



Meeting Items

- A. Call to Order
- B. Pledge of Allegiance
- C. Approve Order of Agenda
- D. Approval of Minutes – October 3, 2022 (Pages 3-4)
- E. Approval of Minutes – October 6, 2022 (Page 5)
- F. Approval of Minutes – October 13, 2022 (Pages 6-101)
- G. Building Permits (Pages 102-105)

Consent Agenda - Approve the Following:

- a. Bills (Pages 106-113)
- b. Games of Chance for VFW Department of North Dakota. Games to be conducted: Raffle on April 15, 2023 at VFW Post 7564 at 444 Sheyenne Street Suite 101 (Pages 114-115)
- c. Games of Chance for Legacy Elementary PTO. Games to be conducted: Bingo on October 28, 2022 at Legacy Elementary at 5150 9th St W (Page 116)
- d. Resolution Amending the Wood Addition to change the name from Wood Addition to Pattyn Addition (Pages 117-120)
- e. Gaming Site Authorization for West Fargo Baseball. Games to be conducted: Bingo, Raffles, Pull Tab Jar, Pull Tab Dispensing Device, Electronic Pull Tab Device, and Prize Board at 1405 Praire Parkway at Bar Nine (Pages 121-122)
- f. Gaming Site Authorization for Metro Sports Foundation. Games to be conducted: Pull Tab Dispensing Device and Electronic Pull Tab Device at 635 32nd Ave Suite 144 at Gimmies (Pages 123-124)

Regular Agenda

- 1. City of West Fargo Draft Planning Needs Assessment -- Aaron Nelson, Planning and Zoning Director (Pages 125-141)
- 2. Resolution approving parking reduction for The Lights District -- John Shockley, City Attorney (Pages 142-145)
- 3. Project No. 1343 (Sanitary Lift Station System Rehabilitation - SA 2,3,12 and 15)
-- Dan Hanson, City Engineer
Approve Task Order No. 63-1 for Basic Services (Pages 146-166)
- 4. Sidewalk Improvement District No. 6056 (2021 Walks) -- Dustin T. Scott, Assistant City Administrator
Final Approval of Assessments (Pages 167-180)
- 5. Project No. 2268 – 52nd Ave West (Phase II) -- Dustin T. Scott, Assistant City Administrator

Approve agreement with City of Fargo and Cass County (Pages 181-204)

6. Pay Study -- Mark Simmons, Commissioner
7. City Administrator's Report -- Tina Fisk, City Administrator
8. Correspondence
9. Non-Agenda Items
10. Adjourn



West Fargo City Commission Meeting
Monday, October 3, 2022
Commission Chambers 5:30 PM

The West Fargo City Commission met on Monday, October 3, 2022, at 5:30 p.m. Those present were Commissioners Bernie Dardis, Brad Olson, Mark Simmons, and Roben Anderson. Commissioner Mandy George was absent. President of the Board Bernie Dardis called the meeting to order at 5:30 p.m.

Commissioner Olson moved and Commissioner Anderson seconded to approve the order of the agenda as distributed. All the Commissioners present voted aye and the motion was declared carried.

Commissioner Olson moved and Commissioner Anderson seconded to approve the minutes of September 19, 2022 as distributed. Commissioners Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Commissioner Anderson moved and Commissioner Simmons seconded to approve the Building Permit Reports as distributed. Commissioners Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

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

- a. Bills (Pages 8-17)
- b. Access Agreement with SE Cass for Drain 21 Repair (Pages 18-26)
- c. Final plat approval of the proposed Wood Addition (Pages 27-36)
- d. Improvement District No. 1339 – Stockyards 1st Addition
 - Authorize Notice to Proceed; and Adopt Resolution Approving Contract and Contractor's Bond (Pages 37-40)
- e. Games of Chance for West Fargo Lions Club for Raffles from October 7, 2022 through April 7, 2023 at Silver Dollar at 221 Sheyenne St (Page 41)

Commissioners Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Aaron Nelson, Planning and Zoning Director, appeared before the Commission for the second reading and final adoption of the Zoning Ordinance amendment allowing for campgrounds within the A: Agricultural District. Following discussion, Commissioner Olson moved and Commission President Dardis seconded to approve the second reading and final adoption of the Zoning Ordinance amendment allowing for campgrounds within the A: Agricultural District. Commissioner Olson and Dardis voted aye and Commissioner Anderson and Simmons voted nay, the motion failed due to a tie.

Dan Hanson, City Engineer appeared before the Commission to request approval of the Sanitary Lift Station System Rehabilitation (SA 2,3,12, &15); create Project No. 1343, approve Engineer's Report, Direct Engineer to prepare Plans and Specifications and prepare a Task Order for Basic Services. Following discussion, Commissioner Simmons moved and Commissioner Anderson seconded to approve the Sanitary Lift Station System Rehabilitation (SA 2, 3, 12, &15); create Project No. 1343, approve Engineer's Report, direct Engineer to prepare Plans and Specifications and prepare a Task Order for Basic Services. Commissioners Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Dan Hanson, City Engineer appeared before the Commission to request approval of the NDDOT Transportation Alternative (TA) grant applications; approve TA grant applications; authorize letters of support. Following discussion, Commissioner Simmons moved and Commissioner Olson seconded to approve the NDDOT Transportation Alternative (TA) grant applications; approve TA Grant Applications; authorize letters of support. Commissioners Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Tina Fisk, City Administrator appeared before the Commission for the final budget approval of the 2023 City of West Fargo budget. Following discussion, Commissioner Olson moved and Commissioner Dardis seconded to approve the 2023 City of West Fargo final budget. Commissioners Olson and Dardis voted aye. Commissioners Anderson and Simmons voted nay, the motion failed due to a tie.

Commissioner Simmons moved and Commissioner Anderson seconded for reconsideration of the 2023 final budget approval. Commissioner Simmons moved and Commissioner Anderson seconded to approve the budget for 2023 with the following exceptions:

1. Remove the full-time employee from Communications
2. Cut the \$70,000 for Marketing down to \$20,000
3. Cut \$5,000 from Communications travel line item
4. Cut the \$25,000 retainer fee for Dale Carnegie through Human Resources
5. Cut the \$25,000 for the Payroll study

Commissioners Simmons, Anderson and Dardis voted aye. Commissioner Olson voted nay. The motion was declared carried on a 3:1 vote.

Dustin Scott, Assistant City Administrator appeared before the Commission for an office space recommendation, requesting to move forward with the lease agreement. Following discussion, Commissioner Simmons moved and Commissioner Olson moved to allow staff to move forward with looking into the office space lease for three years. Commissioners Olson, Simmons, Anderson and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

There was nothing on the Administrator's Report.

In regards to correspondence, they were passed out to each Commissioner.

There were no non-agenda items.

Commissioner Simmons moved and Commissioner Olson seconded to adjourn the meeting. All the Commissioners voted aye and the motion was declared carried. Meeting adjourned at 6:21 p.m.



West Fargo City Commission Meeting
Thursday, October 6, 2022
Commission Chambers 5:30 PM

The West Fargo City Commission met on Thursday, October 6, 2022, at 5:30 p.m. Those present were Commissioners Bernie Dardis, Brad Olson, Mark Simmons and Roben Anderson. Commissioner Mandy George was absent. President of the Board Bernie Dardis called the meeting to order at 5:30 p.m.

Commissioner Olson moved and Commissioner Anderson seconded to approve the order of the agenda as distribute. All the Commissioners present voted aye and the motion was declared carried.

John Shockley, City Attorney appeared before the Commission for a public hearing and review the Special Assessment List - Street Improvement District No. 2250 (Sheyenne Street Reconstruction from Beaton Drive to 40th Ave). Commission President Dardis opened and closed the public hearing for any written appeals submitted by 5 p.m. that day. No action was needed.

Dustin Scott, City Administrator appeared before the Commission with a three-year lease office space recommendation. Following discussion, Commissioner Simmons moved and Commissioner Olson seconded to approve the three-year lease office space recommendation. All the Commissioners present voted aye and the motion was declared carried.

There were no non-agenda items.

Commissioner Simmons moved and Commissioner Olson seconded to adjourn the meeting. All the Commissioners present voted aye and the motion was declared carried. Meeting adjourned at 6: 30 p.m.

Bernie Dardis, Commission President

Tina Fisk, City Administrator



West Fargo City Commission Meeting
Thursday, October 13, 2022
Commission Chambers 5:30 PM

The West Fargo City Commission met on Thursday, October 13, 2022, at 5:30 p.m. Those present were Commissioners Bernie Dardis, Brad Olson, Mark Simmons and Roben Anderson. Commissioner Mandy George was absent. President of the Board Bernie Dardis called the meeting to order at 5:30 p.m.

Commissioner Olson moved and Commissioner Anderson seconded to approve the order of the agenda as distributed. All the Commissioners present voted aye and the motion was declared carried.

John Shockley, City Attorney, appeared before the Commission for final approval of the Special Assessment List - Street Improvement District No. 2250 (Sheyenne Street Reconstruction from Beaton Drive to 40th Ave). Following discussion, Commissioner Simmons moved and Commissioner Olson seconded to approve the addition of 16 City-owned parcels that were inadvertently left off of the special assessment list, to approve a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District, and to approve the special assessment list for this district with adjustments for the addition of 16 City-owned properties and the 150 unit cap for multi-family properties. The Commission directed the City Attorney to finalize the Findings of Fact, Conclusions of Law, and Decision for the properties that appealed special assessments. All the Commissioners present voted aye and the motion was declared carried.

The City Commission directed City Staff to contact Southeast Cass Water Resource District regarding their desire to have discussions about the property for which they appealed the special assessment amount.

There were no non-agenda items.

Commissioner Simmons moved and Commissioner Olson seconded to adjourn the meeting. All the Commissioners present voted aye and the motion was declared carried. Meeting adjourned at 6:46 p.m.

Bernie Dardis, Commission President

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of **Tevye LLC** (the “Landowner”), owner of 4980 Sheyenne Street, West Fargo, North Dakota 58078 (the “Property”), with a parcel number of 02-4955-00010-000, legally described as follows:

Lot 1, Block 1 in Tevye Addition to the City of West Fargo, Cass County, North Dakota

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as Exhibit C. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as Exhibit D. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as Exhibit E.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as Exhibit F. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of

publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022, regarding the Property. See **Exhibit H**. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto. As part of the SAC's decision, it lowered Landowner's proposed assessment after it sustained the Landowner's argument and agreed that the parcel, while having a very large home and a very large lot area, was part of an Established Neighborhood (as defined in the City's Special Assessment Policy) and was unlikely to be further developed or split into additional development areas.

(15) On October 6, 2022, the Landowner, through its attorney, submitted an appeal of the SAC's determination to the City Commission by email. See **Exhibit I**.

(16) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant an additional reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written

appeal stating the grounds upon which the appeal is based. See Exhibit I. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision. The Landowner's attorney appeared at the City Commission's hearing on October 6, 2022, to reassert the objections in the appeal.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D.**

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E.** The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022, and issued its Findings of Fact, Conclusions of Law, and Order for the Property. **Exhibit F; Exhibit H.**

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal and objections at the October 6, 2022 hearing, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their property was unfairly high. The City Commission expressly rejects this argument because the Special Assessment Commission sustained the Landowners objection and reduced the amount of Special Assessments to be levied on this parcel. The Special Assessment Commission properly sustained the objection and levied the correct amount.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner's objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant an additional reduction in the special assessment to Landowner's Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.

(b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of **Invertase LLC** (the “Landowner”), owner of 320 52nd Avenue W and 5102 Sheyenne Street, West Fargo, North Dakota 58078 (the “Property”), with parcel numbers of 02-3000-01283-010 and 02-3000-01293-000, and the legal descriptions are as follows:

That part of the Southeast Quarter of Section 31, in Township 139 North of Range 49 West of the 5th P.M., Cass County, North Dakota, described as follows: Commencing at the Southeast corner of said Southeast Quarter; thence West along the South line of said Southeast Quarter for a distance of 602.71 feet to a point on the Southerly extension of the West line of Nitschke/Geiss First Subdivision of part of said Southeast Quarter, the point of beginning; thence continue West along the South line of said Southeast Quarter for a distance of 350.00 feet; thence North parallel to the West line of said Nitschke/Geiss First Subdivision for a distance of 1,145.00 feet; thence East parallel to the South line of said Southeast Quarter for a distance of 350.00 feet to a point on the West line of said Nitschke/Geiss First Subdivision; thence South along the West line of said Nitschke/Geiss First Subdivision and the Southerly extension thereof for a distance of 1,145.00 feet to the point of beginning, LESS the following described property: Commencing at the Southeast corner of said Section 31; thence South 89°27’27” West (assumed bearing) along the South line of said Section 31 for a distance of 602.71 feet; thence North 02°50’34” West for a distance of 490.65 feet to the point of beginning; thence South 87°45’46” West for a distance of 142.45 feet; thence Northwesterly for an arch distance of 76.75 feet along a non-tangential curve concave to the Southwest, said curve having a radius of 60.00 feet, a chord bearing of North 53°26’35” West and a chord length of 71.62 feet; thence North 20°39’43” West for a distance of 201.76 feet; thence North 34°37’03” East for a distance of 73.01 feet; thence North 87°45’46” East for a distance of 215.14 feet; thence South 02°50’34” East for a distance of 294.73 feet to the point of beginning, AND LESS Right of Way Deed in favor of the County of Cass recorded June 24, 2008, as Document No. 1238155.

AND

That part of the Southeast Quarter of Section 31, Township 139 North, Range 49 West of the 5th P.M., Cass County, North Dakota, described as follows: Beginning at the Southeast corner of Section 31; thence North 02°59'44" West along the East line of said Section 31 for 884.51 feet; thence South 87°50'02" West for 568.14 feet; thence South 00°46'34" East to the South line of the Southeast Quarter; thence East along the South line of the Southeast Quarter for 602.71 feet to the point of beginning, LESS the following described property: That part of the Southeast Quarter of Section 31, in Township 139 North of Range 49 West of the 5th P.M., Cass County, North Dakota, described as follows: Commencing at the Southeast corner of Section 31; thence North along the East section line for 351.51 feet to the point of beginning; thence West and parallel to the South section line for 246 feet; thence North and parallel to the East section line for 200 feet; thence East and parallel to the South section line for 246 feet; thence South and parallel to the East section line for 200 feet to the point of beginning, AND LESS Right of Way Deed in favor of the County of Cass recorded June 24, 2008, as Document No. 1238155.

(the "Property").

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the "District"). **Exhibit A.** The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the "Project"). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the "Assessment Resolution") for the District. **Exhibit B.** In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City

also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC reduced the amount originally proposed to be specially assessed to 5102 Sheyenne Street in 2021 from approximately \$87,900 down to approximately \$20,600 (the "2022 Revised Assessment"). The SAC unanimously adopted a resolution approving special assessments for the District, which included the 2022 Revised Assessment, for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022, regarding the Property. See Exhibit H. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto.

(15) On October 6, 2022, the Landowner, through its attorney, submitted an appeal of the SAC's determination to the City Commission by email. See Exhibit I.

(16) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written appeal stating the grounds upon which the appeal is based. See Exhibit I. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision. The Landowner's attorney appeared at the City Commission's hearing on October 6, 2022, to reassert the objections in the appeal.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D.**

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E.** The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022, and issued its Findings of Fact, Conclusions of Law, and Order for the Property. **Exhibit F; Exhibit H.**

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal and objections at the October 6, 2022 hearing, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged

that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner's objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

- (a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.
- (b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of **Diane Schatz** (the “Landowner”), owner of 1225 32nd Avenue W, West Fargo, North Dakota 58078 (the “Property”), with a parcel number of 02-3000-01150-000, legally described as follows:

That part of the NW¼ of Section 30, Township 139 North, Range 49 West, Cass County, North Dakota, described as follows: Commencing at the Northwest Corner of said NW¼; thence N 87°17’45” E along the North line of said NW¼ for a distance of 845.02 feet to the point of beginning; thence S 02°15’37” E for a distance of 111.55 feet; thence S 85°14’48” W for a distance of 428.49 feet; thence S 01°55’22” E for a distance of 96.65 feet; thence along a curve to the left (R = 290.00’, Δ = 43°13’38” for an Arc distance of 218.79 feet; thence S 45°09’00” E for a distance of 169.80 feet; thence along a curve to the right (R = 670.00’, Δ = 41°41’31” for an Arc distance of 487.53 feet; thence S 03°27’29” E for a distance of 55.00 feet; thence N 87°05’47” E for a distance of 450.51 feet; thence N 02°54’13” W for a distance of 1045.08 feet to a point on the North line of said NW¼; thence S 87°17’45” W along the North line of said NW¼ for a distance of 383.35 feet to the point of beginning. Subject to highway right-of-way and easements of record. Said tract contains 14.31 acres, more or less.

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street

from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC’s complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022, regarding the Property. See **Exhibit H**. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto.

(15) On October 6, 2022, the Landowner, through her attorney, submitted an appeal of the SAC's determination to the City Commission by email. See **Exhibit I**.

(16) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. City staff noted that City right-of-way on Landowner's property was subtracted from the total area of Landowner's Property for the special assessment calculations. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written appeal stating the grounds upon which the appeal is based. See Exhibit I. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision. The Landowner's attorney appeared at the City Commission's hearing on October 6, 2022, to reassert the objections in the appeal.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the

law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D.**

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E.** The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022, and issued its Findings of Fact, Conclusions of Law, and Order for the Property. **Exhibit F; Exhibit H.**

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal and objections at the October 6, 2022 hearing, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of

properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner's objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

- (a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.
- (b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of EagleRidge Development on behalf of its subsidiary entity, **Northern Lights on Sheyenne LLC** (the “Landowner”), owner of 2920 Sheyenne Street in West Fargo, North Dakota, with a parcel number of 02-0320-00010-000, legally described as follows:

Lot 1, Block 1, Eagle Run Plaza Eleventh Addition to the City of West Fargo, Cass County, North Dakota

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be

assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair apportionment and levy of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022. See Exhibit H. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto.

(15) On October 6, 2022, Landowner, through its attorney, submitted a written appeal of the SAC's decision regarding the Property. See Exhibit I.

(16) The City Commission held a hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District. The City assesses some assessments using an equivalent unit basis, whereby a single family home receives one equivalent unit and an apartment unit receives a 0.6 equivalent unit due to lower usage of infrastructure by residents of multi-family units. This system is equitable because large apartment buildings pay more equivalent units than a single family resident. See the City of West Fargo Special Assessment Policy, attached as **Exhibit J**.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. With the City Commission's approval of the 150 unit cap for multi-family residential properties, the Property's special assessment amount is reduced because the Property contains more than 150 residential, rental units. The 150 residential unit cap reduced the special assessment on this parcel by \$86,476.90.

(20) The amended special assessment amount for the Property confirmed by the City Commission is \$270,240.30.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written appeal stating the grounds upon which the appeal is based. See Exhibit I. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's confirmed assessment list.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and

reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D.**

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E.** The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F.**

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project, that the apportionment of assessments is unfair and treats similar

properties differently, violating equal protection principles, that the City's Special Assessment Policy was applied improperly, and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their Property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) In Landowner's written appeal, it asserts the SAC improperly applied the City's Special Assessment Policy and that it was applied retroactively. The City Commission finds that this objection is without merit and has no basis in law. Pursuant to N.D.C.C. § 40-23-06, the SAC levies assessments after an improvement district has been created and the contracts for work awarded. Further, N.D.C.C. provides that the SAC:

“[s]hall determine the particular lots and parcels of land which, in the opinion of the commission, will be especially benefited by the construction of the work for which the assessment is to be made. The SAC shall determine the amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made, and shall assess against each of such lots and parcels of land such sum, not exceeding the benefits, as is necessary to pay its just proportion of the total cost of such work, or of the part thereof which is to be paid by special assessment.”

N.D.C.C. § 40-23-07.

As a result, the SAC and, indeed, the City Commission, can use a special assessment policy as guidance, but the decision regarding the levy of the benefit and amount to be apportioned and levied as a special assessment to a particular parcel is a decision made by the SAC based upon the facts and circumstances of each parcel. We find that the SAC had the legal ability to review each parcel individually and apply special assessment policies in accordance with the North Dakota Century Code.

(11) Landowner contends the assessment apportionments violate equal protection principles. Landowner argues that tenants bear the burden of a special assessment without being allowed to serve on a special assessment commission. While Landowner identifies its challenge as an equal protection issue, it does not cite to or provide any support for its position. N.D.C.C. § 40-23-01 specifically provides the procedure for appointing members of the special assessment commission and the qualifications for serving on the special assessment commission, which require that members of the special assessment commission be “reputable residents and freeholders of the municipality.” The Landowner has not challenged the constitutionality of N.D.C.C. § 40-23-01 and we briefly address it here.

The U.S. Constitution Equal Protection clause “requires the government treat all similarly situated people alike.” Creason v. City of Washington, 435 F.3d 820, 823-24 (8th Cir. 2006) (citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985)). The North Dakota Supreme Court has previously discussed how the interrelation between taxing and the equal protection clause:

In the area of equal protection of the laws, the reasonableness of the classifications for taxing purposes becomes important. In Souris River Telephone Mutual Aid Corporation v. State, 162 N.W.2d 685, 689 (N.D.1968), we stated the rule on taxing classifications to be:

‘. . . any classification must be reasonable and the subjects can be segregated into classes only by differences in the subjects which afford a ground for different treatment with reference to taxation. A basis for classification must be such as naturally inheres in the subject matter. 51 Am.Jur., Taxation ss 175, 177, pp. 234—238. State v. Gamble Skogmo, Inc., 144 N.W.2d 749 (N.D.1966).’

In State v. Gamble Skogmo, Inc., Supra, we held, in paragraph 5 of the syllabus:

‘Only invidious discrimination is prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.’

Chernick v. City of Grand Forks, 210 N.W.2d 73, 79-80 (N.D. 1973)

The City follows N.D.C.C. § 40-22-18 when it imposes special assessments. Under section 40-22-18, N.D.C.C., *owners* of a property may challenge a special assessment. As recognized by the North Dakota Supreme Court and acknowledged by Landowner in its objections, protests to special assessments must be “made by the owners of a majority of the property within such district, and we do not consider holders of leasehold interests to be owners, notwithstanding the fact that they indirectly pay the costs of special assessments.” City of Fargo v. Fahrlander, 199 N.W.2d 30, 35 (N.D. 1972). Tenants are not subject to the protest provisions under N.D.C.C. § 40-22-18, and it would not be appropriate for them to serve on any special assessment commission board.

Landowner has not contended that the City is treating similarly-situated people—owners of properties that are leased by tenants—differently. The City followed state law and is treating similarly situated property owners alike. The City Commission finds that Landowner’s equal protection claim is without merit and has no basis in law.

(12) The assessments on the Landowner’s property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner’s property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of the properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner’s objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(13) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by others at public hearings on this matter, the City Commission has determined it just to incorporate the following modifications to the assessment list as pertains to the Landowner’s Property:

(a) The City Commission approved a 150 unit cap for multi-family properties in order to align with the City’s Comprehensive Plan’s preference for dense development, with the difference to be paid by the City’s economic development sales tax money.

(b) The Property’s special assessment amount is reduced because the Property contains more than 150 residential rental units.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250 as pertains to the Landowner's Property, with the following modification: the special assessment to the Landowner's Property shall be reduced to \$270,240.30.

(b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of EagleRidge Development on behalf of its subsidiary entity, **Wildco LLC** (the “Landowner”), owner(s) of five (5) parcels in West Fargo, North Dakota 58078, with street addresses, parcel numbers, and legal descriptions as follows:

1	5655 11 St W	02-5845-02020-000	Lot 1, Block 8, The Wilds 21st Addition
2	5817 James Dr	02-5845-02460-000	Lot 1, Block 10, The Wilds 21st Addition
3	6115 Martin Ln W	02-5844-01160-000	Lot 29, Block 5, The Wilds 20th Addition
4	6145 Martin Ln W	02-5844-00450-000	Lot 26, Block 2, The Wilds 20th Addition
5	1131 Rachel Dr	02-0930-00010-000	Lot 1, Block 1, Grant Addition

all in the County of Cass, State of North Dakota (the “Property”).

(2) The Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A.** The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B.** In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained

March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair apportionment and levy of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022. See Exhibit H. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto. As part of the SAC's decision, it lowered Landowner's proposed assessment after it sustained the Landowner's objection. All unplatted properties zoned as multiple family properties with the potential of containing 150 or more Equivalent Units and that are not fully built out yet, including the Landowner's Property, received a reduction of assessment amounts by a factor of 0.6.

(15) On October 6, 2022, Landowner, through its attorney, submitted a written appeal of the SAC's decision regarding the Property. See Exhibit I.

(16) The Commission held a hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(18) The Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the Commission did not provide a sufficient legal basis or legal argument that would warrant an additional reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written appeal stating the grounds upon which the appeal is based. See **Exhibit I**. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's confirmed assessment list.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. Id. The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local

governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The Commission created the District by resolution on September 5, 2017. **Exhibit A**.

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D**.

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E**. The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F**.

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project, that the apportionment of assessments is unfair and treats similar properties differently, violating equal protection principles, that the City's Special Assessment Policy was applied improperly, and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their Property was unfairly high.

The City Commission expressly rejects this argument because the Special Assessment Commission sustained the Landowners objection and reduced the amount of Special Assessments to be levied on this parcel. The Special Assessment Commission properly sustained the objection and levied the correct amount.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) In Landowner's written appeal, it asserts the SAC improperly applied the City's Special Assessment Policy and that it was applied retroactively. The Commission finds that this objection is without merit and has no basis in law. Pursuant to N.D.C.C. § 40-23-06, the SAC levies assessments after an improvement district has been created and the contracts for work awarded. Further, N.D.C.C. provides that the SAC:

“[s]hall determine the particular lots and parcels of land which, in the opinion of the commission, will be especially benefited by the construction of the work for which the assessment is to be made. The SAC shall determine the amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made, and shall assess against each of such lots and parcels of land such sum, not exceeding the benefits, as is necessary to pay its just proportion of the total cost of such work, or of the part thereof which is to be paid by special assessment.”

N.D.C.C. § 40-23-07.

As a result, the SAC and, indeed, the City Commission, can use a special assessment policy as guidance, but the decision regarding the levy of the benefit and amount to be apportioned and levied as a special assessment to a particular parcel is a decision made by the SAC based upon the facts and circumstances of each parcel. We find that the SAC had the legal ability to review each parcel individually and apply special assessment policies in accordance with the North Dakota Century Code.

(11) Landowner contends the assessment apportionments violate equal protection principles. Landowner argues that tenants bear the burden of a special assessment without being allowed to serve on a special assessment commission. While Landowner identifies its challenge as an equal protection issue, it does not cite to or provide any support for its position. N.D.C.C. § 40-23-01 specifically provides the procedure for appointing members of the special assessment commission and the qualifications for serving on the special assessment commission, which require that members of the special assessment commission be “reputable residents and freeholders of the municipality.” The Landowner has not challenged the constitutionality of N.D.C.C. § 40-23-01 and we briefly address it here.

The U.S. Constitution Equal Protection clause “requires the government treat all similarly situated people alike.” Creason v. City of Washington, 435 F.3d 820, 823-24 (8th Cir. 2006) (citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985)). The North Dakota Supreme Court has previously discussed how the interrelation between taxing and the equal protection clause:

In the area of equal protection of the laws, the reasonableness of the classifications for taxing purposes becomes important. In Souris River Telephone Mutual Aid Corporation v. State, 162 N.W.2d 685, 689 (N.D.1968), we stated the rule on taxing classifications to be:

‘ . . . any classification must be reasonable and the subjects can be segregated into classes only by differences in the subjects which afford a ground for different treatment with reference to taxation. A basis for classification must be such as naturally inheres in the subject matter. 51 Am.Jur., Taxation ss 175, 177, pp. 234—238. State v. Gamble Skogmo, Inc., 144 N.W.2d 749 (N.D.1966).’

In State v. Gamble Skogmo, Inc., Supra, we held, in paragraph 5 of the syllabus:

‘Only invidious discrimination is prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.’

Chernick v. City of Grand Forks, 210 N.W.2d 73, 79-80 (N.D. 1973)

The City follows N.D.C.C. § 40-22-18 when it imposes special assessments. Under section 40-22-18, N.D.C.C., *owners* of a property may challenge a special assessment. As recognized by the North Dakota Supreme Court and acknowledged by Landowner in its objections, protests to special assessments must be “made by the owners of a majority of the property within such district, and we do not consider holders of leasehold interests to be owners, notwithstanding the fact that they indirectly pay the costs of special assessments.” City of Fargo v. Fahrlander, 199 N.W.2d 30, 35 (N.D. 1972). Tenants are not subject to the protest provisions under N.D.C.C. § 40-22-18, and it would not be appropriate for them to serve on any special assessment commission board.

