

FARGO CITY COMMISSION AGENDA

Monday, June 1, 2009 - 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, May 18, 2009).

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

- a. 2nd reading, waive reading and final adoption of an Ordinance Relating to the Electrical Code; 1st reading, 5/18/09.
- b. Waive the requirement to receive and file an Ordinance one week prior to first reading and first reading of an Ordinance Annexing a Certain Parcel of Land Lying in the North Half of the East Half of the Northwest Quarter of Section 13, T138N, R49W.
- c. Revenue Stabilization Fund Balance policy.
- d. Position Evaluation Committee recommendations.
- e. Report from John M. Olson regarding legislative lobbying services during the 2009 Legislative Session.
- f. Contract with the North Dakota Department of Health for the Public Health Emergency Preparedness and Response for pandemic influenza planning.
- g. Application filed by Michael and Jacey Mueller for a 3-year exemption from taxation for improvements made to a building at 95 28th Avenue North.
- h. Sale of NRI property at 812 8th Street North for \$64,500.
- i. Franchise provision and lease document with PM Coffee, LLC for provision of a coffee kiosk in the Main Library.
- j. Site Authorizations for Games of Chance:
 - (1) West Fargo Hockey Association at Old Chicago and Fort Noks.
 - (2) Gilbert C. Grafton Post #2 American Legion at the American Legion Club.
 - (3) Boys & Girls Club of the Red River Valley d/b/a Fargo Youth Commission at Borrowed Bucks Roadhouse, Mr. G's and Slammers Sports Bar.
 - (4) The ARC Upper Valley, Inc. at JT Cigarros.
- k. Applications for Games of Chance:
 - (1) El Zagal Provost Guard for a sports pool from 9/13/09 through 1/3/10.
 - (2) Fargo Firefighters Local 642 for raffles from 6/2/09 through 7/24/09.

Page 2 Quote from with Northern Improvement Company in the amount of \$82,530.75 for construction of the Shanley recycling drop site.

- m. Access Agreements and \$200 payments for properties at 1101 32nd Avenue South, 3000 11th Street South and 912 Southwood Drive (Improvement District No. 5031-02).
- n. Contract award to Laney's, Inc. for 2009 Flood Storm Sewer Cleaning (Project No. 5892).
- o. Contract awards for 2009 flood projects (Project Nos. 5893, 5894 and 5895).
- p. Bid awards for Project Nos. 5838-01, 5867 and 5872-01.
- q. Contract and bond for Project No. 5870.
- r. Bills.
- s. Final Balancing Change Order No. 2 for Improvement District No. 5314-10.
- t. Final Balancing Change Order No. 1 for Improvement District No. 5762.
- u. Contract Amendment with URS in the amount of \$89,950 for SSFC Improvement District No. 5073-7.
- v. Contract No. 10 in the amount of \$358,990 for SSFC Improvement District No. 5073.
- w. Bid award for Improvement District No. 5838.
- x. Contract and bond for Improvement District No. 5525.

* * * Regular Agenda * * *

- 1. Presentation regarding the 2010 Census.
- 2. Recommendation for appointments to the Library Board.
- 3. Recommendation for appointment to the Civil Service Commission.
- 4. Public Hearings - 5:15 p.m.:
 - a. Application filed by Drunken Noodle, LLC d/b/a Drunken Noodle for a Class "GH" Alcoholic Beverage License at 623 NP Avenue North.
 - b. Application filed by Kobe's Japanese Cuisine Corporation d/b/a Kobe's Japanese Cuisine for a Class "F" Alcoholic Beverage License at 4228 15th Avenue South (business structure change).
 - c. Petition requesting a zoning change from SR-2, SR-3, Single Dwelling; MR-2, MR-3, Multi-Dwelling; LC, Limited Commercial; L1, Limited Industrial and P/I Public Institutional to UMU, University Mixed Use and P/I, Public Institutional on a portion of the north half of Section 1, T139N, R49W (South of 12th Ave. N., north and east of the Great Northern and Burlington Northern Railroad Right-of-ways and west of Barrett Street North excluding 1425 11th Ave. N. and 1414, 1424-1426, 1430 and 1510 12th Ave. N.).
 - (1) Approval recommended by the Planning Commission on 5/13/09.

- Page 3
- d. Amendment to the 2008 Action Plan for Housing and Community Development for CDBG-R funding from the 2009 American Recovery and Reinvestment Act.
 5. Communication from the Planning Office regarding the moratorium placed on LED signs.
 6. Flood issues:
 - a. Cleanup.
 - b. Restoration.

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

9

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 23-0203 AND 23-0211 OF
ARTICLE 23-02 OF CHAPTER 23
OF THE FARGO MUNICIPAL CODE RELATING TO
THE ELECTRICAL CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 23-0203 of Article 23-02 of Chapter 23 of the Fargo Municipal Code is hereby amended to read as follows:

~~23-0203. Fee required before permit granted~~ Permit Required. ~~Before any permit is granted for the constructing, extending, or altering of an electrical installation, the master electrician making an application shall pay to the city a fee in such amounts as specified in article 3 of this chapter.~~

—A permit shall be required for all electrical work as defined in this chapter (whether done by the property owner or otherwise) except for minor repairs, and except as follows:

A. Work of public utilities engaged in the manufacture and distribution of electrical energy when such work pertains directly to the manufacture and distribution of electrical energy.

B. Work of public utilities engaged in telephone, telegraph, and radio communication service when said work pertains directly to such service.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Amendment.

Section 23-0211 of Article 23-02 of Chapter 23 of the Fargo Municipal Code is hereby amended to read as follows:

23-0211. Installations must conform to certain regulations before certificate issued.--No certificate of approval shall be issued for electric light, power, and heating installations unless such installations are in strict conformity with the provisions of this chapter, the statutes of the state of North Dakota, the North Dakota State Wiring Standards, the rules and regulations issued by the board of city commissioners of the city of Fargo, under authority of the state statutes, and unless they are in conformity with approved methods of construction for safety to life and property. The regulations as laid down in the 2008~~2~~ edition of the National Electrical Code as currently adopted by the State of North Dakota, as approved by the American Standards Association and in the National Electrical Safety Code, as approved by the American Standards Association, and other installation and safety regulations approved by the American Standards Association, together with the current standards as published by the National Fire Protection Association, shall be prima facie evidence of such approved methods.

Section 3. Penalty. A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$500.00; the court to have power to suspend said sentence and to revoke the suspension thereof.

Section 4. Effective Date.

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

Dennis R. Walaker, Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 AN ORDINANCE ANNEXING A CERTAIN PARCEL OF LAND
2 LYING IN THE NORTH HALF OF THE EAST HALF OF THE
3 NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 138 NORTH,
4 RANGE 49 WEST, IN CASS COUNTY, NORTH DAKOTA

4 WHEREAS, A Petition for Annexation has been submitted by the owners of not less than
5 three-fourths in assessed value of the property described in said Petition for Annexation to the City
6 of Fargo, Cass County, North Dakota, in accordance with Section 40-51.2-03 N.D.C.C.; and,

7 WHEREAS, Public notice of the submission of such Petition has been given by publication
8 in The Forum as required by Section 40-51.2-05 N.D.C.C.; and,

9 WHEREAS, Said Section 40-51.2-03 N.D.C.C. requires that such annexation be
10 accomplished by ordinance,

11 NOW, THEREFORE,

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

13 Section 1. The following described property located in Section 13, Township 138 North,
14 Range 49 West, Cass County North Dakota, is hereby annexed to the City of Fargo, Cass County,
15 North Dakota:

16 The North Half of the East Half of the Northwest Quarter of Section 13,
17 Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County,
18 North Dakota, EXCEPTING THEREFROM the North 100 feet of said North Half
19 of the East Half of the Northwest Quarter of Section 13 previously annexed to the
20 City of Fargo per the Annexation Plat recorded as Document No. 1254145 in the
21 office of the Cass County Recorder.

22 Said part contains 36.26 Acres, more or less, and is subject to all easements and
23 rights-of-way of record.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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Section 2. Effective Date.

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

CITY OF FARGO

By _____
Dennis R. Walaker, its Mayor

(SEAL)

ATTEST:

First Reading:
Second Reading:
Final Passage:

Steven Sprague, City Auditor



(c)

TO: Board of City Commissioners
FROM: Kent Costin, Director of Finance 
RE: Revenue Stabilization Fund Balance Policy
DATE: May 28, 2009

The Finance Committee is recommending the adoption of the attached Revenue Stabilization Fund Balance policy. This new policy formally documents past practices and also described how the Revenue Stabilization Fund will operate over time.

This policy has been discussed and approved by the Finance Committee and is ready for final adoption.

Suggested Motion

Approve a Revenue Stabilization Fund Balance policy.



City of Fargo

Revenue Stabilization Fund Balance Policy

Whereas the City of Fargo has established a Revenue Stabilization Fund in 1995 for the purpose of accumulating financial resources and,

Whereas this fund has been in existence for several years without the need obligate these funds for any purpose and,

Whereas the stated purpose of this fund when created was to provide a financial cushion in the event of an economic decline, or other major loss of revenue sources and,

Whereas the Fargo Board of City Commissioners has not previously adopted a formal policy on how this fund should be restricted and administered,

Whereas the Governmental Accounting Standards Board requires formal action of the governing body's highest level of decision making authority to allow categorization as a committed fund balance in accordance with the definition of GASB # 54.

Now therefore, be it resolved by the Fargo Board of City Commissioners,

The City desires to continue utilizing the Revenue Stabilization Fund in accordance with governmental accounting best business practices,

This fund should be categorized as a committed fund balance as defined in GASB # 54 to be used only for the purposes defined in this policy and that it cannot be used for any other purpose unless the City Commission removes or changes the specified use,

That surplus revenues generated by the General Fund be considered the primary source of funding this committed fund,

That this fund balance be reported in the City's CAFR as a sub component of the General Fund and that the existing balance categorized as a special revenue fund be transferred to the General Fund and committed as required under newly promulgated accounting requirements,

That the annual budget development process be declared the time for which the adequacy and sufficiency of this fund be evaluated.

That revenue transfers continue to be made each year to assure that this fund sustains itself over time, and that,

In the event that monies are removed from this fund that they are replenished over time to assure that adequate fund balance levels are achieved and maintained and that,

The fund balance requirement for this fund is set based upon minimum and maximum levels with a stated minimum of \$1,000,000 and a stated maximum of 10% of the General Fund expenditures.

The trigger mechanisms established for appropriation of funds will be from overall decline of economically sensitive revenues over at least one fiscal period as incorporated into the City's annual budget revenue projections, (or) need for emergency funds as declared by the Mayor for the local share funding of any major natural disaster event and that,

Multiple fiscal years may be needed to replenish this fund to the stated fund balance requirement and that,

The Finance Committee is appointed by the City Commission to have the authority and responsibility to assure that the Revenue Stabilization Fund continues to operate in accordance with this policy.

Recommended Adoption: 6/1/09



OFFICE OF HUMAN RESOURCES

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

d

To: Board of City Commissioners

From: Jill Minette 
Director of Human Resources

Re: PEC Recommendations

Date: May 28, 2009

The Position Evaluation Committee recommends approval of the changes and actions as outlined in the enclosed PEC Notes from the May 28, 2009 PEC meeting.

Suggested Motion:

Approve the recommendations of the PEC to include:

- the addition of 3 FTE's of police officers
- the reclassification of a WIC Certifier I to a WIC Nutritionist I,
- the conversion of the contract City Readiness Coordinator to a full-time regular position titled Strategic National Stockpile/City Readiness Initiative Coordinator
- the renewal process for the City of Fargo Health Insurance plan along with a comparison with the NDPERS health insurance plan, and
- the job evaluation review process/compensation study for all City of Fargo positions



**POSITION EVALUATION COMMITTEE
MEETING NOTES**

May 28, 2009

1. Police Department – request to add 3 FTE's for police officers using the FTE's allocated to the fire department in the 2009 budget that are now being grant funded effective immediately upon approval.

- **PEC recommends the addition of 3 FTE's for police officers using the FTE's allocated to the fire department in the 2009 budget effective immediately.**
Budget Impact: \$0

2. Health Department – request to reclassify vacant WIC Certifier (B21) to WIC Nutritionist I (B31) effective immediately upon approval.

- **PEC recommends the reclassification of the vacant WIC Certifier (B21) to WIC Nutritionist I (B31) effective immediately.**
Budget Impact: \$7,550 (reimbursed through state grant funding)

Health Department – request to convert City Readiness Coordinator (C42) from a contract position to a regular full-time position and re-title the position to Strategic National Stockpile/City Readiness Initiative Coordinator effective immediately upon approval.

- **PEC recommends the City Readiness Coordinator (C42) be converted from a contract position to a regular full-time position and re-titled to Strategic National Stockpile/City Readiness Initiative Coordinator effective immediately.**
Budget Impact: \$0 (funded through federal grant)

3. Sick Leave Policy –review of employee request to change the sick leave policy to include a pay out of accrued sick leave when an employee retires.

- **PEC recommends no change to the current sick leave policy**

4. Health Insurance Renewal - discussion on health insurance renewal process including a comparison of the City of Fargo health insurance plan and the NDPERS health insurance plan.

- **PEC supports the health insurance renewal process including a comparison of the City of Fargo health insurance plan and the NDPERS health insurance plan.**

5. Job Evaluation Process - review proposal submitted by Employer's Association, Inc. for a formal job evaluation review process/compensation study for all City of Fargo positions.

- **PEC recommends a formal job evaluation review process/compensation study for all City of Fargo positions to be conducted by Employer's Association Inc.**
Budget Impact: \$43,503 (cost of compensation study)

5-11-09



418 East Broadway, Suite 9 • Bismarck, ND 58501
Phone: 701-222-3485 • Fax: 701-222-3091
Email: olsonpc@midconetwork.com

May 8, 2009

Pat Zavoral, Administrator
City of Fargo
200 N. 3rd Street
Fargo, ND 58102

Re: City of Fargo - Legislative

Dear Pat:

Please find enclosed a chronological legislative general work summary for my work performed during the 61st Legislative Assembly of North Dakota on behalf of the City of Fargo. It is difficult to track time as a contract lobbyist representing several clients, but I tried to maintain an approximate record relating to my activities strictly related to Fargo.

The League of Cities does an excellent job in the general representation of cities' interests. However, I trust I was able to provide needed assistance in those issues unique to Fargo, especially in the area of flood control appropriations.

It was a pleasure to work with you and the members of your legislative committee, as well as the Mayor and City Commissioners. Thank you for the opportunity to serve the citizens of Fargo.

Sincerely,

John M. Olson
Attorney at Law

JMO/tbb
cc: Erik Johnson

Date	Work Description	Hours
12/11/2008	Travel to Fargo for Legislative Reception	3
12/12/2008	Legislative Reception and meeting with Legislators	4
12/12/2008	Travel to Bismarck from Fargo	3
1/5/2009	Legislative Contacts	2
1/6/2009	Review of bills and legislative contacts	2
1/7/2009	Review of bills and legislative contacts	2
1/8/2009	Review of bills and legislative contacts	2
1/9/2009	Legislative contacts, meeting with leadership, meeting with Mike Dwyer, water commission bill hearing and League of Cities conference call	3
1/12/2009	Capital contacts and review of bills	2
1/13/2009	Legislative contacts and review of bills	2
1/14/2009	Meetings with legislators, leadership and water lobbyists and review of bills	3
1/15/2009	Legislative contacts, review of bills and meetings with Fargo officials	3
1/16/2009	Legislative contacts, review of bills and League of Cities conference call	2
1/19/2009	Legislative contacts, attended hearings and review of bills	2
1/20/2009	Legislative contacts and meeting with Fargo officials	2
1/21/2009	Review of bills, telephone conference with Pat Zavoral and review of e-mails from Gilmour	3
1/22/2009	Provide info to Senate Transportation committee regarding Gilmour bussing funds attendance at hearing and regarding water appropriations for Ray- Tioga project	1
1/23/2009	Legislative contacts regarding flood control project, attendance at League of Cities conference call and e-mails with Fargo	2
1/29/2009	E-mails with client and presentations of testimony to the Political Subdivisions Committee	2
1/30/2009	Attendance at hearing with Kent Coslin in the House Political Subdivisions Committee, meeting with Mike Dwyer, meeting with Senator Tom Fischer and meeting with Representative Al Carlson and League of Cities Conference call	1
2/2/2009	Legislative contacts and meeting with legislative leadership and Fargo officials	3
2/3/2009	Legislative contacts and meeting with Fargo officials	1
2/4/2009	Legislative contacts with leadership	1
2/12/2009	HB1398 and HB1522 in House Political Subdivisions	2

5-11-09

John M.

Olson, P.C.
Lawyer

418 East Broadway, Suite 9 • Bismarck, ND 58501
Phone: 701-222-3485 • Fax: 701-222-3091
Email: olsonpc@midconetwork.com



May 8, 2009

Pat Zavoral, Administrator
City of Fargo
200 N. 3rd Street
Fargo, ND 58102

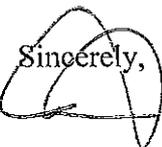
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Sincerely,


John M. Olson
Attorney at Law

JMO/tbb
cc: Erik Johnson

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1/6/2009	Review of bills and legislative contacts	2
1/7/2009	Review of bills and legislative contacts	2
1/8/2009	Review of bills and legislative contacts	2
1/9/2009	Legislative contacts, meeting with leadership, meeting with Mike Dwyer, water commission bill hearing and League of Cities conference call	3
1/12/2009	Capital contacts and review of bills	2
1/13/2009	Legislative contacts and review of bills	2
1/14/2009	Meetings with legislators, leadership and water lobbyists and review of bills	3
1/15/2009	Legislative contacts, review of bills and meetings with Fargo officials	3
1/16/2009	Legislative contacts, review of bills and League of Cities conference call	2
1/19/2009	Legislative contacts, attended hearings and review of bills	2
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1/30/2009	Attendance at hearing with Kent Coslin in the House Political Subdivisions Committee, meeting with Mike Dwyer, meeting with Senator Tom Fischer and meeting with Representative Al Carlson and League of Cities Conference call	3
2/2/2009	Legislative contacts and meeting with legislative leadership and Fargo officials	3
2/3/2009	Legislative contacts and meeting with Fargo officials	1
2/4/2009	Legislative contacts with leadership	1
2/12/2009	HB1398 and HB1522 in House Political Subdivisions	2

2/13/2009	Meeting with League of Cities	1
2/18/2009	Legislative contacts with Fargo legislators regarding appropriations and leadership contacts	2
2/23/2009	Meetings with City Commission and staff February 23-24, 2009	10.5
2/25/2009	Meetings with various Fargo legislators regarding bills and meeting with Commissioner Wimmer	1
2/26/2009	Fargo legislative contacts and dinner with Fargo area legislators: Carlson, Kasper, Boehning, Clark, Thoreson and Commissioner Wimmer	3
2/27/2009	Legislative contacts and League of Cities conference call	2
3/2/2009	Review of e-mails, telephone conference with Pat Zavoral and review of schedules for hearings	1
3/3/2009	Attendance at hearings regarding sales tax exemptions and meeting with City Commissioners and staff	3
3/4/2009	Attendance at hearing regarding renaissance zones and review of legislation regarding building codes	1.5
3/5/2009	Distribution of testimony regarding Building Code, attendance at hearing regarding stimulus, review of executive summary and telephone conference with Pat Zavoral	3
3/6/2009	Legislative contacts, review of stimulus materials, telephone conference with Fargo staff, League of Cities conference call and various telephone conferences with Chief Termes	2
3/10/2009	E-mails with Pat Zavoral and legislative contacts with House Leadership	1
3/11/2009	Attendance at water commission bill hearing in Senate appropriations, legislative contacts and telephone conference with Pat Zavoral regarding water funding	2.5
3/12/2009	Attendance at hearings regarding ET zoning and distribution of testimony	4
3/13/2009	Legislative contacts with Senator Fischer and leadership, review of matrix and telephone conference with the City of Fargo and League of Cities	2
3/16/2009	Review of e-mails and legislative contacts	1
3/17/2009	Legislative contacts, meeting with leadership and water representatives conference with Kent Costin and attendance at hearing	2
3/18/2009	Legislative contacts, meeting with Pat Zavoral, Telephone conference with Erik Johnson and Jim Kasper	2
3/20/2009	Legislative contacts, City of Fargo conference call, League of	

	Cities conference call and review of 1517 testimony	2
3/23/2009	Legislative contacts and preparation of testimony regarding HB 1517 - sales tax	2
4/1/2009	Legislative contacts	1
4/2/2009	Legislative contacts	1
4/3/2009	Hearing in Senate Natural Resources regarding resolutions with Commissioner Mahoney and Pat Zavoral, meetings with Grindberg, Bob Stenehjem, Al Carlson, and Tom Fischer, meetings with Legislative Council staff and work on HB1020 amendments	3.5
4/6/2009	Senate subcommittee hearing on HB1020, meetings with Grindberg, Fischer, Carlson and Governor's office (Lance Gaebe) and telephone conference with Pat Zavoral	2.5
4/7/2009	E-mails with Pat Zavoral, telephone conference at Governor's office with State and City officials, meeting with Al Carlson and meeting with Senator Grindberg	2.5
4/8/2009	Legislative contacts, meeting with Pat Zavoral, Mahoney and Governor and attendance at House natural resources hearing regarding SCR4035	3
4/9/2009	Senate subcommittee hearing regarding HB 1020 and legislative contacts	2
4/10/2009	Telephone conference with City and Federal officials regarding task force meeting, various legislative contacts and meetings with governors office	2.5
4/13/2009	Legislative and related contacts for meeting on 04/14/2009 regarding flood and retention issues.	2
4/14/2009	Meeting in State Capital with legislators, government officials and congressional staff members, e-mails to Fargo officials and legislative contacts	3
4/15/2009	Legislative contacts	1
4/16/2009	Legislative contacts	1
4/20/2009	Legislative contacts	1
4/21/2009	Legislative contacts, telephone conference with Pat Zavoral, and attendance at conference committee regarding SCR4035	2.5
4/22/2009	Legislative contacts	1
4/23/2009	Legislative contacts, meetings with Senator Fischer and Representative Al Carlson regarding amendments to HB 1020	2
4/24/2009	Legislative contacts with Senator Fischer and Representative Hawken and telephone conference with Pat Zavoral	2
4/27/2009	Legislative contacts and review of HB1020 amendments	1



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: MAY 26, 2009

RE: NOTICE OF GRANT AWARD FOR PUBLIC HEALTH
EMERGENCY PREPAREDNESS/PANDEMIC INFLUENZA
NORTH DAKOTA DEPARTMENT OF HEALTH
CONTRACT NO. 08-1057 CFDA NO. 93.283

The attached Notice of Grant Award with the North Dakota Department of Health is for the Public Health Emergency Preparedness and Response for pandemic influenza planning. No budget adjustment is required for this contract.

