

FARGO CITY COMMISSION AGENDA
Monday, November 17, 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 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, November 3, 2008).

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

- a. 2nd reading, waive reading and final adoption of the following rezoning Ordinances; 1st reading, 11/3/08:
 - (1) Certain Parcels of Land Lying in West Park Addition.
 - (2) Certain Parcels of Land Lying in Town Square Village Addition.
 - (3) Certain Parcels of Land Lying in Section 3, Township 138 North, Range 49 West, Cass County, North Dakota.
- b. Computer surplus equipment donation recommendation.
- c. Receive and file Summons and Complaint in the matter of Joshua Oscar Calloway vs. the City of Fargo.
- d. Receive and file Notice of Appeal from Decision of Local Governing Body filed by Fred Hector vs. the City of Fargo.
- e. Resolution Authorizing the Issuance and Sale of \$1,640,000 Sales Tax Revenue Bonds, Series 2008C and Resolution Authorizing the Amendment thereof.
- f. Receive and file Year to Date – Budget to Actual Report for October 2008.
- g. Letter of engagement with AON Consulting for implementation of a Wellness Program.
- h. Contract amendment with the North Dakota Department of Human Services for the Refugee Program (Contract #600-07012, Amendment "A").
- i. Health Department budget adjustment and contract with the North Dakota Department of Health for the Women's Way Program (CFDA #93.919).
- j. Certification of Award for the Juvenile Accountability Block Grant Award (JAIBG).
- k. Application filed by Michael and Marcia Polczinski for a 5-year property tax exemption for improvements made to a building at 920 4th Avenue South.
- l. Application filed by Muskies, Inc. F-M Chapter for a raffle on 2/5/09.

Page 2 Change Orders for the Main Library: M-5 for an increase of \$3,581 and G-7 for an increase of \$6,325.

- n. Contracts with the following companies for furniture, fixtures and equipment for the Main Library: Brown & Saenger; Embury, Ltd.; Hannaher's, Inc.; Jones Library Sales, Inc.; Function Furniture; Christianson's Business Furniture, Inc.; and MBA Development Company d/b/a InterOffice.
- o. Junked vehicle removal contract with Hazer's Auto and Truck Salvage, Inc. for 2009.
- p. Contract with the Metropolitan Council of Governments to place one traffic counting and detective device at University Drive and 18th Avenue South.
- q. Contract amendment with Kadrmas, Lee & Jackson in the amount of \$12,500 for services in connection with Project No. 5798.
- r. Contract amendment with Advanced Engineering and Environmental Engineering Services in the amount of \$16,000 for services in connection with Project No. 5799.
- s. Contract Amendment No. 1 with Advanced Engineering and Environmental Engineering Services in the amount of \$164,600 for services in connection with Project No. 5725.
- t. Bid award for the Shanley recycling drop site and Lease Agreement with the Diocese of Fargo.
- u. Agreement Regarding Storm Sewer Easement with Fred M. Hector, Jr. for property along 42nd Street South.
- v. Land Use Permit with Northern States Power Company in connection with a public bike path along 45th Street South (Improvement District No. 5765).
- w. Purchase Agreement with Prairie Grove, Inc. in connection with the reconstruction of 52nd Avenue South (Improvement District No. 5314).
- x. Encroachment Agreement with Prairie Grove, Inc. for property on Prairie Grove Avenue South at 25th Street.
- y. Advertise for bids for Project No. 5726.
- z. Contract and bond for Project No. 5799.
- aa. Bills.
- bb. Contract and bond for Improvement District No. 5773.

*** Regular Agenda ***

- 1. Appeal from a Board of Adjustment decision to approve construction of a building at 12th Avenue North.
 - a. Recommendation to schedule a hearing for 5:15 p.m. on December 1, 2008.

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

- a. Application filed by Clinical Supplies Management, Inc. for a new or expanding industry property tax exemption for an expansion to their operation at 342 42nd Street South where the applicant is engaged in clinical trial supply services for biotechnology and pharmaceutical companies.
- b. Petition requesting a zoning change from NC, Neighborhood Commercial to LC, Limited Commercial with a Conditional Overlay on property located at 1117 and 1155 13th Avenue South; however, on 10/8/08 the Planning Commission continued their hearing to 11/12/08.
 - (1) Approval recommended by the Planning Commission on 11/12/08.
 - (2) 1st reading of rezoning Ordinance.

PLEASE NOTE: Agenda items for the December 1, 2008 City Commission meeting must be submitted to the City Commission Office no later than noon on WEDNESDAY, November 26, 2008.

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 REZONING CERTAIN PARCELS OF LAND
LYING IN WEST PARK 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 West Park Addition, Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on October 8, 2008; and,

WHEREAS, the rezoning changes were approved by the City Commission on November 3, 2008,

NOW, THEREFORE,

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

Section 1. The following described property:

Lots One (1), Two (2) and Four (4), and the adjacent 20 feet of the vacated street lying along the western edge of Lots One (1) and Two (2), all in Block Two (2), West Park Addition to the City of Fargo, County of Cass and State of North Dakota,

is hereby rezoned from "GC", General Commercial, District to "LI", Limited Industrial, District.

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.

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

Dennis R. Walaker, Mayor

(SEAL)
Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN TOWN SQUARE VILLAGE 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 Town Square Village Addition, Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on October 8, 2008; and,

WHEREAS, the rezoning changes were approved by the City Commission on November 3, 2008,

NOW, THEREFORE,

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

Section 1. The following described property:

Lots Five (5), Six (6) and Seven (7), Block Three (3), Town Square Village Addition to the City of Fargo, County of Cass and State of North Dakota,

is hereby rezoned from "MR-1", Multi-Dwelling, District to "LC", Limited Commercial, District.

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.

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

Dennis R. Walaker, Mayor

(SEAL)
Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
2 LYING IN SECTION 3, TOWNSHIP 138 NORTH, RANGE 49 WEST,
3 CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
5 City of Fargo have held hearings pursuant to published notice to consider the proposed rezoning of
6 certain parcels of land lying in Section 3, Township 138 North, Range 49 West, Cass County, North
7 Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on October 8, 2008; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on November 3,
11 2008,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 The Northwest Quarter of the Northwest Quarter of Section 3, Township One
16 Hundred Thirty-eight North, Range 49 West, of the Fifth Principal Meridian, Cass
17 County, North Dakota,

18 is hereby rezoned from "AG", Agricultural, District to "GC", General Commercial, District,
19 subject to a "CO", Conditional Overlay, District as follows:

- 20 1. This Conditional Overlay is intended to provide for a higher quality of design than is
21 afforded by the City of Fargo Land Development Code regarding the future commercial
22 development.
- 23 2. All primary buildings shall be constructed or clad with materials that are durable,
economically-maintained, and of a quality that will retain their appearance over time,
including but not limited to natural or synthetic stone; brick; stucco; integrally-colored,
textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; or
glass. Natural wood or wood paneling shall not be used as a principal exterior wall
material, but durable synthetic materials with the appearance of wood may be used.

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3. Color schemes shall tie building elements together, relate pad buildings within the same development to each other, and shall be used to enhance the architectural form of a building.
4. All building facades greater than 150 feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade, and extending at least 20 percent of the length of the facade. No uninterrupted length of any facade shall exceed 150 horizontal feet. An articulated façade would emphasize elements on the face of a wall including change in setback, materials, roof pitch or height.
5. Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60 percent of their horizontal length. If the facade facing the street is not the front, it shall include the same features and/or landscaping in scale with the facade.
6. Flat roofs and rooftop equipment, such as HVAC units, shall be concealed from public view by parapets, including but not limited to the back of the structure. The average height of such parapets shall not exceed one third of the height of the supporting wall, and such parapets shall not be of a constant height for a distance of greater than 150 feet.
7. Loading facilities shall not be located at the front of structures where it is difficult to adequately screen them from view. All loading and service areas shall be screened from the view of adjacent public streets through a structure and/or landscaping.
8. Dumpsters and outdoor storage areas must be completely screened from view. Collection area enclosures shall contain permanent walls on three (3) sides with the service opening not directly facing any public right-of-way or residentially zoned property. The fourth side shall incorporate a metal gate to visually screen the dumpster or compactor.
9. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:
 - a) the primary entrance or entrances to each commercial building, including pad site buildings.

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- b) any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
- c) parking areas or structures that serve such primary buildings.
- d) connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.
- e) any public sidewalk system along the perimeter streets adjacent to the commercial development.
- f) where practical and appropriate, adjacent land uses and developments, including but not limited to residential developments, retail shopping centers, office buildings.

10. On-premise signs

- a) Every structure and complex should be designed with a precise concept for adequate signing. Provisions for sign placement, sign scale in relationship with the building, and sign readability should be considered in developing the signing concept.
- b) Signage size, color and form should complement the architecture of the building and should not compete or become the focal point of the building form.
- c) Signage must not extend horizontally or vertically past the building
- d) Signage text should be legible from arterial streets, use of recognizable imagery can be substituted for legibility of text. Sign should not be larger than necessary to achieve this legibility from the street
- e) Sign surface areas must be less than 10% of the building surface.
- f) Signs should be located horizontally above first floor doors and windows, on awnings, or adjacent to building entrances if mounted on a wall

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- g) Corporate logos should be appropriately scaled.
- h) Separate pedestrian oriented signs should be provided when pedestrians cannot see the façade signage which is oriented to the street.
- i) Each development site should be appropriately signed to give directions to loading and receiving areas, visitor parking and other special areas.
- j) Multi-tenant buildings or developments may have one monument or ground mounted sign per street frontage listing all of the tenants. Monument or ground mounted signs for individual businesses in multi-tenant buildings or developments are prohibited. Monument-type signs are the preferred alternative for business identification whenever possible.
- k) Signs should advertise a specific building or business, not products, trademarks, or special events.
- l) Window signs used for shop fronts or mixed use building are permitted provided that the aggregate total of all window signs for each business shall not exceed 25% of its respective window area

11. A minimum of 4.5% of the internal surface area of the parking lot shall be landscaped. The cumulative open space (green space) of each lot shall consist of at least 15% of the lot.

12. The following use(s) are prohibited.

- a) Detention Facilities
- b) Adult Entertainment Center
- c) Off-Premise Advertising Signs (directional signs that are less than 50 square feet in size are exempt for this prohibition)
- d) Portable Signs
- e) Vehicle Repair
- f) Industrial Service
- g) Manufacturing and Production
- h) Warehouse and Freight Movement
- i) Aviation/Surface Transportation

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13. The Zoning Administrator shall review each applicable Site Plan to determine compliance with this Conditional Overlay and act to approve or deny the Site Plan application.

14. The decision of the Zoning Administrator may be appealed to the Planning Commission.

Section 2. The following described property:

The Southwest Quarter of the Northwest Quarter and the South Ten Rods of the East Half of the Northwest Quarter of Section Three, Township One Hundred Thirty-eight North, Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota, subject to road rights of way of record,

TOGETHER WITH:

That part of the North Half of Section Three, Township One Hundred Thirty-eight North, Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows: Commencing at the Northwest corner of said Section 3; thence North 88°03'49" East (assumed bearing), along the northerly line of the Northwest Quarter of said Section 3, for a distance of 1,322.32 feet to the northeast corner of the west half of the Northwest Quarter of said Section 3 and the true point of beginning; thence South 02°08'33" East, along the easterly line of the west half of the Northwest Quarter of said Section 3, for a distance of 2,328.24 feet to a point of intersection with a line which is parallel with and 165.00 feet northerly of the southerly line of the north half of said Section 3; thence North 88°26'59" East, parallel with and 165.00 feet northerly of the southerly line of the North Half of said Section 3, for a distance of 1,320.51 feet to a point of intersection with the easterly line of the Northwest Quarter of said Section 3; thence continue North 88°26'59" East, parallel with and 165.00 feet northerly of the southerly line of the north half of said Section 3, for a distance of 394.82 feet to the southwest corner of the District of Fargo Addition, as platted in the City of Fargo and recorded at the Cass County Recorder's office as Document No. 1215551; thence North 01°56'11" West, along the westerly line and the northerly extension of the westerly line of said the District of Fargo Addition, for a distance of 2,340.84 feet to a point of intersection with the northerly line of the Northeast Quarter of said Section 3; thence South 87°54'47" West, along the northerly line of the Northeast Quarter of said Section 3, for a distance of 401.35 feet to the northeast corner of the Northwest Quarter of said Section 3; thence

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South 88°03'49" West, along the northerly line of the Northwest Quarter of said Section 3, for a distance of 1,322.32 feet to the true point of beginning,

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Subject to a 75.00 foot wide Cass County Highway No. 6 right-of-way which is coincident with the northerly line of said Section 3, to a 125.00 foot wide electrical transmission line easement more particularly described in Misc. Book X-2, page 220, filed at said recorder's office, and to other easements as may be of record,

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

The North 311.10 feet of that part of the north half of Section 3, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota described as follows: Commencing at the northeast corner of the Northwest Quarter of said Section 3; thence South 02°05'48" East, along the easterly line of the Northwest quarter of said Section 3: for a distance of 75.00 feet to the true point of beginning; thence South 88°03'49" West, parallel to the northerly line of the Northwest Quarter of said Section 3, for a distance of 81.16 feet; thence South 01°56'11" East for a distance of 2,256.74 feet to a point on a line lying 165.00 feet northerly of (as measured perpendicular to) the southerly line of the north half of said Section 3; thence North 88°20'37" East, parallel with the southerly line of the north half of said Section 3, for a distance of 87.47 feet to a point of intersection with the easterly line of the Northwest Quarter of Said Section 3; thence continue North 88°20'37" East, parallel with the southerly line of the north half of said Section 3, for a distance of 394.84 feet ; thence North 01°56'11" West for a distance of 2259.11 feet to a point on a line lying 75.00 feet southerly of (as measured perpendicular to) the northerly line of the Northeast Quarter of said Section 3; thence South 88°03'49" West, parallel with the northerly line of the Northeast Quarter of said Section 3 for a distance of 401.14 feet to the true point of beginning,

is hereby rezoned from "AG", Agricultural, District to "LC", Limited Commercial, District, subject to a "CO", Conditional Overlay, District as follows:

1. This Conditional Overlay is intended to provide for a higher quality of design than is afforded by the City of Fargo Land Development Code regarding the future commercial development.

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- 1 2. All primary buildings shall be constructed or clad with materials that are durable,
2 economically-maintained, and of a quality that will retain their appearance over time,
3 including but not limited to natural or synthetic stone; brick; stucco; integrally-colored,
4 textured or glazed concrete masonry units; high-quality pre-stressed concrete systems; or
5 glass. Natural wood or wood paneling shall not be used as a principal exterior wall
6 material, but durable synthetic materials with the appearance of wood may be used.
- 7 3. Color schemes shall tie building elements together, relate pad buildings within the same
8 development to each other, and shall be used to enhance the architectural form of a
9 building.
- 10 4. All building facades greater than 150 feet in length, measured horizontally, shall
11 incorporate wall plane projections or recesses having a depth of at least three percent of
12 the length of the facade, and extending at least 20 percent of the length of the facade. No
13 uninterrupted length of any facade shall exceed 150 horizontal feet. An articulated façade
14 would emphasize elements on the face of a wall including change in setback, materials,
15 roof pitch or height.
- 16 5. Ground floor facades that face public streets shall have arcades, display windows, entry
17 areas, awnings, or other such features along no less than 60 percent of their horizontal
18 length. If the facade facing the street is not the front, it shall include the same features
19 and/or landscaping in scale with the facade.
- 20 6. Flat roofs and rooftop equipment, such as HVAC units, shall be concealed from public
21 view by parapets, including but not limited to the back of the structure. The average
22 height of such parapets shall not exceed one third of the height of the supporting wall,
23 and such parapets shall not be of a constant height for a distance of greater than 150 feet.
- 7. Loading facilities shall not be located at the front of structures where it is difficult to
adequately screen them from view. All loading and service areas shall be screened from
the view of adjacent public streets through a structure and/or landscaping.
- 8. Dumpsters and outdoor storage areas must be completely screened from view. Collection
area enclosures shall contain permanent walls on three (3) sides with the service opening
not directly facing any public right-of-way or residentially zoned property. The fourth
side shall incorporate a metal gate to visually screen the dumpster or compactor.

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9. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be designed to provide direct access and connections to and between the following:

- a) the primary entrance or entrances to each commercial building, including pad site buildings.
- b) any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the commercial development.
- c) parking areas or structures that serve such primary buildings.
- d) connections between the on-site (internal) pedestrian walkway network and any public sidewalk system located along adjacent perimeter streets shall be provided at regular intervals along the perimeter street as appropriate to provide easy access from the public sidewalks to the interior walkway network.
- e) any public sidewalk system along the perimeter streets adjacent to the commercial development.
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- a) Every structure and complex should be designed with a precise concept for adequate signing. Provisions for sign placement, sign scale in relationship with the building, and sign readability should be considered in developing the signing concept.
- b) Signage size, color and form should complement the architecture of the building and should not compete or become the focal point of the building form.
- c) Signage must not extend horizontally or vertically past the building

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- d) Signage text should be legible from arterial streets, use of recognizable imagery can be substituted for legibility of text. Sign should not be larger than necessary to achieve this legibility from the street
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 - j) Multi-tenant buildings or developments may have one monument or ground mounted sign per street frontage listing all of the tenants. Monument or ground mounted signs for individual businesses in multi-tenant buildings or developments are prohibited. Monument-type signs are the preferred alternative for business identification whenever possible.
 - k) Signs should advertise a specific building or business, not products, trademarks, or special events.
 - l) Window signs used for shop fronts or mixed use building are permitted provided that the aggregate total of all window signs for each business shall not exceed 25% of its respective window area
11. A minimum of 4.5% of the internal surface area of the parking lot shall be landscaped. The cumulative open space (green space) of each lot shall consist of at least 15% of the lot.
12. The following use(s) are prohibited.
- a) Detention Facilities
 - b) Adult Entertainment Center

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- c) Off-Premise Advertising Signs (directional signs that are less than 50 square feet in size are exempt for this prohibition)
- d) Portable Signs
- e) Vehicle Repair
- f) Industrial Service
- g) Manufacturing and Production
- h) Warehouse and Freight Movement
- i) Aviation/Surface Transportation

13. The Zoning Administrator shall review each applicable Site Plan to determine compliance with this Conditional Overlay and act to approve or deny the Site Plan application.

14. The decision of the Zoning Administrator may be appealed to the Planning Commission.

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

Dennis R. Walaker, Mayor

(SEAL)
Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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DATE: November 13, 2008
TO: City Commission
FROM: Dan Mahl, Senior Planner, Community Development
RE: Computer Surplus Equipment Donation

b

The Department of Planning and Development is charged with making recommendations on the City's computer surplus equipment donation to area non-profit organizations. Basically, this is computer equipment that the City is no longer using. A recommendation for this year's computer equipment donation is attached.

The recommendations are based on the following criteria:

1. Impact on the City's priorities for housing and community development
2. Impact on non-profit organizations in the Fargo-Moorhead metro area
3. Benefit to non-profit organizations in North Dakota and Minnesota

The City received applications from 23 non-profit organizations. This year, the City's IS equipment surplus is donating 151 personal computers, 100 monitors, 10 printers, 7 network switches, 6 pagers, 5 servers, 2 fax machines, 2 two-way radios, 1 copier, and 1 plotter. Each computer comes in working order with a Windows Operating System. The City does not support the computers after they are picked-up.

Recommendation. Approve the attached computer equipment recommendation and authorize staff to distribute the surplus computer equipment to designated non-profit organizations.

2008 Computer Surplus Equipment Donation

Requested

Organization	Use	Computers	Copier	Monitors	Laptops	Pagers	Printers	Radios	Switches	Servers	Fax	Plotters	Computers	Copier	Monitors	Laptops	Pagers	Printers	Radios	Switches	Servers	Fax	Plotters		
1 All Nation Assembly of God	Volunteer use, training programs, use by new americans	3	3	3	3	3	3			1	1	1	3	3	3									1	
2 All Parks Alliance for Change	Office use	1	1	1	1								1	1	1										
3 American Gold Gymnastics	Improve communication and productivity	5	5	5			3						5	5	5			1							
4 Bethesda All Stars Childcare Center	Provide educational programs for childcare center	3	3	3									3	3	3										
5 Centro Cultural de Fargo-Moorhead	General operations	1	1	1			2	2	2	1	1		1	1	1									1	
6 Churches United for the homeless	Communications and security	2	2	2				8					2	2	2			1						1	
7 Community Living Services, Inc.	Teaching individuals with developmental disabilities	4	4	4			1						4	4	4			1						1	
8 Family HealthCare Center	Clinical operations/emergency preparedness	2	2	2			8	2	8	1	2		2	2	2			6	1					1	
9 Fargo Youth Commission/Boys & Girls Club	Computer labs for youth programs	12	12	12			4	6	3				12	12	12			1	1					1	
10 Fargo Housing and Redevelopment Authority	Computer equipment for nonprofit incubator	12	12	12			1			1			12	12	12			1						1	
11 Gladys Ray Shelter	Guest access to resources	1	1	1									1	1	1									1	
12 HandiWheels	Office use	3	3	3									3	3	3									3	
13 Immigrant Development Center	Use at the international Market	15	15	15	2		1			1	1		15	15	15			1						1	
14 Lake Agassiz Habitat for Humanity	Office use for staff and volunteers	2	2	2			1	4	1				2	2	2			1						1	
15 Mental Health America of ND	Office use for staff and volunteers	1	1	1			2						1	1	1			1						1	
16 Migrant Legal Services	Office use	1	1	2			3						1	1	1									1	
17 North Dakota Human Rights Coalition	Office use	2	2	2									2	2	2									2	
18 Red River Valley Genealogical Society	Data research	1	1	1									1	1	1									1	
19 Somali Community Development	Computer lab for the Somali community	15	2	15	4	4	2	4	2	1	2		15	2	15	8								1	
20 Special Olympics of ND	Staff and volunteer use	9	1	9			2	15					9	1	9	5		1						5	
21 The Salvation Army	Supplement radio communications for disaster response					20		20																	
22 Liberian Community Center	Staff use and education	15	15	15	15	15	15		15	15	15	15	15	15	15	5								5	
23 Village Family Service Center	Office use for counseling staff	20	20	20					5				20	20	20									20	
Total Requested		127	11	128	21	32	42	65	28	5	24	17	127	1	100	0	6	10	2	7	5	2	1	1	
Total Available		151	1	100	0	6	10	2	7	6	2	1	151	1	100	0	6	10	2	7	5	2	1	1	

C

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

JOSHUA OSCAR CALLOWAY,)

Civil No. _____

Plaintiff,)

vs.)

SUMMONS

CITY OF FARGO,)

Defendants.)

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to appear and defend against the Complaint in this action, which is herewith served upon you, by serving upon the undersigned an Answer or other proper response within twenty (20) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 24 day of October, 2008.



Jerry F. Arnason #3943

FOR Kerry S. Rosenquist (ID 04905)
ROSENQUIST, ARNASON & HANKEY
301 N. 3rd Street, Suite 300
Grand Forks, ND 58203
(701) 775-0654
Attorney for Plaintiff

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

JOSHUA OSCAR CALLOWAY,)

Civil No. _____

Plaintiff,)

vs.)

COMPLAINT AND DEMAND
FOR JURY TRIAL

CITY OF FARGO,)

Defendant.)

COMES NOW, the Plaintiff, JOSHUA OSCAR CALLOWAY, and for his cause of action against the Defendant, the CITY OF FARGO, states and alleges the following:

I

That on or about August 1, 2006, Mr. Calloway, a resident of North Dakota, was arrested by Fargo Police and brought to the Cass County Jail for unpaid fines in Fargo, North Dakota. At this time, Mr. Calloway also had a warrant out for his arrest in Ramsey County for unpaid fines. The total monetary obligation for the two offenses was \$1,460.00. Mr. Calloway's family paid the \$1,460.00 for his release.

II

That before leaving the jail, Mr. Calloway was informed that he would not have to appear in court for either Cass or Ramsey County.

III.

That Mr. Calloway called the Clerk of Court for Cass County on August 2, 2006, and asked if he needed to appear in Court. The clerk informed him that so long as he paid his fines he did not have to appear in Court. As Mr. Calloway's fines had been were paid, he believed that his warrant was or would be vacated.

IV

That on December 30, 2006, approximately five months later, Mr. Calloway was in Grand Forks, North Dakota for a concert at the Alerus Center where he was assaulted in an elevator. Immediately, he found a group of security guards and informed them that he had been assaulted and wanted to press charges. When Mr. Calloway was introduced to a police officer, the officer placed him under arrest for a Fargo warrant for unpaid fines. Mr. Calloway relayed to officers that he had paid all his fines in Fargo and he should not have a warrant for his arrest. However, despite Mr. Calloway's assertions, he was taken to the Grand Forks County Correctional Center where he was placed in a holding cell.

V

That Mr. Calloway was still detained the next day on December 31, 2006. That afternoon, Mr. Calloway suffered a panic attack, fell to the floor, and blacked out. Paramedics showed up and started an IV before bringing Mr. Calloway to the hospital, where several tests such as blood tests, x-rays, and an EKG were performed. Tests results showed Mr. Calloway suffered from severe anxiety.

VI

That on January 1, 2007, Mr. Calloway suffered two more attacks and passed out before another ambulance was called. Mr. Calloway was given a shot to calm down. Mr. Calloway suffered yet another attack later that evening.

VII

That on January 2, 2007, at approximately 4:30 p.m., Mr. Calloway's mother and sister were informed of his bond amount and were able to borrow money for his bond. They drove

from Fargo to Grand Forks and arrived at around 7:20 p.m. Mr. Calloway was released at approximately 9:10 p.m. and finally arrived home in Fargo at around 10:40 p.m.

VIII

That on the 4th day of January, 2007, Mr. Calloway appeared in Municipal Court in the city of Fargo. The Court informed Mr. Calloway that the warrant should have been vacated in August, 2006.

IX

That as a direct and proximate result of the Defendant's negligence in not recording the payment of the fines and removing the warrant from the warrant list, Mr. Calloway was wrongfully detained for approximately 72 hours in Grand Forks, North Dakota, and incurred the medical expenses of two ambulance calls and three different doctor visits. Additionally, Mr. Calloway has had repercussions from being wrongfully detained and continues to suffer severe side effects, which has required him to undergo psychiatric counseling and treatment. He has been diagnosed with post traumatic stress disorder.

X

That pursuant to North Dakota Century Code § 32-12.1-03, the acts and omissions of the CITY OF FARGO constitutes negligence and was the proximate cause of Mr. Calloway's false arrest and detention which took place in Grand Forks, North Dakota.

XI

That the Plaintiff has attempted to seek relief from the Defendant and they have refused to acknowledge any wrongdoing and have refused to provide redress for the damages done to the Plaintiff.

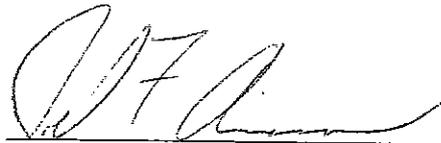
XII

That the Defendant is not shielded from liability under the qualified immunity for government officials statute, N.D.C.C. 32-12.1-03(3)(d), because their conduct clearly violated Mr. Calloway's constitutional rights by infringing on his personal liberty. The government's error in not recording the payment of Mr. Calloway's fine and removing of the warrant is not shielded under the "discretionary" functions exclusion of NDCC 32-12.1-03(3)(d).

THEREFORE, Plaintiff prays for a judgment against the Defendant, CITY OF FARGO, for the following relief.

1. Monetary damages, a reasonable sum but not less than \$50,000; and
2. Whatever further relief is deemed just and equitable by the court.

Dated this 24 day of October, 2008.



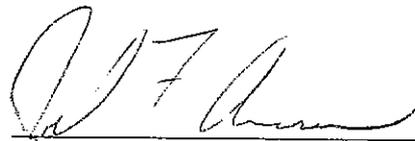
for Kerry S. Rosenquist (ID 04905)
ROSENQUIST, ARNASON & HANKEY
301 N. 3rd Street, Suite 300
Grand Forks, ND 58203
(701) 775-0654
Attorney for Plaintiff

JOEL F. ARNASON
#3743

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the *North Dakota Rules of Civil Procedure*, Demand is hereby made for a trial by a jury of nine (9) people.

Dated this 24 day of October, 2008.

