



Meeting Items

- A. Call to Order
- B. Pledge of Allegiance
- C. Approve Order of Agenda
- D. Approval of Minutes – December 5, 2022 (Pages 3-5)
- E. Building Permits (Pages 6-7)

Consent Agenda - Approve the Following:

- a. Bills (Pages 8-16)
- b. Approval of agreement for EDA Public Space Initiative – Placemaking Planning Grant Award (Pages 17-22)
- c. West Fargo 2023 Hourly I&C Support Services Agreement (Pages 23-29)
- d. Gaming Site Authorization for North Dakota Association for the Disabled, Inc. Games to be conducted: Bingo, Raffles, Pull Tab Jar, Pull Tab Dispensing Device, Electronic Pull Tab Device, Sports Pool, Tewnty-One, Poker, and Paddlewheel Table at Bordertown Bar & Grill at 807 Main Ave E from January 1 - June 30, 2023 (Pages 30-31)
- e. Gaming Site Authorization for Horse Race North Dakota. Games to be conducted: Raffles and Poker at DoubleTree at 825 E Beaton Dr from January 20-22, 2023 (Pages 32-33)
- f. Gaming Site Authorization for Minndak RMEF Inc. Games to be conducted: Raffles and Poker at DoubleTree at 825 E Beaton Dr on March 18, 2023 (Pages 34-35)
- g. Games of Chance for Cowboy Up Ride Against Cancer. Games to be conducted: Raffle at Doubletree at 825 E Beaton Dr on January 7, 2023 (Page 36)
- h. Games of Chance for Red River Infinity Volleyball. Games to be conducted: Raffle at Rustad Recreation Center at 601 26th Ave E on July 7, 2023 (Page 37)
- i. Games of Chance for Cowboy Up Ride Against Cancer. Games to be conducted: Poker at West Fargo Conference Center at 825 E Beaton Dr on January 7, 2023 (Page 38)
- j. Games of Chance for St. John Paul II Catholic Schools. Games to be conducted: Raffle Board at Trinity Elementary School at 2811 7th St E on January 29, 2023 (Page 39)

Regular Agenda

- 1. Request additional members for the EDAC meeting -- Casey Sanders-Berglund (Page 40)
- 2. Ordinance No. 1217 relating to Extermination of Insects and Vermin -- Grant Larson, Fargo Cass Public Health Director of Environmental Health (Pages 41-46)
- 3. Agreement with City of Fargo for MATBUS Transit Services -- Julie Bommelman, Fargo Transit Director (Pages 47-60)
- 4. Downtown Master Plan Project -- Aaron Nelson, Planning Director (Pages 61-66)
- 5. Lagoon Decommissioning Update -- Matt Andvik, Public Works (Pages 67-79)

6. City of West Fargo Logo -- Mark Simmons, Commissioner (tabled from 12/5/2022 City Commission Meeting) (Pages 80-85)
7. 2261 – 2023 Asphalt Mill and Overlay (Various Neighborhoods) -- Dan Hanson, City Engineer
 - Direct Engineer to prepare Report (Pages 86-89)
8. Improvement District No. 2271 – 7th Ave NW & 5th St Ct NW -- Dan Hanson, City Engineer
 - Initiate Public Hearing for the recently approved Resolution Declaring Work Necessary, Approve Task Order for “Basic Services” and Direct engineer to prepare Plans and Specifications (Pages 90-112)
9. 2275 – 26th Ave W – 5th St NW to Sheyenne St (Roadway Reconstruction and Incidentals) -- Dan Hanson, City Engineer
 - Accept Petition for Improvements and Approve the Preliminary Improvement Work Agreement (Pages 113-126)
10. Project No. 4068 – Storm Lift Station (SM-54) & Force Main Rehabilitation -- Dan Hanson, City Engineer
 - Approve Task Order No. 65-1 for Basic Services and Direct Engineer to prepare Plans and Specifications (Pages 127-149)
11. City Administrator's Report -- Tina Fisk, City Administrator
 - Appointment of two Commissioners to the RRRDC Authority Board Members
12. Correspondence
13. Non-Agenda Items
14. Adjourn



**West Fargo City Commission Meeting
Monday, December 5, 2022
Commission Chambers 5:30 PM**

The West Fargo City Commission met on Monday, December 5, 2022, at 5:30 p.m. Those present were Commissioners Bernie Dardis, Brad Olson, Mark Simmons, Mandy George and Roben Anderson. No Commissioners were 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. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Commissioner George moved and Commissioner Olson seconded to approve the minutes from October 17, 2022 as presented. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

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

Commissioner Anderson moved and Commissioner George seconded to approve the consent agenda as presented.

- a. Bills (Pages 9-17)
- b. City owned Right-of-Way within City Limits of West Fargo (Pages 18-19)
 - Authorize staff to initiate a season shutdown for all non-emergent permitting and utility work, and direct staff to send a "Season Shutdown Notice" to all registered contractors.
- c. Games of Chance Packer Backers (West Fargo High School Post Prom/Grad . Committee). Games to be conducted: Raffle on January 20, 2023 at Silver Dollar at 221 Sheyenne St (Page 20)
- d. Games of Chance for STOMP. Games to be conducted: Raffle on January 3, 2023 at Brewtus Brickhouse at 635 32nd Ave E #108 (Page 21)

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

Matt Andvik, Public Works Director appeared before the Commission to discuss 90-minute parking and no parking signs downtown. Following discussion, Commissioner Anderson moved and Commissioner Olson seconded to approve removing all current 90-minute parking signs downtown as well and approved to place no parking signs from 2 a.m. to 6 a.m. Tuesdays and Thursdays. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.



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

Matt Andvik, Public Works Director appeared before the Commission for approval of Project 9027 – Public Works Asphalt Paving (Citywide). Following discussion, Commissioner Olson moved and Commissioner George seconded to approve Project 9027 – Public Works Asphalt Paving (Citywide), which included two rollers and an equipment trailer. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Dan Farnsworth of MetroCOG appeared before the Commission for approval of the Resolution of support for the FM Metropolitan Bicycle & Pedestrian Plan. Following discussion, Commissioner Olson moved and Commissioner Simmons seconded to approve the Resolution of support for the FM Metropolitan Bicycle & Pedestrian Plan with the amendment that Aaron Nelson is moved under West Fargo in the document. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

Aaron Nelson, Planning Director appeared before the Commission for a proposed Downtown Master Plan & Grant Award. Following discussion, Mr. Nelson was directed by the Commission to bring the item back in the future with some recommended actions steps.

Denis Otterness, Police Chief appeared before the Commission for the second reading of the proposed parking ordinance 1214. Following discussion, Commissioner Olson moved and Commissioner Simmons seconded to approve the second reading of the proposed parking ordinance 1214. Commissioners Anderson, Olson, Simmons, and Dardis voted aye. Commissioner George voted nay, the motion was declared carried.

Mark Simmons, Commissioner brought forth the City of West Fargo Logo. Following discussion Commissioner Simmons moved and Commissioner George seconded to table the item of the City of West Fargo Logo until the next scheduled meeting. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

John Shockley, City Attorney appeared before the Commission for approval of the second reading of Ordinance 1216 relating to feeding of wildlife and keeping of fowl and other non-domestic animals. Following discussion, Commissioner Olson moved and Commissioner Anderson seconded to approve the second reading of Ordinance 1216 relating to feeding of wildlife and keeping of fowl and other non-domestic animals. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.



**West Fargo City Commission Meeting
Monday, December 5, 2022
Commission Chambers 5:30 PM**

John Shockley, City Attorney appeared before the Commission for approval of the second reading of Ordinance 1210 regarding the Sales and Use Tax. Following discussion, Commissioner Olson moved and Commissioner Simmons seconded to approve the second reading of Ordinance 1210 regarding the Sales and Use Tax. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.

In regards to the Administrator's Report, Tina Fisk, City Administrator appeared before the Commission:

1. All Commissioners agreed to move the first meeting in January from January 2nd to January 3rd 2023
2. Tina would be out of the Office for League of Cities meetings and the Legislative Workshop
3. On behalf of Betty Adams, Library Director, the West Fargo Library received the Star Award
4. Commissioner Simmons moved and Commissioner George seconded to contribute \$2,000 to the coming year to the Homeward Animal Shelter for the use of their services. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the motion was declared carried.
5. Battle of the Badges Blood Drive at the DoubleTree on December 27 - 29
6. Express thank you towards to the Public Works department for all of their work

Correspondence were passed out to each Commissioner. Commission President Dardis brought forth the upcoming West Fargo Fire Community Health Alliance event at 10 a.m. – 12 p.m. Wednesday, December 14, 2023 at West Fargo City Hall.

In regards to non-agenda, Commissioner Simmons wanted to thank the Public Works department for all of their work. Commission President Dardis wanted to thank West Fargo Events for the Tree Lighting event. As well as congratulating the West Fargo Sheyenne High School Girls Volleyball Team and the Girls Swimming and Diving Teams for winning the North Dakota Class A Championships last month, this is the first time this has been done.

Commissioner Simmons moved and Commissioner Olson seconded to adjourn the meeting. Commissioners George, Anderson, Olson, Simmons, and Dardis voted aye. No Commissioners present voted nay, the meeting adjourned at 7:06 p.m.

Bernie Dardis, Commission President

Tina Fisk, City Administrator

**WEST FARGO CITY COMMISSION MEETING
BUILDING DEPARTMENT ACTIVITY REPORT
12/19/2022**

	AS OF 12/16/2022			YEAR TO DATE		
	# PERMITS	# UNITS	VALUATION	# PERMITS	# UNITS	VALUATION
<u>BUILDING NEW</u>						
COMMERCIAL	1		\$ 1,100,000.00	15		\$ 28,040,790.00
RESIDENTIAL DWELLING	1	1	\$ 343,279.00	195	195	\$ 76,890,806.00
RESIDENTIAL TWINHOME				0	0	\$ -
RESIDENTIAL TOWNHOME				0	0	\$ -
RESIDENTIAL MULTIPLE				1	52	\$ 14,000,000.00
PUBLIC				3		\$ 17,867,265.00
CHURCH						
ACCESSORY				220		\$ 5,176,565.00
FOUNDATION ONLY				2		\$ 35,000.00
<u>BUILDING REMODEL</u>						
COMMERCIAL	1		\$ 175,000.00	54		\$ 18,980,817.00
RESIDENTIAL	3		\$ 80,258.00	130		\$ 4,460,953.00
PUBLIC				4		\$ 3,515,330.00
CHURCH				0		\$ -
ACCESSORY				2		\$ 65,975.00
<u>BUILDING OTHER</u>						
DEMOLITION				6		\$ 227,500.00
MOVE				1		\$ 20,000.00
PERMIT CANCELLATION				1		\$ (530,000.00)
TOTALS	6	1	\$ 1,698,537.00	632	247	\$ 168,751,001.00

Building Department Report - Summary

NO.	CONTRACTOR	ADDRESS	OWNER	VALUATION	PERMIT FOR
221411	Heritage Homes	848 Rania Way West	Active55, LLC	\$ 343,279.00	Residential Dwelling
221426	Western Products	628 36th Ave West	Stacey Frolek	\$ 5,475.00	Remodel - Residential - back wall
221430	Western Products	901 7th Street East	Randy Fiechtner	\$ 31,023.00	Remodel - Residential - siding repair
221442	Res Com	1315 1 Street	Poplar River Properties	\$ 1,100,000.00	Commercial - Tenant Lease Building
221435	Gehrtz Construction Services	360 32 Avenue West	Sheyenne 32 West LLC	\$ 175,000.00	Remodel - Commercial - Partial 2nd Floor Fitup
221459	Western Products	702 3rd Avenue West	Carol McCellan, TOD	\$ 43,760.00	Remodel - Residential - siding repair

12/16/22
08:29:01

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 1 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105287	S	3831 PLACEMAKERS, LLC	15300.00	11/30/22		CL 107194	15300.00
105288	S	4030 FPN GAMING	1900.00	12/02/22		CL 107517	1900.00
105289	S	928 CHRISTIANSON'S BUSINESS FURNITURE	313.78	11/22/22		CL 107299	313.78
105290	S	2954 A-OX WELDING SUPPLY CO INC	26.00	12/06/22		CL 107463	26.00
105291	S	289 ACME TOOLS	1736.25	12/06/22		CL 107409	775.00
						CL 107465	961.25
105292	S	4467 ALL FINISH CONCRETE	42913.77	12/06/22		CL 107327	42913.77
105293	S	999999 ASHLEY MONTAG	26.18	12/06/22		CL 107487	26.18
105294	S	3511 ASPEN MILLS	3088.56	12/06/22		CL 107446	3088.56
105295	S	1926 AUTO OWNER'S INSURANCE	530.09	12/06/22		CL 107360	530.09
105296	S	2931 AUTO VALUE PARTS STORES	423.25	12/06/22		CL 107336	238.36
						CL 107416	130.17
						CL 107471	54.72
105297	S	1695 BAKER & TAYLOR	4135.51	12/06/22		CL 107380	4135.51
105298	S	3828 BEAVER CREEK ARCHAEOLOGY	4500.00	12/06/22		CL 107518	4500.00
105299	S	3149 BEE SEEN GEAR	403.90	12/06/22		CL 107382	375.90
						CL 107447	28.00
105300	S	4466 BEN'S STRUCTURAL FABRICATION INC	320884.00	12/06/22		CL 107334	320884.00
105301	S	36 BERT'S TRUCK EQUIPMENT	1071.92	12/06/22		CL 107346	253.92
						CL 107419	818.00
105302	S	999999 BILT MULUBAH	186.92	12/06/22		CL 107370	186.92
105303	S	3489 BOLTON & MENK, INC	21050.00	12/06/22		CL 107494	1050.00
						CL 107533	20000.00
105304	S	3512 BOUND TREE MEDICAL, LLC	346.06	12/06/22		CL 107448	346.06
105305	S	73 BRAUN INTERTEC	9456.25	12/06/22		CL 107437	9327.25
						CL 107492	129.00
105306	S	652 BRENCO CORPORATION	15900.00	12/06/22		CL 107516	15900.00

12/16/22
08:29:01

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 2 of 9
Report ID: AP300

Claim Checks

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105307	S	953 BROCK WHITE COMPANY LLC	246.66	12/06/22			
105308	S	3892 BURGGRAF'S ACE FARGO WEST	52.95	12/06/22		CL 107414	246.66
105309	S	3905 BURIAN & ASSOCIATES LLC	572.50	12/06/22		CL 107449	52.95
105310	S	351 BUSINESS ESSENTIALS	455.27	12/06/22		CL 107355	572.50
105311	S	39 BUTLER MACHINERY	451.07	12/06/22		CL 107308	254.00
						CL 107457	201.27
105312	S	3605 CASS COUNTY CIVIL ASSET FORFEITURE FUND	1619.20	12/06/22		CL 107403	323.02
105313	S	61 CASS COUNTY FINANCE	14752.53	12/06/22		CL 107468	128.05
						CL 107528	1619.20
105314	S	46 CASS RURAL WATER USERS	31.43	12/06/22		CL 107314	9311.31
105315	S	4548 CC HOLDINGS, INC	40.00	12/06/22		CL 107394	3825.00
105316	S	2909 CC STEEL LLC	442037.85	12/06/22		CL 107480	1616.22
105317	S	4108 CED	1282.73	12/06/22		CL 107358	31.43
105318	S	3216 CINTAS	75.35	12/06/22		CL 107450	40.00
105319	S	111 CITY OF FARGO	23530.12	12/06/22		CL 107368	442037.85
105320	S	999999 CITY OF WEST FARGO	73.00	12/06/22		CL 107479	1282.73
105321	S	1904 CODE 4 SERVICES, INC	50.93	12/06/22		CL 107347	75.35
105322	S	133 COLE PAPER	305.10	12/06/22		CL 107428	23530.12
105323	S	3245 CORE & MAIN	2679.03	12/06/22		CL 107362	73.00
105324	S	60 CROSSCOUNTRY FREIGHT SOLUTIONS	137.42	12/06/22		CL 107383	50.93
105325	S	3500 CUMMINS SALES AND SERVICE	1007.98	12/06/22		CL 107482	305.10
105326	S	662 CUSTOM GRAPHICS, INC	1049.70	12/06/22		CL 107426	2679.03
105327	S	859 DAKOTA ELECTRIC CONSTRUCTION CO	117225.00	12/06/22		CL 107460	137.42
105328	S	1675 DAKOTA FLUID POWER, INC	85.77	12/06/22		CL 107451	1007.98
						CL 107422	1049.70
						CL 107343	117225.00
						CL 107338	22.03
						CL 107470	6.67
						CL 107478	57.07