Landowner has not contended that the City is treating similarly-situated people—owners of properties that are leased by tenants—differently. The City followed state law and is treating similarly situated property owners alike. The Commission finds that Landowner’s equal protection claim is without merit and has no basis in law.

(12) The assessments on the Landowner’s property will be fully valid if the SAC and the Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner’s property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of the properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner’s objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(13) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by others at public hearings on this matter, the Commission has determined that the Landowner’s objection to the Commission did not provide a sufficient legal basis or legal argument that would warrant an additional reduction in the special assessment to Landowner’s Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.

(b) Overrides any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

NEAR FINAL

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of EagleRidge Development on behalf of its subsidiary entities listed below, together the entities listed below are the “Landowner”), owner(s) of nine (9) parcels in West Fargo, North Dakota 58078, with street addresses, parcel numbers, and legal descriptions as follows:

1	Sheyenne Villas LLC	455 26 Ave W	02-4355-00240-000	Lot 24, Blk 1, Eaglewood 6th Addition
2	Maple Ridge Villas LLC	263 31 Ave E	02-4477-00010-000	Lot 1, Blk 1, Maple Ridge at the Preserve 3rd Addition
3	Maple Ridge Villas LLC	247 31 Ave E	02-4477-00020-000	Lot 2, Blk 1, Maple Ridge at the Preserve 3rd Addition
4	Maple Ridge Estates II LLC	325 31 Ave E	02-4475-00610-000	Lot 3, Blk 6, Maple Ridge at the Preserve 1st Addition
5	TownHomes at Shadow Wood LLC	3345 4 St E	02-5050-00020-000	Lot 2, Blk 1, Strawberry Fields Addition
6	Tuscany Villas LLC	2824 5 St W	02-0220-00010-000	Lot 1, Blk 1, Eagle Run 21st Addition
7	Tuscany Villas LLC	2920 5 St W	02-0220-00020-000	Lot 2, Blk 1, Eagle Run 21st Addition
8	7s are Wild LLC	5402 11 St W	02-5842-00050-000	Lot 5, Blk 1, The Wilds 18th Addition
9	25th Street Investments LLC	2900 Sheyenne St	02-0320-00020-000	Lot 2, Blk 1, Eagle Run Plaza 11th Addition

all in the County of Cass, State of North Dakota (the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted

of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in **The Forum**, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair apportionment and levy of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC’s complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in **The Forum**. The affidavit of publication is attached as **Exhibit E**.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022. See **Exhibit H**. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto.

(15) On October 6, 2022, Landowner, through its attorney, submitted a written appeal of the SAC's decision regarding the Property. See **Exhibit I**.

(16) The City Commission held a hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District. The City assesses some assessments using an equivalent unit basis, whereby a single family home receives one equivalent unit and an apartment unit receives a 0.6 equivalent unit due to lower usage of infrastructure by residents of multi-family units. This system is equitable because large apartment buildings pay more equivalent units than a single family resident. See the City of West Fargo Special Assessment Policy, attached as **Exhibit J**.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant an additional reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. *Id.* Landowner submitted a written appeal stating the grounds upon which the appeal is based. See **Exhibit I**. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's confirmed assessment list.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. *E.g., Crane Johnson Lumber Co. v. City of Fargo*, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D.**

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E.** The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F.**

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The

City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project, that the apportionment of assessments is unfair and treats similar properties differently, violating equal protection principles, that the City's Special Assessment Policy was applied improperly, and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their Property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) In Landowner's written appeal, it asserts the SAC improperly applied the City's Special Assessment Policy and that it was applied retroactively. The City Commission finds that this objection is without merit and has no basis in law. Pursuant to N.D.C.C. § 40-23-06, the SAC levies assessments after an improvement district has been created and the contracts for work awarded. Further, N.D.C.C. provides that the SAC:

“[s]hall determine the particular lots and parcels of land which, in the opinion of the commission, will be especially benefited by the construction of the work for which the assessment is to be made. The SAC shall determine the amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made, and shall assess against each of such lots and parcels of land such sum, not exceeding the benefits, as is necessary to pay its just proportion of the total cost of such work, or of the part thereof which is to be paid by special assessment.”

N.D.C.C. § 40-23-07.

As a result, the SAC and, indeed, the City Commission, can use a special assessment policy as guidance, but the decision regarding the levy of the benefit and amount to be apportioned and levied as a special assessment to a particular parcel is a decision made by the SAC based upon the facts and circumstances of each parcel. We find that the SAC had the legal ability to review each parcel individually and apply special assessment policies in accordance with the North Dakota Century Code.

(11) Landowner contends the assessment apportionments violate equal protection principles. Landowner argues that tenants bear the burden of a special assessment without being allowed to serve on a special assessment commission. While Landowner identifies its challenge as an equal protection issue, it does not cite to or provide any support for its position. N.D.C.C. § 40-23-01 specifically provides the procedure for appointing members of the special assessment commission and the qualifications for serving on the special assessment commission, which require that members of the special assessment commission be “reputable residents and freeholders of the municipality.” The Landowner has not challenged the constitutionality of N.D.C.C. § 40-23-01 and we briefly address it here.

The U.S. Constitution Equal Protection clause “requires the government treat all similarly situated people alike.” Creason v. City of Washington, 435 F.3d 820, 823-24 (8th Cir. 2006) (citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985)). The North Dakota Supreme Court has previously discussed how the interrelation between taxing and the equal protection clause:

In the area of equal protection of the laws, the reasonableness of the classifications for taxing purposes becomes important. In Souris River Telephone Mutual Aid Corporation v. State, 162 N.W.2d 685, 689 (N.D.1968), we stated the rule on taxing classifications to be:

‘ . . . any classification must be reasonable and the subjects can be segregated into classes only by differences in the subjects which afford a ground for different treatment with reference to taxation. A basis for classification must be such as naturally inheres in the

subject matter. 51 Am.Jur., Taxation ss 175, 177, pp. 234—238.
State v. Gamble Skogmo, Inc., 144 N.W.2d 749 (N.D.1966).’

In State v. Gamble Skogmo, Inc., Supra, we held, in paragraph 5 of the syllabus:

‘Only invidious discrimination is prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.’

Chernick v. City of Grand Forks, 210 N.W.2d 73, 79-80 (N.D. 1973)

The City follows N.D.C.C. § 40-22-18 when it imposes special assessments. Under section 40-22-18, N.D.C.C., *owners* of a property may challenge a special assessment. As recognized by the North Dakota Supreme Court and acknowledged by Landowner in its objections, protests to special assessments must be “made by the owners of a majority of the property within such district, and we do not consider holders of leasehold interests to be owners, notwithstanding the fact that they indirectly pay the costs of special assessments.” City of Fargo v. Fahrlander, 199 N.W.2d 30, 35 (N.D. 1972). Tenants are not subject to the protest provisions under N.D.C.C. § 40-22-18, and it would not be appropriate for them to serve on any special assessment commission board.

Landowner has not contended that the City is treating similarly-situated people—owners of properties that are leased by tenants—differently. The City followed state law and is treating similarly situated property owners alike. The City Commission finds that Landowner’s equal protection claim is without merit and has no basis in law.

(12) The assessments on the Landowner’s property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner’s property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of the properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner’s objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(13) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by others at public hearings on this matter, the City Commission has determined that the Landowner’s objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner’s Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.

(b) Overrides any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

NEAR FINAL

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of David Campbell representing **L46 Apartments LLC** (the “Landowner”), who did not file a written notice of appeal in accordance with N.D.C.C. § 40-23-14, but the City Commission allowed his appeal to be heard. The Landowner owns 2915 Bluestem Drive in West Fargo, North Dakota, with a parcel number of 02-4851-00020-000, and legally described as follows:

Lot 2, Block 1, South Pond at the Preserve Second Addition to the City of West Fargo,
Cass County, North Dakota

(the “Property”).

(1) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(2) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be

assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(3) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(4) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(5) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair apportionment and levy of special assessments to properties in the City.

(6) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(7) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(8) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**.

(9) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(10) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(11) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(12) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(13) At the October 6, 2022, City Commission meeting, the Landowner indicated that he was resubmitting an appeal of the SAC's determination to the City Commission, following the decision of the SAC, using the same written objection as given to the SAC, dated August 17, 2022. See **Exhibit H**.

(14) The City Commission held a hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(15) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District. The City assesses some assessments using an equivalent unit basis, whereby a single family home receives one equivalent unit and an apartment unit receives a .6 equivalent unit due to lower usage of infrastructure by residents of multifamily units. This system is equitable because large apartment buildings pay more equivalent units than a single family resident. See the City of West Fargo Special Assessment Policy, attached as **Exhibit I**.

(16) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(17) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. With the City Commission's approval of the 150 unit cap for multi-family residential properties, the Property's special assessment amount is reduced because the Property contains more than 150 residential rental units. The 150 residential unit cap reduced the special assessment on this parcel by \$324,288.36.

(18) The amended special assessment amount for the Property confirmed by the City Commission is \$270,240.30.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written appeal stating the grounds upon which the appeal is based. See Exhibit H. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's confirmed assessment list. The Landowner appeared at the City Commission's hearing on October 6, 2022, to assert the objections in the appeal.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the

law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D.**

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E.** The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F.**

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal and objections at the October 6, 2022 hearing, Landowner asserted that the amount of the assessment was not calculated rationally because

Landowner asserts that their Property does not benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their Property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of the properties to the Project, and that the means by which it calculated the benefit were valid and fairly

apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined it just to incorporate the following modifications to the assessment list as pertains to the Landowner's Property:

(a) The City Commission approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money.

(b) The Property's special assessment amount is reduced because the Property contains more than 150 residential rental units.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250 as pertains to the Landowner's Property, with the following modification: the special assessment to the Landowner's Property shall be reduced to \$270,240.30.

(b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of David Campbell representing **Shadow Ridge Apartments LLC** and **Shadow Bay Apartments LLC** (the “Landowner”), who did not file a written notice of appeal in accordance with N.D.C.C. § 40-23-14, but the City Commission allowed his appeal to be heard. The Landowner owns 838 36th Avenue East and 815 34th Avenue East in West Fargo, North Dakota, with parcel numbers of 02-5080-00010-000 and 02-5080-00020-000, legally described as follows:

Lot 1, Block 1, Shadow Wood Sixth Addition to the City of West Fargo, Cass
County, North Dakota

AND

Lot 2, Block 1, Shadow Wood Sixth Addition to the City of West Fargo, Cass
County, North Dakota

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC’s complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in **The Forum**, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) On October 6, 2022, the Landowner, through its attorney, submitted an appeal of the SAC's determination to the City Commission by email. See **Exhibit H**.

(15) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(16) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District. The City assesses some assessments using an equivalent unit basis, whereby a single family home receives one equivalent unit and an apartment unit receives a 0.6 equivalent unit due to lower usage of infrastructure by residents of multifamily units. This system is equitable because large apartment buildings pay more equivalent units than a single family resident. See the City of West Fargo Special Assessment Policy, attached as **Exhibit I**.

(17) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(18) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. *Id.* Landowner submitted a written appeal stating the grounds upon which the appeal is based. See **Exhibit H**. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision. The Landowner's attorney appeared at the City Commission's hearing on October 6, 2022, to reassert the objections in the appeal.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. *E.g., Crane Johnson Lumber Co. v. City of Fargo*, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting *Serenko v. City of Wilton*, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. *Hagerott v. Morton County Bd. of Comm'rs*, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. *Hector v. City of Fargo*, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local

governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A**.

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D**.

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E**. The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F**.

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal and objections at the October 6, 2022 hearing, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner's objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.

(b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of **Jacob and Sarah Salter** (the “Landowner”), who own 818 Albert Drive West in West Fargo, North Dakota, with a parcel number of 02-5831-00790-000, and legally described as follows:

Lot 19, Block 3, The Wilds Seventh Addition to the City of West Fargo, Cass
County, North Dakota

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as Exhibit C. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as Exhibit D. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as Exhibit E.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as Exhibit F. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of

publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) On September 13, 2022, the Landowner submitted an appeal of the SAC's determination to the City Commission by email. See **Exhibit H**.

(15) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(16) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(17) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(18) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. *Id.* Landowner submitted a written appeal stating the grounds upon which the appeal is based. See **Exhibit H**. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable,

or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to “(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received.” Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A.**

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D**.

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E**. The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F**.

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserted that their Property does not benefit from the Project.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is

a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement.”

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff’s argument that the plaintiff’s undeveloped farm land did not benefit from the city’s flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner’s.

(10) The assessments on the Landowner’s property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner’s property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner’s objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner’s objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner’s Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner’s Property.

- (b) Overrides any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

NEAR FINAL

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of **Elton and Mary Tufte** (the “Landowner”), owners of 4200 Carmell Place, in West Fargo, North Dakota 58078, with a parcel number of 02-0039-00070-000, legally described as follows:

Lot 7, Block 1, Carmell Place First Subdivision to the City of West Fargo, Cass
County, North Dakota

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as Exhibit C. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC's complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as Exhibit D. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as Exhibit E.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as Exhibit F. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of

publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022, regarding the Property. See **Exhibit H**. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto.

(15) On October 6, 2022, the Landowner submitted an appeal of the SAC's determination to the City Commission by email. See **Exhibit I**.

(16) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. *Id.* Landowner submitted a written appeal stating the grounds upon which the appeal is based. See **Exhibit I**. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A**.

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D**.

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E**. The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022. **Exhibit F**.

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserts that their Property does not benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their property was unfairly high. Landowner also asked why certain lots owned by the City were not being specially assessed. Landowner raised a question about certain change orders for the Project and believes that a portion of the costs from those should not be included in the assessments to landowners in the District.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially

assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) As stated in the Finding of Facts section above, because of the Landowner's questions, the City did determine that there were 16 City-owned lots that were not on the assessment list that should have been included on the list. The City added the 16 lots to the assessment list, which resulted in lower assessments on the rest of the properties in the District.

(12) To address Landowner's question in the appeal regarding change orders, the determination of whether a change order was proper during the construction is irrelevant during

this proceeding as the change order was reviewed by the Engineer and approved by the City Commission. Further, City staff confirmed to the City Commission that the change orders was not included in the costs that are being specially assessed to landowners for this District. Those change orders were paid from other City funds and as a result Landowners assessment was not increased by the change order.

(13) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner's objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

- (a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.
- (b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

BEFORE THE CITY OF WEST FARGO CITY COMMISSION

In the Matter of the Decision of the)
West Fargo City Commission)
Regarding the Special Assessments)
Planned for Street Improvement)
District No. 2250)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION**

I. INTRODUCTION

(1) On October 13, 2022, the City of West Fargo (the “City”) City Commissioners (the “City Commission”) held a public meeting where, pursuant to and in accordance with N.D.C.C. § 40-23-15, discussion and final consideration was given to the levying of special assessments recommended by the City’s Special Assessment Commission (the “SAC”) for the Assessment District for Street Improvement District No. 2250 (the “District”). At the October 6, 2022 meeting of the City Commission, pursuant to and in accordance with N.D.C.C. § 40-23-15, the City Commission received and heard appeals from West Fargo residents regarding the levying of special assessments in the amounts recommended by the SAC. Among the appeals were those of **Southeast Cass Water Resource District** (the “Landowner”), owner of a parcel without a street address in West Fargo, North Dakota 58078, with a parcel number of 02-3000-01240-012, legally described as follows:

That part of the SW¼ of Section 31, Township 139 North, Range 49 West, Cass County, North Dakota, described as follows: Commencing at the Southwest corner of said SW¼; thence N 02°28’09” W along the West line of said SW¼ for a distance of 493.51 feet to the point of beginning; thence N 29°55’50” E for a distance of 613.83 feet; thence Northerly along a curve to the Left ($\Delta = 32^\circ 27' 07''$, $R = 235.00'$) for an arc distance of 133.10 feet; thence N 02°31’17” W for a distance of 1504.80 feet to the North line of said SW¼; thence S 88°14’42” W along the North line of said SW¼ for a distance of 364.17 feet to the Northwest corner of said SW¼; thence S 02°28’09” E along the West line of said SW¼ for a distance of 2,153.49 feet to the point of beginning.

(the “Property”).

(2) The City Commission has jurisdiction over this matter because it has final authority over the creation and assessment of special assessments pursuant to North Dakota Century Code Chapter 40-23. At the City Commission meeting on September 5, 2017, the City Commission approved the creation of an Assessment District for Street Improvement District No. 2250 (the “District”). **Exhibit A**. The infrastructure project installed for the benefit of the District consisted of replacing the existing 2-lane rural asphalt section with a 6-lane urban concrete section in Segment 2 and 4-lanes in Segment 3. Both segments also included multi-use paths, storm sewer drains, sanitary sewer force main relocation, sewer and water extensions, traffic signals, street lighting and other related incidentals, which increases traffic capacity, improves roadway reliability, and accommodates social and economic demands in the District along Sheyenne Street from Beaton Drive to 40th Avenue S (the “Project”). The City Commission and the SAC received all necessary Project specifications and cost estimates from the City Engineer.

(3) On March 1, 2021, the City Commission adopted a Resolution Directing Assessments to Be Levied (the “Assessment Resolution”) for the District. **Exhibit B**. In the Assessment Resolution, the City Commission directed assessments to be levied on the District in the amount of \$32,270,000. As detailed in **Exhibit B**, the total cost of the Project as ascertained March 1, 2021, was \$69,766,872.90, which means that the cost of the benefit of the Project was 2.16 times the amount of assessments. The difference between the Project cost and amount to be assessed is primarily due to Other Contributions, which consisted of federal, state, and City contributions to the Project.

(4) On May 24, 2021, the SAC reviewed the lots and parcels in the District and prepared a complete list of benefits and assessments for each lot or parcel. The SAC approved the preliminary list of special assessments for the District and published the list and notice of public hearing in The Forum, the official newspaper of the City of West Fargo. The affidavits of publication are attached as **Exhibit C**. In addition to the statutory notice requirements, the City also sent letters to landowners in the District on June 30, 2021, indicating their proposed assessment amounts and notification about the upcoming public hearing of objections.

(5) On July 12, 2021, the Special Assessment Commission held a public hearing regarding objections to the proposed special assessment list for the District, approved the list, and filed it with the City Auditor.

(6) On August 2, 2021, the City Commission tabled the public hearing and approval of special assessments for the District until 2022, and approved a motion for the list to go back to the Special Assessment Commission after policy changes, to ensure the equitable and fair allocation of special assessments to properties in the City.

(7) On August 31, 2021, postcards were sent to landowners in the District to inform them the special assessment proceedings would be delayed until 2022.

(8) On June 20, 2022, letters were sent to landowners in the District to inform them the special assessments were returning to the SAC for new consideration.

(9) The SAC met on June 27, 2022, in the City Commission Chambers at West Fargo City Hall. At the meeting, the SAC reviewed the lots and parcels in the District and the SAC’s complete list of benefits and assessments for each lot or parcel. The SAC unanimously adopted a resolution approving special assessments for the District for a sum not exceeding the benefits received by the Property, with the minutes attached as **Exhibit D**. The SAC produced a list of the assessments for each lot or parcel, certified the list, and authorized its publication in The Forum. The affidavit of publication is attached as **Exhibit E**.

(10) On August 8, 2022, pursuant to the published notice, the SAC held a public hearing in the City Commission Chambers of City Hall to hear any objections made to any assessment by any interested party. Several property owners who are residents of the District appeared and stated their objections to the assessments generally.

(11) The Landowner was provided the opportunity to attend and speak at the August 8, 2022, SAC meeting.

(12) After hearing objections, the SAC closed the public hearing and tabled the determination of the matter until September 7, 2022, in order to review the objections, along with the preliminary special assessment list and the City's Special Assessment Policy and Comprehensive Plan.

(13) The SAC reconvened and rendered its decision approving the revised special assessment list on September 7, 2022. The revised list is attached as **Exhibit F**. The Notice of Confirmation of Amended List for the District was published in The Forum, and the affidavit of publication is attached as **Exhibit G**. The content of any public recording of this meeting is hereby incorporated by reference.

(14) The SAC issued Findings of Fact, Conclusions of Law, and Order on September 7, 2022, regarding the Property. See **Exhibit H**. The SAC's determinations made in its Findings of Fact, Conclusions of Law, and Order are hereby incorporated by reference, including any attachments thereto.

(15) On September 9, 2022, the Landowner, through its Secretary-Treasurer, submitted an appeal of the SAC's determination to the City Commission by email. See **Exhibit I**.

(16) The City Commission held a public hearing on October 6, 2022, as stated in the published Notice of Confirmation of Amended List, to hear from any person having filed a written appeal to assessments contained in the Amended Special Assessment list as confirmed by the SAC. The Landowner was provided an opportunity to speak regarding the appeal at the public hearing on October 6, 2022. In order to provide additional time for the City Commission to review the SAC's decision, the facts and background of the assessments lists, the City's Special Assessment Policy, and issues presented in the appeals, the final decision was tabled to the next meeting.

(17) On October 13, 2022, the City Commission held a special meeting, in which it deliberated and confirmed an amended special assessment list for the District, which added 16 City-owned properties that are in the District but were inadvertently left off of the special assessment list. The City Commission also approved a 150 unit cap for multi-family properties in order to align with the City's Comprehensive Plan's preference for dense development, with the difference to be paid by the City's economic development sales tax money rather than being added to assessment amounts of other parcels in the District.

(18) The City Commission and the SAC complied with all procedural requirements under applicable law in the noticing and establishment of the special assessments for the District. The City followed its Special Assessment Policy in allocating special assessments for the District.

(19) The special assessment amounts proposed by the SAC are appropriate under the facts and the law of this case. City staff noted that City right-of-way on Landowner's property was subtracted from the total area of Landowner's Property for the special assessment calculations. The Landowner's appeal to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

II. CONCLUSIONS OF LAW

(1) Based upon the foregoing Findings of Fact, the City Commission makes the following Conclusions of Law:

(2) Any aggrieved person may appeal from the action of a special assessment commission by filing a written notice of the appeal with the City. N.D.C.C. § 40-23-14. The notice of appeal shall state the grounds upon which the appeal is based. Id. Landowner submitted a written appeal stating the grounds upon which the appeal is based. See Exhibit I. Therefore, the Landowner has satisfied statutory requirements to lodge an appeal.

(3) On October 6, 2022, the Landowner submitted a written appeal of the SAC's decision.

(4) The SAC's determination is subject to the standard codified under North Dakota Century Code Section 28-34-01, which governs appeals of decisions of local governing bodies, including commissions. Unless a commission's decision is arbitrary, capricious, or unreasonable, or there is not substantial evidence to support the commission's decision, an appellate body should affirm the decision. E.g., Crane Johnson Lumber Co. v. City of Fargo, 671 N.W.2d 814, 815 (N.D. 2003).

(5) The Supreme Court of North Dakota has elaborated on the applicable standard of review:

Our review of a decision on special assessments is very limited:

The special assessment commission is in essence a legislative tribunal created by legislative authority to "(1) determin[e] the benefits accruing to the several tracts of land in an improvement district by reason of the construction of an improvement and (2) assess[] the costs and expenses thereof against each tract in proportion to the benefit received." Accordingly, judicial review is limited to assuring that local taxing authorities do not act arbitrarily, capriciously, or unreasonably. Courts are not to act as a super grievance board, and we do not try special assessment cases anew or reweigh the evidence. Rather, we begin with the presumption that assessments for local improvements are valid, and the burden is on the party challenging the validity of the assessments to demonstrate they are invalid.

Bateman v. City of Grand Forks, 2008 ND 72, ¶ 10, 747 N.W.2d 117 (quoting Serenko v. City of Wilton, 1999 ND 88, ¶ 20, 593 N.W.2d 368 (citations omitted)). We must affirm the decision of a local governing body unless it acted arbitrarily, capriciously, or unreasonably, or there is not substantial evidence supporting the decision. Hagerott v. Morton County Bd. of Comm'rs, 2010 ND 32, ¶ 7, 778 N.W.2d 813. A decision is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and

reasonable interpretation. *Id.* The record is adequate to support a local governing body's findings and conclusions if it allows us to discern the rationale for the decision. Hector v. City of Fargo, 2009 ND 14, ¶ 9, 760 N.W.2d 108. A local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct. Hagerott, at ¶ 7.

Hector v. City of Fargo, 788 N.W.2d 354, 356 (N.D. 2010).

(6) For special assessments to be valid, the commission must follow all procedures and requirements established in North Dakota statutes. See, e.g., N.D.C.C. § 40-22-01 to 46; 40-23-01 to 25. The requirements include the following:

(a) North Dakota statutes require the creation of a special assessment district. N.D.C.C. § 40-22-08. The City Commission created the District by resolution on September 5, 2017. **Exhibit A**.

(b) North Dakota statutes require the special assessment commission of the municipality to determine the particular lots and parcels which will be benefitted by the improvements. N.D.C.C. § 40-23-07. The SAC considered evidence brought before it and made its determination as to the benefit received by each parcel in the District. **Exhibit D**.

(c) North Dakota statutes require the special assessment commission of the municipality to prepare an assessment list. N.D.C.C. § 40-23-09. The SAC prepared and approved a special assessment list on June 27, 2022, which included Landowner's parcel.

(d) North Dakota statutes require the special assessment commission of the municipality to notice the assessment list for two consecutive weeks in the municipality's designated publication and hold a hearing on the assessments not less than 15 days after the first publication. N.D.C.C. § 40-23-10. The SAC noticed the assessment list for two consecutive weeks in The Forum. **Exhibit E**. The SAC conducted a public hearing at which members of the public could attend and submit objections on August 8, 2022. The SAC confirmed the amended special assessment list on September 7, 2022, and issued its Findings of Fact, Conclusions of Law, and Order for the Property. **Exhibit F**; **Exhibit H**.

(e) North Dakota statutes require the governing body of the municipality to hold a hearing to address any properly appealed objections and may increase or diminish any assessments as it may deem just. N.D.C.C. § 40-23-15. The City Commission held a public hearing on appeals on October 6, 2022, and heard any citizens who wished to speak at that hearing.

(f) North Dakota statutes require the governing body of the municipality to confirm the assessment list, as amended by the governing body. N.D.C.C. § 40-23-16. The City Commission confirmed the assessment list with several amendments at the public meeting held on October 13, 2022. The City Commission issued these Findings of Fact, Conclusions of Law, and Order to memorialize its decision.

(7) In Landowner's written appeal, Landowner asserted that the amount of the assessment was not calculated rationally because Landowner asserted that their Property does not

benefit from the Project and that the means by which assessments were calculated was skewed in such a way that the total amount of the assessment on their property was unfairly high.

(8) The North Dakota Supreme Court has long recognized that properties can be specially assessed for merely the ability to connect to oversized infrastructure as a community grows, where the benefit received will only be connected to local improvements by future action. For example, the North Dakota Supreme Court held that an undeveloped property was benefitted by construction of a large storage reservoir and large water main which did not directly connect to the undeveloped properties. See Haman v. City of Surrey, 418 N.W.2d 605, 606-08 (N.D. 1988). In Haman, the property owners did not directly connect to the improvements and were specially assessed based upon their ability to connect to the system in the future. Id. The landowners alleged that they did not benefit from the improvement because they were on the south side of U.S. Highway 2 and would have to bore under the road to connect to City water lines. Id. The Court rejected the landowner's arguments and upheld the special assessment, stating that the landowners in fact received a benefit. Id. The Court cited prior cases and stated:

"It is natural for the average property owner to resent the burden thus laid upon him, and he easily persuades himself that the thing for which he is asked to pay is a detriment, rather than a benefit, to his land, and ordinarily it is not difficult for him to find plenty of sympathizing neighbors who will unite in supporting his contention. Indeed, the benefits to be derived in such cases are ordinarily not instant upon the inception or completion of the improvement, but materialize with the developments of the future. They are none the less benefits because their full fruition is postponed, or because the present use to which the property is devoted is not of a character to be materially affected by the improvement."

Id. at 608 (citing Soo Line Railroad Co. v. City of Wilton, 172 N.W.2d 74, 75 (N.D. 1969)) (emphasis added)). A further example may be found in Bateman v. City of Grand Forks, in which the North Dakota Supreme Court rejected the plaintiff's argument that the plaintiff's undeveloped farm land did not benefit from the city's flood protection infrastructure because it was located on high ground, was not developed, and would not receive a benefit from the ability to connect into the installed lift station in the future. 747 N.W.2d 117 (N.D. 2008).