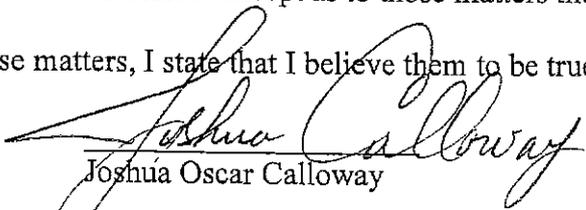


JOEL F. ARNASON #3743

for Kerry S. Rosenquist (ID 04905)
ROSENQUIST, ARNASON & HANKEY
301 N. 3rd Street, Suite 300
Grand Forks, ND 58203
(701) 775-0654
Attorney for Plaintiff

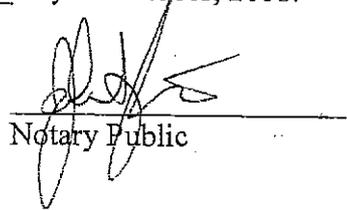
STATE OF NORTH DAKOTA)
)SS VERIFICATION
COUNTY OF CASS)

I, Joshua Oscar Calloway, being first duly sworn on oath, deposes and says: That I am the Plaintiff in the foregoing action and that I have read the foregoing Summons and Complaint and know the contents thereof and that the same is true and correct except as to those matters therein stated on information and belief, and as to those matters, I state that I believe them to be true.


Joshua Oscar Calloway

Subscribed and sworn to before me this 14th day of October, 2008.

JOHN SYVERTSON
Notary Public
State of North Dakota
My Commission Expires Aug. 23, 2013


Notary Public

(d)

COPY

IN THE DISTRICT COURT OF CASS COUNTY, NORTH DAKOTA

Fred M. Hector, Jr.,

Petitioner-Appellant,

Civil No. _____

vs.

**NOTICE OF APPEAL FROM DECISION OF
LOCAL GOVERNING BODY PURSUANT
TO N.D.C.C. § 28-34-01**

City of Fargo, a political subdivision of
the State of North Dakota.

Respondent-Appellee.

TO: The City of Fargo, North Dakota, a municipality and political subdivision of the State of North Dakota located in Cass County, North Dakota, also denominated "Respondent-Appellee":

PLEASE TAKE NOTICE that the above named Petitioner-Appellant Fred M. Hector, Jr., [hereinafter HECTOR"] does appeal to the District Court of Cass County, North Dakota, from the decision of the City Commission of the City of Fargo, Cass County, North Dakota, a "local governing body" as defined by law, on October 20, 2008 [minutes of Regular Meeting, October 20, 2008; Pages No. 361-362, attached hereto and incorporated by reference] relating to approval of the Special Assessment Lists for Improvement Districts Nos. 5702, 5704, 5740, and 5759 over the objections/appeals of Fred M. Hector, Jr.

To further advise the District Court of the type of issues raised by this appeal from the decision(s) of the City Commission of the City of Fargo, Cass County, North Dakota,

HECTOR advises the District Court that the following issues show that the City Commission has acted arbitrarily, capriciously, or unreasonably:

1. AS TO 2007 SPECIAL ASSESSMENT DISTRICT NO. 5704:

“All of the unplatted in the SE¼ of Section 34, Township 139, Range 49, except the north 1.165.23 feet of said SE ¼.”

Fred M. Hector does object to the so-called corrected assessment of \$297,739.91 which is at least \$161,739.91 too much, if any is to be assessed at all:

A. There is an assessment that is \$161,739.91 more than is possible under the City of Fargo’s Infrastructure Funding Policy. 1,360 feet at \$100 FF = \$136,000 possible assessment when using the City of Fargo’s special assessment cap – which should be applied to all equally. There is a \$161,739.91 error in assessment of Hector property – at a minimum. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

B. The City of Fargo seeks to assign benefit to the land owned by Fred M. Hector but the property is being primarily used for agricultural purposes. Fred M. Hector tried to have much of this agricultural property zoned for commercial purposes but the City of Fargo refused to allow for the re-zoning of the property for use by commercial entities – and it remains zoned for agricultural purposes except for the those lands located south of 51st Avenue South if extended to the east and those lands east of the newly constructed frontage road that should be the arterial road to be considered. As to Parcel #01-350005179-010 specifically, said lands do not abut, and cannot access 42nd Street South and there will be another arterial road that is located west of the identified parcel of land. Fred M. Hector should not have any significant benefit attributed to any this land because he does not need to have any improved streets; a gravel road [or even a dry, dirt road], is all that is necessary for him to access his property for planting, weeding, or harvesting purposes. The “benefit” is virtually non-existent, if any benefit exists at all. The benefit to the property is the amount that is the maximum amount that can be assessed to the property. Since Mr. Hector already had access to his real property, the maximum benefit would be a very small amount of tax, if any at all.

C. The amount identified would exceed the amount established by the policies of the City of Fargo no matter how it is zoned. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. Northern Pacific Railway Company v. City of Grand Forks, 73 N.W.2d 348 (1955) provides “(w)here special assessments must be apportioned according to benefits the foot frontage method of assessment is permissible only when the benefits conferred upon the assessed property are equal and uniform.” *Syllabus by the Court* #3. The City of Fargo assesses Woodhaven 5th Addition by the “foot” [approximately \$10/foot] and Hector property improperly by a combination of using “square foot” and also “front foot”. No equal and uniform formula for determining benefit – all in violation of law. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. This same observation/objection is made with respect to other special assessment districts.

D. Moreover, the fees and costs are duplicitous in that municipal entities or offices, funded by general fund expenditures, are charging additional fees for services rendered making certain property owners pay additional tax in violation of the North Dakota Constitution [see specifically, Article X, Sections 4 and 5; Article I, Sections 21 and 22].

E. Fred M. Hector does not dispute the admitted error committed by the City of Fargo which would have caused his land to be assessed \$198,232.68 more than even the City of Fargo now recognizes would be appropriate. The **\$198,232.68 error committed by the City of Fargo** would not have been caught but for Fred M. Hector’s September 17, 2008, investigation as noted in Endnote #1 of the Hector Special Assessment Capsulized Objections filed with the Fargo City Commission. That \$198,232.68 mistake is a given; the corrected assessment is still too much for the reasons herein advanced.

F. Due to information first hinted at the City Commission meeting of October 20, 2008, Fred M. Hector hereby identifies additional issues arising out of legal and factual improprieties committed by the City of Fargo with respect to Special Assessment District #5704 [**Fred M. Hector does not dispute the \$198,232.68**

impropriety should have been remedied – it was never part of the expended monies that were to be assessed, nor could it be so assessed – it would have meant that Fred M. Hector, Jr., would be assessed more than the City Auditor had originally identified as being appropriate for assessment – a maximum of \$381,273.11]:

1. The City of Fargo's Special Assessment Commission acted contrary to N.D.C.C. Chap. 40-23. and other applicable provisions of law by conducting, or claiming to conduct, actions subsequent to September 9, 2008 – the date previously identified by the Special Assessment Commission as constituting the date "a true and correct assessment list as confirmed by the SPECIAL ASSESSMENT COMMISSION on 9-9-08" resulted in a filing with the City Commission. See N.D.C.C. § 40-23-09. Under N.D.C.C. § 40-23-10, any action subsequently taken by the Special Assessment Commission should have resulted in another publication, another mailing, and another hearing – all in accordance with due process of law:
 - A. The Special Assessment Commission, if it met on September 16, 2008, did so without complying with N.D.C.C. Chap. 44-04 which provides for open, public meetings – with notice to Fred M. Hector, Jr.; and/or
 - B. The Special Assessment Commission, if it met on September 24, 2008, did so without complying with N.D.C.C. Chap. 44-04 which provides for open, public meetings – with notice to Fred M. Hector, Jr.
2. The Special Assessment Commission failed to honor N.D.C.C. § 40-23-11 as to conducting a proper hearing and fixing benefits, but further erred in not issuing a confirmation of the list as required by N.D.C.C. § 40-23-12; nor did it file the assessment list in the office of the city auditor as required by statute.
3. At no time subsequent to September 24, 2008, did the Fargo city auditor cause to be published a notice once in the official newspaper as required by N.D.C.C. § 40-23-13 [the city auditor purported to publish a notice

only relating to the actions of the Special Assessment Commission on September 9, 2008, by publication made on September 22, 2008].

4. Using the 2006 caps imposed upon the Special Assessment Commission by the City of Fargo, the property owned by Fred M. Hector, Jr., should not have been subjected to any assessment greater than his share of a 66' asphalt road – which was should have been no more than 1,410.82' in length [not the 1,623.78' claimed to exist] – and more likely only 1,360' in length because the City of Fargo has acquired additional right-of-way along 52nd Avenue South which should not be assessed to Fred M. Hector, Jr.
5. Northern Pacific Railway Company v. City of Grand Forks, 73 N.W.2d 348 (1955), and similar case(s), requires “where the cost of an improvement is to be defrayed by special assessments, the special benefit accruing to each lot or parcel of land in the special assessment district must be determined, and the special assessment levied against each lot or parcel of land must be limited to its just proportion of the total cost of the improvement and must not exceed the benefits determined to have accrued to such lots or parcels of land.” *Syllabus by the Court # 2*.
6. Northern Pacific Railway Company v. City of Grand Forks, 73 N.W.2d 348 (1955) provides “(w)here special assessments must be apportioned according to benefits the foot frontage method of assessment is permissible only when the benefits conferred upon the assessed property are equal and uniform.” *Syllabus by the Court #3*. The City of Fargo assesses Woodhaven 5th Addition by the “foot” [approximately \$10/foot] and Hector property improperly by a combination of using “square foot” and also “front foot”. No equal and uniform formula for determining benefit – all in violation of law. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. This same observation/objection is made with respect to other special assessment districts.

2. AS TO 2007 SPECIAL ASSESSMENT DISTRICT NO. 5740-01:

“All of the unplatted in the west 1.150 feet of the SE¼ of Section 34, Township 139, Range 49.”

The City of Fargo seeks to assess real property owned by Fred Hector, Jr., in the amount of \$25,261.87, which is not possible for the following reasons:

A. There is an assessment that is \$25,261.87 more than is appropriate because the land already has a water line by way of Special Assessment District #5702-03 [and perhaps other projects to the north edge of Hector lands]. There is a \$25,261.87 error in assessment of Hector property. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

B. The City of Fargo seeks to assign benefit to the land owned by Fred M. Hector but the property has already been included in one (1), and possibly two (2) other special assessment district(s) supposedly providing sanitary sewer, water main, and storm sewer assessment. Besides, the property is being primarily used for agricultural purposes. Fred M. Hector tried to have much of this agricultural property zoned for commercial purposes but the City of Fargo refused to allow for the re-zoning of the property for use by commercial entities – and it remains zoned for agricultural purposes except for the those lands located south of 51st Avenue South if extended to the east and those lands east of the newly constructed frontage road that should be the arterial road to be considered. As to Parcel #01-350005179-010 specifically, said lands do not abut, and cannot access 42nd Street South and there will be another arterial road that is located west of the identified parcel of land. Fred M. Hector should not have any significant benefit attributed to any this land because he does not need to have any improved streets; a gravel road [or even a dry, dirt road], is all that is necessary for him to access his property for planting, weeding, or harvesting purposes. The “benefit” is virtually non-existent, if any benefit exists at all. The benefit to the property is the amount that is the maximum amount that can be assessed to the property. Since Mr. Hector already had access to his real property, the maximum benefit would be a very small amount of tax, if any at all.

C. The amount identified would exceed the amount established by the policies of the City of Fargo no matter how it is zoned. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection

Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. Northern Pacific Railway Company v. City of Grand Forks, 73 N.W.2d 348 (1955) provides “(w)here special assessments must be apportioned according to benefits the foot frontage method of assessment is permissible only when the benefits conferred upon the assessed property are equal and uniform.” *Syllabus by the Court* #3. The City of Fargo assesses Hector lands by the “square foot” [approximately \$.00444460064 per square foot under category “MISC 98”] and the “The District” property by a combination of using “square foot” and also “front foot”. No equal and uniform formula for determining benefit – all in violation of law. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. This same observation/objection is made with respect to other special assessment districts.

D. Moreover, the fees and costs duplicitous in that municipal entities or offices, funded by general fund expenditures, are charging additional fees for services rendered making certain property owners pay additional tax in violation of the North Dakota Constitution [see specifically, Article X, Sections 4 and 5; Article I, Sections 21 and 22].

3. AS TO 2007 SPECIAL ASSESSMENT DISTRICT NO. 5702-03:

“All of the unplatted in the south 1,460 feet of the west half of the SE¼ of Section 34, Township 139, Range 49.”

The City of Fargo seeks to assess real property owned by Fred Hector, Jr., in the amount of \$247,361.60, which is at least \$82,453.83 more than is possible, or it is as much as \$233,084.01 more than is possible, for the reasons advanced:

A. There is an assessment that is \$82,453.83 more than is possible should the “area” be used to identify the correct amount to be assessed. There is a \$82,453.83 error in assessment of Hector property – at a minimum. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

B. There is an assessment that is \$233,084.01 more than is possible should the “front footage” be used to identify the correct amount to be assessed. There is a

\$233.084.01 error in assessment of Hector property – at a minimum. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

C. The City of Fargo seeks to assign benefit to the land owned by Fred M. Hector but the property is being primarily used for agricultural purposes. Fred M. Hector tried to have much of this agricultural property zoned for commercial purposes but the City of Fargo refused to allow for the re-zoning of the property for use by commercial entities – and it remains zoned for agricultural purposes except for the those lands located south of 51st Avenue South if extended to the east and those lands east of the newly constructed frontage road that should be the arterial road to be considered. As to Parcel #01-350005179-010 specifically, said lands do not abut, and cannot access 42nd Street South and there will be another arterial road that is located west of the identified parcel of land. Fred M. Hector should not have any significant benefit attributed to any this land because he does not need to have any improved streets; a gravel road [or even a dry, dirt road], is all that is necessary for him to access his property for planting, weeding, or harvesting purposes. The “benefit” is virtually non-existent, if any benefit exists at all. The benefit to the property is the amount that is the maximum amount that can be assessed to the property. Since Mr. Hector already had access to his real property, the maximum benefit would be a very small amount of tax, if any at all.

D. The amount identified would exceed the amount established by the policies of the City of Fargo no matter how it is zoned. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. Northern Pacific Railway Company v. City of Grand Forks, 73 N.W.2d 348 (1955) provides “(w)here special assessments must be apportioned according to benefits the foot frontage method of assessment is permissible only when the benefits conferred upon the assessed property are equal and uniform.” *Syllabus by the Court* #3. The City of Fargo assesses Woodhaven 5th Addition by the “foot” [approximately \$10.50/foot] and Hector property improperly by using “square foot”. No equal and uniform formula for determining benefit – all in violation of law. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22]. This same observation/objection is made with respect to other special assessment districts.

E. Moreover, the fees and costs duplicitous in that municipal entities or offices, funded by general fund expenditures, are charging additional fees for services rendered making certain property owners pay additional tax in violation of the North Dakota Constitution [see specifically, Article X, Sections 4 and 5; Article I, Sections 21 and 22].

F. It is believed that this land has already been subjected to another special assessment district that supposedly provided the same benefits. Benefits will not exist in the present district if already in existence in another.

G. There does not exist any right to further breakdown any special assessment district into a smaller district(s) as is apparently being done without any approval by the Fargo City Commission. Nor is the process done in compliance with N.D.C.C. Chap. 40-22, and other applicable provisions of law.

4. AS TO 2007 SPECIAL ASSESSMENT DISTRICT NO. 5759:

“The unplatted land in the S ½ of Section 35, Township 139, Range 49, west of Drain 53.”

The City of Fargo seeks to assess real property owned by Fred Hector, Jr., in the amounts of \$38,643.40 and \$23,212.94 and \$105,562.77, none of which is possible for the following reasons:

A. There is an assessment that is \$38,643.40 more than is possible for the Hector “Frontier Quarter” lands. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

B. There is an assessment that is \$23,212.94 more than is possible for the Hector “School Land”. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

C. There is an assessment that is \$105,562.77 more than is possible for the Hector lands located in Section 11 outside of the City of Fargo. See Hector Special Assessment Capsulized Objections [Based on “Hector Submission”].

D. The City of Fargo seeks to assign benefit to the land owned by Fred M. Hector but the property is being primarily used for agricultural purposes. Fred M. Hector tried to have much of this agricultural property zoned for commercial purposes [approximately 50 acres of land in the SW¹/₄ of 35-139-49] but the City of Fargo refused to allow for the re-zoning of the property for use by commercial entities – and it remains zoned for agricultural purposes. Fred M. Hector should not have any significant benefit attributed to any this land because he does not need to have any sanitary sewer, water main, storm sewer, and incidentals assessment: a gravel road [or even a dry, dirt road], is all that is necessary for him to access his property for planting, weeding, or harvesting purposes. The other improvements already exist, or improvements are not necessary. The “benefit” is virtually non-existent, if any benefit exists at all. The benefit to the property is the amount that is the maximum amount that can be assessed to the property. Since Mr. Hector already had access to his real property, the maximum benefit would be a very small amount of tax, if any at all.

E. The amount identified would exceed the amount established by the policies of the City of Fargo no matter how it is zoned. Fred M. Hector should not be subjected to different standards, and to do so is violative of the Equal Protection Clause of the United States Constitution, and/or its equivalent provision under the State Constitution [see specifically, Article I, Sections 21 and 22].

F. The attempt to assess is premature and contrary to law. Adherence to N.D.C.C. Chap. 40-23, and other applicable provisions of law, would not allow piecemeal assessment processes. The scheme of improvements has been divided into parts so as to avoid compliance with law. The assessment provides for work which has already been built by special assessment or included in another assessment confirmed, or built, or agreed to be built by other parties or corporations, or made part of other municipal projects for which assessment is not possible. Moreover, the fees and costs duplicitous in that municipal entities or offices, funded by general fund expenditures, are charging additional fees for services rendered making certain property owners pay additional tax in violation of the North Dakota Constitution [see specifically, Article X, Sections 4 and 5; Article I, Sections 21 and 22].

G. So far as is known to the undersigned, Fred M. Hector did not get any notice of an assessment against his real property located in Section 11-139-49, Cass County, North Dakota. He should not be assessed because that land is not presently located within the City of Fargo and it is impossible to legally assess. See, Dakota

Land Company v. City of Fargo, 224 N.W.2d 810 (N.D. 1974) which establishes the impropriety of assessing land outside of the City of Fargo. However, preliminary indications, and the published map for the assessment district on August 25 and September 1, 2008, establish that the City of Fargo has identified an assessment area that includes lands outside of the City of Fargo which makes the entire process suspect. Moreover, the undersigned asserts that the lands of Fred M. Hector are already included in those lands entitled to be serviced by the Water Resource District so that benefit should be little, or nothing.

H. Moreover, the fees and costs are duplicitous in that municipal entities or offices, funded by general fund expenditures, are charging additional fees for services rendered making certain property owners pay additional tax in violation of the North Dakota Constitution [see specifically, Article X, Sections 4 and 5; Article I, Sections 21 and 22].

I. The City of Fargo seeks to assess lands actually owned by the City of Fargo with the special assessment amount to be levied against Fred M. Hector's land(s).

FURTHER OBJECTION AS TO ALL SPECIAL ASSESSMENT DISTRICTS

As a further objection, Fred M. Hector notes that the City of Fargo has created a Special Assessment Commission that has failed to perform its duties as required by law in that the members advised persons present on September 9, 2008, that their role was merely advisory, and it was their intent only to answer questions posed by landowners appearing in protest. When asked by the undersigned, acting on behalf of Fred M. Hector, for identification of the formula by which the assessments were based, none of the commission members were able to identify any formula. When asked if they were honoring the 2007 Fargo Infrastructure Funding Policy as the special assessment districts were all created in 2007, the chairman indicated that it was logical that such policy would control. The members of the Special Assessment Commission further advised persons present that it was the duty of the Fargo City Commission to set the amounts to be assessed against each property, and seemingly rejected, or ignored, the undersigned's legal observation that the law made them legally responsible for determining the special assessment amounts as to each property after personal inspection. See specifically, N.D.C.C. § 40-23-07. The Special Assessment Commission apparently confirmed the assessments done by someone other than themselves – presumptively an unknown or unidentified City of Fargo employee that is not a member of

the commission. All of the actions of the Special Assessment Commissioners were in apparent disregard of their legal duties set forth in N.D.C.C. Chap. 40-22, N.D.C.C. Chap. 40-23, and/or N.D.C.C. Chap. 40-23.1, or other pertinent provisions.

So as to eliminate any question, the City of Fargo does not have the right to change special assessment laws by use of its Home Rule Charter, nor has it acted so to do.

HECTOR hereby incorporates by reference the "FRED M. HECTOR OBJECTION TO ASSESSMENT(S) IN 2007 SPECIAL ASSESSMENT DISTRICT NOS. 5704, 5740-01, 5702-03, & 5759" filed with the Fargo City Auditor on October 15, 2008. HECTOR reserves the right to expand upon the concepts, principles, and objections noted herein, and further requests to have the right to supplement the record following compliance with statutory filing obligations imposed upon the City of Fargo.

Dated this 11th day of November, 2008.

GARAAS LAW FIRM



Jonathan T. Garaas
Attorneys for Fred M. Hector, Jr.
DeMores Office Park
1314 23rd Street South
Fargo, North Dakota 58103-3796
Telephone: (701)293-7211
North Dakota Bar ID #03080

Special Assessment Lists for Improvement District Nos. 5702, 5704, 5740 and 5759 Approved:

A Hearing had been set for this day and hour on the special assessment lists for the construction of the following Improvement Districts in the City of Fargo, North Dakota, on which special assessment lists Hearings had been held by the Special Assessment Commission after which they had been confirmed and filed with the Board of City Commissioners:

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5702.

PC Concrete Pavement and Incidentals No. 5704.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5740.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5759.

The Board received a communication from Jonathan Garaas, Attorney representing Fred Hector, appealing the special assessments for Improvement District Nos. 5702, 5704, 5740 and 5759. Mr. Garaas submitted a packet of information outlining the reasons for the appeals.

Mr. Garaas handed out additional information regarding Mr. Hector's reasons for objecting to the assessments. He said in regard to the special assessment for Improvement District No. 5704, Mr. Hector objects to the corrected assessment of \$297,739.91 which is at least \$161,739.91 too much and he summarized the reasons for the objection. He said as to the special assessment for Improvement District No. 5740, Mr. Hector objects to the assessment of \$25,261.87 and he summarized the reasons for the objection. He said regarding the special assessment for Improvement District No. 5702, Mr. Hector objects to the assessment of \$247,361.70 which is at least \$82,453.73 more than possible or it is as much as \$233,084.01 more than is possible and he summarized the reasons for the objection. He said as to the special assessment for Improvement District No. 5759, Mr. Hector objects to the assessments of \$38,643.40, \$23,212.94 and \$105,562.77 and he summarized the reasons for the objection.

At 6:05 p.m. the Board took a five-minute recess.

After recess: All Commissioners present. Mayor Walaker presiding.

Special Assessment Coordinator Dan Eberhardt explained the City's process in determining the special assessments for Mr. Hector's property. He also responded to Mr. Garaas's statements regarding each of the Improvement Districts in question and summarized the City's method in determining the assessments.

There was discussion regarding the error made in the assessments for Improvement District No. 5704.

Mr. Eberhardt stated the original memorandum that was sent to Mr. Hector listed the 2006 figures as the estimated assessments for Improvement District No. 5704 and, after the final figures went out, the numbers were calculated with the 2008 figures. He said the assessment should have been figured using the 2007 amount, however, the Special Assessment Commission used the 2006 figures since that was

the amount listed in Mr. Hector's original memorandum. He said Mr. Hector got a break on that assessment because it was lower than it should have been.

In answer to a question, Mr. Eberhardt stated the Special Assessment Commission uses the same calculations for everyone's assessments.

In answer to a question, Mr. Eberhardt stated changes can still be made after the Commission approves the special assessments.

Daniel Dunn, Chair of the Special Assessment Commission, stated when the letters for the special assessments are sent out, the Special Assessment Commission holds hearings to answer citizens questions about their assessments. He said the citizens are also told if they have additional questions and concerns they can be addressed by the City Commission at their hearing on the assessments. He said ultimately, the City Commission does have authority to make changes to the special assessments.

Commissioner Mahoney moved that the special assessment lists for the construction of the above listed Improvement Districts be and the same are hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the manner provided by law, that the interest rate be set at 1% per annum over the net rate on bonds financing said projects and that Mr. Eberhardt be directed to address Mr. Garaas's concerns and review the numbers in Improvement District Nos. 5702, 5704, 5740 and 5759.

Second by Wimmer. On call of the roll Commissioners Mahoney, Wimmer, Williams, Piepkorn and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Michael Love Appointed as an Alternate Member of the Board of Adjustment:

The Board received a communication from Mayor Walaker recommending that Michael Love be appointed as an Alternate Member of the Board of Adjustment.

Commissioner Mahoney moved that the Board approve and confirm the appointment of Michael Love as an Alternate Member of the Board of Adjustment for the term ending June 30, 2011.

Second by Piepkorn. On call of the roll Commissioners Mahoney, Piepkorn, Wimmer, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Commissioner Piepkorn moved that the Board adjourn to 5:00 o'clock p.m., Monday, November 3, 2008.

Second by Mahoney. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 6:39 o'clock p.m.



Office of the City Attorney

November 13, 2008i

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

Dear Commissioners:

Enclosed are resolutions authorizing increase of a loan from the State Revolving Fund from \$1.2 million to \$1.64 million. On August 25 you approved the issuance of Sales Tax Revenue Bonds in the amount of \$1.2 million (Series 2008C), which will be borrowed through a sale of bonds to the North Dakota Public Finance Authority in Bismarck. Since that time the project has been slightly revised and you approved an application to increase the loan amount to \$1,640,000.00. That application has been approved by the Public Finance Authority. I have enclosed a resolution intended to reflect that the August 25 resolutions for the sale of \$1.2 million in bonds is now being replaced and revised by the second resolution enclosed which authorized an issuance and sale of \$1.64 million in Sales Tax Revenue Bonds, Series 2008C.

SUGGESTED MOTION: I move to approve the Resolution Authorizing Amendment of Resolution Authorizing Increase of Amount of Loan and Bond Sale From \$1,200,000 to \$1,640,000 and Resolution Authorizing the Issuance and Sale of \$1,640,000 Sale Tax Revenue Bonds, Series 2008C.

Sincerely,

A handwritten signature in cursive script, appearing to read "Erik R. Johnson".

Erik R. Johnson

ERJ/jmf
Enclosures

CITY OF FARGO, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING AMENDMENT OF
RESOLUTION AUTHORIZING INCREASE OF AMOUNT OF LOAN AND BOND
SALE FROM \$1,200,000 TO \$1,640,000

[\$1,640,000 SALES TAX REVENUE BONDS, SERIES 2008C]

RECITATIONS

The City of Fargo, North Dakota (the "City"), hereby recites that by resolution of its governing body the City has:

1. Previously, at its regular meeting of August 25, 2008, approved a Resolution Authorizing the Issuance and Sale of \$1,640,000 Sales Tax Revenue Bonds, Series 2008C; and,

2. Prior to the closing of the sale of municipal securities pursuant to said resolution, has sought an amendment of the application submitted to the North Dakota Public Finance Authority ["ND PFA"] to modify the dollar amount of the loan from \$1,200,000 to \$1,640,000 and said amendment has been approved by the ND PFA;

RESOLUTION

Be it resolved by the governing body of the City:

1. That the Resolution Authorizing the Issuance and Sale of \$1,200,000 Sales Tax Revenue Bonds, Series 2008C, is hereby declared to be amended and reconstituted by that certain Resolution Authorizing the Issuance and Sale of \$1,640,000 Sales Tax Revenue Bonds, Series 2008C, approved this same date.

Adopted _____, 2008.

