	Remove Curb & Gutter	LF	720.00	0.00	720.00	-170.60	549.40	8.00	-1,364.80
6	4316	Detectable Warning Panels	SF	260.00	0.00	260.00	42.00	302.00	45.00	1,890.00
6	4320	Remove 4" Concrete Sidewalk	SY	523.00	0.00	523.00	66.72	589.72	6.00	400.32
6	4339	Remove Existing Paving	SY	1,100.00	0.00	1,100.00	467.68	1,567.68	11.00	5,144.48
6	4342	Asphalt Wearing Course (Includes 5 1/2" - 6% O	Ton	135.00	0.00	135.00	183.17	318.17	100.00	18,317.00
6	4354	Milling 1-2"	SY	890.00	0.00	890.00	1,049.34	1,939.34	10.00	10,493.40
6	4490	Castings to Grade	EA	6.00	0.00	6.00	-1.00	5.00	450.00	-450.00
6	4492	Gate Valve Boxes to Grade	EA	2.00	0.00	2.00	3.00	5.00	160.00	480.00
6	4604	Sodding	SY	100.00	0.00	100.00	-100.00	0.00	8.00	-800.00
6	4680	Traffic Surface Gravel	TON	100.00	0.00	100.00	-100.00	0.00	30.00	-3,000.00
6	4853	6" Vinyl Chain Link Fence	LF	3,610.00	0.00	3,610.00	-455.50	3,154.50	18.00	-8,199.00
6	4858	Install Fence Gate	LS	2.00	0.00	2.00	-2.00	0.00	600.00	-1,200.00
6	4864	Ornamental Fence	LF	609.00	0.00	609.00	-16.30	592.70	149.00	-2,428.70
6	4865	Salvage Fence	LF	16.00	0.00	16.00	42.50	58.50	32.00	1,360.00
6	4879	Slide Gate	EA	2.00	0.00	2.00	5.00	7.00	1,800.00	9,000.00
6	4881	Install Fence	LS	16.00	0.00	16.00	-4.80	11.20	52.00	-249.60
6	5604	Vinyl-Coated Cyclone Fence	LF	160.00	0.00	160.00	-160.00	0.00	7.00	-1,120.00
6	9021	Concrete Access Ramp	SY	20.00	0.00	20.00	-0.21	19.79	1,140.00	-239.40
6	9060	Asphalt Patching	SY	275.00	0.00	275.00	-79.41	195.59	52.70	4,184.91
6	10683	Extra Item-R.R. Ballast	CY	0.00	0.00	0.00	58.50	58.50	55.00	3,217.50
6	10731	Extra Item-Additional Railing @ 801 Main	LS	0.00	0.00	0.00	1.00	1.00	7,542.00	7,542.00
6	10772	Extra Item-KO-Fix-ups not on plans	LS	0.00	0.00	0.00	1.00	1.00	1,886.78	1,886.78
6	10892	Extra Item-"A" Inlet	EA	0.00	0.00	0.00	1.00	1.00	2,000.00	2,000.00
6	10893	Extra Item-"B" Inlet	EA	0.00	0.00	0.00	1.00	1.00	2,000.00	2,000.00
6	10894	Extra Item-10" SDR-26 ST.S.	EA	0.00	0.00	0.00	339.20	339.20	28.75	9,752.00
6	10895	Extra Item-501 4th St. N. Steps&Rails	LS	0.00	0.00	0.00	1.00	1.00	7,700.00	7,700.00
6	10900	Extra Item-Lower Inlet 7 St & Prosper	LS	0.00	0.00	0.00	1.00	1.00	830.50	830.50
6	10901	Extra Item_Hydro Mulch Seeding	SY	0.00	0.00	0.00	302.00	302.00	3.85	1,162.70
6	10902	Extra Item-Mobilize Seeding operation	LS	0.00	0.00	0.00	1.00	1.00	330.00	330.00
6	10956	Extra Item-Prosper Stockpile Cleanup	LS	0.00	0.00	0.00	1.00	1.00	1,248.50	1,248.50