12/16/22
08:29:01

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 3 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105329	S	90 DAKOTA UNDERGROUND	175777.45	12/06/22			
						CL 107372	175777.45
105330	S	3808 DAWSON ROGSTAD	337.21	12/06/22			
						CL 107386	337.21
105331	S	4617 DEREK FARNHAM	5609.00	12/06/22			
						CL 107361	5609.00
105332	S	3762 DREAMSEATS LLC	1098.39	12/06/22			
						CL 107452	1098.39
105333	S	78 DSI AUTOMOTIVE INC	2619.04	12/06/22			
						CL 107461	2619.04
105334	S	3707 EAGLE ENGRAVING INC	763.90	12/06/22			
						CL 107453	763.90
105335	S	2100 EAGLE RUN CROSSING LLC	182.77	12/06/22			
						CL 107484	182.77
105336	S	3410 ENGRAPHIX	421.75	12/06/22			
						CL 107305	421.75
105337	S	3722 ENVIROTECH	42439.98	12/06/22			
						CL 107427	42439.98
105338	S	999999 ERIC HURD	132.72	12/06/22			
						CL 107313	132.72
105339	S	2862 ESSENTIA HEALTH	12684.70	12/06/22			
						CL 107391	12684.70
105340	S	1851 F/S MANUFACTURING INC	1739.22	12/06/22			
						CL 107348	12.94
						CL 107431	1023.85
						CL 107474	702.43
105341	S	660 FARGO FREIGHTLINER	358.47	12/06/22			
						CL 107472	358.47
105342	S	979 FARGO LINE-X	440.00	12/06/22			
						CL 107341	440.00
105343	S	1979 FARGO MHD WEST FARGO CHAMBER OF COMMERCE	45.00	12/06/22			
						CL 107523	45.00
105344	S	151 FEDERAL EXPRESS	6.29	12/06/22			
						CL 107303	6.29
105345	S	3948 FIRE SERVICE TESTING CO	1375.00	12/06/22			
						CL 107454	1375.00
105346	S	3347 FIRST INTERNATIONAL INSURANCE	935.00	12/06/22			
						CL 107514	935.00
105347	S	2637 FORCE AMERICA DISTRIBUTING LLC	1627.39	12/06/22			
						CL 107430	1627.39
105348	S	104 FORUM COMMUNICATIONS	2811.56	12/06/22			
						CL 107522	61.56
						CL 107538	2750.00
105349	S	155 GALLS, LLC	5075.94	12/06/22			
						CL 107312	446.68
						CL 107399	3151.44
						CL 107505	1477.82

12/16/22
08:29:01

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 4 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105350	S	999999 GARY ANDERSON	31.31	12/06/22			
						CL 107369	31.31
105351	S	4450 GRAFSTROM CONSTRUCTION	5850.00	12/06/22			
						CL 107337	5850.00
105352	S	556 GRAINGER, INC.	69.96	12/06/22			
						CL 107476	69.96
105353	S	3534 GRAND FORKS FIRE EQUIPMENT LLC	1455.09	12/06/22			
						CL 107445	1455.09
105354	S	939 GRAYBAR	2042.62	12/06/22			
						CL 107324	866.52
						CL 107425	1176.10
105355	S	2877 GREATAMERICA FINANCIAL SERVICES	442.89	12/06/22			
						CL 107379	442.89
105356	S	2318 HABERDASHERY	143.99	12/06/22			
						CL 107357	143.99
105357	S	135 HAWKINS WTR TREATMENT	6351.13	12/06/22			
						CL 107433	6351.13
105358	S	4619 HERZOG ROOFING INC	176400.00	12/06/22			
						CL 107366	176400.00
105359	S	3593 HOLIDAY COMPANIES	180.00	12/06/22			
						CL 107392	180.00
105360	S	4170 HOOTSUITE INC	5391.00	12/06/22			
						CL 107365	5391.00
105361	S	358 HUBERT OYE-SONS CONST.	260.70	12/06/22			
						CL 107321	260.70
105362	S	2102 IACP	190.00	12/06/22			
						CL 107395	190.00
105363	S	3087 IBM CORPORATION	185.76	12/06/22			
						CL 107504	185.76
105364	S	4144 ICMA MEMBERSHIP RENEWALS	920.22	12/06/22			
						CL 107506	920.22
105365	S	2521 IMAGE ACCESS, INC.	1292.00	12/06/22			
						CL 107432	1292.00
105366	S	233 J & L SPORTS	288.30	12/06/22			
						CL 107323	288.30
105367	S	811 JASON ANDERSON	325.00	12/06/22			
						CL 107388	325.00
105368	S	3526 JOHN NEEB	24.99	12/06/22			
						CL 107455	24.99
105369	S	3608 JONES & BARTLETT LEARNING	42.00	12/06/22			
						CL 107456	42.00
105370	S	344 KARL'S AT THE NODAK CENTER	223.81	12/06/22			
						CL 107421	223.81
105371	S	1796 KEY WEST TECHNOLOGY	358.56	12/06/22			
						CL 107503	358.56
105372	S	2596 KIA OF FARGO	188.62	12/06/22			
						CL 107340	188.62

12/16/22
08:29:01

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 5 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105373	S	693 KPH, INC	262881.90	12/06/22		CL 107345 CL 107367	144000.00 118881.90
105374	S	4543 KRAUS-ANDERSON CONSTRUCTION COMPANY	63221.37	12/06/22		CL 107325	63221.37
105375	S	2325 KUSTOM KONCEPTS	147.04	12/06/22		CL 107396	147.04
105376	S	4432 LIBERTY BUSINESS SYSTEMS INC	6248.21	12/06/22		CL 107520	6248.21
105377	S	3491 LOFFLER COMPANIES INC	154.80	12/06/22		CL 107500	154.80
105378	S	3502 M &T Fire	497.48	12/06/22		CL 107507	497.48
105379	S	3304 MAC'S - FARGO	80.55	12/06/22		CL 107331 CL 107408 CL 107473	3.29 66.07 11.19
105380	S	68 MANNING MECHANICAL	42871.50	12/06/22		CL 107339	42871.50
105381	S	3384 MATHESON TRI-GAS INC	56.70	12/06/22		CL 107459	56.70
105382	S	299 MENARDS	1321.57	12/06/22		CL 107317 CL 107326 CL 107329 CL 107404 CL 107458 CL 107508	198.01 239.20 87.96 373.91 199.69 222.80
105383	S	2766 MIDCONTINENT COMMUNICATIONS	1838.30	12/06/22		CL 107498 CL 107499	62.88 1775.42
105384	S	102 MIDSTATES WIRELESS	2107.88	12/06/22		CL 107309 CL 107310 CL 107311 CL 107384	945.00 142.56 935.00 85.32
105385	S	2779 MIDWEST OVERHEAD CRANE	265.00	12/06/22		CL 107483	265.00
105386	S	1854 MIDWEST TAPE	9373.50	12/06/22		CL 107378	9373.50
105387	S	908 MILES ORTH	200.00	12/06/22		CL 107306	200.00
105388	S	4618 MONSIDO INC	6593.03	12/06/22		CL 107364	6593.03
105389	S	305 MOORE ENGINEERING INC	199902.29	12/06/22		CL 107434 CL 107443 CL 107532	196697.24 287.35 2917.70

12/16/22
08:29:01

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 6 of 9
Report ID: AP300

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Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105390	S	4575 MORTENSON MASONRY INC	185670.00	12/06/22			
105391	S	298 MVTL LABORATORIES	938.30	12/06/22		CL 107333	185670.00
105392	S	1031 NASETH CONSTRUCTION	44903.19	12/06/22		CL 107330	651.60
105393	S	335 ND DEPT OF TRANSPORTATION	114426.64	12/06/22		CL 107435	286.70
105394	S	333 ND MOTOR VEHICLE DEPT.	6.50	12/06/22		CL 107354	44903.19
105395	S	4191 ND SHERIFF'S & DEPUTIES ASSOCIATION	50.00	12/06/22		CL 107536	1768.43
105396	S	364 NELSON INTERNATIONAL	314.77	12/06/22		CL 107537	112658.21
105397	S	271 NETCENTER TECHNOLOGIES	5049.95	12/06/22		CL 107525	6.50
105398	S	2261 NETWORK CENTER INCORPORATED	5437.50	12/06/22		CL 107440	50.00
105399	S	4621 NORDSTROM'S AUTOMOTIVE, INC.	4300.00	12/06/22		CL 107344	113.06
105400	S	331 NORTHERN STATES SUPPLY	555.81	12/06/22		CL 107418	201.71
105401	S	1028 NORTHERN TRUCK EQUIPMENT CORP.	4685.88	12/06/22		CL 107502	5049.95
105402	S	1715 NORTHWEST TIRE INC	19.26	12/06/22		CL 107501	5437.50
105403	S	4223 NORTHWEST TRUCK & TRAILER	128.08	12/06/22		CL 107488	4300.00
105404	S	1774 O'REILLY AUTOMOTIVE STORES, INC	690.90	12/06/22		CL 107420	555.81
105405	S	353 OHNSTAD TWICHELL	63162.28	12/06/22		CL 107493	4685.88
105406	S	352 OK TIRE STORE - COM CTR	1637.90	12/06/22		CL 107417	19.26
105407	S	399 OLYMPIC SALES	963.98	12/06/22		CL 107475	128.08
105408	S	276 OSTROMS ACE HARDWARE	410.39	12/06/22		CL 107349	60.29
						CL 107406	533.27
						CL 107466	16.99
						CL 107469	80.35
						CL 107530	35458.28
						CL 107534	27704.00
						CL 107424	1637.90
						CL 107477	963.98
						CL 107332	136.96
						CL 107405	182.47
						CL 107444	90.96

12/16/22
08:29:02

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 7 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105409	S	563 PETRO SERVE USA	60127.91	12/06/22		CL 107486	3836.60
						CL 107545	56291.31
105410	S	4034 PETRO SERVE USA #63	2080.62	12/06/22		CL 107485	2080.62
105411	S	1310 PETTYS CONSULTING, LLC	267.00	12/06/22		CL 107441	267.00
105412	S	2922 PIERRE FREEMAN	1175.68	12/06/22		CL 107513	1175.68
105413	S	384 PITNEY BOWES GLOBAL FINANCIAL SERVICES L	1040.73	12/06/22		CL 107375	243.09
						CL 107519	398.82
						CL 107524	398.82
105414	S	3921 PITNEY BOWES INC	169.98	12/06/22		CL 107376	169.98
105415	S	1755 PRO SWEEP INC	2125.00	12/06/22		CL 107489	2125.00
105416	S	1472 RAILROAD MANAGEMENT CO III, LLC	313.34	12/06/22		CL 107539	313.34
105417	S	2025 RANDALL'S EXCAVATING, INC	7856.55	12/06/22		CL 107352	2050.00
						CL 107356	5806.55
105418	S	2982 RDO EQUIPMENT CO	526.36	12/06/22		CL 107350	526.36
105419	S	3204 RECORD KEEPERS	47.50	12/06/22		CL 107529	47.50
105420	S	1016 RED WING BUSINESS ADVANTAGE	798.96	12/06/22		CL 107316	203.99
						CL 107436	594.97
105421	S	4451 RTL CONSTRUCTION INC	203526.00	12/06/22		CL 107335	203526.00
105422	S	3353 SAM'S CLUB MC/SYNCB	94.26	12/06/22		CL 107413	94.26
105423	S	437 SANDY'S DONUTS & COFFEE SHOP	321.30	12/06/22		CL 107397	275.40
						CL 107401	45.90
105424	S	140 SANFORD AMBULANCE	32.50	12/06/22		CL 107509	32.50
105425	S	450 SCHEELS	149.96	12/06/22		CL 107385	149.96
105426	S	1634 SHANE ORN	26.99	12/06/22		CL 107387	26.99
105427	S	3642 SIGN PRO	475.00	12/06/22		CL 107410	475.00
105428	S	91 SIGN SOLUTIONS USA	6685.35	12/06/22		CL 107322	528.04
						CL 107363	1160.47
						CL 107407	3424.44
						CL 107491	1360.80
						CL 107521	211.60

12/16/22
08:29:02

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 8 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105429	S	3528 SNACKS PLUS VENDING	336.00	12/06/22		CL 107481	172.00
						CL 107497	164.00
105430	S	465 SPARTAN STORES LLC	26.94	12/06/22		CL 107510	26.94
105431	S	440 SRF CONSULTING GROUP, INC	123.68	12/06/22		CL 107490	123.68
105432	S	3516 STEIN'S INC	169.05	12/06/22		CL 107511	169.05
105433	S	88 STREICHER'S INC	2062.00	12/06/22		CL 107307	1765.00
						CL 107393	297.00
105434	S	176 SUMMIT FIRE PROTECTION	76.27	12/06/22		CL 107415	76.27
105435	S	733 SWANSTON EQUIPMENT CORP.	63276.78	12/06/22		CL 107351	174.37
						CL 107423	610.41
						CL 107515	62492.00
105436	S	4620 TIM BROWN JR	73.50	12/06/22		CL 107398	73.50
105437	S	812 TIM RUNCORN	405.01	12/06/22		CL 107304	138.40
						CL 107389	266.61
105438	S	1285 TRAFFIC CONTROL CORPORATION	895.00	12/06/22		CL 107328	410.00
						CL 107439	485.00
105439	S	665 TWIN CITY GARAGE DOOR	38.00	12/06/22		CL 107412	38.00
105440	S	3215 TWIN CITY HARDWARE	4992.80	12/06/22		CL 107462	4992.80
105441	S	4111 US DIGITAL DESIGNS	95170.70	12/06/22		CL 107512	95170.70
105442	S	3833 VALLEY GREEN	7950.00	12/06/22		CL 107353	7950.00
105443	S	1553 VARITECH INDUSTRIES, INC	1724.57	12/06/22		CL 107429	1724.57
105444	S	544 WALLWORK TRUCK CENTER	858.80	12/06/22		CL 107342	168.56
						CL 107402	17.64
						CL 107464	665.26
						CL 107467	7.34
105445	S	576 WALMART COMMUNITY CARD	725.18	12/06/22		CL 107390	693.64
						CL 107411	31.54
105446	S	4017 WARD MUSCATELL AUTOMOTIVE GROUP INC	35120.00	12/06/22		CL 107371	35120.00
105447	S	566 WEST FARGO PARK DISTRICT	89386.09	12/06/22		CL 107535	89386.09

12/16/22
08:29:02

CITY OF WEST FARGO, ND
Check Register
For the Accounting Period: 12/22

Page: 9 of 9
Report ID: AP300

Claim Checks

Check #	Type	Vendor #/Name	Check Amount	Date Issued	Period Redeemed	Claim #	Claim Amount
105448	S	2184 WEST SIDE STEEL	1504.19	12/06/22			
						CL 107438	1504.19
105449	S	549 WF PUB SCHOOLS DIST #6	10032.50	12/06/22			
						CL 107374	10032.50
105450	S	338 XCEL ENERGY	3147.27	12/06/22			
						CL 107315	98.58
						CL 107495	47.31
						CL 107496	300.04
						CL 107526	26.62
						CL 107527	17.09
						CL 107540	133.13
						CL 107541	51.25
						CL 107542	44.12
						CL 107543	2151.65
						CL 107544	277.48
105451	S	3549 WEX	2533.04	12/06/22			
						CL 107546	2533.04
105452	S	1234 TOOL WAREHOUSE INC	1914.53	12/13/22			
						CL 107588	1914.53
105453	S	274 STEVE MOTTINGER	5000.00	12/13/22			
						CL 107654	5000.00
Total for Claim Checks			3157588.10				
Count for Claim Checks			167				

* denotes missing check number(s)

of Checks: 167 Total: 3157588.10

*** Consent Agenda ***

AGENDA ITEM DESCRIPTION
CITY COMMISSION
WEST FARGO, NORTH DAKOTA

1. CONTACT PERSON: Aaron Nelson
2. PHONE NUMBER: 515-5370 DATE: December 12, 2022
3. AGENDA TITLE:
Approval of agreement for EDA Public Space Initiative – Placemaking Planning Grant Award.
4. PLEASE **BRIEFLY** DESCRIBE YOUR REQUEST:
The City of West Fargo was recently awarded a \$100,000 placemaking planning grant through the U.S. Economic Development Administration and ND Department of Commerce’s Statewide Public Space Initiative - Placemaking Planning Grant program. The attached agreement specifies the terms and conditions of the grant award and requires approval by the City in order for the City to be eligible to receive the grant funds. The request is for the City Commission to approve the attached agreement.
5. SITE ADDRESS OR LEGAL DESCRIPTION (if applicable):
N/A
6. ACTION BEING REQUESTED FROM CITY COMMISSION:
Approval of the EDA Public Space Initiative – Placemaking Planning Grant agreement.

City of West Fargo
EDA Public Space Initiative – Placemaking Planning Grant
Project Title: West Fargo Downtown Placemaking Plan Project

AGREEMENT NUMBER: 3124

The parties to this agreement are the State of North Dakota, acting through its Department of Commerce, Economic Development and Finance Division (STATE), and the City of West Fargo (GRANTEE).

1. SCOPE OF SERVICE

This agreement incorporates the EDA Public Space Initiative – Placemaking Planning Grant application dated 08/31/2022. This agreement incorporates requirements of the EDA Public Space Initiative – Placemaking Planning Grant Guidance, version dated August 26, 2022.

Project is to:

The grantee is to select a qualified third party to complete a Strategic and Development Plan for placemaking uses in the West Fargo Downtown area.

Under this grant, it is understood that the STATE and GRANTEE are bound to follow the EDA Public Space Initiative – Placemaking Planning Grant Guidance, as it pertains to such items as match requirements, reporting requirements, agreement modification, and agreement closeout. GRANTEE acknowledges that any funds disbursed to GRANTEE that are not utilized in accordance with grant requirements must be refunded to STATE.

2. TERM OF AGREEMENT

The term of this agreement is for a period, commencing effective upon completion of signatures and terminating on the 30th day of November 2023.

3. COMPENSATION

STATE will provide reimbursement of expenses related to the project for eligible activities completed following the execution of the agreement.

EDA Public Space Initiative – Placemaking Planning Grant Funds:

The City of West Fargo's grant request is \$100,000, a request for proposals will be developed and solicit a planning team with a scope that limits the total project cost to \$100,000 This grant does not have a match requirement.

Recipient may use award funds to cover eligible costs, specifically the planning and conceptualization of placemaking efforts and projects, incurred during the period that begins upon execution of this agreement and concludes on September 30, 2023. Reimbursement requests must be submitted no later than October 1, 2023.

4. **TERMINATION OF AGREEMENT**

- A. **Termination without cause.** This agreement may be terminated by STATE upon 30 days written notice.
- B. **Termination for lack of funding or authority.** Either party may terminate this agreement effective upon delivery of written notice to the other, or on any later date stated in the notice, under any of the following conditions:
1. If funding from state or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The agreement may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.