CITY OF FARGO

By: _____
Dennis R. Walaker, Mayor

ATTEST:

Steven Sprague, City Auditor

CITY OF FARGO, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF
\$1,640,000
Sales Tax Revenue Bonds, Series 2008C

RECITATIONS

The City of Fargo, North Dakota (the "City"), hereby recites that by resolution of its governing body the City has:

1. Found and determined that it is necessary for the City to construct and install an extension of a sanitary sewer pipeline in north Fargo, and related facilities, or make improvements thereto (the "Project").
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Project and an estimate of the probable cost of the Project.
3. After receiving and approving the engineer's report, directed the engineer to prepare detailed plans and specifications for construction of the Project.
4. Approved the engineer's detailed plans and specifications for construction of the Project and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. By publication, advertised for bids for construction of the Project.
6. Opened and made public the bids, entered them in the minutes of the meeting of the governing body at which they were considered and caused them to be kept by the City Auditor.
7. After requiring the engineer to make a careful and detailed statement of the estimated cost of the Project, awarded the contract to the lowest responsible bidder and approved the contractor's performance bond.
8. Applied to the North Dakota Department of Health (the "Department") and the North Dakota Public Finance Authority (the "Public Finance Authority") for financial assistance to finance all or a portion of the cost of the Project, which application has been approved.
9. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of revenue bonds and required

by the Home Rule Charter and ordinances of the City of Fargo for the purpose of providing money to pay for the cost of the Project in the manner required of the City by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota. Specifically, the City of Fargo has enacted an ordinance for the imposition of a retail sales and/or use tax, the proceeds of which are to be used for infrastructure capital improvements, all of which is set forth in Article 3.Q of the Home Rule Charter, as implemented by Article 3-20 of the Fargo Municipal Ordinances.

11. The City has issued and sold, or will issue and sell, simultaneously with the bonds that are the subject of this Resolution, its \$63,725,000 Sales Tax Revenue Bonds, Series 2008A; \$29,240,000 Sales Tax Revenue Bonds, Series 2008B and its \$2,500,000 Sales Tax Revenue Bonds, Series 2008D.

RESOLUTION

Be it resolved by the governing body of the City:

Section 1. All acts performed, resolutions, motions or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

Section 2. It is hereby found and determined to be necessary for the City to issue \$1,640,000 in principal amount of its City of Fargo Sales Tax Revenue Bonds, Series 2008C (the "Municipal Securities"), pursuant to N.D.C.C. ch. 40-35 and pursuant to Article 3.Q of the Home Rule Charter, as implemented by Article 3-20 of the Fargo Municipal Ordinances. The City has issued and sold, or will issue and sell, simultaneously with the bonds that are the subject of this Resolution, its \$63,725,000 Sales Tax Revenue Bonds, Series 2008A; \$29,240,000 Sales Tax Revenue Bonds, Series 2008B and its \$2,500,000 Sales Tax Revenue Bonds, Series 2008D.

Section 3. Offer and Acceptance. The governing body of the City, in response to its application for financial assistance from the Department and the Public Finance Authority, has received an offer from the Public Finance Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a loan agreement to be entered into between the City and the Public Finance Authority (the "Loan Agreement"). It is hereby found and determined that the offer of the Public Finance Authority to purchase the Municipal Securities is reasonable and advantageous to the City and is hereby accepted, and the Loan Agreement, in substantially the form presented to the City at this meeting, is hereby accepted and authorized to be executed on behalf of the City by its Mayor and

City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Public Finance Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

Section 4. Form. The Municipal Securities issued under this Resolution shall be designated City of Fargo Sales Tax Revenue Bonds, Series 2008C, and shall be issued to the Public Finance Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

Section 5. Terms. The City authorized the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$1,640,000, dated _____, 2008. The Municipal Securities shall be issued in the form of a single registered Municipal Security as set forth in Section 4. The Municipal Securities issued shall be payable in installments of principal, with interest at the rate of two and one-half percent (2.50%) per year (plus an administrative fee as set out in the Loan Agreement), on the dates and in the amounts set forth below. Provided, that interest will be based on funds actually advanced, and the schedule below and attached to the Municipal Security form will be revised to reflect the actual principal amount loaned to the City at the completion of the Project.

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2009	\$ 5,000	2.50%	2020	\$ 95,000	2.50%
2010	5,000	2.50	2021	95,000	2.50
2011	5,000	2.50	2022	100,000	2.50
2012	80,000	2.50	2023	100,000	2.50
2013	80,000	2.50	2024	105,000	2.50
2014	80,000	2.50	2025	105,000	2.50
2015	85,000	2.50	2026	110,000	2.50
2016	85,000	2.50	2027	115,000	2.50
2017	90,000	2.50	2028	115,000	2.50
2018	90,000	2.50			
2019	95,000	2.50			

Section 6. Interest. Interest shall be payable semiannually on each March 1 and September 1 commencing March 1, 2009. The principal of and interest on the Municipal Securities shall be payable to the registered holder thereof at the address appearing on the

registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar.

Section 7. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the North Dakota Public Finance Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Bank"), or such other place as may be designated by the Public Finance Authority in writing, delivered to the Registrar. The Bank shall act as Registrar and as such shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

Section 8. Assignment. The Municipal Securities shall be transferable by the registered holder or its attorney duly authorized in writing upon presentation thereof to the Registrar duly executed by the registered holder or its attorney. Upon request of the registered holder or transferee, and upon surrender of the Municipal Securities, the Municipality shall execute and deliver one or more other Municipal Securities of an aggregate principal amount equal to the principal amount of the Municipal Securities then remaining unpaid and maturing at the same time or times as the then unpaid principal installments thereof, with each Municipal Security dated so that neither gain nor loss in interest shall result from such transfer. Each Municipal Security shall be dated as of the last interest payment date preceding the date of transfer to which interest on the Municipal Security has been paid or made available for payment, unless the date of transfer is an interest payment date to which interest has been paid or made available for payment, in which case the Municipal Security shall be dated as of the date of transfer. The surrendered Municipal Security shall be promptly canceled by the Registrar. The Registrar shall not be required to perform any of the duties set out in this section as of the record date as established by N.D.C.C. § 21-03.1-02(4). No service charge shall be made for such transfer or exchange, but the Registrar may require payment of a sum sufficient to cover any tax, fee or governmental charge or other expense incurred by the Municipality or Registrar with respect to such transfer or exchange.

Section 9. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of an Authorized Officer of the Municipality and when so prepared shall be executed on behalf of the municipality by the manual or facsimile signatures of the Authorized Officers of the Municipality and shall be authenticated by the manual signature of the Registrar. When the Municipal Securities have been so executed and authenticated, they shall be delivered by an Authorized Officer of the Municipality to the Public Finance Authority.

Section 10. Redemption. The Bonds are subject to redemption on any interest payment date with the prior written consent of the Public Finance Authority.

Section 11. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the Municipality to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Public Finance Authority for approval and funding.

Section 12. Wastewater SRF Bond Fund. There is hereby created a special fund of the Municipality designated as the Wastewater SRF Bond Fund, which Fund shall be held and administered by the Municipality separate and apart from all other funds of the Municipality and continued and maintained by the Municipality until all Municipal Securities issued thereon shall have been fully paid with interest. Into the Wastewater SRF Bond Fund there shall be credited and paid, as received, and the City hereby pledges to deposit into the Wastewater SRF Bond Fund, all revenues received by the city as a result of the imposition of the retail sales and/or use tax established by Article 3.Q of the Home Rule Charter and as implemented by Article 3-20 of the Fargo Municipal Ordinances; provided that at such time as funds have been deposited into said Fund to satisfy the payment obligations as required by the Municipal Securities (and as described in Section 5 hereof) for the then current bond year and provided that the City is not in default in any of its payment obligations under the Resolution, the Loan Agreement, or the Municipal Securities, then to the extent such sales and/or use tax revenues exceed the said obligations for the then-current bond year, said revenues may be released from the Wastewater SRF Bond Fund and deposited into such other accounts for purposes as may otherwise be authorized by said Article 3-20 of the Fargo Municipal Ordinances. In the event the said sales and/or use tax revenues are not sufficient in any particular bond year to satisfy the payment obligations as required by the Municipal Securities (and as described in Section 5 hereof) for the then current bond year, then there shall be credited and paid, as received, the entire gross revenues derived from sales tax collections and from the sale of any of the properties of the Sales Tax Wastewater Project not necessary to be retained, and from the investment of any of the money so collected and from the operation of the Wastewater Treatment Works and from any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees, charges for services, facilities, products and by-products to the Municipality and its inhabitants and all other customers, and for the availability thereof, and from the sale of any of the properties of the Wastewater Treatment Works not necessary to be retained, and from the investment of any of the money so collected. On the books and records of the Wastewater SRF Bond Fund there shall be established and maintained the following accounts. Revenues on hand in the Wastewater SRF Bond Fund from time to time shall be apportioned amongst said accounts at least once each calendar month and shall thereafter be held and administered and disbursed from the accounts established below.

Section 13. Operation and Maintenance Account. A separate Operation and Maintenance Account is established within the Wastewater SRF Bond Fund to be used solely to pay, when due, expenses which under accepted accounting practices constitute

current, reasonable and necessary costs of the operation, administration and maintenance of the Project and to maintain, in accordance with accepted accounting practices, a reasonable working capital and reserve for recurring expenses. All revenues remaining after the payment of such costs shall constitute the "net revenues" of the Project and shall be deposited monthly to the credit of the Revenue Account and the Surplus Account as set forth below. The Municipality shall deposit to the credit of the Operation and Maintenance Account, as received, all of the gross revenues derived from the rates, fees and charges imposed for the services and products furnished by the Project, including any improvement or extension thereof.

Section 14. Revenue Account. A separate Revenue Account is established within the Wastewater SRF Bond Fund to be used solely to discharge the Municipal Securities, to pay when due the interest on and the principal of the Municipal Securities, and to redeem the Municipal Securities prior to maturity. In order to produce sums annually for the Revenue Account which will not be less than the amount needed to pay when due the principal and interest payments on the Municipal Securities and the Administrative Fee, the Municipality shall, monthly, deposit to the credit of the Revenue Account from the net revenues of the Sales Tax Wastewater Project an amount equal to (a) the sum of one-sixth of the interest due within the next six (6) months plus one-twelfth of the principal to become due within the next twelve (12) months with respect to the Municipal Securities, and (b) one-twelfth of the Administrative Fee which will become due within the following twelve (12) months; provided that the initial deposits shall be adjusted to the extent the first interest payment and first principal payment do not fall on a date six (6) months and twelve (12) months respectively from the date of Loan Closing.

Section 15. Surplus Account. A separate Surplus Account is established within the Wastewater SRF Bond Fund to be used solely as provided herein. All net revenues in excess of the current requirements of the Revenue Account shall be deposited monthly to the credit of the Surplus Account, provided that the Municipality reserves the right to create additional accounts within the Wastewater SRF Bond Fund for the purpose of segregating any amounts in the Surplus Account which may be hereafter pledged and appropriated to the payment of any municipal securities which may be issued by the Municipality to finance the cost of any improvements, replacements or repairs to or of the Sales Tax Wastewater Project, or to pay for any other expenditures as authorized by law, including Article 3-20 of the Fargo Municipal Code, subject to the prior lien of the Municipal Securities and the covenants made in the Loan Agreement. Amounts in the Surplus Account shall be available and shall also be used to the full extent necessary to restore any deficiency in the Operation and Maintenance Account and the Revenue Account, and when not so needed may be pledged and appropriated as provided above or to redeem Municipal Securities. Notwithstanding the foregoing, the Municipality shall maintain in the Surplus Account such amount, as it shall determine from time to time, to constitute an adequate reserve for the purpose for which moneys in the Surplus Account are available as provided in this section; however, moneys in excess of such adequate reserve may be transferred to other funds of the Municipality in the manner provided by law including, as to municipal utilities funds, the provisions of N.D.C.C. § 40-33-12(2).

Section 16. Reserve Account. A separate Reserve Account is established within the Wastewater SRF Bond Fund in the amount of \$120,875 payable at the rate of \$24,175 per year for the first five years of the loan, which may be reduced proportionately if the final loan amount is less than the approved loan amount of \$1,640,000.

Section 17. Rates, Fees and Charges. The Municipality shall impose, maintain and collect revenues from the aforesaid retail sales and/or use tax, and, to the extent such revenues are not sufficient, to impose and collect such rates, fees and charges for all services furnished by the Sales Tax Wastewater Project, including the Project, including services furnished to the Municipality, according to a schedule or schedules which will provide gross revenues sufficient to pay when due all costs payable under the Operation and Maintenance Account and net revenues equal to 120% of the average annual interest and principal requirements on the Municipal Securities and any additional municipal securities issued pursuant to the provisions of this resolution.

Section 18. Prior Bonds. The Municipality has previously issued its Wastewater Revenue Bonds, Series 1991; Wastewater Revenue Bonds, Series 1993; Wastewater Revenue Bonds, Series 1998; Wastewater Revenue Bonds, Series 1998B and Wastewater Revenue Bonds, Series 2006A - which are Parity Bonds and that would have an equal lien on the net revenues of the Sales Tax Wastewater Project for their payment.

Section 19. Additional Parity Bonds. The Municipality reserves the further right of issuing additional municipal securities payable from the net revenues appropriated to the Bond Fund on a parity as to both principal and interest with the Municipal Securities, provided that the net revenues received during the last fiscal year prior to such issuance shall have been in an amount not less than one hundred twenty percent (120%) of the average annual amount of principal and interest to become due during the remaining term of the then outstanding Municipal Securities payable from the Revenue Account, on those Municipal Securities and the additional municipal securities to be issued. However, if rates and charges for the Sales Tax Wastewater Project have been increased since the beginning of the last fiscal year next preceding the issuance of such additional municipal securities, the net revenues received during such preceding fiscal year shall be deemed to be the amount which would have been received in the preceding fiscal year had the increased rates and charges been in effect throughout such preceding fiscal year. Also, for purposes of this test, the net revenues of the Treatment Works may be adjusted by including the additional net revenues, as determined by a competent feasibility or rate study, to be realized from the area to be served by the improvements to be constructed with such additional municipal securities, provided that the interest on the additional municipal securities is funded until the date of completion of the improvements to be constructed with the proceeds of the additional municipal securities or other available funds.

Section 20. Limited Obligations. The Municipal Securities issued hereunder shall not constitute a charge, lien or encumbrance upon any property of the Municipality, and no holder or holders thereof shall ever have the right to compel any exercise of the taxing power of the Municipality to pay the principal and interest on the Municipal

Securities. The principal and interest of the Municipal Securities shall not be a general obligation of the Municipality but are payable solely from the retail sales and/or use taxes collected pursuant to Article 3-20 of the Fargo Municipal Code and from the net revenues of the Treatment Works as set forth in this resolution.

Adopted _____, 2008.

CITY OF FARGO

By: _____
Dennis R. Walaker, Mayor

ATTEST:

Steven Sprague, City Auditor

FORM OF MUNICIPAL SECURITY

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
CITY OF FARGO

No. R-1

\$ _____

SALES TAX REVENUE BONDS, SERIES 2008C

Interest Rate

Date of Original Issue

2.50%

_____, 20__

REGISTERED OWNER: NORTH DAKOTA PUBLIC FINANCE AUTHORITY

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Fargo, North Dakota (the "Issuer"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to pay from its Series 2008C Sales Tax Revenue Bond fund to the Registered Owner specified above, or registered assigns, the Principal Amount from the Date of Original Issue at the annual rate of two and one-half percent (2.50%) semiannually on March 1 and September 1 on the dates and in the amounts set forth in Attachment A to this Municipal Security and Exhibit C to the Loan Agreement (as defined below), which Attachment A and Exhibit C shall be revised in accordance with Section 3.05 of the Loan Agreement in the event funds are advanced to the Issuer other than as originally set forth in Exhibit B to the Loan Agreement. Principal is payable in lawful money of the United States of America at the main office of The Bank of North Dakota, in Bismarck, North Dakota, as paying agent and Registrar under the Resolution hereinafter described or of its successor as such. Interest shall be paid by check or draft mailed to the Registered Owner at the Owner's address set forth on the registration books.

This Municipal Security is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including N.D.C.C. ch. 40-35 (the "Act"), Article 3.Q of the Home Rule Charter of the City of Fargo, Article 3-20 of the Fargo Municipal Ordinances and pursuant to a Resolution (the "Resolution") and a Loan Agreement (the "Loan Agreement") adopted and entered into by the Issuer. Reference is hereby made to the Resolution and the Loan Agreement for a description of the Funds and Accounts pledged to the payment of the Municipal Security and the rights of the Registered Owner of the Municipal Security. The principal and interest payments for this bond are not general obligations of the municipality, but are payable solely from the

revenues received by the city as a result of the imposition of the retail sales and/or use tax established by Article 3.Q of the Home Rule Charter and as implemented by Article 3-20 of the Fargo Municipal Ordinances and from the operation of the Wastewater Treatment Works of the City of Fargo and from any future additions thereto and betterments thereof, including all income and receipts derived from rates, fees, charges for services, facilities, products and by-products to the Municipality and its inhabitants and all other customers, and for the availability thereof, and from the sale of any of the properties of the Wastewater Treatment Works not necessary to be retained, and from the investment of any of the money so collected, as set forth in the Resolution.

This Municipal Security is transferable, as provided in the Resolution and the Loan Agreement, only upon books of the Issuer kept at the main office of The Bank of North Dakota, by the Registered Owner hereof in person or by the Owner's duly authorized attorney, or it may be surrendered in exchange for new Municipal Securities of the same aggregate principal amount, maturity and interest rate, as provided in the Resolution.

The Municipal Securities shall be subject to prior redemption in inverse order of maturity and by lot within any maturity on September 1, 2009, at any interest payment date thereafter, at a price equal to the principal amount plus accrued interest, upon written consent of the North Dakota Public Finance Authority.

It is further certified, recited and declared that all acts, conditions and things required by the Constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of the Municipal Securities have been performed in due time, form and manner as required by law; and that the issuance of the Municipal Securities is within every debt and other limit prescribed by law.

IN WITNESS WHEREOF, the Issuer has caused this Municipal Security to be executed in its name by the manual or facsimile signatures of its Mayor and of its City Auditor, all as of the Date of Original Issue set forth above.

CITY OF FARGO, NORTH DAKOTA

By: _____
Dennis R. Walaker
Mayor

ATTEST:

Steven Sprague
City Auditor

CERTIFICATE OF AUTHENTICATION

This Municipal Security is one of the Municipal Securities described in and issued under the provisions of the within-mentioned Resolution.

The Bank of North Dakota,
Bismarck, North Dakota

By: _____
Authorized Representative

ASSIGNMENT

For Value received the undersigned hereby sells, assigns and transfers unto _____ the within-mentioned Municipal Security and hereby irrevocably constitutes and appoints _____ attorney-in-fact, to transfer the same on the books of registration thereof, with full power of substitution in the premises.

Dated: _____

Social Security or other
Identifying number of Assignee

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Municipal Security in every particular, without alteration or any change whatsoever.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that attached hereto is a full, true and correct copy of the Resolution adopted by the governing body of the City of Fargo at the meeting held on November 17, 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)

CITY OF FARGO
YEAR TO DATE - BUDGET TO ACTUAL
FOR THE MONTH OF OCTOBER 2008
(PRELIMINARY DRAFT UNAUDITED)

	2008 BUDGET	2008 ACTUAL	VARIANCE
REVENUES:			
310 Taxes	\$ 18,030,514	\$ 18,127,150	\$ 96,636
320 Licenses & Permits	2,245,720	2,432,236	186,516
350 Fines & Traffic Tickets	2,130,800	2,048,281	(82,519)
330 Intergovernmental Revenue	12,082,061	12,741,759	659,698
340 Charges for Services	9,957,506	9,535,130	(422,376)
360 Interest	1,458,330	1,847,770	389,440
361/5 Miscellaneous Revenue	173,780	352,009	178,229
390 Other Financing Sources	6,292,250	6,103,441	(188,809)
TOTAL REVENUES:	\$ 52,370,961	\$ 53,187,776	\$ 816,815
EXPENDITURES:			
0500 City Administrator	2,624,825	\$ 2,441,162	\$ 183,663
1000 Finance	4,817,361	4,461,322	356,039
2000 Planning & Development	5,068,735	5,503,362	(434,627)
3000 Public Works	8,926,185	8,919,933	6,252
4000 Fire Department	6,194,313	6,005,290	189,023
5000 Police	13,267,360	9,503,516	3,763,844
6000 Health	5,893,417	5,728,528	164,889
7000 Library	1,994,258	1,833,927	160,331
8001 Commission	420,795	398,327	22,468
8005 Civic Center	370,290	394,021	(23,731)
8540 Social Services	288,000	288,000	-
8541 Homeless Shelter	117,167	174,891	(57,724)
8550 Capital Outlay	3,859,542	2,720,094	1,139,448
8570 Contingency		6,057	(6,057)
9001 Transfers	2,030,945	1,931,822	99,123
TOTAL OF EXPENDITURES	\$ 55,873,193	\$ 50,310,252	\$ 5,562,941
EXCESS REV OVER (UNDER) EXPENDITURES	\$ (3,502,232)	\$ 2,877,524	\$ 6,379,756

9

To: Board of City Commissioners
From: Jill Minette
Director of Human Resources *JM*
Re: Letter of Engagement for a Wellness Program
Date: November 12, 2008

In the process of plan renewal for the City of Fargo health insurance, AON Consulting recommended the City of Fargo consider implementing a Wellness Program for city employees. Attached is a letter of engagement with AON to include strategic planning, leading a search for a wellness/health management vendor and project management of wellness vendor implementation. Potential costs range from \$24,000 to \$30,000.

Suggested Motion:

Approve the letter of engagement with AON Consulting as indicated on the attachment.



*Human Capital
Consulting Services*

October 31, 2008

PERSONAL AND CONFIDENTIAL

Ms. Jill Minette
Director of Human Resources
City of Fargo
200 North Third Street
Fargo, ND 58107

Re: Wellness Program Development

Dear Jill:

On behalf of Aon Consulting, we appreciate the opportunity to continue to work with you and your colleagues. We are confident that we will exceed your expectations, and look forward to fulfilling our commitment to provide best in class services that are responsive to your needs.

As a first step in any new assignment, we find it helpful to document the commitment we have made to you, as well as our mutual roles and responsibilities. Your review and acceptance of this letter and accompanying exhibits will help ensure the success of our partnership in this regard.

- *Exhibit A:* Wellness Program Development
- *Exhibit B:* Payment for Services
- *Exhibit C:* General terms applicable to the Agreement

In order to meet critical completion dates and operate within budget expectations, we will undoubtedly need your support at various intervals. For example, we may need you to:

- Provide historical benefit plan documentation
- React to preliminary project findings
- Be accessible for conference calls and/or meetings
- Approve final versions of project-related documentation
- Provide written approval of our compensation and written instruction to bind your chosen insurance program.

This Agreement commences on October 31, 2008, and will remain in effect until December 31, 2009.

Jill, we look forward to working with you and your colleagues. Assuming this letter and accompanying exhibits meet your expectations, please sign the letter and return it to my attention at your earliest convenience so we can begin our work. We anticipate that we can commence work on this project immediately and have it completed as shown in the timeline on page. We appreciate this opportunity.

Sincerely,



Barbara Vasko
Vice President

Enclosures

Pat Zi City Admin **Signature of Client**

City of Fargo

October 31, 2008

*Final Approval
to be Confirmed
Fargo City Commission*

Exhibit A – Services to be Provided

Services/Timeline Included in Scope of Agreement	Proposed Key Dates
Phase I Wellness/Health Management Strategy Session	
▪ Wellness strategy session preparation	11/10/08
▪ Conduct Wellness strategy session with the City of Fargo key stakeholders	11/12/08
▪ Summarize and provide City of Fargo with final Wellness strategy documentation	11/19/08
Phase II. Wellness/Health Management Vendor Search	
<ul style="list-style-type: none"> ▪ Collect relevant data and prepare electronic Request for Proposal (RFP) for the Wellness/Health Management Vendor Search ▪ The RFP will cover the following areas <ul style="list-style-type: none"> • Programs and operations • Staff and Account Management • Technology • Implementation • Communications Support • Programs and Services <ol style="list-style-type: none"> 1. Health Risk Assessments 2. Individual Targeted Behavioral Change Programs 3. Incentive Programs 4. Other Programs, i.e., Disease Management • Stakeholder Collaboration and Integration • Reporting • Client Business Relationship <ol style="list-style-type: none"> 1. Process measures 2. Outcomes measures • Impact of Health Promotion Program <ol style="list-style-type: none"> 1. Return on investment 2. Administrative cost reduction 3. Reduced total medical claims 4. Reduced pharmacy claims 5. Reduced diagnosis specific medical claims 6. Improved quality of life 7. Improved patient satisfaction • Performance Guarantees • Conditions and Financials • Legal/Contractual Compliance 	TBD
▪ Distribute RFP to selected vendors	TBD
▪ Respond to vendor questions	TBD
▪ Summarize RFP responses	TBD
▪ Present analysis of RFPs to City of Fargo	TBD
▪ Facilitate finalist meetings	TBD
▪ Conduct negotiations with vendor(s)	TBD

Services/Timeline Included in Scope of Agreement (continued)	
Phase III Project Management of Wellness Vendor Implementation	
▪ Participate in Initial Implementation Meeting	TBD
▪ Participate in Account Management team meetings (frequency to be determined)	TBD
▪ Project Manage Wellness Vendor implementation with regards to the following tasks: <ul style="list-style-type: none"> • Eligibility configuration • Programs and services • Communications strategy • Customer reporting set up • Vendor interface set up • Account management set up • Customer service set up • Billing and banking set up • Transition planning • Compliance set up and documentation 	TBD
▪ Review and revise Wellness vendor contract	TBD
▪ Conduct post implementation debriefing session	TBD

Exhibit B – Payment for Services

Aon Consulting will bill City of Fargo on a time and expense basis. Our actual fees will include:

- Amount of time we spend on the assignment multiplied by the hourly billing rates for the staff assigned to complete the project; and
- Associated out-of-pocket expenses.

Based on our best estimate, we anticipate that the fees for this entire assignment will be \$24,000 to \$30,000.

We anticipate the fees by Phase to be as follows:

Phase I - Range \$2,000 to \$3,000

Phase II - Range \$12,000 to \$15,000

Phase III – Range \$10,000 to \$12,000

If during the course of the assignment it appears that our fees will exceed the maximum of this range, we will notify you. We will pass our out-of-pocket expenses on to you directly without mark-up.

We will bill you monthly as we incur charges for our services. Payment is due within 30 days of the invoice date.

During the course of the assignment, should City of Fargo and Aon Consulting agree to have Aon Consulting undertake additional projects, we would provide you with a fee estimate and bill you monthly on a time and expense basis as we incur charges for the additional services.

If you have elected to compensate us on a time and expense basis, or on a fee only basis, Aon Consulting will use its best efforts to negotiate placements for insurance programs on a net of (without) commission basis, to Aon Consulting; however, it is not always possible or advisable to do so. In instances where a commission is paid to Aon Consulting, we will credit the commission against our fees, where we are permitted to do so by applicable law. We will advise you of all such commissions in writing prior to binding. If Aon Consulting is required, for any reason, to return any commissions that were credited against the fee, you agree to reimburse Aon Consulting for this amount.

Aon Consulting shall provide you copies of all marketing quotes, including any applicable commission rates, received prior to binding any coverages for the Insurance Programs. You will also be provided prior to binding with an accounting of any amounts to be paid to Aon Consulting, Aon Consulting affiliates, and/or non-Aon Consulting intermediaries if available, in connection with coverages placed for the Insurance Programs, including any fees, if applicable, paid to Aon Consulting for services it provides to underwriters. In addition, Aon Consulting will annually provide you with a summary of all Aon revenue applicable to the Insurance Programs.

In some instances, insurance placements made by Aon Consulting on your behalf may require the payment of state surplus lines or other premium taxes and/or fees in addition to the premium itself. Aon Consulting will make every effort to identify any such tax and/or fee in advance, but in all instances the payment of these taxes and/or fees will remain the responsibility of Client and Aon Consulting will invoice Client for the payment of such taxes and fees.

Premiums paid by Client to Aon Consulting for remittance to insurers and Client refunds and claim payments paid to Aon Consulting by insurance companies for remittance to Client are deposited into fiduciary accounts in accordance with applicable insurance laws until they are due to be paid to the insurance company or Client. Subject to such laws and the applicable insurance company's consent, where required, Aon Consulting will retain the interest or investment income earned while such funds are on deposit in such accounts.

Client acknowledges its responsibility to report and communicate in writing to Aon Consulting changes in exposures, loss-related data and other material changes during the Service Period.