Impr Dist No: 5243-1
 Date Entered: 03/05/2008
 Date Printed: 03/05/2008

Final Chg Ord No: 1
 For: Strata Corporation

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

1-Medians needed to be lengthened after original installation due to FRA's final ruling on median lengths. 2-BNSF railing on ramp did not meet City Code and required further modification. 3- Access steps and railing at MeritCare Bldg.(4th St./Proper) required relocation/reconstruction because of pedestrian maze conflict. 4-Addition curb and gutter, asphalt roadwork, milling and sidewalk was required due to poor existing conditions.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
6	10996	Extra Item-Fencing Not on Plans	LS	0.00	0.00	0.00	1.00	1.00	5,986.58	5,986.58
6	10998	Extra Item-additional median length	LS	0.00	0.00	0.00	1.00	1.00	11,461.00	11,461.00
6	11030	Extra Item-1 day closures fir BNSF-KO	LS	0.00	0.00	0.00	1.00	1.00	2,860.00	2,860.00
6	11031	Extra Item-Milling extra mobilization	EA	0.00	0.00	0.00	1.00	1.00	850.00	850.00
Paving Sub Total										83,360.09
20	7305	1.0" Diameter Rigid Conduit	LF	290.00	0.00	290.00	55.00	345.00	5.00	275.00
20	7315	2.0" Diameter Rigid Conduit	LF	1,040.00	0.00	1,040.00	200.00	1,240.00	8.00	1,600.00
20	7333	3.0" Diameter Rigid Conduit	LF	770.00	0.00	770.00	154.00	924.00	25.00	3,850.00
20	7391	Install PVC Pull Box	EA	24.00	0.00	24.00	-2.00	22.00	400.00	-800.00
20	7395	Install Frame & Cover	EA	24.00	0.00	24.00	-2.00	22.00	300.00	-600.00
20	7412	No. 12 AWG 7 Conductor	LF	85.00	0.00	85.00	915.00	1,000.00	1.50	1,372.50
20	7420	Underground Conductor No. 8 RHW	LF	2,070.00	0.00	2,070.00	120.00	2,190.00	0.80	96.00
20	7421	Underground Conductor No. 8 THW	LF	1,035.00	0.00	1,035.00	60.00	1,095.00	-0.70	42.00
20	7430	Detector Loop Conduit Pre-wired	LF	6,300.00	0.00	6,300.00	2,235.00	8,535.00	2.00	4,470.00
20	7431	Loop Lead-in Conductor	LF	3,710.00	0.00	3,710.00	3,632.00	7,342.00	1.50	5,448.00
20	7432	Saw Slot	LF	1,250.00	0.00	1,250.00	-91.00	1,159.00	10.00	-910.00
20	7435	Install Preformed Loop	EA	6.00	0.00	6.00	-6.00	0.00	700.00	-4,200.00
20	7510	Obliterate Pavement Markings	SF	700.00	0.00	700.00	-625.00	75.00	0.93	-581.25
20	7544	Paint 4" Epoxy	LF	400.00	0.00	400.00	774.00	1,174.00	4.00	3,096.00
20	7570	4" Grooved Plastic Marking Film	LF	2,500.00	0.00	2,500.00	-590.00	1,910.00	3.00	-1,770.00
20	7660	Island Tip Delineator	EA	1.00	0.00	1.00	15.00	16.00	80.00	1,200.00
20	10999	Extra Item-median tip painting	LS	0.00	0.00	0.00	1.00	1.00	1,500.00	1,500.00
20	11036	Extra Item-Cabinet Upgrade-Synch modes	EA	0.00	0.00	0.00	4.00	4.00	320.00	1,280.00
Traffic Signals Improvements Sub Total										15,368.25
									Total:	98,728.34

DATE: 3/5/2008 3:23:48 PM
 COMP: fgo - City of Fargo

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5243-1
 Date Entered: 03/05/2008
 Date Printed: 03/05/2008

Final Chg Ord No: 1
 For: Strata Corporation

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

1-Medians needed to be lengthened after original installation due to FRA's final ruling on median lengths. 2-BNSF railing on ramp did not meet City Code and required further modification. 3- Access steps and railing at MeritCare Bldg.(4th St./Proper) required relocation/reconstruction because of pedestrian maze conflict. 4-Addition curb and gutter, asphalt roadwork, milling and sidewalk was required due to poor existing conditions.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
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Source of Funding: **CSSI**
 Net Amount Change Order 1: \$98,728.34
 Previous Change Orders: \$0.00
 Original Contract Amount: \$648,768.00
 Total Contract Amount: \$747,496.34

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

APPROVED:

APPROVED:

Mark Buttre

City of Fargo Engineer

X *[Signature]*

For Contractor

Mayor

Division Manager

Title

Attest

CITY OF FARGO ENGINEERING DEPARTMENT

COMP: fgo - City of Fargo

Impr Dist No: 5671-2
 Date Entered: 03/11/2008
 Date Printed: 03/11/2008

Final Chg Ord No: 1
 For: Asplin Excavating, Inc.