(9) However, like the plaintiffs in Haman and Bateman, the Landowner owns land in a district over which the special assessments have been approved. The Project consists of oversized infrastructure because the street, storm sewer, and related improvements provide a direct or regional benefit to a large area, including every property in the District and specifically including the Landowner's.

(10) The assessments on the Landowner's property will be fully valid if the SAC and the City Commission properly calculated them. According to the analysis previously conducted by the SAC, which was based on all necessary project specifications and cost estimates from the City Engineer, the assessment amount does not exceed the benefit received by each parcel. The SAC has determined that the Landowner's property is located within the District, will receive a benefit from the Project, that the assessment is legally valid despite the future connection of properties to the Project, and that the means by which it calculated the benefit were valid and fairly apportioned the assessed cost of the project to the Landowner. The special assessments for the District were properly approved by the SAC and the City Commission and otherwise comply with

all applicable legal requirements. Accordingly, the Landowner's objections to the assessments do not affect the legality of the special assessments. Therefore, the assessments are legally valid.

(11) Landowner is a political subdivision of the State of North Dakota. Landowner's property is not exempt from being specially assessed. N.D.C.C. § 40-23-07.

(12) Pursuant to North Dakota statute, the governing body of a municipality may, after hearing the objections of landowners during final consideration of the assessment list, increase or diminish the amount of any assessments as it may deem just. N.D.C.C. § 40-23-15. Upon consideration of the facts of this case and the arguments made by Landowner and others at public hearings on this matter, the City Commission has determined that the Landowner's objection to the City Commission did not provide a sufficient legal basis or legal argument that would warrant a reduction in the special assessment to Landowner's Property for this District.

III. ORDER

(1) Based upon the foregoing Findings of Fact and Conclusions of Law, the City Commission makes the following Order:

(a) Confirms the assessment list for Street Improvement District No. 2250, with no reduction for the Landowner's Property.

(b) Overrules any other objections to the special assessments or the assessment list asserted by the Landowner.

[Remainder of page intentionally left blank.]

Dated: October 13, 2022

Commissioner Simmons introduced the above Findings, Conclusion, and Decision and moved its adoption. The motion for the adoption of the foregoing Findings, Conclusion, and Decision was duly seconded by Commissioner Olson. The following Commissioners voted in favor of adoption: Simmons, Olson, Dardis, and Anderson. No Commissioners voted in opposition to the adoption. Commissioner George was absent and not voting. The majority having voted aye, the motion was declared passed.

President of the City Commission
of the City of West Fargo

ATTEST:

Tina Fisk, City Administrator

**WEST FARGO CITY COMMISSION MEETING
BUILDING DEPARTMENT MONTHLY COMPARISON REPORT
10/17/2022**

	SEPTEMBER 2021			SEPTEMBER 2022		
	# PERMITS	# UNITS	VALUATION	# PERMITS	# UNITS	VALUATION
<u>BUILDING NEW</u>						
COMMERCIAL	44		\$ 62,205,619.00	13		\$ 24,940,790.00
RESIDENTIAL DWELLING	234	234	\$ 75,490,479.00	138	138	\$ 60,834,951.00
RESIDENTIAL TWINHOME	4	4	\$ 837,500.00			
RESIDENTIAL TOWNHOME	5	38	\$ 7,883,537.00			
RESIDENTIAL MULTIPLE	1	54	\$ 6,500,000.00	1	52	\$ 14,000,000.00
PUBLIC	1		\$ 3,150,550.00	3		\$ 17,867,265.00
CHURCH						
ACCESSORY	151		\$ 1,409,314.00	183		\$ 4,720,410.00
FOUNDATION ONLY	21		\$ 6,591,000.00	2		\$ 35,000.00
<u>BUILDING REMODEL</u>						
COMMERCIAL	54		\$ 9,317,803.00	47		\$ 15,579,932.00
RESIDENTIAL	151		\$ 4,910,372.00	107		\$ 3,848,839.00
PUBLIC	4		\$ 4,950,400.00	3		\$ 3,490,330.00
CHURCH	1		\$ 458,900.00			
ACCESSORY	2		\$ 22,000.00	2		\$ 65,975.00
<u>BUILDING OTHER</u>						
DEMOLITION	2		\$ 20,000.00	5		\$ 197,500.00
MOVE	1		\$ 20,000.00	1		\$ 20,000.00
PERMIT CANCELLATION	1		\$ 81,640.00	1		\$ (530,000.00)
TOTALS	675	330	\$ 183,849,114.00	506	190	\$ 145,070,992.00

**WEST FARGO CITY COMMISSION MEETING
BUILDING DEPARTMENT ACTIVITY REPORT
10/17/2022**

	AS OF 10/12/2022			YEAR TO DATE		
	# PERMITS	# UNITS	VALUATION	# PERMITS	# UNITS	VALUATION
<u>BUILDING NEW</u>						
COMMERCIAL				13		\$ 24,940,790.00
RESIDENTIAL DWELLING	6	6	\$ 3,098,944.00	144	144	\$ 63,933,895.00
RESIDENTIAL TWINHOME						
RESIDENTIAL TOWNHOME						
RESIDENTIAL MULTIPLE				1	52	\$ 14,000,000.00
PUBLIC				3		\$ 17,867,265.00
CHURCH						
ACCESSORY	8		\$ 248,800.00	191		\$ 4,969,210.00
FOUNDATION ONLY				2		\$ 35,000.00
<u>BUILDING REMODEL</u>						
COMMERCIAL	3		\$ 1,595,585.00	50		\$ 17,175,517.00
RESIDENTIAL	7		\$ 200,675.00	114		\$ 4,049,514.00
PUBLIC				3		\$ 3,490,330.00
CHURCH						
ACCESSORY				2		\$ 65,975.00
<u>BUILDING OTHER</u>						
DEMOLITION				5		\$ 197,500.00
MOVE				1		\$ 20,000.00
PERMIT CANCELLATION				1		\$ (530,000.00)
TOTALS	24	6	\$ 5,144,004.00	530	196	\$ 150,214,996.00

WEST FARGO CITY COMMISSION MEETING

1 of 2

Building Department Report - Summary

NO.	CONTRACTOR	ADDRESS	OWNER	VALUATION	PERMIT FOR
221139	Premium Decks	1159 6th Avenue West	David & Sara Schneck	\$ 17,000.00	Accessory - Deck
221131	Dabbert Custom Homes	126 33rd Avenue East	Dabbert Custom Homes	\$ 174,900.00	Residential Dwelling
221141	Vision Construction	138 Beaton Drive West	Christopher Olson	\$ 35,000.00	Accessory - Shed
221158	Better Home Solutions	1443 7th Street West	Perry McCullan III, ETAL	\$ 18,300.00	Remodel - Residential - Replace Siding
221159	Hanlon Construction	936 Westwynd Drive	Barbara & Robert Rice	\$ 16,225.00	Remodel - Residential - Replace Siding
221136	CBE LLC	300 Sheyenne Street	Pioneer Place LLC	\$ 65,000.00	Remodel - Commercial - Fitup Lease Space for Retail
221121	Brick View Apartments LLC	340 8 Street West	Brick View Apartments LLC	\$ 5,000.00	Remodel - Commercial - Residing
221112	Deck Builders	1609 Maple Place	Raymond & Margaret Burnstad	\$ 21,750.00	Remodel - Residential - Deck
221116	Michael Renfrew	5009 Prairie Green Ct West	Michael Renfrew	\$ 40,000.00	Remodel - Residential - Lower Level Finish
221150	Premium Decks	734 14 1/2 Avenue East	Kenneth Cummings	\$ 15,000.00	Accessory- Deck
221169	Patrick Joyce, ETAL	2160 14th Street West	Patrick Joyce, ETAL	\$ 400.00	Remodel - Residential - storage area
221146	Jordahl Custom Homes	6026 Martin Lane West	Jordahl Custom Homes	\$ 185,000.00	Residential Dwelling
221147	Jordahl Custom Homes	6030 Martin Lane West	Jordahl Custom Homes	\$ 185,000.00	Residential Dwelling
221167	Jordahl Custom Homes	813 60th Avenue West	Jordahl Custom Homes	\$ 2,800.00	Accessory - Deck
221171	Justin & Lynnae Monson	2820 Rivers Bend Drive East	Justin & Lynnae Monson	\$ 100,000.00	Remodel - Residential - Lower Level Finish
221174	JDH Contracting Inc	851 38 Avenue East	West Fargo School District	\$ 100,000.00	Accessory - Tower
221155	Devon Wolff	829 12th Avenue West	Devon Wolff	\$ 4,000.00	Remodel - Residential - Replace roof
221071	Joshua Swanson	2803 Pyle Lane East	Joshua & Elizabeth Swanson	\$ 8,000.00	Accessory - Shed
221187	Bakken Contracting	2060 Sheyenne Street	Gateway West, LLC	\$ 1,525,585.00	Remodel - Commercial - 3rd Floor Office Fitup
221122	Kochmann Brothers Homes	2530 Rivers Bend Drive East	Michael & Carrie Guttormson	\$ 2,000,000.00	Residential Dwelling
221140	Paul Gabbert	707 8th Avenue West	Dorothy Gabbert	\$ 1,000.00	Accessory - Deck

Building Department Report - Summary

NO.	CONTRACTOR	ADDRESS	OWNER	VALUATION	PERMIT FOR
221184	William & Flora West	1430 Sheyenne Street	William & Flora West	\$ 70,000.00	Accessory - Detached Garage
221181	Horizon Homes LLC	5828 James Drive West	Horizon Homes LLC	\$ 281,063.00	Residential Dwelling
221182	Horizon Homes LLC	5822 James Drive West	Horizon Homes LLC	\$ 272,981.00	Residential Dwelling

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 1 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104485	S	3549 WEX	2533.04	09/27/22			
104486	S	2766 MIDCONTINENT COMMUNICATIONS	1785.42	09/27/22		CL 106143	2533.04
104487	S	4553 THE LIBRARY SUPPLY LLC	1550.98	09/27/22		CL 106145	1785.42
104488	S	4432 LIBERTY BUSINESS SYSTEMS INC	778.90	09/27/22		CL 106144	1550.98
104489	S	4432 LIBERTY BUSINESS SYSTEMS INC	250.86	09/27/22		CL 106164	778.90
104490	S	299 MENARDS	229.09	09/27/22		CL 106167	250.86
104502	S	999999 WEST FARGO MUNICIPAL COURT	40.00	09/30/22		CL 106183	229.09
104503	S	289 ACME TOOLS	194.53	10/04/22		CL 106306	40.00
104504	S	3179 ADVANCED ENGINEERING & ENVIRONMENTAL SER	5664.08	10/04/22		CL 106163	194.53
104505	S	779 AGASSIZ SEED COMPANY	190.00	10/04/22		CL 106178	5664.08
104506	S	4467 ALL FINISH CONCRETE	218306.47	10/04/22		CL 106214	190.00
104507	S	2947 ALLSTATE PETERBILT OF FARGO	4262.99	10/04/22		CL 106113	218306.47
104508	S	3490 AMAZON CAPITAL SERVICES	23.44	10/04/22		CL 106168	224.12
104509	S	865 AMERICAN ENTERPRISES, INC.	30000.00	10/04/22		CL 106197	4038.87
104510	S	317 AMERICAN WELDING & GAS, INC.	879.82	10/04/22		CL 106271	23.44
104511	S	4566 ARMAND ADVERTISING LLC	1216.92	10/04/22		CL 106284	30000.00
104512	S	2931 AUTO VALUE PARTS STORES	663.04	10/04/22		CL 106169	879.82
104513	S	3000 BAILEY NURSERIES, INC	17214.00	10/04/22		CL 106294	1216.92
104514	S	1695 BAKER & TAYLOR	433.92	10/04/22		CL 106148	419.50
104515	S	3273 BERNIE DARDIS	127.45	10/04/22		CL 106266	64.61
104516	S	4560 BLOOMINGTON POLICE DEPARTMENT	40.00	10/04/22		CL 106272	6.49
104517	S	26 BORDER STATES INDUSTRIES INC	1304.10	10/04/22		CL 106295	172.44
						CL 106218	17214.00
						CL 106235	433.92
						CL 106239	127.45
						CL 106127	40.00
						CL 106149	1304.10

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 2 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104518	S	4220 BRAINSTORM INC	113.70	10/04/22		CL 106231	113.70
104519	S	73 BRAUN INTERTEC	21893.25	10/04/22		CL 106116	9804.75
						CL 106301	3883.50
						CL 106307	8205.00
104520	S	652 BRENCO CORPORATION	43.00	10/04/22		CL 106274	43.00
104521	S	3892 BURGGRAF'S ACE FARGO WEST	147.97	10/04/22		CL 106275	147.97
104522	S	3905 BURIAN & ASSOCIATES LLC	9015.00	10/04/22		CL 106302	9015.00
104523	S	351 BUSINESS ESSENTIALS	409.90	10/04/22		CL 106153	185.24
						CL 106232	224.66
104524	S	39 BUTLER MACHINERY	47417.99	10/04/22		CL 106193	43844.16
						CL 106200	1998.78
						CL 106262	1575.05
104525	S	1403 CAPITAL ONE TRADE CREDIT	399.99	10/04/22		CL 106150	399.99
104526	S	2465 CASEY BAARDSON	45.50	10/04/22		CL 106131	45.50
104527	S	3687 CASS COUNTY WEED CONTROL	455.32	10/04/22		CL 106207	455.32
104528	S	4108 CED	444.60	10/04/22		CL 106174	183.00
						CL 106206	261.60
104529	S	1623 CENGAGE GALE	5.53	10/04/22		CL 106233	5.53
104530	S	2875 CENTRAL LANDSCAPE SUPPLY INC	338.00	10/04/22		CL 106146	338.00
104531	S	928 CHRISTIANSON'S BUSINESS FURNITURE	16468.30	10/04/22		CL 106309	16468.30
104532	S	3216 CINTAS	140.01	10/04/22		CL 106172	140.01
104533	S	111 CITY OF FARGO	44787.86	10/04/22		CL 106219	44787.86
104534	S	3021 CIVICPLUS	2299.37	10/04/22		CL 106189	2299.37
104535	S	4360 CONSOLIDATED ELECTRICAL DISTRIBUTORS	108.00	10/04/22		CL 106300	108.00
104536	S	3245 CORE & MAIN	25266.58	10/04/22		CL 106152	1966.48
						CL 106228	22568.00
						CL 106247	732.10
104537	S	3555 COSTCO MEMBERSHIP	120.00	10/04/22		CL 106310	120.00

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 3 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104538	S	859 DAKOTA ELECTRIC CONSTRUCTION CO	44131.50	10/04/22		CL 106123	44131.50
104539	S	624 DAKOTA SUPPLY GROUP	243.96	10/04/22		CL 106208	243.96
104540	S	90 DAKOTA UNDERGROUND	863269.86	10/04/22		CL 106109	634821.15
						CL 106110	228448.71
104541	S	999999 DANE SKOW	121.80	10/04/22		CL 106314	121.80
104542	S	856 DAVE'S WEST FARGO TIRE	31.31	10/04/22		CL 106139	31.31
104543	S	2531 DAVID ARNTSON	43.86	10/04/22		CL 106182	43.86
104544	S	4563 DICKINSON AREA PUBLIC LIBRARY	19.44	10/04/22		CL 106245	19.44
104545	S	2100 EAGLE RUN CROSSING LLC	189.81	10/04/22		CL 106273	189.81
104546	S	4049 EAPC ARCHITECTS ENGINEERS	14175.00	10/04/22		CL 106276	14175.00
104547	S	1849 EDWARD SHEELEY	400.00	10/04/22		CL 106242	400.00
104548	S	545 ELECTRIC PUMP, INC	196657.15	10/04/22		CL 106181	196657.15
104549	S	4564 ELLIOT STEINBRINK	400.00	10/04/22		CL 106243	400.00
104550	S	1851 F/S MANUFACTURING INC	112.02	10/04/22		CL 106223	112.02
104551	S	979 FARGO LINE-X	110.00	10/04/22		CL 106270	110.00
104552	S	1648 FARSTAD OIL, INC	255.84	10/04/22		CL 106171	255.84
104553	S	151 FEDERAL EXPRESS	4.69	10/04/22		CL 106132	4.69
104554	S	3347 FIRST INTERNATIONAL INSURANCE	8464.00	10/04/22		CL 106161	7210.00
						CL 106308	1254.00
104555	S	155 GALLS, LLC	3627.96	10/04/22		CL 106142	3097.97
						CL 106277	529.99
104556	S	3431 GEHRTZ CONSTRUCTION	11000.00	10/04/22		CL 106186	11000.00
104557	S	156 GENERAL EQUIP & SUPPLIES	4000.00	10/04/22		CL 106211	4000.00
104558	S	2558 GOODYEAR COMMERCIAL TIRE	2147.35	10/04/22		CL 106226	21.50
						CL 106287	2125.85
104559	S	4450 GRAFSTROM CONSTRUCTION	9000.00	10/04/22		CL 106121	9000.00

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 4 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104560	S	556 GRAINGER, INC.	1506.44	10/04/22		CL 106177	12.78
						CL 106201	1493.66
104561	S	3534 GRAND FORKS FIRE EQUIPMENT LLC	1070.11	10/04/22		CL 106279	1070.11
104562	S	3840 GRATEFUL CRATEFULLS	153.73	10/04/22		CL 106154	153.73
104563	S	939 GRAYBAR	910.54	10/04/22		CL 106156	910.54
104564	S	2877 GREATAMERICA FINANCIAL SERVICES	442.89	10/04/22		CL 106234	442.89
104565	S	4431 HALI-BRITE INC	103.66	10/04/22		CL 106184	103.66
104566	S	2713 HAMPTON INN & SUITES	936.00	10/04/22		CL 106134	936.00
104567	S	4026 HEIMAN INC	412.58	10/04/22		CL 106280	412.58
104568	S	4562 HMI	90772.15	10/04/22		CL 106225	90772.15
104569	S	358 HUBERT OYE-SONS CONST.	153449.33	10/04/22		CL 106159	153449.33
104570	S	211 INTERSTATE BATTERIES	307.20	10/04/22		CL 106179	307.20
104571	S	1012 INTERSTATE POWER SYSTEMS, INC	380.05	10/04/22		CL 106281	380.05
104572	S	1765 J.J. KELLER & ASSOC, INC	1331.51	10/04/22		CL 106221	1331.51
104573	S	2886 JENNA WILM	70.00	10/04/22		CL 106236	70.00
104574	S	3790 JIM BROWNLEE	400.00	10/04/22		CL 106241	400.00
104575	S	4561 KATHY LOEGERING	143.61	10/04/22		CL 106185	143.61
104576	S	3173 KIESLER'S POLICE SUPPLY, INC.	3049.50	10/04/22		CL 106100	3049.50
104577	S	693 KPH, INC	17550.00	10/04/22		CL 106124	17550.00
104578	S	4543 KRAUS-ANDERSON CONSTRUCTION COMPANY	68249.18	10/04/22		CL 106112	68249.18
104579	S	4555 LEDGESTONE INC	9469.38	10/04/22		CL 106125	9469.38
104580	S	3418 LOFFLER	52.41	10/04/22		CL 106166	52.41
104581	S	3603 LOGAN JACOBSON	908.54	10/04/22		CL 106195	908.54
104582	S	3304 MAC'S - FARGO	563.02	10/04/22		CL 106180	2.19
						CL 106265	171.12
						CL 106282	389.71

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 5 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104583	S	3536 MACQUEEN EMERGENCY	769.25	10/04/22			
104584	S	68 MANNING MECHANICAL	37370.70	10/04/22		CL 106283	769.25
104585	S	3011 MARK SIBENALLER	176.89	10/04/22		CL 106122	37370.70
104586	S	656 MASTER CONSTRUCTION	238606.38	10/04/22		CL 106210	176.89
104587	S	299 MENARDS	1190.35	10/04/22		CL 106304	238606.38
						CL 106114	3.98
						CL 106155	331.83
						CL 106157	285.97
						CL 106203	166.63
						CL 106285	359.08
						CL 106296	42.86
104588	S	4420 MEYER GROUP ARCHITECTURE	6500.00	10/04/22		CL 106205	6500.00
104589	S	305 MOORE ENGINEERING INC	77581.95	10/04/22		CL 106303	2777.70
						CL 106305	74804.25
104590	S	3085 MRA-THE MANAGEMENT ASSOCIATION, INC	2375.00	10/04/22		CL 106126	2375.00
104591	S	999999 NANCY DELEEUEW	300.00	10/04/22		CL 106188	300.00
104592	S	728 NAPA CENTRAL	70.00	10/04/22		CL 106147	70.00
104593	S	1031 NASETH CONSTRUCTION	98507.29	10/04/22		CL 106222	98507.29
104594	S	4315 NATHAN SKALSKY	93.75	10/04/22		CL 106238	93.75
104595	S	333 ND MOTOR VEHICLE DEPT.	23.00	10/04/22		CL 106229	23.00
104596	S	363 ND PERS	7841.62	10/04/22		CL 106151	7841.62
104597	S	1600 NELSON AUTO CENTER FLEET DEPT	78741.68	10/04/22		CL 106190	78741.68
104598	S	271 NETCENTER TECHNOLOGIES	180.00	10/04/22		CL 106165	180.00
104599	S	1028 NORTHERN TRUCK EQUIPMENT CORP.	7740.00	10/04/22		CL 106194	7740.00
104600	S	141 NORTHSTAR SAFETY, INC	216.00	10/04/22		CL 106115	216.00
104601	S	1715 NORTHWEST TIRE INC	38.52	10/04/22		CL 106176	19.26
						CL 106202	19.26
104602	S	1774 O'REILLY AUTOMOTIVE STORES, INC	882.44	10/04/22		CL 106227	540.20
						CL 106268	276.30
						CL 106288	65.94

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 6 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104603	S	276 OSTROMS ACE HARDWARE	230.05	10/04/22		CL 106137	79.84
						CL 106224	49.88
						CL 106261	15.98
						CL 106289	84.35
104604	S	4567 PANSY PLANTS LLC	2133.92	10/04/22		CL 106313	2133.92
104605	S	903 PETE NIELSEN	687.20	10/04/22		CL 106133	687.20
104606	S	563 PETRO SERVE USA	3665.00	10/04/22		CL 106263	3665.00
104607	S	4034 PETRO SERVE USA #63	1524.59	10/04/22		CL 106264	1524.59
104608	S	66 PETTY CASH CITY OF WEST FARGO	350.00	10/04/22		CL 106311	350.00
104609	S	1295 PRO-WEST & ASSOCIATES, INC	123.79	10/04/22		CL 106237	123.79
104610	S	1166 PRODUCTIVITY PLUS ACCOUNT	197.75	10/04/22		CL 106199	197.75
104611	S	4244 RED CARPET/SUPERPUMPER	90.00	10/04/22		CL 106290	90.00
104612	S	4565 RUBICON GLOBAL, LLC	51472.00	10/04/22		CL 106260	51472.00
104613	S	441 S & S LANDSCAPING	192.75	10/04/22		CL 106212	192.75
104614	S	3353 SAM'S CLUB MC/SYNCB	64.72	10/04/22		CL 106255	64.72
104615	S	1881 SAM'S CLUB/SYNCHRONY BANK	342.71	10/04/22		CL 106293	342.71
104616	S	454 SANITATION PRODUCTS	241.98	10/04/22		CL 106175	241.98
104617	S	450 SCHEELS	200.00	10/04/22		CL 106135	200.00
104618	S	639 SECRETARY OF STATE	36.00	10/04/22		CL 106230	36.00
104619	S	1201 SHANE MARCUSON	68.15	10/04/22		CL 106315	68.15
104620	S	459 SHERWIN WILLIAMS	69.28	10/04/22		CL 106173	69.28
104621	S	3994 SHEYENNE GARDENS	87.50	10/04/22		CL 106170	87.50
104622	S	1702 SHEYENNE RIVER KENNELS	152.44	10/04/22		CL 106136	152.44
104623	S	2885 SHORTPRINTER	256.37	10/04/22		CL 106140	256.37
104624	S	91 SIGN SOLUTIONS USA	928.20	10/04/22		CL 106213	928.20

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 7 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104625	S	2655 SIMPLIFILE	145.00	10/04/22			
104626	S	3528 SNACKS PLUS VENDING	138.00	10/04/22		CL 106312	145.00
104627	S	274 STEVE MOTTINGER	5000.00	10/04/22		CL 106215	138.00
104628	S	38 STRATA CORPORATION	2247.89	10/04/22		CL 106244	5000.00
104629	S	176 SUMMIT FIRE PROTECTION	341.00	10/04/22		CL 106158	1037.58
104630	S	733 SWANSTON EQUIPMENT CORP.	4568.35	10/04/22		CL 106192	1210.31
						CL 106216	341.00
						CL 106162	476.63
						CL 106204	241.72
						CL 106278	3850.00
104631	S	4559 TAMI CRIST	45.50	10/04/22		CL 106129	45.50
104632	S	4545 TARACON PRECAST	56468.88	10/04/22		CL 106120	56468.88
104633	S	2491 TEAM LABORATORY CHEMICAL, LLC	195.50	10/04/22		CL 106191	195.50
104634	S	1156 TESSMAN	550.00	10/04/22		CL 106220	550.00
104635	S	3043 THE FORUM	288.00	10/04/22		CL 106103	288.00
104636	S	4557 TIM BROWN	45.50	10/04/22		CL 106130	45.50
104637	S	2217 TINA FISK	476.60	10/04/22		CL 106240	476.60
104638	S	1495 TRAVIS JOHNSON	256.00	10/04/22		CL 106141	256.00
104639	S	1373 TROY FREADRICH	189.00	10/04/22		CL 106196	189.00
104640	S	665 TWIN CITY GARAGE DOOR	90.00	10/04/22		CL 106246	90.00
104641	S	2951 TYLER TECHNOLOGIES, INC	3480.00	10/04/22		CL 106291	3480.00
104642	S	2136 ULINE INC	1425.00	10/04/22		CL 106292	1425.00
104643	S	2720 UNITED RENTALS (NORTH AMERICA), INC	250.75	10/04/22		CL 106297	250.75
104644	S	2478 VALLI	7626.47	10/04/22		CL 106117	1288.38
						CL 106118	6338.09
104645	S	1658 VERN BAARDSON	45.50	10/04/22		CL 106128	45.50
104646	S	1346 VISTO'S TRAILER SALES	119.97	10/04/22		CL 106269	119.97

10/14/22
09:03:57

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 10/22

Page: 8 of 8
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
104647	S	544 WALLWORK TRUCK CENTER	5993.93	10/04/22		CL 106160	451.51
						CL 106198	5533.49
						CL 106267	8.93
104648	S	576 WALMART COMMUNITY CARD	59.20	10/04/22		CL 106138	59.20
104649	S	2184 WEST SIDE STEEL	855.92	10/04/22		CL 106209	855.92
104650	S	999999 WILLIAM YATES	300.00	10/04/22		CL 106187	300.00
104651	S	3283 WIN-911	960.00	10/04/22		CL 106286	960.00
104652	S	338 XCEL ENERGY	132.86	10/04/22		CL 106111	89.15
						CL 106298	26.62
						CL 106299	17.09
104653	S	582 ZEP MANUFACTURING	1633.06	10/04/22		CL 106217	1633.06
104654	S	3549 WEX	2533.04	10/06/22		CL 106325	2533.04
104655	S	4412 ROBERT MUELLER	225.00	10/06/22		CL 105750	225.00
104656	S	999999 CITY OF WEST FARGO	73.00	10/07/22		CL 106331	73.00
104657	S	2766 MIDCONTINENT COMMUNICATIONS	370.54	10/07/22		CL 106332	370.54
104658	S	2264 JUDY HOLZHEY	200.00	10/11/22		CL 106386	200.00
104659	S	4265 CHRISTY GOULET	150.00	10/11/22		CL 106378	150.00
104660	S	2709 JOHNSON LAWN SERVICE	92.49	10/11/22		CL 106390	92.49
104661	S	4414 MUSCATELL AUTOMOTIVE	42602.00	10/11/22		CL 106410	42602.00
104662	S	2264 JUDY HOLZHEY	100.00	10/14/22		CL 106488	100.00
Total for Claim Checks			2730839.47				
Count for Claim Checks			167				

* denotes missing check number(s)

of Checks: 167 Total: 2730839.47



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (04-2020)

Applying for (check one)
☒ Local Permit ☐ Restricted Event Permit*

Games to be Conducted
☐ Bingo ☒ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker* ☐ Twenty-One* ☐ Paddlewheels*
 Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

Name of Organization or Group of People permit is issued to VFW Dept. of N.D.	Dates of Activity 12-11-22 / 4-15-23	If raffle, provide drawing date 4-15-23	
Organization or Group Contact Person William L TUFF	Title or Position Quartermaster	Telephone Number 701-261-2144	
Business Address 526 2nd St. Ct.	City WEST Fargo	State ND	ZIP Code 58078
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) VFW Post 7564 - Offices			
Site Address 444 UNIT 101 Slegrove St	City WEST Fargo	ZIP Code 58078	County CASS

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
RAFFLE	CASH Prize	1,500
Add Row	Delete Row	
		See Attached List
Total (limit \$40,000 per year)		4000⁰⁰

Intended Uses of Gaming Proceeds
To Support the Veterans Service Office

Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)
☐ Yes ☒ No

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

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)
☒ No ☐ Yes - Total Retail Value: (This amount is part of the total prize limit of \$40,000 per year)

Organization or Group Contact Person

Name William L TUFF	Title Quartermaster	Telephone Number 701-261-2144	E-mail Address bltuff@aol.com
Signature of Organization or Group's Top Official William L TUFF		Title Quartermaster	Date 10/10/22

\$1000 cash 10/11 EIT

Raffle Prizes awarded for VFW Raffle

Cash Prizes

2. 500

3. 500

4. 300

5. 300

6. 300

7. 200.