Suggested Motion: Move to approve the contract for pandemic influenza planning.

RB/LA
Enclosure

Page 20 Contract No. 08-1057		CFDA No. 93.283	North Dakota Department of Health 600 East Boulevard Ave-Dept. 301 Bismarck, ND 58505-0200
Contract Period From: June 1, 2009	Through: August 9, 2009		Type: NOTICE OF GRANT AWARD (SFN53771)

This contract is not effective and expenditures related to this contract should not be incurred until all parties have signed this document.

Title of Project/Program: PHEP/PanFlu **Health Dept. Grant Code:** HLH0289

Contractor Name and Address: Fargo Cass Public Health 401 3 rd Avenue North Fargo, ND 58102 Contact Name: Ruth Bachmeier Telephone: 701.241.1360	North Dakota Department of Health Program Director: Tim Wiedrich, Section Chief Emergency Preparedness and Response 918 E Divide Avenue Bismarck, ND 58501-1959 Telephone: 701.328.2270
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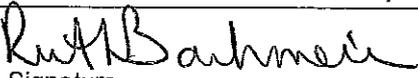
Financial Information	Dept of Health Cost Share	Contractor Cost Share	Total Project/Program Costs
Amount of Financial Assistance	\$3,571	\$	\$3,571
Previous Funds Awarded	\$0	\$	\$0
Total Funds Awarded to Date	\$3,571	\$	\$3,571

Scope of Service:
 Contractor will conduct Pandemic planning activities or may choose to purchase signs for Point of Dispensing sites.

Reporting Requirements:
 An expenditure report for the period ending June 30, 2009 must be received by July 15, 2009. The final expenditure report for the budget period ending August 9, 2009 must be received by August 31, 2009. Payments will be processed upon Department approval of expenditure reports and progress reports.

Special Conditions:

This contract is subject to the terms and conditions incorporated either directly or by reference in the following:
 (1) Requirements for Contracts issued by ND Dept. of Health as signed by Contractor for the period July 1, 2007 to June 30, 2009 [Accounting Use Only Requirements Received] (2) Department of Health and Human Services, Centers for Disease Control, Program Announcement AA154, Public Health Emergency Preparedness Cooperative Agreement No. 5U90/TP817000, and (3) applicable Federal and State regulations.

Evidence of Contractor's Acceptance		Evidence of Departmental Acceptance	
 Signature	May 26, 2009 Date	 Signature	 Date
Typed Name and Title of Authorized Representative Ruth Bachmeier Director of Public Health		Typed Name and Title of Authorized Representative Arvy Smith, Deputy State Health Officer	
 Signature	 Date	 Signature	 Date
Typed Name and Title of Authorized Representative Dennis R. Walaker Mayor, City of Fargo		Typed Name and Title of Authorized Representative Tim Wiedrich, Section Chief Emergency Preparedness and Response	

Contractor: Attachments if referenced in the scope of service must be returned with the signed contract. If you did not receive attachments as indicated in the scope of service, please contact the Program Director identified above.



9

ASSESSMENT DEPARTMENT

April 29, 2009

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 & Jacey Mueller. 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.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$720 with the City of Fargo's share being \$95.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Hushka".

Ben Hushka
City Assessor

tla

attachment

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

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

Property Identification

1. Name of Property Owner Michael + Jacey Mueller Phone No. 701-271-0390

2. Address of Property 95 28th Ave N
 City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed, LOT 14 BLOCK 1
Replat of PT Edgewood 1st Addn (10/21/1971 B-E, P-49)

4. Parcel Number 01-0070-00140-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner 95 28th Ave N
 City Fargo State ND Zip Code 58102

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). Additional room above garage, Seamless Siding, new windows

7. Building Permit No. 61072 8. Year Built 2008/1974

9. Date of Commencement of making the improvement _____

10. Estimated market value of property before improvement \$ 167,100

11. Cost of making the improvement (all labor, material and overhead) \$ 30,000 - 35,000

12. Estimated market value of property after improvement \$ 193,000

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 [Signature] Date 4-24-09

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s) 3 YEARS
 Assessor's Signature [Signature] Date 5/18/09

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 _____



PLANNING AND DEVELOPMENT

200 Third Street North
Fargo, North Dakota 58102

Phone: (701) 241-1474

Fax: (701) 241-1526

E-Mail: planning@cityoffargo.com

www.cityoffargo.com

A handwritten signature in black ink, appearing to be the initials "DM" or similar, enclosed in a circular scribble.

DATE: May 28, 2009
TO: City Commission
FROM: Dan Mahli, Senior Planner, Community Development
RE: Sale of NRI Property – 812 8th Street North

812 8th Street North is one of nine units in a condo-conversion project undertaken as part of the Neighborhood Revitalization Initiative (NRI). The rehab project converted a problem property with 9 rental units into owner-occupied condominiums. The acquisition, rehab and holding costs have been financed through a combination of the Fannie Mae line-of-credit and the NRI Purchase Rehab fund. We have received an offer of \$64,500 for the property at 812 8th Street North that meets all of the specified conditions of the NRI program.

Recommended Action: Accept the offer of \$64,500 for 812 8th Street North.



June 1st, 2009

To: City Commission

From: Tim Dirks, Director
Fargo Public Library

The documents represent a lease and franchise provision with PM Coffee, LLC and the City of Fargo for the provision of a coffee kiosk in the Main Library. Both documents have been thoroughly reviewed by council Erik Johnson. It has recently come to our attention that Section 1.4 will need a minor revision to clarify the commencement date of the lease to be the 1st of the month following substantial completion (the final sentence of that paragraph is somewhat contradictory of that) and to insert an anticipated date of substantial completion. The lease contract has been signed by the lessee and we submit it to you for approval with the understanding that the lessee and I will make the appropriate clarifications to Section 1.4.

Recommended motion: To approve the lease and franchise provision as presented with PM Coffee, LLC.

Attachments:

Franchise Provision and lease document with PM Coffee, LLC.

FRANCHISOR PROVISION

This addendum to the Lease dated 27th May, 2009 entered into between _____ (the "Landlord") and PM Coffee, LLC (the "Tenant");

WHEREAS, Tenant has entered into a franchise agreement with a third party known as Dunn Bros Coffee Franchising, Inc. (the "Franchise Agreement"), and

WHEREAS, the purposed Franchise Agreement provides for the right of Dunn Bros Coffee Franchising, Inc. (DBCF) to assume the rights and obligation of the Tenant to the above referenced LEASE under certain conditions, and

WHEREAS, the LEASE does not currently provide for such assumption, and

WHEREAS, the Landlord and the Tenant wish to amend the above referenced LEASE to provide for such an assumption,

NOW THEREFORE, for due and valuable consideration, the Landlord and the Tenant agree to this LEASE ADDENDUM as follows:

1. In the event of termination of the Franchise Agreement, Landlord agrees to give DBCF the right to take possession of the Leased Premises and assume the rights and obligations of the Tenant under the LEASE, provided that the Landlord receives prior written notice of such termination from the Tenant and DBCF. In the event that Landlord receives notice from DBCF only, Tenant agrees that the Landlord shall have the right to rely on the notice from DBCF.
2. In the event of a breach of the LEASE by the Tenant resulting in a re-entry into the Leased Premises by the Landlord, whereby Tenant no longer has the right of possession of the Premises, the Landlord agrees to give DBCF the right to take possession of the Leased Premises and assume the rights and obligations of the Tenant under the LEASE.
3. Under no circumstances shall the Landlord be obligated under Paragraphs 1 or 2 above to allow DBCF to assume the LEASE unless DBCF cures any breaches of the LEASE which may exist at the time of its assumption of the LEASE.
4. This LEASE ADDENDUM is being entered into by the Landlord at the request of the Tenant because it directly benefits the Tenant and is required by the Franchise Agreement.

In the event the Landlord allows DBCF to assume the LEASE according to the terms of this LEASE ADDENDUM, Tenant shall release and hold Landlord harmless from all liability from allowing DBCF to assume the LEASE.

Dated: _____

LANDLORD

By: _____

Its: _____

Dated: 27th May, 2009

TENANT

By: William Polue

Its: President

LEASE AND VENDING AGREEMENT

City of Fargo – PM Coffee, LLC
Fargo Public Library-Main Branch

THIS AGREEMENT is made and entered into effective this 27th day of 2009, 2009, by and between the City of Fargo, a municipal corporation of the State of North Dakota [hereinafter called “Lessor” or “City”], and:

**PM COFFEE, LLC
1895 “Space C” 45th Street
Fargo, ND 58104**

[hereinafter called “Lessee” or “PM Coffee”].

RECITATIONS:

- A. City is the owner of real property and a building currently being constructed at Fargo, North Dakota upon property located at 102 3rd Street North, Fargo, North Dakota (hereinafter “Library Building”) which building will be operated by the City as a public library for all purposes as may be deemed appropriate by the City. Within the Library Building there is an area identified on the site plan attached hereto as Attachment “A”, said area to be the subject of this agreement and which described area will hereinafter be referred to as the "subject property," "premises" or "demised premises." Said area consists of 165 square feet, more or less.
- B. Lessee desires to lease the subject property for use as a coffee kiosk for the sale of coffee, other non-alcoholic beverages, fresh pastries and other food items described more fully below.
- C. Lessor desires to lease the space to Lessee for that use.

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

**ARTICLE I
Premises and Terms**

Section 1.1. Leased Premises.

Lessor does hereby lease unto Lessee the following premises:

Approximately **165 square feet** of space on the ground floor of the Library Building. The parties recognize that the 165 square feet is an approximation. The actual square footage

~~will be such footage as is ultimately constructed. The Leased Premises shall be fit up to suit the business purposes of Lessee as a retail coffee kiosk and serving area, as described further herein.~~

A copy of the floor plan outlining the demised premises is attached to this agreement and is incorporated by reference hereto.

Section 1.2. Use of Premises.

1.2.1 Use as coffee kiosk. The premises shall be used and occupied by Lessee for use as a coffee kiosk for the sale of coffee, other non-alcoholic beverages, fresh pastries and other food items. It is understood that the demised premises will not be used in such a way as to emit excessive noise or odors or to disturb the intended use of the Library Building by the City for library purposes, other than those associated with a coffee shop, which the parties specifically agree includes grinding coffee beans. It is further understood that the food items Lessee will sell or distribute will be foods that are readily eaten with fingers such as fruit, pastries and the like. Lessor will notify Lessee if it objects to any item sold by Lessee and the parties will cooperate to resolve such concerns; provided, however, that Lessee may sell any food items consistent with the general provisions of this lease.

1.2.2 Lessee's General Responsibilities: Lessee shall at all times comply with sound business practices, including but not limited to providing safe quality products; providing proper training for employees and personnel, adhering to all health department rules, regulations, and guidelines; providing adequate quantities of products; ensuring that the stands are opened at the time scheduled by the Lessor and for all events as determined jointly by Lessor and Lessee; providing an appropriate stand that is clean, well-maintained, and displays appropriate signage, and, if applicable, providing adequate staff, who are timely, friendly, and well-groomed.

The Lessee shall be responsible for the appearance of the Demised Premises. The Demised Premises will be visually appealing, clean and well-maintained. The City shall have the final approval of the design of the Demised Premises, which approval will not be unreasonably withheld.

1.2.3 Review of Service: The Lessor and Lessee shall meet to review the concession operations on an informal, as-needed basis. The review will include an assessment of the current service offered by Lessee; Lessee's adherence to the above-stated General Responsibilities and other specific terms of the agreement; discussion of any problems, concerns or issues relating to Lessee's services, as well as any product and equipment changes and issues relating to products or services that have arisen since the previous review. At or following the review, the Lessor may suggest such changes or modifications as the Lessor determines are appropriate. The Lessor shall set forth any recommended changes or modifications in writing. The written report of any recommended changes or modifications to the product and services provided by the Lessee shall be provided by the Lessor to the Lessee within thirty (30) days following the review. Lessee shall implement such changes and/or modifications within thirty (30) days of the date of written notice of the same. Provided, however, that nothing in the foregoing shall in any way expand or limit the rights of the parties under this lease, and Lessee need not make any recommended

changes to the extent Lessee's activities are in compliance with the terms of this Lease and the attached Franchisor Provision.

1.2.4 Employees of Lessee. Lessee shall comply with all applicable federal, state, and local employment laws, statutes, rules, and regulations covering Lessee's employees. Lessee will have in place North Dakota Worker's Compensation coverage including stopgap insurance coverage for Worker's Compensation liability.

1.2.5 Hours of Operation. Lessee will maintain hours of operation in conjunction with the operating hours of the Library Building so that patrons of the Library Building are able to purchase beverages and other products from Lessee. To the extent Lessee wishes to open Lessee's business earlier than the opening time for the Library Building, Lessee and Lessor will cooperate to make appropriate arrangements therefore, which arrangements may be contained in a supplemental memorandum to this Lease. Lessee recognizes that Lessee will be obligated to comply with health, plumbing or other code requirements, such as requirements for availability of public restrooms for example, without the benefit of the Library itself being open to the public during such times.

1.2.6 Limited exclusivity. During the term of this Lease, including any renewal terms, Lessor will not enter into any lease allowing any other person or entity to use any part of the Library Building for the uses described in section 1.2.1, nor will the Lessor itself use any part of the Library Building for any uses described in section 1.2.1. The parties recognize that a kitchen facility is located within the Library Building for the purpose of serving the functions of the Library and nothing in this subparagraph is intended to limit the Lessor from providing coffee, other beverages or any other hospitality service for any events or functions, nor from engaging employees, contract or otherwise, for such purposes. Furthermore, nothing in this subparagraph is intended to prohibit users of the Library Building from obtaining coffee, beverages or other hospitality service from a source other than Lessee.

Section 1.3. Term of Lease and Options to Extend Lease.

1.3.1. This Lease shall be for an initial term of thirty-six months commencing on the Commencement Date as defined below; provided, however, that if the Lessee's first month of occupancy is a partial month, Lessee shall pay a pro-rated amount of rent for said first partial month of occupancy. At such time as Lessee commences occupancy or within a reasonable time thereafter, the parties shall execute a memorandum of Commencement Date that will specify the starting date of the initial term of this lease.

1.3.2. This lease shall be extended at the option of the Lessee for two (2) additional terms of thirty-six months each. Said option shall be exercised in writing by Lessee, as provided in the terms and conditions in Article II hereof, delivered to Lessor not later than ninety (90) days prior to the expiration of the term. References herein to "this Lease" or "this Agreement" shall be deemed to include any such extensions.

Section 1.4 Commencement date.

The term of this Lease and the payment of rent hereunder shall commence on the first day of the month following the date the Demised Premises are substantially complete ("Commencement Date"). The Demised Premises shall be deemed substantially complete when the following are done: Lessee or Lessor procures either a temporary or permanent Certificate of Occupancy permitting occupancy of the Demised Premises for the general business purposes of Lessee as described herein. The anticipated date of substantial completion is _____ 2009. Lessee shall submit plans to Lessor within 30 days of lease execution and rent shall commence within 30 days of Lessor's approval of said plans.

Section 1.5. This section intentionally left blank.

Section 1.6. Punch List.

Within 10 business days after the Commencement Date, a representative of both parties shall survey the Demised Premises for the purpose of determining which items of Lessor's work, if any, remain to be completed, which the Lessor shall reduce to an itemized agreed "punch" list. Lessor shall complete these items within a reasonable time thereafter.

Section 1.7 Site representatives.

Lessor and Lessee will cooperate with each other in settling problems arising out of job conditions, including having available at the job all persons necessary to settle such problems.

Section 1.8. Fit-Up Expense:

Lessor will provide a fit-up allowance to Lessee in an amount of Ten Thousand Dollars (\$10,000) . This fit-up allowance must first be expended on those fit-up items that will become a part of, or affixed to, the Library Building and which, except for signage as described in Article 3.4 herein, upon expiration or termination of this lease and vacation of the demised premises by Lessee, will remain in place and intact and will remain under ownership by the City. Specifically, fit-up allowance will first be used for defraying or reimbursing expenses for electrical rough-in, telephone or communications line procurement and installation and signage. All fit-up work shall be performed by contractors or subcontractors whose employees are covered by North Dakota Worker's Compensation, including appropriate stopgap coverage for Worker's Compensation.

**ARTICLE II
Rent and Maintenance Charges**

Section 2.1. Rent.

Lessee shall pay a fixed amount of base rent from the Commencement Date of this lease through the end of the initial thirty-six (36) in the amount of \$130.00 per month ("base rent

amount"). Said rent shall be paid in equal monthly installments, in advance on the first day of each month, starting 30 days after substantial completion. The period between the Commencement Date hereof and the end of said 36-month period, shall be referred to herein as the "Initial Term" of this lease. The base rent shall be adjusted thereafter by an increase of three and one-half percent (3½%) over the base rent amount for each year of the term that has elapsed, so that upon the end of the initial 36-month term, the base rent for the next term shall be an additional amount of 10.5% over the base rent amount, as set forth below:

Rent Payment Period	Monthly Base Rent	3½ % increase over base rent	Annual Base Rent
Years 1 – 3	\$130.00	Base rent only	\$1,560.00
Year 4	\$130.00	\$143.65	\$1,723.80
Year 5	\$130.00	\$148.20	\$1,778.40

Section 2.2. Place of Payment.

Rent and Maintenance payments shall be paid to the CITY OF FARGO, c/o City Auditor, 200 North 3rd Street, Fargo, North Dakota 58102 or such other address as Lessor may require upon written notice to Lessee.

**ARTICLE III
Improvements, Conditions and Maintenance
of the Demised Premises**

Section 3.1. Care and Repair of the Demised Premises.

3.1.1 Lessor maintenance. Lessor shall be responsible for maintenance of the exterior of the building and interior area, except for the Demised Premises and except for the cleaning and trash removal noted in 3.1.2, below. Lessor will also, at its sole expense, make repairs as follows:

- (a) all repairs necessary at any time to the structure of the Demised Premises (except those caused by the negligence of Lessee or by an intentional act of Lessee); and
- (b) for a period of one year after the Commencement Date, all other repairs necessary to correct any latent defects for one year after the Commencement Date in the Demised Premises (other than defects connected with, or related to, any alterations made or performed by or on behalf of Lessee by persons other than Lessor or its contractors).

Provided, however, that Lessor shall not be required to make any repairs if Lessee is obligated to make them under paragraph 3.1.2 below. Lessee shall promptly notify Lessor of the necessity of any repairs of which Lessee has knowledge and for which Lessor may be responsible under this section.

3.1.2 Lessee maintenance. Lessee shall take good care of the Demised Premises, and, shall be responsible for the cost of all repairs to electric wiring, plumbing and the fixtures, equipment and appurtenances therein except those repairs required to be made by Lessor under paragraph 3.1.1, above. Lessee shall be responsible for the cost of all repairs to the Demised Premises when needed to preserve them in good working order and condition. All damage to the structure and/or roof of the Demised Premises caused by the negligence of Lessee or by an intentional act of

Lessee shall be the responsibility of Lessee. All damage or injury to the Demised Premises and its fixtures, glass, appurtenances, and equipment or to the Building or its fixtures, glass, appurtenances, and equipment caused by Lessee moving property in or out of the Building or by installation or removal of furniture, fixtures, or other property, be repaired, restored, or replaced promptly by Lessee to the reasonable satisfaction of Lessor at Lessee's expense. All repairs and restorations or replacement required in connection therewith shall be of quality and class at least equal to the original work or installations and done in a good and workmanlike manner.

- 3.1.3 Unless approved in writing otherwise, Lessor shall make the actual repairs to the Demised Premises, subject to reimbursement by Lessee for the reasonable cost thereof. Lessor shall make such repairs in a timely manner.