Termination of this agreement under this subsection shall any obligations or liabilities of either party already accrued prior to termination.

- C. **Termination for cause.** The STATE by written notice of default to the GRANTEE may terminate the whole or any part of this agreement:
1. If the GRANTEE fails to provide services required by this agreement within the time specified or any extension agreed to by the STATE; or
 2. If the GRANTEE fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms.
 3. The rights and remedies of the STATE provided in the above clause related to defaults by the GRANTEE are not exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

5. **FORCE MAJEURE**

GRANTEE shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the Grantee's reasonable control and the GRANTEE gives notice to the STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

6. **RENEWAL**

This agreement will not automatically renew.

7. MERGER AND MODIFICATION

This agreement constitutes the entire agreement between the parties. There are no understandings, additional agreements, or representations, oral or written, not specified within this agreement. This agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both parties. Any unexpended funds remaining at the end of the agreement period will be recovered by the State through issuance of a Unilateral Agreement Modification.

8. SEVERABILITY

If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement did not contain that term.

9. ASSIGNMENT AND SUBCONTRACTS

GRANTEE may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the GRANTEE may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this agreement and incorporates this agreement, including any attachments. GRANTEE is solely responsible for the performance of any subcontractor. GRANTEE has no authority to enter into an agreement or contract for or incur obligations on behalf of the STATE.

10. NOTICE

All notices or other communications required under this agreement shall be given by registered or certified mail or email confirmation and are complete on the date imprint when addressed to the parties at the following addresses:

- North Dakota Department of Commerce, PO Box 2057, Bismarck, ND 58502-2057, Communitydevelopment@nd.gov
- City of West Fargo Attn Malachi Petersen, 800 Fourth Ave E Suite #1, West Fargo, ND 58078

11. APPLICABLE LAW AND VENUE

This agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this agreement must be brought in the District Court of Burleigh County, North Dakota.

12. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

GRANTEE shall promptly notify STATE of all potential claims which arise or result from this agreement. GRANTEE shall also take all reasonable steps to preserve all physical evidence and information, which may be relevant to the circumstances

surrounding a potential claim, while maintaining public safety, and grants to the STATE the opportunity to review and inspect the evidence, including the scene of an accident.

13. COMPLIANCE WITH PUBLIC RECORDS LAW

Each party acknowledges that as a North Dakota state government entity, it is subject to North Dakota open records law, N.D.C.C. chapter 44-04. Each party agrees not to use or disclose any information it receives from the other party under this agreement that the sending party has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by the sending party. If one party has been notified of a request for information under the public record law, it must notify the other party of said request. The duty of each party to maintain confidentiality of information under this section continues beyond the term of this agreement, or any extensions or renewals of it.

Each party understands that, except for disclosures prohibited as a result of that information meeting a specific exception to the North Dakota open records law, each party must disclose to the public upon request any records it receives from the other. Each party further understands that any records which are obtained or generated by either party under this agreement, except for records that are confidential under this provision, may, under certain circumstances, be open to the public upon request under the North Dakota open records law.

14. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, or materials created or purchased under this agreement belongs to the STATE and must be delivered to STATE at State's request upon termination of this agreement. GRANTEE agrees that all materials prepared under this agreement are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests GRANTEE may have in the materials it prepares under this agreement, including any right to derivative use of the material. GRANTEE shall execute all necessary documents to enable STATE to protect its rights under this section. Notwithstanding the forgoing, STATE recognizes that GRANTEE brings to the work specified herein certain intellectual property. STATE agrees that GRANTEE shall remain the sole owner of said intellectual property during this project and after its completion.

15. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

Each party agrees to comply with all applicable laws, rules, regulations, and policies, including but not limited to those relating to nondiscrimination, accessibility, and civil rights. GRANTEE agrees to timely file all required reports, make required payroll deductions, and timely pays all taxes and premiums owed, including, but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. GRANTEE shall have and keep current at all times during the term of this agreement all licenses and permits required by law.

16. STATE AUDIT

Each party acknowledges that all records, regardless of physical form, and the accounting practices and procedures of each party relevant to this agreement are subject to examination by the North Dakota State Auditor or the Auditor's designee. GRANTEE will maintain all such records for at least three years following completion of this agreement.

17. TAXPAYER ID

Grantee's federal employer ID number 45-6002542

18. EFFECTIVENESS OF AGREEMENT

This agreement is not effective until fully executed by both parties.

GRANTEE
City of West Fargo

Bernie Dardis, Mayor

Tina Fisk, City Auditor

DATE: _____

STATE OF NORTH DAKOTA
Department of Commerce

Rich Garman, Director of Economic Development
and Finance Division

DATE: _____

November 30, 2022

City of West Fargo
Matt Andvik, Public Works Director
800 4th Ave E. STE 1
West Fargo, ND 58078

**RE: Letter Agreement between Client and AE2S
West Fargo 2023 Hourly I&C Support Services**

Dear Mr. Andvik:

Advanced Engineering and Environmental Services, LLC (AE2S) proposes to render instrumentation and controls (I&C) services (Assignment) to the City of West Fargo (CLIENT).

This Agreement, including Exhibit A, sets forth the terms and conditions under which the CLIENT and AE2S shall be governed regarding the Assignment.

Scope of Basic Services

AE2S will provide on-call I&C system services upon specific request(s) of the CLIENT, which is anticipated to include, but not limited to, the following tasks:

- Instrumentation and controls (I&C) system services to support the operation of CLIENT's Ignition supervisory control and data acquisition (SCADA) system;
- Programming services for programmable logic controllers (PLCs) to automate miscellaneous processes and improvements; and
- Assistance in troubleshooting program deficiencies and testing for correct operation.

Additional Services

Services resulting from significant changes in the general scope, extent, or character of the Assignment are not included as a part of the Scope of Basic Services. If authorized in writing by the CLIENT, AE2S will provide services beyond the scope of this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B.

CLIENT'S Responsibilities

CLIENT shall do the following in a timely manner, so as not to delay the services of AE2S:

1. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, and interpret and define CLIENT's policies and decisions with respect to services for the Assignment.

City of West Fargo

Mr. Matt Andvik

RE: Letter Agreement for West Fargo Hourly I&C Support Services

November 30, 2022

Page 2 of 3

2. Provide relevant information regarding requirements for the Assignment. AE2S shall be entitled to use and rely upon all information provided by CLIENT or others in performing AE2S's services under this Agreement.
3. Provide access to the relevant site sufficient for AE2S to perform its services under this Agreement.
4. CLIENT shall, so long as AE2S is not in default, promptly pay AE2S for such services as have been performed satisfactorily hereunder in accordance with the fee terms set forth herein.

CLIENT shall bear all costs incident to compliance with its responsibilities pursuant to this section.

Fees

AE2S shall render services under this Agreement on an hourly basis in accordance with the Hourly Fee Schedule attached as Exhibit B not to exceed \$30,000 without written authorization from CLIENT, plus reimbursement for all project related expenses.

Performance Schedule

AE2S shall use commercially reasonable efforts to complete Basic Services within a reasonable time period.

Contract Documents

This Agreement includes the following documents, incorporated herein by reference:

1. Exhibit A - Terms and Conditions;
2. Exhibit B - Hourly Fee and Expense Schedule;
3. All other attached Exhibits referenced in this Agreement;
4. Any drawings or specifications provided by the CLIENT in writing; and
5. Any duly executed written amendments.

There are no contract documents other than this Agreement and those documents listed above.

If this Agreement sets forth your understanding of our agreement, including the scope of work desired, fees, terms, and conditions, please sign in the space provided and return a copy to AE2S. Thank you for the opportunity to assist in this project and we look forward to working with you.

Sincerely,



Jason Stewart
Senior I&C Technician

City of West Fargo

Mr. Matt Andvik

RE: Letter Agreement for West Fargo Hourly I&C Support Services

November 30, 2022

Page 3 of 3

AE2S

CLIENT

Accepted this _____ day of
_____, 20____

By: _____


Ryan Grubb, PE
Operations Manager

By: _____

Name (Print): _____

Title: _____

Standard Terms and Conditions

The Agreement is supplemented to include the following terms and conditions:

1. **Standard of Care**
 - a. The standard of care for all professional services performed or furnished by AE2S under this Agreement will be the care and skill ordinarily used by members of AE2S's profession practicing under similar circumstances at the same time and in the same locality. AE2S makes no warranties, express or implied, under this Agreement or otherwise, in connection with AE2S's services.
 - b. CLIENT shall be responsible for, and AE2S may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by CLIENT to AE2S pursuant to this Agreement. AE2S may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
2. **Payments to AE2S**

Invoices will be prepared in accordance with AE2S's standard invoicing practices and will be submitted to CLIENT by AE2S monthly, unless otherwise agreed. Invoices are due and payable within 30 days. If CLIENT fails to make any payment due AE2S for services and expenses within 30 days, the amounts due AE2S will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, AE2S may, after giving seven days written notice to CLIENT, suspend services under this Agreement until AE2S has been paid in full all amounts due for services, expenses, and other related charges. All payments shall be made in United States Dollars.
3. **Insurance**

AE2S will maintain insurance coverage for Workers' Compensation, Professional Liability, General Liability, and Automobile Liability and will provide certificates of insurance to CLIENT upon request.
4. **Indemnification and Allocation of Risk**
 - a. To the fullest extent permitted by law, AE2S shall indemnify and hold harmless CLIENT and CLIENT's officers, directors, members, and employees from any and all costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of AE2S or AE2S's officers, directors, members, partners, employees, or Consultants. The parties expressly agree that AE2S or AE2S's officers, directors, members, partners, or employees have no duty to defend CLIENT and CLIENT's officers, directors, members, and employees against any claims, causes of action, demands, lawsuits, or proceedings of any kind.
 - b. To the fullest extent permitted by law, AE2S's total liability to CLIENT and anyone claiming by, through, or under CLIENT for any injuries, losses, damages and expenses caused in part by the negligence of AE2S and in part by the negligence of CLIENT or any other negligent entity or individual, shall not exceed the percentage share that AE2S's negligence bears to the total negligence of CLIENT, AE2S, and all other negligent entities and individuals.
5. **Exclusion of Special, Incidental, Indirect, and Consequential Damages**

To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, AE2S and AE2S's officers, directors, partners, employees, agents, and Consultants, or any of them, shall not be liable to CLIENT or anyone claiming by, through, or under CLIENT for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Assignment or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract or warranties, express or implied, of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them.
6. **Limit of Liability**

To the fullest extent permitted by law, notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of AE2S and AE2S's officers, directors, partners, employees, agents, and AE2S's Consultants, and any of them, to CLIENT and anyone claiming by, through, or under CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of AE2S or AE2S's officers, directors, partners, employees, agents, or AE2S's Consultants, or any of them, shall not exceed total compensation received by AE2S as part of this agreement.
7. **Termination of Contract**

Either party may at any time, upon seven days prior written notice to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to AE2S all amounts owing to AE2S under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs.
8. **Access**

CLIENT shall arrange for safe access to and make all provisions for AE2S and AE2S's Consultants to enter upon public and private property as required for AE2S to perform services under this Agreement.
9. **Hazardous Environmental Conditions**

It is acknowledged by both parties that AE2S's scope of services does not include any services related to a "Hazardous Environmental Condition," i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Assignment. In the event AE2S or any other party encounters a Hazardous Environmental Condition, AE2S may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Assignment affected thereby until CLIENT: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. CLIENT acknowledges that AE2S is performing professional services for CLIENT and that AE2S is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with AE2S's activities under this Agreement.
10. **Patents**

AE2S shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising therefrom. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.
11. **Ownership and Reuse of Documents**

All documents prepared or furnished by AE2S pursuant to this Agreement are instruments of service, and AE2S shall retain an ownership and property interest therein.

12. Use of Electronic Media
- a. Copies of Documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by the AE2S. Files in electronic media format of text, data, graphics, or of other types that are furnished by AE2S to CLIENT are only for convenience of CLIENT. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- b. When transferring documents in electronic media format, AE2S makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by AE2S at the beginning of this Assignment.
- c. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- d. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. AE2S shall not be responsible to maintain documents stored in electronic media format after acceptance by CLIENT.
13. Contractors
- AE2S shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall AE2S have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at a project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. AE2S neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between CLIENT and such contractor. AE2S shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except AE2S's own employees) at a project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by AE2S.
14. Force Majeure
- AE2S shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond AE2S's reasonable control.
15. No Third Party Beneficiaries
- All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and AE2S and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or AE2S. AE2S's services under this Agreement are being performed solely for CLIENT's benefit, and no other entity shall have any claim against AE2S because of this Agreement or the performance or nonperformance of services hereunder.
16. Assignment
- Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.
17. Binding Effect
- This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.
18. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and AE2S, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

19. Survival
- All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.
20. Headings
- The headings used in this Agreement are for general reference only and do not have special significance.
21. Controlling Law
- This Agreement is to be governed by the law of the State of North Dakota without regard to its conflicts of laws principles.
22. Notices
- Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
23. Executed in Counterparts
- This Agreement may be executed in counterparts, each of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement shall constitute effective delivery of this Agreement. Each party agrees that the delivery of the Agreement by facsimile or electronic mail shall have the same force and effect as delivery of original signature and that each party may use such facsimile or electronic mail signatures as evidence of the execution and delivery of the Agreement by the parties to the same extent that an original signature could be used.

This is EXHIBIT B, consisting of 2 pages, referred to in and part of the Agreement between CLIENT and AE2S dated November 30, 2022

Hourly Fee and Expense Schedule

Reimbursable Expenses and Standard Hourly rates in effect on the date of the Agreement are set forth below. Rates are subject to annual adjustment effective January 1.

Labor Rates*

Administrative 1	\$65.00	I&C Assistant	\$100.00
Administrative 2	\$79.00	I&C 1	\$148.00
Administrative 3	\$95.00	I&C 2	\$175.00
		I&C 3	\$198.00
Communications Specialist 1	\$105.00	I&C 4	\$210.00
Communications Specialist 2	\$122.00	I&C 5	\$220.00
Communications Specialist 3	\$141.00		
Communications Specialist 4	\$170.00	IT 1	\$130.00
Communications Specialist 5	\$187.00	IT 2	\$175.00
		IT 3	\$215.00
Construction Services 1	\$125.00		
Construction Services 2	\$153.00	Land Surveyor Assistant	\$95.00
Construction Services 3	\$170.00	Land Surveyor 1	\$115.00
Construction Services 4	\$188.00	Land Surveyor 2	\$139.00
Construction Services 5	\$208.00	Land Surveyor 3	\$157.00
		Land Surveyor 4	\$173.00
Engineering Assistant 1	\$85.00	Land Surveyor 5	\$190.00
Engineering Assistant 2	\$99.00		
Engineering Assistant 3	\$125.00	Operations Specialist 1	\$100.00
Engineer 1	\$135.00	Operations Specialist 2	\$125.00
Engineer 2	\$162.00	Operations Specialist 3	\$155.00
Engineer 3	\$190.00	Operations Specialist 4	\$177.00
Engineer 4	\$220.00	Operations Specialist 5	\$199.00
Engineer 5	\$235.00		
		Project Coordinator 1	\$116.00
Engineering Technician 1	\$84.00	Project Coordinator 2	\$130.00
Engineering Technician 2	\$105.00	Project Coordinator 3	\$145.00
Engineering Technician 3	\$126.00	Project Coordinator 4	\$160.00
Engineering Technician 4	\$141.00	Project Coordinator 5	\$180.00
Engineering Technician 5	\$161.00		
		Project Manager 1	\$205.00
Financial Analyst 1	\$112.00	Project Manager 2	\$225.00
Financial Analyst 2	\$127.00	Project Manager 3	\$240.00
Financial Analyst 3	\$153.00	Project Manager 4	\$254.00
Financial Analyst 4	\$167.00	Project Manager 5	\$272.00
Financial Analyst 5	\$186.00	Project Manager 6	\$284.00
GIS Specialist 1	\$105.00	Sr. Designer 1	\$178.00
GIS Specialist 2	\$127.00	Sr. Designer 2	\$198.00
GIS Specialist 3	\$150.00	Sr. Designer 3	\$212.00
GIS Specialist 4	\$168.00		
GIS Specialist 5	\$187.00	Sr. Financial Analyst 1	\$210.00
		Sr. Financial Analyst 2	\$230.00
		Sr. Financial Analyst 3	\$250.00
		Technical Expert 1	\$325.00
		Technical Expert 2	Negotiable

Reimbursable Expense Rates

Transportation	\$0.75/mile
Survey Vehicle	\$0.95/mile
Laser Printouts/Photocopies	\$0.30/copy
Plotter Printouts	\$1.00/s.f.
UAS - Photo/Video Grade	\$100.00/day
UAS – Survey	\$50.00/day
Total Station – Robotic	\$35.00/hour
Mapping GPS	\$25.00/hour
Fast Static/RTK GPS	\$50.00/hour
All-Terrain Vehicle/Boat	\$100.00/day
Cellular Modem	\$75.00/month
Web Hosting	\$26.00/month
Legal Services Reimbursement	\$250.00/hour
Outside Services	cost * 1.15
Geotechnical Services	cost * 1.30
Out of Pocket Expenses	cost * 1.15
Rental Car	cost * 1.20
Project Specific Equipment	Negotiable

* Position titles are for labor rate grade purposes only.

These rates are subject to adjustment each year on January 1.



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 **North Dakota Association For The Disabled, 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 Bordertown Bar & Grill			
Street 807 Main Ave E	City West Fargo	ZIP Code 58078	County Cass
Beginning Date(s) Authorized 1/1/23	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) Gaming will be conducted in the entire bar (excluding 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	☐ 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.