8. 200

9. 200

10. 100

11. 100

12. 100

13. 100

14. 100

15. 100

16. 100

17. 100

18. 100

19. 100

Total Prize Distribution \$4000 cash



APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 9338 (09-2021)

Applying for (check one)	
☒ Local Permit	☐ Restricted Event Permit*
Games to be Conducted	
☐ Raffle by a Political or Legislative District Party	
☒ Bingo	☐ Raffle ☐ Raffle Board ☐ Calendar Raffle ☐ Sports Pool ☐ Poker* ☐ Twenty-One* ☐ Paddlewheels*

Poker, Twenty-One, and Paddlewheels may be conducted **Only** with a Restricted Event Permit. Only one permit allowed per year.

LOCAL PERMIT RAFFLES MAY NOT BE CONDUCTED ONLINE AND CREDIT CARDS MAY NOT BE USED FOR WAGERS.

Name of Organization or Group of People permit is issued to	Dates of Activity	If raffle, provide drawing date	
Legacy Elementary PTO	Oct. 28, 2022	NA	
Organization or Group Contact Person	Title or Position	Telephone Number	
Chelsea Levorsen	Co-treasurer	701-290-1838	
Business Address	City	State	ZIP Code
5150 9th St. West	West Fargo	ND	58078
Mailing Address (if different)	City	State	ZIP Code
1010 Larkin Lane	West Fargo	ND	58078
Site Name (where gaming will be conducted)			
Legacy Elementary			
Site Address	City	ZIP Code	County
5150 9th St. West	West Fargo		

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Bingo	Books, Candy	\$1-\$5 EACH
Add Row	Delete Row	
Total (limit \$40,000 per year)		≈ \$200

Intended Uses of Gaming Proceeds	This is a free event, sales from consessions to offset PTO event costs
Does the organization presently have a state gaming license? (If yes, the organization is not eligible for a local permit or restricted event permit and should call the Office of Attorney General at 1-800-326-9240)	
☐ Yes ☒ No	
Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? (If yes, the organization or group does not qualify for a local permit or restricted event permit)	
☐ Yes ☒ No	
Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? (If yes, indicate the total retail value of all prizes previously awarded)	
☒ No ☐ Yes - Total Retail Value: (This amount is part of the total prize limit of \$40,000 per year)	
Is the organization or group a state political party or legislative district party? (If yes, the organization or group may only conduct a raffle and must complete SFN 52880 "Report on a Restricted Event Permit" within 30 days of the event. Net proceeds may be used for political purposes.)	
☐ Yes ☒ No	

Organization or Group Contact Person

Name	Title	Telephone Number	E-mail Address
Chelsea Levorsen	Co-treasurer	701-290-1838	Chelsea.levorsen@icloud.com
Signature of Organization or Group's Top Official		Title	Date
C. Levorsen		Co-Treasurer	Oct. 3, 2022

\$1000 Check #2550

*** Consent Agenda ***

AGENDA ITEM DESCRIPTION
CITY COMMISSION
WEST FARGO, NORTH DAKOTA

1. CONTACT PERSON: Malachi Petersen
2. PHONE NUMBER: 515-5377 DATE: October 13, 2022
3. AGENDA TITLE:
Resolution Amending the name of the Wood Addition, a replat of Lot 3, Block 1 of Hersch Addition, and a plat of a minor subdivision of property located in the NW 1/4 of Section 29, T139N, R49W.
4. PLEASE **BRIEFLY** DESCRIBE YOUR REQUEST:
The City Commission previously approved the replat and plat of the Wood Addition at their Oct. 3 meeting, however, due to another subdivision with a similar name the County Recorder's Office requires the plat name to be changed prior to recordation. This resolution will formally change the name of the plat from the Wood Addition to the Pattyn Addition. No other changes aside from the name are being made.
5. SITE ADDRESS OR LEGAL DESCRIPTION (if applicable):
Located at 116 and 122 Golden Spike Rd (Lot 3, Block 1 of Hersch Addition), City of West Fargo, North Dakota.
6. ACTION BEING REQUESTED FROM CITY COMMISSION:
Approval of the Resolution Amending the Wood Addition to change the name from Wood Addition to Pattyn Addition.

Commissioner _____ introduced and moved the adoption of the following Resolution:

RESOLUTION APPROVING RENAMING PLAT OF WOOD ADDITION

WHEREAS, on October 3, 2022, the West Fargo City Commission, by resolution attached hereto as Exhibit A, approved the final plat of Wood Addition to the City of West Fargo; and

WHEREAS, said plat was submitted to the Cass County Recorder for recording; and

WHEREAS, said plat was rejected by the Cass County Recorder due to the plat having a similar name to a previously recorded plat in Cass County; and

WHEREAS, an amended plat has been submitted to the City Commission, with the only amendment being the name of the plat.

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo that the plat formerly known as Wood Addition and approved as to content on October 3, 2022, is hereby acknowledged to now be known as the Plat of Pattyn Addition to the City of West Fargo.

Dated this 17th day of October, 2022.

APPROVED:

President of the Board of City Commissioners

ATTEST:

City Auditor

Commissioner _____ seconded the motion. On roll call the following commissioners voted in favor of said motion: _____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority having voted aye, the motion was carried and the Resolution was duly adopted.

CERTIFICATE

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

I, Tina Fisk, the duly appointed, qualified and acting City Auditor of the City of West Fargo, North Dakota, do hereby certify that attached hereto is a true and correct portion of the minutes of the meeting of the City Commission of the City of West Fargo, North Dakota, held on the 3rd day of October, 2022, and the 17th day of October 2022, which reflects the approval by the City Commission of the City of West Fargo, North Dakota, of the replat of Lot 3, Block1, Hersch Addition and the plat of part of the Northwest Quarter of Section 29, Township 139 North, Range 49 West (originally to be known as the Plat of Wood Addition and subsequently amended to be known as the Plat of Pattyn Addition) to the City of West Fargo, North Dakota. A description of the exterior boundary line of said property so replatted reads as follows, to-wit:

SEE ATTACHED

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2022.

Tina Fisk, City Auditor

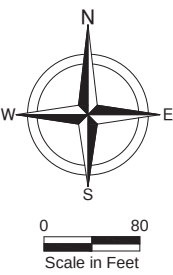
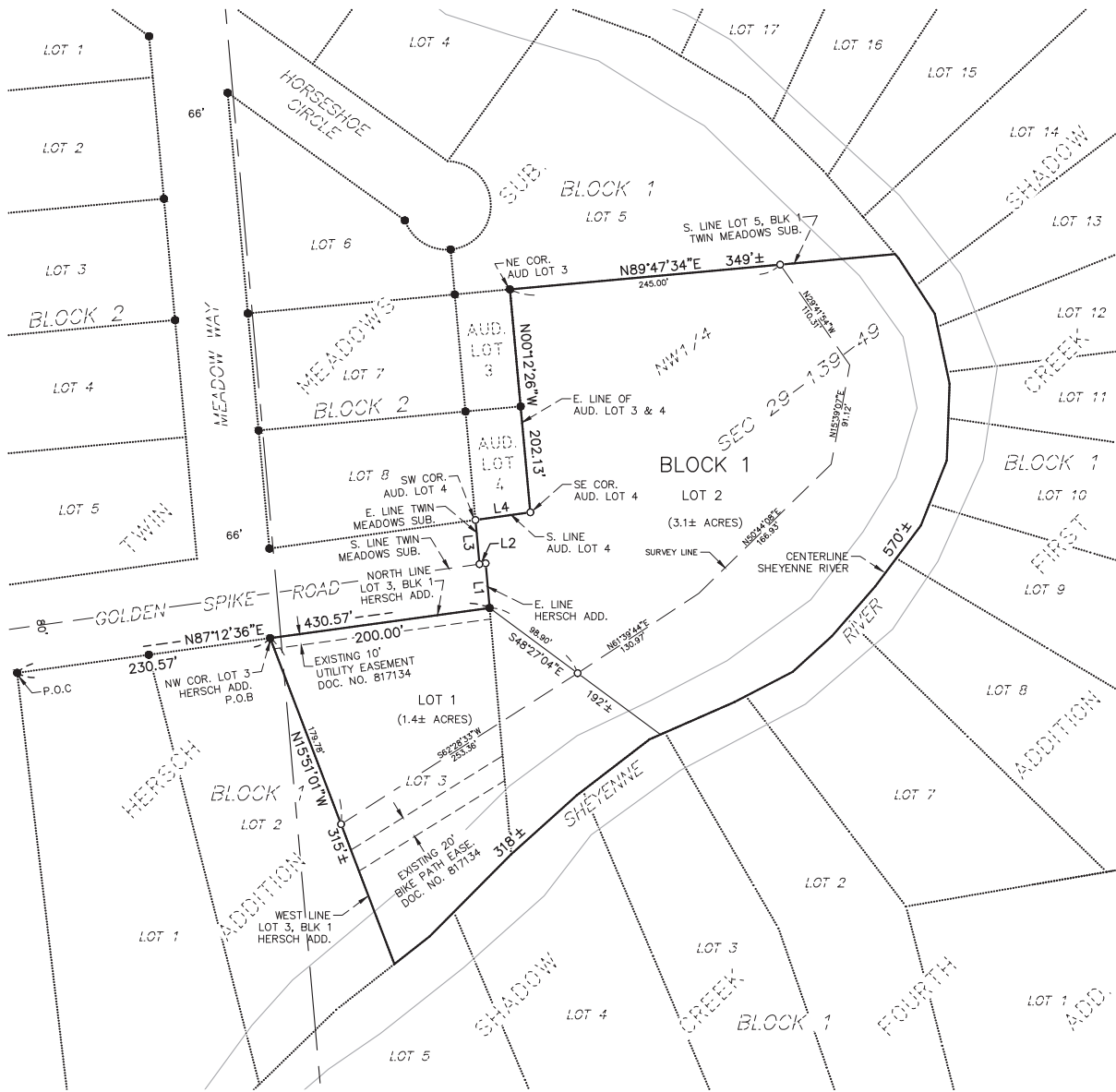
STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 17th day of October, 2022, before me, a Notary Public, in and for Cass County, in the State of North Dakota, personally appeared Tina Fisk, the City Auditor of the City of West Fargo, North Dakota, a municipal corporation under the laws of the State of North Dakota, and acknowledged to me that she executed the foregoing instrument.

Notary Public, Cass County, ND

(SEAL)

PLAT OF
WOOD ADDITION
TO THE CITY OF WEST FARGO, A REPLAT OF LOT 3, BLOCK 1,
HERSCH ADDITION AND A PLAT OF PART OF THE NORTHWEST
QUARTER OF SECTION 29, TOWNSHIP 139 NORTH, RANGE 49 WEST,
CASS COUNTY, NORTH DAKOTA.



LEGEND

- IRON MONUMENT FOUND
- SET 5/8"x18" REBAR WITH PINK PLASTIC CAP #28251
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING

TOTAL PLATTED AREA: 4.5± ACRES

BASIS OF BEARINGS: THE NORTH LINE OF BLOCK 1, HERSCH ADDITION TO THE CITY OF WEST FARGO HAS A RECORD BEARING OF N87°12'36"E

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	40.49'	N00°00'00"W
L2	5.65'	S87°12'36"W
L3	40.04'	N00°12'26"W
L4	50.05'	N87°07'34"E

NOTES:

- SUBJECT TO RESTRICTIVE COVENANTS PER DOCUMENT NO. 817135
- EASEMENT IN FAVOR OF NORTHERN STATES POWER COMPANY RECORDED NOVEMBER 23, 1954 AT 8:06 A.M., IN BOOK N-2 OF MISC., PAGE 345, AS DOC. 318459

CERTIFICATE

JACOB R. DUCHSHERER, BEING DULY SWORN, DEPOSES AND SAYS THAT HE IS THE REGISTERED LAND SURVEYOR WHO PREPARED AND MADE THE ATTACHED PLAT OF "WOOD ADDITION" TO THE CITY OF WEST FARGO, A REPLAT OF LOT 3, BLOCK 1, HERSCH ADDITION AND A PLAT OF PART OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 139 NORTH, RANGE 49 WEST, CASS COUNTY, NORTH DAKOTA; THAT SAID PLAT IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY; THAT ALL DISTANCES ARE CORRECTLY SHOWN ON SAID PLAT; THAT MONUMENTS HAVE BEEN PLACED IN THE GROUND AS INDICATED FOR THE GUIDANCE OF FUTURE SURVEYS AND THAT THE EXTERIOR BOUNDARY LINES OF SAID ADDITION ARE DESCRIBED AS FOLLOWS, TO WIT:

COMMENCING AT THE NORTHWEST CORNER OF BLOCK 1, HERSCH ADDITION, SAID PLAT IS ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SAID CASS COUNTY; THENCE NORTH 87 DEGREES 12 MINUTES 36 SECONDS EAST ALONG THE NORTH LINE OF SAID BLOCK 1 FOR A DISTANCE OF 230.57 FEET TO THE NORTHWEST CORNER OF LOT 3 OF SAID BLOCK 1 AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 87 DEGREES 12 MINUTES 36 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 3 FOR A DISTANCE OF 200.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 3; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID HERSCH ADDITION FOR A DISTANCE OF 40.49 FEET TO THE NORTHEAST CORNER OF SAID HERSCH ADDITION; THENCE SOUTH 87 DEGREES 12 MINUTES 36 SECONDS WEST ALONG THE NORTH LINE OF SAID HERSCH ADDITION FOR A DISTANCE OF 5.65 FEET TO THE SOUTHEAST CORNER OF GOLDEN SPIKE ROAD, ACCORDING TO TWIN MEADOW'S SUBDIVISION, SAID PLAT IS ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SAID CASS COUNTY; THENCE NORTH 00 DEGREES 12 MINUTES 26 SECONDS WEST A DISTANCE OF 40.04 FEET TO THE SOUTHWEST CORNER OF AUDITOR'S LOT 4 OF SAID SECTION 29; THENCE NORTH 87 DEGREES 07 MINUTES 34 SECONDS EAST ALONG THE SOUTH LINE OF SAID AUDITOR'S LOT 4 FOR A DISTANCE OF 50.05 FEET TO THE SOUTHEAST CORNER OF SAID AUDITOR'S LOT 4; THENCE NORTH 00 DEGREES 12 MINUTES 26 SECONDS WEST ALONG THE EAST LINES OF AUDITOR'S LOT 3 AND AUDITOR'S LOT 4 OF SAID SECTION 29 FOR A DISTANCE OF 202.13 FEET TO THE SOUTH LINE OF LOT 5, BLOCK 1, OF SAID TWIN MEADOWS SUBDIVISION; THENCE NORTH 89 DEGREES 47 MINUTES 34 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 5 FOR A DISTANCE OF 349 FEET, MORE OR LESS, TO THE CENTERLINE OF THE SHEYENNE RIVER; THENCE SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG THE SAID CENTERLINE OF THE SHEYENNE RIVER TO THE INTERSECTION WITH A LINE THAT BEARS SOUTH 15 DEGREES 51 MINUTES 01 SECOND EAST FROM THE POINT OF BEGINNING, ALSO BEING THE WESTERLY LINE OF SAID LOT 3; THENCE NORTH 15 DEGREES 51 MINUTES 01 SECOND WEST ALONG THE WESTERLY LINE OF SAID LOT 3 FOR A DISTANCE OF 315 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 4.5 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD, IF ANY.



JACOB R. DUCHSHERER
REGISTERED LAND SURVEYOR
REG. NO. LS-28251

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JACOB R. DUCHSHERER, REGISTERED LAND SURVEYOR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

DEDICATION

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND DESCRIBED IN THE PLAT OF "WOOD ADDITION" TO THE CITY OF WEST FARGO, A REPLAT OF LOT 3, BLOCK 1, HERSCH ADDITION AND A PLAT OF PART OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 139 NORTH, RANGE 49 WEST, CASS COUNTY, NORTH DAKOTA, THAT WE HAVE CAUSED IT TO BE PLATTED INTO LOTS AND BLOCKS AS SHOWN BY SAID PLAT AND CERTIFICATE OF JACOB R. DUCHSHERER, REGISTERED LAND SURVEYOR, AND THAT THE DESCRIPTION AS SHOWN IN THE CERTIFICATE OF THE REGISTERED LAND SURVEYOR IS CORRECT.

OWNERS:

HARRY O. WOOD II ANGELA J. WOOD

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED HARRY O. WOOD II AND ANGELA J. WOOD, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME AS THEIR FREE ACT AND DEED.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

MORTGAGEE: BELL BANK

BY: _____
ITS: _____

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED _____ KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF BELL BANK.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

WEST FARGO PLANNING COMMISSION APPROVAL

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS _____ DAY OF _____, 2022.

JOSEPH F. KOLB, CHAIRMAN

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOSEPH F. KOLB, CHAIRMAN OF THE WEST FARGO PLANNING COMMISSION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN THE NAME OF THE WEST FARGO PLANNING COMMISSION.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

WEST FARGO CITY COMMISSION APPROVAL

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS _____ DAY OF _____, 2022.

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

TINA FISK, CITY AUDITOR

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED BERNIE L. DARDIS, PRESIDENT OF THE WEST FARGO CITY COMMISSION, AND TINA FISK, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN THE NAME OF THE CITY OF WEST FARGO.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

CITY ENGINEER'S APPROVAL

THIS PLAT IN THE CITY OF WEST FARGO IS HEREBY APPROVED THIS _____ DAY OF _____, 2022.



DANIEL R. HANSON, CITY ENGINEER

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED DANIEL R. HANSON, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS CITY ENGINEER.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA

WEST FARGO CITY ATTORNEY APPROVAL

I HEREBY CERTIFY THAT PROPER EVIDENCE OF TITLE HAS BEEN EXAMINED BY ME AND I APPROVE THE PLAT AS TO FORM AND EXECUTION THIS _____ DAY OF _____, 2022.

JOHN T. SHOCKLEY, CITY ATTORNEY

STATE OF NORTH DAKOTA)
COUNTY OF CASS)

ON THIS _____ DAY OF _____, 2022, BEFORE ME, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED JOHN T. SHOCKLEY, CITY ATTORNEY, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS THE CITY ATTORNEY.

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA



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

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

Full, Legal Name of Gaming Organization **West Fargo Baseball, Inc.**

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

Name of Location Bar Nine			
Street 1405 Prairie Parkway	City West Fargo	ZIP Code 58078	County Cass
Beginning Date(s) Authorized 11/2/22	Ending Date(s) Authorized 6/30/23	Number of twenty-one tables if zero, enter "0": 1	
Specific location where games of chance will be conducted and played at the site (required) Bar Area			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known TBD			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted) n/a	Hours of gaming (if restricted) 4PM to Midnight
--	--

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

☒ Bingo	☐ Club Special	☐ Sports Pools
☐ ELECTRONIC Quick Shot Bingo	☐ Tip Board	☒ Twenty-One
☒ Raffles	☐ Seal Board	☒ Poker
☐ ELECTRONIC 50/50 Raffle	☐ Punchboard	☐ Calcuttas
☒ Pull Tab Jar	☒ Prize Board	☐ Paddlewheels with Tickets
☒ Pull Tab Dispensing Device	☐ Prize Board Dispensing Device	☐ Paddlewheel Table
☒ ELECTRONIC Pull Tab Device		

APPROVALS

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

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



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

License Number (Office Use Only)

Site Owner (Lessor) Md2, Inc.		Site Name Bar Nine		Site Phone Number (701) 356-0099
Site Address 1405 Prairie Parkway	City West Fargo	State ND	Zip Code 58078	County Cass
Organization (Lessee) West Fargo Baseball, Inc.		Rental Period 11/2/2022 to 6/30/2023		Monthly Rent Amount
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.				☐ No ☒ Yes ☒ No ☐ Yes \$ 0.00
2. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 <u>1</u> ☒ Rent per Table \$ <u>200.00</u> Number of Tables with wagers over \$5 <u>0</u> ☒ Rent per Table \$ _____				☐ No ☒ Yes \$ 200.00 \$ _____
3. Is Paddlewheels conducted at this site? Number of Tables _____ ☒ Rent per Table \$ _____				☒ No ☐ Yes \$ _____
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: ☒ Jar Bar ☒ Standard Dispensing Device				☐ No ☒ Yes \$ 325.00
☒ Electronic Dispensing Device Number of Electronic Devices <u>10</u>				\$ 750.00
Total Monthly Rent				\$ 1,275.00

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

TERMS OF RENTAL AGREEMENT:

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

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

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

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

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

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

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

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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

Signature of Lessor 	Title Vice President	Date 10/14/2022
Signature of Lessee 	Title Vice President WF Baseball	Date 10/14/2022



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

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

Full, Legal Name of Gaming Organization

Metro Sports Foundation

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

Name of Location

Gimmies

Street

635 32nd AVE suite 144

City

West Fargo

ZIP Code

58078

County

Cass

Beginning Date(s) Authorized

10-19-22

Ending Date(s) Authorized

6-30-23

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

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

machines located in bar area, played in bar area except restrooms

If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

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

☐

Bingo

☐

ELECTRONIC Quick Shot Bingo

☐

Raffles

☐

ELECTRONIC 50/50 Raffle

☐

Pull Tab Jar

☒

Pull Tab Dispensing Device

☒

ELECTRONIC Pull Tab Device

☐

Club Special

☐

Tip Board

☐

Seal Board

☐

Punchboard

☐

Prize Board

☐

Prize Board Dispensing Device

☐

Sports Pools

☐

Twenty-One

☐

Poker

☐

Calcuttas

☐

Paddlewheels with Tickets

☐

Paddlewheel Table

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

PRINT Name and official position of person signing on behalf of city/county above

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



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

License Number (Office Use Only)

Site Owner (Lessor) <u>Bob Polcher</u>		Site Name <u>Gimmies</u>		Site Phone Number <u>701-532-4663</u>	
Site Address <u>635 32nd Ave Suite 144</u>		City <u>West Fargo</u>		State <u>ND</u>	Zip Code <u>58078</u>
Organization (Lessee) <u>Metro Sports Foundation</u>		Rental Period <u>10-19-22</u> to <u>6/30/23</u>		County <u>Cass</u>	
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.				☐ No ☐ Yes ☐ No ☐ Yes \$	
2. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____ Number of Tables with wagers over \$5 _____ X Rent per Table \$ _____				☐ No ☐ Yes \$ \$	
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____				☐ No ☐ Yes \$	
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: ☐ Jar Bar ☐ Standard Dispensing Device				☐ No ☒ Yes \$	
☒ Electronic Dispensing Device Number of Electronic Devices <u>6</u>				\$ <u>550</u>	
Total Monthly Rent				\$ <u>550</u>	

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

TERMS OF RENTAL AGREEMENT:

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

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

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

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

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

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

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

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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

Signature of Lessor <u>[Signature]</u>	Title <u>Owner</u>	Date <u>10/7/22</u>
Signature of Lessee <u>[Signature]</u>	Title <u>President</u>	Date <u>10/10/22</u> (over)



To: West Fargo City Commission
From: Aaron Nelson, Planning Director
Date: October 17, 2022
Subject: City of West Fargo Planning Needs Assessment
Action: No Action – Informational Item to Receive and File

Commission President

Bernie Dardis

Primary Portfolio:
Administration/Finance

Secondary Portfolio:
Street, Water and Sewer

Commission Vice President

Brad Olson

Primary Portfolio:
Street, Water and Sewer

Secondary Portfolio:
Administration/Finance

Commissioner

Roben Anderson

Primary Portfolio:
Planning, Zoning and Engineering

Secondary Portfolio:
Sanitation

Commissioner

Mark Simmons

Primary Portfolio:
Police and Fire

Secondary Portfolio:
Planning, Zoning and Engineering

Commissioner

Mandy George

Primary Portfolio:
Sanitation

Secondary Portfolio:
Police and Fire

Administration

Tina Fisk, Administrator

Dustin Scott, Assistant Administrator

The City's consultant, *PlaceMakers, LLC*, has completed the draft West Fargo Planning Needs Assessment, which is attached for your review. This assessment is the synthesis of the consultant's analysis of existing conditions, input from City staff & leadership, and review of City plans & policies. Planning staff will provide a brief overview of the assessment at the October 17 City Commission meeting in order to update the Commission on the status of this work and to solicit feedback and any initial thoughts commissioners would like to share. This is an informational item and no action is being requested at this time.

Background/Process:

The purpose of this overall process is to clarify the City's current planning/development-related issues, to prioritize the areas of greatest future need for the City, and to build consensus around associated action steps. The Planning Department intends to utilize the results of this effort to inform its work plan for 2023 and beyond. This effort seeks to advance and build upon the recommendations of the City's Comprehensive Plan, West Fargo 2.0.

Initial project information was provided to the City Commission at the July 18, 2022 meeting, prior to solicitation of Commissioner input through an online questionnaire.

Over the next month or two, the consultant will work with staff to develop a set of recommended action steps in response to the identified needs. Once complete, the final documents and recommendations will be formally presented to the Planning & Zoning Commission and City Commission for consideration.

Policy Analysis:

The West Fargo 2.0 Comprehensive Plan calls for "*the City's Planning Department to coordinate with other city departments to request funds and schedule special studies consistent with the timeframes presented in the [plan implementation] matrix*" (pg. 149). The Plan also notes that, "*In order to implement many of the recommendations in this document, revisions need to be made to the local zoning regulations, as well as supporting policies and ordinances. Additional Plans and studies for specific sites will be needed to support their implementation*" (pg. 149).

Financial Analysis:

This project was initiated via task order through the City's existing Master Service Agreement with PlaceMakers, LLC for on-call planning services, utilizing budgeted 2022 funds for professional services.

West Fargo Planning Resources Assessment

Introduction

With significant recent changes in leadership within the City of West Fargo departments, this needs assessment convened management across the city departments and the Planning and Zoning Commission to share information as it relates to current and future Planning Department resources and needs. Several issues identified within the West Fargo 2.0 Comprehensive Plan, and others that have come to light more recently, exceed the capacity and resources available to sufficiently study and to address in the short term. This process seeks to establish consensus as to which of these issues should have priority.

Project Goals

1. Facilitate input, expertise and discussion from West Fargo City staff and officials.
2. Establish priority and strategy of upcoming planning projects.
3. Assess the City's long-range planning and development-related issues and needs.
4. Create an action plan to guide the City in how to best address identified issues and needs.