Aon Consulting's goal is to procure insurance for Client with underwriters possessing the financial strength to perform in today's economic environment. Toward this objective, Aon Consulting regularly reviews publicly available information concerning an underwriter's financial condition including, but not limited to:

- approvals by various regulatory authorities;
- analyses of underwriters by professional rating agencies such as A.M. Best, Standard and Poors, and Moody's;
- the input of our global affiliates and correspondents.

Most Aon Consulting placements are made with underwriters that are rated "Excellent" by the professional rating agencies; however, Aon Consulting does not guarantee the solvency of any underwriter. Aon Consulting encourages Client to review the publicly available information made available by Aon Consulting. The decision to accept or reject an underwriter shall be made solely by Client.

Aon Consulting and/or its affiliates may from time to time maintain contractual relationships with the insurers which recommend as potential markets, or with whom your coverage may ultimately be placed. Further details concerning Aon Consulting's relationship with insurance carriers can be found at http://www.aon.com/market_relationships.

The Services and work product provided by Aon Consulting hereunder are provided for the exclusive use of Client. Data, recommendations, proposals, reports, and similar information and work product provided by Aon Consulting ("Confidential Information"), are not to be distributed to, used or relied upon by other parties without the written consent of Client and Aon Consulting. Confidential Information shall be and remain the exclusive property of Aon Consulting and/or its affiliates and no copies thereof shall be made without the written permission of Aon Consulting.

Client agrees that it will not, during the Service Period of this Agreement and for two (2) years thereafter, directly or indirectly communicate, divulge or otherwise disclose any Confidential Information to any third party and shall prevent, to the best of Client's ability, the disclosure of such Confidential Information to others. The provisions of this paragraph shall survive the termination of this Agreement.

In the event that Client's operations change substantially by merger, acquisition, expansion or other material change in scope and nature of exposures, losses and/or Insurance Programs, Client shall inform Aon Consulting, and Client and Aon Consulting will negotiate in good faith to revise this Agreement as appropriate.

Aon Consulting's obligation to render Services will terminate at the end of the Service Period.

Change in Scope

Please be aware that requested changes in the scope of services provided by Aon Consulting could result in an increase in fees and charges. Changes in scope could include, but are not limited to the following:

- A material increase in the number of employees and/or the number of participants;
- Amendments or changes to the plan design or plan operation;
- Change of your payroll or other vendors or systems which are integral to the performance of our services;
- Change of your organizational contacts;
- Assignment of additional roles, responsibilities or functions related to the plan; or
- Other factors which were not anticipated and increase the complexity or timing of plan operations or which affect our responsibilities or duties.

Out-of-Pocket Expenses

Out-of-pocket expenses (including transportation, hotels, meals, etc.) will be billed as soon as possible after the actual expenses are incurred. Charges from third party vendors for printing or production services on your behalf will be passed through to you, as well as any sales or use tax that Aon Consulting becomes obligated to pay in connection with services provided on your behalf.

If you require copies of files for transferring services to other service providers during or after this engagement, such services will be available based on our standard hourly time and expense rates.

Exhibit C - General Terms

Please read these general engagement terms thoroughly. These terms apply to all assignments ("Services") that you ask Aon Consulting ("Aon", "We", "Us", "Our") to provide for you ("You", "Your"). "Agreement" refers to these general engagement terms and any agreement (including any schedules and exhibits) between You and Us.

Relationship

You agree that our employees assigned to perform Services under this Agreement will be and remain our employees whether Services are performed at our facilities or your facilities and will not for any purpose be considered your employees. We will be solely responsible for the payment of salaries and all matters relating thereto, including the withholding and/or payment of all payroll taxes, workers' compensation, unemployment compensation, public liability, insurance-related benefits, vacation pay, holiday pay and all such additional legal requirements applicable to our employees.

Our relationship to you under this Agreement is one of independent contractor and nothing contained in this Agreement or any schedule will be construed to imply that we or any of our officers, employees or agents is an employee or agent of yours for any purpose. We will have no right, power or authority to create any obligation, expressed or implied, or to make any representation on your behalf, except as may be expressly authorized in writing by you from time to time and then only to the extent of such authorization. Nothing herein is to imply an agency, joint venture or partner relationship between us.

Unless otherwise specified in writing, you agree that Aon is not a plan fiduciary within the meaning of the Employee Retirement Income Security Act (ERISA) or other legislation, we have no discretion with respect to the management or administration of your plan, and we have no control or authority over any assets of your plans, including the investment of those assets.

In no event will Services be provided in a manner that will knowingly conflict with legal or professional requirements. If Aon is providing insurance consulting or brokerage Services, Aon is not responsible for any insurance policies, coverages and programs that predate this Agreement unless mutually agreed otherwise.

Representations and Warranties

We represent and warrant that:

We are a corporation duly organized, validly existing and in good standing under the laws of the state of our incorporation, and we have the full and unrestricted power and authority to execute, deliver and perform this Agreement and such execution, delivery and performance have been duly authorized by all necessary

action on our part and the Agreement, when executed and delivered by us in accordance with the provisions hereof, will be a legal, valid and binding obligation of ours, enforceable against us in accordance with its terms.

To the best of our knowledge, our execution and performance of this Agreement or any exhibit or schedule will not constitute a breach or default or material default under any contract, instrument or agreement to which we are a party or by which we are bound and will not materially violate or interfere with the rights of any other party.

The Services performed under this Agreement, which may include certain deliverables ("Deliverables"), will be of professional quality, conforming to generally accepted industry standards and practices for similar services and deliverables. This representation and warranty will be in lieu of and excludes all other implied warranties of merchantability for a particular purpose or otherwise.

For any Deliverable provided by us to you under this Agreement or any schedule hereto, we are the sole owner of, or have rights to, such Deliverables, have full power and authority to grant any license herein granted without the consent of any other party and any Deliverable is delivered free of any rightful claim of any third party by way of infringement or otherwise, arising from or related to the claimed rights in any Deliverable or your exercise of your rights under this Agreement.

The Services we provide are not of a legal nature, and we will in no event give, or be required to give, any legal opinion or provide a legal representation to you.

Both parties acknowledge that the accuracy of Services depends upon the accuracy and completeness of the data supplied to us. We make no representation and warranty concerning the accuracy and completeness of any data provided to us. You accept sole responsibility for errors in Services resulting from inaccurate or incomplete data you supplied.

You agree to provide the data necessary for the performance of Services in the form agreed upon. You understand and agree that if data is submitted in a form other than agreed upon, you will pay Aon, in addition to the fees otherwise set forth, the reasonable expenses incurred to merge/convert the data to the agreed upon form.

Exhibit C - General Terms

Please read these general engagement terms thoroughly. These terms apply to all assignments ("Services") that you ask Aon Consulting ("Aon", "We", "Us", "Our") to provide for you ("You", "Your"). "Agreement" refers to these general engagement terms and any agreement (including any schedules and exhibits) between You and Us.

Fees and Billing Procedures

Fees for any additional services, excluding Services, not provided for in a specific agreement will be charged on an time and expense basis.

We will submit invoices as mutually agreed, and payment is due within thirty (30) days of your receipt thereof. Any invoice remaining unpaid after thirty (30) days may be subject to a late charge equal to the lesser of 1.0% of the amount outstanding, per month, or the highest rate allowed by applicable law. If invoices remain unpaid, or if you refuse to pay the invoices, we reserve the right to stop work on Services.

In addition to costs specified by any specific agreement, you will be responsible for any sales or use taxes that are levied on any goods or Services under the Agreement. If your account is referred to an attorney for collection, you agree to pay reasonable attorney fees and court costs and expenses.

Indemnification

We will indemnify, defend, and hold you harmless from and against any and all claims, demands, losses, damages, costs and expenses of any nature whatsoever including litigation expenses, attorney's fees and liabilities incurred in connection therewith, arising out of: (i) injury to, or death of, any person whatsoever or damage to property of any kind by whomever owned, caused by our acts or omissions, or other persons directly or indirectly employed by or associated with us; or (ii) any material breach by us of a representation or warranty contained in this Agreement. However, nothing herein will obligate us to pay any consequential or punitive damages or any damages whatsoever in excess of the fees paid pursuant to this contract.

Notwithstanding anything else contained in this Agreement, we will indemnify and hold you harmless from and against any and all claims, demands, losses, damages, costs and expenses, including without limitation, reasonable attorney's fees, asserted in connection with any third party claim as to rights in and to any claims of infringement of any patent, copyright, trademark or trade secret or unfair competition rights of any third party. If a claim subject to infringement indemnification has been made, we will have the right to, at our option, either: (i) obtain for you the right to continue using the Deliverable or (ii) replace or modify

the Deliverable so that such Deliverable becomes non-infringing, provided however, that our liability for damages shall be limited to the aggregate amount of fees and expenses paid pursuant to this agreement, except to the extent resulting from the bad faith or intentional misconduct of our employees.

Notwithstanding the foregoing, in no event will either party be liable to the other party for any indirect, incidental, special, consequential, exemplary or reliance damages (including, without limitation, lost or anticipated revenues or profits) arising out of this Agreement or the use of the Deliverables on any theory of liability, even if the party is advised of the possibility of such damages.

This Paragraph will survive the termination or expiration of this Agreement.

Confidential Information

We may receive Confidential Information from you or create Confidential Information as a result of Services, and any such Confidential Information is and will be owned by you. Except as required for the performance of Services, and as set forth in any exhibit or schedule, we will not use or disclose any Confidential Information. We agree to take all necessary steps to protect any Confidential Information with the same degree of care that we use to protect our own confidential and proprietary information of like kind.

"Confidential Information" includes any process, system, formula, pattern, model, device, compilation, or other information unless same: (i) was already in our possession prior to its receipt from you without restriction on its use or disclosure; (ii) is or becomes available to the general public through no act or fault of ours; or (iii) is rightfully disclosed to us by a third party without restriction on its use or disclosure; or (iv) is independently developed by us without reference to any Confidential Information disclosed by you to us; or (v) is demanded by any state or federal government agency or by court order. The requirements of this paragraph will survive the termination of this Agreement for a period of one (1) year.

If we are receiving protected health information (PHI) from your health plan, our use of PHI will be governed by the terms of the business associate agreement we have with your health plan.

Exhibit C - General Terms

Please read these general engagement terms thoroughly. These terms apply to all assignments ("Services") that you ask Aon Consulting ("Aon", "We", "Us", "Our") to provide for you ("You", "Your"). "Agreement" refers to these general engagement terms and any agreement (including any schedules and exhibits) between You and Us.

Works of Authorship

You acknowledge and agree that we are in the business of providing consulting services to clients utilizing our knowledge, including background software, ideas, concepts, methodologies, and processes ("Prior Works"). We reserve all right, title and interest in and to any of the Prior Works which we will use in the course of the Services for you; and we grant you limited, , nonexclusive license to use such Prior Works utilized during the course of Services or incorporated into any items delivered by us under this Agreement.

Nothing contained in this Agreement will prohibit us from using any of our general knowledge or knowledge acquired under this Agreement to perform similar services for others; provided however, that we will not (i) use any of your Confidential Information in providing Services to others, or (ii) if applicable, provide to others any custom software we created specifically for you.

Termination

For any reason and without penalty, you or Aon may discontinue work related to a specific assignment by providing written notice to the other at least sixty (60) days in advance of the termination. You agree to pay us within thirty (30) days of our invoice date for any incurred expenses and for a pro rata fee based on the time expended. [This must be included, as we give the client the choice of an open ended agreement when providing services only].

Responsibility for Records

We maintain records in accordance with Aon's document retention policy. Our responsibilities do not include maintaining official plan records, unless otherwise agreed upon; therefore, you should retain copies of all data, documents, reports and determinations that you provide and that we provide to you.

Force Majeure

The performance by either party or their subcontractors hereunder may be subject to delays caused by an Act of God, war, riot, fire, explosion, accident, flood, sabotage, inability to obtain fuel or power, governmental laws, regulation or orders, acts or inaction of the other party, or any other cause beyond the reasonable control of a party, or labor trouble, strike, lockout or injunction (whether or not such labor event is within the reasonable control of either party). In the event of any such delay,

the times for performance will be extended accordingly for additional period(s) of delay. In the event, however, that any such delay lasts for a period of ninety (90) days, then either party may terminate this Agreement upon ten (10) days prior written notice. In the event of such non-performance, the party which was delayed in its performance will make reasonable efforts to promptly resume its performance.

Miscellaneous

This Agreement and any exhibits or schedules hereto embodies the entire understanding between the parties. The terms of this Agreement will take precedence over any conflicting terms and conditions set forth in any schedule relating to the subject matter hereof, unless such conflicting terms and conditions comprise a writing which is signed by both parties and which specifically references the terms and conditions which are in conflict. If any provisions of this Agreement are unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining provisions will not be affected by this holding. The laws of the State of Illinois will govern this Agreement. We will not assign, convey, encumber or otherwise dispose of this Agreement or any rights or obligations hereunder without your prior express written consent. This Agreement will be binding upon the successors, and/or legal representatives of the parties.



Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

FARGO CASS PUBLIC HEALTH
401 Third Avenue North
Fargo, ND 58102
Phone 701-241-1360
Fax 701-241-8559
www.cityoffargo.com/health

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

**FROM: RUTH BACHMEIER
DIRECTOR OF PUBLIC HEALTH**

DATE: OCTOBER 30, 2008

**RE: CONTRACT AMENDMENT WITH THE NORTH DAKOTA
DEPARTMENT OF HUMAN SERVICES FOR THE REFUGEE
PROGRAM
CONTRACT NO. 600-07012 AMENDMENT "A"**

This is a request to approve the attached amendment to the Master Grant Agreement with the North Dakota Department of Human Services for refugee and entrant assistance.

No budget adjustment is required for this contract.

If you have questions, please contact Ruth Bachmeier at 241-1380.

Suggested Motion: Move to approve the contract amendment with North Dakota Department of Human Services to extend the refugee health nursing agreement.

RB/LA
Enclosures

AMENDMENT TO GRANT AGREEMENT

On or about October 1, 2007, City of Fargo (Grantee) and the State of North Dakota, acting through its North Dakota Department of Human Services, Children and Family Services Division (Grantor) entered into an agreement to provide a refugee health nursing component for refugee health care.

The parties agree that certain parts of that agreement should be changed.

- 1) The Term of Grant is changed from October 1, 2007, through September 30, 2008, to October 1, 2007, through September 30, 2009.
- 2) The Compensation section is amended to increase the total amount paid under the grant from \$60,000 to \$120,000, an increase of \$60,000. The funding source for the increase is anticipated as follows:

Federal \$	60,000.00	Other	\$0.00
State \$	0.00	Unknown	\$0.00

Catalog of Federal Domestic Assistance Number 93.576, Department of Health and Human Services, Refugee and Entrant Assistance: Discretionary Grants.

All other terms and conditions remain as previously written.

Dated this 30th day of September, 2008.

CITY OF FARGO

By Ruth Bachmeier

By _____

Director
Its of Public Health

Its Mayor, City of Fargo

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By _____

TARA LEA MUHLHAUSER, ACTING DIRECTOR
CHILDREN AND FAMILY SERVICES DIVISION

By _____

JULIE LEER
CONTRACT OFFICER

Approved for form and content



Public Health
Prevent. Promote. Protect.
Fargo Cass Public Health

FARGO CASS PUBLIC HEALTH
401 Third Avenue North
Fargo, ND 58102
Phone 701-241-1360
Fax 701-241-8559
www.cityoffargo.com/health

M E M O R A N D U M

TO: BOARD OF CITY COMMISSIONERS

**FROM: RUTH BACHMEIER
DIRECTOR OF PUBLIC HEALTH**

DATE: NOVEMBER 10, 2008

**RE: CONTRACT WITH THE NORTH DAKOTA DEPARTMENT OF
HEALTH FOR WOMEN'S WAY PROGRAM
CONTRACT NO. PF08-190A CFDA No. 93.919**

The attached contract amendment with the North Dakota Department of Health is for the Women's Way program.

The following budget adjustment is required for this amended grant agreement.

2009 Revenue

Women's Way Grant	101-0000-331-12-02	\$11,115.00
-------------------	--------------------	-------------

2009 Expenses

Contract	101-6020-451-38-99	\$11,115.00
----------	--------------------	-------------

Please feel free to call me if you have any questions at 241-1380.

Suggested Motion: Move to approve the North Dakota Department of Health contract amendment for the Women's Way program.

RB/LA
Enclosure



Office of the Chief of Police

COPY

November 17, 2008

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

RE: Juvenile Accountability Block Grant

Commissioners,

Attached is a copy of the certification of award for the Juvenile Accountability Block Grant Award. (JAIBG)

The Police Department is seeking the Mayor's signature to allow Cass County to receive and obligate funds as part of a collective allocation among Cass County, West Fargo, and the City of Fargo.

The total amount of the award is \$18,659 for 2009.

Cass County is eligible for \$11,608.
Fargo is eligible for \$6,326.
West Fargo is eligible for \$725.

The required cash match of \$2,073 will be funded through the Cass County 2009 budget. (No cash match will be required of the City of Fargo)

The Cass County Juvenile Crime Enforcement Coalition (JCEC) will use the funding to provide funds to Lutheran Social Services Youth Court.

Recommended Action:

Approval from the Commission to allow the Mayor to accept this collective allocation of JAIBG funds.

Respectfully,

Keith A. Ternes
Chief of Police

Attachment

(K)



ASSESSMENT DEPARTMENT

October 30, 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 & Marcia Polczinski. 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 \$1,250 with the City of Fargo's share being \$160.

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka". The signature is written in a cursive, flowing style.

Ben Hushka
City Assessor

tl

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 and MARCIA POLCZINSKI Phone No. 701.298.0030
2. Address of Property 920 4th Avenue South
City FARGO State ND Zip Code 58103
3. Legal description of the property for which the exemption is being claimed, LOT 6 IN BLOCK 37 of Northern Pacific Addition
4. Parcel Number 01-2140-00250-000 Residential [X] Commercial [] Central Business District []
5. Mailing Address of Property Owner 920 4th Avenue South
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). Construct 2 1/2 story addition to south end of house; includes kitchen expansion, 1/2 bath, sunroom, back entry, foundation, attic space, porch and balcony.
7. Building Permit No. 20080697 8. Year Built 1908
9. Date of Commencement of making the improvement MAY 5, 2008
10. Estimated market value of property before improvement \$ 124,000.00
11. Cost of making the improvement (all labor, material and overhead) \$ 60,000.00
12. Estimated market value of property after improvement \$ 196,000.00

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 Marcia J. H. Polczinski Date Oct. 26, 2008

Assessor's Determination

14. The local assessor finds that the improvements in this application has [X] has not [] met the qualifications for exemption for the following reason(s): 5175
Assessor's Signature [Signature] Date 11/6/08

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

Page 72
APPLICATION FOR A LOCAL PERMIT

City of Fargo
 Rev. 10-07

(Handwritten: 11-12-08 CR# 6236 25.00)

Name of Non-profit Organization Muskie Inc. F-M Chapter		Date(s) of Activity Feb. 5, 2009 to Feb 5, 2009	
Person Responsible for the Gaming Operation Richard A. Eagleson		Title Treasurer	Business Phone Number 701-237-4801
Business Address 909 Page Dr.	City Fargo	State ND	Zip Code 58103
Mailing Address (if different) Same	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Doublewood Inn		Site Address 3333 13th Ave South	
City Fargo	State ND	Zip Code 58103	County Cass
Check the Game(s) 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
Raffle	Cash	\$ 500.00	Raffle	Cash	\$ 100.00
Raffle	Cash	100.00	Raffle	Cash	100.00
Raffle	Cash	100.00	Raffle	Cash	100.00
Raffle	Cash	100.00	Raffle	Cash	100.00
Raffle	Cash	100.00	Raffle	Gift Cert.	520.00
Raffle	Cash	100.00	Raffle	Gift Cert.	305.00
Raffle	Cash	100.00	Raffle	Tasco Scope	50.00
Total:					(Limit \$12,000 per year) \$2,375.00

Intended uses of gaming proceeds: To promote Muskie research, establish hatcheries, and rearing ponds, to promote good sportsmanship and fellowship among men, women and youth.

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: \$ _____. 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>(Signature)</i>	Date 11-11-08	Title CFO/Treasurer	Daytime Phone Number 701-237-4801
---	------------------	------------------------	--------------------------------------

RECEIVED

11/12/08

M

IMAGE
Group
Architecture
& Interiors

November 10, 2008



Pat Zavoral
City of Fargo
200 3rd Street North
Fargo, ND 58102

Richard
Moorhead
AIA, NCARB

RE: Fargo Public Library
Main Library
Fargo, ND Image 0505.04

Carter
Sharff
RA, NCARB

Dear Mr. Zavoral;

Enclosed please find three (3) copies each of the following Change Orders:

Change Order M-5 in the amount of \$3,581.00 for locating fin tube radiation control valves in second floor radiation covers; and addition of radiation at Storage Room 216.

Marcia
Pulczynski
AIA, NCARB,
LEED AP

Change Order G-7 in the amount of \$6,325.00 for omitting Louver Type L1 and L2; addition of foundation for service enclosure; revision of security system rough-ins; furring at west wall of Storage 136; and addition of built-in bookcases at Lobby 104.

403 Center
Avenue
Suite 300
Moorhead
Minnesota
56560

If the documents meet with your approval please obtain appropriate signatures and return signed Architect and Contractor copies to this office.

Sincerely,

IMAGE GROUP, INC.

Telephone
218.233.2062

Richard A. Moorhead, NCARB, AIA

IG: jrg

Facsimile
218.233.2575

Enc.

CC: Dirks



AIA Document G701™ - 2001

Change Order

PROJECT: (Name and address) Fargo Public Library Main Library Fargo, North Dakota	CHANGE ORDER NUMBER: M-5	<input type="checkbox"/> OWNER
	DATE: October 7, 2008	<input type="checkbox"/> ARCHITECT
	ARCHITECT'S PROJECT NUMBER: 0505.04	<input type="checkbox"/> CONTRACTOR
TO CONTRACTOR: (Name and address) Robert Gibb & Sons, Inc. 205 40th Street SW Fargo, ND 58102	CONTRACT DATE: July 20, 2007	<input type="checkbox"/> FIELD
	CONTRACT FOR: Mechanical Construction	<input type="checkbox"/> OTHER

The Contract is changed as follows:
(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

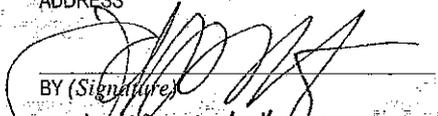
1. Locate fin tube radiation control valve and shut-off valves within Second Floor radiation covers, in lieu of above First Floor ceiling. ADD \$115.00
 2. Furnish and install fin tube radiation at Storate Room 216. ADD \$3,466.00
- TOTAL ADD \$3,581.00**

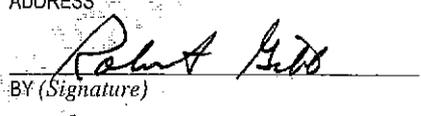
The original (Contract Sum) ~~(Guaranteed Maximum Price)~~ was \$ 1,468,300.00
 The net change by previously authorized Change Orders \$ 11,389.20
 The (Contract Sum) ~~(Guaranteed Maximum Price)~~ prior to this Change Order was \$ 1,479,689.20
 The (Contract Sum) ~~(Guaranteed Maximum Price)~~ will be (increased) ~~(decreased)~~ by this Change Order in the amount of \$ 3,581.00
 The new (Contract Sum) ~~(Guaranteed Maximum Price)~~ including this Change Order will be \$ 1,483,270.20
 The Contract Time will be ~~(increased)~~ ~~(decreased)~~ (unchanged) by zero (0) days
 The date of Substantial Completion as of the date of this Change Order therefore is unchanged

(Note: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.)

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>Meyer, Scherer & Rockcastle</u>	<u>Robert Gibb & Sons, Inc.</u>	<u>City of Fargo</u>
ARCHITECT (Firm name)	CONTRACTOR (Firm name)	OWNER (Firm name)
<u>710 South 2nd Street, 7th</u>	<u>205 40th Street SW</u>	<u>200 North Third Street</u>
<u>Minneapolis, MN 55401</u>	<u>Fargo, ND 58103</u>	<u>Fargo, ND 58102</u>
ADDRESS	ADDRESS	ADDRESS


 BY (Signature)
Jeffrey Mandryck
 (Typed name)


 BY (Signature)
Robert Gibb
 (Typed name)


 BY (Signature)
 (Typed name)

31 OCT 08
 DATE

10-7-08
 DATE

DATE

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



AIA Document G701™ - 2001

Change Order

PROJECT: (Name and address)

Fargo Public Library
Main Library
Fargo, North Dakota

CHANGE ORDER NUMBER: G-7

DATE: October 7, 2008

ARCHITECT'S PROJECT NUMBER: 0505.04

OWNER

ARCHITECT

CONTRACTOR

FIELD

OTHER

TO CONTRACTOR: (Name and address)

Meinecke-Johnson Company
5 North Fourteenth Street
P.O. Box 2643
Fargo, ND 58108-2643

CONTRACT DATE: July 20, 2007

CONTRACT FOR: General Construction

The Contract is changed as follows:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

1. Omit Louver Type L-1 and L-2.	DEDUCT	(\$6,189.00)
2. Add foundation for service enclosure.	ADD	\$4,874.00
3. Security System rough-in provisions.	ADD	\$409.00
4. Furring at west wall of Storage 136.	ADD	\$799.00
5. Built-in bookcases at east wall of Lobby 104.	ADD	\$6,432.00
	TOTAL ADD	\$6,325.00

The original (Contract Sum) (~~Guaranteed Maximum Price~~) was \$ 5,850,700.00

The net change by previously authorized Change Orders \$ 157,468.00

The (Contract Sum) (~~Guaranteed Maximum Price~~) prior to this Change Order was \$ 6,008,168.00

The (Contract Sum) (~~Guaranteed Maximum Price~~) will be (increased) (~~decreased~~) (~~unchanged~~) by this Change Order in the amount of \$ 6,325.00

The new (Contract Sum) (~~Guaranteed Maximum Price~~) including this Change Order will be \$ 6,014,493.00

The Contract Time will be (~~increased~~) (~~decreased~~) (unchanged) by zero (0) days

The date of Substantial Completion as of the date of this Change Order therefore is unchanged

(Note: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.)

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Meyer, Scherer & Rockcastle
ARCHITECT (Firm name)
710 South 2nd Street, 7th
Minneapolis, MN 55401
ADDRESS

Meinecke-Johnson Company
CONTRACTOR (Firm name)
5 North Fourteenth Street
Fargo, ND 58108-2643
ADDRESS

City of Fargo
OWNER (Firm name)
200 North Third Street
Fargo, ND 58102
ADDRESS

BY (Signature)
Jeffrey Mandyck
(Typed name)

BY (Signature)
D. A. Olson
(Typed name)

BY (Signature)

(Typed name)

31 OCT 08
DATE

October 16, 2008
DATE

DATE

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.


Fargo Inspections

City of Fargo
200 Third Street North
701-241-1561
fax 701-476-6779

Memorandum

DATE: November 14, 2008
TO: Mayor Walaker and Board of City Commissioners
FROM: Ron C. Strand, Inspections Administrator 
SUBJECT: Junked vehicle removal contract for 2009

Attached is the only bid that we received for the provision of junk vehicle removal services as part of our code enforcement effort during 2009. The bid was received from the present provider, Hazer's Auto and Truck Salvage, Inc. Also attached is the agreement which would set forth the provisions for those services.

This process is routine and done annually. I would respectfully request that you **approve a motion to accept this proposal and enter into this agreement for the provision of the junk vehicle removal services for calendar 2009 with Hazer's Auto and Truck Salvage, Inc.**

Hazer's Auto & Truck Parts, Inc.
811 - 9th Street NE
PO Box 672
West Fargo, ND 58078-0672

October 28, 2008

Inspections Administrator
Ron C. Strand
200 North 3rd Street
Fargo, ND 58102

Dear Mr. Strand,

We propose to provide the City of Fargo with service to remove (tow or haul) designated junked vehicles from private property within the City of Fargo for the calendar year of 2009. We would provide prompt and more than adequate service at no charge to the City.

Our storage lot is nearly twenty-five acres, more than sufficient space for the storage of vehicles. An eight-foot security chain-linked fence encloses the lot.