\$100⁰⁰ EH
check #29979

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. 05-2018)

License Number (Office Use Only)

Site Owner (Lessor) Brtn, Llc		Site Name Bordertown Bar & Grill		Site Phone Number (701) 277-1968
Site Address 807 Main Ave E	City West Fargo	State ND	Zip Code 58078	County Cass
Organization (Lessee) North Dakota Association For The Disabled, Inc.		Rental Period 1/1/2023 to 6/30/2027		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 _____ X Rent per Table \$ _____ Number of Tables with wagers over \$5 <u>1</u> X Rent per Table \$ <u>0.00</u>				☐ No ☒ Yes \$ 0.00 \$ 0.00
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____				☒ No ☐ Yes \$ 0.00
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 ☒ Electronic Dispensing Device Number of Electronic Devices <u>10</u> No additional rent is allowed for electronic pull tabs. Rent must be based on dispensing device requirements per NDCC 53-06.1-11 (5)(a)(b)				☐ No ☒ Yes \$ 0.00
Total Monthly Rent				\$ 0.00

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.

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 PRESIDENT	Date 12-08-22
Signature of Lessee 	Title CFO	Date 12-08-22

(over)



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

Horse Race North Dakota

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 <i>Doubletree</i>			
Street <i>825 E Benton Dr</i>	City <i>West Fargo</i>	ZIP Code <i>58078</i>	County <i>Cass</i>
Beginning Date(s) Authorized		Ending Date(s) Authorized	
		Number of twenty-one tables if zero, enter "0":	
Specific location where games of chance will be conducted and played at the site (required) <i>entire facility excluding restrooms and guest rooms</i>			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known <i>1/20/23 to 1/22/23</i>			

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	☐ 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) KAS Hospitality LLC		Site Name Doubletree		Site Phone Number 701-551-0120	
Site Address 825 S Benton Dr		City West Fargo	State ND	Zip Code 58078	County Cass
Organization (Lessee) Horse Race North Dakota		Rental Period 1/20/23 to 1/23/23		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	
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 ☐ No ☐ Yes	
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____				☒ No ☐ Yes ☐ 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 ☐ No ☐ Yes	
☐ Electronic Dispensing Device Number of Electronic Devices _____				☐ No ☐ Yes	
Total Monthly Rent				\$	

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 GM	Date 10/20
Signature of Lessee 	Title GM	Date 12-8-22



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (07/2016)

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

Full, Legal Name of Gaming Organization **Minndak RMEF 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 Doubletree by Hilton			
Street 825 E Beaton Dr	City West Fargo	ZIP Code 58078	County Cass
Beginning Date(s) Authorized 3/18/23	Ending Date(s) Authorized 3/18/23	Number of twenty-one tables if zero, enter "0" 0	
Specific location where games of chance will be conducted <u>and</u> played at the site (required) Private Ball Room			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known 3/18/23			

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	☐ 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

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

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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



RENTAL AGREEMENT
OFFICE OF ATTORNEY GENERAL
LICENSING SECTION
SFN 9413 (Rev. 08-2013)

License Number (Office Use Only)

Site Owner (Lessor) Doubletree By Hilton		Site Name Doubletree By Hilton		Site Phone Number (701) 551-0120
Site Address 825 E Beaton Dr	City West Fargo	State ND	Zip Code 58087	County Cass
Organization (Lessee) Minn Dak Rmef Inc.		Rental Period 3/18/2023 to 3/18/2023		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		\$
2. Is a raffle drawing going to be conducted at this site?		☐ No ☒ Yes		\$ 0.00
3. Is Prize Boards involving a dispensing device conducted at this site?		☒ No ☐ Yes		\$
4. 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		\$ \$
5. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____		☒ No ☐ Yes		\$
6. Is Pull Tabs involving either a jar bar and/or a dispensing device conducted at this site? Please check: ☐ Jar Bar Only ☐ Dispensing Device Only ☐ Jar Bar and Dispensing Device		☒ No ☐ Yes		\$
				Total Monthly Rent \$ 0.00

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 or prize boards 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.

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 Sales Manager	Date 12/7/22
Signature of Lessee (Top Executive Official) 	Title Regional Director	Date

(over)



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 Cowboy Up Ride Against Cancer	Dates of Activity January 7, 2023	If raffle, provide drawing date January 7, 2023	
Organization or Group Contact Person Karen Haugen	Title or Position Volunteer	Telephone Number 701-267-1518	
Business Address there is no business office	City	State	ZIP Code
Mailing Address (if different) 1810 17th St S	City Moorhead	State MN	ZIP Code 56560
Site Name (where gaming will be conducted) DoubleTree by Hilton			
Site Address 825 E Beaton Dr,	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	Meat	\$1,000.00
Raffle	Meat	1,000
Total (limit \$40,000 per year)		2,000-

Intended Uses of Gaming Proceeds Roger Maris Cancer Center
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: \$500.00 (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 Karen Haugen	Title Volunteer	Telephone Number 701-367-1518	E-mail Address karenhaugen58@gmail.com
Signature of Organization or Group's Top Official <i>Karen Haugen</i>		Title Volunteer	Date 12/13/22

\$10- check # 19266EH



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	
☐ 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 <i>Red River Infinity Volleyball</i>	Dates of Activity	If raffle, provide drawing date <i>5/7/23</i>	
Organization or Group Contact Person <i>Nikki Hersrud</i>	Title or Position <i>Board member</i>	Telephone Number <i>701-367-5397</i>	
Business Address <i>1555 43rd St S #104</i>	City <i>Fargo</i>	State <i>ND</i>	ZIP Code <i>58103</i>
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) <i>Rustad Recreational Center</i>			
Site Address <i>601 26th Ave E</i>	City <i>West Fargo</i>	ZIP Code <i>ND</i>	County <i>CASS</i>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
<i>Raffle</i>	<i>Cash</i>	<i>\$4000</i>
Add Row	Delete Row	
Total (limit \$40,000 per year)		<i>4000</i>

Intended Uses of Gaming Proceeds <i>Fundraising for volleyball club</i>	
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 <i>Nikki Hersrud</i>	Title <i>Board member</i>	Telephone Number <i>701-367-5397</i>	E-mail Address <i>nikki@rriv.onmicrosoft.com</i>
Signature of Organization or Group's Top Official <i>[Signature]</i>		Title <i>Board member</i> <i>Chair, Fundraising</i>	Date <i>12/6/22</i>



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 <u>Leroy Turner Cowboy Up Ride Against Cancer</u>	Dates of Activity 01/07/2023	If raffle, provide drawing date	
Organization or Group Contact Person Leroy Turner	Title or Position	Telephone Number 701-238-2881	
Business Address	City	State	ZIP Code
Mailing Address (if different) 1514 170th Ave	City Wolverton	State MN	ZIP Code 56594
Site Name (where gaming will be conducted) West Fargo Conference Center			
Site Address 825 E Beaton Dr	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
NL Holdem Poker	\$150 buy-in, 80% payout determined by tournament play.	
Total (limit \$40,000 per year)		

Intended Uses of Gaming Proceeds Donation to Roger Maris Cancer Center. Leroy Turner is a recent cancer survivor himself.	<u>Cash \$10-9H</u>
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 Leroy Turner	Title	Telephone Number 701-238-2881	E-mail Address caeslinger@yahoo.com
Signature of Organization or Group's Top Official <u>[Signature]</u>		Title	Date 12/1/22



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 <u>St. John Paul II Catholic Schools</u>	Dates of Activity <u>01/29/2023</u>	If raffle, provide drawing date <u>01/29/2023</u>	
Organization or Group Contact Person <u>Liz Bassett</u>	Title or Position <u>Special Events Coord.</u>	Telephone Number <u>701-893-3242</u>	
Business Address <u>5600 25th Street S.</u>	City <u>Fargo</u>	State <u>ND</u>	ZIP Code <u>58104</u>
Mailing Address (if different)	City	State	ZIP Code
Site Name (where gaming will be conducted) <u>Trinity Elementary School</u>			
Site Address <u>2811 7th Street E</u>	City <u>West Fargo</u>	ZIP Code <u>ND</u>	County <u>58078</u>

Description and Retail Value of Prizes to be Awarded

Game Type	Description of Prize	Retail Value of Prize
Raffle Board	Three-night stay at Detroit Lakes Cabin	\$1200.00
Add Row	Delete Row	
Total (limit \$40,000 per year)		<u>12,000</u>

Intended Uses of Gaming Proceeds

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: 7,000.00 (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 <u>Liz Bassett</u>	Title <u>Special Events Coord.</u>	Telephone Number <u>701-893-3242</u>	E-mail Address <u>liz.bassett@jp2schools.org</u>
Signature of Organization or Group's Top Official <u>[Signature]</u>		Title <u>Special Events Coordinator</u>	Date <u>12/8/2023</u>

Cash \$10-gh



To: West Fargo City Commission

From: Casey Sanders-Berglund, Economic Development Manager

Date: December 19, 2022

Subject: Increase number of members on EDAC

Action: Approve an addition of three seats on the Economic Development Advisory Committee

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

Summary:

The Economic Development Advisory Committee meets on the first Thursday of each month. This committee is a recommending body to the City Commission on applications for city incentives as well as city funded projects requesting the use of Economic Development sales tax. The current members of this committee are comprised with six total voting members.

Ensuring that we will have a quorum available on a monthly basis has been challenging. Adding three additional members not only will give us an odd number for our committee, increase a quorum to five and we would have the opportunity to add to the business composition of the committee.

Current Composition:

Current Membership Composition

(Must conduct business in the City of West Fargo)

Technology (1) Service (1) Banks (1) Manufacturing (1) Retail (1) Utilities (1)

Proposed additions to the Committee Composition:

Construction or Engineering (1) Small Business Owner (1)

Member At Large (1) – Individual Community Member (Retired, College Student, Faculty Member, Not-For Profit, Subject Matter Expert in a related field)

Economic Development Advisory Committee Recommendation:

At their December 1st meeting the Economic Development Advisory Committee unanimously voted to recommend approval of the proposed three additional seats on the Economic Development Advisory Committee.

Request:

Staff is requesting the City Commission to approve the additional three Economic Development Advisory Committee members to the current committee.

Elevating the quorum to five out of nine total members in the proposed areas of construction or engineering, small business, and a member at large.

No additional Changes to the Organizational Guidelines of the West Fargo

Economic Development Advisory Committee.

ORDINANCE NO. 1217

AN ORDINANCE TO CREATE AND ENACT CHAPTER 10-08 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO EXTERMINATION OF INSECTS AND VERMIN.

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

SECTION 1. Chapter 10-08 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby created and enacted to read as follows:

CHAPTER 10-08

EXTERMINATION OF INSECTS AND VERMIN

Sections:

- 10-0801. Operations Prohibited Without License.
- 10-0802. License Required.
- 10-0803. Issuance of License.
- 10-0804. Fees for Licenses.
- 10-0805. Notification of Officers.
- 10-0806. Regulations.
- 10-0807. Penalty for Violation.

10-0801. OPERATIONS PROHIBITED WITHOUT LICENSE. No person, firm, or corporation shall fumigate with any poisonous or dangerous gases, fumes, vapors, or other agents that are liable to endanger the health and lives of human beings when used for the extermination or control of disease germs, household insects, vermin, rodents, or other household pests in any place of domestic habitation, office buildings, stores, markets, warehouses, places of public assembly, asylums, hospitals, or other similar places without first obtaining a license as hereinafter required. No person, firm, or corporation shall commercially engage in the business of exterminating with powders, liquids, sprays, poisonous baits, or other insecticides without first obtaining a license.

10-0802. LICENSE REQUIRED. Any person, firm, or corporation, desiring a license to engage in the business of extermination of disease germs, household insects, vermin, rodents, or other household pests in the City shall make a written application for such a license to the health officer on a form provided for such purpose. Such application shall state whether hydrocyanic acid gas or similar dangerous gases or fumigants, or exterminators, or insecticides are to be used for fumigating purposes. The term

"fumigant" shall mean and include any substance which by itself or in combination with any other substance emits or liberates a gas, fumes, or vapors, which gas, fumes, or vapors when liberated and used for the destruction or control of insects, vermin, germs, rodents, or other pests is lethal, poisonous, noxious, or dangerous to human life. The terms "exterminator" or "insecticide" as used herein shall mean and include any substance, not a fumigant, under whatever name known, used for the destruction or control of insects, vermin, germs, rodents, or other pests. In addition, the applicant shall file with the health officer, a sworn statement, listing the training and experience tending to qualify the applicant desiring to engage in the business of exterminating with dangerous and poisonous gases, fumes, vapors, or other agents. The health officer may also examine applicants by giving such oral or written examination as he deems necessary. The health officer is authorized to appoint an advisory board of three representatives of the fumigating industry to confer with him upon matters of technical information with reference to said business and to assist him in drafting questions for such examinations as he deems necessary to determine the fitness and reliability of the applicant and to ascertain his knowledge of the requirements of said business as set forth in this ordinance. Every person and every firm or corporation, by an officer or agent, engaged in exterminating work shall be required to obtain a license for such work, and no employee of such person, firm, or corporation shall be permitted to do any work for the person, firm, or corporation while engaged in exterminating work unless such employee is under the immediate supervision of a licensed exterminator employed by the person, firm, or corporation.

10-0803. ISSUANCE OF LICENSE. The health officer shall issue a license to applicants when he believes them to be qualified to engage in the business of exterminating or fumigating with dangerous and poisonous gases, fumes, vapors, or other agents.

10-0804. FEE FOR LICENSES. The annual license fee for any person, firm, or corporation engaging in the exterminating business shall be as established by resolution of the Board of City Commissioners. The approval of the health officer for the renewal of the licenses as provided for by this section shall be obtained before such a license is renewed.

10-0805. NOTIFICATION OF OFFICERS. It shall be the duty of every person, firm, or corporation holding a license under this article for fumigating with dangerous gases, fumes and vapors, to notify in writing the health department, fire department, and police department at least 24 hours before starting to fumigate any premises, except that in case of emergency, notification may be made by telephone immediately preceding fumigation, to be followed by written notice. Such notice shall give the location of the building or enclosed space to be fumigated, as well as the day and hour when the work will be performed. Representatives of these

departments may or may not inspect such premises before, during, or after the fumigation, but under no circumstances will the representatives of such departments or the city assume any responsibility for the work of the licensee. Greenhouses, specially constructed vaults, and other places performing their own fumigation are not required to obtain a license under the provisions of this article and are not required to notify the above-named departments whenever they fumigate, providing these places are so located or so constructed as not to endanger the health or lives of occupants or frequenters of these places and nearby buildings or persons in the vicinity.

10-0806. REGULATIONS. When dangerous gases, fumes, or vapors are used for exterminating purposes, the following procedure shall be followed:

1. Notification of occupants and vacating of premises. Before fumigation, the operator shall personally inspect the premises, and shall serve notice, over his signature, upon all responsible occupants of each room or apartment within the danger area, stating the danger of the process and the precautions to be observed, designating the rooms or apartments which must be vacated, and indicating the time when the gas is to be generated and liberated. The form of this notice shall be approved by the health officer. Every room in the danger area shall be vacated. In the case of a building in which there is an inner court, vent shaft, or light well, or a lot-line court with a partywall, or in the case of two buildings having adjacent lot-line courts, upon which any room being gassed opens, every room, with windows or other apertures opening to such inner or lot-line courts, vent shafts or light wells, shall be vacated or the windows remain closed until the fumigation room is thoroughly ventilated. Where the walls of any adjoining buildings are located within 10 feet of the rooms or apartments being gassed, the operator shall notify, over his signature, all responsible occupants of rooms or apartments with window openings in such wells that such windows are directly opposite or above the area of the adjoining building which is under gas and must remain closed, or the rooms vacated, during the time the building gassed is being flushed or aired. All rooms or apartments ordered vacated but not under gas shall be ventilated during the process by keeping the windows or rooms or apartment open.

The operator placing or liberating toxic gas during the process of fumigation and while he is entering and airing out the premises during said process and immediately thereafter shall be properly protected and safeguarded by

being equipped with a mask approved by the health officer and suitable gloves.

Vacating of premises and notification of occupants shall not be necessary where the fumigation is done in special rooms or vaults in furniture stores, secondhand stores, or household goods warehouses, when such special rooms or vaults are approved as to their location, construction, and gas-tightness by the fire department and a provision is made for the airing of such vaults so as to allow the escape of gases, fumes, or vapors at such location where it is not dangerous, by a system of ducts and ventilation approved by the fire department.

2. The danger area. The danger area is those portions of any structure or dwelling which lie within the boundary of the outside of the building under gas, the roof, the basement or cellar floor, and such cutoff or firewalls as may exist in the structure in question. Such cutoff or fire walls shall be of solid masonry, gas tight, at least eight inches in thickness, extending from the basement through the attic, with all openings locked and guarded against entry and effectively sealed against gas leakage.
3. Sealing rooms. Before fumigation with dangerous gases, fumes, or vapors, it is required that the operator shall securely seal all cracks, holes, crevices, openings, and apertures in walls, ceilings, and floors in such a way as to confine the gas to the premises intended to be fumigated.
4. Locking rooms and adjoining rooms or apartments. Before fumigation, it is required that the operator shall personally inspect all rooms and apartments ordered vacated under subdivision (A) above, and be assured that they are unoccupied by persons or domestic animals, and that all fish and growing plants have been removed; afterward all doors to all apartments, excepting one exit door to the rooms or apartments to be gassed, shall be securely locked; in addition, such windows or other wall openings as might possibly be used to gain entrance shall be locked or barred in such a way as to prevent entrance while still permitting thorough airing of the room. Immediately upon generating or liberating the gas, the door through which the operator leaves shall be securely locked and sealed, and all keys obtainable to all rooms or apartments ordered vacated shall be retained by the operator until all danger is past. As an additional precaution, all rooms and apartments vacated shall be placarded.