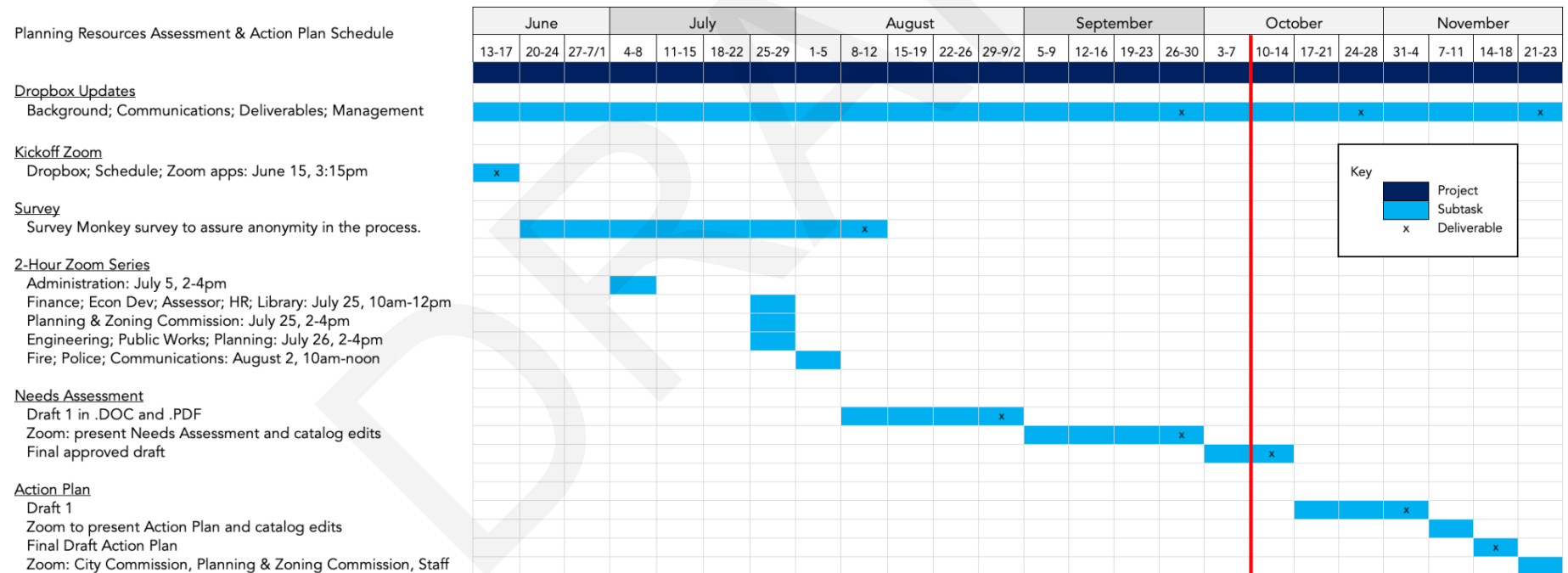
West Fargo Planning Resources Assessment Actions

1. Summarize the process to date.
2. Identify issues and needs, with supporting rationale.
3. Summarize next steps in the development of the West Fargo Action Plan.

While this needs assessment summarizes the process and identifies the planning needs and rationale, it does not establish timelines, roles, responsibilities, resources and anticipated funding sources, all of which comprise the next step of the West Fargo Action Plan, discussed on pages 11 and 12. Once this needs assessment has been edited and approved by the City of West Fargo, with a goal of mid-October, the drafting of the West Fargo Action Plan will begin. The action plan is expected to be completed this autumn provided speedy input is provided on the resources assessment. The Planning Department intends to utilize the results of this effort to inform its work plan for 2023 and onward, contingent upon corresponding resource allocation. This effort seeks to advance and build upon the recommendations of the City's Comprehensive Plan, West Fargo 2.0.

Process Summary

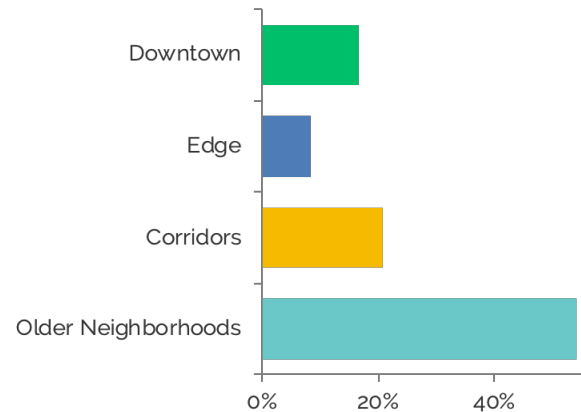
West Fargo Planning Resources Assessment and Action Plan spans six months in summer and autumn of 2022. This process is consistent with the City's Comprehensive Plan, West Fargo 2.0, which calls for "the City's Planning Department to coordinate with other city departments to request funds and schedule special studies consistent with the timeframes presented in the [plan implementation] matrix" (pg. 149). The Plan also notes that, "In order to implement many of the recommendations in this document, revisions need to be made to the local zoning regulations, as well as supporting policies and ordinances. Additional Plans and studies for specific sites will be needed to support their implementation" (pg. 149). The assessment process began with an anonymous online survey made available to department heads, senior staff, appointed officials, and elected officials that ran from mid-June through mid-August 2022. Follow-up emails were received by a number of participants with additional points and direction. During the summer, a series of in-depth Zoom sessions received input and direction from participants, as detailed in the project schedule below.



Survey Response Overview

An anonymous online questionnaire was answered by 24 West Fargo leaders, giving direction on needs and resources. Answers are edited for brevity and combined to summarize by topics.

Q1: Where does the City need to focus the most attention?



Q2: Why?

To maintain what we already have as well as to be well prepared for future growth and expansion, focus should be placed in areas that will continue to attract new businesses and families. To set strategies and plan so growth is more intentional.

We need to focus on opportunities to grow our nonresidential property tax base in The Downtown Yards on

Sheyenne and along the major corridors. Building the business centers to support the population and deliver a resilient tax base is necessary.

Vibrant, walkable downtowns attract both residents and outsiders alike and are an anchor point for commerce. West Fargo has invested heavily in The Downtown Yards area but the work is not done yet. We need to keep our momentum going forward. The downtown mixed use district has seemed to stall, and has been the source of several political battles. If it loses too much momentum, it will be harder to take off again.

The oldest infrastructure has not been updated and limits access and growth. Infrastructure needs include new sidewalks and bike lanes, and resurfacing the streets.

Well planned and built corridors will set up the city for long-term success. They

serve as the skeleton of the city. Aging and deteriorating infrastructure is a challenge.

Q3: Is there another part of the city that needs more attention (than in Q1)?

The City should complete the redevelopment of The Downtown Yards. We need an overall plan for growth to attract commercial to the downtown mixed use district and industrial to our industrial park. Now development is piecemeal, as a developer comes forward, without regard to neighborhoods and what the community needs besides tax dollars.

The 32nd Avenue W. Corridor near The Lights is an up-and-coming commercial business and entertainment mixed use district. A core area study indicates needed storm sewer, curb lines sunk and infrastructure repair.

There is a great opportunity to plan for the northern growth area with the Fargo-Moorhead Area Diversion becoming a reality in the next five years. West Fargo has an opportunity to master plan its future to the north, but we need to start now.

Main Avenue and the connecting roads north to 12th Avenue need sidewalks and multi-use paths that connect these roads to currently isolated neighborhoods north of Main Avenue. The north south multi-use paths connecting Main and 12th Avenue are currently under contract with Houston for the 9th Street NE corridor reconstruction between these two roadways and that project intends to have pedestrian facilities incorporated into the work. This type of project will help the corridor to be brought into the 21st century.

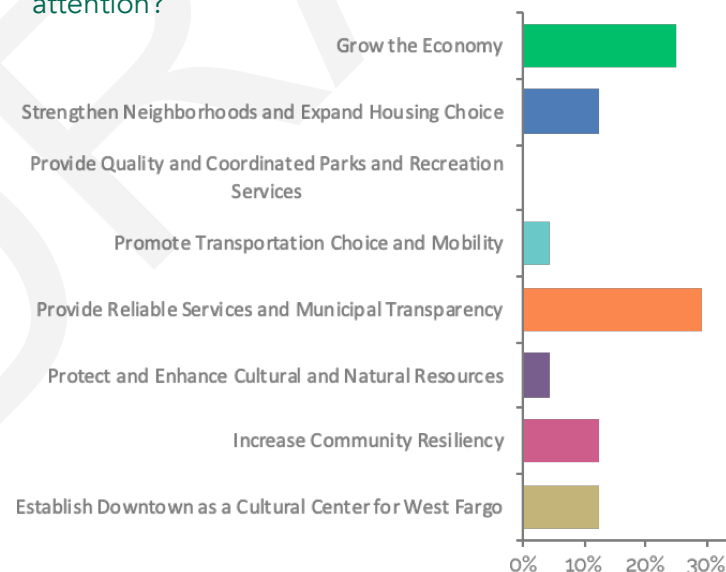
Many of the buildings are old and need updating. Riverside, the part of the city north of Main, has received little, if any, improvements since it merged with West Fargo. Connections are also needed between the north and south over the

interstate and the area of 15th Street NW and 13th Avenue W.

We are 10 years behind in the planning cycle for the library, based on recent population trends. We need adequate library space to attract new workers and residents.

The older neighborhoods' infrastructure is aging and we do not want it to degrade the neighborhoods.

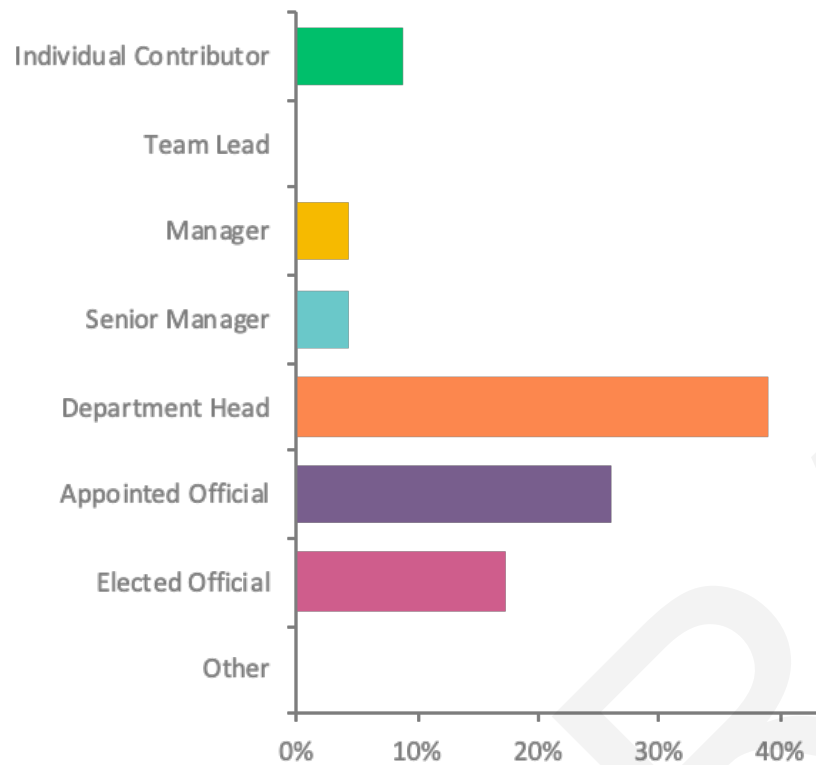
Q4: Which "Big Idea" from the West Fargo 2.0 Comprehensive Plan is the strongest in terms of community need as we prioritize projects and focus attention?



Q5: Rank these projects for importance and urgency from greatest to least:

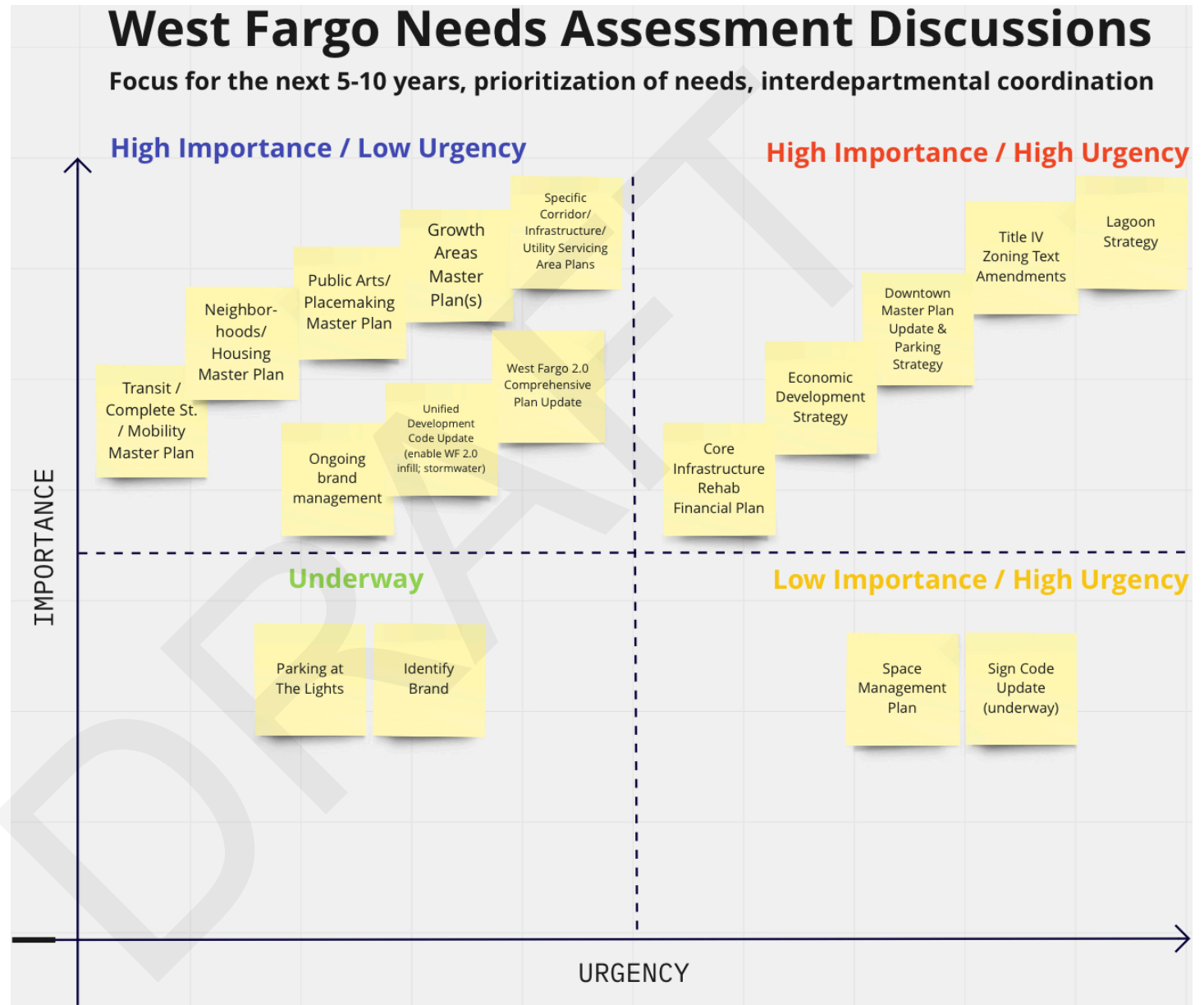
1. Specific Corridor/Infrastructure/Utility Servicing Area Plans
2. Northwest Area Master Plan
3. Neighborhoods/Housing Master Plan
4. Downtown Master Plan Update
5. Public Parking Strategy
6. Comprehensive Plan Update
7. Strategy for Lagoon Property
8. Development Regulation Update
9. Sign Code Update
10. Public Arts/Placemaking Master Plan

Q6: What is your job role?



Zoom Sessions Overview

In July and August, Zoom sessions were held with directors and senior managers from city departments representing Administration, Finance, Economic Development, Assessor, Human Resources, Library, Engineering, Public Works, Fire, Police, Communications, Planning, as well as the Planning & Zoning Commission. Various perspectives were integrated and the details were nuanced as the conversations progressed. A white board was used to work through community needs to establish project priority, with issues, needs, and rationales in the next section below.



Issues, Needs, and Rationales

Issues, needs and rationales are identified across multiple departments, the administration and the planning commission.

Issues

Challenges identified through this needs assessment fall into three categories: funding, infrastructure and growth. A significant number of studies have been completed in recent years analyzing needs and identifying required infrastructure improvements, but sufficient funding sources are not currently available for all identified needs. The funding challenge stems from West Fargo historically being a bedroom community to Fargo. Because about 70% of the land area is zoned residential and about 30% commercial and industrial, the tax base is not enough to provide needed upgrades to infrastructure. Recent prioritization of The Downtown Yards on Sheyenne and The Lights on Sheyenne through the comprehensive plan, West Fargo 2.0, has made significant strides to diversify uses and move away from being a bedroom community, making for a more resilient economy.

This complete community trend needs to continue, both with lands currently available for development and redevelopment as well as when the Fargo-Moorhead Area Diversion and Lagoon Strategy are completed, freeing more land to absorb potential development pressures. To ensure new growth respects these issues, several of the highest priority projects include the Downtown Master Plan, Economic Development Strategy and Core Infrastructure Rehab Plan. To clear the way for the mixture of compatible uses envisioned by West Fargo 2.0, a Unified Development Code update is also deemed of high importance.

Needs and Rationale

The needs and rationales were organized with categories that clarify the responsible department. Vision, policy, and much of implementation will be led by the Planning Department, and needs identified as administrative are frequently led by other departments or by the administration. The current needs identified through this process are organized into these three scales of planning:

1. **Vision and policy** includes master plans for essential topics (comprehensive, mobility, housing and placemaking) as well as the various parts of the city (The Downtown Yards, the lagoons, existing corridors and growth areas).
2. **Implementation** includes the tools to bring the vision and policy to life (zoning, subdivision and sign regulations).

3. **Administration** applies the vision, policy and regulations to specific areas and topics within the city (space management, infrastructure, economic development, communications and branding).

Each specific need identified within each of these categories includes current status, priority, and a rationale for the need. There are a number of needs identified in the survey that will be addressed through multiple actions, for example the historic neighborhoods will benefit from the Neighborhoods and Housing Master Plan in Vision, the Zoning text amendments and UDC in Implementation, and the Core Infrastructure Rehab Financial Plan in Administration.

Vision and Policy

These needs address the ongoing refinement of the city's vision and establish the policies that implement the vision, like the comprehensive plan, downtown and mobility master plans. Priority is given to significant impacts on economic development.

Need	Status	Priority	Rationale
Lagoon Master Plan	Not started	Near term	The lagoon redevelopment master plan is a short-term priority to establish a vision for the most advantageous development structure (P3; land sale; etc.); consulting the community; establishing development patterns; and engaging developers. The vision will plan the preferred types of high-return development preemptively rather than being reactive to developers. This will assure the city is ready for redevelopment once remediation and stabilization of the former lagoon sites is complete. West Fargo 2.0 is clear about the type of future growth that is preferred, but this plan will refine that before this land comes online.
Downtown Master Plan Update	Not started	Near term	Development in downtown has stalled, in part due to unclear regulations and a 22 year old master plan. To assure downtown continues to redevelop and generate a strong tax base, this update is needed in the near term. Parking is critical to the development capacity and the success of downtown so should be a part of the master plan.
Growth Areas Master Plan	Not started	Mid term	This master plan for greenfield and redevelopment areas addresses land outside the lagoon areas. West Fargo 2.0 is clear about the type of future growth that is preferred, but this plan will refine that to detail future growth.

Need	Status	Priority	Rationale
Public Arts and Placemaking Master Plan	Not started	Mid term	Placemaking and public arts are critical elements of a City's brand and must be nurtured to provide real-life experience of the brand promise. There is a statewide Public Space Initiative (SPSI) Planning Grant available that could move this plan to the near term if the deadlines can be met. A portion of this work would likely be included in the scope for the downtown master plan update.
Mobility Master Plan	Launched	Long term	The mobility master plan is needed to design a coordinated network of transit, complete streets, and multimodal means of transportation. It will leverage the MetroCOG Bicycle & Pedestrian Plan, anticipated to be complete in fall 2022, and identify further action required in addition to the transportation plans produced by MetroCOG (Long Range Transportation Plan; Bike/Ped Master Plan; Transit Development Plan). Partner with MetroCOG and seek transportation funding.
Neighborhoods and Housing Master Plan	Launched	Long term	There is a housing supply shortage in the region, but this is a low urgency issue as MetroCOG is conducting a Housing Needs and Market Analysis and when completed it will provide an assessment of the local housing market and will identify direction for further action.
Comprehensive Plan Update	Not started	Long term	Most of West Fargo 2.0 is still relevant and resources would be better used implementing key recommendations in the plan. The update is seen as text edits, instead of a full rewrite, to refresh the plan before 2028, which will mark 10 years in service.

Implementation

These needs include regulations, ordinances and their oversight, such as zoning, sign and parking ordinances. These needs are the tools used to implement the vision and policies defined in the prior needs list. They are allocated to the high urgency half of the matrix due to their immediate impact, and are split between high and low importance relative to their impact on the capital improvement budget.

Need	Status	Priority	Rational
Title IV Zoning Text Amendments	Not started	Near term	In preparation for a Unified Development Code, a series of text amendments to Title IV can correct pressing issues, respond to current market demands, and support higher levels of tax base in the near term.
Sign Code Update	In progress	Near term	This update is important because of federal case law making the current code legally indefensible. The first draft is complete and only requires the public process and minimal fiscal resources to consider for adoption. Could be combined with the Title IV Zoning Text Amendments.
Unified Development Code Update	Not started	Near term	A UDC is crucial to implement West Fargo 2.0, be prepared for future growth, provide a clear path for development, and generate a more robust tax base. This will be a significant project, both financially and for staff resources so is allocated for the mid-term to assure capacity is available.

Administration

Administrative needs are defined by multiple departments and include needs related to the policies and processes that govern city administration. This area is largely within the realm of staff oversight, has the greatest diversity of responsible departments, and usually does not involve public participation.

Need	Status	Priority	Rational
Identify Brand	In progress	Underway	Establishing the unique, competitive position of West Fargo can help boost economic development and build a sense of community. This process is underway and funded, but the ongoing brand management and brand promotion will need to be funded in the next cycle.
Parking at The Lights	In progress	Underway	Parking at The Lights is significantly different from in The Downtown Yards and other parts of the city, so has its own management plan underway.
Lagoon Administration Strategy	Launched	Near term	This need is related to the Lagoon Master Plan and the Economic Development Strategy. An administrative strategy should be established to determine how to respond to developer requests prior to land availability. The strategy is needed immediately to assure the city disposes of or improves the properties in alignment with West Fargo 2.0 even before the Growth Areas Master Plan is completed.

Public Input	Not started	Near term	Garner public input into the planning stages for relevant specific areas of need. While it has been the custom to limit public input to generation of the individual planning initiatives, some department leaders have recognized the need to update West Fargo 2.0 and to add specifics because of its very general nature, in part because of not enough public input early on. Public input is important to several of the current needs, including the downtown master plan and the space management plan, which is useful before specific proposals are sought.
Economic Development Strategy	Not started	Near term	Many economic development incentives are available, but should be used strategically to incentivize the type of growth identified in West Fargo 2.0. The current incentive programs predate the current comprehensive plan, so more work is needed to calibrate incentives to goals identified in West Fargo 2.0.
Core Infrastructure Rehab Financial Plan	Not started	Near term	The historic infrastructure of the City is aging quickly and needs a strategy for prioritizing maintenance. Analysis has been completed to identify what should be done, but financial sources have not been identified to complete.
Space Management Plan	Not started	Mid term	Various city-owned parcels are available for development or redevelopment. The use of these parcels is not regulated and administrative decisions need to be made regarding the highest and best use of the land. A new library, new fire stations, and the potential for placemaking are all topics prioritized by participants.

Specific Corridor / Infrastructure / Utility Servicing Plans	Not started	Long term	The city needs a plan in place for infrastructure and utilities prior to the lagoon decommissioning. This should be guided by development types supported by West Fargo 2.0.
Brand Management	Not started	Long term	Economic development is directly tied to successful City branding to position the community as attractive to consumers, businesses, investors and developers. West Fargo's name needs to be on the site selection networks.

Next Steps

Process

This assessment will be reviewed by the groups that participated in its creation for revisions. After edits are complete PlaceMakers will work with the City to develop an Action Plan that includes:

- Recommendations for addressing identified needs,
- A strategy to implement the recommendations including
 - timelines,
 - roles and responsibilities,
 - necessary resources, and
 - anticipated funding sources.

The Action Plan will aim to be politically feasible, fiscally constrained, and sufficiently detailed for future budgeting and project scoping purposes, as applicable. To that end, review of this assessment will include a discussion of the additional refinement of priorities.

Priorities

While the initial ranking of individual projects by City leaders were captured in the anonymous online survey, additional dialogue in the series of Zoom calls refined those initial priorities and ranked them a little differently once more of the nuances could be considered together as a group. Some of those limiting factors were budget-driven. Other dialogue encouraged project prioritization that can deliver the greatest value to spark additional local investment. Not all identified needs will be funded in the next budget cycle, so priorities must be set to achieve the most value with the available resources. The following recommendations are the needs that are likely to have the greatest impact across departments and contribute the most to the success of the city. These plans, regulations, and strategies prioritize the implementation of West Fargo 2.0 and prepare the city for strategic expansion after the completion of the lagoon decommissioning. They also prioritize areas with existing infrastructure, acknowledging the need for improvements and maintenance. These six initiatives are predominantly in the near term priority, with one in the midterm priority.

Vision/Policy

1. **Lagoon Master Plan.** Plan the preferred types of high-return development preemptively rather than being reactive to developers, to be ready for redevelopment once remediation and stabilization of the former lagoon sites is complete.
2. **Downtown Master Plan.** The redevelopment momentum for downtown has stalled due to the impacts of the pandemic, unclear or conflicting regulations that will be detailed further in the Action Plan, and lack of clarity from a 22 year-old master plan. Updating this plan to reflect urban parking best practices, current market realities, parking demand, and regulatory clarifications is the best solution to leverage downtown and effectively implement West Fargo 2.0. These needs in the vision/policy issue category will flow into the short-term recommendations under implementation.
3. **Growth Areas Master Plan.** The Growth Areas Master Plan will plan the preferred types of high-return development preemptively rather than being reactive to developers text regarding future planning areas.

Implementation

1. **Title IV Zoning Text Amendments.** Fortunately simple Title IV Zoning text amendments can be done affordably when it comes to costs and staff time. These edits are placeholders for a larger Unified Development Code (UDC) initiative that should be pursued at a later date, but can have immediate impact on a number of regulatory barriers. In the very near term, downtown mixed use district parking requirements can be updated to reflect the context, and the draft sign code could be reviewed for adoption. This need could likely be addressed with a very small budget and within the current fiscal year.

Administration

1. **Lagoon Administration Strategy.** This strategy should be established as soon as possible to give the City the tools needed to respond to land acquisition requests prior to the completion of the Growth Areas Master Plan. This will consider decisions in light of the community vision, fiscal needs, and infrastructure and environmental constraints.
2. **Economic Development Strategy.** The economic development strategy may be able to be completed largely in-house. Additional costs associated with this need could be market studies, but some of that data is available through MetroCOG.
3. **Core Infrastructure Rehab Financial Plan.** The success of downtown and surrounding neighborhoods are impacted by the status of the historic infrastructure. Deferred maintenance is becoming a barrier to success and a rehabilitation strategy and funding is crucial to the future economic success of these areas.



To: West Fargo City Commission
From: John Shockley, City Attorney
 Aaron Nelson, Planning Director

Date: October 17, 2022

Subject: Off-street Parking Reduction for The Lights District

Action: Approve Parking Reduction Resolution for The Lights District

Commission President

Bernie Dardis

Primary Portfolio:
 Administration/Finance

Secondary Portfolio:
 Street, Water and Sewer

Commission Vice President

Brad Olson

Primary Portfolio:
 Street, Water and Sewer

Secondary Portfolio:
 Administration/Finance

Commissioner

Roben Anderson

Primary Portfolio:
 Planning, Zoning and Engineering

Secondary Portfolio:
 Sanitation

Commissioner

Mark Simmons

Primary Portfolio:
 Police and Fire

Secondary Portfolio:
 Planning, Zoning and Engineering

Commissioner

Mandy George

Primary Portfolio:
 Sanitation

Secondary Portfolio:
 Police and Fire

Administration

Tina Fisk, Administrator

Dustin Scott, Assistant Administrator

The Lights entertainment district (including Lots 2, 3, 4, 7, & 8, Block 1, Eagle Run Plaza 6th Addition; all of Eagle Run Plaza 10th Addition; and all of Eagle Run Plaza 11th Addition; hereafter "the District") is a public-private partnership in which the City is a prime partner and part owner. The District includes a mix of public and private spaces with shared parking throughout. The District's parking and transportation needs are currently managed through mutually approved agreements between the respective parties. Due to the unique nature of the District as a mixed-use entertainment destination with shared parking, and in the spirit of the mutual cooperation of the public-private partnership upon which this development is based, there is a desire to relieve the District of the City's universally mandated parking minimums. Doing so would allow the partner entities, including the City, to work together on customized parking and transportation solutions that are more appropriate for a mixed-use entertainment district (such as off-site parking, event shuttling, ride share, etc.) as the District continues to evolve into the future.

To this end, staff has drafted the attached resolution which seeks to exempt the District from the City's minimum parking standards, allowing the City to manage parking and transportation through its mutual agreements with partner entities.

Policy Analysis:

The stated intent of the EMU zoning district (which the District is located within) is "to provide elements which promote the principles of good planning and design as outlined in West Fargo 2.0. The elements are walkability, connectivity, mixed-use, scale, intensity and hidden parking."