Section 3.2 Services and Equipment

- 3.2.1 Lessor services. Lessor, at its expense, shall supply water and sewer.
- 3.2.2 Lessee services and expenses. Lessee shall be responsible for payment of, and shall be responsible for all cleaning for, the demised premises. Lessee shall also be responsible for removal of trash from the entry hallway area that is reasonably attributable to the business of Lessee. For purposes of this provision, Lessor is responsible for overall cleaning of the Library Building, including the removal of trash at least once per day. It is assumed that if trash receptacles in the entry hallway are in need of emptying more frequently than once per day, it is likely that such receptacles are being filled by refuse originating from Lessee and Lessee will be responsible for periodic emptying of such receptacles.

Section 3.3. Alterations, Installation, Fixtures

Except as hereinafter provided, Lessee shall not make any alterations, additions or improvements in or to the demised premises or add, disturb or in any way change the plumbing or wiring therein [hereinafter referred to as "alterations"] without the prior written consent of the Lessor. Any such approved alterations to the demised premises shall be made by, or under the control of Lessor, unless otherwise approved. Plans for the same must be submitted to Lessor for approval at least ten (10) days prior to the proposed date for starting these alterations.

In the event alterations are required by any governmental agency by reason of the use and occupancy of the demised premises by Lessee (including alterations, additions, or changes required for compliance with the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213, as amended (including administrative, judicial, and legislative interpretations, rulings, and clarifications relating thereto)), such alterations shall be made at Lessor's own cost and expense. Lessor's obligation under this paragraph shall apply to the condition of the Library Building but not to the uses and activities of the Lessee and Lessee's employees within the Demised Premises, nor to the functions of such employees.

Alterations or additions made by Lessee must be built in compliance with all laws, ordinances and governmental regulations affecting the premises and Lessee shall warrant to Lessor that all such alterations, additions or improvements shall be in strict compliance with all relevant laws, ordinances, governmental regulations and insurance requirements. Construction of such alterations or additions shall be commenced only upon Lessee obtaining and exhibiting to Lessor the requisite approvals, licenses and permits and indemnification against liens.

All alterations, installations, physical additions or improvements to the demised premises made by Lessee, not including Lessee's signage, shall at once become the property of Lessor and shall be surrendered to Lessor upon the termination of this Lease; provided, however, this clause shall not apply to the movable equipment or furniture owned by Lessee which may be removed by Lessee at the end of the term of this Lease.

Section 3.4. Signs.

Any sign, lettering, picture, notice or advertisement installed on or in any part of the premises and visible from the exterior of the subject property or visible from the exterior of the demised premises shall be approved by Lessor in writing prior to installation and shall be installed at Lessee's sole cost and expense (subject to such expense being reimbursed from the fit-up allowance described in Section 1.8). Any signs shall be maintained by the Lessee at the Lessee's sole expense and shall be anchored to and removed from the building without causing any damage to the same and in a manner approved in writing by Lessor. In the event of a violation of the foregoing by Lessee, Lessor may remove the violation without any liability and may charge the expense incurred by such removal to Lessee. At the termination or expiration of this Lease, Lessee shall cause removal of all of its signs at its expense and shall repair any damage caused by the removal of the signs if requested to do so by Lessor. 3

Section 3.5. Surrender of Premises.

At the end of the term of this Lease and any renewals and extensions thereof, Lessee shall surrender the demised premises to lessor in clean condition and in as good a condition as at the completion of the initial construction and remodeling of the demised premises at the start of the Lease, reasonable wear and tear excepted.

Section 3.6 Parking

Patrons of Lessee shall be entitled to utilize the same parking as users of the library and the Library Building, itself. Lessee's employees shall be allowed to park in the southern portion of the Library/Civic Parking Lot. Lessor may elect to assign certain parking spaces.

ARTICLE IV

This article intentionally left blank.

ARTICLE V
Utilities

Section 5.1. Lessor's Obligation for Utilities.

Lessor shall provide the means and conduits to supply water, electricity and sanitary sewer to the premises. Lessor shall not be liable for and Lessee shall not be entitled to, any abatement or reduction of rent by reason of Lessor's failure to furnish any of the foregoing utilities and services when such failure is caused by or results in casualties, riots, strikes, picketing, accidents, breakdowns or any other cause beyond Lessor's reasonable control. Lessor shall pay, when due, all charges for utilities attributable to the premises, including heat, air conditioning, water, sewer, garbage and/or other utility charges or energy sources furnished to the demised premises during the term of this Lease, or any renewal or extension thereof.

ARTICLE VI
Lessor's Access to the Demised Premises

Section 6.1. Lessor's Access to Demised Premises.

The Lessee agrees to permit the Lessor and the authorized representatives of the Lessor to enter the demised premises at all times during usual business hours for the purpose of inspection of the same and making any necessary repairs to the demised premises and performing any work therein that may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or of the Board of Fire Underwriters or any similar body that the Lessor may deem necessary to prevent waste or deterioration in connection with the demised premises. Nothing herein shall imply any duty upon the part of the Lessor to do any such work which, under any provision of this Lease, the Lessee may be required to perform and the performance thereof by the Lessor shall not constitute a waiver of the Lessee's default in failing to perform the same. The Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of the Lessee by reason of making repairs or the performance of any work in the demised premises or on account of bringing materials, supplies and equipment into or through the demised premises during the course thereof and the obligations of the Lessee under this Lease shall not thereby be affected in any manner whatsoever.

Lessor reserves the right to enter upon the demised premises at any time in the event of an emergency and at reasonable hours to exhibit the demised premises to prospective purchasers or others; and to exhibit the demised premises to prospective lessees and to display "for rent" or similar signs on the exterior of the Building or upon the grounds of the Subject Property during the last 90 days of the term of this Lease, all without hindrance or molestation by Lessee.

ARTICLE VIII
Damage or Destruction of Leased Premises

Section 7.1. Total or Partial Destruction.

In the event of any damage or destruction to the premises by fire or other cause during the term hereof, the following provisions shall apply:

- 7.1.1 If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by an independent appraiser, will equal or exceed thirty percent (30%) of the replacement value of the building (exclusive of foundations) just prior to the occurrence of the damage, then either party may, no later than the 60th day following the damage, give written notice of that party's election to terminate this Lease.
- 7.1.2 In the event a party elects to terminate this Lease then the Lease shall be deemed to terminate on the date of the receipt of notice of election and all rentals shall be paid up to that date, Lessee shall have no claim against Lessor for the value of any unexpired term of this Lease.
- 7.1.3 In any case where damage to the building shall materially affect the demised premises so as to render them unsuitable in whole or in part for the purposes for which they are demised hereunder, then, unless such destruction was wholly or partially caused by the negligence or breach of the terms of this Lease by Lessee, its employees, contractors or licensees, a portion of the rent based upon the amount of the extent to which the demised premises are rendered unsuitable shall be abated until repaired or restored. If the destruction or damage was wholly or partially caused by negligence or breach of the terms of this Lease by Lessee as aforesaid and if Lessor shall elect to rebuild, the rent shall not abate and the Lessee shall remain liable for the same.

ARTICLE VIII
Eminent Domain

Section 8.1. Eminent Domain.

In the event of any eminent domain or condemnation proceeding or private sale in lieu thereof in respect to the premises during this Lease, the following provisions shall apply:

Section 8.2. Total Condemnation.

If the whole of the premises shall be acquired or condemned by eminent domain for any public or quasi public use or purpose, then the term of this Lease shall cease and terminate as of the date possession shall be taken in such proceeding and all rentals shall be paid up to that date, and Lessee shall have no claim against the Lessor for any unexpired term of this Lease.

Section 8.3. Partial Condemnation.

If any part constituting less than the whole of the premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall materially affect the demised premises so as to render the demised premises unsuitable for the business of the Lessee then the term of this Lease shall cease and terminate as of the date possession shall be taken by the condemning authority and rent shall be paid to the date of such termination. If Lessor and Lessee are unable to agree as to whether such partial taking or condemnation shall materially affect the demised premises so as to render the demised premises unsuitable for the business of the Lessee then the matter shall be submitted to a judge for declaratory judgment on the issue.

In the event of a partial taking or condemnation of the premises, which shall not materially affect the demised premises so as to render the demised premises unsuitable for the business of the Lessee, in the reasonable opinion of the Lessee, this Lease shall continue in full force and effect but with a proportionate abatement of the basic rent and additional rent based on the portion, if any, of the demised premises taken. Lessor reserves the right, at its option, to restore the building and the demised premises to substantially the same condition as they were prior to such condemnation. In such event, Lessor shall give written notice to Lessee, within 30 days following the date possession shall be taken by the condemning authority, of Lessor's intention to restore. Upon Lessor's notice of election to restore, Lessor shall commence restoration and shall restore the building and the demised premises with reasonable promptness, subject to delays beyond Lessor's control and delays in the making of condemnation or sale proceeds adjustments by Lessor; and Lessee shall have no right to terminate this Lease except as herein provided. Upon completion of such restoration, the rent shall be adjusted based upon the portion, if any, of the demised premises restored.

Section 8.4. Lessor's Damages.

In the event of any condemnation or taking as aforesaid, whether whole or partial, the Lessee shall not be entitled to any part of the award paid for such condemnation and Lessor is to receive the full amount of such award, the Lessee hereby expressly waiving any right to claim any part thereof.

Section 8.5. Lessee's Damages.

Although all damages in the event of any condemnation shall belong to the Lessor whether such damages are awarded as compensation for diminution in value of the leasehold to the fee of the demised premises, Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recovered by Lessee's own right on account of any and all damages to Lessee's business by reason of the condemnation and for or on account of any cost or loss to which Lessee might be put in removing Lessee's merchandise, furniture, fixtures, leasehold improvements and equipment.

ARTICLE IX

Insurance, Liability and Indemnity

Section 9.1. Commercial General Liability and Fire Legal Liability Insurance.

- 9.1.1 Lessee shall maintain, at its sole cost and expense, a commercial general liability insurance policy including premises liability, operations liability and products liability coverage, including North Dakota employer's liability (commonly referred to as "stopgap" insurance coverage) in the face amount of \$1,000,000 with a company acceptable to the Lessor. Such policy shall name City of Fargo and its employees, officials and officers as an additional insured. Such policy or policies shall provide that 30 days written notice must be given to Lessor prior to cancellation thereof. Lessee shall furnish evidence satisfactory to Lessor at the time this Lease is executed that such coverage is in full force and effect.
- 9.1.2 Lessee shall maintain, at its sole cost and expense a fire legal liability insurance policy to provide coverage for damage to the Library Building caused by Lessee's or Lessee's employees' act or failure to act in the face amount of a minimum of \$300,000 with a company acceptable to the Lessor. Such policy shall name City of Fargo and its employees, officials and officers as an additional insured. Such policy or policies shall provide that 30 days written notice must be given to Lessor prior to cancellation thereof. Lessee shall furnish evidence satisfactory to Lessor at the time this Lease is executed that such coverage is in full force and effect.

Section 9.2. Casualty Insurance.

- 9.2.1 Lessor shall at all times during the term of this Lease, at its expense, maintain a policy or policies of insurance with premiums paid in advance issued by an insurance company licensed to do business in the State of North Dakota insuring the building against loss or damage by fire, explosion or other insurable hazards and contingencies, provided that Lessor shall not be obligated to insure any furniture, equipment, machinery, goods or supplies not covered by this Lease which Lessee may bring upon the demised premises or any additional improvements which Lessee may construct or install on the demised premises.
- 9.2.2 Lessee shall not carry any stock of goods or do anything in or about the demised premises which will in any way impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease.
- 9.2.3 Lessee hereby waives and releases all claims, liabilities and causes of action against Lessor and its agents, servants and employees for loss or damage to, or destruction of, any of the improvements, fixtures, equipment, supplies, merchandise and other property, whether that of Lessee or of others in, upon or about the premises resulting from fire, explosion or other perils included in standard extended coverage insurance, whether caused by the negligence of any

of said persons or otherwise. The waiver shall remain in force whether or not the Lessee's insurers shall consent thereto.

- 9.2.4 In the event that the particular use(s) of the demised premises by Lessee causes an increase or additional charge in the premium rate for insurance carried by Lessor on the improvements of which the demised premises are a part, which increase or additional charge is specifically related to the particular use(s) by Lessee, Lessee shall be responsible for reimbursement to Lessor for the amount of such premium increase or additional charge. If Lessee installs any electrical equipment that overloads the power lines to the building or its wiring, Lessee shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriter, insurance rating bureau and government authorities having jurisdiction.

Section 9.3. Covenant to Hold Harmless.

Unless the liability for damage or loss is caused by the negligence or willful actions of Lessor, its agents or employees, Lessee shall hold harmless Lessor from any liability for damages to any person or property in or upon the demised premises, including the person and property of Lessee and its employees and all persons in the demised premises at its or their invitation or sufferance, and from all damages resulting from Lessee's failure to perform the covenants of this Lease. All property kept, maintained or stored on the demised premises shall be so kept, maintained or stored at the sole risk of Lessee. Lessee agrees to pay all sums of money in respect of any labor, service, materials, supplies or equipment furnished or alleged to have been furnished to Lessee in or about the premises, and not furnished on order of Lessor, which may be secured by any mechanic's, materialmen's or other lien to be discharged at the time performance of any obligation secured thereby matures, provided that Lessee may contest such lien, but if such lien is reduced to final judgment and if such judgment or process thereon is not stayed, or if stayed and said stay expires, then and in each such event, Lessee shall forthwith pay and discharge said judgment. Lessor shall have the right to post and maintain on the demised premises, notice of non-responsibility under the laws of the State of North Dakota.

Section 9.4. Non-Liability of Lessor.

Subject to the terms and conditions of Article IX hereof, to the extent any claim exceeds insurance coverage maintained by the Lessor, Lessor shall not be liable for any damage to property of Lessee or of others located on the demised premises, nor for the loss or damage to any property of Lessee or of others by theft or otherwise; nor shall Lessor be liable for any injury or damage to property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the premises or from the pipes, appliances, or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. To the extent any claim exceeds insurance coverage maintained by the Lessor, Lessor shall not be liable for any personal injury resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the premises or from the pipes, appliances, or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Lessor shall

not be liable for any such damage caused by other Lessees or persons in the premises, occupants of adjacent property, of the building, or the public or caused by operations in construction of any private, public or quasi-public work. Lessor shall not be liable for any latent defect in the demised premises. All property of Lessee kept or stored on the demised premises shall be so kept or stored at the risk of Lessee only and Lessee shall hold Lessor harmless from any claims arising out of damage to the same, including subrogation claims by Lessee's insurance carrier.

ARTICLE X

Assignment or Subletting

Section 10.1. Assignment or Subletting.

Lessee agrees to use and occupy the demised premises throughout the entire term hereof for the purpose or purposes herein specified and for no other purposes, in the manner and to substantially the extent now intended, and not to transfer or assign this Lease or sublet said demised premises, or any part thereof, whether by voluntary act, operation of law, or otherwise, without obtaining the prior consent of Lessor in each instance. Lessee shall seek such consent of Lessor by a written request therefore, setting forth such information as Lessor may deem necessary. Lessor agrees not to withhold consent unreasonably; however, Lessor reserves the right to fully investigate the proposed successor and to assure itself that the proposed successor is acceptable to Lessor and Lessor may require that the proposed successor agree to additional conditions or obligations not contained within this agreement before granting consent to the assignment or subletting. Consent by Lessor to any assignment of this Lease or to any subletting of the demised premises shall not be a waiver of Lessor's right under this Article as to any subsequent assignment or subletting. Lessor's rights to assign this Lease are and shall remain unqualified. No such assignment or subleasing shall relieve the Lessee from any of Lessee's obligations in this Lease contained, nor shall any assignment or sublease or other transfer of this Lease be effective unless the assignee, sub lessee or transferee shall at the time of such assignment, sublease or transfer, assume in writing the benefit of Lessor, its successors or assigns, all of the terms, covenants and conditions of this Lease thereafter to be performed by Lessee and shall agree in writing to be bound thereby.

Section 10.2. Successors and Assigns.

The terms, covenants and conditions hereof shall be binding upon and inure to the successors and assigns of the parties hereto.

Section 10.3 Franchise Provision

The parties hereto recognize and acknowledge that Lessee is a franchisee of Dunn Bros Coffee Franchising, Inc. ("Franchisor") pursuant to a Franchise Agreement between Lessee and Franchisor. The parties have executed a separate Franchisor Provision, which is attached hereto as Exhibit B and incorporated herein in its entirety. The parties expressly agree that to the extent the Franchisor Provision conflicts with any other term of this Lease, then the Franchisor Provision will control and the parties shall be bound by its terms with respect to such issue.

ARTICLE XI

Default and Overdue Payments of Lessee

Section 11.1.

- 11.1.1 In the event of any failure of Lessee to pay any rental due hereunder within ten days after the same shall be due, or any failure to perform any other of the term, condition or covenant of this Lease to be observed or performed by Lessee for more than 30 days after written notice of such failure shall have been given to Lessee, or if Lessee or an agent of Lessee shall falsify any report required to be furnished to Lessor pursuant to the terms of this Lease, or if Lessee or any guarantor of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or any person shall take or have against Lessee or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency for the reorganization or for the appointment of a receiver or trustee of all or a portion of Lessee's or any such guarantor's property, or if Lessee or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Lessee shall abandon the demised premises or suffer this Lease to be taken under any writ of execution, then in any such event Lessee shall be in default hereunder, and Lessor, in addition to other rights of remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the demised premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Lessee, all without service of notice or resort to legal process without being guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. Failure to pay rent more than 10 days after it is due more than twice in any 12-month period shall constitute a breach of this lease.
- 11.1.2 Should Lessor elect to re-enter the demised premises, as herein provided, or should it take possession of the demised premises pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the demised premises, and relet the demised premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable. Upon each subletting all rentals received by the Lessor from such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys fees and of costs of such alterations and repairs; third, to the payment of residue and unpaid hereunder, and the rent due, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Lessee hereunder, Lessee, upon demand shall pay any

such deficiency to Lessor. No such re-entry or taking possession of the demised premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time after such re-entry and reletting elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any such breach, in addition to any other remedies it may have, it may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the demised premises, reasonable attorneys fees, and including the worth at the time of such termination the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the demised premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

- 11.1.3 Lessor may, at its option, instead of exercising any other rights or remedies available to it in this Lease or otherwise by law, statute or equity, spend such money as is reasonably necessary to cure any default of Lessee herein and the amount so spent, and costs incurred, including attorneys fees in curing such default, shall be paid by Lessee, as additional rent, upon demand.
- 11.1.4 In the event suit shall be brought for recovery of possession of the demised premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Lessor or Lessee to be kept or performed, and a breach shall be established, the prevailing party in the suit shall be entitled to recover reasonable attorney's fees and costs incurred as a result of the litigation in addition to any amounts recoverable under this Lease. The prevailing party in the suit shall be entitled to recover interest on all damages, other than such reasonable attorney's fees and costs awarded by the court, in an amount determined by the court, and not by a jury. All damages, including such reasonable attorney's fees and costs awarded by the court, shall accrue interest at the then current legal rate for interest on judgments under North Dakota law from the date of entry of judgment.
- 11.1.5 Lessee waives any demand for possession of the demised premises, and any demand for payment of rent and any notice of intent to re-enter the demised premises, or of intent to terminate this Lease, other than the notices above provided in this Article, and waives any and every other notice or demand prescribed by any applicable statutes or laws.
- 11.1.6 No remedy herein or elsewhere in this Lease or otherwise by law, statute or equity, conferred upon or reserved to Lessor or Lessee shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

Section 11.2. Overdue Payments.

All monies due under this Lease from Lessee to Lessor shall be due on demand, unless otherwise specified. In the event rent is not paid within ten (10) days of the due date, Tenant agrees to pay a late charge of Fifteen Dollars (\$15.00) plus interest at 8% per annum on the delinquent amount until paid. The rate of interest defined in this Section shall be referred to as the Contract Interest Rate.

**ARTICLE XII
Certificate of Estoppel and Subordination**

Section 12.1. Certificate of Estoppel.

The Lessee agrees at any time and from time to time upon not less than 10 days prior written request by the Lessor to execute, acknowledge and deliver to the Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect, or if modified, in full force and effect, and stating the modifications, and the dates to which the basic rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or mortgage or assignee of any mortgagee upon the fee of the demised premises.

Section 12.2. Subordination.

Upon request of Lessor, Lessee will subordinate this Lease and its rights hereunder to the lien of any mortgage, trust deed or other instrument resulting from any method of finance and refinancing, now or hereafter in force against the land and buildings which constitute the premises, and to all advances made or hereafter to be made upon the security thereof, provided, however, that such mortgage or instrument of finance will agree that, in the event any action is taken to foreclose the lien of the mortgage, this Lease and all rights of the Lessee under its terms to use and quiet possession of the premises shall not be disturbed and shall continue in full force and effect so long as Lessee shall faithfully discharge each and every obligation on its part to be kept and performed under the terms of this Lease.

**ARTICLE XIII
Surrender, Holding Over and Abandonment**

Section 13.1. Surrender.