If the owner of the impounded vehicle wishes to claim his or her vehicle, he or she must make appropriate arrangements within the thirty-day limit. The owner must provide proof of ownership, proof of insurance and current tabs. He or she would be responsible for paying towing charges of \$200.00 and storage fees of \$25.00 per day. One-and-a-half ton trucks and heavier (including semi-tractors) will be towed for \$400.00, with daily storage fees of \$25.00.

We will fax the City a listing of all vehicles impounded, those reclaimed by the owners, and those retained after thirty days of storage, as documented in the weekly fax we receive. The vehicles retained by Hazer's will either be crushed or dismantled for parts.

Sincerely,



Duane Hazer
Hazer's Auto & Truck Parts, Inc.

AGREEMENT

This agreement, made and entered into this 21st day of November, 2008, by and between the City of Fargo, a municipal corporation ("City"); and Hazers Auto & Truck Parts Ltd. of West Fargo, North Dakota ("Contractor").

PREMISES:

- A. City has solicited proposals for the removal, impound and disposition of junk cars.
- B. Contractor has submitted a proposal for such removal, impound and disposition.
- C. City has determined that the proposal submitted by contractor is the most advantageous to the City.
- D. The parties entered into a contract on November 21, 2008.
- E. The parties mutually agree that certain amendments to that contract are necessary.
- F. The parties wish to reduce their supplemental agreement to writing.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

- 1. Contractor agrees to provide prompt wrecker services to the City of Fargo for the removal of junk cars, as may be designated by the City; in the event the contractor is unable, for any reason, to furnish prompt wrecker services, they will be required to hire another firm to remove junk cars, at its expense.
- 2. Contractor will provide a suitably fenced storage area and will retain all vehicles picked up for a minimum period of thirty days.
- 3. During the thirty-day holding period, the owner of such vehicle may take possession thereof by paying to the Contractor a towing charge of \$200 and \$25 per day storage charge (\$400 and \$25 for 1 1/2 ton trucks and semi-trucks). No vehicle may be removed by the owner which does not have a current automobile registration tag.
- 4. Any vehicles which are not claimed by the owner within the thirty-day period shall be retained by Contractor for salvage purposes.
- 5. Contractor shall, on the first day of each month, furnish the City with an accounting which shall consist of a list of all vehicles which are picked up and impounded and all vehicles which are claimed by the owner.

6. Contractor agrees to dismantle for parts or crush all motor vehicles which are not claimed by the owner and retained by contractor. No motor vehicle shall be sold to the public at large.

7. The term of this agreement shall be from January 1, 2009 through December 31, 2009. This agreement may be terminated at any time by either party upon giving thirty days written notice of such termination.

Dated this 21st day of November, 2008.

CITY OF FARGO

BY _____
Its Mayor

HAZERS AUTO & TRUCK PARTS, INC.

BY Deane Hazer For Hazer's auto
Its President



ENGINEERING DEPARTMENT

200 3rd Street North
Fargo, North Dakota 58102
Phone: (701) 241-1545
Fax: (701) 241-8101
E-Mail: feng@ci.fargo.nd.us

November 12, 2008

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Permanent Wireless Traffic Counter Trial

Dear Commissioners:

I have attached a contract with the Fargo-Moorhead Metro Council of Governments that calls for both the City of Fargo and the City of Moorhead to demonstrate and test the utility of placing wireless traffic counter and detection devices within the regional transportation system. Both cities plan on installing the devices at one intersection in their respective city; the City of Fargo's will be installed on University Drive at 18th Avenue South and the City of Moorhead's will be installed along 34th Street, just north of 24th Avenue South. By doing so, the two cities will be further implementing recommendations from the 2008 FM Metro ITS Plan.

The budget for the installation in Fargo is estimated at \$15,186.00, with \$11,477.50 being the federal share and \$3708.50 being the City's share. I would recommend that the City's cost share come from the 2008 Traffic Engineering budget.

Recommended Motion:

To approve the Contract with the Fargo-Moorhead Metro Council of Governments that calls for the placement of one traffic counting and detection device at the intersection of University Drive and 18th Avenue South, with the City's share to come from the 2008 Traffic Engineering budget.

Sincerely,

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

JMG/jmg
Attachment

Street Lighting
Sidewalks

Design & Construction
Traffic Engineering

Truck Regulatory
Flood Plain Mgmt.

Mapping & GIS
Utility Locations



**Fargo, North Dakota and Moorhead, Minnesota
and the
FARGO-MOORHEAD METROPOLITAN COG
TRANSPORTATION PLANNING AGREEMENT (Project #08-1224)**

Permanent Wireless Counter Trial

This agreement is entered into by the Fargo-Moorhead Metropolitan Council of Governments, hereinafter referred to as the Metro COG; and the City of Fargo, ND and Moorhead, MN, hereinafter referred to as the Contractor.

WHEREAS, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act, A Legacy for Users (SAFETEA-LU) has provided Metro COG federal funding for the purpose of transportation planning in urban areas, and

WHEREAS, the Metro COG wishes to expand local officials' transportation planning capacities in order to assist Metro COG address metropolitan planning responsibilities as identified by the SAFETEA-LU;

WHEREAS, under separate agreement the Metro COG has agreed to administer these federal planning funds in accordance with all applicable federal standards, and

WHEREAS, the Contractor has been approved by the NDDOT, MnDOT, FHWA or FTA as an eligible sub-recipient of Metro COGs federal planning funds, and

WHEREAS, the Contractor has agreed to complete specific work activities included in Metro COGs approved 2008 UPWP utilizing these federal funds, and

WHEREAS, the Contractor has agreed to complete these tasks and expend these funds in conformance with applicable state and federal regulations,

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Metro COG and the Contractor agree as follows:

Scope of Work: The contractor shall perform those tasks and activities as outlined in the Scope of Work and approved by the Metro COG (a copy of which shall be attached hereto and made a part hereof).

Duration of Agreement: This agreement shall extend from November 5th, 2008 to March 31, 2009.

Costs: The Metro COG, upon State and federal authorization, and after local approval of this contract, shall be prepared to reimburse the Contractor for all eligible costs up to a maximum amount of \$19,200 (*split \$11,477.50 for the City of Fargo and \$7,722.50 for the City of Moorhead*). The Contractor shall provide the remaining match, and all cost overruns or additional costs with nonfederal funds. See Attachment A and B for overall project budget for a breakdown of these reimbursable costs and matching funds. The Contractor shall provide to the Metro COG quarterly billings accompanied by project status reports. These billing and project status reports are due within the prescribed time schedule established by Metro COG. To be eligible, costs must be limited to those costs that are allowable under federal regulations (48 CFR, 31.6 and OMB Circular A-87). Allowable cost must be in conformance with the project description and the project budget, and all other provisions of this agreement. Additionally they must be: necessary in order to accomplish the project, reasonable in amount of the goods or services purchased, actual net costs to the Contractor (i.e., the price paid minus any refunds, rebates, or other items of value received by the Contractor which have the effect of reducing the cost actually incurred), incurred (and be for work performed) after the beginning date of this contract, unless specific authorization from Metro COG to the contrary is received, and treated uniformly and consistently under accounting principles and procedures approved or prescribed by the F-M COG for its contractors.

The Contractor shall comply with, and ensure that the requirements in 48 CFR Part 31, Cost Principles and Procedures, and 49 CFR Part 18 (Common Rule), Procurement Procedures, are included in all subcontracts/agreements that are funded wholly or in part utilizing federal funding.

All costs charged to the project including any approved services, contributed by the Contractor or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail, the nature and propriety of the charges.

Records: The Contractor shall maintain accounting and project records as Metro COG may require. Such records shall be made available to Metro COG and the state/federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, then the records shall be retained until such action is satisfied.

Audits: The Contractor, in accordance with the Single Audit Act of 1984, shall include this contract and its funds within its schedule of federal programs to be audited during the Contractor's fiscal year 2008 audit. Copies of this audit shall be provided to Metro COG for review and presentation to cognizant State and federal agencies. The responsibility to resolve any exceptions or questioned costs shall be the Contractor's, and if such arise a plan of resolution shall be forwarded to Metro COG with the audit.

The costs of the audit to be conducted in accordance with provisions of the Single Audit Act of 1984, and any ancillary costs shall be borne by the Contractor.

Conflicts of Interest: No official or employee of Metro COG, a state, or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector, or other person performing services for Metro COG, a state, or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by Metro COG, a state, or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by Metro COG, a state, or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the Metro COG, the NDDOT or such other governmental instrumentality, and such officer, employee, or person has not participated in such acquisition for and in behalf of the state.

Ownership/Publications: All work products of the Contractor which result from this contract are the exclusive property of Metro COG and its federal/state grantor agencies. With prior written approval, the Contractor may print or publish any documents, reports, records, data, software, resulting from this contract work.

Subcontracting: The Contractor may with prior approval from Metro COG subcontract, as necessary to accomplish the contract objectives. Subcontracts shall contain all applicable provisions of this agreement and copies of the subcontract must be filed with Metro COG.

Assignments: The Contractor shall not assign nor transfer the contractor's interest in this agreement without the express written consent of Metro COG.

Procurement-Property Management: The Contractor shall adhere to 49 CFR 18.36 when procuring services, supplies, or equipment and to the applicable provisions of 49 CFR 18.32, and 23 CFR Part 1204, property management standards, which are incorporated into this agreement by reference, and are available from the NDDOT.

Termination: The right is reserved by either party to terminate this agreement with or without cause at any time upon 30-day written notice. Metro COG or its state/federal grantor agencies may withhold payment or terminate this agreement at any time if the Contractor does not comply with the provisions of this agreement or its attachments.

If Metro COG terminates this agreement, it reserves the right to take such action as it deems necessary and appropriate to protect the interests of Metro COG and its state/federal grantor agencies. Such action may include refusing to make any additional reimbursement of funds and requiring the return of all or part of any funds that have already been disbursed.

Amendments: The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

Public Participation: The Contractor will comply and assume all state and federal responsibilities on behalf of Metro COG regarding public participation. Further, the Contractor will maintain a data base on the level of public participation and documentation of the demographics of such participation (quantitative and qualitative) and will provide this information as requested by Metro COG in quarterly and annual reports.

Civil Rights: The Contractor will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (78 STAT. 252), the regulations of the federal department of transportation, 49 CFR, Part 21, Executive Order 11246, and Executive Order 12898 Environmental Justice.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age, handicap, or national origin. Such actions shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Furthermore the Contractor agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

Civil Rights - Noncompliance: If the Contractor fails to comply with the federal or state civil rights requirements of this contract, sanctions may be imposed by the FHWA or the NDDOT as may be appropriate, including, but not limited to:

- a. withholding of payments to the Contractor under the contract until the contractor complies, or
- b. cancellation, termination, or suspension of the contract, in whole or in part.

Disadvantaged Business Enterprise: In the performance of this agreement, the Contractor shall cooperate with the Metro COG in meeting its goals with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to insure that such business enterprises shall have the maximum practical opportunities to compete for subcontract work under this agreement.

In accordance with US DOT regulations, all subcontracts must include the following statement of DBE policy:

- "1. DBE Policy: It is the policy of the Department of Transportation that disadvantage business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently the DBE requirements of 49 CFR Part 23 apply to this agreement.
2. DBE Obligation: The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 40 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 40 CFR Part 23 to ensure the disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of Metro COG-assisted contracts."

Energy Efficiency: The Contractor shall comply with the standards and policies relating to energy efficiency which are contained in the North Dakota Energy Conservation Plan issues in compliance with the Energy Policy and Conservation Act, Public Law 94-163, and Executive Order 11912.

Handicapped: The Contractor shall ensure that no qualified handicapped individual, as defined in 29 USC 706(7) and 49 CFR Part 27 shall, solely by reason of this handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from the assistance under this agreement.

EPA Clean Air and Clean Water Acts: The Contractor shall comply with the Clean Air Act, 42 U.S.C. 1857; the Clean Water Act, 33 U.S. C. 1251; EPA regulations under 40 CFR Part 15, which prohibits the use of nonexempt federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities, and Executive Order 11738.

Successors in Interest: The provisions of this agreement shall be binding upon and shall insure to the benefit of the parties hereby, and their respective successors and assigns.

Waivers: The failure of the Metro COG or its state/federal grantors to enforce any provisions of this contract shall not constitute a waiver by Metro COG or its state/federal grantors of that or any other provision.

Notice: 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.

Metro COG:
Robert L. Bright, Executive Director
Metro COG
Case Plaza, Suite 232
One 2nd Street North
Fargo, ND 58102-4807

City of Fargo
Jeremy Gorden
200 3rd Street North
Fargo, ND 58102

City of Moorhead
Bob Zimmerman
500 Center Avenue
Moorhead, MN 56560

Hold Harmless: The Contractor shall save and hold harmless the Metro COG, its officers, agents, employees, and members, and the State of North Dakota and NDDOT, its officers, agents, employees and members from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this agreement. It is hereby understood

and agreed that any and all employees of the Contractor, and all other persons employed by the Contractor in the performance of any of the services required or provided for under this agreement shall not be considered employees of Metro COG or the NDDOT and that any and all claims that may arise under the Worker's Compensation Act on behalf of said employees while so engaged and any and all claims by any third parties as a consequence of any act or omission on the part of said Contractor's employees while so engaged in any of the services to be rendered under this agreement by the Contractor shall in no way be the obligation or responsibility of Metro COG.

Compliance with Federal Regulations: The Contractor is advised that his or her signature on this contract certifies that its jurisdiction will comply with all provisions of this agreement as well as applicable federal and state laws, regulations, and procedures. Moreover, the Contractor affirms its compliance with the federal Debarment and Suspension Certification and the federal Restrictions on Lobbying.

Merger: 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 Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, this agreement has been executed this 10th day of November, 2008.

WITNESS:

JURISDICTIONS:

City of Fargo

Mayor

WITNESS:

City of Moorhead

Mayor

City Manager

WITNESS:

**Fargo-Moorhead Metropolitan Council
of Governments**

Chairman or Executive Director

Scope of Work for Agreement #08-1224

TASK #1:

PROJECT # n/a

A. Project Title: Wireless Counter Project – University Dr. & 18th Street South

1. Objective:

Demonstrate and test the utility of placing wireless traffic counter and detection devices within the regional transportation system. Further deployment elements of the 2008 FM Metro ITS Plan. Increase the ability of regional traffic authorities to collect, monitor, and analysis traffic patterns.

2. Activities:

Procurement and placement of wireless traffic counter equipment on University Drive and 18th Street South in Fargo.

3. Product:

The collection of pertinent traffic information for use in the Metropolitan Planning Program.

C. Budget:	\$ 11,477.50	Federal funds*
	<u>\$ 3,708.50</u>	<u>Local match</u>
	\$ 15,186.00	Total Cost

D. Timeframe:

- 1. Completion Date:** March 31, 2009

**Note: Federal Share of Project is 75.6%*

To: Fargo, City of
510 5th Street N
Fargo, ND 58102
USA**Date:** 07/10/2008
Prepared By: Anthony Juettner**Contact:** Jeremy Gorden
Phone: 701 241-1529
Fax: 701 241-8101
Email:**RFQ #:**
Description: Fargo Sensys Install University Drive & 18th Ave. S.

Part #	Description	Quantity	Price	Extended
SEN-900-240-015-y-010	AP240 Mounting Bracket 1	3	\$162.00	\$486.00
SEN-900-240-100-0-000	VSN240-f-Flush Mount Sensor Node	12	\$496.00	\$5,952.00
SEN-900-240-015-Y-002	AP240-E/EG/EGG Power Supply	1	\$162.00	\$162.00
FAB-MP450	450 ml MixPac w/ regular mixing tube	12	\$36.00	\$432.00
CAT5e Outdoor	Outdoor Rated CAT5 Cable, Belden 7934A	200	\$0.42	\$84.00
SEN-900-100-001-0-001	SNAPS-20; SNAPS software license for up to 20 Access Points	1	\$2,500.00	\$2,500.00
SEN-900-240-021-0	RP240-B-LL: Repeater including long-life 171Ah battery pack	2	\$1,385.00	\$2,770.00
SEN-900-240-015-0-000	AP240-E: Access Point w/wired IP connectivity (Ethernet interface for data detection)	1	\$2,800.00	\$2,800.00

Total: **\$15,186.00****Notes:**NET-30 Days
Price includes turn-on assistance, but does not include installation.**Terms:**

Shipment of the material will be approximately 90 days after receipt of both an acceptable purchase order and approved submittal data if required. Quoted prices are based on the entire value and volume of the quote. Payment terms are Net 30 days with prior approved credit. Brown Traffic Products, Inc. retains title to material until paid in full. A service charge of 1.5% per month (18% annual rate) will be assessed against all past due accounts. Prices and delivery quoted are firm for 30 days from the date of bid. The above quote does not include installation of the products quoted. On-Site technical assistance is available and will be quoted upon request.

Quotation does not include sales tax. Sales tax will be added at time of invoice unless a valid Sales Tax Exempt certificate has been provided. Sales tax exempt certificate should accompany customer Purchase Order.

Limited Warranty: Brown Traffic Products only obligations shall be to replace such quantity of the product proven to be defective.

Warranty Period: The length of warranty manufacturers have conveyed to the seller and which can be passed on to the buyer.

Additional terms and conditions apply - See Brown Traffic Products Terms & Conditions document.

Thank you for the opportunity to provide this quote.

Scope of Work for Agreement #08-1224

TASK #2:

PROJECT # n/a

A. Project Title: Wireless Counter Project – 34th Street South

B. Project Description:

1. Objective:

Demonstrate and test the utility of placing wireless traffic counter and detection devices within the regional transportation system. Further deployment elements of the 2008 FM Metro ITS Plan. Increase the ability of regional traffic authorities to collect, monitor, and analysis traffic patterns.

2. Activities:

Procurement and placement of wireless traffic counter equipment on 34th Street South in Moorhead, just north of the intersection of 24th Avenue in Moorhead.

3. Product:

The collection of pertinent traffic information for use in the Metropolitan Planning Program.

C. Budget:	\$ 7,722.50	Federal funds*
	\$ 2,457.50	Local match
	<u>\$10,180.00</u>	Total Cost

D. Timeframe:

1. Completion Date: March 31, 2009.

**Note: Federal Share of Project is 75.9%*

Quote

Quote Number: Q008168

To: MOORHEAD, City of
P.O. BOX 779
MOORHEAD, MN 56561
USA

Date: 07/10/2008
Prepared By: Anthony Juettner

Contact: Bob Zimmerman
Phone:
Fax:
Email:

RFQ #:
Description: Moorhead Sensys Project October 2008

Part #	Description	Quantity	Price	Extended
SEN-900-240-015-y-010	AP240 Mounting Bracket 1	1	\$162.00	\$162.00
SEN-900-240-100-0-000	VSN240-f Flush-Mount Vehicle Sensor Node	8	\$496.00	\$3,968.00
SEN-900-240-015-Y-002	AP240-E/EG/EGG Power Supply	1	\$162.00	\$162.00
FAB-MP450	450 ml MixPac w/ regular mixing tube	8	\$36.00	\$288.00
SEN-900-100-001-0-001	SNAPS software license for up to 20 access points	1	\$2,500.00	\$2,500.00
SEN-900-240-015-0-000	AP240-E: Access Point w/wired IP connectivity (Ethernet interface for data detection)	1	\$2,800.00	\$2,800.00
FC-1140	Nema Flasher Cabinet (natural)	1	\$300.00	\$300.00

Total: **\$10,180.00**

Notes:

NET-30 Days
Price does include turn-on assistance.
Price does not include installation.

Terms:

Shipment of the material will be approximately 90 days after receipt of both an acceptable purchase order and approved submittal data if required. Quoted prices are based on the entire value and volume of the quote. Payment terms are Net 30 days with prior approved credit. Brown Traffic Products, Inc. retains title to material until paid in full. A service charge of 1.5% per month (18% annual rate) will be assessed against all past due accounts. Prices and delivery quoted are firm for 30 days from the date of bid. The above quote does not include installation of the products quoted. On-Site technical assistance is available and will be quoted upon request.

Quotation does not include sales tax. Sales tax will be added at time of invoice unless a valid Sales Tax Exempt certificate has been provided. Sales tax exempt certificate should accompany customer Purchase Order.

Limited Warranty: Brown Traffic Products only obligations shall be to replace such quantity of the product proven to be defective.

Warranty Period: The length of warranty manufacturers have conveyed to the seller and which can be passed on to the buyer.

Additional terms and conditions apply - See Brown Traffic Products Terms & Conditions document.

Thank you for the opportunity to provide this quote.

Q

UTILITY COMMITTEE

Project No. 5798 Type: Sanitary Lift Station No. 19 Replacement

Location: 25th Street and 17th Avenue South

Date of Hearing: 11/05/08

Routing	Date
City Commission	11/17/08
Project File	

Brenda Derrig, Senior Engineer, presented that attached memorandum and contract amendment to the Owner-Engineer Agreement with Kadrmas, Lee & Jackson for the following additional services:

- 17th Avenue South Reconstruction
- Vapor Phase Odor Control Equipment
- 3-D Architectural Renderings for Property Acquisition

The total contract amendment amount is \$12,500. The additional work was requested by City staff representatives.

On a motion by Mark Bittner, seconded by Pete Bilstad, the Utility Committee voted to approve the attached contract amendment with Kadrmas, Lee & Jackson in the amount of \$12,500 resulting in a new total contract amount of \$114,720.

COMMITTEE:	Present	Yes	No	Unanimous
				Proxy
Dennis Walaker, Mayor	X			
Mike Williams, City Commissioner	X			
Pat Zavoral, City Administrator				
Mark Bittner, City Engineer	X			
Kent Costin, Director of Finance	X			
Ron Hendricksen, Water Plant Supt.	X			
Peter Bilstad, Wastewater Plant Supt.	X			
Bruce Grubb, Enterprise Director	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Manager	X			
James Hausauer, Wastewater Util. Manager	X			
Al Weigel, Public Works Operations Manger				

ATTEST:

Bruce P. Grubb

Bruce P. Grubb
Enterprise Director

C: Commissioner Mahoney
Commissioner Wimmer
Commissioner Piepkorn

Item 5

October 22, 2008

To: Utility Committee

From: Brenda E. Derrig, Senior Engineer *B. E. Derrig*

Re: Contract Amendment for Project #5798
Lift Station #19 Replacement

Last winter the City of Fargo Distributed a request for proposals on the 45th Street Westside Interceptor Sewer Projects, the 17th Avenue South and 25th Street Sanitary Lift Station, and the North Side Sewer Extension. Kadrmas, Lee & Jackson was awarded the contract for the replacement of Lift Station 19 at 25th Street and 17th Avenue South.

The City requested that Kadrmas, Lee & Jackson repair the deteriorating concrete west of 25th Street and improve the intersection layout by extending the right turn lane. This increase of \$12,500 will be paid with Street Rehabilitation funds. Kadrmas, Lee & Jackson requested reimbursement for extra work completed on the odor control and renderings for the architecture of the building.

Attached you will find an amendment for \$25,200 to the original contract of \$89,520 for a total Engineering cost of \$114,720.

I recommend that the Utility Committee approve the Contract Amendment of \$25,200 for Project #5798.

September 22, 2008

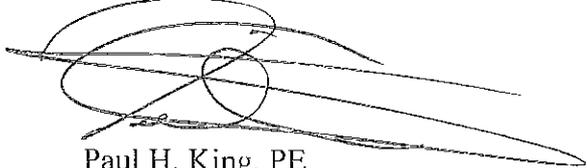
Ms. Brenda Derrig, PE
Senior Engineer
City of Fargo Engineering Department
200 North 3rd Street
Fargo, ND 58102

Re: Amendment to Engineering Agreement

Dear Ms. Derrig,

Please find attached two copies of an Amendment to the Engineering Agreement for Project No. 5798 Lift Station #19 replacement and Incidentals. The amendment covers additional services for the preparation of specifications for 17th Avenue South reconstruction, odor control, and additional architectural rendering for the proposed property acquisition. Once approved please execute the documents and return one copy to me. Thank You.

Sincerely,
Kadmas, Lee & Jackson, Inc.



Paul H. King, PE

218 287 0300

1505 S 30th Avenue

PO Box 96

Moorhead, MN 56561-0096

Fax 218 287 6313

www.kljeng.com

Kadmas, Lee & Jackson, Inc.

A KLJ Solutions Company

AMENDMENT NO. 1 TO OWNER-ENGINEER AGREEMENT

Subject of Amendment:

1. Background Data:

- a. Effective Date of OWNER-ENGINEER Agreement: March 17, 2008
- b. OWNER: City of Fargo, ND
- c. ENGINEER: Kadmas, Lee & Jackson, Inc.
- d. Project: Project #5798 Sanitary Sewer Lift station #19 Replacement

2. Nature of Amendment

Additional Services to be performed by ENGINEER

Modifications to Payment to ENGINEER

3. Description of Modifications

Attachment 1, "Modifications"

OWNER and ENGINEER hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is October 1, 2008.

OWNER:

ENGINEER:

By: _____

By:  _____

Title: _____

Title: Municipal Services Director

Date Signed: _____

Date Signed: 9/18/08

Initial:
OWNER _____
ENGINEER RE

Modifications

- A1. ENGINEER shall perform the following Additional Services for the reconstruction of the existing eastbound lanes of 17th Avenue South from the west side of 25th Street to the intersection of East Gateway Circle:
Design Engineering

Preliminary Phase

- Topographic survey
- Review existing pavement section
- Preparation of preliminary pavement design and plans.
- Provide preliminary engineers opinion of probable cost

Final Design Phase

- Prepare detailed project plans and specifications for bidding and construction purposes.
- Prepare plans and specifications for traffic signal detectors into Lift Station #19 construction and bidding documents.
- Provide final engineers opinion of probable cost.
- Incorporate 17th Avenue South plans and specifications into Lift Station # 19 construction and bidding documents.

- A2. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional fixed fee compensation:
Lump Sum \$12,500.00

- B1. ENGINEER shall perform the following Additional Services for the reconstruction of Lift Station #19: Design and preparation of odor control plans and specification and estimates. Preparation of additional architectural 3-D renderings, to assist with property acquisition and esthetics. Preliminary staking for utility relocation.

Design Engineering

Preliminary Phase

- Review Odor Control PER and develop operational requirements.
- Create Specifications for odor control equipment.
- Preparation of 3-D site plan for proposed property acquisition.
- Preparation of 3-D renderings depicting optional façade configurations.

Final Design Phase

- Prepare detailed project odor control plans and specifications for bidding and construction purposes.
- Incorporate odor control components, electrical, mechanical into Lift Station #19.
- Incorporate selected façade features into Plans and specifications.
- Preliminary staking for utility relocation.

- B2. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional fixed fee compensation:
Odor Control Design, Lump Sum \$8,500.00
Preparation of 3-D Renderings, Lump Sum \$3,700.00
Preliminary Staking, Lump Sum \$500.00

AMENDMENT NO. 1 TO OWNER-ENGINEER AGREEMENT

Subject of Amendment:

1. Background Data:

- a. Effective Date of OWNER-ENGINEER Agreement: March 17, 2008
- b. OWNER: City of Fargo, ND
- c. ENGINEER: Kadrmas, Lee & Jackson, Inc.
- d. Project: Project #5798 Sanitary Sewer Lift station #19 Replacement

2. Nature of Amendment

Additional Services to be performed by ENGINEER

Modifications to Payment to ENGINEER

3. Description of Modifications

Attachment 1, "Modifications"

OWNER and ENGINEER hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is October 1, 2008.

OWNER:

ENGINEER:

By: _____

By:  _____

Title: _____

Title: Municipal Services Director

Date Signed: _____

Date Signed: 9/18/08

Initial:
OWNER _____
ENGINEER BE

Modifications

A1. ENGINEER shall perform the following Additional Services for the reconstruction of the existing eastbound lanes of 17th Avenue South from the west side of 25th Street to the intersection of East Gateway Circle:
Design Engineering

Preliminary Phase

- Topographic survey
- Review existing pavement section
- Preparation of preliminary pavement design and plans
- Provide preliminary engineers opinion of probable cost

Final Design Phase

- Prepare detailed project plans and specifications for bidding and construction purposes.
- Prepare plans and specifications for traffic signal detectors into Lift Station #19 construction and bidding documents.
- Provide final engineers opinion of probable cost.
- Incorporate 17th Avenue South plans and specifications into Lift Station # 19 construction and bidding documents.