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

Additional excavation was required due to deepening of retention pond. Additional asphalt was required to bring asphalt to curb gutter height and transition asphalt was not included in the original contract.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
3	3302	7" RC Channel Liner	SY	1,800.00	0.00	1,800.00	-354.11	1,445.89	57.00	-20,184.27
Storm Sewer Sub Total										
										-20,184.27
6	3751	Seeding with Mulch	ACRE	9.60	0.00	9.60	-1.04	8.56	2,754.00	-2,864.16
6	4000	Excavation	CY	10,000.00	0.00	10,000.00	-8,712.19	1,287.81	2.50	-21,780.48
6	4002	Subcut	CY	12,800.00	0.00	12,800.00	-6,219.56	6,580.44	3.31	-20,586.74
6	4010	Subgrade Preparation	SY	38,200.00	0.00	38,200.00	474.36	38,674.36	0.95	450.64
6	4050	Geotextile Filter Fabric	SY	38,200.00	0.00	38,200.00	474.36	38,674.36	1.35	640.39
6	4066	Gravel Base (Class 5) - 8"	SY	16,100.00	0.00	16,100.00	454.22	16,554.22	4.61	2,093.95
6	4068	Gravel Base (Class 5) - 7"	SY	22,100.00	0.00	22,100.00	20.14	22,120.14	4.07	81.97
6	4100	Concrete Curb & Gutter (Type I)	LF	12,400.00	0.00	12,400.00	160.78	12,560.78	9.52	1,530.63
6	4104	Concrete Curb & Gutter (Type II)	LF	8,100.00	0.00	8,100.00	-88.80	8,011.20	9.67	-858.70
6	4138	4" RC Sidewalk	SY	3,600.00	0.00	3,600.00	189.32	3,789.32	29.12	5,513.00
6	4200	Aggregate for Asphalt Base Course	TON	9,000.00	0.00	9,000.00	1,533.63	10,533.63	32.55	49,919.66
6	4221	Asphalt Cement	GAL	136,000.00	0.00	136,000.00	20,657.12	156,657.12	1.55	32,018.54
6	4316	Detectable Warning Panels	SF	350.00	0.00	350.00	-158.00	192.00	45.80	-7,236.40
6	4460	4" Perforated PVC w/Fabric Wrap	LF	20,500.00	0.00	20,500.00	72.00	20,572.00	3.25	234.00
6	4461	Install Watertight Manhole Seals	EA	36.00	0.00	36.00	-1.00	35.00	300.00	-300.00
6	4465	Install Watertight Manhole Seal Extension	EA	36.00	0.00	36.00	-11.00	25.00	150.00	-1,650.00
6	4490	Castings to Grade	EA	86.00	0.00	86.00	-2.00	84.00	350.00	-700.00
6	4603	Hydroseeding w/Mulch	Acre	7.00	0.00	7.00	0.38	7.38	3,423.00	1,300.74
6	4680	Traffic Surface Gravel	TON	100.00	0.00	100.00	-87.00	13.00	12.00	-1,044.00
6	9064	Excavation (Excess)	CY	29,100.00	0.00	29,100.00	5,788.22	34,888.22	4.00	23,152.88
6	10957	Extra Item - haul garbage to landfill	LS	0.00	0.00	0.00	1.00	1.00	133.40	133.40
6	11009	Extra Item - basketball court in park	LS	0.00	0.00	0.00	1.00	1.00	23,418.80	23,418.80
6	11010	Extra Item - 10' biketrail park	SY	0.00	0.00	0.00	2,609.51	2,609.51	29.12	75,988.93
6	11054	Extra Item - repair hydrant	LS	0.00	0.00	0.00	1.00	1.00	3,981.00	3,981.00
6	11055	Extra Item - leveling & comp. add. Clay	LS	0.00	0.00	0.00	1.00	1.00	27,000.00	27,000.00
Paving Sub Total										
										190,438.05
16	5018	#6 USE Cu Conductor	LF	32,340.00	0.00	32,340.00	-207.00	32,133.00	0.98	-202.86
16	5074	1-1/2" Innerduct	LF	10,980.00	0.00	10,980.00	25.00	11,005.00	2.45	61.25
Street Lighting Sub Total										
										-141.61
183	7544	Paint 4" Epoxy	LF	1,410.00	0.00	1,410.00	140.00	1,550.00	1.38	193.20
183	7546	Paint 8" Epoxy	LF	200.00	0.00	200.00	9.00	209.00	2.55	22.95
183	7547	Paint 16" Epoxy	LF	48.00	0.00	48.00	3.00	51.00	8.16	24.48
183	7730	Install Sign Assembly	EA	14.00	0.00	14.00	-1.00	13.00	40.80	-40.80
183	7751	High Intensity Prismatic Signs	SF	65.00	0.00	65.00	-20.00	45.00	14.28	-285.60
183	7753	Diamond Grade Cubed Signs	SF	46.80	0.00	46.80	50.70	97.50	17.34	879.14
183	7755	Sign Assembly & Anchor	EA	17.00	0.00	17.00	7.00	24.00	61.20	428.40
183	11025	Extra Item - obliterate pavement markings	LS	0.00	0.00	0.00	1.00	1.00	129.80	129.80
183	11026	Extra Item - epoxy arrows	LS	0.00	0.00	0.00	1.00	1.00	495.00	495.00