On the expiration date or upon the termination hereof upon a day other than the expiration date, Lessee shall peaceably surrender the demised premises broom-clean in good order, condition and repair, reasonable wear and tear only excepted. On or before the expiration date or upon termination of this Lease on a day other than the expiration date, Lessee shall, at its expense, remove all trade fixtures, personal property and equipment and signs from the demised premises and any property not removed shall be deemed to have been abandoned. Any damage caused in the removal of such items shall be repaired by Lessee and at its expense. All alterations, additions, improvements and fixtures (other than trade fixtures) which shall have

been made or installed by Lessor or Lessee upon the demised premises and all floor covering so installed shall remain upon and be surrendered with the demised premises as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this Lease. Upon request by Lessee, Lessor and Lessee shall identify and designate such fixtures as "trade fixtures" from time to time, as such trade fixtures are installed which designation by Lessor shall not be unreasonably withheld. If the demised premises are not surrendered on the expiration date or the date of termination, Lessee shall indemnify Lessor against loss or liability, claims, without limitation, made by any succeeding Lessee founded on such delay. Lessee shall promptly surrender all keys for the demised premises to Lessor at the place then fixed for payment of rent and shall inform Lessor of combinations of any locks and safes on the demised premises.

Section 13.2. Holding Over.

In the event Lessee remains in possession of the demised premises after the expiration date of this Lease and without the execution of a new lease, it shall be deemed to be occupying the demised premises as a Lessee from month to month, subject to all the conditions, provisions and obligations of this Lease insofar as the same can be applicable to a month-to-month tenancy, provided, however, that the base rent required to be paid by Lessee during any holdover period shall be in the amount equal to 120% of the rent due for the last month prior to the expiration of the term of this Lease, plus any monthly Maintenance payments as set forth in Section 2.01 of this Lease.

Section 13.3. Abandonment.

In the event Lessee shall remove its fixtures, equipment or machinery or shall vacate the demised premises or any part thereof prior to the expiration date of this Lease, or shall discontinue or suspend the operation of its business conducted on the demised premises for a period of more than 30 consecutive days (except during any time when the demised premises may be rendered unleaseable by reason of fire or other casualty), then in any such event Lessee shall be deemed to have abandoned the demised premises and Lessee shall be in default under the terms of this Lease.

**ARTICLE XIV
Rules and Regulations**

Section 14.1. Rules and Regulations.

Lessee shall observe and comply with reasonable rules and regulations as Lessor may prescribe, on written notice to Lessee, for the safety, care and cleanliness of the building and to regulate, restrict or prohibit smoking on the Subject Property.

~~ARTICLE XV~~
Mechanics' Liens

Section 15.1. Mechanics' Liens.

- 15.1.1 Lessee will not permit to be created or to remain undischarged in any lien, encumbrance or charge (arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialmen, or any mortgage, conditional sale, security agreement or chattel mortgage, or otherwise by or for Lessee) which might be or become a lien or encumbrance or charge upon the subject premises or any portion thereof or the income and interest of Lessor in the demised premises or any portion thereof that might be impaired. If any lien or notice of lien on account of any alleged debt of Lessee or any notice of contract by a party engaged by Lessee or Lessee's contractor to work on the premises shall be filed against the demised premises or subject property or any portion thereof, Lessee shall within 10 days after demand from Lessor, cause the same to be discharged of record by payment, deposit, bond, order of a Court of competent jurisdiction or otherwise. If Lessee shall fail to cause such lien or notice of lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge such lien by deposit or by bonding proceedings or in any such event Lessor shall be entitled if Lessor so elects to compel the prosecution of an action for the foreclosure of any such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowance. Any amount so paid by Lessor and all costs and expenses, including attorney's fees, incurred by Lessor in connection therewith shall constitute additional rent payable by Lessee under the Lease and shall be paid by Lessee to Lessor on demand. Nothing herein contained shall obligate Lessor to pay or discharge any lien created by Lessee.
- 15.1.2 Lessee shall pay promptly all persons furnishing labor and materials with respect to any work performed by Lessee or Lessee's contractor in the premises. No work which Lessor permits Lessee to do shall be deemed to be for the immediate use and benefit of Lessor, so that no mechanic's or other liens should be allowed against the estate of Lessor by reason of any consent given by Lessor to Lessee to improve the premises.
- 15.1.3 Prior to the commencement of any work or the delivery of any material to the premises by a contractor, subcontractor or materialmen, Lessee shall deliver to the Lessor a recordable waiver of lien affidavit from each such contractor which waiver of lien shall provide, among other things, that the contractor waives any and all lien rights that he may have against Lessor's interest in the property or any portion thereof.
- 15.1.4 The provisions of this section shall apply with respect to Lessee's work or any other work performed on the premises at any time during the term hereof.

ARTICLE XVI
Hazardous Substances

Section 16. Hazardous Substances

- 16.1 Lessee shall not use, store, transport or dispose of any toxic or hazardous substances upon the demised premises without first obtaining the written consent of Lessor. The term "hazardous substance" shall include, but not be limited to, the following: asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products, or other dangerous, toxic, or hazardous pollutant, contaminant, chemical material, or substances defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by any law or regulation and shall include any medical and biomedical substances and equipment (such as syringes) used to handle such substances.
- 16.2 Lessee shall indemnify, defend and hold Lessor and its members, officers and employees harmless from any claim, loss, or expense arising out of or in any way related to use, storage, transportation or disposal of any such toxic or hazardous substances upon the demised premises including any claim, loss or expense from illness, personal injury or death. This indemnification provided hereunder shall also specifically cover, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision or other third party resulting from the use, storage, transportation or disposal of such toxic or hazardous substances upon the demised premises.
- 16.3 Lessee shall comply with all applicable local, state and federal laws regarding such hazardous substances.

ARTICLE XVII
Miscellaneous

Section 17.1. Notices.

Any notice required or permitted under this Lease shall be deemed sufficiently given or secured if sent by registered or certified return receipt mail to Lessee at:

PM COFFEE, LLC
1895 SPACE C – 45TH STREET
FARGO, ND 58103

and to Lessor at the address then fixed for the payment of rent as provided in Section 2.02 of this Lease, and either party may by like written notice at any time designate a different address to which notices shall subsequently be sent or rent to be paid.

Section 17.2. Intent of Parties.

Except as otherwise provided herein, the Lessee covenants and agrees that if it shall at any time fail to pay any such cost or expense, or fail to take out, pay for, maintain or deliver any of the insurance policies above required, or fail to make any other payment or perform any other act on its part to be made or performed as in this Lease provided, then the Lessor may, but shall not be obligated to do so, and without notice to or demand upon the Lessee and without waiving or releasing the Lessee from any obligations of the Lessee in this Lease contained, pay any such cost or expense, effect any such insurance coverage and pay premiums therefore, and may make any other payment or perform any other act on the part of the Lessee to be made and performed as in this Lease provided, in such manner and to such extent as the Lessor may deem desirable, and in exercising any such right, to also pay all necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys fees. All sums so paid by Lessor and all necessary and incidental costs and expenses in connection with the performance of any such act by the Lessor, together with interest at the Contract Interest Rate from the date of making of such expenditure by Lessor, shall be deemed additional rent hereunder, and shall be payable to lessor on demand. Lessee covenants to pay any such sum or sums with interest as aforesaid and the Lessor shall have the same rights and remedies in the event of non-payment thereof by Lessee as in the case of default by Lessee in the payment of the base rent payable under this Lease.

In the event the Lessor fails to perform any covenant or obligation to be kept by Lessor under this Lease, Lessee at its option may cure the Lessor's failure to perform Lessor's covenants and obligations, having first given Lessor reasonable notice of such failure to perform, and a reasonable opportunity for Lessor to so perform. Lessee shall be entitled to an offset against future rents equal to the reasonable costs, including interest at the Contract Interest Rate from the date of payment, incurred by Lessee to complete performance of the Lessor's covenants and obligations under the Lease.

Section 17.3. Consents by Lessor and Authorized Representatives.

17.3.1. Whenever provision is made under this Lease for Lessee securing the consent or approval by Lessor, such consent or approval shall only be in writing.

17.3.2. The following persons are authorized to act on behalf of Lessor/Lessee:

As to Lessor, any one or more of the following are authorized to act or make decisions: Director of the Fargo Public Library, Tim Dirks, or his successor; City Administrator, Patrick J. Zavoral, or his successor.

As to Lessee, any one or more of the following are authorized to act or make decisions: Meghann Poku, President; Eric Mehrer, Vice President, or their successors in office for PM Coffee, LLC.

Section 17.4. No Agency Relationship.

The Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Lessor and Lessee, the sole relationship between the parties being that of Lessor and Lessee.

Section 17.5. Governmental Regulations.

Lessee shall at Lessee's sole cost and expense comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the said premises and shall faithfully observe in the use of the premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force.

Section 17.6. Waiver.

The waiver by the Lessor of any breach or default of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach of the Lessee of any term, covenant or condition of this Lease, regardless of Lessor's knowledge of said preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Lessor unless such waiver is in writing by Lessor.

Section 17.7. Force Majeure.

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required during the term of this Lease, the performance of such act shall be excused for the period of the delay. The provisions of this section shall not operate to excuse Lessee from the prompt payment of rent, additional rent or any other payments required by this Lease.

Section 17.8. Entire Agreement.

This Lease and the schedules, if any, attached hereto and forming a part hereof, constitute the entire agreement between Lessor and Lessee affecting the demised premises and there are no other agreements, either oral or written, between them other than are herein set forth. All negotiations, considerations, representations and understandings between the parties are incorporated herein. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Lessor or Lessee unless reduced to writing and executed in the same form and manner in which this Lease is executed.

Section 17.9. Interpretation of Lease.

Unless specifically stated herein, this Lease shall be construed and interpreted in accordance with the laws of the State of North Dakota.

Section 17.10. Time is of the Essence.

Time is of the essence of each provision in this Lease

Section 17.11. Construction.

If any agreement, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application or such agreement, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each agreement, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 17.12. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or described the scope of this Lease nor the intent of any provision thereof.

Dated the day and year first set forth above.

LESSOR:

CITY OF FARGO

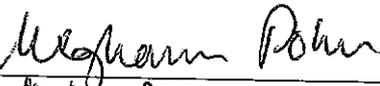
By: Dennis R. Walaker, its Mayor

ATTEST:

Steven Sprague, City Auditor

LESSEE:

PM COFFEE, LLC, a North Dakota Limited
Liability Company


By: Meghan Pohn, President



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2008)

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

JL

West Fargo Hockey Association
(Full, Legal Name of Gaming Organization) is hereby authorized to conduct games of

chance under the license granted by the Attorney General of the State of North Dakota
at the following location: Old Chicago the address of which is:
2551 South 45th Street Fargo 58104 Cass
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning 7/1/09 Ending 6/30/10

Specific location where games of chance will be conducted and played at the site (required):
Entire bar and restaurant area (excluding the restrooms) and including outside patio area

Number of twenty-one tables (required)(if zero, enter "0"): 1

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)

1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Bingo, Raffles, Club Specials, Tip Boards, Seal Boards, Prize Boards, Punch Boards, Sports Pools, Poker, Calcutta Paddlewheels

Attorney General Date Signature of City/County Auditor 06-01-2009
Steven Sprague, City Auditor
PRINT Name / Official Position of person signing above

INSTRUCTIONS:

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

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



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2008)

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

West Fargo Hockey Association
(Full, Legal Name of Gaming Organization) is hereby authorized to conduct games of

chance under the license granted by the Attorney General of the State of North Dakota at the following location: Fort Nok the address of which is:
52 Broadway Fargo 58102 Cass
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning 7/1/09 Ending 6/30/10

Specific location where games of chance will be conducted and played at the site (required):
Entire bar area (excluding the restrooms) and including outside patio area

Number of twenty-one tables (required)(if zero, enter "0"): 1

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)

1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Bingo, Raffles, Club Specials, Tip Boards, Seal Boards, Prize Boards, Punch Boards, Sports Pools, Poker, Calcutta, Paddlewheels

Attorney General Date Signature of City/County Auditor 06-01-2009
Steven Sprague, City Auditor
PRINT Name / Official Position of person signing above

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2008)

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

1
2

Gilbert C. Grafton Post # 2

American Legion

(Full, Legal Name of Gaming Organization)

is hereby authorized to conduct games of

chance under the license granted by the Attorney General of the State of North Dakota at the following location: American Legion Club the address of which is:

505 3rd Ave N Fargo 58102 Cass
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning July 1, 2009 Ending June 30, 2010

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

Lower-BJ and Pull-Tabs SW Corner of Building. Bingo in bar and lounge
North half of building. Upper-S Corner Building. Paddlewheel w/o table,

Number of twenty-one tables (required)(if zero, enter "0"): (2) Two Raffles E. Corner Building

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)

1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Club specials, Tip Boards, Seal Boards, Prize Boards, Punch Boards, Poker, Calcutta

Attorney General

Date

Signature of City/County Auditor

Steven Sprague, Auditor
PRINT Name / Official Position of person signing above

6-1-09

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2008)

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

13

Boys & Girls Club of the Red River Valley
(D.B.A. FARGO Youth Commission)
(Full, Legal Name of Gaming Organization)

is hereby authorized to conduct games of

chance under the license granted by the Attorney General of the State of North Dakota
at the following location: Borrowed Bucks Roadhouse the address of which is:

1201 Westrac Drive FARGO 58103 CASS
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning July 1, 2009 Ending June 30, 2010

Specific location where games of chance will be conducted and played at the site (required):
Entire lounge area, excluding rest rooms and entry ways

Number of twenty-one tables (required)(if zero, enter "0"): 4 (four)

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)

1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Bingo, Raffles, Club Specials, Tip Boards, Seal Boards, Prize Boards, Punch Boards, Sports Pools, Calcutta, Paddlewheels, Pull Tab

Dispensing Devi

Attorney General

Date

Signature of City/County Auditor

Steven Sprague, City Auditor 06-01-2009
PRINT Name / Official Position of person signing above

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2008)

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

Boys & Girls Club of the Red River Valley
(O.B.A. FARGO Youth Commission)

is hereby authorized to conduct games of

chance under the license granted by the Attorney General of the State of North Dakota
at the following location: Mr. O's the address of which is:
1150 43rd Street South FARGO 58103 CASS
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning July 1, 2009 Ending June 30, 2010

Specific location where games of chance will be conducted and played at the site (required):
Entire lounge Area, excluding Rest rooms and entry ways

Number of twenty-one tables (required)(if zero, enter "0"): 2

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)

1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Bingo, Raffles, Club Specials, Tip Boards, Seal Boards
Prize Boards, Punch Boards, Sports Pools, Calcutta, Paddlewheels, Pull Tab Dispensing
Devices

Attorney General Date Signature of City/County Auditor
06-01-2009
Steven Sprague, City Auditor
PRINT Name / Official Position of person signing above

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (9-2008)

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

Boys & Girls Club of the Red River Valley
(D.B.A. - FARGO Youth Commission)
(Full, Legal Name of Gaming Organization)

is hereby authorized to conduct games of

chance under the license granted by the Attorney General of the State of North Dakota
at the following location: Slammers Sports Bar the address of which is:
RR. Lanes 707 28th Ave. N. FARGO 58102 GRASS
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning July 1, 2009 Ending June 30, 2010

Specific location where games of chance will be conducted and played at the site (required):
Entire lounge Area, excluding Rest rooms and entry ways

Number of twenty-one tables (required)(if zero, enter "0"): 2

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)

1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game type prohibited Bingo, Raffles, Club Specials, Tip Boards, Seal Boards, Prize Boards, Punch Boards, Sports Pools, Calcutta, Paddlewheels, Pull Tab Dispensing Devices

06-01-2009

Attorney General

Date

Signature of City/County Auditor

Steven Sprague, City Auditor
PRINT Name / Official Position of person signing above

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



Site License Number _____
(Attorney General Use Only)
SFN - 17996

JH

NORTH DAKOTA GAMES OF CHANCE
SITE AUTHORIZATION

The Arc Upper Valley Inc is hereby authorized to conduct games of
(Name of Organization)
chance under the license granted by the Attorney General of the State of North
Dakota at the location known as JH Cigarros the address of
which is: _____
(Street) Fargo (City) 58103 (Zip Code) Cass (County)
Date(s) authorized: Beginning JUNE 17, 2009 Ending JUNE 30 2009
Specific location of gaming operations within facility: EAST WALL
JH CIGARROS & ENTIRE BAR (UPPER LEVEL)
Number of twenty-one tables: TWO

RESTRICTIONS: (To be completed ONLY if restrictions are set by local governing
body)
1. Days of week of gaming operations _____
2. Hours of gaming _____
3. List each specific game prohibited Bingo, Raffles, Club Specials, Tip Boards, Boards, Prize Boards, Punch Boards, Sports Pools, Poker, Calcutta, Paddlewheel

Seal
with a
table

Pull Tab Dispensing Devices _____
(Attorney General) Date _____ (Signature of City/County Auditor) June 1, 2009
Date
Steven Sprague, City Auditor

Routing: White & Canary - Attorney General Pink - To be retained by City/County

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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

May 27, 2009

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



Re: Recycling Drop-Site at Shanley High School

Dear Commissioners:

Over the past several years, the City of Fargo has experienced significant growth in residential dwellings in the south and southwest portions of the city. 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 entered a lease agreement with the Diocese of Fargo to allow construction of a new recycling drop-site at Shanley High School.

On November 17, 2008, the Commission approved a price quote from Aggregate Industries in the amount of \$92,958 for the grading, storm sewer and asphalt paving work associated with the construction project. Unfortunately, the work could not be completed within the 2008 calendar year as originally requested by the City.

Therefore, we have solicited new quotes for construction of the Shanley recycling drop-site to be completed this summer. Quotes were received from three contractors as follows:

Northern Improvement	\$82,530.75
Aggregate Industries	\$87,758.00
Border States Paving	\$101,865.00

An itemized summary spreadsheet of the quotations has been attached for your reference. It is the recommendation of this office that the quote from Northern Improvement in the amount of \$82,530.75 be accepted and approved for construction of the Shanley recycling drop-site.

Your consideration in this matter is greatly appreciated.

SUGGESTED MOTION

Accept the quote from Northern Improvement Company in the amount of \$82,530.75 for construction of the Shanley recycling drop-site.

Sincerely,



Bruce P. Grubb
Enterprise Director



Memorandum

To: PWPEC

From: April E. Walker, Storm Sewer Utility Engineer *Aew*

CC:

Date: 5/26/09

Re: Access Agreements

The engineering department is currently in the process of evaluating potential flood control projects in the Southwood neighborhood. As a part of the preliminary investigations a study of the soils in the area needs to be completed.

Working with Houston engineering we have identified a number of locations where we would like to conduct borings and place inclinometers to monitor movement in the banks. Much of this work can be done on city owned property however private property will also be affected.

To facilitate this work we have approached two private property owners with agreements for temporary right of access. They have signed and returned the attached agreements. These agreements also include the provision for a \$200.00 payment in lieu of an appraisal for the temporary easement for each property. This is consistent with the minimum payment policy.

At this time staff recommends that these agreements be forwarded to City Commission with a recommendation for approval.

ACCESS AGREEMENT

THIS AGREEMENT, is made this ___ day of _____, 2009, by and between the City of Fargo, a North Dakota municipal corporation ("City"), and SISTERS OF PRESENTATION OF THE BLESSED VIRGIN MARY ("Grantor").

RECITALS

A. The City is currently in the process of evaluating the need for flood protection in an area of the City located approximately between 32nd Ave. S. and Interstate I-94 and east of University Dr. In an effort to determine the necessary and appropriate components of a potential flood protection project it must enter upon certain real property to conduct parcel reviews.

B. Grantor agrees to grant the City, its officers, employees, contractors, consultants, representatives, and agents, access to and entry upon real property owned by Grantor, subject to the terms of this Agreement.

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

AGREEMENT

1. **Access.** In accordance with the terms of this Agreement, Grantor grants to the City, and its officers, employees, consultants, contractors, agents, and representatives, including employees of the City, access and right-of-way in, on, over, through, and across the following real property in Cass County, North Dakota:

- Lot One (1), Block One (1), Presentation Addition to the City of Fargo, ND; commonly referred to as 1101 32 AVE S.
- Lot Three (3), Block One (1), Presentation Addition to the City of Fargo, ND; commonly referred to as 3000 11th Street S.

(the "Property").

The City's temporary rights under this Agreement include the right of ingress and egress to and over the Property, including by vehicle by the least intrusive means possible; the right to enter upon and occupy the Property; the right to install inclinometers in the boring holes and for site visits to read the inclinometers on a quarterly basis for a period of two years from the date of this Agreement; and the right to conduct parcel review and field design, including parcel survey, parcel staking, visual observation, and data collection for purposes of an environmental assessment.

City of Fargo
Access Agreement
Page 2

2. **Ownership.** Grantor warrants that Grantor is the fee simple owner of the Property; that Grantor has the authority and right to execute this Agreement; and that this Agreement does not violate any mortgage or other interest held by any third party regarding the Property, or any portion of the Property.
3. **Term.** The rights and privileges granted under this Agreement will begin immediately and will continue until the City completes its objectives identified in Section 1 above, but no later than June 15, 2011.
4. **Condition of the Property.** The City will return the Property as nearly as practicable to its original condition, taking into consideration the nature of the work being performed.
5. **Indemnity.** The City agrees to indemnify and hold Grantor harmless from any and all claims, damages, or losses to the Property that arise out of the City's negligence on the Property.
6. **Assignment.** Neither party will transfer or assign this Agreement or any of their rights or obligations under this Agreement without the express written consent of the other party.
7. **Governing Law.** This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree the venue for any litigation arising out of this Agreement will be in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
8. **Survival of Agreement.** If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.
9. **Time is of the Essence.** Time is of the essence of the parties' obligations under this Agreement.
10. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties.
11. **Modifications.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.
12. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors, heirs, representatives, and assigns, including successors in title.