A2. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional fixed fee compensation:
Lump Sum \$12,500.00

B1. ENGINEER shall perform the following Additional Services for the reconstruction of Lift Station #19:
Design and preparation of odor control plans and specification and estimates. Preparation of additional architectural 3-D renderings, to assist with property acquisition and esthetics. Preliminary staking for utility relocation.

Design Engineering

Preliminary Phase

- Review Odor Control PER and develop operational requirements.
- Create Specifications for odor control equipment.
- Preparation of 3-D site plan for proposed property acquisition.
- Preparation of 3-D renderings depicting optional façade configurations.

Final Design Phase

- Prepare detailed project odor control plans and specifications for bidding and construction purposes.
- Incorporate odor control components, electrical, mechanical into Lift Station #19.
- Incorporate selected façade features into Plans and specifications.
- Preliminary staking for utility relocation.

B2. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional fixed fee compensation:
Odor Control Design, Lump Sum \$8,500.00
Preparation of 3-D Renderings, Lump Sum \$3,700.00
Preliminary Staking, Lump Sum \$500.00

AMENDMENT NO. 1 TO OWNER-ENGINEER AGREEMENT

Subject of Amendment:

1. Background Data:

- a. Effective Date of OWNER-ENGINEER Agreement: March 17, 2008
- b. OWNER: City of Fargo, ND
- c. ENGINEER: Kadmas, Lee & Jackson, Inc.
- d. Project: Project #5798 Sanitary Sewer Lift station #19 Replacement

2. Nature of Amendment

Additional Services to be performed by ENGINEER

Modifications to Payment to ENGINEER

3. Description of Modifications

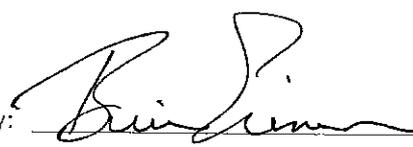
Attachment 1, "Modifications"

OWNER and ENGINEER hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is October 1, 2008.

OWNER:

ENGINEER:

By: _____

By: 

Title: _____

Title: Municipal Services Director

Date Signed: _____

Date Signed: 9/18/08

Initial:
OWNER _____
ENGINEER BE

Modifications

- A1. ENGINEER shall perform the following Additional Services for the reconstruction of the existing eastbound lanes of 17th Avenue South from the west side of 25th Street to the intersection of East Gateway Circle:
Design Engineering

Preliminary Phase

- Topographic survey
- Review existing pavement section
- Preparation of preliminary pavement design and plans
- Provide preliminary engineers opinion of probable cost

Final Design Phase

- Prepare detailed project plans and specifications for bidding and construction purposes.
- Prepare plans and specifications for traffic signal detectors into Lift Station #19 construction and bidding documents.
- Provide final engineers opinion of probable cost.
- Incorporate 17th Avenue South plans and specifications into Lift Station # 19 construction and bidding documents.

- A2. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional fixed fee compensation:
Lump Sum \$12,500.00

- B1. ENGINEER shall perform the following Additional Services for the reconstruction of Lift Station #19:
Design and preparation of odor control plans and specification and estimates. Preparation of additional architectural 3-D renderings, to assist with property acquisition and esthetics. Preliminary staking for utility relocation.

Design Engineering

Preliminary Phase

- Review Odor Control PER and develop operational requirements.
- Create Specifications for odor control equipment.
- Preparation of 3-D site plan for proposed property acquisition.
- Preparation of 3-D renderings depicting optional façade configurations.

Final Design Phase

- Prepare detailed project odor control plans and specifications for bidding and construction purposes.
- Incorporate odor control components, electrical, mechanical into Lift Station #19.
- Incorporate selected façade features into Plans and specifications.
- Preliminary staking for utility relocation.

- B2. For the Additional Services or the modifications to services set forth above, OWNER shall pay ENGINEER the following additional fixed fee compensation:
Odor Control Design, Lump Sum \$8,500.00
Preparation of 3-D Renderings, Lump Sum \$3,700.00
Preliminary Staking, Lump Sum \$500.00

(r)

UTILITY COMMITTEE

Project No. 5799 Type: County Road 20 Interceptor Sewer Forcemain

Location: County Road 20 Lift Station to Wastewater Treatment Plant

Date of Hearing: 11/5/08

Routing	Date
City Commission	11/17/08
Project File	

Brenda Derrig, Senior Engineer, presented the attached memorandum and contract amendment to the Owner-Engineer Agreement with Advanced Engineering for a relocation of the final forcemain alignment across the Municipal Airport property. The new alignment was requested by the Municipal Airport in an effort to consolidate their utility easements between University Drive and the Wastewater Treatment Plant. The total contract amendment amount is \$16,000.

On a motion by Bruce Grubb, seconded by Mike Williams, the Utility Committee voted to approve the attached contract amendment with Advanced Engineering and Environmental Services in the amount of \$16,000 resulting in a new total contract amount of \$448,300.

COMMITTEE:	Present	Yes	No	Unanimous
				<u>Proxy</u>
Dennis Walaker, Mayor	X			
Mike Williams, City Commissioner	X			
Pat Zavoral, City Administrator				
Mark Bittner, City Engineer	X			
Kent Costin, Director of Finance	X			
Ron Hendricksen, Water Plant Supt.	X			
Peter Bilstad, Wastewater Plant Supt.	X			
Bruce Grubb, Enterprise Director	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Manager	X			
James Hausauer, Wastewater Util. Manager	X			
Al Weigel, Public Works Operations Manger				

ATTEST:



 Bruce P. Grubb
 Enterprise Director

C: Commissioner Mahoney
 Commissioner Wimmer
 Commissioner Piepkorn

Item 6

October 22, 2008

To: Utility Committee

From: Brenda E. Derrig, Senior Engineer *Brenda E. Derrig*

Re: Contract Amendment for Project #5799 – CR20 Force Main

Last winter the City of Fargo distributed a request for proposals on the 45th Street Westside Interceptor Sewer Projects, the 17th Avenue South and 25th Street Sanitary Lift Station, and the North Side Sewer Extension. Advanced Engineering and Environmental Services, Inc. (AE2S) was awarded the contract for the construction of the County Road #20 Force Mains from the Lift Station to the WWTP and the WWSP.

In negotiations with the Airport, it was requested that the City relocate the force main from University Drive to the WWTP along the Airport property. This developed after the 90% plans had been reviewed and AE2S was working towards the final plans. AE2S is requesting an amendment of \$16,000 to cover the costs for realigning and revising the construction plans and the easements.

Attached you will find Amendment #1 for \$16,000 to the original contract of \$432,300 for a total Engineering cost of \$448,300.

I recommend that the Utility Committee approve the Contract Amendment #1 of \$16,000 for Project #5799.



September 3, 2008

Brenda Derrig, PE
Project Manager
City of Fargo
Engineering Department
200 North 3rd Street
Fargo, ND 58103

RE: Amendment No. 1 – CR20 Force Mains (Fargo Project #5799)

Dear Brenda:

Please find enclosed two signed copies of Amendment No. 1 to our Owner-Engineer Agreement for the County Road 20 Force Mains (Fargo Project #5799). Amendment No. 1 is for additional design services related to the re-alignment of the 30-inch Force Main between the CR20 Lift Station and the Wastewater Treatment Facility.

As noted in the attached Amendment No. 1, the re-aligned force main is a result of the Municipal Airport Authority's desire to consolidate utility easements on airport property between University Drive and the Wastewater Treatment Facility. The work included in Amendment No. 1 includes re-aligning the force main and revising the construction drawings, as well as preparing updated easement maps. AE2S proposed to complete these services for a lump sum fee of \$16,000.

If you agree with the proposed scope and fee, please sign both copies of the attached Amendment No. 1, retain one copy for the City's records and return the other signed original to me. We look forward to completing the design of the CR20 Lift Station with you and the City of Fargo.

Sincerely,

AE2S

Eric C. Dodds, PE
Operations Manager

C. Bruce P. Grubb, PE

AMENDMENT No. 1 TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: March 24, 2008
- b. Owner: City of Fargo
- c. Engineer: Advanced Engineering and Environmental Engineering Services, Inc.
- d. Project: County Road 20 Force Mains (City Project #5799)

2. Nature of Amendment

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- Modifications to other terms and conditions of the Agreement

3. Description of Modifications

See Attachment 1, "Modifications"

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is September 8, 2008.

OWNER:

ENGINEER:

By: _____

By: Charles J. Vain

Title: _____

Title: PRESIDENT

Date Signed: _____

Date Signed: 9-3-08

This is EXHIBIT K, consisting of one (1) page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated March 24, 2008.

AMENDMENT No. 1 TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: March 24, 2008
- b. Owner: City of Fargo
- c. Engineer: Advanced Engineering and Environmental Engineering Services, Inc.
- d. Project: County Road 20 Force Mains (City Project #5799)

2. Nature of Amendment

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- Modifications to other terms and conditions of the Agreement

3. Description of Modifications

See Attachment 1, "Modifications"

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is September 8, 2008.

OWNER:

ENGINEER:

By: _____

By: Charles S. Vein

Title: _____

Title: PRESIDENT

Date Signed: _____

Date Signed: 9-3-08

This is Attachment 1 to EXHIBIT K, consisting of 1 page, to Amendment No. 1 , dated September 8 , 2008 .

Modifications

1. Engineer shall perform the following Additional Services:

Final Design Phase Services – Force Main Re-Alignment

Amend Paragraph A1.03.A.4.a of Appendix 1 to Exhibit A to include:

Based on feedback from the Municipal Airport Authority in regards to easements for the 30-inch Force Main, Engineer shall complete the Work associated with re-alignment of the 30-inch diameter force main from the CR20 Lift Station to the Wastewater Treatment Facility. The revision includes shifting the segment of force main located between University Drive North and 10th Street North (approximately 1,800 lineal feet of pipe) approximately 150 feet further to the south of the alignment used for the 90 percent milestone for the project. The revised alignment places the 30-inch diameter force main approximately 40 feet north of the south property line of the Municipal Airport Authority property and parallel with an existing sanitary sewer force main that was installed approximately 10 feet north of the property line. The revised alignment is desired by the Municipal Airport Authority to consolidate easements and utilities in this area along the property line. A new 30 foot wide permanent utility easement will be required for the 30-inch diameter force main as well as a new 50 foot wide temporary construction easement. Specifically, Engineer shall revise the bidding documents as well as easement documents to reflect the revised force main alignment and easement locations.

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

No modifications per this Amendment No. 1

3. The responsibilities of Owner are modified as follows:

No modifications per this Amendment No. 1

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional compensation:

1. *Final Design Phase Services – Force Main Re-Alignment.* For services of Engineer referenced above, a Lump Sum amount of \$16,000.

5. The schedule for rendering services is modified as follows:

No modifications per this Amendment No. 1

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

No modifications per this Amendment No. 1

This is Attachment 1 to EXHIBIT K, consisting of 1 page, to Amendment No. 1, dated September 8, 2008.

Modifications

1. Engineer shall perform the following Additional Services:

Final Design Phase Services – Force Main Re-Alignment

Amend Paragraph A1.03.A.4.a of Appendix 1 to Exhibit A to include:

Based on feedback from the Municipal Airport Authority in regards to easements for the 30-inch Force Main, Engineer shall complete the Work associated with re-alignment of the 30-inch diameter force main from the CR20 Lift Station to the Wastewater Treatment Facility. The revision includes shifting the segment of force main located between University Drive North and 10th Street North (approximately 1,800 lineal feet of pipe) approximately 150 feet further to the south of the alignment used for the 90 percent milestone for the project. The revised alignment places the 30-inch diameter force main approximately 40 feet north of the south property line of the Municipal Airport Authority property and parallel with an existing sanitary sewer force main that was installed approximately 10 feet north of the property line. The revised alignment is desired by the Municipal Airport Authority to consolidate easements and utilities in this area along the property line. A new 30 foot wide permanent utility easement will be required for the 30-inch diameter force main as well as a new 50 foot wide temporary construction easement. Specifically, Engineer shall revise the bidding documents as well as easement documents to reflect the revised force main alignment and easement locations.

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

No modifications per this Amendment No. 1

3. The responsibilities of Owner are modified as follows:

No modifications per this Amendment No. 1

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional compensation:

1. *Final Design Phase Services – Force Main Re-Alignment.* For services of Engineer referenced above, a Lump Sum amount of \$16,000.

5. The schedule for rendering services is modified as follows:

No modifications per this Amendment No. 1

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

No modifications per this Amendment No. 1

5

UTILITY COMMITTEE

Project No. 5725 Type: County Road 20 Lift Station

Location: County Road 20 and 38th Street North

Date of Hearing: 11/05/08

<u>Routing</u>	<u>Date</u>
City Commission	11/17/08
Project File	

Brenda Derrig, Senior Engineer, presented the attached memorandum and contract amendment to the Owner-Engineer Agreement with Advanced Engineering for the following additional services:

- 1.) Instrumentation and Control System Design \$98,800
- 2.) Geothermal Heating and Cooling System Design \$65,800

The total contract amendment amount is \$164,600. However, the added cost for instrumentation and control system design will be recovered due to it's removal from the County Road 20 Lift Station construction project. The geothermal system design will allow a bid alternate to conventional heating and cooling. The alternate bid will facilitate an evaluation of the economic feasibility of incorporating geothermal energy features into the County Road 20 Lift Station.

On a motion by Mike Williams, seconded by Mark Bittner, the Utility Committee voted to approve the attached Amendment No.1 with Advanced Engineering in the amount of \$164,600 for instrumentation/control system and geothermal heating/cooling system design. The new total contract amount will be \$936,900.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>Proxy</u>
Dennis Walaker, Mayor	X			
Mike Williams, City Commissioner	X			
Pat Zavoral, City Administrator				
Mark Bittner, City Engineer	X			
Kent Costin, Director of Finance	X			
Ron Hendricksen, Water Plant Supt.	X			
Peter Bilstad, Wastewater Plant Supt.	X			
Bruce Grubb, Enterprise Director	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Manager	X			
James Hausauer, Wastewater Util. Manager	X			
Al Weigel, Public Works Operations Manger				

ATTEST:

Bruce P. Grubb
 Bruce P. Grubb
 Enterprise Director

C: Commissioner Mahoney
 Commissioner Wimmer
 Commissioner Piepkorn



ENGINEERING DEPARTMENT

200 3rd Street North
Fargo, North Dakota 58102
Phone: (701) 241-1545
Fax: (701) 241-8101
E-Mail: feng@ci.fargo.nd.us

October 22, 2008

Item 4

To: Utility Committee
From: Brenda E. Derrig, Senior Engineer *Brenda E. Derrig*
Re: Contract Amendment for Project #5725 – CR20 Lift Station

Last winter the City of Fargo distributed a request for proposals on the 45th Street Westside Interceptor Sewer Projects, the 17th Avenue South and 25th Street Sanitary Lift Station, and the North Side Sewer Extension. Advanced Engineering and Environmental Services, Inc. (AE2S) was awarded the contract for the construction of the County Road #20 Lift Station.

The City has requested that AE2S provide us with a cost to design the control system along with programming services for the new lift station. This cost would have been included with the construction contract but will be included with the Engineering Contract instead. The City also requested that AE2S design and bid an alternate geothermal system for the lift station, so the City can make an informed decision on the feasibility of using a geothermal system.

Attached you will find Amendment #1 for \$164,600 to the original contract of \$772,300 for a total Engineering cost of \$936,900.

I recommend that the Utility Committee approve the Contract Amendment of \$164,600 for Project #5725.



September 3, 2008

Brenda Derrig, PE
Project Manager
City of Fargo
Engineering Department
200 North 3rd Street
Fargo, ND 58103

RE: Amendment No. 1 – CR20 Lift Station (Fargo Project #5725)

Dear Brenda:

Please find enclosed two signed copies of Amendment No. 1 to our Owner-Engineer Agreement for the County Road 20 Lift Station (Fargo Project #5725). Amendment No. 1 is for additional services including: (1) Instrumentation and Control Phase Services, and (2) Geothermal Heating and Cooling System Design Services.

In accordance with the attached Amendment No. 1, the Instrumentation and Control Phase Services for the CR20 Lift Station will be complete by AE2S in two parts: 1) control system design and programming services will be completed for a fixed fee of \$83,800, and 2) field support services for control system start-up will be provided on an hourly basis estimated at \$15,000. It is important to note that including the Instrumentation and Control Phase Services as a professional service does not increase the overall project cost as these services will be removed from the contractor's requirements and completed by your design engineer. Based on preliminary meetings with City wastewater utility staff, it was determined that providing the control system programming as a professional services will be beneficial for the City of Fargo and the CR20 Lift Station project.

The City also requested that a geothermal heating and cooling system be designed and bid as an alternate to a conventional heating and cooling system. The amendment for Geothermal Heating and Cooling System Design Services will allow the City to make an informed decision as to the capital cost requirements and potential pay-back period of a geothermal system. As indicated in the attached Amendment No. 1, the AE2S/Black & Veatch team will complete the geothermal design, bidding, and construction administration services for a lump sum fee of \$65,800. It is important to note that for the approximately \$9,000,000 CR20 Lift Station project, the Geothermal Heating and Cooling System Design Services Amendment represents a change in total engineering fee percentage from approximately 8.6 percent to 9.3 percent.

RE: **Amendment No. 1 – CR20 Lift Station (Fargo Project #5725)**

September 3, 2008

If you agree with the proposed scope and fee, please sign both copies of the attached Amendment No. 1, retain one copy for the City's records and return the other signed original to me. We look forward to completing the design of the CR20 Lift Station with you and the City of Fargo.

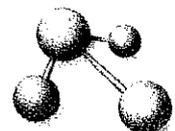
Sincerely,

AE2S



Eric C. Dodds, PE
Operations Manager

C. Bruce P. Grubb, PE



AMENDMENT No. 1 TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: March 24, 2008
- b. Owner: City of Fargo
- c. Engineer: Advanced Engineering and Environmental Engineering Services, Inc.
- d. Project: County Road 20 Lift Station (City Project #5725)

2. Nature of Amendment

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- Modifications to other terms and conditions of the Agreement

3. Description of Modifications

See Attachment 1, "Modifications"

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is September 8, 2008.

OWNER:

ENGINEER:

By: _____

By: Charles S. Vein

Title: _____

Title: PRESIDENT

Date Signed: _____

Date Signed: 9-3-08

This is Attachment 1 to EXHIBIT K, consisting of 3 pages, to Amendment No. 1 , dated September 8 , 2008 .

Modifications

1. Engineer shall perform the following Additional Services:

Instrumentation and Control Phase Services

Add Paragraph A1.07 to Exhibit A as follows:

A1.07 Instrumentation and Controls

A. Provide final design, specifications, drawings, bidding services, construction administration, field support services, and post-construction services for the instrumentation and control system associated with the County Road 20 Lift Station (CR20 LS). The Instrumentation and Controls part of the project generally consists of designing and programming the control system for the CR20 LS and integrating the new control system into the existing lift station telemetry and supervisory control and data acquisition (SCADA) system at the Wastewater Treatment Plant (WWTP). Specifically, the Instrumentation and Controls services include:

1. Control System Design and Programming Services
 - a. Engineer to provide programming services for the remote operator interface terminal (OIT) and programmable logic controllers (PLC) at the new CR20 LS, and customize to Owner's preference.
 - b. Engineer to design new radio telemetry system between CR20 LS and WWTP. New radio telemetry system shall include a new repeater system to be placed at Owner's Water Tower #7.
 - c. Engineer to integrate new telemetry system into existing lift station SCADA.
 - d. Engineer to program new master PLC at WWTP for new lift station radio telemetry system. New master PLC shall be programmed to interface with existing RSView human machine interface (HMI) software package.
 - e. Engineer shall develop new control system screens for the CR20 LS. New screens will be compatible with existing screens on existing RSView HMI. New screens for the CR20 LS will be duplicated from the HMI at the WWTP to the OIT at the CR20 LS.
2. Field Support Services
 - a. Engineer to provide control system start-up services for the CR20 LS and WWTP as necessary.
 - b. Engineer to provide post-construction support services for the CR20 LS and WWTP, including submittal of requested deliverables.

Geothermal Heating and Cooling System Design Services

Amend Paragraph A1.03.A.4.a of Appendix 1 to Exhibit A as follows:

Amend 'Subtask 630 -- Prepare and Review 90 Percent Design Documents' and 'Subtask 640 -- Prepare 100 Percent Design Documents' to include:

Engineer shall design a geothermal heating and cooling system to be bid as an alternate to a conventional heating and cooling system for the CR20 LS. The geothermal heating and cooling system will consist of a ground-loop well and header system connected to a geothermal heat pump located on a mezzanine level grated platform in the dry-pit of the CR20 LS between the pump room and operating room. Specific design phase services shall include:

- a. Engineer shall complete a preliminary evaluation of using a geothermal heating and cooling system for the CR20 LS. The preliminary evaluation will include completing a preliminary economic assessment as well as researching local conditions affecting geothermal system design and performance criteria.

- b. Engineer shall design and prepare a site plan indicating the ground-loop system and geothermal well locations.
- c. Engineer shall design and prepare drawings and specifications for architectural, structural, mechanical, and electrical design elements of the geothermal heating and cooling system to be bid as an alternate to the conventional heating and cooling system.

Amend Paragraph A1.04.A.5.a of Appendix 1 to Exhibit A as follows:

Amend 'Subtask 710 – Bidding Services', 'Subtask 720 – Pre-bid Activities', and 'Subtask 730 – Bid Reviews and Construction Contract Preparation' to include:

Engineer shall provide bidding services related to bidding a geothermal heating and cooling system as an alternate to a conventional heating and cooling system for the CR20 LS. Specific bidding phase tasks shall include:

- a. Engineer shall compile, review, and evaluate bid results for the geothermal heating and cooling system alternate.
- b. Engineer shall provide a recommendation to Owner to accept or reject alternate bid item.

Amend Paragraph A1.05.A.18.a of Appendix 1 to Exhibit A as follows:

Amend 'Subtask Series 800 – Construction Administration Services' to include:

Engineer shall provide construction administration services related to submittal review and requests for information for the geothermal heating and cooling system equipment.

- 2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

No modifications per this Amendment No. 1

- 3. The responsibilities of Owner are modified as follows:

Amend Paragraph B2.01.Q of Exhibit B to include:

- 2. *Owner to provide Engineer a digital copy of existing RSVIEW control system programming for integration of new control system screens into existing HMI.*
- 3. *Owner to test interferences of existing RF antennas and determine proper placement of new omni-directional repeater antenna.*
- 4. *Owner to provide Engineer other existing control system information as deemed necessary.*

- 4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional compensation:

1. *Instrumentation and Control Phase – Control System Design and Programming Services.* For services of Engineer under paragraph A1.07.A.1 referenced above in Exhibit K – Amendment No. 1, a Lump Sum amount of \$83,800.

2. *Geothermal Design and Bidding Services.* For services of Engineer under paragraph A1.03.A.4.a of Appendix 1 to Exhibit A referenced above in Exhibit K – Amendment No. 1, a Lump Sum amount of \$65,800 based on the following assumed distribution of compensation:

a.	Final Design Phase	\$61,000
b.	Bidding and Negotiating Phase	\$ 2,400
c.	Construction Phase	\$ 2,400

Page 116 3. *Instrumentation and Control Phase – Field Support Services.* For services of Engineer under paragraph A1.07.A.2 referenced above in Exhibit K – Amendment No. 1, an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all Engineer services performed on the Project, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any. The total compensation under this paragraph is estimated to be \$15,000.

5. The schedule for rendering services is modified as follows:

No modifications per this Amendment No. 1

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

No modifications per this Amendment No. 1

AMENDMENT No. 1 TO OWNER-ENGINEER AGREEMENT

1. Background Data:

- a. Effective Date of Owner-Engineer Agreement: March 24, 2008
- b. Owner: City of Fargo
- c. Engineer: Advanced Engineering and Environmental Engineering Services, Inc.
- d. Project: County Road 20 Lift Station (City Project #5725)

2. Nature of Amendment

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- Modifications to Services of Engineer
- Modifications to Responsibilities of Owner
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
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Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is September 8, 2008.

OWNER:

ENGINEER:

By: _____

By: Charles J. Vein

Title: _____

Title: PRESIDENT

Date Signed: _____

Date Signed: 9-3-08

This is Attachment 1 to EXHIBIT K, consisting of 3 pages, to Amendment No. 1, dated September 8, 2008.

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Geothermal Heating and Cooling System Design Services

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Amend 'Subtask 630 – Prepare and Review 90 Percent Design Documents' and 'Subtask 640 – Prepare 100 Percent Design Documents' to include:

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- b. Engineer shall design and prepare a site plan indicating the ground-loop system and geothermal well locations.
- c. Engineer shall design and prepare drawings and specifications for architectural, structural, mechanical, and electrical design elements of the geothermal heating and cooling system to be bid as an alternate to the conventional heating and cooling system.

Amend Paragraph A1.04.A.5.a of Appendix 1 to Exhibit A as follows:

Amend 'Subtask 710 – Bidding Services', 'Subtask 720 – Pre-bid Activities', and 'Subtask 730 – Bid Reviews and Construction Contract Preparation' to include:

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- a. Engineer shall compile, review, and evaluate bid results for the geothermal heating and cooling system alternate.
- b. Engineer shall provide a recommendation to Owner to accept or reject alternate bid item.

Amend Paragraph A1.05.A.18.a of Appendix 1 to Exhibit A as follows:

Amend 'Subtask Series 800 – Construction Administration Services' to include:

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- 2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:

No modifications per this Amendment No. 1

- 3. The responsibilities of Owner are modified as follows:

Amend Paragraph B2.01.Q of Exhibit B to include:

- 2. *Owner to provide Engineer a digital copy of existing RSVIEW control system programming for integration of new control system screens into existing HMI.*
- 3. *Owner to test interferences of existing RF antennas and determine proper placement of new omni-directional repeater antenna.*
- 4. *Owner to provide Engineer other existing control system information as deemed necessary.*

- 4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional compensation:

1. *Instrumentation and Control Phase – Control System Design and Programming Services.* For services of Engineer under paragraph A1.07.A.1 referenced above in Exhibit K – Amendment No. 1, a Lump Sum amount of \$83,800.

2. *Geothermal Design and Bidding Services.* For services of Engineer under paragraph A1.03.A.4.a of Appendix 1 to Exhibit A referenced above in Exhibit K – Amendment No. 1, a Lump Sum amount of \$65,800 based on the following assumed distribution of compensation:

a.	Final Design Phase	\$61,000
b.	Bidding and Negotiating Phase	\$ 2,400
c.	Construction Phase	\$ 2,400

Page 120 3. *Instrumentation and Control Phase – Field Support Services.* For services of Engineer under paragraph A1.07.A.2 referenced above in Exhibit K – Amendment No. 1, an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all Engineer services performed on the Project, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any. The total compensation under this paragraph is estimated to be \$15,000.

5. The schedule for rendering services is modified as follows:

No modifications per this Amendment No. 1

6. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

No modifications per this Amendment No. 1



REPORT OF ACTION

UTILITY COMMITTEE

Project No. NA Type: Shanley Recycling Drop-Site
 Location: Shanley High School
 Date of Hearing: 11/05/08

<u>Routing</u>	<u>Date</u>
City Commission	11/17/08
Project File	

Bruce Grubb, Enterprise Director, presented the attached memorandum and draft Lease Agreement with the Diocese of Fargo for a new recycling drop-site near Shanley High School. Also presented was a facility site plan and bid tabulation for constructing the drop-site. Solid Waste staff was contacted by representatives from the Fargo Catholic Schools Network requesting the City's development of a recycling drop-site at Shanley High School to assist them in the incorporation of recycling and resource conservation education into their school curriculum. The City has experienced significant growth in the area near Shanley High School and is in need of a drop-site for the collection of residential and commercial recyclables.