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5671-2
 Date Entered: 03/11/2008
 Date Printed: 03/11/2008

Final Chg Ord No: 1
 For: Asplin Excavating, Inc.

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

Additional excavation was required due to deepening of retention pond. Additional asphalt was required to bring asphalt to curb gutter height and transition asphalt was not included in the original contract.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
Signing & Striping Sub Total										1,846.57
									Total:	171,958.74

Source of Funding: *Special Assessment*
 Net Amount Change Order 1: \$171,958.74
 Previous Change Orders: \$0.00
 Original Contract Amount: \$1,950,830.41
 Total Contract Amount: \$2,122,789.15

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

APPROVED:

APPROVED:

Mark Buttre
 City of Fargo Engineer

See Attached

For Contractor

Mayor

Title

Attest

Pay Estimate No: 8 - Final
Improvement District No 5671-2

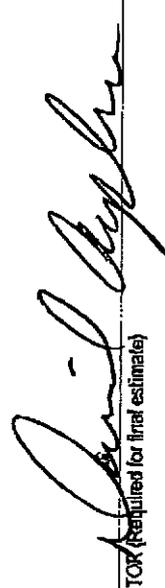
CITY OF FARGO
ENGINEERING DEPARTMENT
PAY ESTIMATE SHEET

Total Amount of Work to Date	\$2,122,785.16	Original Contract Amount	\$1,950,830.41
Materials on Hand	\$0.00	Contract Change Orders	\$0.00
Less Retainage	0.00 %	Total Contract Amount	\$1,950,830.41
Less Liquidated Damages	0 days @ \$0 /day	Remaining Contract Amount	(\$157,798.75)
Liquidated Damages Description	20 days @ 600/day		
Total Due to Date	\$2,108,629.16		
Less Previous Payments	\$1,853,165.04		
Amount allowed Pay Estimate # 8 - Final	\$255,464.12		

Approvals:


PROJECT ENGINEER

2/26/08
Date


CONTRACTOR (Required for final estimate)

3-11-08
Date


CITY ENGINEER

3/11/08
Date

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5742
 Date Entered: 03/10/2008
 Date Printed: 03/10/2008