5. Warning card. Prior to releasing the gas, suitable warning signs shall be posted on all entrances or doors to the premises to be fumigated:

Skull and Crossbones Symbol	DANGER Fumigating With Poisonous Gas KEEP OUT	Skull and Crossbones Symbol
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By order of the West Fargo Fire Department (name and address of licensee as well as telephone number).

Such signs shall be printed in red ink on white cardboard. The letters in the word "DANGER" shall be at least two inches high, all others except signature, at least three-fourths of an inch high. At night, whenever possible, such signs shall be illuminated so as to make the reading matter thereon plainly legible.

6. Guards. Whenever dangerous gases, fumes, or vapors are generated or liberated in any room or portion of a structure in the city, a sufficient number of capable, alert watchmen shall remain on duty at the entrance to the building, room, or other enclosed space to prevent people from entering or attempting to enter while gas is present and for two hours after the room or area gassed is open for aeration and ventilation. All guards or watchmen shall be reliable persons and must be acceptable as proper guards by the health officer. The licensee shall be held strictly responsible and accountable for the conduct of the guards or watchmen. In every case where the entire building is not vacated, the licensee or his approved representative shall remain on the job during the progress of fumigation and airing and shall constantly supervise the occupancy of the structure to ensure that no person will be endangered or inconvenienced by gas leakage. Guards are not compulsory when one- or two-family residences are fumigated.
7. Opening of rooms after gassing. At the conclusion of the gassing process, it shall be the duty of the operator to throw open doors and windows of the premises until all rooms have been opened for free access of air. No person other than the operator shall be permitted to enter the premises until all traces of the gas have disappeared. No room or space, except where the whole building is vacated, shall be left under gas after the time of sunset. Warnings posted where the natural light between sunrise and sunset is dim shall be artificially illuminated.

8. Disposal of chemical residue. The operator shall pour the residue left in the jars or containers which held the chemicals and the water used for cleaning such jars or containers down the toilet bowl, which shall then be flushed thoroughly with water to remove all traces of the chemicals.
9. Powers of health officer. The health officer is further authorized and directed to give 30 days' notice of his intention to add or change rules and regulations with reference to the fumigating industry to representatives of said industry.
10. Separability. It is the intent of the Board of City Commissioners that the provisions of this chapter are separable, and if any provision or part of this Chapter shall be held unconstitutional by any court having competent jurisdiction, such decision shall not affect the validity of any other part of this Chapter. Such other parts shall remain in full force and effect.

10-0807. PENALTY FOR VIOLATION. The license of any person, firm, or corporation violating any of the provisions of this Chapter may be revoked by the Board of City Commissioners, who shall give due hearing to the licensee before such revocation. The licensee shall be given 10 days' certified mail notice of any such hearing.

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

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

ATTEST:

City Auditor

Date of First Reading:

Date of Second Reading:

Date of Publication:



Metropolitan Area Transit

650 23rd Street N
Fargo, ND 58102
Phone: 701-241-8140
Fax: 701-241-8558

December 19, 2022

West Fargo Board of City Commissioners
City Hall – 800 4th Avenue East
West Fargo, ND 58078

Dear Commissioners:

The City of Fargo has provided transit service in West Fargo for many years. An annual Mass Transit Agreement defines the level and cost of the service, and West Fargo provides Fargo with an appropriate amount of funds to pay for local costs of the transit service. A portion of the cost of transit service is paid for with grants from the Federal Transit Administration and the State of North Dakota – detailed breakdowns are attached.

Agreements for these services for 2022 and 2023 are attached for your consideration. Under the terms of this agreement, in 2022 the City of West Fargo will contribute \$18,246.87 a month toward the cost of fixed route transit service and \$12.85 a ride toward the cost of paratransit service. In 2023 the City of West Fargo will contribute \$19,460.42 a month toward the cost of fixed route transit service and \$16.95 a ride toward the cost of paratransit service.

RECOMMENDED MOTION: Approve of the Mass Transit Agreements with the City of West Fargo for 2022 and 2023.

Sincerely,

A handwritten signature in blue ink that reads "Julie Bommelman".

Julie Bommelman
City of Fargo Transit Director
476-6737

/enc

MASS TRANSIT AGREEMENT

This AGREEMENT made and entered into this 1st day of January, 2022, by and between the City of West Fargo, North Dakota (hereinafter "West Fargo") and the City of Fargo, North Dakota (hereinafter "Fargo").

WHEREAS, Fargo provides regular transit service and Paratransit service for its citizens; and

WHEREAS, West Fargo would like to provide such services to the citizens of West Fargo; and

WHEREAS, Fargo is agreeable to provide such transit service to West Fargo on the terms and conditions set out below;

NOW THEREFORE, be it agreed between West Fargo and Fargo as follows:

1. Fargo will provide regular transit service to West Fargo during the term of this agreement under the following conditions:
 - A. Fargo and West Fargo shall agree to routes, schedules, and stopping points of the transit service in West Fargo. It is understood that such West Fargo routes will tie into the Fargo route system at West Acres. Route 20 and stopping points must be such that the route can be completed in approximately thirty (30) minutes; the route will run once each hour. Route 24 and stopping points must be such that the route can be completed in approximately 60 minutes; the route will run once each hour.
 - B. West Fargo shall pay Fargo, on a monthly basis, \$18,246.87 a month in 2022, with payment being due by the 10th day of each month, for Route 20 and Route 24 transit service to be available in West Fargo. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
 - C. Persons who get onto the bus in West Fargo shall not be charged a fee to transfer onto other bus routes of the bus system, and may transfer onto another bus with no transfer fee.
 - D. The bus fare for using the buses in West Fargo shall be the same fare that is charged to passengers using the bus service in Fargo.
 - E. Fargo shall be responsible for all administrative responsibilities regarding the bus transit service provided to West Fargo, including dispatching, complaint issues, annual grant applications, marketing of routes, preparation and revision of route maps and schedules, and filing of any necessary reports.
2. Fargo shall provide West Fargo transit service for persons with disabilities through the Paratransit service on the following conditions:

- A. The service shall be available to the citizens of West Fargo on the same basis that it is available to citizens in Fargo.
 - B. The cost of the service to the citizens of West Fargo shall be the same cost as available to the citizens of Fargo.
 - C. It is understood between West Fargo and Fargo, that Fargo contracts with a provider for drivers services for the Paratransit service. West Fargo shall pay Fargo \$12.85 per ride in 2022, for paratransit services taken by a resident of West Fargo, except for those rides that are paid at an agency rate or those rides that are paid by Medicaid. West Fargo will not pay for rides billed at an agency rate or those rides that are paid by Medicaid. Fargo will track the number of rides for which West Fargo will be billed, as described herein, and will submit a monthly invoice to West Fargo. West Fargo will remit payment to Fargo by the 10th day of the following month. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
 - D. West Fargo, by written notification to Fargo, may limit the hours of Paratransit service in West Fargo, provided that such limitation would not cause any violation of any state or federal law.
- 3. West Fargo shall adhere to the Emergency Service Guidelines that Fargo has implemented.
 - 4. This agreement shall be for a period of twelve (12) months, beginning on January 1, 2022 and terminating on December 31, 2022.
 - 5. Either party may terminate or reduce the amount of service to be rendered if there is, in the opinion of either party's City Commission, a significant increase in local costs; or, in the opinion of either party's City Commission, insufficient state or federal funding available for the service, thereby terminating this agreement or reducing the service and compensation to be paid under this agreement. In such event the terminating party will notify the other party in writing one hundred eighty (180) days in advance of the date such actions are to be implemented. In the event of any termination, West Fargo shall pay the agreed rate only for services delivered up to the date of termination. West Fargo has no obligation to Fargo, of any kind, after the date of termination.
 - 6. This agreement shall not be amended, except in writing executed by both parties.
 - 7. Nothing in this agreement shall be deemed a waiver by West Fargo or Fargo of the limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses. Additionally, the limitations on liability for West Fargo and Fargo shall not be added together or stacked to increase the maximum amount of liability.
 - 8. West Fargo and Fargo are each responsible for securing liability insurance that it believes, in its discretion, will be adequate for this agreement. Additionally, West Fargo and Fargo are each responsible for securing workers' compensation insurance and

employer's liability insurance at levels required under state law, or within its discretion, to cover any of its respective employees working under this agreement.

9. Both parties agree to indemnify, save, and hold harmless the other and its agents and employees from any and all liability, loss, cost, damages, expenses, claims, or causes of action, including attorney's fees, arising out of or by reason of actions of the other or its agents or employees in connection with or in the execution, performance, or failure to adequately perform obligations pursuant to this agreement. The indemnification and hold harmless obligations set forth in this agreement shall survive the termination of this Agreement.
10. The parties will cooperate and use their best efforts to ensure that the various provisions of this agreement are fulfilled. The parties agree to act in good faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this agreement.
11. The District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this agreement, and the Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.
12. This agreement shall not be assigned without the express written consent of the other party.
13. Each provision, section, sentence, clause, phrase, and word of this agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid whatsoever, such illegality or invalidity will not affect the validity of the remainder of this agreement.
14. No party will be liable to another party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances 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, 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.
15. 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, Suite #1
West Fargo, ND 58078

If to Fargo:

City Administrator
City of Fargo
225 4th Street North
Fargo, ND 58102

16. This agreement will be controlled by the laws of the State of North Dakota.
17. This agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. All parties will receive a fully-executed counterpart. The facsimile, email, or other electronically delivered signatures of the parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicable originals.
18. 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.

IN WITNESS WHEREOF, the parties have caused this Mass Transit Agreement to be executed on the day and year first above written.

CITY OF WEST FARGO

BY: _____
Bernie L. Dardis, President, City Commission

ATTEST: _____
City Auditor

CITY OF FARGO

BY: _____
Timothy J. Mahoney, M.D., Mayor

ATTEST: _____
City Auditor

West Fargo 2022

Fixed Route

Route	Trip Mileage	Revenue Mileage	Deadhead Mileage	Total Mileage	W. Fargo %	W. Fargo Mileage
20	9.52	43,430.00	1,725.00	45,155.00	54.47%	24,595.93
24	12.49	57,145.00	1,725.00	58,870.00	40.76%	23,995.41

Billing Calculation Option 3 - Maintenance Costs

System Mileage	812,838
West Fargo Mileage	48,591
West Fargo Percentage of Total Mileage	6.0%

Maintenance & Capital Replacement Costs

Maintenance Cost (\$1.58 per mile)	\$76,774.32
20% Local Match	\$15,354.86
Capital Replacement Cost (\$0.18 per mile)	\$8,746.44
Total	\$24,101.30

Operating Costs

Total MATBUS Operating & Admin Costs	\$5,221,506.00
WF Operating Costs (\$6.42 per mile)	\$312,140.89
70% Operating Local Match	\$218,498.62
Total	\$218,498.62
Grand Total	\$242,599.93

Administrative Costs
(10% of Operating Costs HR, Finance, City Services)

Total State Aid	\$ 475,272.00
WF Portion of State Aid	\$ 28,411.69
Total Fair and Pass Revenues (Estimated)	\$ 570,716.00
WF portion of Fare Revenues	\$ 34,117.32

Based on WF Mileage compared to total system mileage
Based on WF Mileage compared to total system mileage

2022 Monthly Fee - Fixed Route	\$18,246.87
2022 Yearly Fee - Fixed Route	\$218,962.43

West Fargo 2022

	Para Ridership		WF Para Ridership						
	Estimated		Estimated						
Para Total Operating	\$ 1,953,259.25	56,036	8155	14.55%	Para Ridership - 1/1/22 - 11/18/22	49238	Para Ridership - 11/19/22 - 12/31/22 (estimated)	6798	Total
Fargo	\$ 1,601,672.59				Para Ridership - 1/1/21 - 11/18/21	46389	Para Ridership - 11/19/21 - 12/31/21	6413	Total
WF portion of operating based on ridership	\$ 233,093.72								52802
Total Para Federal Grant Funds	\$ 238,000.00								
Federal Grant funds applied to WF Ridership	\$ 34,636.48								
Total State Aid Funds	\$475,272				Para Ridership - 1/1/22 - 11/18/22	7059	Para Ridership - 11/19/22 - 12/31/22 (estimated)	1096	Total
State Aid Funds Applied to WF Ridership	\$ 69,167.02								8155
Cost to operate in WF	\$ 198,457.24				Para Ridership - 1/1/21 - 11/18/21	5964	Para Ridership - 11/19/21 - 12/31/21	929	Total
Fare credit	\$24,465								6893
Cost to operate in WF minus all grants and fares	\$ 104,825.22								
			Cost per ride	12.85					

MASS TRANSIT AGREEMENT

This AGREEMENT made and entered into this 1st day of January, 2023, by and between the City of West Fargo, North Dakota (hereinafter "West Fargo") and the City of Fargo, North Dakota (hereinafter "Fargo").

WHEREAS, Fargo provides regular transit service and Paratransit service for its citizens; and

WHEREAS, West Fargo would like to provide such services to the citizens of West Fargo; and

WHEREAS, Fargo is agreeable to provide such transit service to West Fargo on the terms and conditions set out below;

NOW THEREFORE, be it agreed between West Fargo and Fargo as follows:

1. Fargo will provide regular transit service to West Fargo during the term of this agreement under the following conditions:
 - A. Fargo and West Fargo shall agree to routes, schedules, and stopping points of the transit service in West Fargo. It is understood that such West Fargo routes will tie into the Fargo route system at West Acres. Route 20 and stopping points must be such that the route can be completed in approximately thirty (30) minutes; the route will run once each hour. Route 24 and stopping points must be such that the route can be completed in approximately 60 minutes; the route will run once each hour.
 - B. West Fargo shall pay Fargo, on a monthly basis, \$19,460.42 a month in 2023, with payment being due by the 10th day of each month, for Route 20 and Route 24 transit service to be available in West Fargo. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
 - C. Persons who get onto the bus in West Fargo shall not be charged a fee to transfer onto other bus routes of the bus system, and may transfer onto another bus with no transfer fee.
 - D. The bus fare for using the buses in West Fargo shall be the same fare that is charged to passengers using the bus service in Fargo.
 - E. Fargo shall be responsible for all administrative responsibilities regarding the bus transit service provided to West Fargo, including dispatching, complaint issues, annual grant applications, marketing of routes, preparation and revision of route maps and schedules, and filing of any necessary reports.
2. Fargo shall provide West Fargo transit service for persons with disabilities through the Paratransit service on the following conditions:

- A. The service shall be available to the citizens of West Fargo on the same basis that it is available to citizens in Fargo.
 - B. The cost of the service to the citizens of West Fargo shall be the same cost as available to the citizens of Fargo.
 - C. It is understood between West Fargo and Fargo, that Fargo contracts with a provider for drivers services for the Paratransit service. West Fargo shall pay Fargo \$16.95 per ride in 2023, for paratransit services taken by a resident of West Fargo, except for those rides that are paid at an agency rate or those rides that are paid by Medicaid. West Fargo will not pay for rides billed at an agency rate or those rides that are paid by Medicaid. Fargo will track the number of rides for which West Fargo will be billed, as described herein, and will submit a monthly invoice to West Fargo. West Fargo will remit payment to Fargo by the 10th day of the following month. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
 - D. West Fargo, by written notification to Fargo, may limit the hours of Paratransit service in West Fargo, provided that such limitation would not cause any violation of any state or federal law.
- 3. West Fargo shall adhere to the Emergency Service Guidelines that Fargo has implemented.
 - 4. This agreement shall be for a period of twelve (12) months, beginning on January 1, 2023 and terminating on December 31, 2023.
 - 5. Either party may terminate or reduce the amount of service to be rendered if there is, in the opinion of either party's City Commission, a significant increase in local costs; or, in the opinion of either party's City Commission, insufficient state or federal funding available for the service, thereby terminating this agreement or reducing the service and compensation to be paid under this agreement. In such event the terminating party will notify the other party in writing one hundred eighty (180) days in advance of the date such actions are to be implemented. In the event of any termination, West Fargo shall pay the agreed rate only for services delivered up to the date of termination. West Fargo has no obligation to Fargo, of any kind, after the date of termination.
 - 6. This agreement shall not be amended, except in writing executed by both parties.
 - 7. Nothing in this agreement shall be deemed a waiver by West Fargo or Fargo of the limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses. Additionally, the limitations on liability for West Fargo and Fargo shall not be added together or stacked to increase the maximum amount of liability.
 - 8. West Fargo and Fargo are each responsible for securing liability insurance that it believes, in its discretion, will be adequate for this agreement. Additionally, West Fargo and Fargo are each responsible for securing workers' compensation insurance and

employer's liability insurance at levels required under state law, or within its discretion, to cover any of its respective employees working under this agreement.

9. Both parties agree to indemnify, save, and hold harmless the other and its agents and employees from any and all liability, loss, cost, damages, expenses, claims, or causes of action, including attorney's fees, arising out of or by reason of actions of the other or its agents or employees in connection with or in the execution, performance, or failure to adequately perform obligations pursuant to this agreement. The indemnification and hold harmless obligations set forth in this agreement shall survive the termination of this Agreement.
10. The parties will cooperate and use their best efforts to ensure that the various provisions of this agreement are fulfilled. The parties agree to act in good faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this agreement.
11. The District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this agreement, and the Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.
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18. 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.

IN WITNESS WHEREOF, the parties have caused this Mass Transit Agreement to be executed on the day and year first above written.