On a motion by Mike Williams, seconded by Kent Costin, the Utility Committee voted to approve the attached Lease Agreement with the Diocese of Fargo for a recycling drop-site and accept the low bid from Aggregate Industries in the amount of \$92,958 for construction of the drop-site. The 2008 Solid Waste budget contains adequate funding to pay for the construction of a new recycling drop-site near Shanley High School.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>Proxy</u>
Dennis Walaker, Mayor	X			
Mike Williams, City Commissioner	X			
Pat Zavoral, City Administrator				
Mark Bittner, City Engineer	X			
Kent Costin, Director of Finance	X			
Ron Hendricksen, Water Plant Supt.	X			
Peter Bilstad, Wastewater Plant Supt.	X			
Bruce Grubb, Enterprise Director	X			
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Manager	X			
James Hausauer, Wastewater Util. Manager	X			
Al Weigel, Public Works Operations Manger				

ATTEST:



 Bruce P. Grubb
 Enterprise Director

C: Commissioner Mahoney
 Commissioner Wimmer
 Commissioner Piepkorn



Fargo Water Treatment Plant
435 14th Avenue South
Fargo, North Dakota 58103
Phone (701) 241-1469
FAX (701) 241-8110

MEMORANDUM

October 27, 2008

To: Utility Committee

From: Bruce P. Grubb, Enterprise Director *BPG*

Re: Shanley Recycling Drop-Site

Attached, please find a draft Lease Agreement with the Diocese of Fargo for development and operation of a new recycling drop-site near Shanley High School. Also attached is a facility site plan and bid tabulation summary for completing the necessary grading, storm sewer and asphalt paving work.

Last spring, we were contacted by the Fargo Catholic Schools Network informing us of their intent to incorporate recycling and resource conservation into their school curriculums. As such, they inquired about the possibility of the City establishing a recycling drop-site near Shanley High School.

Over the past several years, the City of Fargo has experienced significant growth in residential dwellings to the south and southwest. As a result, there is a need to locate recycling drop-sites in these areas for the collection of recyclables and yard waste. Therefore, we have met with Diocese representatives and selected a site location at the southwest corner of Lot 2, Block 1, Sullivan Addition. In addition, we have completed a site design and solicited three informal quotes for the grading, storm sewer and asphalt paving work. The quotes were as follows:

Aggregate Industries	\$ 92,958
Northern Improvement	\$100,405
Border States Paving	\$104,100

The 2008 Recycling Budget contains \$123,828 for the construction of new recycling drop-sites.

Finally, we have worked with the City Attorney to prepare a draft Lease Agreement with the Diocese of Fargo. The draft is patterned after our existing Lease Agreements with the Fargo Public School District.

It is our recommendation that Solid Waste staff and the City Attorney be authorized to finalize the Lease Agreement with the Diocese of Fargo for formal approval by the City Commission. It is further recommended that the quote from Aggregate Industries in the amount of \$92,958 for construction of the drop-site be accepted as the lowest and best bid.

Your consideration in this matter is greatly appreciated.

LEASE AGREEMENT

This agreement, made and entered into this 1st day of _____ 2008, by and Between the City of Fargo, North Dakota, a municipal corporation (“City”); and Diocese of Fargo (including Fargo Catholic Schools Network) of Fargo, ND (“Owner”).

WITNESSETH:

WHEREAS, Owner has real property located in the City of Fargo; and

WHEREAS, City desires to rent a portion of Owner’s property for use as a depository and pick-up point for recycling containers; and

WHEREAS, the parties desire to enter into a lease agreement to define their respective rights, duties, and liabilities relating to said premises:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Owner hereby leases to City, the premises which are described as being in the southwest corner of Lot 2, Block 1, Sullivan Addition, and made a part hereof by reference.
2. The demised premises shall be used for the purpose of a depository and pick-up point for recycling. Equipment to be located on the demised premises shall consist of one or more receptacles (commonly known as “dumpsters”) or other devises for containment of recyclables therein by citizens of Fargo.
3. Rent for the demised premises shall be the sum of \$1,700 per year, per site, payable in advance.

4. The term of the lease shall be for one year commencing on the 1st day of _____, 2008 and ending on the 31st day of _____, 2009.
5. City covenants with Owner that it will pick up the recyclables from the demised premises periodically as needed.
6. City agrees to make improvements at the site as may be necessary to facilitate its use as a recycling pick-up point. Such improvements may include, but shall not be limited to, a fence, appropriate signs, an asphalt pad, a curb cut for access, and any other improvements which may be necessary to facilitate use of the site as a recycling pick-up point.
7. City agrees to make timely repairs on any damage to Owner's property which may result from City vehicles driving on Owner's property for utilization of the demised premises. City's obligation to repair shall be limited to actual damage resulting from operation of City Vehicles on Owner's property.
8. Upon expiration of the lease, or any renewal thereof, City agrees to restore the premises to essentially the same condition, normal wear and tear expected, as existed at the commencement of the lease.
9. City and Owner agree that (a) City will indemnify Owner and hold Owner harmless from any and all claims, demands or causes of action which may be brought against Owner as a result of the utilization of the leased premises by the City as a pick-up point for recyclables, (b) City will name Owner as "additional insured" on its public liability insurance policy, and provide evidence thereof, provided; however, that so long as the City is self-insured under an authorized self-insurance program, this requirement shall be deemed to be satisfied

and (c) that Owner does not waive any rights of recovery against City, either by itself or through its insurer(s), for damages that are covered by Owner's property or liability insurance coverages.

Dated the day and year first above written.

CITY OF FARGO

BY _____
Dennis R. Walaker, Mayor

Attest:

OWNER

Bid Item	Quantity	Contractor Border States Paving, Inc		Contractor Aggregate Industries		Contractor Northern Improvement Co.	
		Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1 Erosion/Sediment Control	1.00 LS	\$1,993.00	\$1,993.00	\$3,500.00	\$3,500.00	\$3,680.00	\$3,680.00
2 Remove Topsoil (Assume 1')(CV)	650.00 CY	\$21.30	\$13,845.00	\$8.00	\$5,200.00	\$4.60	\$2,990.00
3 Embankment (CV)	1,100.00 CY	\$26.50	\$29,150.00	\$14.00	\$15,400.00	\$18.75	\$20,625.00
4 Subgrade Prep	1,300.00 SY	\$2.30	\$2,990.00	\$3.50	\$4,550.00	\$2.10	\$2,730.00
5 8" Asphalt Pavement	520.00 Ton	\$69.00	\$35,880.00	\$85.00	\$44,200.00	\$92.90	\$48,308.00
6 Geotextile Fabric	1,200.00 SY	\$2.25	\$2,700.00	\$2.00	\$2,400.00	\$2.15	\$2,580.00
7 7" Concrete Pavement	72.00 SY	\$81.00	\$5,832.00	\$78.00	\$5,616.00	\$80.75	\$5,814.00
8 Storm Manhole 48 inch	2.00 EA	\$2,600.00	\$5,200.00	\$4,000.00	\$8,000.00	\$4,560.50	\$9,121.00
9 Storm Sewer 12 inch	93.00 LF	\$70.00	\$6,510.00	\$44.00	\$4,092.00	\$49.00	\$4,557.00
BID TOTAL			\$104,100.00		\$92,958.00		\$100,405.00

CV = Compacted Volume

5534

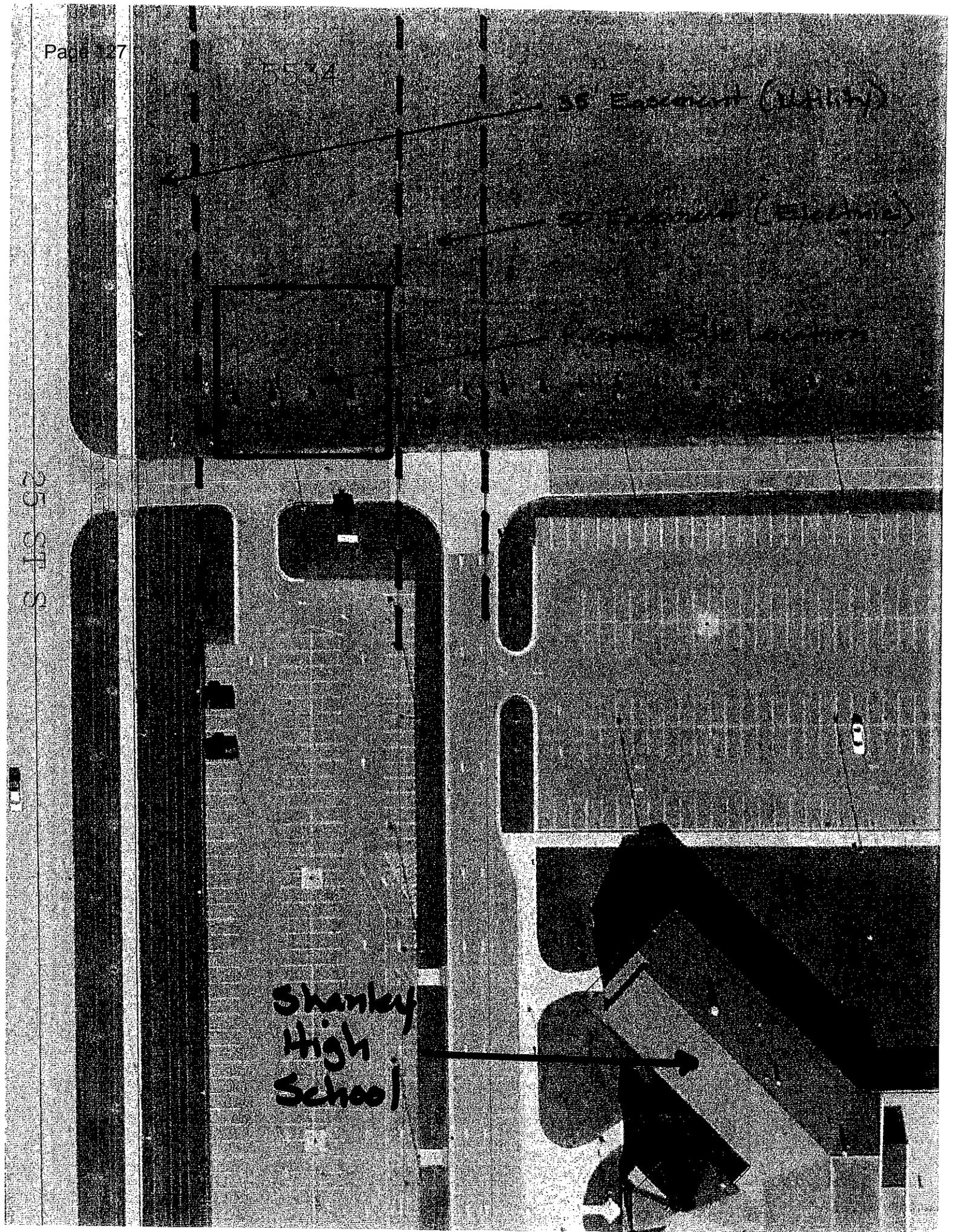
35 Equipment (Utility)

35 Equipment (Electric)

35 Equipment (Mechanical)

25 ST 2

Shanley High School



(u)

November 13, 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 attached agreement with Mr. Fred M. Hector, JR. regarding an agreement for storm sewer easement in which it is so desired for the installation of storm sewer utilities to aid in drainage from owner's property.

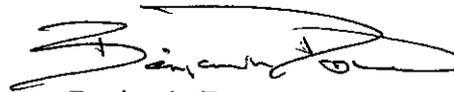
Agreement Regarding Storm Sewer Easement

RECOMMENDED MOTION:

Approve agreement regarding storm sewer easement with Mr. Fred M. Hector, JR. for property located along 42nd Street South.

Please return signed originals.

Respectfully submitted,



Benjamin Dow
Engineering Technician

BJD/jmg
Attachment

C: Mark Bittner
Cody Eilertson
Gary Stewart

AGREEMENT REGARDING STORM SEWER EASEMENT

THIS AGREEMENT, made and entered into this _____ day of November, 2008 by and between **FRED M. HECTOR, JR.**, whose address is 6816 University Drive South, Fargo, ND 58104-7322, hereinafter referred to as "Owner", and **THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREAS, Owner has land adjoining 42nd Street South and is presently utilizing said land for farming purposes;

WHEREAS, There is no outlet to drain the land immediately east of 42nd Street;

WHEREAS, City will install a storm sewer easement facility to provide drainage from Owner's land to the storm sewer located in 42nd Street thus providing such drainage;

WHEREAS, Owner is willing to grant an easement for this purpose; and

WHEREAS, The parties wish to commit their agreement to writing.

NOW THEREFORE, it is hereby agreed as follows:

1. Owner hereby grants a storm sewer easement (temporary) in a 500 square foot area comprising 0.011 acres, more or less and legally described as follows:

A parcel of land located in Section Thirty-four (34), Township One Hundred Thirty-nine (139) North, Range Forty-nine (49) West, City of Fargo, Cass County, North Dakota described as follows:

Commencing at the Northwest corner of the Southeast Quarter (SE¼) of said Section Thirty-four (34); thence N 88°05'22" E along the North line of said Southeast Quarter (SE¼), a distance of Sixty-eight and Eighty-six Hundredths Feet (68.86') to a point on the East right-of-way line of 42nd Street South, thence S 03°16'00" W along said East right-of-way line, a distance of One Hundred Thirty-nine and Fourteen Hundredths Feet (139.14') to the point of beginning; thence S 86°44'00" E, a distance of Twenty-five Feet (25.00'); thence S 03°16'00" W, a distance of Twenty Feet (20.00'); thence N 86°44'00" W, a distance of Twenty-five Feet (25.00') to a point on said East right-of-way line; thence N 03°16'00" E, a

distance of Twenty Feet (20.00') to the point of beginning. Said parcel contains 0.011 acres, more or less.

Said easement is pictorially represented on the attached Exhibit "A" which is incorporated herein by reference.

2. The parties recognize and agree that said storm sewer easement is temporary in nature and will expire when the property is platted and developed. The term of this agreement and temporary easement is thus indefinite.

3. This agreement is being executed in duplicate and each of the parties will have an original of the same.

4. The City will not be making any charge to Owner for installing the storm sewer outlet. Owner will not be charging City for the temporary easement for a storm sewer outlet.

DATED the day and year first above written.

OWNER:


FRED M. HECTOR, JR.

CITY OF FARGO, NORTH DAKOTA
a municipal corporation

By _____
Dennis R. Walaker, Mayor

ATTEST:

Steven Sprague, City Auditor

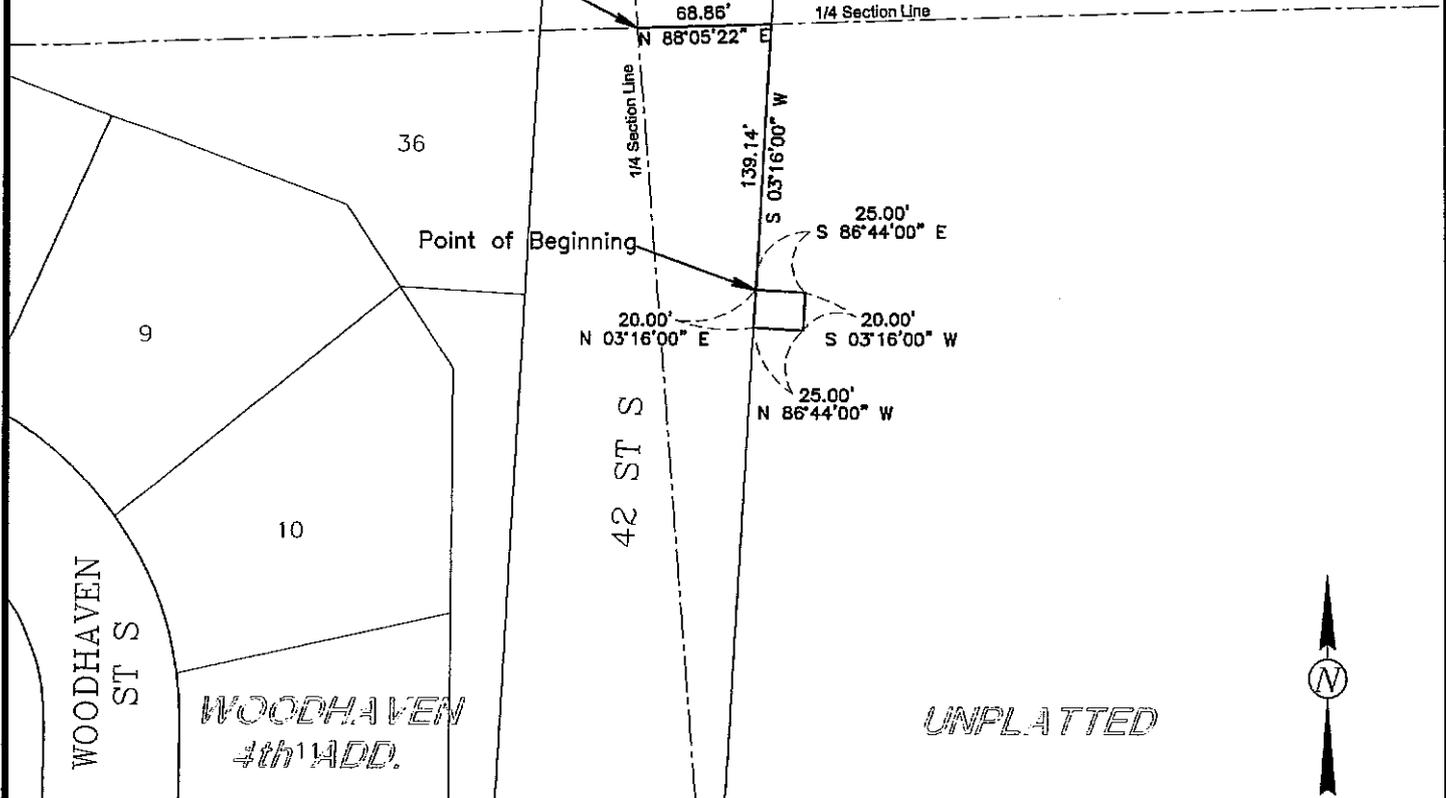
*SOUTHWEST
ELEMENTARY ADD.*

PRAIRIE TECH ADD.

3

1
1

Point of Commencement



Parcel No. 5314.9-1-StS

TYPE: Storm Sewer Easement
 AREA: 500 S.F. = 0.011 Acres
 OWNER: Fred M. Hector Jr.
 6816 University Dr. S.
 Fargo, ND 58104-7322

Parcel Description:

A parcel of land located in Section 34, Township 139 North, Range 49 West, City of Fargo, Cass County, North Dakota described as follows;

Commencing at the NW corner of the SE ¼ of said Section 34; thence N88 °05'22"E along the north line of said SE ¼, a distance of 68.86 feet to a point on the east right-of-way line of 42nd Street South, thence S03°16'00"W along said east right-of-way line, a distance of 139.14 feet to the point of beginning; thence S86°44'00"E, a distance of 25.00 feet; thence S03°16'00"W, a distance of 20.00 feet; thence N86°44'00"W, a distance of 25.00 feet to a point on said east right-of-way line; thence N03°16'00"E, a distance of 20.00 feet to the point of beginning.

Said parcel contains 0.011 acres, more or less.

Exhibit "A"



ENGINEERING DEPARTMENT

200 3rd Street North
Fargo, North Dakota 58102
Phone: (701) 241-1545
Fax: (701) 241-8101
E-Mail: feng@ci.fargo.nd.us

November 13, 2008

A handwritten letter 'U' enclosed in a hand-drawn circle.

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

Re: Land Use Permit (Public Bike Path)
Improvement District #5765

Dear Commissioners:

Accompanying for the City Commission review and approval is the attached Land Use Permit with Northern States Power Company (NSP) regarding area so desired for Public Bike Path use in associated with Improvement District #5765.

Land Use Permit (Public Bike Path)

RECOMMENDED MOTION:

Approve Land Use Permit with NSP for property located along 45th Street South.

Please return signed originals.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benjamin Dow".

Benjamin Dow
Engineering Technician

BJD/jmg
Attachment

C: Mark Bittner
Gary Stewart
Jeremy Gorden

LAND USE PERMIT

(Public Bike Path)

KNOW ALL BY THESE PRESENTS: That **NORTHERN STATES POWER COMPANY**, a Minnesota corporation, d/b/a Xcel Energy, hereinafter called "NSP", in consideration of the sum of One Thousand dollars (\$1,000.00) and the terms and covenants herein contained, and of other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, does hereby grant unto the **CITY OF FARGO, NORTH DAKOTA**, hereinafter called "Grantee", permission to use for a public bike path a portion (the "Permit Area") of real estate owned by NSP, known as the Sheyenne Substation (the "Property") and described as:

The north 715 feet of the west 810 feet of the Northwest Quarter of the Northwest Quarter of Section 27, Township 139 North, Range 49 West, Cass County, North Dakota.

The Permit Area shall be restricted to that area depicted and described on Exhibit A attached hereto.

Grantee shall keep the Permit Area cultivated or neatly mowed or trimmed, and shall observe the following restrictions:

- 1) No structure shall be built on the Property and no trees shall be planted thereon;
- 2) No temporary fixtures, portable equipment, or materials shall be placed on the Property which may tend to become an eyesore or create a nuisance;
- 3) No automobiles, trucks, or trailers shall be parked on the Property;
- 4) No use of the Property shall be made which tends to induce third persons to drive or trespass upon NSP's lands adjacent to said property, or which gives rise to bona fide objections to such use from other residents in the area.

Grantee agrees to assume all liability and to indemnify and compensate NSP for any injury or damage to persons or property including NSP's property or employees occasioned by or arising in connection with the use of the above Property by Grantee and Grantee further agrees to defend, indemnify and save harmless NSP against all actions, claims, damages or demands which may be brought or made either against NSP or against NSP's interest in the above described land by reason of anything done by Grantee, in the exercise of the rights and privileges herein granted.

This permit shall become effective on October 1, 2008, and shall continue until terminated. Either party may terminate this permit at anytime, with or without cause, by giving at least 30 days' prior notice in writing of such termination.

Upon the termination or revocation of this permit, Grantee shall restore or regrade the Permit Area to a condition satisfactory to NSP.

Grantee, in his use of the Permit Area, shall comply with all pertinent laws, codes, and ordinances.

Nothing herein contained shall be deemed to restrict in any way the continued use of the Property by NSP for the construction, operation, or maintenance of its electric transmission or distribution lines and appurtenant facilities located or to be located thereon, or with other uses of the land not inconsistent with the right herein granted.

Any implied or unwritten consent of NSP in any instance to any variation of the terms or conditions of this permit shall not be deemed a waiver as to any breach of covenant or condition herein contained, nor shall any waiver or modification be claimed as to any provision of this permit unless the same shall be endorsed hereon by NSP. Failure of NSP to insist upon the strict performance of the terms, covenants, agreements, and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of NSP's right to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

It is further expressly agreed that any use of the Property in violation of the terms of this permit shall not be asserted by Grantee to be adverse and hostile to NSP's rights in the property unless and until Grantee serves written notice upon NSP that it intends to thereafter use all or a portion of the Property in an adverse and hostile manner.

IN WITNESS WHEREOF, the said NSP has caused this instrument to be duly executed this 15th day of OCTOBER, 2008.

NORTHERN STATES POWER COMPANY

By 

Greg P. Chamberlain, Director
Portfolio Delivery & Integration
Xcel Energy Services Inc.
Authorized Agent for Northern States Power Company,
a Minnesota corporation, d/b/a XcelEnergy

GRANTEE:

CITY of FARGO, a body corporate and politic, under
the laws of the State of North Dakota

By: _____

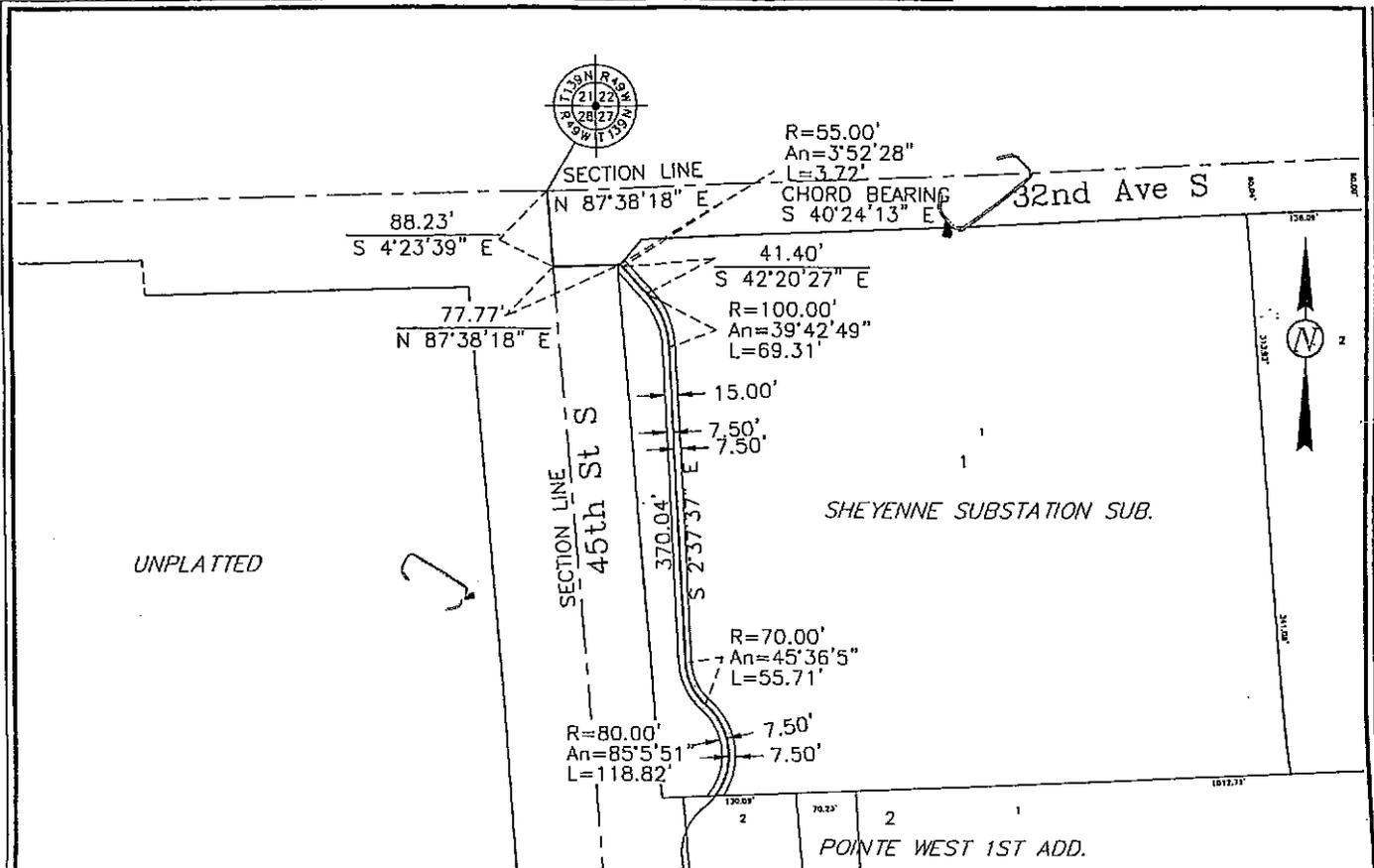
(Print Name)

Its: _____

This instrument drafted by: kab
Northern States Power Company
414 Nicollet Mall – MP8
Minneapolis, Minnesota 55401

2007.409

The Permit Area



Parcel No. 5765-BP-1

Type: Bike Path Use
 Area: 9877.415 S.F. = 0.227 Acres
 Owner: Xcel Energy
 Box 2747
 Fargo, ND 58108-2747

Properly Description:

A part of land located in the NW 1/4 of Section 27, Township 139 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota, described as being a strip of land 15' wide, 7.5' on either side of the following described center line;

Commencing at the northwest corner of said Section 27; thence southeasterly along the west line of said Section 27, at an assumed bearing of S 4°23'39" E, a distance of 88.23'; thence easterly and parallel to the north section line of said Section 27, at an assumed bearing of N 87°38'18" E, a distance of 77.77' to the true point of beginning; thence southeasterly a distance of 3.72', along the arc of a non-tangential curve, concave to the northeast, having a radius of 55.00', a central angle of 3°52'28", a chord length of 3.72', and a chord bearing of S 40°24'13" E; thence S 42°20'27" E, a distance of 41.40'; thence southeasterly a distance of 69.31', along the arc of a tangential curve, concave to the southwest, having a radius of 100.00', and a central angle of 39°42'49"; thence S 2°37'37" E, a distance of 370.04'; thence southeasterly a distance of 55.71', along the arc of a tangential curve, concave to the northeast, having a radius of 70.00', and a central angle of 45°36'05"; thence southwesterly a distance of 118.82', along the arc of a tangential curve, concave to the west, having a radius of 80.00', and a central angle of 85°05'51" to a point along the north line of Lot 2, Block 2 of Pointe West 1st Addition, there terminating.