The West Fargo 2.0 Comprehensive Plan recommends that the City "Improve Parking Design," noting that "The City of West Fargo could examine zoning codes and consider revisions so developers can maximize land use without being restricted by high parking minimums" (pg. 81). The Plan also identifies this area as a "Core-Retrofit Growth Sector," which is an urban node intended for high-intensity, walkable, mixed-use development/re-development (pgs. 122-123, 132-135).

Additionally, the Fargo/West Fargo Parking & Access Study (conducted in conjunction with Metro COG and the City of Fargo in 2018) recommends a reevaluation of the City's parking minimums as well as working towards deregulating off-street parking to allow the market to determine parking supply levels.

Financial Analysis:

There are no fiscal impacts to the City. Generally, reductions in mandated parking minimums allow for increased buildable area on a given property, which can in turn result in added taxable value.

Recommended Action:

Approve the resolution to exempt the District from the off-street parking standards of §4-450 of the City Ordinances.

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION APPROVING EXEMPTION FROM
MINIMUM REQUIRED PARKING SPACES

WHEREAS, a petition has been received for a reduction in the number of required off-street parking spaces for The Lights entertainment district (including Lots 2, 3, 4, 7 and 8, Block 1, Eagle Run Plaza Sixth Addition, all of Eagle Run Plaza Tenth Addition, and all of Eagle Run Plaza Eleventh Addition (the "District") in the City of West Fargo; and

WHEREAS, the District is a public-private partnership, with the City as a prime partner and part owner; and

WHEREAS, the District includes a mix of public and private spaces with shared parking throughout; and

WHEREAS, the District's parking and transportation needs are currently managed through mutually approved agreements; and

WHEREAS, due to the unique nature of the District as a mixed-use entertainment destination with shared parking, and in the spirit of the mutual cooperation of the public-private partnership, the District requests relief from the City of West Fargo's universally mandated parking minimum; and

WHEREAS, pursuant to Section 4-451 of the Revised Ordinances of 1990 of the Board of City Commission of the City of West Fargo may reduce the number of required spaces by passage of a resolution approved by a majority of the members of the City Commission.

NOW THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, North Dakota, that, in accordance with Section 4-451 of the Revised Ordinances of 1990 of the City of West Fargo, the City desires to exempt the District from the City's minimum parking standards, allowing the City to manage parking and transportation through its mutual agreements with partner entities.

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Board of City Commissioners of the City of West Fargo, North Dakota, that this Resolution shall be effective as of _____, 2022.

Dated: October 3, 2022.

APPROVED:

President of Board of City Commissioners

ATTEST:

City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____
_____. The following commissioners voted nay: _____.
The following commissioners were absent and not voting: _____. The majority having voted aye, the motion carried and the resolution was duly adopted.



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

Commission President

Bernie Dardis

Primary Portfolio:

Administration/Finance

Secondary Portfolio:

Street, Water and Sewer

Commission

Vice President

Brad Olson

Primary Portfolio:

Street, Water and Sewer

Secondary Portfolio:

Sanitation

Commissioner

Roben Anderson

Primary Portfolio:

Planning, Zoning and
Engineering

Secondary Portfolio:

Administration/Finance

Commissioner

Mark Simmons

Primary Portfolio:

Police and Fire

Secondary Portfolio:

Planning, Zoning and
Engineering

Commissioner

Mandy George

Primary Portfolio:

Sanitation

Secondary Portfolio:

Police and Fire

City Administrator

Tina Fisk

Assistant City Administrator

Dustin T. Scott

To: West Fargo City Commission

From: Dan Hanson, City Engineer

Date: October 17, 2022

Subject: Project No. 1343 - Sanitary Lift Station System Rehabilitation (SA 2,3,12, &15)

Action: Approve Tas Order No. 63-1 for Basic Services.

New Information and Recommendation:

As directed by the City Commission on October 3, 2022, we are starting plans and specifications for the rehabilitation of the next priority group of sanitary lift stations (SA 2,3,12 and 15). Attached to this packet is Task Order No. 63-1 which was prepared in accordance with the Master Service Agreement between Moore Engineering and the City of West Fargo which outlines a scope of work for "basic services" for an estimated fee of \$110,000. The combine compensation of all task orders is estimated at \$126,500.

The following documents are attached for review/consideration:

- Task Order No. 63-1

Staff Recommendation: Approve Task Order No. 63-1 in the amount of \$126,500 for Project No. 1343.

Financial Analysis:

The 2022 CIP listed the project with a cost of \$1,250,000 and identified project funding to be sewer bonds; however final project financing will be determined which could also include Capital Improvement Sales Tax. We do not anticipate any special assessments associated with this project. Per the Preliminary Engineering Report prepared by the Consultant, costs for this project are estimated to be \$1,200,000.

Previously Presented Information and Commission Actions:

October 3, 2022-

- Staff Recommendation: Create Project No. 1343, Approve Engineer's Report, Direct Engineer to prepare plans and specifications and a Task Order for Basic Services.
- Commission Action: Commissioner Simmons moved and Commissioner Anderson seconded. Commissioner George was absent and not voting. No opposition, motion carried.

EXHIBIT A to MSA

Task Order for Design & Construction Services

This is Task Order No. 63-1
consisting of 20 pages.

Task Order 63-1

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

1. Background Data

- a. Effective Date of Task Order: October 4, 2022
- b. Owner: City of West Fargo
- c. Engineer: Moore Engineering, Inc.
- d. Specific Project Title: Project No. 1343
- e. Specific Project Description: Sanitary Sewer Lift Station Rehabilitation (SA 2, 3, 12, 25)
- f. Project Background: The city is undergoing rehabilitation of aging wastewater lift stations. In 2021, the first group of lift station rehabilitation began, and the second group of lift stations rehabilitation began in 2022. This project includes the third and final group of lift stations that were targeted for rehabilitation in the initial study.

2. Services of Engineer

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

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

1. Engineer shall:

- a. Coordinate a meeting with the Owner to review the project and task order to ensure mutual understanding of the objectives, requirements, schedule, etc. prior to starting work.
- b. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project. This shall include coordination as necessary with Engineer's Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any deliverables executed by other Owner consultants, such as technical data, reports, drawings and specifications, etc. shall be provided to Engineer.

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

revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

2. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables

B. *Final Design Phase*

1. Engineer shall:

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

- j. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 - k. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- 2. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
 - 3. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one.

C. Bidding or Negotiating Phase

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

proposals or other construction procurement documents) prior to award of contracts for the Work.

- g. Attend the bid opening as needed, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts. Bid tabulations will be provided in pdf and spreadsheet format.
 - h. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
 - i. Coordinate execution of Contract by assembling contract documents for review by Owner, Owner's Attorney, and Contractor and assist in routing contracts between entities to obtain necessary signatures.
2. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

D. *Construction Phase*

1. Engineer shall:

- a. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
- b. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth below. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth below.
 - 1) Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - 2) Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over

or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in in this Task Order, are applicable.

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

- Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
- Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
- h) *Proposed Modifications*: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
- i) *Review of Work; Defective Work*
 - Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and
 - Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
- j) *Inspections, Tests, and System Start-ups*
 - Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
 - Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
 - Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
- k) *Records*
 - Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
 - Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions,

data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

- Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- Maintain records for use in preparing Specific Project documentation.
- Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

l) Reports

- Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

m) *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

n) *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

o) Completion:

- Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit A.1).
- 4) Resident Project Representative shall not:
 - a) Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including “or-equal” items).
 - b) Exceed limitations of Engineer’s authority as set forth in this Agreement.
 - c) Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 - d) Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 - e) Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 - f) Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 - g) Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 - h) Authorize Owner to occupy the Specific Project in whole or in part
- c. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
- d. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
- e. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
- f. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- g. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer’s judgment are necessary to enable Contractor to proceed.
- h. *Visits to Site and Observation of Construction:* In connection with observations of Contractor’s Work while it is in progress:
 - 1) Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor’s executed Work. Such visits and observations by

Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. This shall include coordination as necessary with Engineer's Subcontractor(s) and/or other consultants employed by the Owner for observations requiring their expertise.

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

Any clarifications, interpretation, or decision shall be provided by the Owner's applicable consultant.

- l. *Field Orders*: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
- m. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
- n. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract. This shall include coordination as necessary with Engineer's Subcontractor(s) and/or other consultants employed by the Owner. Any reviews, obtaining of information, and preparation of findings, conclusions, and recommendations shall be provided by the Owner's applicable consultant.
- o. *Non-reviewable matters*: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
- p. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
- q. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.
- r. *Inspections and Tests*:
 - 1) Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - 2) As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

- 3) Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

s. *Change Proposals and Claims:*

- 1) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
- 2) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. This shall include coordination as necessary with Engineer's Subcontractor(s) and/or other consultants employed by the Owner, such as a geotechnical consultant. Any pertinent information shall be provided to Engineer.

t. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- 1) Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract.
- 2) Provide justification on pay items that end up over/under the contract quantity.
- 3) Provide final payment spreadsheet as requested by Owner.

u. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph 2.D.1.p. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

v. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

- w. *Final Notice of Acceptability of the Work*: Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit A.1 (“Notice of Acceptability of Work”) to the best of Engineer’s knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
- x. *Standards for Certain Construction-Phase Decisions*: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- y. *Construction Staking*: Engineer will provide the following upon request of the Contractor
- 1) Water Mains/ Force Mains
 - a) Centerline with offsets at 50’ intervals
 - b) Cut stakes to top of pipe with hubs, if plan calls for specified grades
 - c) Curb Stop Locations
 - 2) Storm-Sanitary Sewers
 - a) Centerline stakes with offsets and cuts to inverts at 50’ intervals
 - b) Manholes with offsets
 - c) Inlets with offsets
 - d) Wye locations
 - e) Service ends with grades
 - 3) Streets
 - a) Initial dirt grade stakes with lath every 100’ and at high and low
 - b) Subgrade blue tops for centerline and curb and gutter areas if so specified in construction contract
 - c) Centerline gravel blue tops if so specified in construction contract
 - d) Curb & gutter flow line stakes with offsets every 25’
 - e) Concrete Paving grade stakes with offset at 25’ intervals plus high and low points
 - 4) Lift Stations (without buildings)
 - a) Location & elevation of rim and invert centerline of wet well, dry well, and/or check valve manhole
 - 5) Buildings
 - a) Location & elevation of corners of first floor with offsets
 - 6) Sidewalks/Multi-Use Paths
 - a) Elevation & location of “Outside” finished edge (one edge) of Sidewalk or Multi-Use Path @ 25’ stationing
 - 7) Channels/Embankments
 - a) Centerline cut/fill, daylights, and temporary construction easement limits (every 200’)
 - b) Culvert alignment, lengths, and invert elevations with offsets
 - c) Structure locations and invert elevations with offsets
 - 8) Ponds/Lakes
 - a) Location and elevation of bottom of lake/pond every 200’
 - b) Location and elevation of changes in slopes (i.e. hinges) every 200’

- c) Location and elevation of contour defining bottom of planting area used to protect slopes every 200'
- d) Topsoil stripping location every 200'
- e) Five elevation control points.

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

E. *Post-Construction Phase*

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

F. *Commissioning Phase*

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

3. Additional Services

Additional Services authorized or necessary under this Task Order are:

A. Additional Construction Services

1. Additional Record Drawing Administration
 - a. Prepare and furnish to Owner GIS shapefiles showing appropriate record information based on Project annotated record documents received from Contractor. GIS shapefiles shall include survey ("gps") points on significant surface infrastructure features including manholes, catch basins, curb stops, valves, hydrants, and streetlights. The infrastructure will be moved to these locations in GIS. GIS shapefiles will be supplied to City for use within their webmap.

4. City's Responsibilities

City shall have those responsibilities as follows:

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

5. Task Order Schedule

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

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

6. Payments to Engineer

- A. City shall pay Engineer for services rendered under this Task Order as follows:
 - a. Compensation for services outlined in Section 3 shall be on a Time and Material basis in accordance with the Standard Hourly Rates shown in Exhibit B of the Agreement.

TASK CATEGORY & TASK	TASK ORDER NO.	PREVIOUS FEE (\$)	INCREASED FEE (\$)	AMENDED MAXIMUM FEE (\$)
Study & Report Services				
Engineering Study	63	\$11,500	\$0	\$11,500
Additional Construction Phase Services				
Additional Record Drawings Administration	63-1	\$0	\$5,000	\$5,000
ADDITIONAL SERVICES SUBTOTAL (TO 63-1)			\$5,000	
ADDITIONAL SERVICES SUBTOTAL (All TO's)		\$11,500		\$16,500

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

Project Type	Preliminary Design, Final Design, Bidding or Negotiation Phases (% of Final Construction Contract Value plus value of any alternates designed but not constructed)	Construction, Post-Construction, and Commissioning Phases (% of Final Construction Contract Value)
Projects designed and constructed in accordance with NDDOT requirements	6%	6%
All other projects	5.5%	5.5%
Estimated Value of Final Construction Contract		\$1,000,000
Estimated Compensation based on 11% of Construction		\$110,000
TOTAL TASK ORDER (TO 63-1)		\$115,000

- c. Compensation for services referenced in 6.A.a (Additional Services) and 6.A.b (Basic Services) are summarized in the following table.

Services to be Provided	Estimated Compensation
Additional Services Subtotal	\$16,500
Estimated Compensation based on 11% of Construction	\$110,000
TOTAL ESTIMATED COMPENSATION UNDER ALL TASK ORDERS (LIST ALL TO'S)	\$126,500

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

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

- a. LKA

8. Other Modifications to Agreement and Exhibits:

- a. None

9. Attachments:

- a. None

10. Other Documents Incorporated by Reference:

- a. None

11. Terms and Conditions

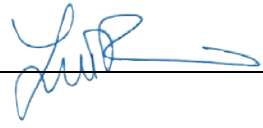
Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by City.

The Effective Date of this Task Order No. 63-1 is October 4, 2022.

CITY: City of West Fargo

ENGINEER: Moore Engineering, Inc.

By: _____

By:  _____

Print Name: Dustin T. Scott, PE

Print Name: Lee Beauvais, PE

Title: Assistant City Administrator

Title: Chief Operations Officer

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Dustin T. Scott, PE

Name: Matt Welle, PE

Title: Assistant City Administrator

Title: Senior Project Manager

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

Address: 925 10th Avenue East,
West Fargo, ND 58078

E-Mail Dustin.Scott@westfargond.gov
Address: _____

E-Mail Matt.Welle@mooreengineeringinc.com
Address: _____

Phone: (701) 515-5050

Phone: (701) 282-4692



NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

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

Exhibit A.1 cont'd

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

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

By: _____

Title: _____

Dated: _____



"Consent" or "Regular"
Agenda Item?

[Regular]

Commission President

Bernie Dardis

Primary Portfolio:
Administration/Finance

Secondary Portfolio:
Street, Water and
Sewer

**Commission
Vice President**

Brad Olson

Primary Portfolio:
Street, Water and
Sewer

Secondary Portfolio:
Sanitation

Commissioner

Roben Anderson

Primary Portfolio:
Planning, Zoning and
Engineering

Secondary Portfolio:
Administration/Finance

Commissioner

Mark Simmons

Primary Portfolio:
Police and Fire

Secondary Portfolio:
Planning, Zoning and
Engineering

Commissioner

Mandy George

Primary Portfolio:
Sanitation

Secondary Portfolio:
Police and Fire

City Administrator

Tina Fisk

To: West Fargo City Commission

From: Dustin T. Scott, Assistant City Administrator

Date: October 17, 2022

Subject: Sidewalk Improvement District No. 6056 (2021 Walks)

Action: Final Approval of Assessments

New Information and Recommendation:

During their regular meeting held on May 17, 2021 the City Commission approved the resolution for the contract and contractor's bond for sidewalk improvement district no. 6056.

The following document are attached for review/consideration:

- Notice of Assessment
- Improvement Area Maps

Staff Recommendation: Approve sidewalk improvement district no. 6056 assessment list.

Background and Project Summary:

This project will construct sidewalks along properties within developed areas to fill gaps and provide safe pedestrian connectivity. As noted in the amended Engineer's Report approved by the city commission last December, property owners were given the choice to construct the sidewalk or have the city install with that cost being assessed to the property. After the fall construction season concluded, we inventoried lots choosing to be included with city improvement district and receive a special assessment. Also noted in that report was the additional work petitioned by the West Fargo Park District.

Policy Analysis:

This project is consistent with city policies and ordinances. The goal is to provide sidewalk connectivity and enhance pedestrian safety throughout these neighborhoods

Financial Analysis:

	Estimated Project Costs (April 2021)	Estimated Final Costs (October 2022)
Share of 6056		
Park District	\$415,600.00	\$318,400.00
City	\$82,000	\$135,000.00
Special Assessments	\$325,000.00	\$116,600.00
Total	\$822,600.00	\$570,000.00

Previously Presented Information and Commission Actions:

September 28, 2022- Notice of Assessment published with time/date of meeting for City Commission action.

May 17, 2021- During the May 17, 2021 meeting, the City Commission approved the resolution for the contract and contractor's bond in sidewalk improvement district no. 6056.

**Assistant City
Administrator**
Dustin Scott

**Infrastructure Funding
Manager**
Eric Watne

**ENGINEERING
DEPARTMENT**

City Engineer:
Dan Hanson

Asst. City Engineer:
Andrew Wrucke

Asst. City Engineer:
Jerry Wallace

Eng. Office Manager:
Kayla Volness

- **Staff Recommendation:** Adopt the Resolution Approving Contract and Contractor's Bond; AND Authorize Notice to Proceed.
- **Commission Action:** Commissioner Olson Moved and Commissioner Simmons seconded to Approve Resolution contract and contractor's bond in sidewalk improvement district no. 6056. No opposition, motion carried

April 19, 2021- Moore Engineering conducted a virtual Bid opening on April 8, 2021 and only one contractor, Master Construction, submitted a proposal. Several bid alternates were included to facilitate sidewalk improvements on Park properties. The West Fargo Park District met on April 14, 2021 to review bid alternates for the Wild's Park Path Extension and Elmwood Path Replacement. The Park District is recommending Alternate No.1 at \$42,660.00 for the Wilds Park Path Extension and Alternate No. 3 at \$279,210.00 for the Elmwood Path Replacement. The total construction cost for the Base Bid, Alternate No.1 and Alternate No.3 is \$621,733.00.

- **Staff Recommendation:** Approve Resolution Accepting Bids, AND Award Contract to Master Construction for their bid amount of \$621,733.00
- **Commission Action:** Commissioner George moved and Commissioner Simmons seconded to Approve Resolution Accepting Bids and Award Contract to Master Construction. No opposition, Motion carried.

March 15, 2021- During the March 1, 2021 meeting, the City Commission approved Task Order No. 35-2 for the design and construction phases of "Sidewalk Improvement District No. 6056". On March 9, 2021, the city's Review Committee voted unanimously in favor of the staff recommendation noted below.

- **Staff Recommendation:** Approve Plans and Specifications; Authorize Bid Advertisement for sidewalk Improvement District No. 6056
- **Commission Action:** Commissioner Olson moved and Commissioner Gjerdevig seconded to Accept Bid and Award Contract to Master Construction. No opposition, Motion carried.

March 1, 2021- This project will construct sidewalks along properties within developed areas to fill gaps and provide safe pedestrian connectivity. As noted in the amended Engineer's Report approved by the city commission last December, property owners were given the choice to construct the sidewalk or have the city install with that cost being assessed to the property. After the fall construction season concluded, we inventoried lots choosing to be included with city improvement district and receive a special assessment. Also noted in that report was the additional work petitioned by the West Fargo Park District. As we are now progressing into final design with construction scheduled this spring, we have initiated the attached task order with Moore Engineering in accordance with the Master Service Agreement dated May 1, 2018. On February 23, 2021, the city's Review Committee voted unanimously in favor of the staff recommendation noted below.

- **Staff Recommendation:** Approve Task Order No. 35-2 for Sidewalk Improvement District No. 6056.
- **Commission Action:** Commissioner Olson moved and Commissioner George seconded to Approve Task Order No. 35-2. No opposition, Motion carried.

December 21, 2020- On August 3, 2020 the City Commission approved the Engineer's Report and corresponding list of properties to receive a "Notice of Order to Construct Sidewalk". Property owners were given the choice to construct the sidewalk or have the city install with that cost being assessed to the property. After the fall construction season concluded, engineering staff conducted an inventory of lots choosing to be included with city improvement district and receive a special assessment. The proposed amendment to the Engineer's Report reflects this final inventory along with a few additional areas of work requested by the City and petitioned by the West Fargo Park District.

- **Staff Recommendation:** Amend the Engineer's Report AND Authorize Engineer to prepare Plans and Specifications for Sidewalk Improvement District No. 6056.
- **Commission Action:** Commissioner Olson Moved and Commissioner Gjerdevig seconded to Amend Engineer's Report and Authorize Plans and Specifications. No opposition, Motion carried.

August 3, 2020- Engineer's Report along with a CIP Cut sheet was brought forward to the Commission. The Project consists of sidewalks, multi-use paths and other associated items throughout the City. The locations of work are based on inventory collected in the field by the City staff and consist of filling in missing gaps of sidewalks in developed areas as well as some rehabilitation work of deteriorated sidewalks and/or bike paths.

- **Staff Recommendation:** Approve Engineer's Report AND Authorize Notice of Order to Construct Sidewalks for Sidewalk Improvement District No. 6056.
- **Commission Action:** Commissioner Gerdevig moved and Commissioner Olson seconded to Approve Engineer's Report and Authorize Notice of Order to Construct. No opposition, Motion carried.

NOTICE OF ASSESSMENTS FOR SIDEWALKS
2022
SIDEWALK DISTRICT NO. 6056

The following special assessment list for the expense of constructing sidewalks, ordered by the Board of City Commissioners of the City of West Fargo, North Dakota, to be constructed by the person or firm employed or under contract to construct or repair sidewalks within the City at the expense of lots or parcels of land benefitted by such sidewalks, is returned by the City Engineer and filed in the office of the City Auditor, to-wit:

<u>LOT</u>	<u>BLOCK</u>	<u>AMOUNT ASSESSED</u>
BROOKS HARBOR SECOND ADDITION		
1	4	\$ 4,084.09
7	4	2,509.64
BROOKS HARBOR FOURTH ADDITION		
8	1	3,797.04
11	3	4,030.83
12	3	2,195.94
19	4	6,019.61
2	6	3,314.63
2	9	3,690.48
3	9	3,690.48
BROOKS HARBOR SIXTH ADDITION		
1	1	3,977.56
7	2	3,743.75
5	3	4,084.09
EAGLEWOOD FOURTH ADDITION		
2	1	4,243.91
1	2	4,243.91
2	2	3,977.56
3	2	3,924.29
9	2	4,030.83
GOLDENWOOD FIFTH ADDITION		
9	1	2,693.14

15	1	7,635.49
20	1	5,504.66
23	1	4,510.28
HALVERSON'S ADDITION		
13	5	3,472.06
MAPLE RIDGE AT THE PRESERVE FIRST ADDITION		
3	6	12,012.88
RIVER'S BEND AT THE PRESERVE FIRST ADDITION		
11	1	3,622.41
SOUTH POND AT THE PRESERVE SIXTH ADDITION		
1	3	3,631.88
2	3	7,903.03

Notice is hereby given that the Board of City Commissioners of the City of West Fargo will meet at the City Commission Rooms in the City Hall, 800 Fourth Avenue East, West Fargo, at 5:30 p.m. on October 17, 2022, to approve said assessment list, at which time any person interested in said assessment list may be heard.

Dated this 19th day of September, 2022.

Tina Fisk
City Auditor, West Fargo, North Dakota



PRELIMINARY



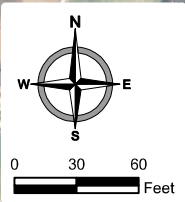
AREA - H
SIDEWALK IMPROVEMENT DISTRICT NO. 6056
2021 WALKS
WEST FARGO, NORTH DAKOTA
GOLDENWOOD

DATE:	01.26.21
REVISED:	----
REVISED:	----
REVISED:	----
REVISED:	----
REVISED:	----
RECORD:	----
PROJECT No.	21398
MANAGER:	MW
DESIGNER:	TB
DRAFTER:	KMV
REVIEWER:	----

C-101

SHEET 7 OF --

T:\Projects\21300\21396\21396_Walks_Cadd_Layout.mxd, 1/26/2021



PRELIMINARY



AREA - J
SIDEWALK IMPROVEMENT DISTRICT NO. 6056
2021 WALKS
WEST FARGO, NORTH DAKOTA
HALVERSON

DATE	01.28.21
REVISED	----
REVISED	----
REVISED	----
REVISED	----
REVISED	----
RECORD	----
PROJECT No.	21396
MANAGER	MW
DESIGNER	TB
DRAFTER	KMV
REVIEWER	----

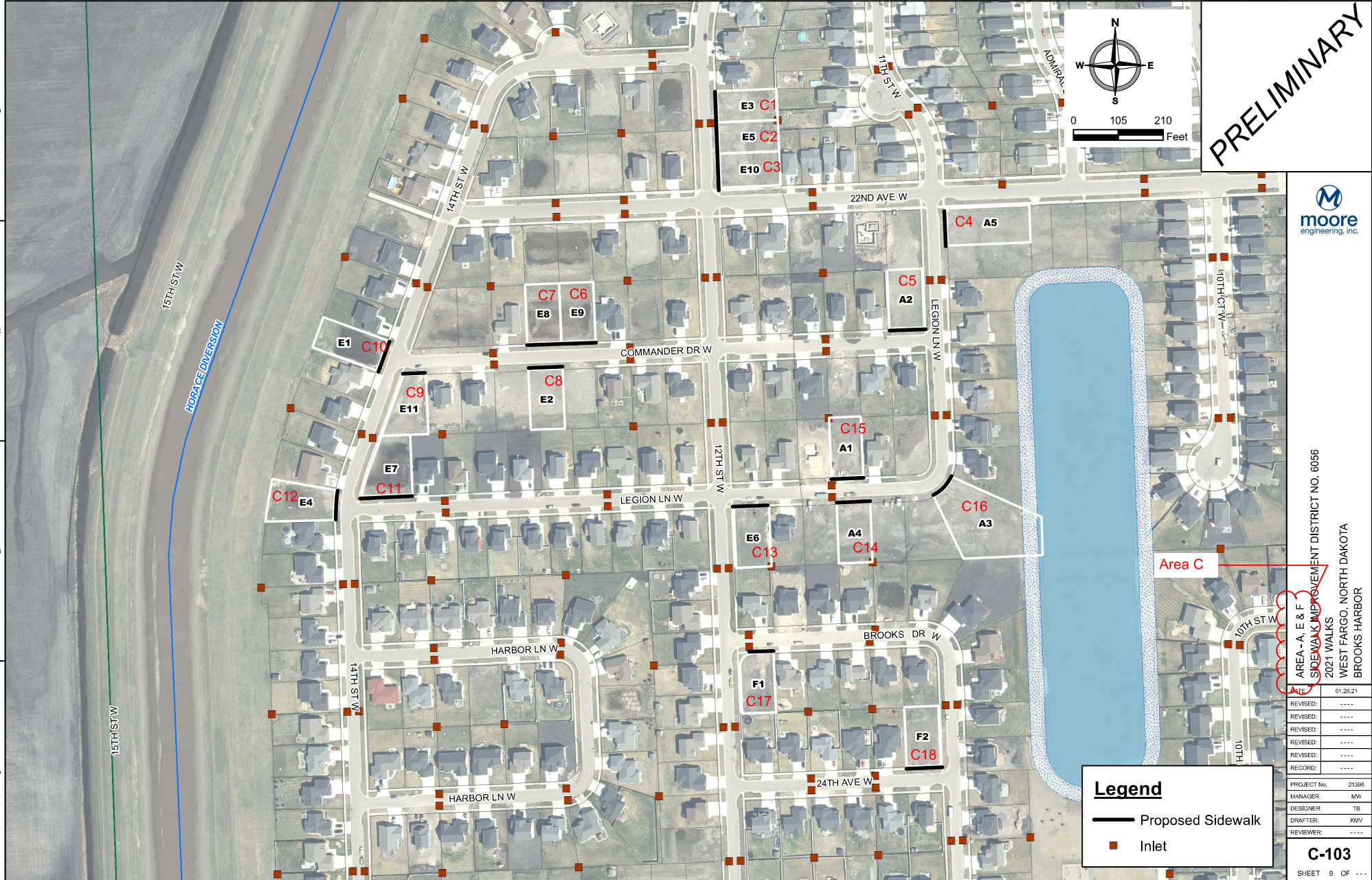
C-102
SHEET 8 OF ---

Legend

— Proposed Sidewalk

■ Inlet

T:\Projects\121800121896\121896_Walks_Cadd_Layout.mxd, 1/26/2021



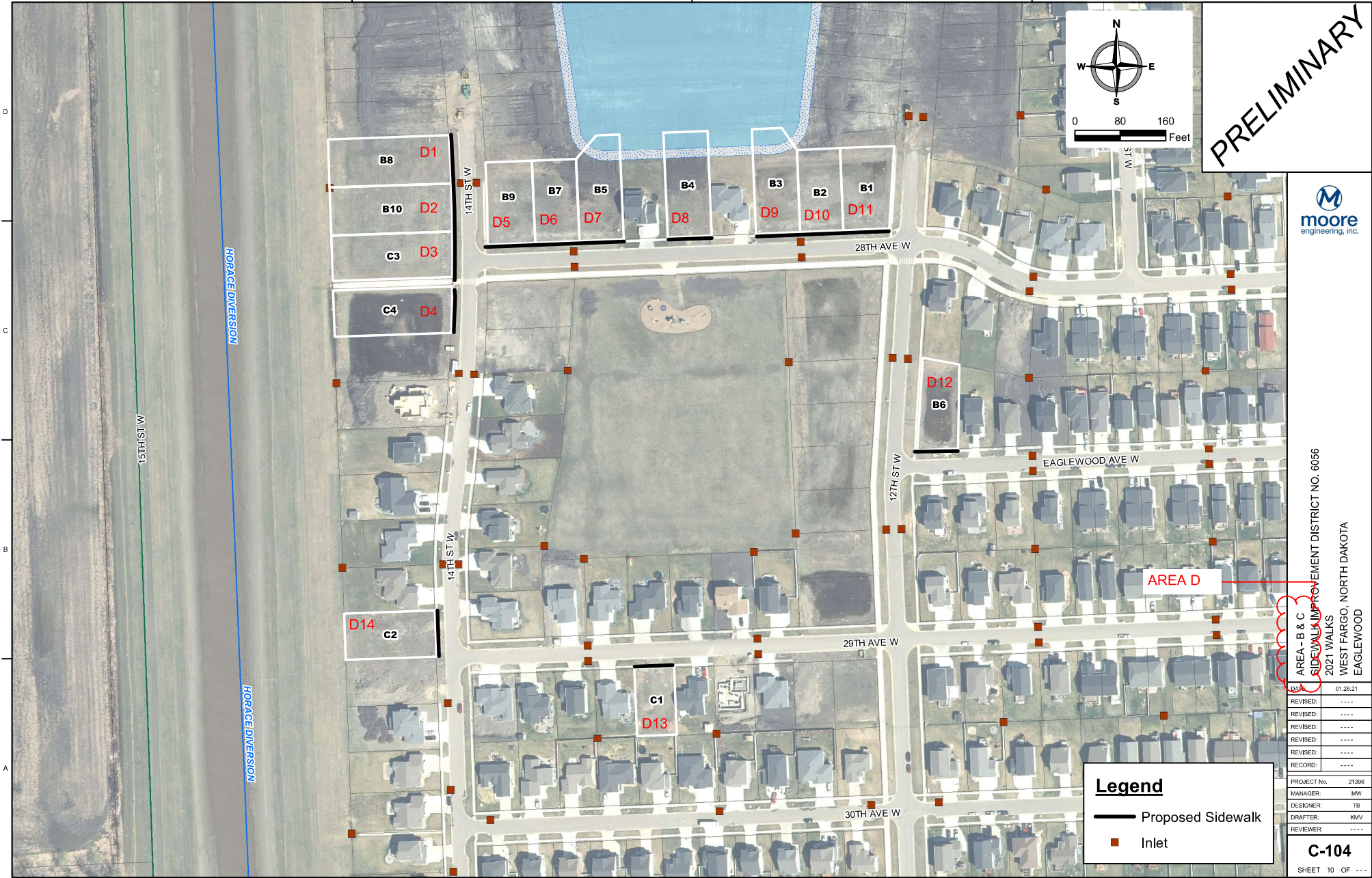
AREA - A, E & F
SIDEWALK IMPROVEMENT DISTRICT NO. 6056
2021 WALKS
WEST FARGO, NORTH DAKOTA
BROOKS HARBOR