Final Chg Ord No: 1
 For: Shermans LLC

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

Additional utilities as requested by developer.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
1	1002	Standard Compaction Earth Backfill	LF	6,547.00	0.00	6,547.00	-192.50	6,354.50	0.55	-105.88
1	1006	6" Sanitary Sewer	LF	4,000.00	0.00	4,000.00	-194.50	3,805.50	12.00	-2,334.00
1	1008	8" Sanitary Sewer	LF	1,238.00	0.00	1,238.00	3.00	1,241.00	12.00	36.00
1	1010	10" Sanitary Sewer	LF	1,309.00	0.00	1,309.00	-1.00	1,308.00	13.00	-13.00
1	3897	Temporary Construction Entrance	EA	2.00	0.00	2.00	-1.00	1.00	877.43	-877.43
1	3997	Silt Fence - Heavy Duty	LF	500.00	0.00	500.00	-160.00	340.00	3.01	-481.60
1	11053	Extra Item-1012-12" Sanitary Sewer	LF	0.00	0.00	0.00	16.00	16.00	19.50	312.00
Sanitary Sewer Sub Total										-3,463.91
2	1002	Standard Compaction Earth Backfill	LF	6,050.00	0.00	6,050.00	-238.85	5,811.15	0.55	-131.37
2	2006	6" Water Main	LF	383.00	0.00	383.00	44.50	427.50	11.00	489.50
2	2008	8" Water Main	LF	1,112.00	0.00	1,112.00	2.25	1,114.25	13.00	29.25
2	2010	10" Water Main	LF	1,335.00	0.00	1,335.00	0.40	1,335.40	16.00	6.40
2	2041	1" Cu	LF	3,220.00	0.00	3,220.00	-286.00	2,934.00	11.00	-3,146.00
2	2106	6" Gate Valve	EA	11.00	0.00	11.00	1.00	12.00	783.93	783.93
2	2250	Mechanical Joint Fittings	LB	4,445.00	0.00	4,445.00	515.00	4,960.00	0.50	257.50
Water Main Sub Total										-1,710.79
3	1002	Standard Compaction Earth Backfill	LF	2,903.00	0.00	2,903.00	-37.05	2,865.95	0.55	-20.38
3	3000	12" RCP Storm Sewer	LF	107.00	0.00	107.00	-92.00	15.00	13.00	-1,196.00
3	3001	12" PVC Storm Sewer	LF	455.00	0.00	455.00	47.15	502.15	13.00	612.95
3	3016	15" RCP Storm Sewer	LF	177.00	0.00	177.00	7.30	184.30	13.00	94.90
3	3017	15" PVC Storm Sewer	LF	441.00	0.00	441.00	0.25	441.25	13.00	3.25
3	3020	18" RCP Storm Sewer	LF	483.00	0.00	483.00	-0.50	482.50	14.00	-7.00
3	3021	21" RCP Storm Sewer	LF	540.00	0.00	540.00	0.50	540.50	15.00	7.50
3	3024	24" RCP Storm Sewer	LF	402.00	0.00	402.00	0.25	402.25	18.00	4.50
3	3100	12" Storm Sewer w/Gravel Backfill	LF	113.00	0.00	113.00	119.35	232.35	27.00	3,222.45
3	3101	15" Storm Sewer w/Gravel Backfill	LF	172.00	0.00	172.00	-26.90	145.10	28.00	-753.20
3	3443	Connect Storm Sewer to Existing Manhole	EA	2.00	0.00	2.00	1.00	3.00	397.11	397.11
3	3450	A Inlet	EA	11.00	0.00	11.00	1.00	12.00	642.33	642.33
3	3895	Inlet Protection Type B	EA	13.00	0.00	13.00	-13.00	0.00	402.90	-5,237.70
3	3898	Inlet Protection Type A2	Ea	6.00	0.00	6.00	1.00	7.00	127.50	127.50
3	4606	Seeding with Hydro-mulch	SY	5,000.00	0.00	5,000.00	15,363.50	20,363.50	0.63	9,679.01
Storm Sewer Sub Total										7,577.22
Total:										2,402.52

MAR. 10. 2008 12:55PM

CITY OF FARGO ENGR

NO. 4715 P. 3

Page 157

DATE: 3/10/2008 1:11:03 PM

CITY OF FARGO ENGINEERING DEPARTMENT

COMP: Igo - City of Fargo

Impr Dist No: 5742

Final Chg Ord No: 1

Date Entered: 03/10/2008

For: Shermans LLC

Date Printed: 03/10/2008

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

Additional utilities as requested by developer.