City of Fargo
Access Agreement
Page 3

13. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.
14. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

City of Fargo
Access Agreement
Page 4

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

CITY OF FARGO

By: Dennis Walaker, Mayor

ATTEST

Steve Sprague, City Auditor

City of Fargo
Access Agreement
Page 5

OWNER

Frances O'Neill

Signature

Frances O'Neill PBVM

Print Name

President

Mary Margaret Mooney

Signature

Mary Margaret Mooney PBV

Print Name

Vice - President

MINIMUM PAYMENT POLICY

Property owners have the option of waiving their right to an appraisal of the property in exchange for minimum payment. The amount of the minimum payment is established through City policy.

The waiver of an appraisal in exchange for minimum payment applies to the following types of acquisitions:

1. Temporary construction easements
2. Slope easements
3. Permanent right-of-way

The minimum payment policy is an acquisition tool that allows the City to pay the property owner a minimum amount in lieu of conducting an appraisal. Regardless of the specific policy established, the City ensures that its minimum payment policy is fair and equitable from one property owner to the next. *Federal aid participation in minimum payment policies is limited to \$500 per property owner.*

The property owner completes, signs and dates the Notification and Waiver form. The property owner selects the following option on this form:

- We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plans.
- We wish to waive our rights to an appraisal on our property and receive the minimum payment described below:
 - Temporary construction and/or slope easements only, minimum payment of \$200.00
 - Permanent right-of-way easement only, minimum payment of \$400.00
 - Combined permanent right-of-way with a temporary construction easement and/or slope easement, minimum payment of \$500.00

It is the City's policy to employ the minimum payments policy described above whenever a property owner wishes to donate the needed property or wishes to forgo the appraisal process in return for the in-lieu minimum payment. The waiver form will indicate that the property owner understands that they are entitled to just compensation for the property being acquired. If the property owner chooses not to accept the minimum payment, then the City will follow the requirements of Section 323, Title 23, United States Code, and proceed to an appraisal of the property in question. If the appraisal shows that the just compensation is less than the City's established minimum payment, the property owner will only be eligible for the appraised value.

MINIMUM PAYMENT POLICY
NOTIFICATION AND WAIVER

Project No. 5031-2

Parcel No. 01 7030 00100 000 01 7030 00300 000

Owner(s) Presentation

Legal Description (See Attachment)

Section 323, Title 23, United States Code, states that no provision of law shall prevent a person whose real property is being acquired for a federally aided highway project from making a gift or donation of such property, or any part hereof, or of any of the compensation paid therefore, after such person has been fully informed of his right to receive just compensation for the acquisition of his property.

The purpose of this notification is to provide you with a written explanation of your right to receive just compensation for the acquisition of your property for the above-named federal-aid highway project.

If you elect to receive just compensation for your property, federal and state law requires that your property be appraised and an amount be established which is believed to be just compensation therefor prior to the initiation of negotiations. The law also requires that a prompt offer be made to acquire your property for the full amount so established. In no event will the amount offered be less than the approved appraisal of the fair market value of the property appraised.

Should you desire to receive compensation for your property, the City will provide you with a written statement of a summary of the basis of the amount established as just compensation.

I, the undersigned, understand that we are entitled to receive just compensation for our property being acquired by the City of Fargo in cooperation with the North Dakota Department of Transportation to construct a federal-aid project in Fargo, Cass County, North Dakota.

- I/we do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plans.
- I/we wish to waive our right to an appraisal on our property and receive the minimum payment described below:
 - Temporary construction and/or slope easement only, minimum payment of \$200.00
 - Permanent right-of-way easement only, minimum payment of \$400.00
 - Combined permanent right-of-way with a temporary construction and/or slope easement, minimum payment of \$500.00

It is understood that any changes in these plans, adverse to our property, will make this agreement null and void.

Francis O'Neill
Signature(s)

Mary Margaret Moroy
Signature(s)

5-18-09
Date

5/18/09
Date

Signature(s) _____ Date

Signature(s) _____ Date

ACCESS AGREEMENT

THIS AGREEMENT, is made this ____ day of _____, 2009, by and between the City of Fargo, a North Dakota municipal corporation ("City"), and Fredrick B. and Virginia J. Scheel, (referred to herein collectively as "Grantor").

RECITALS

A. The City is currently in the process of evaluating the need for flood protection in an area of the City located approximately between 32nd Ave. S. and Interstate I-94 and east of University Dr. In an effort to determine the necessary and appropriate components of a potential flood protection project it must enter upon certain real property to conduct parcel reviews.

B. Grantor agrees to grant the City, its officers, employees, contractors, consultants, representatives, and agents, access to and entry upon real property owned by Grantor, subject to the terms of this Agreement.

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

AGREEMENT

1. **Access.** In accordance with the terms of this Agreement, Grantor grants to the City, and its officers, employees, consultants, contractors, agents, and representatives, including employees of the City, access and right-of-way in, on, over, through, and across the following real property in Cass County, North Dakota:

Lots Thirteen (13) and Fourteen (14), Southwood Addition to the City of Fargo, ND;
commonly referred to as 912 Southwood Dr.

(the "Property").

The City's temporary rights under this Agreement include the right of ingress and egress to and over the Property, including by vehicle by the least intrusive means possible; the right to enter upon and occupy the Property; the right to install inclinometers in the boring holes and for site visits to read the inclinometers on a quarterly basis for a period of two years from the date of this Agreement; and the right to conduct parcel review and field design, including parcel survey, parcel staking, visual observation, and data collection for purposes of an environmental assessment.

City of Fargo
Access Agreement
Page 2

2. **Ownership**. Grantor warrants that Grantor is the fee simple owner of the Property; that Grantor has the authority and right to execute this Agreement; and that this Agreement does not violate any mortgage or other interest held by any third party regarding the Property, or any portion of the Property.
3. **Term**. The rights and privileges granted under this Agreement will begin immediately and will continue until the City completes its objectives identified in Section 1 above, but no later than June 15, 2011.
4. **Condition of the Property**. The City will return the Property as nearly as practicable to its original condition, taking into consideration the nature of the work being performed.
5. **Indemnity**. The City agrees to indemnify and hold Grantor harmless from any and all claims, damages, or losses to the Property that arise out of the City's negligence on the Property.
6. **Assignment**. Neither party will transfer or assign this Agreement or any of their rights or obligations under this Agreement without the express written consent of the other party.
7. **Governing Law**. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree the venue for any litigation arising out of this Agreement will be in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
8. **Survival of Agreement**. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable; the parties will reconvene negotiations to arrive, in good faith, at an agreement as to matters remaining undetermined as a result of any finding by a court of competent jurisdiction that any provision or part of this Agreement is invalid, illegal, or unenforceable.
9. **Time is of the Essence**. Time is of the essence of the parties' obligations under this Agreement.
10. **Entire Agreement**. This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes any previous oral or written agreements between the parties.
11. **Modifications**. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.
12. **Binding Effect**. The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors, heirs, representatives, and assigns, including successors in title.

City of Fargo
Access Agreement
Page 3

13. **Representation**. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.
14. **Headings**. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages.)

IN WITNESS WHEREOF, the parties executed this Agreement on the date written above.

CITY OF FARGO

By: Dennis Walaker, Mayor

ATTEST

Steve Sprague, City Auditor

City of Fargo
Access Agreement
Page 5

OWNER/GRANTOR

FREDRICK B. SCHEEL
Signature
P.O.A. - F. B. Scheel
Print Name

VIRGINIA S. SCHEEL
Signature
P.O.A. F. B. Scheel
Print Name

STEVE D. SCHEEL
5/12/2001

MINIMUM PAYMENT POLICY

Property owners have the option of waiving their right to an appraisal of the property in exchange for minimum payment. The amount of the minimum payment is established through City policy.

The waiver of an appraisal in exchange for minimum payment applies to the following types of acquisitions:

1. Temporary construction easements
2. Slope easements
3. Permanent right-of-way

The minimum payment policy is an acquisition tool that allows the City to pay the property owner a minimum amount in lieu of conducting an appraisal. Regardless of the specific policy established, the City ensures that its minimum payment policy is fair and equitable from one property owner to the next. *Federal aid participation in minimum payment policies is limited to \$500 per property owner.*

The property owner completes, signs and dates the Notification and Waiver form. The property owner selects the following option on this form:

- We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plans.
- We wish to waive our rights to an appraisal on our property and receive the minimum payment described below:
 - Temporary construction and/or slope easements only, minimum payment of \$200.00
 - Permanent right-of-way easement only, minimum payment of \$400.00
 - Combined permanent right-of-way with a temporary construction easement and/or slope easement, minimum payment of \$500.00

It is the City's policy to employ the minimum payments policy described above whenever a property owner wishes to donate the needed property or wishes to forgo the appraisal process in return for the in-lieu minimum payment. The waiver form will indicate that the property owner understands that they are entitled to just compensation for the property being acquired. If the property owner chooses not to accept the minimum payment, then the City will follow the requirements of Section 323, Title 23, United States Code, and proceed to an appraisal of the property in question. If the appraisal shows that the just compensation is less than the City's established minimum payment, the property owner will only be eligible for the appraised value.

MINIMUM PAYMENT POLICY
NOTIFICATION AND WAIVER

Project No. 5031-2
Parcel No. G1 2560 00140 000
Owner(s) Scheel
Legal Description (See Attachment)

Section 323, Title 23, United States Code, states that no provision of law shall prevent a person whose real property is being acquired for a federally aided highway project from making a gift or donation of such property, or any part hereof, or of any of the compensation paid therefore, after such person has been fully informed of his right to receive just compensation for the acquisition of his property.

The purpose of this notification is to provide you with a written explanation of your right to receive just compensation for the acquisition of your property for the above-named federal-aid highway project.

If you elect to receive just compensation for your property, federal and state law requires that your property be appraised and an amount be established which is believed to be just compensation therefor prior to the initiation of negotiations. The law also requires that a prompt offer be made to acquire your property for the full amount so established. In no event will the amount offered be less than the approved appraisal of the fair market value of the property appraised.

Should you desire to receive compensation for your property, the City will provide you with a written statement of a summary of the basis of the amount established as just compensation.

I, the undersigned, understand that we are entitled to receive just compensation for our property being acquired by the City of Fargo in cooperation with the North Dakota Department of Transportation to construct a federal-aid project in Fargo, Cass County, North Dakota.

- I/we do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plans.
- I/we wish to waive our right to an appraisal on our property and receive the minimum payment described below:
 - Temporary construction and/or slope easement only, minimum payment of \$200.00
 - Permanent right-of-way easement only, minimum payment of \$400.00
 - Combined permanent right-of-way with a temporary construction and/or slope easement, minimum payment of \$500.00

It is understood that any changes in these plans, adverse to our property, will make this agreement null and void.

FREDRICK R. SCHEEL

VIRGINIA J. SCHEEL

P.O.A. *F.D. Scheel*
Signature(s) STEVE D. SCHEEL

11/2/08
Date

P.O.A. *F.D. Scheel*
Signature(s)

11/2/08
Date

Signature(s) _____

Date _____

Signature(s) _____

Date _____



Memorandum

To: PWPEC
From: Nathan Boerboom, Storm Sewer Utility Engineer
Date: 5/22/09
Re: Project No. 5892 – Storm Sewer Cleaning

On Thursday, May 21, we opened an RFP for cleaning of the City's storm sewer system wherever temporary levees were constructed as a part of the recent flood fight. The RFP included cleaning of the inlet structures and the storm sewer leads to the main. Since the extent of sediment within the main lines is unknown, we included two additional unit price bid items for cleaning of these mains. These two items will be used whenever it is deemed necessary by the inspector.

We received quotes from Ernst Trenching, Inc. and Laney's Inc. Laney's was the apparent low and was awarded the contract. They will start the cleaning on Tuesday, May 26th.

Attached are the two quotes received for the project.

PROPOSAL FOR STORM SEWER CLEANING

	Est. Quantity		
Clean Structure	200	<u>\$85.00</u>	EA
Clean 10"-18" Storm Sewer	7000	<u>\$.50</u>	LF
Clean 21"-36" Storm Sewer	-	<u>\$.75</u>	LF
Clean 36"+ Storm Sewer	-	<u>\$1.00</u>	LF
Tipping Fee Reimbursement	200	<u>\$30.00</u>	TON

Quote Submitted by

KEVIN WOLF - Kevin Wolf

Name

LANEY'S INC.

Company

LANEY'S INC.

55 SOUTH 27TH STREET - FARGO, ND
Address 58103

701-237-0543

Phone

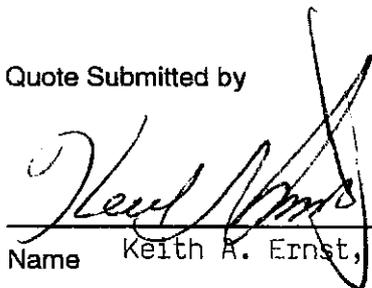
701-237-9767

Fax

PROPOSAL FOR STORM SEWER CLEANING

	Est. Quantity		
Clean Structure	200	<u>72.00</u>	EA
Clean 10"-18" Storm Sewer	7000	<u>2.80</u>	LF
Clean 21"-36" Storm Sewer	-	<u>4.20</u>	LF
Clean 36"+ Storm Sewer	-	<u>6.60</u>	LF
Tipping Fee Reimbursement	200	<u>\$30.00</u>	TON

Quote Submitted by



Name Keith A. Ernst, President

ERNST TRENCHING, INC.

Company

932 40th Street NW

Fargo ND 58106

Address

701-282-5954

Phone

701-282-0276

Fax



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. 5893 Levee Removal Type: 2009 Flood Levee Removals/Restoration
 5894 Gravel Road Restoration
 5895 Levee Restoration

Location: Various Locations Date of Hearing: 5/26/09

<u>Routing</u>	<u>Date</u>
City Commission	6/1/09
PWPEC File	X
Project File	
Petitioners	
David W. Johnson	X

Dave Johnson, Deputy City Engineer, provided a summary of proposals received related to 2009 flood cleanup and restoration. Dave recommended the following contract awards based on the criteria set forth in the Request for Proposals.

Type	Contractor	Project No.	Estimated Cost*
Levee Removal	Adelman Concrete & Excavating Inc.	5893	\$40,050
Gravel Road Restoration	Northern Improvement Co.	5894	\$181,230
Levee Restoration	Pioneer Trucking	5895	\$99,456

- * Note:
- Costs shown are estimated.
 - Payment will be made based on hourly rates and unit material costs as listed in the proposal.

On a motion by Pat Zavoral, seconded by Bruce Grubb, the Committee voted to recommend approval of 2009 flood projects.

RECOMMENDED MOTION

Approve contract award for 2009 Flood Projects:

Levee Removal Adelman Concrete & Excavating
 Gravel Road Restoration Northern Improvement Co.
 Levee Restoration Pioneer Trucking

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: FEMA Public Assistance 90%
 2009 Flood Funds 4%
 NDDDES 6%

	Yes	No
Developer meets City policy for payment of delinquent specials		N/A
Agreement for payment of specials required of developer		N/A
50% escrow deposit required		N/A

COMMITTEE

Pat Zavoral, City Administrator
Jim Gilmour, Planning Director
Bruce Hoover, Fire Chief
Mark Bittner, City Engineer
Bruce Grubb, Enterprise Director
Al Weigel, Public Works Operations Manager
Steve Sprague, City Auditor

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
X	X		X
X	X		
X	X		
X	X		
X	X		
X	X		
X	X		

ATTEST:

Mark H. Bittner

Mark H. Bittner
City Engineer

Type	Quantity	Unit	Price	Ext	Material	Subtotal	Specialized	IBI	Appln	Northern Imp	Exc Inc	Exc Inc
avee Farmwork - 1/2 SI and Silverleaf	5500 CY	avee-1/2	58.93	324,000.00								
6000 SI or 667 CY Black dirt returned	6000 SI	avee-1/2	58.93	353,340.00								
Foreman and pickup	75	hour	40.00	3,000.00								
Tandem dump truck (back dirt)	100	hour	65.00	6,500.00								
Tandem dump truck (\$ mil)	300	hour	110.00	33,000.00								
Backhoe - 1 1/2 CY	60	hour	130.00	7,800.00								
Front End Loader	50	hour	90.00	4,500.00								
Rubber Tired backhoe w/loader	0	hour	80.00	0.00								
Bobcat Type loader	80	hour	60.00	4,800.00								
Dozer	0	hour	110.00	0.00								
Broom	0	hour	110.00	0.00								
Street sweeper	0	hour	110.00	0.00								
Vector	0	hour	110.00	0.00								
seeding	6000	sq ft	0.55	3,300.00								
Subtotal				324,000.00								
Grade and Gravel areas	10,800 lf @ 1000 ft/day	150 hours	58.74	634,368.00								
grade and gravel	10,800 lf @ 1000 ft/day	150 hours	58.74	634,368.00								
Rebuild road	150 hours	hour	58.74	8,811.00								
seeding-400 lf at 17 wide each side of rebuild road	150 hours	hour	58.74	8,811.00								
Type	Hours	Unit	Price	Ext	Material	Subtotal	Specialized	IBI	Appln	Northern Imp	Exc Inc	Exc Inc
Foreman and pickup	150	hour	40.00	6,000.00								
Skidder (CY full)	240	hour	150.00	36,000.00								
Dozer	150	hour	110.00	16,500.00								
Material	150	hour	110.00	16,500.00								
Backhoe - 1 1/2 CY	20	hour	130.00	2,600.00								
Front End Loader	20	hour	90.00	1,800.00								
Rubber Tired backhoe w/loader	20	hour	80.00	1,600.00								
Bobcat Type loader	60	hour	60.00	3,600.00								
Dozer	60	hour	110.00	6,600.00								
Skidder	60	hour	150.00	9,000.00								
Subtotal				88,100.00								
Material	3200	CSM per ton	81.00	259,200.00								
Gravel - MD Class 5	3200	ton	81.00	259,200.00								
Building (Type A) with hydro mulch	18000	sq ft	0.35	6,300.00								
material total				265,500.00								
Grand total				634,368.00								
Leave restoration	5895	EST										
70 430 SY seeding	70 430	SY	0.55	387,265.50								
2" Black dirt is 3900 CY	3900	CY	0.55	2,145.00								
Foreman and pickup	1000	hour	40.00	40,000.00								
Tandem dump truck (\$ mil)	240	hour	110.00	26,400.00								
Dozer	200	hour	110.00	22,000.00								
Backhoe - 1 1/2 CY	60	hour	130.00	7,800.00								
Front End Loader	60	hour	90.00	5,400.00								
Rubber Tired backhoe w/loader	40	hour	80.00	3,200.00								
Bobcat Type loader	40	hour	60.00	2,400.00								
Dozer	160	hour	110.00	17,600.00								
Broom	0	hour	110.00	0.00								
Street sweeper	0	hour	110.00	0.00								
Vector	0	hour	110.00	0.00								
seeding	70 430	SY	0.55	387,265.50								
Subtotal				427,665.50								
Material	70 430	SY	0.55	387,265.50								
Building (Type A) with hydro mulch	70 430	sq ft	0.55	387,265.50								
Grand total				814,833.50								

PROPOSAL FORM
ROAD REPAIR AND GRAVEL

PROJECT 5894

Road Repair and Gravel

Site #	Location	Approx Length	Approx Gravel
1	64 th Avenue South - 18 th to 25 th Street	2,200 lf	1,370 ton
2	45 th Street South - 52 nd to 58 th Avenue South	2,600 lf	1,620 ton

Grade and Gravel Area

Site #	Location	Approx Length	Approx Gravel
3	64 th Avenue South - 25 th Street to 33 rd Street	3,400 lf	1,800 ton
4	38 th Street - 54 th to 58 th Avenue South	3,900 lf	2,000 ton
5	Drive west of 38 th Street at 55 th Avenue South	1,950 lf	650 ton
6	Drive north of 64 th Avenue S at 28 th Street	850 lf	300 ton

Road Repair

Site 1 will require a dozer, a maintainer and a bobcat or small loader for cleanup. Site 2 will require more extensive earth moving equipment and will require stripping of topsoil, removal of the existing levee, grading and compaction of a new roadbed and cutting and grading of ditches, and replacement of the topsoil and seeding of the ditches. It is anticipated that this site will need a minimum of two 6+ CY scrapers, a maintainer and a dozer to complete this work. Sites 3 - 6 will need a maintainer to fine grade and to spread and tire compact the road gravel.

Type	Number of Units Proposed	Unit Price per Hour
Foreman and pickup	1 Each	67.00 hour
Scraper (6 CY plus)	1 Each	205.00 hour
Dozer	1 Each	96.00 hour
Maintainer	1 Each	110.00 hour
Backhoe 1 - 1 1/2 CY	1 Each	102.00 hour
Front end loader	1 Each	100.00 hour
Rubber tired backhoe w/loader	1 Each	85.00 hour
Bobcat type loader	1 Each	85.00 hour
Other equipment: Transport	1 Each	105.00 hour
Type <u>Sheepsfoot Compactor 66"</u>	1 Each	85.00 hour
Type <u>Pneumatic Roller 15ton</u>	1 Each	85.00 hour
Material <u>Water Truck</u>	1 Each	85.00 hour
Gravel - ND Class 5	Cost per ton	12.20
Seeding (Type A) with hydro mulch	Cost per SY installed	0.65

List the equipment you have available to accomplish the work and the number of units you are proposing to use. (Only one foreman and pickup allowed per proposal.)