DATE	01.28.21
REVISED	----
REVISED	----
REVISED	----
REVISED	----
RECORD	----

PROJECT NO.	21396
MANAGER	MW
DESIGNER	TB
DRAFTER	KMV
REVIEWER	----

C-103

SHEET 9 OF ---



T:\Projects\121800121896121896\Walks_Cadd_Layout.mxd, 1/26/2021



PRELIMINARY



AREA - D
SIDEWALK IMPROVEMENT DISTRICT NO. 6056
WEST FARGO, NORTH DAKOTA
EAGLEWOOD & EAGLE RUN

DATE	01.28.21
REVISED	----
REVISED	----
REVISED	----
REVISED	----
REVISED	----
RECORD	----
PROJECT NO.	21396
MANAGER	MW
DESIGNER	TB
DRAFTER	KMV
REVIEWER	----

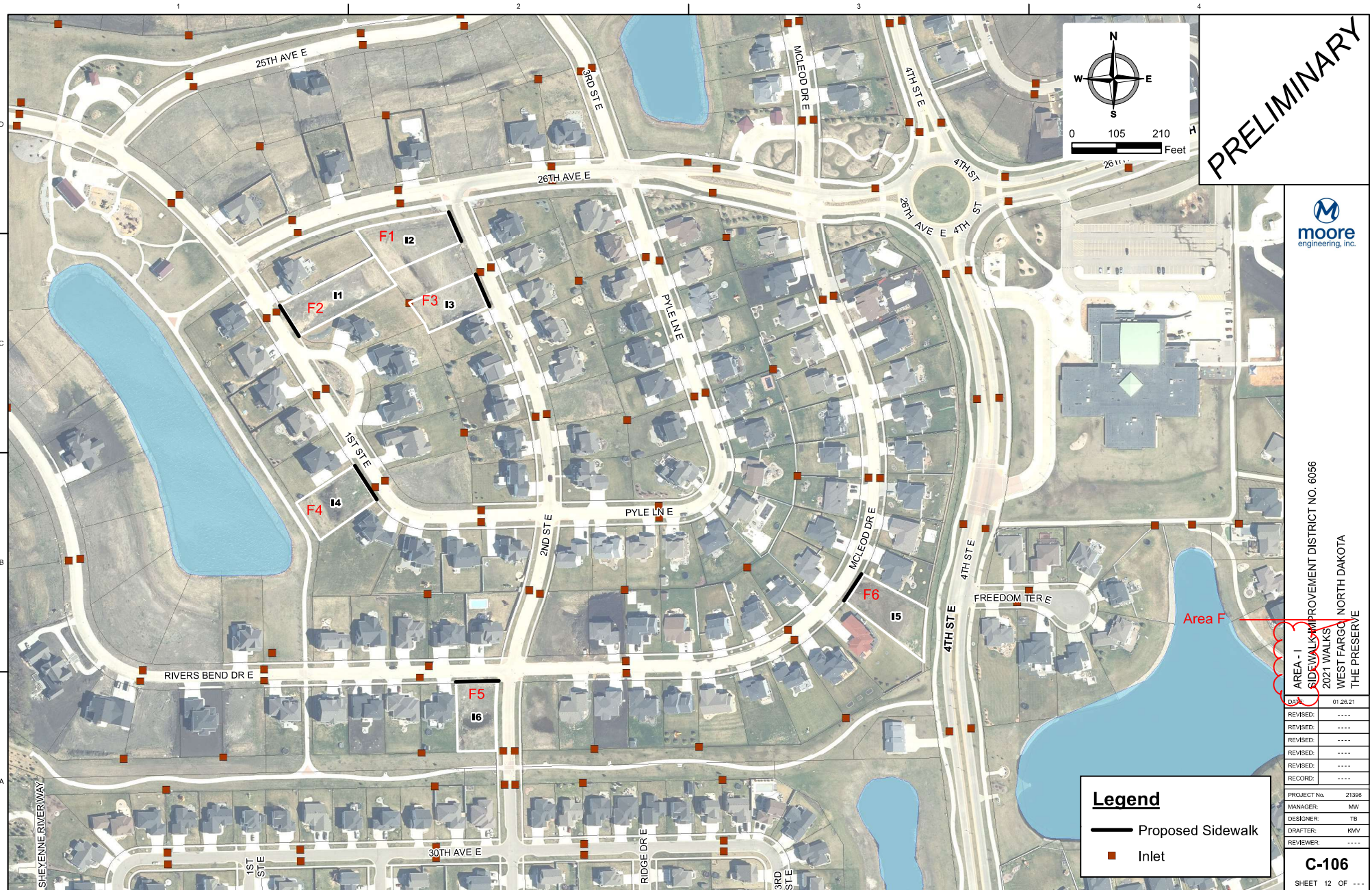
C-105
SHEET 11 OF ---

Legend

— Proposed Sidewalk

■ Inlet

T:\Projects\121800\121800\121800_196C_Walks_Cad_Layout.mxd, 1/26/2021



PRELIMINARY



AREA - I
SIDEWALK IMPROVEMENT DISTRICT NO. 6056
2021 WALKS
WEST FARGO, NORTH DAKOTA
THE PRESERVE

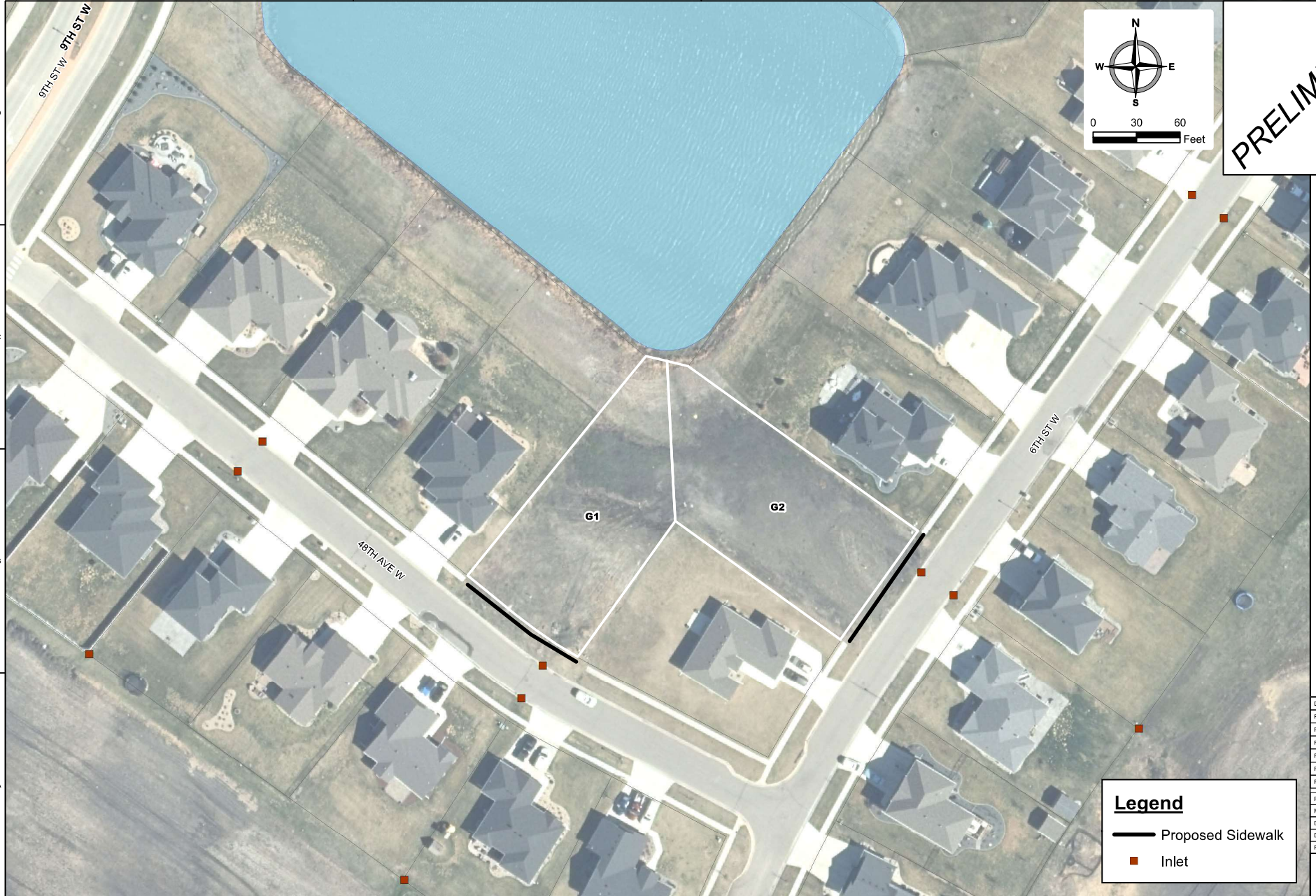
DATE	01.28.21
REVISED	----
REVISED	----
REVISED	----
REVISED	----
REVISED	----
RECORD	----

PROJECT No. 21396
MANAGER: MW
DESIGNER: TB
DRAFTER: KMV
REVIEWER: ----

C-106

SHEET 12 OF ---

T:\Projects\121800\121800\121800_196C_Walks_Cadd_Layout.mxd, 1/26/2021



PRELIMINARY



AREA - G
SIDEWALK IMPROVEMENT DISTRICT NO. 6056
2021 WALKS
WEST FARGO, NORTH DAKOTA
THE WILDS

DATE:	01.28.21
REVISED:	----
REVISED:	----
REVISED:	----
REVISED:	----
REVISED:	----
RECORD:	----

PROJECT No.	21396
MANAGER:	MW
DESIGNER:	TB
DRAFTER:	KMV
REVIEWER:	----

Legend

Proposed Sidewalk

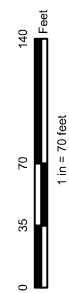
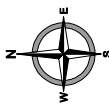
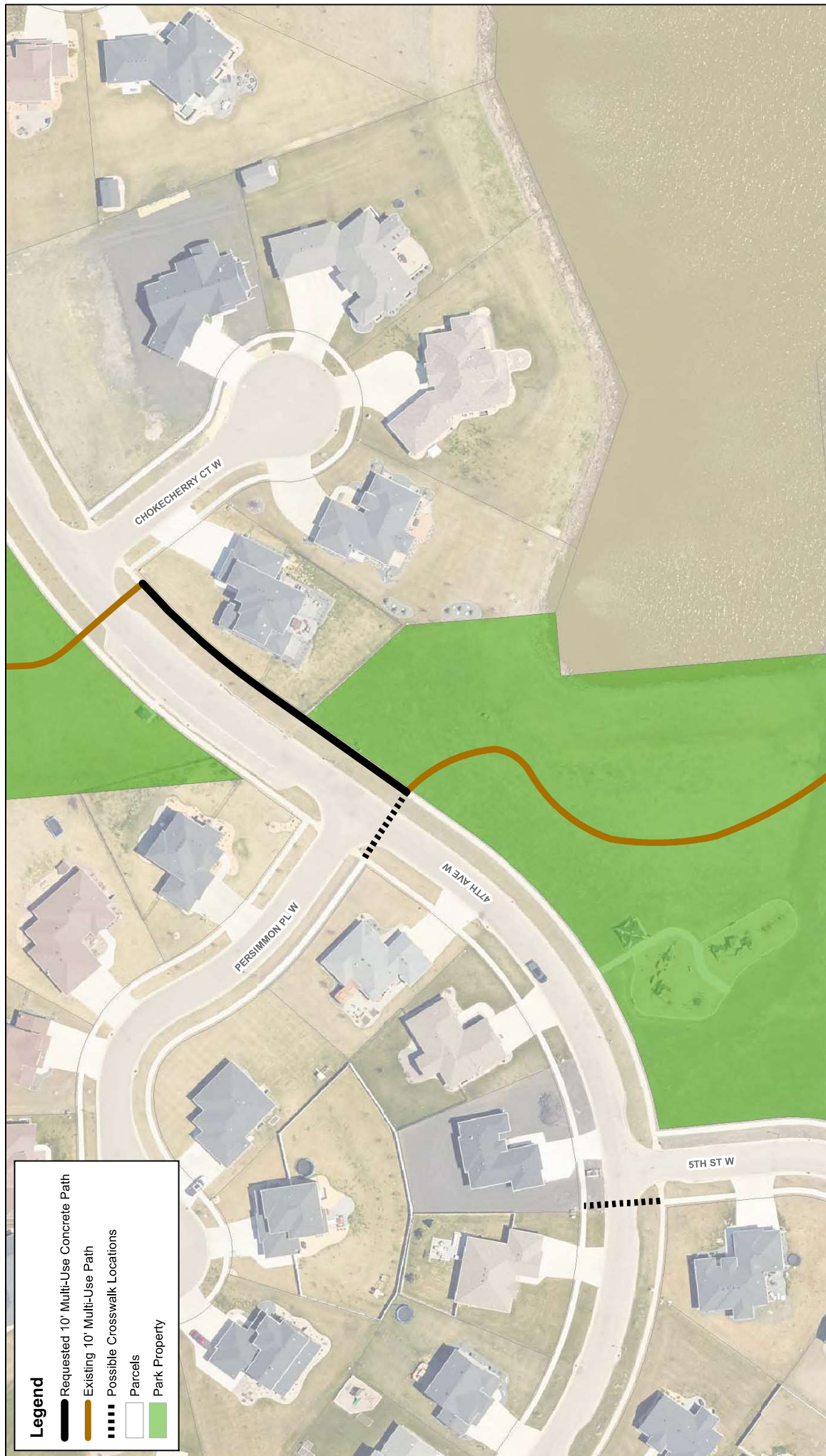
Inlet

C-107
SHEET 13 OF ---



Legend

- Requested 10' Multi-Use Path
- Existing 10' Multi-Use Path
- Parcels
- Park Property



141

**THE WILDS PARK
WEST FARGO, NORTH DAKOTA**

Created By: TJS Date Created: 11/30/20 Date Saved: 11/30/20 Date Plotted: NEVER Date Exported: 11/30/20
Plotted By: Tanner, Schmidt Parcel Date: 11/30/20 Aerial Image: 2019 County NAD SIDS Elevation Data: Lidar
Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3202 Foot Vertical Datum: NAVD1988
UTMZone: 12N UTM: 500924 Zone: 12N UTM: 500924 UTM: 500924 UTM: 500924 UTM: 500924 UTM: 500924 UTM: 500924 UTM: 500924 UTM: 500924 UTM: 500924



To: West Fargo City Commission

From: Dustin Scott, Asst. City Administrator

Date: October 17, 2022

Subject: Project No. 2268 – 52nd Ave West (Phase II)

Action: Approve agreement with City of Fargo and Cass County

Commission President

Bernie Dardis

Primary Portfolio:
Administration/Finance

Secondary Portfolio:
Street, Water and Sewer

Commission Vice President

Brad Olson

Primary Portfolio:
Street, Water and Sewer

Secondary Portfolio:
Administration/Finance

Commissioner

Roben Anderson

Primary Portfolio:
Planning, Zoning and Engineering

Secondary Portfolio:
Sanitation

Commissioner

Mark Simmons

Primary Portfolio:
Police and Fire

Secondary Portfolio:
Planning, Zoning and Engineering

Commissioner

Mandy George

Primary Portfolio:
Sanitation

Secondary Portfolio:
Police and Fire

Administration

Tina Fisk, Administrator

Dustin Scott, Assistant
City Administrator

Summary and Recommendation:

The first phase of the 52nd Ave reconstruction project extended from 45th Street to 63rd Street South (4th St West) and was finished in 2020. Phase II will continue west to Sheyenne Street, including a new bridge over the river and expansion of the round-a-bout to increase traffic capacity. The City of Fargo is administering this project through the NDDOT and in partnership with Cass County and West Fargo. The attached agreement was drafted to authorize the joint and cooperative exercise of power common to all three (3) agencies (basically a Joint Powers Agreement). This is a fairly standard form of agreement and it has been reviewed by City Attorney, John Shockley.

Included in the agreement is a separate agreement between Cass County and the City of Horace for the transfer of ownership in roadways as well as an Engineer's Report prepared by the City of Fargo. The estimated total project cost is nearly \$20 million with West Fargo's share estimated to be about \$3 million. This includes surface improvements as well as replacing underground utilities. The NDDOT will be opening bids November 18, 2022 and construction is scheduled for 2023.

The following documents are attached for review/consideration:

- Draft Agreement
- Project overview map

Staff Recommendation: Approve Agreement with Fargo and Cass County

Financial Summary:

Per the agreement, West Fargo's share is estimated to be about \$3 million, and the City of Fargo will invoice periodically as the project progresses. Staff anticipates paying 50 to 75 percent in 2023 and the remaining balance in 2024. As with Phase 1, we are proposing to use capital improvement sales tax to fund this project (i.e., NO special assessments). The project will be added to the City's 5-yr CIP, which is currently being revised for 2023-2027.

Agenda Attachment #1

"Draft Agreement"

52nd Avenue S Reconstruction

THIS AGREEMENT, made and entered into this _____ day of _____, 2022 (the “Effective Date”), by and between the City of Fargo, the City of West Fargo, and Cass County (the “Project Partners”). This Agreement outlines the mutually developed responsibilities between the Project Partners regarding the reconstruction of 52nd Avenue South (aka Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street) (the “Project”).

WHEREAS, Cass County Highway 6 is currently owned and maintained by Cass County from County Rd 17 east to Interstate 29, a distance of three miles; and

WHEREAS, funding formulas for distribution of the State Highway Distribution Funds and Federal highway funds in North Dakota are based on the premise that county highways have traditionally been turned over to the larger cities as the land adjacent to the highways is annexed; and

WHEREAS, these formulas are population based, resulting in increased city funding and decreased county funding as annexations take place; and

WHEREAS, counties have no authority to levy special assessments for highway improvements within an incorporated area; and

WHEREAS, the 2022-2025 Metropolitan Transportation Improvement Program (TIP) includes the Project; and

WHEREAS, the Project Partners agree elements of project development will be cooperatively developed in coordination with the NDDOT as follows; and

WHEREAS, the Project Partners agree that the Project will be developed through a project steering committee composed of the Project Partners, and NDDOT; and

WHEREAS, the Project Partners agree that the construction for the Project will be administered through the use of an engineering consulting firm (the “Construction Administration Consultant”) procured through a publicly advertised “Request for Proposal”; and

WHEREAS, the Project Partners agree that ownership of the project corridor, also known as Cass County Highway 6, will transfer upon completion of the reconstruction project; and

WHEREAS, the estimated total cost of the Project is \$19,664,845; and

WHEREAS, the Project will be funded partially with Federal funds provided by the North Dakota Department of Transportation (NDDOT) through the Surface Transportation Program (STP), in the amount of \$9,000,000; and

WHEREAS, the Project Partners agree to split the remaining Project costs, the non-Federal share, according to the terms of this Agreement; and

WHEREAS, the Project Partners are interested in working in a cooperative manner to undertake the Project pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Purpose. This Agreement is made pursuant to N.D.C.C. § 54-40-1, which authorizes the joint and cooperative exercise of power common to the contracting parties. The intent of this Agreement is to increase efficiencies with respect to the Project, and to prevent delays with respect to the scheduling of work for the Project. This Agreement does not create a separate political subdivision.
2. Term. The term of this Agreement is for ten (10) years beginning on the Effective Date of this Agreement and ending ten (10) years after the Effective Date (the “Original Term”). Thereafter, this Agreement will automatically be extended by one (1) additional ten (10) year term, unless either party gives written notice to the other party a minimum of ninety (90) days prior to the expiration of the Original Term. The parties by mutual agreement may terminate this Agreement at any time or extend this Agreement for additional terms.
3. Process. The City of Fargo will work cooperatively with the City of West Fargo and Cass County to refine the recommended alternative for construction during environmental documentation phase and prior to completion of design plans. The City of Fargo will be the lead agency for the Project.
4. Procedures. Fargo will undertake the Project pursuant to and in accordance with Chapter 40-22 of the North Dakota Century Code. Fargo will be responsible for inspection, review and observation of work performed on the Project.
5. Transfer of Ownership and Maintenance Responsibility. The City of West Fargo will assume ownership of Cass County Highway 6 from the intersection with County Rd 17 (Sheyenne Street), east to the centerline of the Sheyenne River, and the City of Fargo will assume ownership of Cass County Highway 6 from the centerline of the Sheyenne River east to Interstate 29. The transfer of all ownership, liability and maintenance responsibility will occur upon the substantial completion of the Project. All future maintenance and costs for the intersection of Sheyenne St S and 52nd Ave S will be split with 75% to the City of West Fargo and 25% to Cass County. The east-west section line between Sections 32 and 5 and Sections 31 and 6 serve as the line of responsibility for maintenance work on the roundabout. As per Cass County’s agreement (see attached agreement, Exhibit A) with the City of Horace signed on March 1st, 2021, when County Rd 17 is transferred to the City of Horace, the City of Horace will assume all maintenance responsibilities for County Rd 17.

6. Apportionment of Costs related to the Project. The Project will be partially funded with Federal funds provided by the North Dakota Department of Transportation (NDDOT) through the Surface Transportation Program (STP), along with a non-Federal share of contributions from the Project Partners. The Project Partners agree to split the non-Federal share of the Project as represented in the Engineer's Report attached hereto as Exhibit B, to be revised upon award of the Bid for the Project. The amounts to be paid by the parties shall be trued up at the completion of the Project, costs to be shared as follows:

Engineer's Estimated Construction Cost (Exhibit B).

(Included in this cost is a 20% inflation markup, a 10% construction contingency, a 4% Fargo administration fee, 4% Fargo interest fee, and 3% Fargo legal/miscellaneous fee)

Bridge Portion (excluding City of Fargo Water Plant Gates on Bridge Structure)

Local funding breakouts: 25% WF, 25% Fargo, 50% Cass County

Roadway west of Bridge (including roundabout modifications)

Local funding breakouts: 50% WF, 50% Cass County

Roadway east of Bridge

Local funding breakouts: 40% Fargo, 40% WF, 20% Cass County

City of Fargo Water Plant Gates on Bridge Portion

Local funding breakouts: 100% Fargo

City of Fargo Watermain on east Portion

Local funding breakouts: 100% Fargo

Estimated Cost for NEPA, Preliminary and Final Engineering Design, Construction Administration Services, Right of Way, and Utility Relocations

Overall project funding breakouts: 46% Fargo, 27% West Fargo, 27% Cass County

7. Project Costs. Each of the Project Partners will be responsible for obtaining financing for its own portion of the costs of the Project, as set forth above. This responsibility includes any and all costs related to creation of any special assessment district and bonding related to the Project.
8. Cass County Contribution. Cass County shall make payment to Fargo to the project based on the bid amount as follows: as follows: Cass County will submit a check for half of the total amount due to the City of Fargo on or before October

1, 2023. The remaining amount will be paid to the City of Fargo following certification of costs.

9. Processing of Pay Requests and Change Orders. The Construction Administration Consultant will approve contractor payments from the NDDOT. The NDDOT will then invoice the City of Fargo for the local share of the contractor payments. The City of Fargo will invoice the City of West Fargo the contractor expenses incurred in the responsible bid items.
10. Final Punch List. The City of West Fargo and the City of Fargo will coordinate with respect to developing a final punch list.
11. Right of Way. This Project required the acquisition of both temporary construction easements and permanent right of way; as such, each party will be responsible for acquisition of right of way within that party's jurisdiction. The costs of acquiring property will be the sole responsibility of the party responsible for the property acquisition.
12. No Stacking of Claims Permitted. For the purposes of N.D.C.C. § 32-12.1-03 the employees and officers of a party are deemed to be employees of that party. Under no circumstances shall a party, irrespective of whether it may have waived the limit on liability set forth in N.D.C.C. § 32-12.1-03, be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in N.D.C.C. § 32-12.1-03 applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party.
13. Waiver of Jury Trial/Venue/Selection. FARGO AND WEST FARGO HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS CONTRACT, OR IN ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS CONTRACT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS CONTRACT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FARGO AND WEST FARGO ENTERING INTO THIS CONTRACT. THE PARTIES STIPULATE AND AGREE THAT THE DISTRICT COURT OF CASS COUNTY, NORTH DAKOTA, SHALL BE THE SOLE AND EXCLUSIVE VENUE FOR ANY LAWSUIT PERTAINING TO THIS CONTRACT AND CONSENT TO THE PERSONAL JURISDICTION IN SAID COURT IN THE EVENT OF ANY SUCH LAWSUIT.
14. Merger Clause. This Agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

15. Previous Agreements Superseded. This Agreement supersedes any previous agreement between any of the parties hereto regarding the items addressed herein.
16. Written Amendment Required. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties thereto under and pursuant to this Agreement.
17. Grammatical Construction. Whenever the singular number is used herein, the same includes the plural where appropriate, and the words of any gender include any other genders where appropriate.
18. Default. Upon the occurrence of any non-performance of any party's obligations under this Agreement which has not been cured within thirty (30) days after notice to the breaching party, a non-breaching party may take any one or more of the following remedial steps: (a) terminate this Agreement; (b) suspend the non-breaching party's performance under this Agreement until it receives assurances from the breaching party satisfactory to the non-breaching party that the breaching party will cure such Event of Default and perform its obligations under this Agreement; (c) commence legal or administrative proceedings for the collection of any amounts due hereunder or the enforcement of any covenant, agreement or obligation of the breaching party.
19. Severability Clause. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement.
20. Force Majeure. No party will be liable to any other party during any period in which its performance is delayed or prevented, in whole or in part, by circumstance beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the party claiming the delay must undertake reasonable action to notify the other party of the same.
21. Notice. All notices, certificates or other communications required under this Agreement will be deemed sufficiently given when delivered or deposited in the

United States mail in certified form with postage fully prepaid and addressed as follows:

If to West Fargo: City Administrator
City of West Fargo
800 4th Avenue East
West Fargo, ND 58078

If to Fargo: City Administrator
City of Fargo
225 4th Street N
Fargo, ND 58103

If to Cass County: County Administrator
Cass County
P.O. Box 2806
Fargo, North Dakota 58108-2806

22. Agreement Binding on Successors. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.
23. North Dakota Law Applies. This Agreement will be controlled by the laws of the State of North Dakota.
24. Execution in Counterparts. This Agreement may be executed in counterparts with each Project Partner having a fully-executed counterpart.