Seq	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
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Source of Funding: Special Assessments

Net Amount Change Order 1: \$2,402.52

Previous Change Orders: \$0.00

Original Contract Amount: \$353,148.12

Total Contract Amount: \$355,548.64

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

APPROVED:

APPROVED:

Mark Butler

City of Fargo Engineer

For Contractor

Mayor

CEO

Title

Attest

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5742
 Date Entered: 03/10/2008
 Date Printed: 03/10/2008

Final Chg Ord No: 1
 For: Shermans LLC

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

Additional utilities as requested by developer.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
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Source of Funding: Special Assessments

Net Amount Change Order 1: \$2,402.52
 Previous Change Orders: \$0.00
 Original Contract Amount: \$353,146.12
 Total Contract Amount: \$355,548.64

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

APPROVED:

APPROVED:



City of Fargo Engineer

For Contractor

Mayor

Title

Attest

CITY OF FARGO ENGINEERING DEPARTMENT

Project No: 5676
 Date Entered: 03/06/2008
 Date Printed: 03/06/2008

Final Chg Ord No: 1
 For: Adelman Concrete & Excavating

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

Quantities varied due to modifications made in the field

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
129	3008	8" Storm Sewer	LF	55.00	0.00	55.00	-27.00	28.00	8.00	-216.00
129	3036	36" RCP Storm Sewer	LF	10.00	0.00	10.00	-2.00	8.00	50.00	-100.00
129	3654	Remove & Replace Curb & Gutter	LF	60.00	0.00	60.00	13.00	73.00	24.00	312.00
129	3660	Remove " Asphalt Pavement	SY	850.00	0.00	850.00	268.30	1,118.30	2.50	670.75
129	3684	Remove & Replace 4" Concrete Sidewalk	SY	200.00	0.00	200.00	-11.22	188.78	4.50	-50.49
129	3991	Storm Water Management	LS	1.00	0.00	1.00	-1.00	0.00	2,500.00	-2,500.00
129	4064	Crushed Concrete Base Material	CY	34.00	0.00	34.00	250.00	284.00	18.00	4,500.00
129	4341	Asphalt Base Course (Includes 5 - 5 1/2% Oil)	TON	530.00	0.00	530.00	115.83	645.83	75.00	8,687.25
129	4409	Site Grading	SY	17,088.00	0.00	17,088.00	-1,231.50	15,856.50	2.25	-2,770.88
129	5049	Guard Post	EA	8.00	0.00	8.00	-8.00	0.00	50.00	-400.00
129	8566	Topsoil & Hydroseeding	SY	18,099.00	0.00	18,099.00	-1,745.00	16,354.00	1.95	-3,402.75
129	9006	6" Concrete Sidewalk	SY	12.00	0.00	12.00	12.00	24.00	29.50	354.00
129	10819	Extra Item - Manhole modifications	EA	0.00	0.00	0.00	1.00	1.00	5,295.55	5,295.55
Flood Mitigation Sub Total										10,379.43
										Total: 10,379.43

Source of Funding: Flood Repair funds
 Net Amount Change Order 1: \$10,379.43
 Previous Change Orders: \$0.00
 Original Contract Amount: \$129,363.05
 Total Contract Amount: \$139,742.48

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

APPROVED:

APPROVED:

Mark Butte

City of Fargo Engineer

For Contractor

Mayor

Pres. Dan Smith

Title

Attest

March 19, 2008

(4)

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. 5792

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, March 19, 2008, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals, Improvement District No. 5792, located on 44th Street from 15th Avenue to 17th Avenue South.

The bids were as follows:

MIC	\$146,333.20
Rising Sun Construction, Inc.	\$149,581.00
Shermans LLC	\$151,873.24
Master Construction Co., Inc.	\$163,920.25
Kindred Plumbing & Heating, Inc.	\$166,484.80
Dakota Underground	\$175,246.00
George E. Haggart, Inc.	\$187,669.00
Robert Gibb & Sons	\$218,623.00
Engineer's Estimate	\$160,000.00

The special assessment escrow is in order.

This office recommends award of the contract to MIC, in the amount of \$146,333.20 as the lowest and best bid.

Sincerely,



Mark H. Bittner
City Engineer

MHB/jmg

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ENGINEER'S REPORT

SANITARY SEWER, WATER MAIN,
STORM SEWER & INCIDENTALS

IMPROVEMENT DISTRICT NO. 5384

Nature & Scope

This project is for the installation of underground utilities at the location described as follows:

On 30th Avenue South from 41st Street to 100' north of the east/west quarter line of Section 22, Township 139N, Range 49W.