CITY OF WEST FARGO

BY: _____
Bernie L. Dardis, President, City Commission

ATTEST: _____
City Auditor

CITY OF FARGO

BY: _____
Timothy J. Mahoney, M.D., Mayor

ATTEST: _____
City Auditor

West Fargo 2023

Fixed Route

Route	Trip Mileage	Revenue Mileage	Deadhead Mileage	Total Mileage	W. Fargo %	W. Fargo Mileage
20	8.46	43,430.00	1,719.00	45,149.00	54.47%	24,592.66
24	12.49	57,145.00	1,719.00	58,864.00	40.76%	23,992.97

Billing Calculation - Maintenance Costs

System Mileage	955,000	*Estimated by averaging 2019's full year of service and 2022's year of reduced service.
West Fargo Mileage	48,586	We are expecting to have reduced service through May 12, and return to full service for the rest of the year.
West Fargo Percentage of Total Mileage	5.1%	

Maintenance & Capital Replacement Costs

Total MATBUS Maintenance Costs	\$2,146,987.36
Maintenance Cost (\$2.25 per mile)	\$109,227.99
20% Local Match	\$21,845.60
Capital Replacement Cost (\$0.18 per mile)	\$8,745.41
Total	\$30,591.01

Operating Costs

Total MATBUS Operating & Admin Costs	\$5,917,922.00
Operating Costs (\$6.81 per mile)	\$301,074.29
70% Operating Local Match	\$210,752.00
Total	\$210,752.00
Grand Total	\$241,343.01

Administrative Costs
(10% of Operating Costs HR, Finance, City Services) \$41,030.23

Total State Aid	\$ 395,161.00	
WF Portion of State Aid	\$ 20,103.82	Based on WF Mileage compared to total system mileage
Total Fair and Pass Revenues (Estimated)	\$ 565,000.00	
WF portion of Fare Revenues	\$ 28,744.38	Based on WF Mileage compared to total system mileage

2022 Monthly Fee - Fixed Route	\$19,460.42
2022 Yearly Fee - Fixed Route	\$233,525.05

West Fargo 2023

		Para Ridership Estimated	WF Para Ridership Estimated
MATBUS Paratransit Total Operating Costs	\$	2,233,652.50	
Fargo Paratransit Total Operating Costs	\$	1,831,595.05	
WF Portion of Operating Based on Ridership	\$	297,139.45	9647
Total Para Federal Grant Funds	\$	250,000.00	16.27%
Federal Grant Funds Applied to WF Ridership	\$	40,557.47	
Total State Aid Funds	\$	\$395,161	
State Aid Funds Applied to WF Ridership	\$	64,106.92	
Cost to Operate in WF	\$	256,581.98	
WF Portion of Fare Revenues	\$	\$28,941	
Cost to Operate in WF Minus all Grants and Fares	\$	163,534.06	
			Cost per ride
			\$ 16.95



To: West Fargo City Commission

From: Aaron Nelson, Planning Director

Date: December 19, 2022

Subject: Downtown Master Plan Project Initiation

Action: Initiate the proposed project & authorize staff to issue RFP

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

Summary and Recommendation:

As discussed at the December 5 City Commission meeting, the City of West Fargo was awarded a \$100,000 placemaking planning grant from the State of North Dakota in order to undertake a downtown placemaking plan with the assistance of a 3rd party consultant in 2023. While time is limited, the City has the opportunity to expand the scope of study in order to develop a more wholistic master plan for downtown West Fargo, which has been identified as a priority for future planning efforts. As such, staff is requesting formal approval to move forward with a competitive request for proposals (RFP) process to select and hire a professional consultant team to work with the City on the development of an updated downtown master plan.

At their December 13, 2022 meeting, the West Fargo Planning & Zoning Commission recommended the City Commission direct staff to publish an RFP for the development of a downtown master plan and to otherwise initiate this project.

Recommended Action: *Initiate the proposed downtown master plan project as outlined and authorize staff to issue a Request for Proposals (RFP).*

Background and Context:

The Sheyenne Street & Main Avenue Framework Study has served as the City's guiding plan for the downtown area since its creation in 2010-2011. That plan envisioned the revitalization of an aging auto-oriented commercial center that was struggling to compete with the changing market and demand trends of the region. It laid the groundwork and pointed the way for a number of catalytic changes for the downtown Sheyenne Street corridor, including an urban street redesign, high density mixed-use redevelopment, the establishment of the DMU (Downtown Mixed-Use) zoning district, and community activity space.

In 2018, the City adopted the West Fargo 2.0 Comprehensive Plan, which expanded upon many of the themes from the Framework Study and, with broad community input, further developed the community's vision for its downtown core. One of the eight overarching goals (or "Big Ideas") of the

West Fargo 2.0 Plan is to "establish downtown as a cultural center for West Fargo."

At the September 13 Planning & Zoning Commission meeting and October 17 City Commission meeting, discussions were held regarding an assessment of the City's future planning needs. This assessment identified the need for an updated downtown master plan as a "near term" priority, recognizing that the current Framework Plan is outdated and that the West Fargo 2.0 Plan identifies several initiatives relating to downtown that warrant further exploration. While the City has had some early success with redevelopment downtown, momentum has slowed as new issues emerge.

Because there is a need to establish an updated plan of action for downtown, and because there would be significant cost savings in doing this work in conjunction with the downtown placemaking planning grant, staff recommends initiating a downtown master planning project which would encompass a broader scope of work beyond the topic of placemaking. Attached is a general summary of the proposed downtown master plan project.

A previous version of this project summary was presented to the City Commission on December 5, at which time the Commission directed staff to solicit additional input as to the scope of study. Since then, staff has solicited additional feedback through the creation and distribution of an online survey, a second round of conversation with downtown businesses through the Yards Business Association, and outreach to partner organizations such as the Parks and School districts. A summary of this additional input will be provided at the December 19 City Commission meeting.

Policy Analysis:

The intent of this proposal is to take action on the City's goal of *Establishing Downtown as a Cultural Center for West Fargo*, as outlined within the City's Comprehensive Plan. The project seeks to develop a more nuanced understanding of the downtown area in order to identify and respond to critical issues and impediments to investment and activity within the heart of the City. In summary, the project aligns with existing City policy and seeks to advance community goals as outlined within the West Fargo 2.0 Comprehensive Plan.

Financial Analysis:

The proposed downtown master plan project would have a "not to exceed" maximum budget of \$180,000. Of this total project cost, \$100,000

will be covered by the grant and \$80,000 will need to be covered by the City. Grant money will only be received on a reimbursable basis, meaning the City will need to front the total project cost prior to being reimbursed towards the end of the project. A specific project budget and funding source recommendation would be presented to the City Commission prior to contract approval, once a consultant team has been selected. Project funds could come from either the 2023 Planning Department budget, economic development sales tax fund, or combination thereof.

At their December 1 meeting, the City's Economic Development Advisory Committee recommended approval of the use of economic development sales tax funds for purposes of this project.

Process/Timeline:

Following approval of the initiation of this project by the City Commission, staff will work to publish a request for proposals (RFP) from qualified consultant teams in early January. A selection committee, formed by the City Administrator and including members of the City Commission and Planning & Zoning Commission, would be used to evaluate project proposals and to provide a recommendation to the City Commission. A contract, outlining the finalized scope of work and project budget, would then be presented to the City Commission for approval prior to the work commencing. The project must be substantially completed by October 1, 2023 for grant reimbursement. A timeline is included in the attached project summary, along with other information that will be incorporated into the RFP.

Attachment

Downtown Master Plan – Project Overview

December 14, 2022

Project Abstract:	The purpose of this project is to partner with a qualified multi-disciplinary consultant team to produce a Downtown Master Plan that will build upon the vision and goals of the City's Comprehensive Plan, define and respond to current conditions and issues, enhance downtown's sense of place, and guide public and private investment over the next 5-10 years. This effort will be funded, in part, through a \$100,000 State placemaking grant award. The project will be action oriented towards the continued transformation of downtown West Fargo into an iconic mixed-use center of urban activity and economic growth.
Purposes and Needs	• To confirm and refine the City's Vision for the future of Downtown West Fargo • To explore and to set into action the recommendations of the West Fargo 2.0 Comprehensive Plan in order to <i>"Establish Downtown as a Cultural Center for West Fargo"</i> • To establish a comprehensive parking and access strategy appropriate for an urban setting • To facilitate conversation amongst all stakeholders in order to build consensus and clarity around preferred strategy and associated action steps necessary to strengthen downtown • To align and calibrate the City's economic development activities and incentives with the City's vision and goals for downtown • To help build upon the City's brand and reputation by enhancing downtown as a place that is authentically West Fargo's • To guide the future growth of the downtown as a walkable mixed-use neighborhood that provides opportunities for all • To activate the public realm through placemaking and public art • To support and expand the capacity of the downtown business community • To revitalize aging and blighted properties and to encourage infill investment into downtown • To manage the growth and change of downtown in a manner compatible with adjacent land-uses and existing conditions, such as adjacent residential neighborhoods, and to build consensus between conflicting views • To explore opportunities for civic facilities and spaces • To facilitate the creation and enhancement of the community partnerships necessary to achieve project outcomes and strengthen the downtown
Project Outcomes:	The project team will produce a downtown master plan that translates the priorities of the community into specific, attainable, implementation steps to guide the continued development of downtown West Fargo. The planning process will build consensus amongst City leaders and partner stakeholders in order to bring clarity to the development strategy necessary to achieve the community's vision for a strong and vibrant city center • An updated community vision for downtown West Fargo • A framework for future decision making, including land-use and incentive decisions

	• An understanding of the elements needed to cultivate an iconic downtown that is the cultural center of the City • Identification of a preferred approach to parking management, and supporting detail regarding next steps • A framework and process for the creation and support of public art and placemaking • An understanding of market conditions relevant to downtown growth, development, and business activity • Increased business, activity, and private investment in downtown • A sustainable and effective downtown business association • A clear understanding by all stakeholders of the actions and steps necessary to implement the plan
Plan Focus Areas:	1. Placemaking (including Urban Design, Activity, & Public Art). A portion of this project is being funded through a Placemaking Planning Grant that the City has received from the State in order to develop a placemaking plan for downtown West Fargo. The City desires to create this downtown placemaking plan as part of this larger downtown master planning effort. 2. Business & Economic Development. In recent years, the City has seen some success in the redevelopment of downtown through investment in a new urban streetscape, construction of several mixed-use buildings, a downtown plaza, and the formation of a downtown business association. However, additional advancement and redevelopment has slowed, with many properties and storefronts remaining vacant. The City is interested in exploring the market dynamics at play and working to build upon early success in order to drive additional development investment and business growth. 3. Parking & Access. Lack of parking availability is often cited as a deterrent to visitors and potential developers alike. The City is interested in exploring potential short- and long-term parking solutions (including the potential for public parking) which are appropriate for a walkable urban environment. Alternative modes of transportation may also be explored in conjunction with parking. 4. Infill, Redevelopment, & Land Use. As downtown West Fargo redevelops from a low intensity auto-oriented commercial strip to a walkable mixed-use district, it faces unique contextual challenges as new development infills adjacent to core residential neighborhoods, a US Highway, and an assortment of aging commercial/industrial buildings. Additionally, previous planning efforts have identified opportunities for civic buildings and spaces downtown. The City would like to identify likely development scenarios in order to be better positioned to manage the growth of downtown. 5. Other Plan Elements. In addition to the focus areas listed above, the process will include a number of plan elements that will apply to the project in general, such as robust public and stakeholder participation, project management in coordination with a project

	steering committee, and emphasis on plan implementation through identification of specific action steps.
Study Area	Primary Focus: Sheyenne St (Main Ave to 7th Ave) and Main Ave (River to 1st St) Secondary Focus: Surrounding blocks & nearby amenities (River, Library, Park Facilities, etc.)
Anticipated Timeline:	• Dec 2022 – Project scoping and initiation • Jan 2023 – Publication of request for proposals (RFP) • Q1 2023 – Consultant selection & contracting • Q2 2023 – Project kick-off & consultant-lead planning process • Q3 2023 – Planning process continues & substantial completion of placemaking element • Oct 1, 2023 – Deadline for expenditure of placemaking grant funds • Q4 2023 – Project completion
Feedback & Questions:	<u>Please contact the West Fargo Planning Department with any feedback or input you would like to share as staff works to further develop and refine the project details and proposed focus areas.</u> West Fargo Planning Department Attn: Malachi Petersen 800 4th Ave E. Suite 1 West Fargo, ND 58078 Phone: (701) 515-5370 Email: Malachi.Petersen@westfargond.gov



LAGOON UPDATE

CITY OF WEST FARGO

CURRENT OPERATIONS UPDATE

Work began June 2021

Cell 10 is fully decommissioned.

Cells 8 & 9 are graded and planted.

Cells 5 & 6 drained and we are removing rock. Next summer we will work on grading and planting.

Cells 4 & 7 are currently dry.

We are currently only using Cells 1,2 & 3

The crew has also removed clay stock piles from behind Trail king and 40th Ave. That fill has been placed in the old borrow pit East of Cell 8 and stockpiling at our rock pad.



CELL 10





CELL 10

CELL 9



Cell 9

8/31/2022



CELL 8



Cell 8

8/31/22



PROJECT NUMBERS

Approved funds for the Project: \$12,400,000
2019 Engineers Estimate for the Project: \$17,000,000 - \$35,000,000
2021 Engineers Estimate to decommission Cell 10: \$3,700,000
2021 & 2022 Financial model budgeted amount: \$2,700,000
ARPA funds Applied to the Project: \$5,800,000

Amount spent from May 2021 to November 1, 2022: \$2,600,000
Revenue from selling the Rock from cells 8, 9 & 10: \$100,000 with an additional \$260,000 under contract.
Net amount spent as of November 1, 2022: \$2,300,000

Total Acres to be Decommissioned: 554
Number of Acres Decommissioned as of today: 212 (38% complete)
*numbers are approximate

As of November 1, 2022, we are:
\$400,000 under our Financial Model Budget
\$2,000,000 under the 2019 Engineers Estimate for Cell's 8,9&10.
\$1,400,000 under the 2021 Estimate for just Cell 10, and we have completed 3 cells with this amount.



FUTURE PROJECT TIMELINE

- **2023:** Decommission Cells 5 and 6, drain Cells 4 & 7, create area for the future redundant lift station between Cell's 1&2.
- **2024:** Decommission Cell's 4&7, drain Cell 3 & create work area on Cell 1.
- **2025:** Decommission Cell 3 and drain Cell 2.
- **2026:** Decommission Cell 2.
- **2027:** Decommission Cell 1.
- **2028:** Finish all final grading, clean up, and complete the decommissioning project.
- We anticipate achieving our goal of complete decommissioning of the lagoons before the FM Diversion is finished.
- The timeline is subject to change due to weather and regulatory changes.

WASTEWATER FLOWS TO FARGO

The timeline for the rest of the project will be guided by the budget to send wastewater to Fargo. The level of where we are budgeted will determine when and what cells we can decommission.

2022 budgeted amount: \$2,700,000

2023 budgeted amount: \$2,737,500, which equates to 2.5mgd

WW Pumped to Fargo	2.5 MGD	2.75 MGD	3 MGD	3.25MGD
Budget #	\$ 2,737,500.00	\$ 3,011,250.00	\$ 3,285,000.00	\$ 3,558,750.00
Gallons Over/Under Low year	89,060,000	(2,190,000)	(93,440,000)	(184,690,000)
Gallons Over/Under Ave year	197,221,452	105,971,452	14,721,452	(76,528,548)
Gallons Over/Under High year	268,712,811	177,462,811	86,212,811	(5,037,189)
Number of Cells Needed	4 possibly 5	3	1	0
Budget numbers are based off the rate of \$3 per 1,000				

The table above shows that we would need to budget just over \$3.5 million to send all our waste water to Fargo. The table shows the High, Low and Average yearly flows from the last 4 years.

PLANNING FOR THE FUTURE

- Now that we are 38% complete on decommissioning, there are many questions and decision that will need to be answered regarding the future use of the land. Staff has begun to have informal meetings to discuss options. The goal of these meeting is to come up with options to bring forward to the commission.
- In addition to staff meeting, Planning Director Aaron Nelson has been working with Placemakers on a West Fargo Action Plan. In that action plan, a Lagoon Strategy was identified as one of the short-term projects. They offered a few examples to consider, Issuing a Request for Expression of Interest (REOI). In drafting the REOI, we could consider,
 - *Sell the land to a private developer,*
 - *Enter into a Public-Private partnership (P3),*
 - *Become the master developer of the property.*
- These are just some of the strategy's and ideas, that we will need to look at. The Lagoon area has great potential to keep West Fargo a City on the grow.



THANK YOU



OPTION A



OPTION A



Full color version



Black version



White version

OPTION B



OPTION B



Full color version



Black version



White version

OPTION C



OPTION C



Full color version



Black version



White version



"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: December 19, 2022

Subject: 2023 Asphalt Mill and Overlay – Various Neighborhoods

Action: Direct Engineer to prepare report

New Information and Recommendation:

In the years following the installation of an asphalt road section the roadways deteriorate and utility trench settlement occurs. To revitalize the pavement surface and section and to increase the life cycle of the roadway it is recommended that a mill and overlay be applied. This will smooth out the surface creating a better ride quality as well as extending the life cycle of the roadway. In addition to the roadway resurfacing, current ADA laws require that all ADA ramps in the project areas be ADA compliant.

The following documents are attached for review/consideration:

- Maps showing areas intended to be milled and overlaid

Staff Recommendation: Direct Engineer to prepare report.

Background and Project Summary:

It has been a number of years since the last mill & overlay was completed. Typically streets are recommended to be milled and overlaid within 10 to 15 years after original construction. This project will mill and overlay the streets in the shown project areas as well as reconstruct any ADA pedestrian ramps that are not within ADA compliance.