Quote submitted by: W. D. Berg

Name: W. D. BERG - SECRETARY

Firm: Northern Improvement Company

WALLY 4 wd. TRACTOR & DISC. 90⁰⁰

May 21, 2009

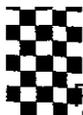
Dave Johnson
City of Fargo
200 3rd Street North
Fargo, ND 58102

Re: Available equipment
Road repair and gravel, levee restoration and grading

Dave:

Northern Improvement Company will make the following equipment available:

Road foreman and pickup	1	EA
STX 440 Quad w/2 Ashland 15CY bowls	1	EA
Cat D-5 Dozer	1	EA
Cat 140 Blade	1	EA
Cat 314 Excavator	1	EA
Cat 938 Loader	1	EA
Cat 420 Rubber Tired Backhoe	1	EA
Cat 287 Track Skid steer	1	EA
Sheep foot compactor 66"	1	EA
Pneumatic Roller 15 ton	1	EA
Water Truck	1	EA
Triple Axle Transport	1	EA



Page 1



HOME OFFICE
 4000 12TH AVE NW
 FARGO, NORTH DAKOTA
 58108-2544
 P.O. BOX 2544
 PHONE 701-277-1225
 FAX 701-277-1516

OFFICE AT
 BISMARCK, NORTH DAKOTA
 58502-1254
 P.O. BOX 1254
 PHONE 701-223-6688
 FAX 701-224-0937

OFFICE AT
 DICKINSON, NORTH DAKOTA
 58402-1034
 P.O. BOX 1034
 PHONE 701-226-6197
 FAX 701-226-0287

THOMAS McCORMICK, President/CEO
 STEVE McCORMICK, Executive Vice-President

DATE: 5/26/2009

TO: Dave Johnson

BUSINESS NAME: City of Fargo Engineering Department

FAX NUMBER: 241-8101 PHONE: 241-1545

FROM: Aaron Deringer PHONE: (701) 277-1225
 FAX: (701) 277-1516
 CELL: (701) 367-7812

1 PAGES TO FOLLOW
No WE WILL BE SENDING ORIGINAL BY MAIL

COMMENTS: Proposal form for grade, gravel and road repair job # 5894.
Please call me if you need additional information.

Thank You,
Aaron Deringer

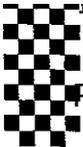
NOTE: IF YOU DID NOT RECEIVE ALL OF THE PAGES OR IF YOU HAVE A QUESTION, PLEASE CALL.

 IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE,
 AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL
 SERVICE. THANK YOU.

CONSTRUCTOR OF BRIDGES, HIGHWAYS, AND MUNICIPAL WORK
 WE ARE AN EQUAL OPPORTUNITY EMPLOYER



RECEIVED TIME MAY. 26. 4:20PM



PROPOSAL

Pioneer Excavating & Trucking LLC.
PO BOX 9468
Fargo ND 58106

To: City of Fargo

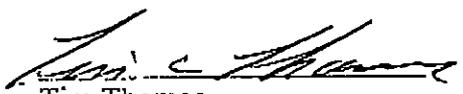
Attn: Dave Johnson

Re: Levee Restoration & Grading of Levee Dikes

Project: 5895

Pioneer Excavating & Trucking, LLC. Will provide equipment, labor and all materials needed to restore, level and compact clay and grade to uniform elevation as per proposal for project 5895.

Any questions feel free to call Tim Thomas at 701-491-2561.


Tim Thomas

Dennis R. Walaker, Mayor
City of Fargo

6/1/09

PROPOSAL FORM
LEEVE RESTORATION AND GRADING

Levee Restoration/Grading and Topsoil

Site #	Location	Approx Length	Approx SY
1	Cardinal Muench	1,800 lf	6,000 SY
2	1029 & 1033 Oak Street	170 lf	660 SY
3	South of 64 th Avenue S – Univ to 18 th St	3,700 lf	25,000 SY
4	Drain 27 and 32 nd Street South	1,000 lf	3,500 SY
5	52 nd Avenue South and Drain 53	700 lf	3,000 SY
6	64 th Avenue South – 33 rd Street to I-29	1,300 lf	5,000 SY
7	South of 52 nd Ave S – west of Drain 27	4,700 lf	20,000 SY

Levee Restoration

These sites will require a dozer, possibly a backhoe with a 1 to 1½ CY bucket and a bobcat or small loader for cleanup. Sites 2 & 4 are more restrictive sites and will require grading and/or moving the emergency levees from the rear of several lots and are the more difficult access areas. They are generally smaller scale cleanup areas.

Upon completion of the grading operation, topsoil will be placed on the disturbed areas. Topsoil will be available from the City stockpile site at 37th Avenue South, west of 38th Street South.

Type	Number of Units Proposed	Unit Price per Hour
Foreman and pickup	<u>1 #</u> Each	<u>55.00</u> hour
Dozer	<u>1 #</u> Each	<u>90.00</u> hour
Tandem dump truck	<u>6 #</u> Each	<u>68.00</u> hour
Backhoe 1 – 1½ CY	<u>1 #</u> Each	<u>125.00</u> hour
Front end loader	<u>2 #</u> Each	<u>85.00</u> hour
Rubber tired backhoe w/loader	<u>1 #</u> Each	<u>85.00</u> hour
Bobcat type loader	<u>2</u> Each	<u>50.00</u> hour
Other equipment:		
Type <u>labor</u>	<u>2 #</u> Each	<u>45.00</u> hour
Type _____	Each	hour

Material
 Seeding (Type A) with hydro mulch Cost per SY installed _____

List the equipment you have available to accomplish the work and the number of units you are proposing to use. (Only one foreman and pickup allowed per proposal.)

Quote submitted by:

Name: Tim Thomas

Firm: Pioneer Excavating & Trucking LLC



Contractor #33408 Class A
1841 43rd St N Ste B
Fargo, ND 58102
Office 701-277-7001 Fax 701-297-7748
Jon Cell 701-261-7725 Josh 701-361-8742

May 21, 2009

Pioneer Excavating
Fargo, ND 58102

Project Location: Road Repair and Gravel Levee Restoration

Addendums: 0

Bid is tied together

Our proposal includes the following:

Quote for seeding with hydro mulch only. Prep is hourly per Dave Johnson

<u>Item</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Total</u>
1. Cardinal Muench	6,000	\$0.55	\$3,300.00
2. 1029 & 1033 Oak Street	660	\$0.85	\$561.00
3. South of 64th Ave S Univ to 18th St	25,000	\$0.50	\$12,500.00
4. Drain 27 and 32nd St S	3,500	\$0.65	\$2,275.00
5. 52nd Ave S & Drain 53	3,000	\$0.55	\$1,650.00
6. 64th Ave S 33rd Street to I 29	5,000	\$0.52	\$2,600.00
7. South of 52nd Ave S West of Drain 27	20,000	\$0.52	\$10,400.00
			\$0.00
			\$0.00
Bobcat type loader /w conditioner	# of units	per hr rate	
	3	\$75	
			Total \$33,286.00

If you have any questions feel free to call.

PROPOSAL FORM

2009 EMERGENCY FLOOD LEVEE REMOVAL & CLEANUP

Levee Removal

<u>Site #</u>	<u>Location</u>	<u>Approx CY</u>	<u>Disposal Site</u>
1	Riverwood Addition	3,500	Airport Borrow Site
2	Red River Addition	900	Airport Borrow Site
3	Lilac Lane & Woodcrest	400	Airport Borrow Site
④	Oak Grove Area	2,500	Airport Borrow Site
5	2701 Oak Creek	300	64 th Avenue S & Univ Dr
⑥	Silverleaf Addition	2,000	Within the Addition

Levee Removal

Sites 1 (north vacant lots) & 2 require a minimum of 5 trucks, a backhoe with a 1 to 1½ CY bucket and a bobcat or small loader for cleanup. Sites 1 (south built up lots), 3, 4, 5 & 6 are more restrictive sites and will require removing the emergency levees from the rear of several properties and/or more difficult access areas and are generally smaller scale cleanup areas.

Type	Number of Units Proposed	Unit Price per Hour
Foreman and pickup	<u>1</u> Each	<u>\$40</u> hour
Tandem dump truck (5 min)	<u>4</u> Each	<u>\$55</u> hour
Backhoe 1 - 1 ½ CY	<u>1</u> Each	<u>\$85⁰⁰</u> hour
Front end loader	<u>1</u> Each	<u>\$85⁰⁰</u> hour
Rubber tired backhoe w/loader	<u>1</u> Each	<u>\$60⁰⁰</u> hour
Bobcat type loader	<u>2</u> Each	<u>\$50⁰⁰</u> hour
Other equipment:		
Type <u>Sheep's Foot Compactor.</u>	<u>1</u> Each	<u>\$45⁰⁰</u> hour
Type _____	_____ Each	_____ hour

List the equipment you have available to accomplish the work and the number of units you are proposing to use. (Only one foreman and pickup allowed per proposal.)

Quote submitted by:

Name: Scott Adelman

Firm: Adelman Concrete & Excavating Inc.
(# NB 32404A contractor's license on file)

Adelman Concrete & Excavating Inc.

1168 Center Street
West Fargo, ND 58078

Estimate

Date	Estimate #
5/26/2009	1129

Name / Address
City of Fargo 2009 Emergency Levee Removal & Cleanup

Project

Description	Qty	Cost	Total
<p>Adelman Concrete & Excavate agrees to furnish the following equipment and labor for the 2009 Emergency Levee Removal & Cleanup.</p> <p>Foreman and Pickup \$40/hour Tandem Dump Truck (qty.4) \$55/hour Backhoe 1-1 1/2 CY \$85/hour Front End Loader \$85/hour Rubber Tire Backhoe \$60/hour Skidsteer (qty. 2) \$50/hour Sheepsfoot Compactor \$45/hour</p> <hr/> <p>Adelman Concrete & Excavating Scott Adelman</p> <p>Please sign below and return one copy if the above prices are accepted</p> <hr/> <p>City of Fargo Dennis R. Walaker, Mayor</p>			
<p><u>6/1/09</u></p>		Total	\$0.00

1168 Center Street
West Fargo, ND 58078

Date	Estimate #
5/26/2009	1129

Name / Address
City of Fargo 2009 Emergency Levee Removal & Cleanup

			Project
Description	Qty	Cost	Total
<p>Adelman Concrete & Excavate agrees to furnish the following equipment and labor for the 2009 Emergency Levee Removal & Cleanup.</p> <p>Foreman and Pickup \$40/hour Tandem Dump Truck (qty.4) \$55/hour Backhoe 1-1 1/2 CY \$85/hour Front End Loader \$85/hour Rubber Tire Backhoe \$60/hour Skidsteer (qty. 2) \$50/hour Sheepsfoot Compactor \$45/hour</p> <p>_____ Adelman Concrete & Excavating Scott Adelman</p> <p>Please sign below and return one copy if the above prices are accepted</p> <p>_____ City of Fargo Dennis R. Walaker, Mayor</p>			
<p>6/1/09</p>		Total	\$0.00

May 28, 2009

PI

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

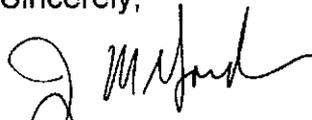
Re: Concurrence of Bid Award for Project Number 5838-01
Drain 27 Pedestrian Bridge

Dear Commissioners,

I have attached a bid award letter from Josh Olson, Project Manager from Ultieg Engineers, Inc., recommending approval of the lowest bid on this project located over County Drain 27 at approximately 48th Avenue South. I concur with his recommendation and recommend proceeding to award the contract to Wanzek Construction in the amount of \$440,971.40.

The special assessment escrow is not required.

Sincerely,



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

JMG/bem
Attachments



Ulteig

3350 38th Ave. S.
Fargo, ND 58104
Tel 701-280-8500
Fax 701-237-3191

www.ulteig.com

May 28, 2009

Mr. Jeremy Gorden, PE
City of Fargo Engineering Department
200 North 3rd Street
Fargo, North Dakota 58102

RE: Drain 27 Pedestrian Bridge
TEU-8-984 (110)113
Project No. 5838-01
Fargo, North Dakota
UEI Project No. 108.0512

Dear Jeremy,

On May 27, 2009 the City of Fargo received and publicly opened three (3) sealed bids for the referenced project.

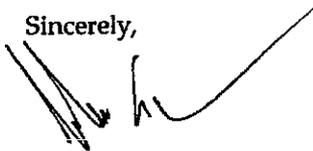
After reviewing the bids, it is our recommendation that the City of Fargo award the contract to the low bidder, Wanzek Construction, Inc., for the total bid of \$440,971.40.

Enclosed for your use is a copy of the bid tabulation.

If you have any question, please feel free to call me at (701) 280-8620.

Thank you.

Sincerely,



Joshua C. Olson, PE
Project Manager

JCO/jlr
Enclosure

Bid Tabulation
City of Fargo
Fargo, North Dakota
UEI Project No. 108.0512
Bid: 11:30 AM, May 27, 2009

No.	Item	Unit	Quantity	Wanzek Construction, Inc.		Swingsen Construction Co.		Industrial Builders, Inc.		Engineer's Opinion of Cost	
				Unit Cost	Ext. Price	Unit Cost	Ext. Price	Unit Cost	Ext. Price	Unit Cost	Ext. Price
Demolition											
1	Sawing (Full Depth)	LF	40	\$4.00	\$160.00	\$8.80	\$352.00	\$20.00	\$800.00	\$5.00	\$200.00
2	Remove Existing Concrete Trail	SY	608	\$8.00	\$4,864.00	\$1.70	\$1,033.60	\$6.00	\$3,648.00	\$4.00	\$2,432.00
3	Remove & Replace Curb & Gutter	LF	14	\$50.00	\$700.00	\$28.40	\$397.60	\$60.00	\$840.00	\$40.00	\$560.00
Subtotal Demolition					\$5,724.00		\$1,783.20		\$5,288.00		\$3,192.00
Paving											
1	Inlet Protection Type C	EA	2	\$100.00	\$200.00	\$97.00	\$194.00	\$350.00	\$700.00	\$250.00	\$500.00
2	Temporary Construction Entrance	EA	2	\$2,000.00	\$4,000.00	\$2,400.00	\$4,800.00	\$4,000.00	\$8,000.00	\$2,500.00	\$5,000.00
3	12" Fiber Roll	LF	736	\$2.50	\$1,840.00	\$3.60	\$2,649.60	\$3.25	\$2,392.00	\$4.00	\$2,944.00
4	Foundation Preparation	EA	1	\$5,000.00	\$5,000.00	\$16,000.00	\$16,000.00	\$54,500.00	\$54,500.00	\$6,000.00	\$6,000.00
5	Class 1 Excavation	LS	1	\$1,700.00	\$1,700.00	\$6,000.00	\$6,000.00	\$5,000.00	\$5,000.00	\$3,600.00	\$3,600.00
6	Common Excavation	CY	435	\$8.00	\$3,480.00	\$10.60	\$4,611.00	\$3.50	\$1,522.50	\$3.00	\$1,305.00
7	Imported Fill	CY	1412	\$18.00	\$25,416.00	\$8.50	\$12,002.00	\$14.00	\$19,768.00	\$20.00	\$28,240.00
8	Topsoil Placement	CY	274	\$8.00	\$2,192.00	\$14.70	\$4,027.80	\$4.00	\$1,096.00	\$2.50	\$685.00
9	Aggregate Base - Class 5	CY	165	\$26.00	\$4,290.00	\$24.00	\$3,960.00	\$32.00	\$5,280.00	\$25.00	\$4,125.00
10	4" Concrete Trail	SY	1340	\$37.00	\$49,580.00	\$34.90	\$46,766.00	\$37.00	\$49,580.00	\$40.00	\$53,600.00
11	Detachable Warning Panels	SF	20	\$45.00	\$900.00	\$47.00	\$940.00	\$42.00	\$840.00	\$50.00	\$1,000.00
12	Class AAE-3 Structural Concrete	CY	128	\$252.00	\$67,200.00	\$797.00	\$102,016.00	\$600.00	\$76,800.00	\$450.00	\$57,600.00
13	Reinforcing Steel - Grade 60	LBS	18112	\$1.20	\$21,734.40	\$1.70	\$30,790.40	\$1.30	\$23,545.60	\$1.10	\$19,923.20
14	Bearing - Expansion	EA	2	\$1,200.00	\$2,400.00	\$1,000.00	\$2,000.00	\$1,300.00	\$2,600.00	\$4,300.00	\$8,600.00
15	Bearing - Fixed	EA	2	\$1,000.00	\$2,000.00	\$850.00	\$1,700.00	\$1,400.00	\$2,800.00	\$4,800.00	\$9,600.00
16	Steel Piling	LF	1524	\$32.00	\$48,768.00	\$31.70	\$48,310.80	\$31.00	\$47,244.00	\$40.00	\$60,960.00
17	72" Prestressed I-Beam	LF	263	\$255.00	\$67,065.00	\$236.00	\$62,068.00	\$240.00	\$63,120.00	\$225.00	\$59,175.00
18	Class AAE-3 Bridge Deck Concrete	CY	52	\$940.00	\$48,880.00	\$1,300.00	\$67,600.00	\$1,040.00	\$54,080.00	\$500.00	\$26,000.00
19	Bridge Pedestrian Railing	LF	270	\$163.00	\$44,010.00	\$171.00	\$46,170.00	\$171.00	\$46,170.00	\$100.00	\$27,000.00
20	Pedestrian Railing	LF	85	\$163.00	\$13,855.00	\$171.00	\$14,535.00	\$171.00	\$14,535.00	\$70.00	\$5,950.00
21	Rub Rail	LF	263	\$67.00	\$17,621.00	\$62.40	\$16,411.20	\$63.00	\$16,569.00	\$50.00	\$13,150.00
22	Bench	EA	1	\$800.00	\$800.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$2,000.00	\$2,000.00
23	Install Sign	EA	2	\$170.00	\$340.00	\$159.00	\$318.00	\$160.00	\$320.00	\$600.00	\$1,200.00
24	Seeding With Hydromulch	SY	2470	\$0.80	\$1,976.00	\$2.10	\$5,187.00	\$0.75	\$1,852.50	\$2.50	\$6,175.00
Subtotal Paving					\$435,247.40		\$500,256.80		\$499,514.60		\$404,332.20
Total Bid					\$440,971.40		\$502,040.00		\$504,802.60		\$407,524.20

Whereby certify there were 3 sealed bids received and opened and 0 bids rejected on May 27, 2009, at Fargo, North Dakota.

Ulteig Engineers, Inc.

May 29, 2009

(Handwritten circled "p 2")

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. 5867

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, May 27, 2009, for Street Rehabilitation & Incidentals, Project No. 5867, located City wide.

The bids were as follows:

Northern Improvement Co.	\$ 65,450.00
Aggregate industries	\$ 79,300.00
Border States Paving, Inc.	\$ 81,190.00
Central Specialties, Inc.	\$114,500.00
Engineer's Estimate	\$ 72,000.00

The special assessment escrow is not required.

This office recommends award of the contract to Northern Improvement Co., in the amount of \$65,450.00 as the lowest and best bid.

Sincerely,

Mark H. Bittner

Mark H. Bittner
City Engineer

MHB/bem

May 27, 2009

13

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. 5872-01

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, May 27, 2009, for Traffic Signal Improvements, Project No. 5872-01, located at University Drive and 32nd Avenue North.

The bids were as follows:

Moorhead Electric	\$41,296.00
Strata Corporation	\$42,890.00
Fritz Electric	\$43,500.00
Engineer's Estimate	\$30,000.00

The special assessment escrow is not required.

This office recommends award of the contract to Moorhead Electric, in the amount of \$41,296.00 as the lowest and best bid.

Sincerely,

Mark H. Bittner

Mark H. Bittner
City Engineer

MHB/bem

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5314 (Phase 10)
 Date Entered:
 Date Printed: 05/06/2009

Chg Ord No: 2
 For: Master Construction Co. Inc.