Signature page for the agreement between the City of Fargo, the City of West Fargo, and Cass County regarding the reconstruction of 52nd Avenue South (Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street):

CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

BY: _____ Date: _____
Dr. Timothy J. Mahoney, M.D.
Mayor

ATTEST: _____ Date: _____
Steven Sprague
Auditor

Signature page for the agreement between the City of Fargo, the City of West Fargo, and Cass County regarding the reconstruction of 52nd Avenue South (Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street):

CITY OF WEST FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

BY: _____ Date: _____
Bernie Dardis
President of the Board of
City Commissioners

ATTEST: _____ Date: _____
Tina Fisk
City Administrator

Signature page for the agreement between the City of Fargo, the City of West Fargo, and Cass County regarding the reconstruction of 52nd Avenue South (Cass County Highway 6) between 63rd Street South and County Road 17 (Sheyenne Street):

COUNTY OF CASS, STATE OF NORTH DAKOTA

BY: _____ Date: _____
Rick Steen
Commissioner

ATTEST: _____ Date: _____
Robert Wilson
Administrator

EXHIBIT A

MEMORANDUM OF UNDERSTANDING REGARDING CASS COUNTY HIGHWAY 6 TO INCLUDING 76TH AVENUE SOUTH FROM 45TH STREET SOUTH TO 81ST STREET SOUTH AND CASS HIGHWAY 17 FROM 52ND AVENUE SOUTH TO CASS 14 (100TH AVENUE SOUTH)

This Memorandum of Understanding ("MOU") is entered into between the City of Horace, a North Dakota municipal corporation whose address is 215 Park Drive East, Horace, North Dakota 58047 ("City" or "Horace"), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South, Fargo, North Dakota 58103 ("Cass County").

WHEREAS, North Dakota Century Code § 40-05.1-06 and Article 3 of Horace's Home Rule Charter authorizes Horace to enter into contracts; and

WHEREAS, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County's Home Rule Charter authorizes the Cass County to enter into contracts; and

WHEREAS, Development in Horace and the West Fargo School District has resulted in the need for expanded use of existing Stanley Township roads of 76th Avenue South and 45th Street South. Modifications to the road to accommodate the increased traffic anticipated from such expansion is required and Stanley Township does not have the financial capacity to improve these road segments; and

WHEREAS, Cass County Highway 6 currently continues west of Cass County Highway 17 on 76th Avenue South. Cass County Highway 6 east of Cass County Highway 17 along 52nd Avenue will be turned over to the Cities of Fargo and West Fargo; and

WHEREAS, Cass County will coordinate with Stanley Township to take over control of 76th Avenue from the Horace city limits to 45th Street South and of 45th Street South from 76th to 64th Avenue S. Cass County will coordinate with Horace to take over ownership of 76th Avenue within the Horace city limits. These road segments will be renamed as Cass County Highway 6 ("Cass Highway 6"); and

WHEREAS, City constructed a concrete four lane roadway on 76th Avenue South from the round about on Cass Highway 17 east approximately 2700 feet to just east of 63rd Street.

WHEREAS, City and County wish to enter into this Agreement for the purpose of establishing the parties' responsibilities with respect to 76th Avenue from the Horace city limits at 57th Street South to Cass Highway 17, future transfer of control and operations of Cass Highway 6 west of Cass Highway 17 to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South. To permit the City to exercise a greater level of responsibility and control from along these roadways prior to full transfer of control of the easements or right of way along these County highways. In anticipation of the future growth of Horace above a population of 5,000 residents; and

WHEREAS, County Commission Policy 9.35 "County Highways within Annexed Cities" states that in cities with populations over 5,000, County highways should be targeted to be turned

over to the city within two years. The policy recognizes that segments should be turned over with logical termini and Cass County should work cooperatively with the cities to accomplish an orderly transfer of ownership. This policy supports interim partnership arrangements during transitional periods to provide for logical and efficient delivery of government services; and

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Future Turnover Date for Cass Highways 6 and 17. Full turnover of ownership, maintenance, operations, and control of Cass Highway 6 from 57th Street South to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South will occur on the January 1st after two full years (730 days) have passed after the City's population exceeds 5,000.
2. Maintenance, Striping and Signage. The parties agree that Cass County will be responsible for the maintenance, striping and signage until turnover to the City of:
 - a. 76th Avenue South within the City limits from 57th Street South west to 81st Street South.
 - b. Cass Highway 17 within the City limits from 52nd Avenue South to the Metro Flood Diversion Project limits approximately 0.5 miles south of 112th Avenue South
3. Drainage. The parties agree that Cass County remains responsible for drainage maintenance associated with Cass County Highways 6 and 17 until turnover to the City.
4. Snow Removal. The parties agree that Cass County shall be primarily responsible for snow removal on Cass County Highways 6 and 17 until turnover to the City. The City shall have the ability to assist Cass County in snow removal as they deem necessary or as available such as when the City snowplows are traveling on County highways. There shall be no remuneration for snow removal completed by either party.
5. Highway and Bridge Regrading, Reconstruction, Paving, and Maintenance - Cass County Responsibility (see Exhibit A). The parties agree that Cass County shall be responsible for funding and executing the following improvements or maintenance:
 - a. 76th Avenue South approximately 2,600 feet from immediately east of 63rd Street South to 57th Street South, Cass County will pay for the initial regrading, graveling, and paving.
 - b. 76th Avenue South from Cass Highway 17 east approximately 2,700 feet to 63rd Street South, Cass County will complete Concrete pavement maintenance and sealing.
 - c. Cass Highway 6 from Cass Highway 17 west to 81st Street South, Cass County will complete an asphalt overlay.
 - d. Intersection of Cass Highway 17 and 64th Avenue South, Cass County will construct a roundabout.
 - e. Cass Highway 17 Sheyenne River bridge approximately 2,800 feet south of 52nd Avenue South, Cass County will reconstruct this bridge and approach roadways.
 - f. 52nd Avenue South Sheyenne River bridge approximately 250 feet east of Cass Highway 17, Cass County, in conjunction with the Cities of Fargo and West Fargo, will reconstruct this bridge and approach roadways.

g. Cass Highway 17 from 52nd Avenue South continuing south to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South, Cass County will complete an asphalt overlay.

h. Cass County also agrees to complete crack sealing and chip sealing two years after any asphalt paving.

i. Cass County also agrees to complete a second crack sealing and chip sealing 10 years after the first chip seal. However, should turnover take place prior this second chip seal, the City will take over and incur the costs to complete the crack sealing, chip sealing, or other maintenance of Cass Highways 6 and 17.

6. Highway and Bridge Regrading, Reconstruction, Paving, and Maintenance – City of Horace Responsibility (see Exhibit A). The parties agree that the City shall be responsible for:

a. 76th Avenue South approximately 2,600 feet from immediately east of 63rd Street South to 57th Street South, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road reconstruction, to include the storm sewer arch pipe.

b. 76th Avenues South from Cass Highway 17 east approximately 2,700 feet to 63rd Street South, the City will maintain the underground City utilities, street lighting, and shared use paths.

c. Cass Highway 6 from Cass Highway 17 west to 81st Street South, the City will be responsible for any underground City utilities, or future street lighting and shared use paths

d. Intersection of Cass Highway 17 and 64th Avenue South, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road reconstruction of a roundabout.

e. Cass Highway 17 Sheyenne River bridge approximately 2,800 feet south of 52nd Avenue South, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road/bridge reconstruction.

f. 52nd Avenue South Sheyenne River bridge approximately 250 feet east of Cass Highway 17, the City will pay for underground City utilities, street lighting, shared use paths, and other City requested features outside of the normal road/bridge reconstruction..

g. Cass Highway 17 from 52nd Avenue South continuing south to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South, the City will be responsible for any underground City utilities, or future street lighting and shared use paths.

7. Access Control. The parties agree that once the City reaches a population of 5,000 and starts the two year timeline for turnover, the City will assume responsibility for reviewing and approving all new access points on Cass Highway 6 from 57th Street South to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South. The determination on acceptable access locations shall be made by the City in accordance with its Land Development Code. All costs associated with designing and constructing all new access points in the previously described highway segments shall be the City's responsibility. Any turnlanes or additional traffic control measures needed due to the City's approved access points shall be the City's responsibility. The City shall provide completed designs to Cass County thirty (30) days in advance of bid advertisement for concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10)

business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is turned over to the City. Upon full turnover of Cass Highways 6 and 17, the City will have full responsibility for access control without review by Cass County.

8. Utility Permitting. Cass County will remain responsible for all utility permitting associated with and adjacent to Cass Highway 6 from 57th Street South to 81st Street South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project approximately 0.5 miles south of 112th Avenue South with the purpose of reviewing and approving locations of both private and public utilities. Any fees and costs collected by Cass County associated with utility permitting shall remain with Cass County. Upon full turnover of Cass Highways 6 and 17, the City will have full responsibility for utility permitting without review by Cass County.

9. Streetlights and Traffic Signals. The parties agree to permit City to design and install streetlights and/or traffic signals within Cass Highway 6 and 17 rights of way and appropriate access points thereto. The City shall be responsible for all installation and maintenance costs of all new or existing streetlights and traffic signals installed. The locations of any streetlights or traffic signals shall be at the sole discretion of the City. The City shall provide completed designs to Cass County thirty (30) days in advance of bid advertisement for concurrence of the design specifications. If Cass County fails to make any timely design comments within such period, the City shall provide written notice to Cass County of such failure to respond. If Cass County fails to provide design comments within ten (10) business days following such notice from the City, the design shall be deemed to be approved. Cass County agrees to maintain the road improvements installed by City until the road is turned over to the City. The City agrees to pay all electrical costs or fees for the any streetlights or traffic signals.

10. Speed Limits. The parties agree that the County will retain authority to establish the appropriate speed limit on Cass Highways 6 and 17 until turnover. Cass County shall undertake an appropriate traffic study and provide the data to the City for review of the proposed speed limit modifications. Cass County agrees to provide approved speed limit signage in accordance with applicable standards.

11. Transfer of County Lots along Cass Highway 17. Cass County will quit claim the properties located at:

Immediately north of the Casey's gas station on Cass 17 at 314 Main Street North, Rud's Addition Lot 4 Block 1, to the City for the sole purpose of use as a public street corridor.

Property south of 52nd Avenue South to the Sheyenne River on the west side of Cass 17 at 5358 County Road 17 S. This property would be for the sole purpose of public land for park or recreation use with a sole access at the far south end of the property.

This property transfer will occur once an approved re-plat has been recorded that includes platting of this lot as a street corridor. The City must include Cass County in planning and platting discussions of this property during the platting approval process.

12. Dispute Resolution.
- a. Horace and Cass County will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the elements identified in this MOU which may be in dispute or requiring agreement under the terms of this Agreement. Such representatives may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the scheduling of maintenance and repairs.
 - b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.
13. Easements or Right of Way. Each party will grant to the other party any and all necessary easements or right of way to enable the other party to perform their obligations under the terms of this Agreement. Upon the transfer of control and operations of Cass Highway 6 from 57th Street South to 81st South and Cass Highway 17 from 52nd Avenue South to the Metro Flood Diversion Project 0.5 miles south of 112th Avenue South, Cass County will quit claim all deeded right of way and easements from Cass County to the City.
14. Term. The term of this Agreement will be twenty (20) years, with an expiration date of March 31, 2041 unless the City reaches a population of 5,000 triggering the turnover process outlined in this agreement. This Agreement will automatically renew for successive periods of twenty (20) years until turnover.
15. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties' agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.
16. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Horace:

City of Horace
ATTN: City Administrator
Horace City Hall
215 Park Drive East
Horace, ND 58047

If to Cass County:

ATTN: County Administrator
211 9th Street South
Fargo, ND 58103

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

17. Time is of the Essence. Time is of the essence of each provision of this entire MOU and of all the conditions thereof.

18. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

19. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

20. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

21. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

22. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

23. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

24. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

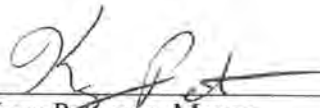
25. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

26. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this _____ day of February, 2021.

CITY OF HORACE, NORTH DAKOTA, a
municipal corporation

By: 
Kory Peterson, Mayor

ATTEST:


Brenton Holper, City Administrator

Dated this 1st March day of ~~February~~, 2021.

CASS COUNTY, NORTH DAKOTA



Chad M. Peterson, Board Chairman

ATTEST:

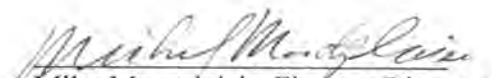

Mike Montplaisir, Finance Director

Exhibit A

HORACE AREA TRANSPORTATION IMPROVEMENTS

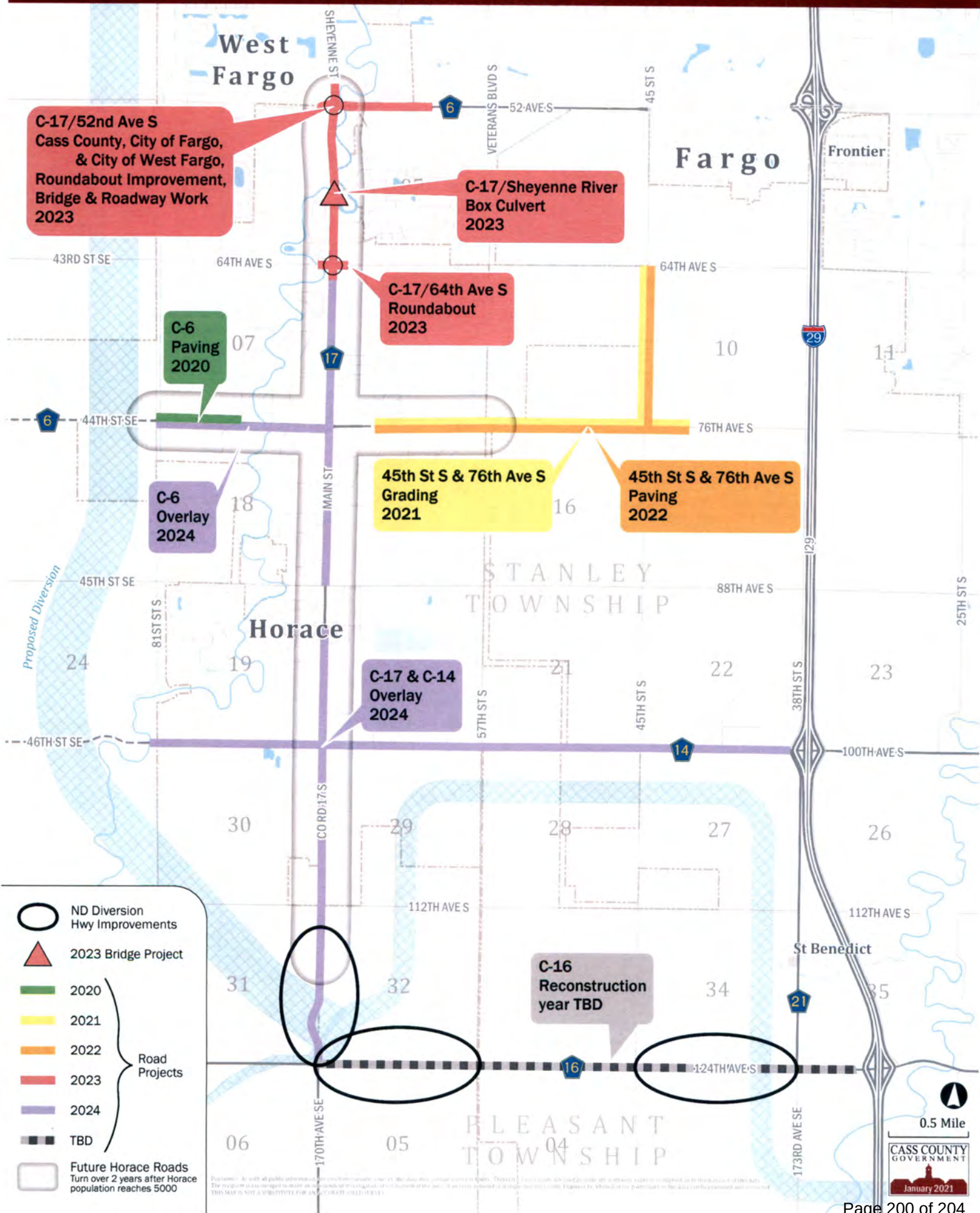


EXHIBIT B

ENGINEER'S REPORT

NEW PAVING AND UTILITY CONSTRUCTION

IMPROVEMENT DISTRICT NO. BN-23-A

Nature & Scope

This project is being completed in partnership with the City of Fargo, the City of West Fargo, and Cass County and will urbanize 52nd Avenue South (Sheyenne Street/County Road 17 to west of 63rd Street South) from a rural asphalt roadway section to a divided urban concrete street section with curb and gutter, storm sewer, bridge over the Sheyenne River and pedestrian systems.

Purpose

This project will urbanize the existing roadway and install necessary infrastructure for the continued growth of the City of Fargo, West Fargo, and Cass County. The new bridge over the Sheyenne River will include features necessary for the operation of the water intake structure just south of the new bridge. This project will also install important pedestrian upgrades along the corridor and make improvements to the roundabout at the intersection of Sheyenne St/County Road 17 and 52nd Avenue South.

The project will be funded by a combination of Federal Funds, City of Fargo Infrastructure Sales Tax, funds from the City of West Fargo, funds from Cass County, and Special Assessments to the benefiting properties. Special Assessments will be applied per City policy.

Feasibility

The estimated cost of construction is \$ 16,148,736.95. The cost breakdown is as follows:

Project area west of the bridge		\$	1,632,814.99
Amount Federally Funded		\$	1,025,242.33
Amount Locally Funded		\$	607,572.66
Plus 4% Administration Fee:		\$	24,302.91
Plus 3% Legal Fee:		\$	18,227.18
Plus 4% Interest Fee:		\$	24,302.91
Plus 10% Contingency:		\$	60,757.27
Total Estimated Cost:		\$	735,162.92
City of Fargo:	0.00%	\$	-
City of West Fargo:	75.00%	\$	551,372.19
Cass County:	25.00%	\$	183,790.73

Bridge structure (not including water intake portion)		\$	7,087,624.80
Amount Federally Funded		\$	4,450,310.06
Amount Locally Funded		\$	2,637,314.74
Plus 4% Administration Fee:		\$	105,492.59
Plus 3% Legal Fee:		\$	79,119.44
Plus 4% Interest Fee:		\$	105,492.59
Plus 10% Contingency:		\$	263,731.47
Total Estimated Cost:		\$	3,191,150.83
City of Fargo:	25.00%	\$	797,787.71
City of West Fargo:	25.00%	\$	797,787.71
Cass County:	50.00%	\$	1,595,575.42

Water intake portion of the bridge structure		\$	1,781,943.60
Amount Federally Funded		\$	-
Amount Locally Funded		\$	1,781,943.60
Plus 4% Administration Fee:		\$	71,277.74
Plus 3% Legal Fee:		\$	53,458.31
Plus 4% Interest Fee:		\$	71,277.74
Plus 10% Contingency:		\$	178,194.36
Total Estimated Cost:		\$	2,156,151.76
City of Fargo:	100.00%	\$	2,156,151.76
City of West Fargo:	0.00%	\$	-
Cass County:	0.00%	\$	-

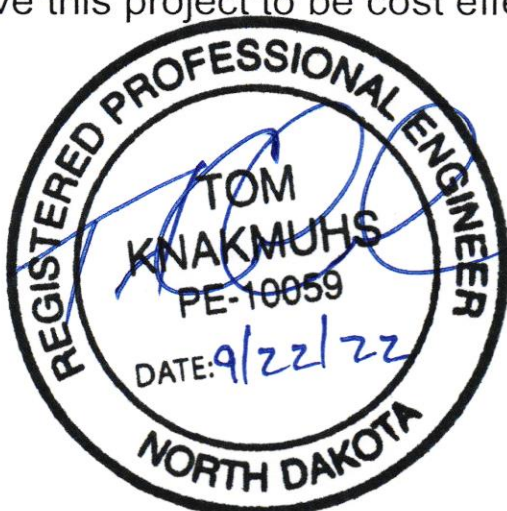
Water Mains		\$	33,270.00
Amount Federally Funded		\$	-
Amount Locally Funded		\$	33,270.00
Plus 4% Administration Fee:		\$	1,330.80
Plus 3% Legal Fee:		\$	998.10
Plus 4% Interest Fee:		\$	1,330.80
Plus 10% Contingency:		\$	3,327.00
Total Estimated Cost:		\$	40,256.70
City of Fargo:	100.00%	\$	40,256.70
City of West Fargo:	0.00%	\$	-
Cass County:	0.00%	\$	-

Project area east of the bridge		\$	5,613,083.56
Amount Federally Funded		\$	3,524,447.60
Amount Locally Funded		\$	2,088,635.95
Plus 4% Administration Fee:		\$	83,545.44
Plus 3% Legal Fee:		\$	62,659.08
Plus 4% Interest Fee:		\$	83,545.44
Plus 10% Contingency:		\$	208,863.60
Total Estimated Cost:		\$	2,527,249.50
City of Fargo:	40.00%	\$	1,010,899.80
City of West Fargo:	40.00%	\$	1,010,899.80
Cass County:	20.00%	\$	505,449.90

Miscellaneous Costs			
Right-of-Way and Easements:		\$	250,000.00
Utility Relocation		\$	150,000.00
Outside Engineering:		\$	1,679,825.00
Incentive		\$	-
Total Miscellaneous Costs:		\$	2,079,825.00
City of Fargo:		\$	956,719.50
City of West Fargo:		\$	561,552.75
Cass County:		\$	561,552.75
Federal Funds:		\$	-

Project Funding Summary			
Special Assessments - City of Fargo	11.02%	\$	2,174,857.22
Special Assessments - Cass Rural Water	0.20%	\$	40,256.70
Special Assessments - Water Utility	10.93%	\$	2,156,151.76
City of Fargo - Infrastructure Sales Tax	2.99%	\$	590,549.78
City of West Fargo	14.81%	\$	2,921,612.45
Cass County	14.43%	\$	2,846,368.80
Federal Funds	45.62%	\$	9,000,000.00
Total Estimated Project Cost		\$	19,729,796.71

We believe this project to be cost effective.



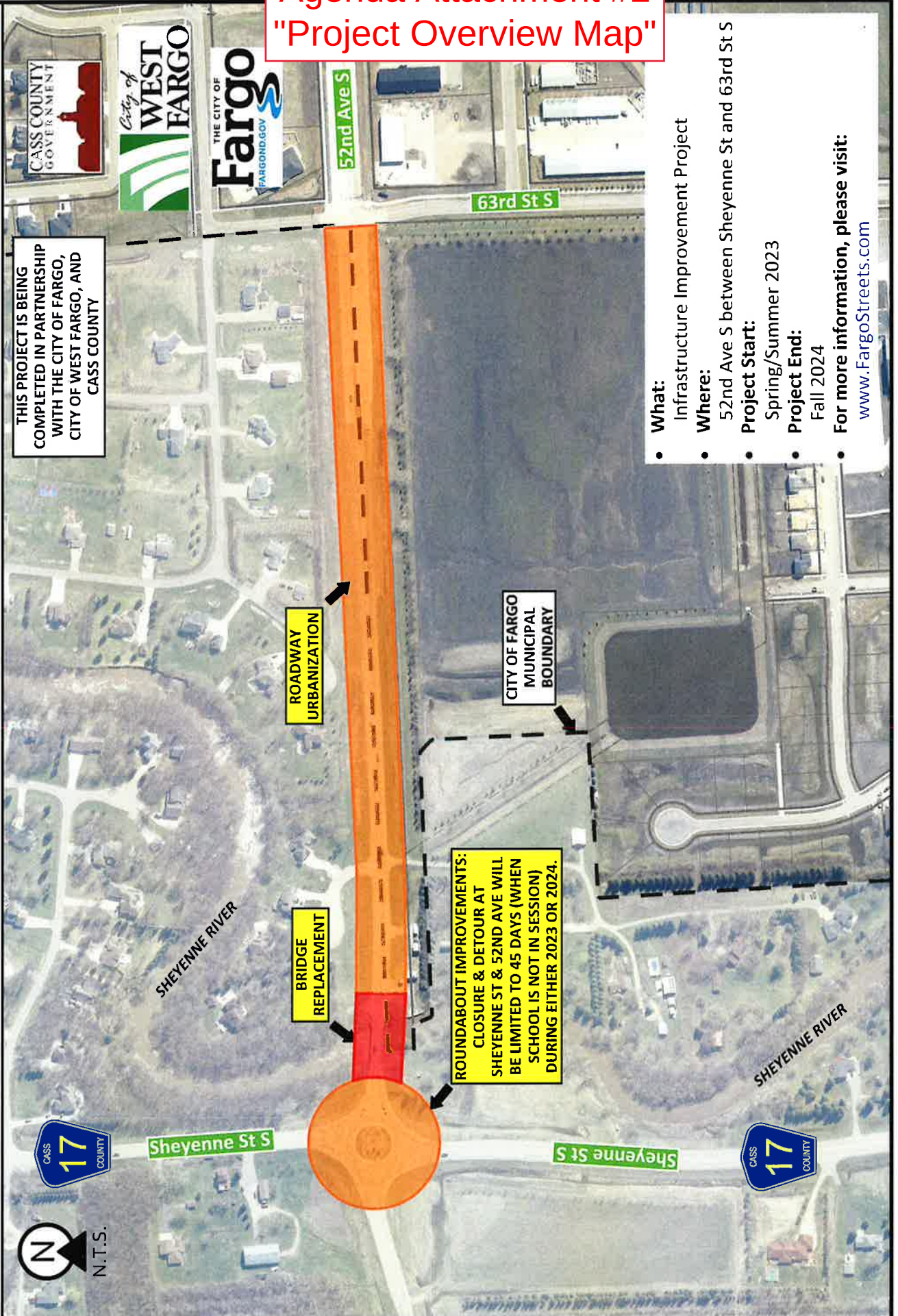

Tom Knakmuhs, P.E.
Assistant City Engineer

52ND AVENUE SOUTH IMPROVEMENTS OVERALL PROJECT MAP

CITY OF FARGO IMPROVEMENT DISTRICT BN-23-A1



FargoStreets
SUSTAINABLE COMMUNITIES



THIS PROJECT IS BEING COMPLETED IN PARTNERSHIP WITH THE CITY OF FARGO, CITY OF WEST FARGO, AND CASS COUNTY

ROADWAY URBANIZATION

BRIDGE REPLACEMENT

ROUNDABOUT IMPROVEMENTS:
CLOSURE & DETOUR AT
SHEYENNE ST & 52ND AVE WILL
BE LIMITED TO 45 DAYS (WHEN
SCHOOL IS NOT IN SESSION)
DURING EITHER 2023 OR 2024.

CITY OF FARGO
MUNICIPAL
BOUNDARY

Agenda Attachment #2
"Project Overview Map"

- **What:** Infrastructure Improvement Project
- **Where:** 52nd Ave S between Sheyenne St and 63rd St S
- **Project Start:** Spring/Summer 2023
- **Project End:** Fall 2024
- **For more information, please visit:** www.FargoStreets.com