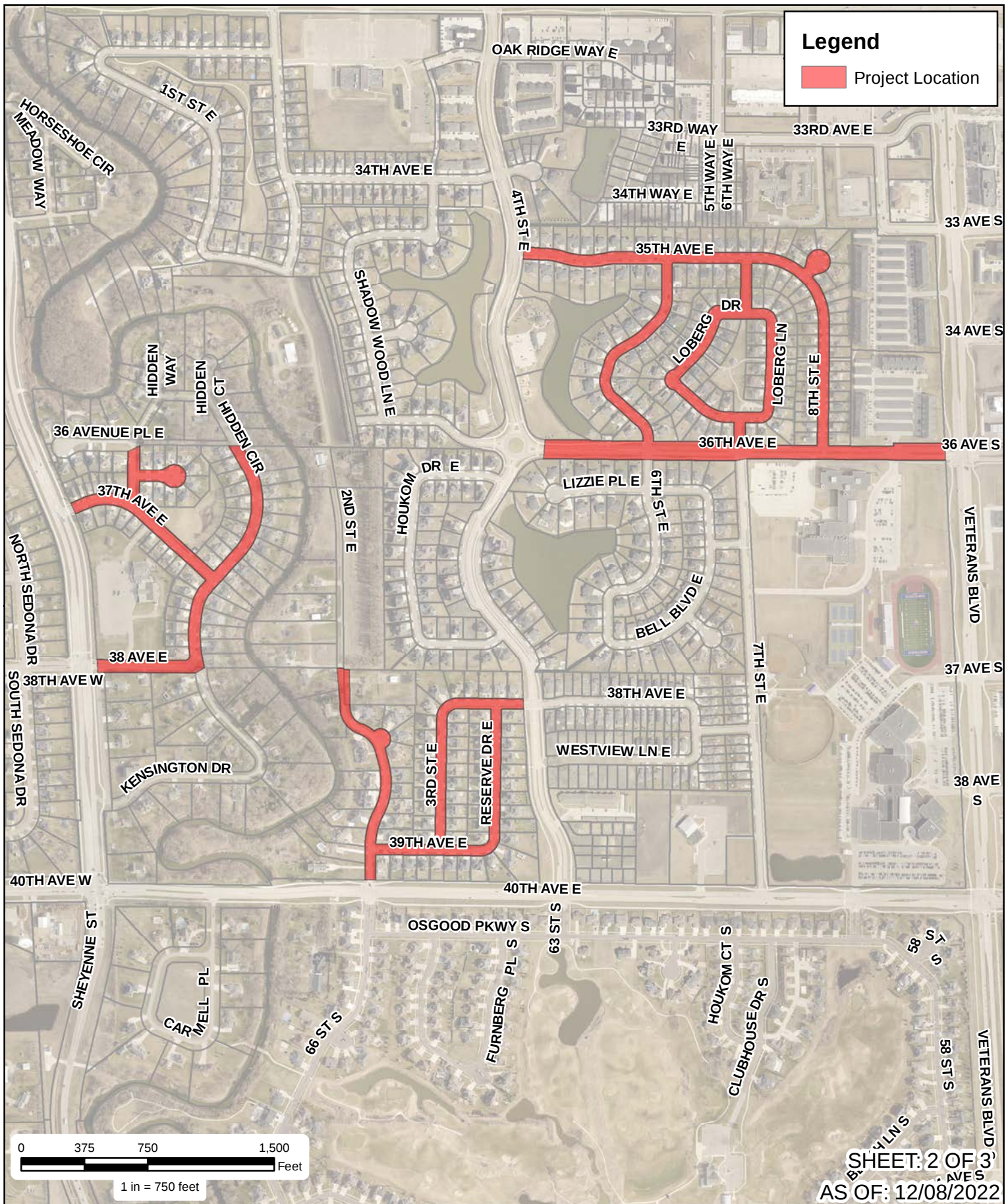
City of West Fargo Engineering Staff have inventoried the roadways and pedestrian ramps in the project areas. It is intended that city engineering staff will design, bid and administer construction observation and administration on approximately half of the project and the other half of the project will be designed, bid and administered by a consultant. By utilizing City staff we will be able to save costs to the project.

Financial Analysis:

The 2022 CIP had a \$3,000,000 Mill & Overlay project scheduled for 2022 under Impr. No. 2261 that was not constructed as well as an additional \$1,500,000 Mill and Overlay project scheduled for 2023. This is outside of the planned overlays completed by Public Works. This project is shown on the CIP to be funded using a combination of CIP sales tax and special assessments.

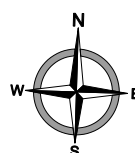
Previously Presented Information and Commission Actions:

None



PROJECT LOCATION MAP
IMPROVEMENT DISTRICT 2261 - 2023 MILL & OVERLAY VARIOUS NEIGHBORHOODS
ASPHALT RESURFACING, CONCRETE ADA RAMPS AND INCIDENTALS
WEST FARGO, NORTH DAKOTA

Created By: TJS Date Created: 12/07/22 Date Saved: 12/08/22 Date Plotted: NEVER Date Exported: 12/08/22
 Plotted By: Tanner.Schmidt Parcel Date: 12/01/22 Aerial Image: 2021 FM Metro Elevation Data: Lidar
 Horizontal Datum: NAD 1983 StatePlane North Dakota South FIPS 3302 Feet Vertical Datum: NAVD1988
 T:\Projects\22900\22962_2023CWFMillandOverlay\22962_2261_ProjectLocationMap.mxd



moore
 engineering, inc.



“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: December 19, 2022

Subject: Improvement District No. 2271 - 7th Ave NW & 5th St Ct NW

Action: Resolution of Necessity Public Hearing, Approve Task Order for “Basic Services”; and Direct Engineer to prepare Plans and Specs.

New Information and Recommendation:

With the additional development occurring at the former Stockyards site (Stockyards 1st), on November 7, the Commission approved the Engineer’s Report and authorized the Resolution of Necessity. At this commission meeting, the required Public Hearing will take place and afterwards, to proceed with the project the Commission will consider directing the Plans and Specifications to be created.

The following documents are attached for review/consideration:

- Task Order No. 66-1
- Resolution Directing Plans and Specifications

Staff Recommendation: Initiate Public Hearing for the recently approved Resolution Declaring Work Necessary, Approve Task Order for “Basic Services” and Direct engineer to prepare Plans and Specs.

Background and Project Summary:

The project will pave the existing gravel road into an urban section concrete roadway which will include the installation of storm sewer. This will accommodate increased activity at the Stockyards site and businesses adjacent to this roadway as well as reduce dust in the area.

Policy Analysis:

This project will improve the accessibility of the Stockyards site by creating a concrete roadway constructed to city standards by replacing the existing gravel road. This will be designed by a consultant and bid following city and state procedures.

Financial Analysis:

This project is proposed to be funded exclusively through special assessments to the adjacent properties.

Previously Presented Information and Commission Actions:

November 7, 2022

- Staff Recommendation: Create Improvement District No. 2271, Approve Engineer’s Report, and Authorize Resolution of Necessity.
- Commission Action: Commissioner Olson moved and Commissioner Anderson seconded to approve. Commissioner Dardis voted nay and Commissioner George was absent, motion carried on a 3 to 1 vote.

EXHIBIT A to MSA

Task Order for Design & Construction Services

This is Task Order No. 66-1
consisting of 21 pages.

Task Order 66-1

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: November 8, 2022
- b. Owner: City of West Fargo
- c. Engineer: Moore Engineering, Inc.
- d. Specific Project Title: Improvement District 2271 – Concrete Paving, Street Lighting, Storm Sewer; and Incidentals
- e. Specific Project Description: 7th Avenue NW & 5th Street Ct NW
- F. Project Background: Upon approval of the Engineer's Report, the City requested design and construction related services to complete the corridor improvement project. Additionally, special assessment and right-of-way tasks are needed.

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 Funding Services*

1. Special Assessment Administration

- a. Based on proposed infrastructure at specified project stages, prepare (or update) benefitting area maps, assessment philosophy narrative and preliminary special assessment allocations based on City Policy at the following project stages:
 - a) City Final Engineer's Report results
 - 1) Additional allocations for bid alternate options per City directive
 - 2) After bid results
- b. Prepare presentation documents for public presentation to demonstrate scope, scale, potential improvements, etc.
- c. Prepare for and attend one Resolution of Necessity public hearing meeting with the Board of City Commissioners and provide support for the Owner staff for the hearing.

B. *Additional Design Related Services*

1. Right-of-Way Administration

- a. Property Owner coordination and correspondence pertaining to potential right-of-way needs.
- b. Prepare concept exhibits pertaining to the right-of-way process.
- c. For right-of-way required for construction and maintenance of the Project, prepare any necessary legal descriptions, plats, or other land surveying documents to provide to the Owner's attorney for document preparation, participate in negotiation of terms of easement or land acquisition with landowners, participate in coordination of land acquisition process, and install monuments as required upon completion of the Project.

C. *Additional Construction Services*

1. 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 street lights. 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				
Engineer's Study	66	\$25,000	\$0	\$25,000
Special Assessment Administration	66 66-1	\$6,000	\$6,000	\$12,000
Additional Design Related Services				
Right-of-Way Administration	66-1	\$0	\$8,000	\$8,000
Additional Construction Services				
Additional Record Drawings	66-1	\$0	\$4,200	\$4,200
ADDITIONAL SERVICES SUBTOTAL (TO 66-1)			\$18,200	
ADDITIONAL SERVICES SUBTOTAL (All TO's)		\$31,000	\$18,200	\$49,200

- 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		\$2,885,000
Estimated Compensation based on 11% of Construction		\$317,350
TOTAL TASK ORDER (TO 66-1)		\$335,550

- 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	\$49,200
Estimated Compensation based on 11% of Construction	\$317,350
TOTAL ESTIMATED COMPENSATION UNDER ALL TASK ORDERS (TO 66, TO 66-1)	\$366,550

- 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. None

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. 66-1 is November 8, 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: _____

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION DIRECTING ENGINEER
TO PREPARE PLANS AND SPECIFICATIONS

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, deeming it necessary to make certain improvements consisting of new concrete paving, street lighting, storm sewer and incidentals necessary to service the properties in connection with the above specified improvements, be constructed and made in Improvement District No. 2271 – New Concrete Pavement, Street Lighting, Storm Sewer; and Incidentals of the City of West Fargo, the City hereby directs Daniel Hanson, the Engineer for the City of West Fargo and being a competent engineer, to prepare plans and specifications for such work.

Dated: December 19, 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 _____. Upon roll call vote being taken thereon, the following commissioners voted in favor thereof: _____. The following commissioners were absent and not voting: _____. The following commissioners voted nay: _____. The majority having voted aye, the motion was 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: December 19, 2022

Subject: 26th Ave W – 5th St NW to Sheyenne St (Roadway Reconstruction and Incidentals)

Action: Accept Petition for Improvements and Approve the Preliminary Improvement Work Agreement.

New Information and Recommendation:

M&M Land Holdings has submitted a petition for improvements requesting the City create a district and install roadway modifications to add additional dedicated northbound and southbound turning lanes onto Sheyenne Street from 26th Ave W. Improvements would also include stubbing in utilities consisting of new sanitary sewer and water for the property listed as Lot 2, Block 1 of Brooks Harbor First Addition.

The following documents are attached for review/consideration:

- Petition for Improvements with evidence of ownership
- Exhibit showing location to be reconstructed
- Preliminary Improvement Work Agreement
- Resolution Relating to Written Petition by Owners

The following documents are available upon request:

- Proof of ownership of the property
- Traffic study and correspondence with traffic engineer

Staff Recommendation: Accept Petition for Improvements and Approve the Preliminary Improvement Work Agreement.

Background and Project Summary:

Staff has met multiple times with the Petitioner as well as a business that is looking to build on the lot. Traffic analysis studies have been conducted on the roadway and the traffic engineering consultant is of the opinion that the improvements being requested would increase the level of service of the 26th Ave W. corridor by allowing more traffic to flow through the project site.

Policy Analysis:

This project will improve the conductivity of 26th Avenue W. and with the traffic study provided by the Petitioner, ordinance allows access to Lot 2, Block 1 of Brooks Harbor First Addition where there is currently a negative access at the Petitioner's proposed connection point on 24th Ave. W. and 26th Ave. W.

Financial Analysis:

This project is proposed to be funded exclusively through special assessments to the property owned by the Petitioner.

	Previously Presented Information and Commission Actions:
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	None
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I/ we M&M Land Holdings are the legal and equitable owners of the following described property, to-wit:

[Lot 2 Block 1 Brooks Harbor First Addition]

(hereinafter the “**Property**”)

I/we hereby petition the City Commission of the City of West Fargo, Cass County, North Dakota, to create an improvement district for the purpose of constructing the following municipal improvements: I would request the installation of a flush median to accommodate dual left hand turning movements for east and west bound traffic between Sheyenne and 5th as well as the installation of a dedicated right turn lane for east bound traffic to turn south on to Sheyenne. Also, utilities, including sewer and water to the site.

(hereinafter the “**Improvements**”)

I/We hereby request that the City Commission of the City of West Fargo, Cass County, North Dakota, determine by resolution that a written petition for the **Improvements** signed by the owners of a majority of the area of the **Property** included within the district, has been received and that the resolution declaring work necessary shall not be required for said improvement district.

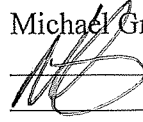
I/we hereby certify that I/we am/are the legal and equitable owner(s) of the **Property** and have the authority to grant the City of West Fargo all necessary easements, rights of ways, fee simple, dedications and other interests in the **Property** that may be required to complete the construction of the **Improvements**.

I/We agree that pursuant to North Dakota Century Code Chapters 40-23 through 40-32 that the City shall assess the entire cost of the Improvements against my/our Property and hereby agree to pay the entire cost as levied and apportioned by the city.

Dated this 28 day of November, 2022.

OWNERS:

Michael Graham

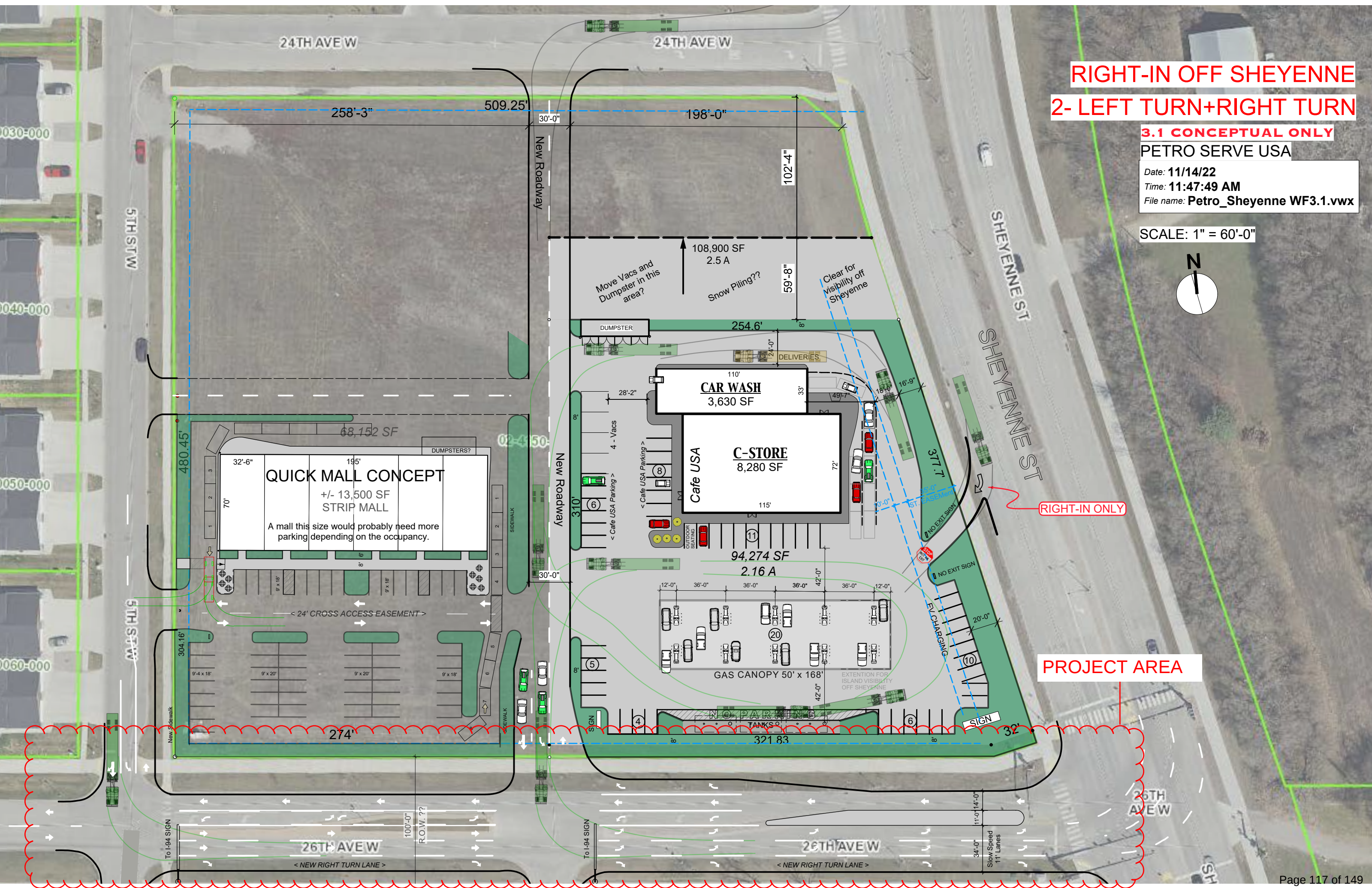
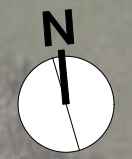
A handwritten signature in black ink, appearing to be 'MG' or similar, written over a horizontal line.