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
3	1002	Standard Compaction Earth Backfill	LF	473.00	-132.30	340.70	-132.30	208.40	1.00	-132.30
3	3012	12" Storm Sewer	LF	22.00	-0.10	21.90	-0.10	21.80	34.00	-3.40
3	3015	15" Storm Sewer	LF	151.00	-26.60	124.40	-26.60	97.80	24.50	-651.70
3	3018	18" Storm Sewer	LF	195.00	-0.60	194.40	-0.60	193.80	26.50	-15.90
3	3101	15" Storm Sewer w/Gravel Backfill	LF	43.00	23.90	66.90	23.90	90.80	34.75	830.53
3	3102	18" Storm Sewer w/Gravel Backfill	LF	20.00	1.60	21.60	1.60	23.20	43.00	68.80
3	3103	21" Storm Sewer w/Gravel Backfill	LF	42.00	-6.20	35.80	-6.20	29.60	50.00	-310.00
3	3712	12" CMP	LF	33.00	-33.00	0.00	-33.00	-33.00	40.00	-1,320.00
3	3887	Inlet Protection - Type C2	EA	4.00	1.00	5.00	1.00	6.00	425.00	425.00
3	3894	Inlet Protection Type A1	EA	6.00	-6.00	0.00	-6.00	-6.00	260.00	-1,560.00
3	4492	Gate Valve Boxes to Grade	EA	3.00	-1.00	2.00	-1.00	1.00	150.00	-150.00
Storm Sewer Sub Total										-2,818.97
5	4130	6" RC Driveway	SY	30.00	18.00	48.00	18.00	66.00	40.00	720.00
Sub Total										720.00
6	3992	Temporary Construction Entrance	LS	1.00	-1.00	0.00	-1.00	-1.00	1,500.00	-1,500.00
6	3997	Silt Fence - Heavy Duty	LF	80.00	86.00	166.00	86.00	252.00	3.00	258.00
6	3998	Fiber Rolls	LF	80.00	-20.00	60.00	-20.00	40.00	3.50	-70.00
6	4006	Imported Fill	CY	4,000.00	-1,200.00	2,800.00	-1,200.00	1,600.00	8.00	-9,600.00
6	4010	Subgrade Preparation	SY	4,200.00	-416.30	3,783.70	-416.30	3,367.40	1.00	-416.30
6	4050	Geotextile Filter Fabric	SY	2,500.00	141.30	2,641.30	141.30	2,782.60	1.30	183.69
6	4064	Crushed Concrete Base Material	CY	340.00	-140.00	200.00	-140.00	60.00	21.00	-2,940.00
6	4068	Gravel Base (Class 5) - 7"	SY	2,500.00	141.30	2,641.30	141.30	2,782.60	4.45	628.79
6	4112	7" Reinforced PC Concrete Pavement	SY	2,326.00	92.00	2,418.00	92.00	2,510.00	55.00	5,060.00
6	4310	Remove Curb & Gutter	LF	200.00	-68.20	131.80	-68.20	63.60	5.00	-341.00
6	4320	Remove 4" Concrete Sidewalk	SY	73.00	-6.00	67.00	-6.00	61.00	10.00	-60.00
6	4331	Remove Asphalt Pavement	SY	893.00	-24.21	868.79	-24.21	844.58	5.00	-121.05
6	4336	Remove 3" Asphalt Bike Trail	SY	370.00	33.34	403.34	33.34	436.68	6.00	200.04
6	4341	Asphalt Base Course (Includes 5 - 5 1/2% Oil)	TON	375.00	190.97	565.97	190.97	756.94	100.00	19,097.00
6	4490	Castings to Grade	EA	10.00	-10.00	0.00	-10.00	-10.00	250.00	-2,500.00
6	4857	Remove 4' Security Fence	LF	80.00	151.00	231.00	151.00	382.00	5.50	830.50
6	8566	Topsoil & Hydroseeding	SY	6,385.00	-4,060.40	2,324.60	-4,060.40	-1,735.80	1.00	-4,060.40
6	8567	Temporary Chainlink Fence w/Constr. Warning	LF	625.00	-92.00	533.00	-92.00	441.00	13.60	-1,251.20
6	11038	Extra Item-Removal of cmp	LF	0.00	126.00	126.00	126.00	252.00	8.00	1,008.00
6	11039	Extra Item-Remove Church sign Base	LS	0.00	1.00	1.00	1.00	2.00	500.00	500.00
6	11109	Extra Item-8"WM	LF	0.00	1,466.80	1,466.80	2.80	1,469.60	27.00	75.60
6	11110	Extra Item-12"WM	LF	0.00	2.50	2.50	2.50	5.00	29.00	72.50
Paving Sub Total										5,054.17
16	5018	#6 USE Cu Conductor	LF	3,492.00	-327.00	3,165.00	-327.00	2,838.00	1.20	-392.40
16	5074	1-1/2" Innerduct	LF	1,164.00	-109.00	1,055.00	-109.00	946.00	2.65	-288.85
Street Lighting Sub Total										-681.25

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5314 (Phase 10)
 Date Entered:
 Date Printed: 05/06/2009

Chg Ord No: 2
 For: Master Construction Co. Inc.

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Curr Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
									Total:	2,273.95

Source of Funding: *street Sales Tax*
 Net Amount Change Order 2: \$2,273.95
 Previous Change Orders: \$87,092.00
 Original Contract Amount: \$334,119.50
 Total Contract Amount: \$423,485.45

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

APPROVED:

APPROVED:

Mark Bitter

City of Fargo Engineer

For Contractor

[Signature]

Mayor

Project Manager

Title

Attest

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5762

Chg Ord No: 1

Date Entered:

For:

Rising Sun Construction, Inc.

Date Printed: 05/21/2009

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Cur C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
1	1002	Standard Compaction Earth Backfill	LF	2,299.00	0.00	2,299.00	-153.22	2,145.78	0.50	-76.61
1	1006	6" Sanitary Sewer	LF	605.00	0.00	605.00	-46.50	558.50	12.00	-558.00
1	1008	8" Sanitary Sewer	LF	144.00	0.00	144.00	-4.00	140.00	15.00	-60.00
1	1012	12" Sanitary Sewer	LF	1,550.00	0.00	1,550.00	-102.72	1,447.28	19.00	-1,951.68
1	1500	Standard Sanitary Sewer Manhole	EA	4.00	0.00	4.00	1.00	5.00	2,155.00	2,155.00
1	11356	Extra Item-Internal Drop Connection	EA	0.00	0.00	0.00	1.00	1.00	301.06	301.06
1	11357	Extra Item-Mobilization	LS	0.00	0.00	0.00	2.00	2.00	450.00	900.00
Sanitary Sewer Sub Total										709.77
2	1002	Standard Compaction Earth Backfill	LF	1,890.00	0.00	1,890.00	-29.20	1,860.80	0.50	-14.60
2	2006	6" Water Main	LF	30.00	0.00	30.00	-7.00	23.00	20.00	-140.00
2	2008	8" Water Main	LF	176.00	0.00	176.00	-20.00	156.00	14.00	-280.00
2	2010	10" Water Main	LF	1,684.00	0.00	1,684.00	-1.20	1,682.80	18.00	-21.60
2	2110	10" Gate Valve	EA	3.00	0.00	3.00	1.00	4.00	1,300.00	1,300.00
2	2250	Mechanical Joint Fittings	LB	4,405.00	0.00	4,405.00	-280.00	4,125.00	0.67	-187.60
2	11358	Extra Item-8" Gate Valve	EA	0.00	0.00	0.00	2.00	2.00	1,450.00	2,900.00
2	11359	Extra Item-Lower Water Main	EA	0.00	0.00	0.00	1.00	1.00	4,284.00	4,284.00
2	11360	Extra Item-Replace Hydrant	EA	0.00	0.00	0.00	1.00	1.00	408.91	408.91
Water Main Sub Total										8,249.11
3	1002	Standard Compaction Earth Backfill	LF	2,110.00	0.00	2,110.00	-210.00	1,900.00	0.50	-105.00
3	3012	12" Storm Sewer	LF	737.00	0.00	737.00	-345.50	391.50	13.00	-4,491.50
3	3036	36" RCP Storm Sewer	LF	1,372.00	0.00	1,372.00	-205.00	1,167.00	44.00	-9,020.00
3	3100	12" Storm Sewer w/Gravel Backfill	LF	118.00	0.00	118.00	-11.50	106.50	24.00	-276.00
3	3101	15" Storm Sewer w/Gravel Backfill	LF	42.00	0.00	42.00	3.85	45.85	24.00	92.40
3	3408	36" RCP Plug	EA	2.00	0.00	2.00	-2.00	0.00	200.00	-400.00
3	3504	Type D Standard Storm Sewer Manhole	EA	1.00	0.00	1.00	-0.19	0.81	14,000.00	-2,660.00
3	3894	Inlet Protection Type A1	EA	4.00	0.00	4.00	1.00	5.00	130.00	130.00
3	3895	Inlet Protection Type B	EA	4.00	0.00	4.00	-4.00	0.00	350.00	-1,400.00
3	3896	Inlet Protection Type C	EA	4.00	0.00	4.00	-4.00	0.00	130.00	-520.00
3	3995	Silt Fence - Standard, Preassembled	LF	1,500.00	0.00	1,500.00	-1,483.50	16.50	1.80	-2,670.30
3	4448	10" Reinforced Concrete	SY	80.00	0.00	80.00	-49.30	30.70	48.00	-2,366.40
3	11361	Extra Item-15" Storm Sewer	LF	0.00	0.00	0.00	341.15	341.15	22.00	7,505.30
3	11362	Extra Item-36" RCP FES w/Trash Rack	EA	0.00	0.00	0.00	1.00	1.00	3,592.48	3,592.48
3	11363	Extra Item-Modify ST-5	LS	0.00	0.00	0.00	1.00	1.00	166.15	166.15
3	11364	Extra Item-Rock Bedding	LF	0.00	0.00	0.00	40.00	40.00	10.00	400.00
3	11365	Extra Item-Backhoe Rental	LS	0.00	0.00	0.00	1.00	1.00	1,510.00	1,510.00
Storm Sewer Sub Total										-10,512.87
Total:										-1,553.99

CITY OF FARGO ENGINEERING DEPARTMENT

Impr Dist No: 5762
 Date Entered:
 Date Printed: 05/21/2009

Chg Ord No: 1
 For: Rising Sun Construction, Inc.

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

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

Sec	Item	Item Description	Unit	Orig Cont Qty	Prev C/O Qty	Prev Cont Qty	Curr C/O Qty	Tot Cont Qty	Unit Price	C/O Ext Price
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Source of Funding:	
Net Amount Change Order 1:	(\$1,553.99)
Previous Change Orders:	\$0.00
Original Contract Amount:	\$228,365.85
Total Contract Amount:	\$226,811.86

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

APPROVED:

APPROVED:

Mark H. Betten

City of Fargo Engineer

Scott W. Soriano

For Contractor

Mayor

SCOTT W. SORIANO, PRESIDENT

Title

Attest

u

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. 5073 (Phase 7)

Type: Contract Amendment

Location: South Side Flood Control (SSFC) Project

Date of Hearing: 5/26/09

<u>Routing</u>	<u>Date</u>
City Commission	<u>6/1/2009</u>
PWPEC File	<u>X</u>
Project File	<u>April Walker</u>
Petitioners	<u> </u>
David W. Johnson	<u> </u>

The committee reviewed the scope of work and estimated cost for contract amendment for Environmental documentation associated with the SSFC Project. The amendment addresses additional work items associated with FEMA's decree that an Environmental Impact Statement (EIS) be completed in lieu of the Environmental Assessment (EA) as originally proposed.

On a motion by Pat Zavoral, seconded by Jim Gilmour, the Committee voted to recommend approval of the Contract Amendment.

RECOMMENDED MOTION

Approve Contract Amendment with URS in the amount of \$89,950 for SSFC Project #5073 (Phase 7).

	75%	FEMA HMGP
	12.5%	NDSWC
<u>PROJECT FINANCING INFORMATION:</u>	12.5%	Storm Sewer Utility

Recommended source of funding for project: _____

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 50% escrow deposit required

	<u>Yes</u>	<u>No</u>
	<u>N/A</u>	<u> </u>
	<u>N/A</u>	<u> </u>
	<u>N/A</u>	<u> </u>

COMMITTEE

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

ATTEST:

Mark H. Bittner
 Mark H. Bittner
 City Engineer

C: Bev Martinson

TIME AND MATERIALS WORK ORDER NO. 3

In accordance with the Agreement for Professional Services between City of Fargo ("Client"), and URS Corporation ("URS"), a Nevada corporation, dated May 22, 2009, this Work Order describes the Services, Schedule, and Payment Conditions for URS Services on the Project known as:

Fargo Southside Flood Control Project EIS Modification

Client Authorized

Representative: Mr. Mark Bittner, City Engineer
Address: 200 3rd Street North
Fargo, ND 58102
Telephone No.: (701) 241-1572

URS Authorized

Representative: Mr. Steve Cox, Operations Manager
Address: 12120 Shamrock Plaza, Suite 300
Omaha, Nebraska 68154
Telephone N (402) 334-8181

SERVICES. The Services shall be described in the SOW attachment to this Work Order.

SCHEDULE. The Estimated Schedule shall be set forth in the attachment to this Work Order. Because of the uncertainties inherent in the Services, Schedules are estimated and are subject to revision unless otherwise specifically described herein.

PAYMENT. URS charges shall be on a "time and materials" basis and shall be in accordance with the URS Schedule of Fees and Charges in effect at the time the Services are performed. Payment provisions and the URS current Schedule of Fees and Charges are attached to this work order.

TERMS AND CONDITIONS. The terms and conditions of the Agreement referenced above shall apply to this Work Order, except as expressly modified herein.

ACCEPTANCE of the terms of this Work Order is acknowledged by the following signatures of the Authorized Representatives.

CLIENT

Signature
Dennis R. Walaker - Mayor

Typed Name/Title
6/1/09

Date of Signature

URS

Steve Cox

Signature
Steve Cox, Operations Manager

Typed Name/Title
5-22-09

Date of Signature

Scope of Work
Environmental Impact Statement
Fargo Southside Flood Control Project
Fargo, North Dakota

URS has prepared the following Scope of Work (SOW) for modifying the original contract with the City of Fargo for an Environmental Assessment (EA) for the Southside Flood Control Project in Fargo, North Dakota. We have prepared this SOW based on the determination by the Federal Emergency Management Agency (FEMA) that an Environmental Impact Statement (EIS) is required.

URS has been proceeding under the original contract (dated 6/13/2008) and modification (12/15/2008). With the change in direction towards the preparation of the EIS, the scope of that project has changed. It is unclear at this time whether URS will complete the EIS through the City of Fargo or FEMA; however, based on our conversation with the City of Fargo, the City is requesting URS continues working towards completion of the EIS under the existing contract until a final determination can be made. In order to continue towards the goal of completing an EIS on an aggressive timeline, URS has been directed by the City of Fargo to prepare this scope modification. URS is proposing to extend the existing contract to include additional cultural resources surveys, continued preparation of the EIS through June 30, 2009, and the attendance of any meetings that may be required now through June 30, 2009.

Please note that this scope of work is not intended to include all tasks required to complete the EIS. If it is determined that the City of Fargo will continue contracting with URS for the completion of the EIS, an additional cost and scope modification will be required. This estimate is intended solely to allow URS to continue preparation of the EIS until final contracting with FEMA or the City of Fargo has been determined. Any funds remaining in this modification that have not been expended at the time of this resolution will not be invoiced.

The following items are changes in the original scope of work. These items require immediate attention in order to complete the EIS in the expedited timeframe required by the City of Fargo and FEMA.

Attend Applicant and Stakeholder Meetings and Participate in Conference Calls

The URS Project Manager and Senior Environmental Planner will attend up to 2 meetings in Fargo in the month of June. It was determined during the May 7 and May 8 meetings that the EIS will require multiple stakeholder meetings. It is anticipated that meetings will occur to discuss the Purpose and Need statement and the alternatives analysis submission. In addition, URS will continue participation in conference calls scheduled by FEMA or the City of Fargo.

Obtain Stakeholder Approval of Alternatives

Based on the change in scope from an EA to EIS, additional alternatives analysis scoping will be required. A more detailed description of the alternatives analysis is required for the EIS, as well as obtaining stakeholder approval of the alternatives. URS assumes the original alternatives will be included in this analysis, including a No Action Alternative that does not include emergency measures. An additional alternative that includes the use of emergency measures will be included in this analysis, at the direction of FEMA. An alternatives analysis summary will be prepared and submitted to the City of Fargo and FEMA for initial review. Following concurrence from the City and FEMA, this may be submitted to applicable stakeholders, including the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and other applicable state and local agencies for approval. URS assumes an expedited timeline will require that this report be prepared, submitted, and approved by June 26, 2009.

Complete Expanded Cultural Resources Surveys

URS began cultural resources inventories and surveys for the EA in 2008. Based on the change in scope from an EA to an EIS, the scope of the surveys has been expanded to include additional coordination with both the North Dakota and Minnesota State Historic Preservation Offices (SHPOs), additional surveying requirements including near surface soil testing, and the complete analysis of all project alternatives, including the no action. URS assumes an additional survey crew of four archaeologists will be required for an additional two weeks, plus the processing and cataloging of these resources.

It has been relayed to URS by the North Dakota SHPO and FEMA that additional coordination will be required, including conference call participation, to determine what level of deep surface borings will be required. This task does not include the completion of the deep soil boring surveys since this requirement has not been clearly defined by the SHPO. In addition, the property access agreements currently in place do not allow for subsurface soil boring and new property access agreements would be required to fulfill this task.

Preparation of the EIS

In order to meet the required timeline of the EIS preparation, URS must expand its scope of investigation and assessment from the original EA. The analysis of resources for an EIS is significantly more in depth than that of an EA. This requires URS to expand the original analysis to include the quantification of impacts for all alternatives. This scope of work assumes URS continues working towards completion of the preliminary draft EIS until June 30.

Assumptions

- URS assumes a signed work order will be obtained by June 1, 2009.
- URS assumes that if a contract for the completion of the EIS is executed by FEMA and URS prior to June 30, 2009 or the expenditure of this modification, the remaining funds will not be invoiced and the contract will be terminated.
- URS assumes that if a contract for the completion of the EIS is not executed by FEMA and URS prior to June 30, 2009, an additional scope and cost modification will be required to complete the EIS.

		Continue Preparation of EIS and Complete Cultural Resource Surveys at Approved Properties	
A. DIRECT LABOR	RATE	HOURS	COSTS
Professional Labor			
Project Manager	152.68	40	6,107.20
Environmental Planner - Master	135.75	80	10,860.00
Environmental Planner - Senior	113.16	160	18,105.60
Environmental Planner - Mid	82.45	80	6,596.00
Archaeologist - Master	122.44	160	19,590.40
Archaeologist - Senior	99.59	80	7,967.20
Archaeologist - Mid	68.42	180	12,315.60
Technical Editor	113.16		-
Biologist/Ecologist - Master	106.28		-
Biologist/Ecologist - Senior	86.41	20	1,728.20
Biologist/Ecologist - Mid	57.88		-
Technical Labor			
CADD/GIS Operator - Mid Level	71.47		-
Clerical/Word Processor	48.32		-
TOTAL DIRECT LABOR		800	83,270.20

B. OTHER SIGNIFICANT COSTS

1. OTHER DIRECT COSTS	RATE	NO.	COSTS
Shipping (correspondence)	8.70	2	17.40
EDR Database Search	280.00		0.00
G & A	8.00%		1.39
TOTAL OTHER DIRECT COSTS			18.79

2. TRAVEL	RATE	NO.	COSTS
Airfare - Denver to Fargo	590.00	4	2,360.00
Rental Car - Daily	60.00	12	720.00
Gasoline	3.40	80	272.00
Per Diem	109.00	24	2,616.00
Airport Parking - Daily	10.00	20	200.00
G & A	8.00%		493.44
TOTAL TRAVEL			6,661.44

B. TOTAL OTHER DIRECT COSTS 6,680.23

A. TOTAL DIRECT LABOR 83,270.20

TOTAL	\$ 89,950.43
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moore engineering, inc.

Consulting Engineering • Land Surveying

925 10th Avenue East • West Fargo, North Dakota 58078
Phone: 701-282-4692 • Fax: 701-282-4530

Moore Engineering, Inc. Scope of Work – Amendment to Engineering Agreement

City of Fargo Southside Flood Protection, District 5073

Scope of Work

The City of Fargo has requested the addition of various items related to the Southside Flood Protection project to the existing engineering services agreement. The additional tasks are generally related to additional public communication and outreach, coordination of work with the Technical Committee related to the project CLOMR, and additional project features. A brief description of tasks follows.

Item No. 1 – Environmental Assessment Support

Tasks included in this item are related to providing information for the project Environmental Assessment as well as providing review and comments of the document(s). A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$35,910.

Item No. 2 – Project Meetings

Tasks included in this item are related to preparing for and attending various project meetings including Tech. Team, Southeast Cass WRD, and public meetings. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$88,153

Item No. 3 – Right of Way, Land Access and Public Communication

Tasks included in this item are related to identifying and contacting landowners for the purpose of accessing property as well as responding to questions about the project from the general public. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$37,065.

Item No. 4 – Hydraulic Modeling

Tasks included in this item are related to creating and running hydraulic models for various project items as well as completing the Hydraulics/Hydrology Design Report for the project. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$68,597.

Item No. 5 – Reports and CLOMR Submittal

Tasks included in this item include updating and completing Decision Documents for various project features as well as completing items related to the submittal of the project CLOMR. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$46,998.

Item No. 6 – Project Management

Tasks included in this item are related to management of all project tasks including internal management as well as coordination with all parties involved. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$43,523.

Item No. 7 – Maple Prairie Geotechnical Analysis

Tasks included in this item are related to the geotechnical analysis of the Maple Prairie levee alignments for the purpose of the CLOMR. The cost to complete this item is estimated at \$9,744.

Item No. 8 – Rose Coulee Pump Station Physical Model

This item includes all work associated with construction of a 1:10 physical model as well as hydraulic testing and reporting. The total cost of this item is estimated at \$104,000, \$75,000 of which has been included in a previous amendment. The cost to complete this item is estimated at \$29,000.