Said tract contains 0.227 acres, more or less.

November 13, 2008

W

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

Re: Purchase of Permanent Right-of-Way, Utility and Temporary Construction Easement
Parcel No. 5314.1-9-UTIL, 5314.1-22A-R/W, 5314.1-22B-R/W, 5314.1-22C-R/W,
5314.1-25-R/W, 5314.1-62-TEMP
Improvement District #5314.1

Dear Commissioners:

Enclosed and delivered to the Commission office is a single original Purchase Agreement document with Prairie Grove, Inc. for permanent Right-of-Way, Utility and Temporary Construction Easement to the City of Fargo in association with the reconstruction of 52nd Avenue South (SID #5314.1). All land acquisition procedures have been followed and the City Engineer's office recommends said purchase.

RECOMMENDED MOTION:

I/we hereby move to approve and authorize purchase of permanent Right-of-Way, Utility and Temporary Construction Easement to the City of Fargo in association with the reconstruction of 52nd Avenue South.

Please return the signed original.

Respectfully submitted,



Benjamin Dow
Engineering Technician

BJD/jmg
Enclosure

C: Mark Bittner
Gary Stewart

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 31st day of October, 2008, by and between, **PRAIRIE GROVE, INC.**, hereinafter "Seller" and **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter "Buyer".

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota, hereinafter "Property," described as indicated on the attached Exhibit "A"; and

WHEREAS, Buyer is compensating Seller for a Permanent Rights of Way and Utilities Easements and Temporary Construction Easement and certain other factors constituting other damage to the subject property in lieu of taking such interest under the power of eminent domain, which buyer was prepared to invoke; and

WHEREAS, Buyer desires to purchase the said property interests and pay Seller under the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. **Subject Matter.** The subject matter of this agreement is the subject real estate interests hereinbefore described as well as other items of damage not directly related to land value discussed herewith.
2. **Purchase Price.** The purchase price will be One Hundred Ninety-six Thousand Five Hundred Seventeen and no/100 Dollars (\$196,517.00).
3. **Payment and Purchase Price.** The entire purchase price shall be payable in cash at closing.
4. **Abstract and Title Assurance.** By execution of this purchase agreement, Seller warrants that it has good title of record to the above real estate and thus has the power to grant easements in the same, subject to easements, reservations, restrictions and other encumbrances of record. Upon request of Buyer, Seller shall furnish Buyer with an updated abstract of title to the subject property evidencing marketable title in Seller. In the event City requests such abstract for examination, City shall return the abstract of title to Seller after the same is accomplished.
5. **Closing Date and Transfer of Possession.** Closing of this transaction shall take place as soon as possible. Possession of the property shall be on or about the date of closing.
6. **Liens and Encumbrances.** The property shall be conveyed to Buyer free and clear of all

liens and encumbrances except special assessments, and subject, however, to all easements, reservations, restrictions and other encumbrances of record, if any.

7. Title. Buyer wishes to take title as follows:

The City of Fargo, North Dakota
a municipal corporation

The Buyer shall prepare the necessary easements (permanent and temporary) to transfer said property interests to the City of Fargo, North Dakota, a municipal corporation. Conveyance of the subject property shall be by said easements in the usual form used in North Dakota. The Buyer will arrange preparation of the said easements, and pay the cost of recording the same.

8. Closing Costs. It is understood and agreed that as part of this purchase, each of the parties shall pay its own attorneys fees and all other closing costs (except those listed in this agreement).

9. Property Purchased "AS IS". The Buyer represents to the Seller that the property has been inspected by Buyer and that Buyer has been assured by means independent of the Seller or any agent of the Seller of the truth of all facts material to this contract and that the property as it is described in this contract is and has been purchased by the Buyer as a result of such inspection or investigation and not by or through any representations made by the Seller or by an agent of the Seller, except as expressly provided herein to the contrary. The Buyer acknowledges that it is accepting the property in an "AS-IS", "WHERE-IS" and "WITH-ALL-FAULTS-AND-VIRTUES" condition, without representation or warranty by Seller of any nature whatsoever, express or implied. The Buyer hereby expressly waives any and all claims for damages or for rescission or cancellation of this contract because of any representations by the Seller or any agent of the Seller other than such representation as may be contained in this contract. The Buyer further agrees that the Seller and any and all agents of the Seller shall not be liable for or on account of any inducements, promises, representations, or agreements not contained in this contract and no agent or employee of the Seller is or has been authorized by the Seller to make any representations with respect to the property and that if any such representations have been made, they are wholly unauthorized and not binding on the Seller.

DATED the day and year as set forth above.

SELLER:

PRAIRIE GROVE, INC.

By: _____

Its: _____

BUYER:

THE CITY OF FARGO, NORTH DAKOTA,
a municipal corporation

By: _____

Dennis R. Walaker, Mayor

ATTEST:

Steven Sprague, City Auditor

Exhibit "A"

Permanent Easements

Parcel No. 5314.1-9-UTIL

A tract of land in the Northeast Quarter (NE¼) of Section Two (2), Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West of the Fifth Principal Meridian, Cass County, North Dakota more particularly described as follows:

Commencing at the Northeast corner of said Section Two (2); thence Westerly along the Northerly line of said Section Two (2) on an assumed bearing of S 88°02'47" W, a distance of Two Thousand Seventy-eight and Sixty-three Hundredths Feet (2278.63'); thence at a right angle to the left a distance of Forty Feet (40.00') to a point on the Southerly right-of-way line of 52nd Ave S to the City of Fargo, the point of beginning; thence S 84°48'43" E, a distance of Six Hundred Two and Ninety-four Hundredths Feet (602.94'); thence S 70°03'17" E, a distance of One Hundred Seventeen and Seventy-one Hundredths Feet (117.71') more or less to a point on the Westerly boundary of Prairie Grove First Addition to the City of Fargo as recorded in Document No. 1217089, Book W1, Page 81 at the Cass County Recorder's office; thence Northerly along said Westerly boundary a distance of Twenty-five Feet (25.00'); thence N 70°03'17" W, a distance of One Hundred Twenty and Ninety-four Hundredths Feet (120.94'); thence N 84°48'43" W, a distance of Four Hundred Six and Sixty-four Hundredths Feet (406.64') more or less to a point on the Southerly right-of-way line of said 52nd Ave S; thence Westerly along said Southerly right-of-way line to the point of beginning. Basis of bearings is the City of Fargo GIS. Said tract contains 0.36 acres, more or less.

Parcel No. 5314.1-22A-R/W

A tract of unplatted land located in the Northeast Quarter (NE¼) of Section Two (2), Township One Hundred Thirty-eight (138), Range Forty-nine (49), City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the Northeast corner of said Northeast Quarter (NE¼); thence Westerly along the North line of said Northeast Quarter (NE¼), a distance of One Thousand One Hundred Nineteen and Thirty-four Hundredths Feet (1119.34'); thence Southerly along a line perpendicular to the North line of said Northeast Quarter (NE¼), a distance of Forty Feet (40.00') to a point on the South right-of-way line of 52nd Ave SW, that point being the point of beginning; thence Westerly along said right-of-way line, a distance of One Hundred Twenty-six and Fifteen Hundredths Feet (126.15'); thence Southerly along a line perpendicular to said right-of-way line, a distance of Sixty Feet (60.00'); thence Easterly along a line parallel to, and One Hundred Feet (100.00') South of the North line of said Northeast Quarter (NE¼), a distance of One Hundred Twenty-five and Five Hundredths Feet (125.05') to a point on the underlying parcel line; thence Northerly along said parcel line, a distance of Sixty and One Hundredth Feet (60.01') to the point of beginning.

Parcel 5314.1-22B-R/W

A trace of unplatted land located in the Northeast Quarter (NE¼) of Section Two (2), Township One Hundred Thirty-eight (138), Range Forty-nine (49), City of Fargo, Cass County, North Dakota, described as follows:

Commencing at the Northwest corner of said Northeast Quarter (NE¼); thence on an assumed bearing of N 88°02'47" E along the North line of said Northeast Quarter (NE¼), a distance of One Thousand One Hundred Twenty-one and Thirty-two Hundredths Feet (1121.32'); thence S 01°57'13" E, a distance of Forty Feet (40.00') to a point on the South right-of-way line of 52nd Ave SW, that point being the point of beginning; thence S 19°54'51" W, a distance of One Hundred Three and Eight Hundredths Feet (103.08'); thence N 70°03'17" W, a distance of One Hundred Twenty and Ninety-four Hundredths Feet (120.94'); thence N 84°48'43" W, a distance of Four Hundred Six and Sixty-four Hundredths Feet (406.64') to a point on the South right-of-way line of 52nd Ave SW; thence N 88°02'47" E, along said South right-of-way line, a distance of Five Hundred Fifty-four and Ten Hundredths Feet (554.10') to the point of beginning. Said tract contains 0.465 acres, more or less.

Parcel No. 5314.1-22C-R/W

The South Two Hundred Sixty Feet (260.00') of the North Three Hundred Feet (300.00') of the West Two Hundred Ninety Feet (290.00') of the Northeast Quarter (NE¼) of Section Two (2), Township One Hundred Thirty-eight (138), Range Forty-nine (49), City of Fargo, Cass County, North Dakota. All measurements being perpendicular to the North and West lines of said Northeast Quarter (NE¼). Said tract contains 1.73 acres, more or less.

PARCEL No. 5314.1-25-R/W

A tract of land located in the Northeast Quarter (NE¼) of Section Two (2), Township One Hundred Thirty-eight (138), Range Forty-nine (49), City of Fargo, Cass County, North Dakota described as follows:

Commencing at the Northeast corner of Said Northeast Quarter (NE¼); thence S 00°53'49" E, along the East line of said Northeast Quarter (NE¼), a distance of Five Hundred Seventeen and Fifty-one Hundredths Feet (517.51'); thence S 88°04'05" W, along a line parallel to the North line of said Northeast Quarter (NE¼), a distance of Sixty and One Hundredths Feet (60.01') to a point on the West right-of-way line of 25th St S, that point being the point of beginning (P.O.B.); thence Southerly along said right-of-way line, a distance of One Hundred Sixty-eight and Thirty-seven Hundredths Feet (168.37'); thence S 88°04'05" W, a distance of Seven Hundred Ninety-four and Seventy-seven Feet (794.77'); thence Westerly a distance of Eighty-two and Ninety-two Hundredths Feet (82.92'), along a tangential curve concave to the North, having a central angle of 11°10'52", and a radius of Four Hundred Twenty-four and Ninety-two Hundredths Feet (424.92'); thence N 80°45'03" W, a distance of Seventy and Twenty-three Hundredths Feet (70.23'); thence Northerly a

distance of One Hundred Thirteen and Eleven Hundredths Feet (113.11') along the arc of a non-tangential curve concave to the West, having a chord bearing of N 06°10'7" E, a chord length of One Hundred Twelve and Seventy-three Hundredths Feet (112.73'), a central angle of 16°12'05", and a radius of Four Hundred Feet (400.00'); thence N 01°55'55" W, a distance of Thirty-four and Seventy Hundredths Feet (34.70') to a point on the underlying parcel line; thence Easterly along a line parallel to the North line of said Northeast Quarter (NE¼), a distance of Seventy Feet (70.00'); thence S 01°55'55" E, a distance of Thirty-four and Seventy-three Hundredths Feet (34.73'); thence Southerly a distance of Fifty-six and Sixty-nine Hundredths Feet (56.69') along the arc of a tangential curve concave to the West having a central angle of 06°54'39", and a radius of Four Hundred Seventy Feet (470.00'); thence Easterly a distance of Sixty-nine and Twenty-six Hundredths Feet (69.26') along the arc of a non-tangential curve concave to the North, having a chord bearing of S 86°20'26" E, a chord length of Sixty-nine and Fifteen Hundredths Feet (69.15'), a central angle of 11°10'53", and a radius of Three Hundred Fifty-four and Ninety-two Hundredths Feet (354.92'); thence N 88°04'05" E, a distance of Seven Hundred Eighty-one and Three Hundredths Feet (781.03'); thence Northerly and parallel to the East line of said Northeast Quarter (NE¼), a distance of Ninety-eight and Thirty-six Hundredths Feet (98.36'); thence Easterly along a line parallel to the North line of said Northeast Quarter (NE¼), a distance of Fifteen Feet (15.00') to the point of beginning.

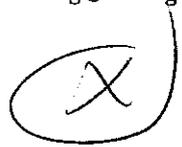
Temporary Construction Easement

Parcel No. 5314.1-62-TEMP

A tract of land in the Northeast Quarter (NE¼), Section Two (2), Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West of the Fifth Principal Meridian, Cass County, North Dakota more particularly described as follows:

Commencing at the Northeast corner of said Section Two (2); thence Westerly along the Northerly line of said Section Two (2) a distance of Two Thousand Two Hundred Seventy-eight and Sixty-three Hundredths Feet (2278.63'); thence at a right angle to the left a distance of Forty Feet (40.00') to a point on the Southerly right-of-way line of 52nd Ave S to the City of Fargo, the point of beginning; thence S 84°48'43" E, a distance of Six Hundred Two and Ninety-four Hundredths Feet (602.94'); thence S 70°03'17" E, a distance of One Hundred Seventeen and Seventy-one Hundredths Feet (117.71'), more or less to a point on the Westerly boundary of Prairie Grove First Addition to the City of Fargo as recorded in Document No. 1217089, Book W1, Page 81 at the Cass County Recorder's office; thence Southerly along said Westerly boundary a distance of Fifteen Feet (15.00'); thence N 70°03'17" W, a distance of One Hundred Fifteen and Seventy-eight Hundredths Feet (115.78'); thence N 84°48'43" W, a distance of Six Hundred Seventy-six and Twenty-six Hundredths Feet (676.26'); thence N 01°26'21" W, a distance of Five Feet and Fifty-three Hundredths Feet (5.53'), more or less to a point on the Southerly right-of-way line of said 52nd Ave S; thence Easterly along said Southerly right-of-way line to the point of beginning. Basis of bearings is the City of Fargo GIS. Said tract contains 0.27 acres, more or less.

November 13, 2008



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

**Re: Prairie Grove Addition
Encroachment Agreement**

Dear Commissioners:

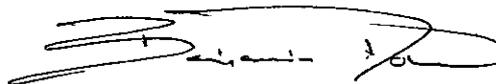
Enclosed please find the attached Encroachment Agreement with Prairie Grove, Inc. for use of City property to construct private facilities to include a street median with landscaping and entry sign on Prairie Grove Avenue South at 25th Street.

RECOMMENDED MOTION:

I/we hereby move to approve and authorize the execution of an Encroachment Agreement, furthermore granting construction of private facilities on public rights-of-way.

Please return the signed original.

Respectfully submitted,



Benjamin Dow
Engineering Technician

BJD/jmg
Enclosure

C: Mark Bittner
Gary Stewart

ENCROACHMENT AGREEMENT

THIS AGREEMENT, Made and entered into this 31st day of October, 2008, by and between **PRAIRIE GROVE, INC.**, hereinafter referred to as "Owner", and **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREAS, Owner desires to encroach on City property for a street median with landscaping and entry sign on Prairie Grove Avenue South at 25th Street;

WHEREAS, Owner has requested to encroach on that portion of the City right of way described above and as shown in Exhibit "A" thus allowing it to utilize City right of way for such purpose;

WHEREAS, the Board of City Commissioners of the City of Fargo has approved such encroachment; and

WHEREAS, Owner has agreed to execute the usual type of agreement required by City to construct private facilities on public rights-of-way;

WHEREAS, Owner agrees to finance median construction, including over width street costs and be responsible for all maintenance associated with median and signs and plantings located in the median.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

Owner, its successors and assigns, is hereby granted the right to encroach and use a portion of the rights-of-way of the above-mentioned avenue, said encroachment being for the purpose of displaying a monument sign.

Said encroachment is more particularly described and indicated on the attached Exhibit "A"

which exhibit is attached hereto and incorporated herein by reference.

1. Owner, its successors and assigns, will, during any occupation of the monument sign located on public right-of-way, use due care to protect city streets, utilities and all other public property; and after such occupation of said signs, Owner will restore and replace all public property to its condition prior to the commencement of such use of the public premises.

2. Owner, its successors and assigns, will also be financing the median construction, including over-width street costs and shall be responsible for all maintenance associated with the median and signs and plantings located in the median.

3. It is understood and agreed by and between the parties that Owner, its successors and assigns, will be responsible for the repair or replacement of any public property which may be damaged or destroyed as a direct or indirect result of the use of the public rights-of-way for location of its monument sign.

4. Owner, its successors and assigns, agrees to further hold the City harmless against any and all expenses, demands, claims or losses of any kind that may be sustained by City, its officers, agents and employees by reason of placement of said sign within public right-of-way.

5. Owner agrees to provide to City a certificate of insurance indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

6. This agreement shall be binding upon the successors and assigns of the parties.

7. It is specifically understood and agreed that upon the giving of thirty (30) days' notice, the City may require the party given permission to encroach to remove its property, thus allowing the City to re-take and to use the public rights-of-way, said notice to be given at any time in the City's discretion, but in such case Owner shall have no requirement to restore any portion of the encroached area.

8. It is understood and agreed by and between the parties that this agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.

IN WITNESS WHEREOF, the parties to this agreement have set their hands on the day and year first above written.

PRAIRIE GROVE, INC.
By: [Signature]
Its: President

THE CITY OF FARGO, NORTH DAKOTA,
a municipal corporation

By _____
Dennis R. Walaker, Mayor

ATTEST:

Steven Sprague, City Auditor

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

On this 31st day of October, 2008, before me, a notary public in and for said county and state, personally appeared Olaf Rommang, Jr., to me known to be the President of PRAIRIE GROVE, INC., to me known to be the person described in and who executed the within and foregoing instrument, and acknowledged to me that he executed the same.

[Signature]

Notary Public

DANIEL A BUEIDE
Notary Public
State of North Dakota
My Commission Expires Sept. 16, 2010

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

On this ____ day of _____, 2008, before me, a notary public in and for said county and state, personally appears DENNIS R. WALAKER, and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public

The legal description was prepared by:

Mark Bittner, City Engineer
City of Fargo
200 North Third Street
Fargo, ND 58102

Document prepared by:

Garylle B. Stewart (ND #02869)
Solberg, Stewart, Miller & Tjon, Ltd.
P.O. Box 1897
Fargo ND 58107-1897
(701) 237-3166

F:\US\GBS\CITY\Engineer (112)\S2nd Ave S - 481\Prairie Grove (481.016)\Encroachment Agreement.doc

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COVER SHEET
CITY OF FARGO PROJECTS

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Project as it will appear in the Contract:

Sanitary Collection System Improvements

Project No. 5726

Call For Bids	<u>November 17,</u>	<u>2008</u>
Advertise Dates	<u>November 24, December 1 and 8,</u>	<u>2008</u>
Bid Opening Date	<u>December 17</u>	<u>2008</u>
Completion Date	<u>July 15</u>	<u>2010</u>

N/A PWPEC Report (Attach Copy) **Part of 2008 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

 Notice to Property Owners (Dan Eberhardt)

Project Engineer Brenda Derrig

Phone No. 241-1549

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

N/A Create District (Attach Copy of Legal Description)

N/A Order Plans & Specifications

N/A Approve Plans & Specifications

N/A Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

N/A Assessment Map (Attach Copy for Auditor's Office Only)

Get the job done right

3350 38th Avenue S.
Fargo, ND 58104-7079
PO Box 9615 / 58106-9615
Phone: 701.237.3211
Fax: 701.237.3191

ENGINEER'S REPORT
FARGO SANITARY COLLECTION SYSTEM IMPROVEMENTS
CITY OF FARGO PROJECT NO. 5726

Nature & Scope

This project consists of three (3) parts: Anderson Lift Station, Lift Station No. 25, and 30" Forcemain.

Anderson Lift Station

The Anderson Lift Station will be a dry-pit submersible lift station capable of handling up to 33 million gallons per day (MGD) of sewage. It will also contain chemical feed for odor control in the existing West Side Interceptor and provisions for future chemical feed for odor control in the 45th Street Corridor Interceptor. Atmospheric odor control provisions will be installed at the station as well as emergency stand-by power capabilities.

Lift Station No. 25

The existing Lift Station No. 25 will be upgraded to handle up to 18 MGD of sewage. The existing station will be gutted and the existing building will be razed. A new building will be constructed and new pumps and piping will be installed. A channel grinder will be installed to alleviate problems associated with the existing pumps plugging with rags and other materials. Atmospheric odor control provisions will be installed at the station as well as a new curtain wall around the existing stand-by generator.

30" Forcemain

To handle the increased flow from the upgraded Lift Station No. 25, a new 30" forcemain will be installed. This forcemain will convey sewage from Lift Station No. 25 to the new Anderson Lift Station.

Purpose

This project is a part of the 45th Street Corridor Interceptor System as outlined in the facility plan dated October of 2007. This system will allow for continued growth in the southern portion of the City and alleviate system deficiencies of the current West Side Interceptor.

Get the job done right

3350 38th Avenue S.
Fargo, ND 58104-7079
PO Box 9615 / 58106-9615
Phone: 701.237.3211
Fax: 701.237.3191

Feasibility

See attached Engineer's Option of Costs.

Based on the costs provided, we believe this project to be cost effective.



Thomas J. Welle, PE
Project Manager

Get the job done right

3350 38th Avenue S.
 Fargo, ND 58104-7079
 PO Box 9615 / 58106-9615
 Phone: 701.237.3211
 Fax: 701.237.3191

ENGINEER'S OPINION OF COSTS

Fargo Sanitary Collection System Improvements
 City of Fargo Project No. 5726

Total Costs		
Total Construction:		\$11,650,000.00
City Engineering & Administration:	10%	\$1,165,000.00
Legal, Advertising, Miscellaneous:	7%	\$815,000.00
Contingencies:	10%	\$1,165,000.00
Interest:	8%	\$932,000.00
Estimated Outside Engineering:		\$770,525.00
Total Estimated Cost:		\$16,497,525.00

Less Sewer Utility Funding		
Total Construction:		\$11,650,000.00
City Engineering & Administration:	10%	\$1,165,000.00
Legal, Advertising, Miscellaneous:	7%	\$815,000.00
Contingencies:	10%	\$1,165,000.00
Interest:	8%	\$932,000.00
Estimated Outside Engineering:		\$770,525.00
Total Estimated Cost:		\$16,497,525.00



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CITY OF FARGO
LOCATION & COMPRISING
FARGO SANITARY COLLECTION SYSTEM IMPROVEMENTS
CITY OF FARGO PROJECT NO. 5726

LOCATION:

Anderson Lift Station

The South half of the East 255 feet of Lot 2, Block 2 of Calico Addition to the City of Fargo. Said parcel is located near the intersection of 31st Avenue South and 43rd Street.

Lift Station No. 25

An area on the North side of 32nd Avenue south between 33rd Street and 36th Street. Said area includes existing street right-of-way and existing and new easements.

30" Forcemain

The forcemain improvement is broken into two (2) segments:

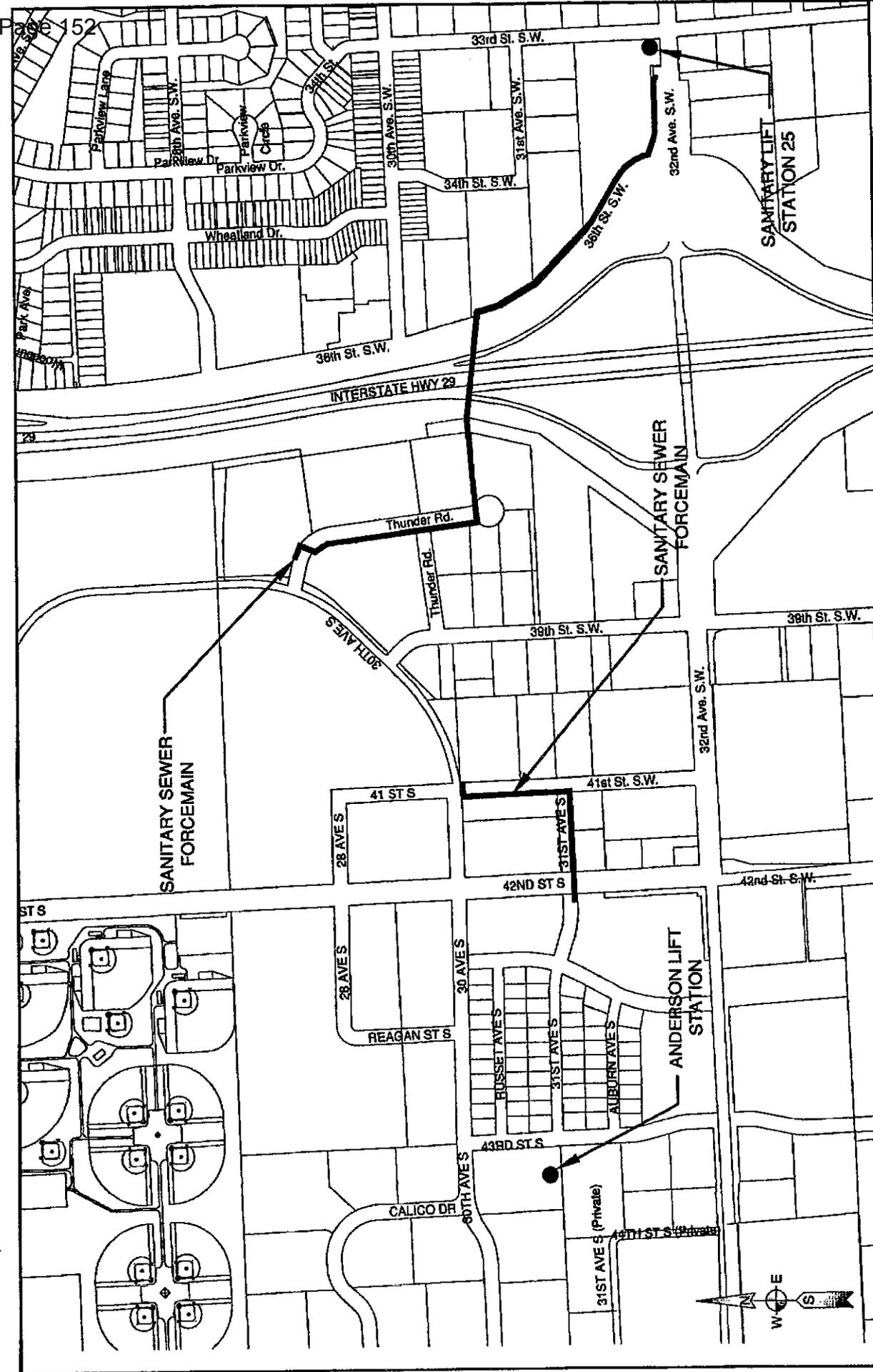
The first segment of forcemain will exit Lift Station No. 25 and travel along the north side of 36th Street to the Northwest corner of Lot 4, Block 1, of Virgil Montplaisier Second Addition. It will then proceed West a point in the northeast corner of Lot 5, Block 1 of Adams 5th Addition. It will then proceed North along the west side of Thunder Road South and cross it near the intersection of 30th Avenue South.

The second segment of forcemain begins at the intersection of 30th Avenue South and 41st Street. It then proceeds south to 31st Avenue South. From there, it follows 31st Avenue South to the West side of 42nd Street, where it meets with the existing forcemain installed this year.

COMPRISING:

All improvements will be located within City-owned property or easements obtained by the City of Fargo.

The areas detailed above are located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO
SANITARY COLLECTION
SYSTEM IMPROVEMENTS
CITY OF FARGO #5726
FARGO, NORTH DAKOTA

Bismarck - Denver - Detroit Lakes - Fargo - Minneapolis - Sioux Falls
 3350 38th Avenue South
 Fargo, North Dakota 58104
 Phone: 701.280.8500 Fax: 701.280.8739
 Web: www.ulteig.com
 Drawn By: SLW
 Checked By: TJP
 Approved By: TJP



Project Number: 07.1992Z
 Date: AUGUST 13, 2002
 Sheets: 1 of 1

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