This petition must be accompanied by evidence of ownership of the Property. Such evidence can include the following items: (a) title opinion; (b) O & E report; or (c) a copy of the vesting deed.

RIGHT-IN OFF SHEYENNE
2- LEFT TURN+RIGHT TURN

3.1 CONCEPTUAL ONLY
PETRO SERVE USA
Date: 11/14/22
Time: 11:47:49 AM
File name: Petro_Sheyenne WF3.1.vwx

SCALE: 1" = 60'-0"





**PRELIMINARY IMPROVEMENT
WORK AGREEMENT**

THIS PRELIMINARY IMPROVEMENT WORK AGREEMENT (the “Agreement”) is entered into this 13 day of December, 2022 (the “Effective Date”), by and between the City of West Fargo, North Dakota (the “City”), and M&M Land Holdings (the “Petitioner”). The City and the Petitioner are, collectively, referred to as the “Parties.”

WHEREAS, the Petitioner is the legal and equitable owner of real property legally described as Lot 2, Block 1 of Brooks Harbor First Addition (the “Property”); and

WHEREAS, the Property is located within Brook Harbor (the “District”); and

WHEREAS, on November 28, 2022, the Petitioner filed a Petition for Improvements (the “Petition”) with the City pursuant to N.D.C.C. ch. 40-22, requesting that the City enlarge the District and install roadway modifications to add an additional dedicated northbound and southbound turning lanes and utility stubs in to the Property (the “Improvements”); and

WHEREAS, to begin development of the Improvements, the City must engage in certain administrative work, including engaging the services of an engineer licensed in North Dakota (the “Administrative Work”), and cause an engineer’s report to be prepared as to the general nature, purpose, and feasibility of the proposed Improvements and with an estimate of the probable cost of the Improvements (the “Report”); and

WHEREAS, following the approval of the Report, the City must also cause detailed plans and specifications for the construction of the Improvements to be prepared (the “Plans and Specifications,” along with the Administrative Work and the Report, the “Preliminary Improvement Work”); and

WHEREAS, the City will invest significant time and resources into the Preliminary Improvement Work and, as a result, desires to be reimbursed for the Preliminary Improvement Work prior to construction commencing; and

WHEREAS, to support the City's efforts in completing the Preliminary Improvement Work, the Petitioner agrees to reimburse the City for the Preliminary Improvement Work as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants made herein and other valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I PARTIES

1. The City, a North Dakota home rule charter city, is vested with the authority to control access to its streets and municipal infrastructure. The City has authority to review and approve petitions for improvements within its territorial jurisdiction.

2. The Petitioner is Michael Graham, with the authority to own the Property. The Petitioner is the legal and equitable owner of the Property. The individuals signing this Agreement represent and hereby certify they are expressly authorized to execute this Agreement on behalf of the Petitioner.

ARTICLE II JURISDICTION

1. The Petitioner agrees to submit to the authority of the City. The Petitioner agrees and acknowledges that it and/or its successors or assigns, as applicable, must receive approval from the City for platting and zoning and for any building permits or other permits required by the City with respect to the Property.

2. The Petitioner agrees and acknowledges that it and/or its successors and assigns, as applicable, must comply with all federal, state, and local statutes, rules, and regulations regarding the development of the Property.

ARTICLE III REIMBURSEMENT OF COSTS

1. Within ten (10) business days of the Effective Date, the Petitioner shall deposit Thirty Thousand Dollars (\$30,000) with the City to be held in an interest-bearing escrow account administered by the City (the "Escrow Deposit"). The City will not commence any Preliminary Improvement Work on the Improvement until the Petitioner has made the Escrow Deposit. Following the deposit of the Escrow Deposit, the City will draw from the Escrow Deposit as needed to cover the expense of the Preliminary Improvement Work. The City will apply any interest earned on the Escrow Deposit for the payment of Preliminary Improvement Work. The City will keep an accounting of any credit to the Escrow Deposit and will provide records of any credit to the Petitioner upon request. In the event the Escrow Deposit is drawn down in its entirety prior to the completion of the Preliminary Improvement Work, the City will keep a running total of costs and expenses it expends on the remaining Preliminary Improvement Work.

2. Once the Preliminary Improvement Work is completed or the Petitioner decides to no longer proceed with the City installing the Improvements, (i) if a balance remains of the Escrow Deposit and the City has been reimbursed in full for all Preliminary Improvement Work, the City will return the balance of the Escrow Deposit to the Petitioner, or (ii) if the balance of the Escrow Deposit has been expended and the City has not been reimbursed in full for all Preliminary Improvement Work, the City will invoice the Petitioner for the outstanding balance of Preliminary Improvement Work owed to the City.

3. The Petitioner shall remit payment to the City, in full, within thirty (30) calendar days of the date of the invoice. In the event the Petitioner does not timely remit payment in full to the City, the City will charge the Petitioner interest at the rate of one-half percent (1/2%) per month, or the maximum amount permitted by applicable law if lesser, on all past-due amounts. Payments will first be credited to interest and then to principal.

4. In the event the Petitioner has not remitted payment in full, plus interest, to the City within ninety (90) calendar days of the date of the invoice, the Petitioner agrees that the City may levy a special assessment equal to the outstanding balance of the Preliminary Improvement Work, plus interest (the "Preliminary Work Special Assessment"), against the Property without a hearing. The Petitioner agrees that the Preliminary Work Special Assessment benefits the Property and that said benefit exceeds the amount of the Preliminary Work Special Assessment by more than fifty percent (50%). The Petitioner waives any objection to any irregularity with regard to the assessment process for the Preliminary Work Special Assessment. This waiver includes a waiver to any objection to the amount of the special assessments for the Preliminary Work Special Assessment levied against the Property, including any and all claims that the Preliminary Work Special Assessment is excessive, arbitrary, capricious, or unreasonable. Additionally, the Petitioner waives all rights to appeal such action of the City to the court. These waivers are express, and the Petitioner acknowledges that it is waiving any and all rights of appeal to the assessment and reassessment.

5. The Petitioner will have no claim to funds of the Escrow Deposit drawn down by the City to pay for Preliminary Improvement Work in the event the Petitioner decides to not continue pursuing the Improvements.

6. Nothing in this Agreement is intended to modify the Petitioner's commitment in the Petition to pay the entire cost of construction of the Improvements as they are assessed by the City against the Property pursuant to N.D.C.C. chs. 40-23 through 40-32.

ARTICLE IV GENERAL MATTERS

1. The 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.

2. No amendment, modification, or waiver of any condition, provision, or term shall 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 shall not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the Parties thereto under and pursuant to this Agreement.

3. Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate.

4. Each provision, section, sentence, clause, phrase, and word of this Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

5. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective personal representatives, successors, and assigns. The City acknowledges that

if the Petitioner conveys title to the Property to a purchaser, all obligations under this Agreement become the responsibility of such purchaser and thereafter such purchaser's successors and assigns.

6. This Agreement shall not be recorded.

7. This Agreement shall be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand, or cause of action arising under the terms of this Agreement shall be brought in an appropriate venue in the State of North Dakota.

8. This Agreement may be executed in counterparts with the City and the Petitioner having a fully-executed counterpart.

9. The City and the Petitioner agree that an electronic signature to this Agreement shall be valid as an original signature of the City or the Petitioner and shall be effective to bind the signatories of this Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means or an electronic acknowledgment which provides the signatory the ability to validate and affix a digital signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the Effective Date.

[Signatures appear on the following pages.]

CITY:

CITY OF WEST FARGO

_____, President of the Board of
City Commissioners of the City of West Fargo

ATTEST:

_____, City Administrator

PETITIONER:

MdM Land Holdings

By: Mike Graham
Its: President

By: _____
Its: _____

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION RELATING TO WRITTEN PETITION BY OWNERS
OF A MAJORITY OF THE AREA OF PROPERTY
WITHIN THE DISTRICT

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, Cass County, North Dakota, that it is hereby determined that a written petition for the improvements within the 26th Avenue W. right-of-way to service Lot 2 Block 1 Brooks Harbor First Addition – Roadway Reconstruction; and Incidentals signed by owners of a majority of the area of the property included within the district, has been received.

BE IT FURTHER RESOLVED that the improvements consists of a roadway improvements to accommodate dual left hand turning movements for east bound traffic at Sheyenne Street and the installation of a dedicated right turn lane for east bound traffic to turn south onto Sheyenne Street. Utilities including sewer and water would also be nessessary to service Lot 2 Block 1 of Brooks Harbor First Addition .

BE IT FURTHER RESOLVED that the Resolution Declaring Improvements Necessary shall not be required.

Date: December 19, 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 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: December 19, 2022

Subject: Project No. 4068 - Storm Lift Station SM-54 & Force Main Rehabilitation

Action: Approve Task Order No. 65-1 for Basic Services, and Direct Engineer to prepare Plans and Specs.

New Information and Recommendation:

This project is to line an existing 24" RCP force main along 63rd Street S. from 52nd Avenue S. north to storm lift station SM-54 as well as upgrade the control panel and radio system in the lift station to current City of West Fargo standards. SM-54 evacuates stormwater from the McMahon Estates 2nd and 3rd Additions and discharges to the Sheyenne River via a 24" force main.

The following documents are attached for review/consideration:

- Project Area Exhibit
- Task Order No. 65-1
- Resolution Directing Plans and Specifications

Staff Recommendation: Approve Task Order No. 65-1 for "Basic Services, and Direct Engineer to prepare Plans and Specs.

Background and Project Summary:

At the November 21, 2022 commission meeting, the Commission authorized Engineering to prepare a Task Order for Basic Services. The proposed action approves this Task Order and the resolution will direct the Engineer to prepare the plans and specifications for the project.

Policy Analysis:

This project will rehabilitate critical infrastructure that evacuates storm water from the McMahon Estates 2nd and 3rd Additions that has been known to leak. Leaks in this force main pose a threat to the integrity of the system and adjacent roadways and boulevards.

Financial Analysis:

This project was listed in the 2022 CIP with a planned construction year of 2023 and a \$900,000 budget. The Preliminary Engineering Report provided by the Consultant estimates this project to cost \$680,000 and funding is anticipated to be provided utilizing Capital Improvement Sales Tax funds. No special assessments are anticipated with this project.

Previously Presented Information and Commission Actions:

November 21, 2022-

- Staff Recommendation: Create Project No. 4068, Approve Engineer's Report and Authorize Engineering to Prepare a Task Order for Basic Services.
- Commission Action: Commissioner Anderson moved and Commissioner Olson seconded to approve. No opposition, motion carried.

A portion of the work was performed under Project No. 4066:

Project 4068 – SM-54 Lift Station and Forcemain Improvements

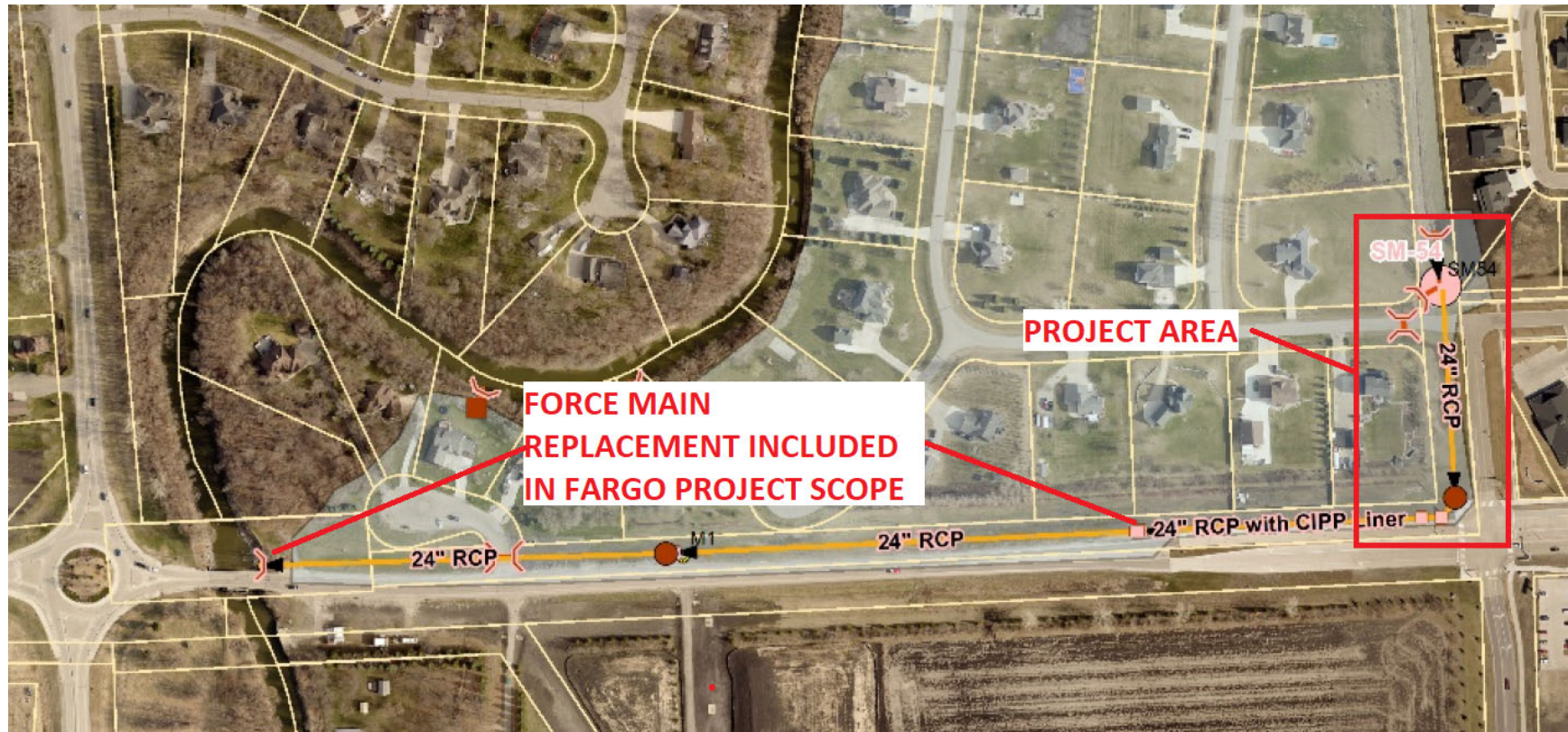


EXHIBIT A to MSA

Task Order for Design & Construction Services

This is Task Order No. 65-1
consisting of 20 pages.

Task Order 65-1

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: November 16, 2022
- b. Owner: City of West Fargo
- c. Engineer: Moore Engineering, Inc.
- d. Specific Project Title: Project No. 4068 – Replacement of Sewerage Systems and Incidentals
- e. Specific Project Description: Storm Sewer Lift Station (SM-54) & Forcemain Rehabilitation
- F. Project Background: Upon approval of the Engineer's Report, the City requested design and construction related services and coordination with City Project No. 2268.

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 Design Related Services*

1. Coordination with City Project No. 2268
 - a. Coordination regarding force main connection with City of Fargo design staff and their project consultant.

- b. Coordination with KPH and City of West Fargo on Force Main Repair on existing storm sewer force main along 52nd Avenue South
- c. Exchange design or CAD files with City of Fargo staff and their project consultant.
- d. General coordination during construction and project close out process with City of Fargo.

B. *Additional Commissioning Phase Services*

1. 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 street lights. 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				
Engineer's Study	65	\$10,000	\$0	\$10,000
Additional Design Related Services				
Coordination with City Project No. 2268	65-1	\$0	\$10,000	\$10,000
Additional Commissioning Phase Services				
Additional Record Drawings Administration	65-1	\$0	\$2,500	\$2,500
ADDITIONAL SERVICES SUBTOTAL (TO 65-1)		\$10,000	\$12,500	\$22,500
ADDITIONAL SERVICES SUBTOTAL (All TO's)				

- b. Compensation for services outlined in the Preliminary Design, Final Design, Bidding or Negotiation, Construction, Post-Construction, and Commissioning Phases shall be made according to 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		\$575,000
Estimated Compensation based on 11% of Construction		\$63,250
TOTAL TASK ORDER (TO 65-1)		\$75,750

- 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	\$22,500
Estimated Compensation based on 11% of Construction	\$63,250

TOTAL ESTIMATED COMPENSATION UNDER ALL TASK ORDERS (LIST ALL TO'S)	\$85,750
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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. None

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

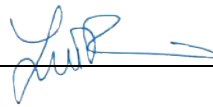
Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by City.

The Effective Date of this Task Order No. 65-1 is November 16, 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

Exhibit A.1



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: _____

Commissioner _____ introduced the following resolution and moved its adoption:

RESOLUTION DIRECTING ENGINEER
TO PREPARE PLANS AND SPECIFICATIONS

BE IT RESOLVED by the Board of City Commissioners of the City of West Fargo, deeming it necessary to make certain improvements consisting of rehabilitating a storm sewer lift station along with lining associated forcemains and other system components, and related incidentals, and all other appurtenances, contrivances and structures used or useful in connection with the above specified improvements, be constructed and made in Project No. 4068– Sewerage; and Incidentals of the City of West Fargo, the City hereby directs Daniel Hanson, the Engineer for the City of West Fargo and being a competent engineer, to prepare plans and specifications for such work.

Dated: December 19, 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 _____. Upon roll call vote being taken thereon, the following commissioners voted in favor thereof: _____. The following commissioners were absent and not voting: _____. The following commissioners voted nay: _____. The majority having voted aye, the motion was carried and the resolution was duly adopted.