It is estimated that the above items will be substantially complete in conjunction with the submittal of the CLOMR for the project to FEMA.

Compensation

The total estimated compensation for the work described including labor, equipment, and reimbursable items is \$358,990. The fees associated with the completion of the work described shall be per fee schedule currently in place under the existing agreement. Billing will be done monthly upon completion of the work.

**Southside Flood Protection
City of Fargo
Engineering Services Agreement - Amendment 10**

ATTACHMENT "A" - STUDY TASKS

<u>Task</u>	<u>Principal Eng</u>	<u>Project Manager</u>	<u>Professional Engineer</u>	<u>Design Engineer</u>	<u>Graduate Engineer</u>	<u>CADD/GIS</u>	<u>Clerical</u>		
Item No. 1: Environmental Assessment Support									
Provide information to Environmental Consultant for EA	5.0	25.0	20.0	100.0	100.0	85.0	10.0		
Review and comments for Environmental Assessment	5.0	15.0	5.0	15.0	0.0	0.0	0.0		
Subtotal	10.0	40.0	25.0	115.0	100.0	85.0	10.0	Totals	\$34,200
	\$1,350	\$5,000	\$2,625	\$10,350	\$8,000	\$6,375	\$500	Equipment and Reimbursables	\$1,710
								Task Total	\$35,910
Item No. 2: Project Meetings									
Prepare for and attend Local Meetings	30.0	42.0	18.0	42.0	30.0	36.0	6.0		
Prepare for and attend Technical Committee Meetings	48.0	72.0	60.0	72.0	30.0	12.0	12.0		
Prepare For and Attend SE Cass meetings	32.0	40.0	16.0	32.0	24.0	24.0	8.0		
Prepare for and Attend Corps and FEMA meetings	25.0	30.0	10.0	30.0	10.0	20.0	5.0		
Subtotal	135.0	184.0	104.0	176.0	94.0	92.0	31.0	Totals	\$83,955
	\$18,225	\$23,000	\$10,920	\$15,840	\$7,520	\$8,900	\$1,550	Equipment and Reimbursables	\$4,198
								Task Total	\$88,153
Item No. 3: Right of Way, Land Access and Public Communication									
Identify and contact properties for r.o.w./access needs	10.0	40.0	25.0	30.0	25.0	15.0	5.0		
Communication with government entities	10.0	15.0	10.0	5.0	0.0	0.0	0.0		
Landowner/affected resident communications	20.0	60.0	25.0	30.0	0.0	0.0	0.0		
Subtotal	40.0	115.0	60.0	65.0	25.0	15.0	5.0	Totals	\$35,300
	\$5,400	\$14,375	\$6,300	\$5,850	\$2,000	\$1,125	\$250	Equipment and Reimbursables	\$1,785
								Task Total	\$37,085
Item No. 4: Hydraulic Modeling									
Analyze necessity of Sheyenne River Breakout feature	10.0	15.0	30.0	5.0	10.0	10.0	0.0		
Update and finalize hydrology/hydraulic design report	5.0	10.0	100.0	50.0	50.0	30.0	12.0		
Analyze spring storm on top of storage operation	3.0	10.0	60.0	0.0	40.0	20.0	0.0		
Model 2009 flood with and without project	10.0	10.0	100.0	0.0	60.0	35.0	0.0		
Subtotal	28.0	45.0	290.0	55.0	160.0	95.0	12.0	Totals	\$85,330
	\$3,780	\$5,825	\$30,450	\$4,950	\$12,800	\$7,125	\$600	Equipment and Reimbursables	\$3,267
								Task Total	\$88,597
Item No. 5: Reports and CLOMR Submittal									
Compile Additional Feedback and Complete Decisions Docu	10.0	45.0	12.0	50.0	50.0	15.0	15.0		
Review and comments for CLOMR submittal	10.0	15.0	25.0	15.0	0.0	0.0	0.0		
Update plan/profile for CLOMR based on Tech. Team comm	5.0	10.0	10.0	20.0	60.0	125.0	0.0		
Subtotal	25.0	70.0	47.0	85.0	110.0	140.0	15.0	Totals	\$44,760
	\$3,375	\$8,750	\$4,935	\$7,650	\$8,800	\$10,500	\$750	Equipment and Reimbursables	\$2,238
								Task Total	\$46,998
Item No. 6: Project Management									
Communication/Coordination with Public Agencies	10.0	15.0	15.0	0.0	0.0	0.0	0.0		
Coordinate work, schedule	15.0	50.0	20.0	0.0	0.0	0.0	0.0		
Technical Direction/Coordinating with Subconsultants	15.0	50.0	10.0	20.0	0.0	0.0	0.0		
Coordination/standardize with Tech. Team Members	20.0	60.0	30.0	20.0	0.0	0.0	0.0		
Subtotal	60.0	175.0	75.0	40.0	0.0	0.0	0.0	Totals	\$41,450
	\$8,100	\$21,875	\$7,875	\$3,600	\$0	\$0	\$0	Equipment and Reimbursables	\$2,073
								Task Total	\$43,523
Item No. 7: Maple Prairie Geotechnical Analysis (Braun Intertec)								Task Total	\$9,744
Item No. 8: Rose Coulee Pump Station Physical Model (Barr Engineering)								Task Total	\$29,000
Total Amendment - All Tasks:									\$358,990

**AMENDMENT NO. 10
CITY OF FARGO
ENGINEERING SERVICES AGREEMENT
5073-1**

Project Name: Southside Flood Protection Study
Wild Rice River Overland Flood Control and Rose Coulee Backflow Prevention
Fargo, North Dakota

Scope of Work

Add the following:

The city desires to have the engineer continue with the development of the Southside Flood Study. Additional engineering services are generally related to additional public communication and outreach, coordination of work with the Technical Committee related to the CLOMR and additional project features as more completely outlined on the attached Scope of Work.

Compensation

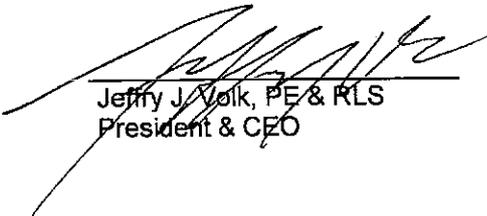
Amend the following:

- A. The City will pay the Engineer as follows:
The fees associated with completing this amendment shall be as per the attached proposal. The estimated cost Amendment No. 10 is \$358,990.

IN WITNESS WHEREOF, this amendment to a contract dated the 14th day of May, 2001 has been executed this ___ day of _____, 2009.

WITNESS:  _____

MOORE ENGINEERING INC.



Jeffrey J. Volk, PE & RLS
President & CEO

WITNESS: _____

CITY OF FARGO

By _____
Dennis R. Walaker, Mayor

Approved _____
City Attorney



moore engineering, inc.

Consulting Engineering • Land Surveying

925 10th Avenue East • West Fargo, North Dakota 58078
Phone: 701-282-4692 • Fax: 701-282-4530

Moore Engineering, Inc.
Scope of Work – Amendment to Engineering Agreement

City of Fargo
Southside Flood Protection, District 5073

Scope of Work

The City of Fargo has requested the addition of various items related to the Southside Flood Protection project to the existing engineering services agreement. The additional tasks are generally related to additional public communication and outreach, coordination of work with the Technical Committee related to the project CLOMR, and additional project features. A brief description of tasks follows.

Item No. 1 – Environmental Assessment Support

Tasks included in this item are related to providing information for the project Environmental Assessment as well as providing review and comments of the document(s). A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$35,910.

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Tasks included in this item are related to preparing for and attending various project meetings including Tech. Team, Southeast Cass WRD, and public meetings. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$88,153

Item No. 3 – Right of Way, Land Access and Public Communication

Tasks included in this item are related to identifying and contacting landowners for the purpose of accessing property as well as responding to questions about the project from the general public. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$37,065.

Item No. 4 – Hydraulic Modeling

Tasks included in this item are related to creating and running hydraulic models for various project items as well as completing the Hydraulics/Hydrology Design Report for the project. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$68,597.

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Tasks included in this item include updating and completing Decision Documents for various project features as well as completing items related to the submittal of the project CLOMR. A breakdown of the estimated effort to complete this item is attached. The cost to complete this item is estimated at \$46,998.

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Tasks included in this item are related to the geotechnical analysis of the Maple Prairie levee alignments for the purpose of the CLOMR. The cost to complete this item is estimated at \$9,744.

Item No. 8 – Rose Coulee Pump Station Physical Model

This item includes all work associated with construction of a 1:10 physical model as well as hydraulic testing and reporting. The total cost of this item is estimated at \$104,000, \$75,000 of which has been included in a previous amendment. The cost to complete this item is estimated at \$29,000.

It is estimated that the above items will be substantially complete in conjunction with the submittal of the CLOMR for the project to FEMA.

Compensation

The total estimated compensation for the work described including labor, equipment, and reimbursable items is \$358,990. The fees associated with the completion of the work described shall be per fee schedule currently in place under the existing agreement. Billing will be done monthly upon completion of the work.

**Southside Flood Protection
City of Fargo
Engineering Services Agreement - Amendment 10**

ATTACHMENT "A" - STUDY TASKS

<u>Task</u>	<u>Principal Eng</u>	<u>Project Manager</u>	<u>Professional Engineer</u>	<u>Design Engineer</u>	<u>Graduate Engineer</u>	<u>CADD/GIS</u>	<u>Clerical</u>		
Item No. 1: Environmental Assessment Support									
Provide information to Environmental Consultant for EA	5.0	25.0	20.0	100.0	100.0	85.0	10.0		
Review and comments for Environmental Assessment	5.0	15.0	5.0	15.0	0.0	0.0	0.0		
Subtotal	10.0	40.0	25.0	115.0	100.0	85.0	10.0	Totals	
	\$1,350	\$5,000	\$2,625	\$10,350	\$8,000	\$6,375	\$500	\$34,200	
						Equipment and Reimbursables		\$1,710	
							Task Total	\$35,910	
Item No. 2: Project Meetings									
Prepare for and attend Local Meetings	30.0	42.0	18.0	42.0	30.0	36.0	6.0		
Prepare for and attend Technical Committee Meetings	48.0	72.0	60.0	72.0	30.0	12.0	12.0		
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Subtotal	135.0	184.0	104.0	176.0	94.0	92.0	31.0	Totals	
	\$18,225	\$23,000	\$10,920	\$15,840	\$7,520	\$6,900	\$1,550	\$83,955	
						Equipment and Reimbursables		\$4,198	
							Task Total	\$88,153	
Item No. 3: Right of Way, Land Access and Public Communication									
Identify and contact properties for r.o.w./access needs	10.0	40.0	25.0	30.0	25.0	15.0	5.0		
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Landowner/affected resident communications	20.0	60.0	25.0	30.0	0.0	0.0	0.0		
Subtotal	40.0	115.0	60.0	65.0	25.0	15.0	5.0	Totals	
	\$5,400	\$14,375	\$6,300	\$5,850	\$2,000	\$1,125	\$250	\$35,300	
						Equipment and Reimbursables		\$1,765	
							Task Total	\$37,065	
Item No. 4: Hydraulic Modeling									
Analyze necessity of Sheyenne River Breakout feature	10.0	15.0	30.0	5.0	10.0	10.0	0.0		
Update and finalize hydrology/hydraulic design report	5.0	10.0	100.0	50.0	50.0	30.0	12.0		
Analyze spring storm on top of storage operation	3.0	10.0	60.0	0.0	40.0	20.0	0.0		
Model 2009 flood with and without project	10.0	10.0	100.0	0.0	60.0	35.0	0.0		
Subtotal	28.0	45.0	290.0	55.0	160.0	95.0	12.0	Totals	
	\$3,780	\$5,625	\$30,450	\$4,950	\$12,800	\$7,125	\$600	\$65,330	
						Equipment and Reimbursables		\$3,267	
							Task Total	\$68,597	
Item No. 5: Reports and CLOMR Submittal									
Compile Additional Feedback and Complete Decisions Docu	10.0	45.0	12.0	50.0	50.0	15.0	15.0		
Review and comments for CLOMR submittal	10.0	15.0	25.0	15.0	0.0	0.0	0.0		
Update plan/profile for CLOMR based on Tech. Team comm	5.0	10.0	10.0	20.0	60.0	125.0	0.0		
Subtotal	25.0	70.0	47.0	85.0	110.0	140.0	15.0	Totals	
	\$3,375	\$8,750	\$4,935	\$7,650	\$8,800	\$10,500	\$750	\$44,760	
						Equipment and Reimbursables		\$2,238	
							Task Total	\$46,998	
Item No. 6: Project Management									
Communication/Coordination with Public Agencies	10.0	15.0	15.0	0.0	0.0	0.0	0.0		
Coordinate work, schedule	15.0	50.0	20.0	0.0	0.0	0.0	0.0		
Technical Direction/Coordination with Subconsultants	15.0	50.0	10.0	20.0	0.0	0.0	0.0		
Coordination/standardize with Tech. Team Members	20.0	60.0	30.0	20.0	0.0	0.0	0.0		
Subtotal	60.0	175.0	75.0	40.0	0.0	0.0	0.0	Totals	
	\$8,100	\$21,875	\$7,875	\$3,600	\$0	\$0	\$0	\$41,450	
						Equipment and Reimbursables		\$2,073	
							Task Total	\$43,523	
Item No. 7: Maple Prairie Geotechnical Analysis (Braun Intertec)									
								Task Total	
								\$9,744	
Item No. 8: Rose Coulee Pump Station Physical Model (Barr Engineering)									
								Task Total	
								\$29,000	
Total Amendment - All Tasks:					\$358,990				



Braun Intertec Corporation
526 10th Street NE, Suite 300
PO Box 485
West Fargo, ND 58078

Phone: 701 232.8701
Fax: 701 232.7817
Web: braunintertec.com

December 10, 2008

Proposal FA-08-05435

Mr. Lee Beauvais
Moore Engineering, Inc.
925 10th Avenue East
West Fargo, ND 58078

Re: Proposal for Geotechnical Evaluation
Maple Prairie Residential Area Flood Control
76th Avenue South, East of University Drive South
West Fargo, North Dakota

Dear Mr. Beauvais:

We respectfully submit our proposal to perform a geotechnical evaluation for the Maple Prairie residential area flood control project. The project consists of an approximate 2,500-foot long levee that will be built along or atop 76th Avenue South, rising approximately 6 or 7 feet above adjacent grades.

Project Goal

Our primary goal is to qualify the levee according to the requirements of Federal Emergency Management Agency's (FEMA's) December 2007 Riverine Structures Form 81-89B. FEMA requires stability analyses under a variety of loading conditions, including end-of-construction, flood stage, rapid drawdown, long-term steady-state, and earthquake, as applicable.

Proposed Scope of Services

The following tasks are proposed to help us meet our project goal. If unfavorable or unforeseen conditions are encountered at any point during the completion of these tasks that lead us to recommend an expanded scope of services, we will contact you to discuss those conditions before resuming our work.

Document Review

We will rely on historic boring, laboratory testing and other information obtained by our firm and other consultants to complete the evaluation. Our firm has performed many borings, and performed many laboratory classification and strength tests on samples of the geologic materials present throughout West Fargo and along the Red River in the vicinity of this project. Northern Technologies, Inc., has also performed borings and laboratory tests on the geologic materials present in the area.

We have already visited the site and will be incorporating the results of our observations into the discussions, conclusions and recommendations we ultimately publish in our report.

Stability, Settlement and Seepage Analyses

As with other flood control projects we have completed or are in the process of completing in the area (University Drive South, 52nd Avenue South, South Acres and River Vili Residential areas, and the River Drive residential area), we will use finite element methodology to model typical flood control structure and subsurface geologic profiles and evaluate stability, settlement and seepage. Slope/W, Sigma/W and Seep/W by Geo-Slope International, will be used to perform the analyses and achieve FEMA's recommended minimum factors of safety; in the event those factors of safety are not met based on the proposed design, we will use the analyses to modify the design and meet those factors of safety.

Reporting

We will prepare a report including:

- A CAD sketch showing the project components and limits, as well as exploration locations.
- Logs of available borings and laboratory tests describing and characterizing the geologic materials represented in our models, and groundwater conditions.
- The results of stability, settlement and seepage analyses for three proposed cross sections, two showing the levee adjacent to the existing roadway, another showing the levee atop the existing roadway.
- General geotechnical recommendations for construction.

Three (3) hard copies and one (1) electronic copy of our report will be submitted to you. At your request, however, additional copies can be prepared for other project team members. If you anticipate that additional copies will be needed, please request them prior to the report being completed and forwarded to you so that we can prepare a copy list for the recipients and broadcast the additional reports expediently.

Estimated Cost and Invoicing

We will furnish the services described in this proposal for an estimated fee of \$9,472.50. A tabulation showing our estimated hourly and/or unit rates associated with our proposed scope of services is also attached. We would be happy to meet with you and discuss our proposed scope of services further, clarifying the various scope components, or discussing how the scope may be adjusted to meet your project requirements.

Our work will extend over multiple invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

Schedule

We have completed a reconnaissance of the site as mentioned. We can begin model construction within the week, and, upon receipt of information concerning river hydraulics from you, can likely complete our analyses by the end of December or early January.

General Remarks

Braun Intertec appreciates the opportunity to present this Proposal to you. We are providing it in duplicate so the original can be retained for your records and the ***copy can be signed and returned to us. Please return the copy in its entirety.***

The proposed fee is based on the scope of services described and the assumptions that our services will be authorized within 30 days and that others will not significantly delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please call us at 701.232.8701.

Sincerely,

BRAUN INTERTEC CORPORATION



Charles D. Hubbard, PE
Principal

Attachments:
Table 1: Estimated Costs
General Conditions (6/15/06)

The Proposal including the Braun Intertec General Conditions is accepted, and you are authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

W:/Drafts/FA/2008/Proposals/Geotechnical/05435/Proposal

Braun Intertec Corporation

Client: Moore Engineering, Inc.

Project: Maple Prairie Flood Control, Fargo, ND

Braun Intertec Proposal No.: FA-08-05435			Prepared: 12/10/2008	
Service Description:	Qty:	Units:	Unit Price:	Extension:
Engineering Consulting Services				
Project Engineer	50.00	Hours	126.00	6,300.00
Senior Engineer	20.00	Hours	144.00	2,880.00
Project Assistant	4.50	Hours	65.00	292.50
Phase Total:				\$ 9,472.50

Estimated Project Total: \$ 9,472.50

Our agreement ("Agreement") with you consists of these General Conditions and the accompanying written proposal or authorization.

Section 1: Our Responsibilities

1.1 We will provide the services specifically described in our Agreement with you. You agree that we are not responsible for services that are not fairly included in our specific undertaking. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

1.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction.

1.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and, further, that site conditions may change over time.

1.4 Our duties do not include supervising your contractors or commenting on, overseeing, or providing the means and methods of their work, unless we accept such duties in writing. We will not be responsible for the failure of your contractors to perform in accordance with their undertakings, and the providing of our services will not relieve others of their responsibilities to you or to others.

1.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, job, or site health or safety unless we accept that duty in writing.

1.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our

employees are authorized by you to refuse to work under conditions that may be unsafe.

1.7 Estimates of our fees or other project costs will be based on information available to us and on our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 2: Your Responsibilities

2.1 You will provide us with prior geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed our work.

2.2 You will provide access to the site. In the course of our work some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of normal damage in the estimated charges.

2.3 You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site unless we accept that duty in writing. You agree to hold us harmless from claims, damages, losses, and related expenses involving buried objects of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others on your behalf furnished to us.

2.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials in a sample provided to us. You agree to provide us with information in your possession or control relating to contamination at the work site. If we observe or suspect the presence of contaminants not anticipated in our Agreement, we may terminate our work without liability to you or to others, and we will be paid for the services we have provided.

2.5 Neither this Agreement nor the providing of services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. You agree to hold us harmless and indemnify us from any such claim or loss.

2.6 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless we accept that duty in writing.

2.7 You agree to make disclosures required by law. In the event you do not own the site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. You agree to hold us harmless and indemnify us from claims related to disclosures made by us that are required by law and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.

Section 3: Reports and Records

3.1 We will furnish reports to you in duplicate. We will retain analytical data for seven years and financial data for three years.

3.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property but are subject to a license to you for your use in the related project for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval, which will not be unreasonably withheld. You agree to indemnify and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use. At your request, we will provide endorsements of our reports or letters of reliance, but only if the recipients agree to be bound by the terms of our agreement with you and only if we are paid the administrative fee stated in our then current Schedule of Charges.

3.3 Because electronic documents may be modified intentionally or inadvertently, you agree that we will not be liable for damages resulting from change in an electronic document occurring after we transmit it to you. In case of any difference or ambiguity between an electronic and a paper document, the paper document shall govern.

3.4 If you do not pay for our services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control. You agree not to use or rely upon our work for any purpose whatsoever until it is paid for in full.



May 27, 2009

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District 5838

Dear Commissioners:

The protest period for Shared Use Path, Improvement District 5838, has expired. The project area is located between 40th and 52nd Avenue South, between Drain 27 and the Shyenne River.

There was one protest received amounting to less than 1% of the District.

Recommended Motion:

Validate Improvement District 5838 and declare protests insufficient.

Sincerely,

Mark H. Bittner
City Engineer

MHB/bem