Purpose

This project is for the development of properties abutting 30th Avenue South and the construction of the detention pond to serve Matrix properties in the area. As part of this project a portion of the 30" sanitary sewer force main to service the future rehabilitation of Sanitary Sewer Lift #25 will be installed in this right of way.

Feasibility

The costs of these improvements are estimated as follows:

Estimated Construction Cost:	\$603,205
Assessed Portion:	\$445,840
Plus 32% Engineering & Administration Fees:	<u>142,669</u>
Total Estimated Assessed Cost:	\$588,509
Sewer Utility Portion:	\$157,365
Plus 25% Engineering & Administration Fees:	<u>39,342</u>
Total Estimated Cost:	\$197,707

We believe this project to be cost effective.



Mark H. Bittner

 Mark H. Bittner
 City Engineer

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ENGINEER'S REPORT
CONCRETE CURB & GUTTER,
ASPHALT PAVEMENT,
STREET LIGHTS & INCIDENTALS
IMPROVEMENT DISTRICT NO. 5770

Nature & Scope

This project is for asphalt paving with concrete curb and gutter and street lights on:

30th Avenue South from 43rd to 45th Street.
Calico Drive South from 30th Avenue South to a point 500' north.

Purpose

This project is another step in the development of Calico Prairie Addition as requested by the developer.

Feasibility

The entire cost of the project will be assessed as follows.

Estimated Construction Cost:	\$359,100
Plus 32% Engineering & Administration Fees:	<u>114,912</u>
Total Estimated Assessed Cost:	\$474,012

We believe this project to be cost effective.



David W. Johnson
Senior Engineer

March 2008

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ENGINEER'S REPORT
MILL & OVERLAY & INCIDENTALS
IMPROVEMENT DISTRICT NO. 5780

Nature & Scope

Under this project, the City will mill and overlay the streets in the following section of the City:

- On 14th Avenue South from 32nd Street South 35th Street South.
- On 15th Avenue South from 32nd Street South to 35th Street South.
- On 16th Avenue South from 32nd Street South to 34th Street South.
- On Prairiewood Circle South.
- On 33rd Street South from 13th Avenue South to 15th Avenue South.
- On 34th Street South from 14th Avenue South to 35th Street South.
- On 35th Street South from 14th Avenue South to Prairiewood Circle South.

Purpose

The mill and overlay will provide a new wearing surface as well as correcting deficiencies which have appeared over time. Rehabilitation at this time is a cost effective means of extending the useful life of the street.

Feasibility

The construction cost is estimated to be \$511,000. It will be paid for by special assessments and street rehabilitation funds. The cost breakdown is as follows:

Estimated Construction Cost:	\$511,000.00
Plus 25% Engineering & Administration Fees:	<u>127,750.00</u>
Total Section Cost:	\$638,750.00
Estimated Cost of Future Seal Coat:	\$ 58,000.00
Plus 25% Engineering & Administration Fees:	<u>14,500.00</u>
Total Seal Coat Cost:	\$ 72,500.00
Street Rehabilitation Funds 50%:	\$319,375.00
Less 50% Future Seal Coat:	<u>36,250.00</u>
Amount of Street Rehabilitation Funds 44%:	\$283,125.00
Amount Special Assessed 56%:	\$355,625.00

We believe this project to be cost effective.



Mark H. Bittner
 Mark H. Bittner
 City Engineer

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ENGINEER'S REPORT
CONCRETE CURB & GUTTER,
ASPHALT PAVEMENT, STREET LIGHTS
& INCIDENTALS

IMPROVEMENT DISTRICT NO. 5793

Nature & Scope

This project is for the installation of paving and street lights at the location described as follows:

On 44th Street from 15th Avenue to 17th Avenue South

Purpose

This project is for the development of Concierge Southwest Addition as requested by the developer.

Feasibility

The entire cost of the project will be assessed as follows:

Estimated Construction Cost:	\$320,000
Plus 32% Engineering & Administration Fees:	<u>\$102,400</u>
Total Estimated Assessed Cost:	\$422,400

We believe this project to be cost effective.



Mark H. Bittner

 Mark H. Bittner
 City Engineer

March 2008