



THE REGULAR MONTHLY MEETING OF THE BOARD OF COMMISSIONERS OF THE PARK DISTRICT OF THE CITY OF FARGO WILL BE HELD ON **TUESDAY, SEPTEMBER 10, 2024, AT 5:30 P.M.** IN THE BOARD ROOM AT THE FARGO PARKS SPORTS CENTER AT 6100 38th STREET SOUTH, FARGO, WITH PRESIDENT AARON HILL, PRESIDING. **Please note:** This is an in-person event and streamed virtually. Members of the public and media can view the live meeting at www.fargoparks.com/news/park-board-meeting-september-agenda-2024

6:00 p.m. Budget Hearing

- A. Call to Order
- B. Board to Approve Order of Agenda

Consent Agenda - approve the following:

- a. Minutes - August 6, 2024
- b. August Bills
- c. Award bid for Rheault Farm Fencing Replacement Project
- d. Approve construction of Red River Phase 2 Trail and Drain 27 Trail Crossing Projects.
- e. Approve to apply for grant opportunities - Garrison Diversion Conservancy District Recreation Grant and Outdoor Heritage Fund Grant.

Regular Agenda

- 1. Recognition of Audience/Public Comments
- 2. Director's Report
- 3. Resolution Adopting the City of Fargo Ordinance Enacting Article 10-14 of Chapter 10 of the Fargo Municipal Code Relating to Camping on Public Property; Susan Faus, presenter.
- 4. Adjourn

Individuals who wish to attend Park Board meetings but need special arrangements or would like to address the Board, please contact the Fargo Park District office at 499-6060 by noon on the Monday before the Board Meeting.

**MINUTES OF THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS
OF THE FARGO PARK DISTRICT OF AUGUST 6, 2024**

The regular monthly meeting of the Board of Commissioners of the Park District of the City of Fargo was held on Tuesday, August 6, 2024, at 5:30 p.m. at the Fargo Park District office at 701 Main Avenue, Fargo, North Dakota and via Restream. Present at the meeting were Commissioners Aaron Hill, Jerry Rostad, Zoë Absey, Joe Deutsch and Vicki Dawson. Also present were: Dave Bietz, Susan Faus, and attorney Jeffrey Gunkelman.

Approval of Agenda

Commissioner Joe Deustch moved and Commissioner Vicki Dawson seconded a motion to approve the agenda. Upon call of the roll, the motion passed unanimously.

Approval of Consent Agenda

Commissioner Joe Deutsch moved and Commissioner Jerry Rostad seconded a motion to approve the following actions on the consent agenda:

- (a) The minutes from July 9, 2024 meeting;
- (b) The July 2024 bills;
- (c) Approve 2025 Aquatic Fees at Island Park Pool;
- (d) Approve Policy 480 – Confidentiality;
- (e) Approve Tree removal and stump grinding bid in the amount of \$49,736.19 to Carr’s Tree Service.
- (f) Award Confluence the contract for Park Master Plan Consulting Services for the Fargo Park District in the amount of \$250,945.00;
- (g) Approve the bill of sale for the utility cart to the City of Fargo;
- (h) Approve the Governance Policies;

Upon call of the roll, the motion passed unanimously.

Public Comments

Members of the public were afforded the opportunity to discuss issues with the Board.

Director’s Report

Susan Faus presented this matter and provided an informational update to the Board on the respective departments. No action was taken on this matter.

Courts Plus Presentation

The Courts Plus staff presented to the Board regarding the operations of Courts Plus.

Approval of 2025 Fargo Park District Preliminary Budget

Broc Lietz presented to the Board on this matter. It was noted that the proposed 2025 preliminary budget includes a 2.05 mil increase. It was noted that increased costs include a payroll increase of 4.5% for full-time salaries, 5 new full-time positions, an increase in health insurance costs of 20%, added utility costs of 5%, amongst other cost increases. It was noted that the procedure is to approve the preliminary budget at the hearing, which would result in the county sending out estimated tax statements to residents. It was noted that September 10, 2024 would be the budget hearing where citizens can have input on the budget and that October 8 is the final certification of the budget.

Commissioner Absey noted that it is great to see such a high percent of the Park District budget going toward public use. Commissioner Hill noted that he is sensitive to the fellow political budgets within the community but that this proposed mil increase follows an approximate 4 mil decrease last year. Commissioner Dawson noted that she is sensitive to the mil increase but that the total mils are still lower than they were in 2023. Commissioner Deutsch noted that 2025 will be the first full year in which the entire sports complex is in operations. Commissioner Rostad noted that the Park District's buying power is down due to inflation and if one margins out inflation the Park District is not increasing its budget as much as it looks.

Commissioner Jerry Rostad moved and Commissioner Vicki Dawson seconded a motion to approve the 2025 Fargo Park District Preliminary Budget as presented and directed staff to comprehensively review the approved Preliminary Budget to potentially reduce the final budget. Upon call of the roll, the motion passed unanimously.

Approval of Fargo Park District Strategic Plan

Susan Faus presented to the Board on this matter. It was noted that process of getting to the proposed strategic plan was a 7-to-8-month process that included: data collection, data analysis and committee engagements. It was noted that the proposed strategic plan included a new Mission, Vision and Values of the Park District. It was noted that the proposed strategic plan includes three strategic priorities:

1. Organizational Excellence which includes: policy governance, capital improvement plan, preventative maintenance plan; long-range financial planning; and people and culture;
2. Relationships which includes: organizational relationships and community engagement;
3. Places and Spaces which includes: informed decision making; ecological and sustainable interactions; long-term sustainability; and inclusive design and diverse programming.

It was noted that the next steps are to create an organization work plan, department meetings, implementation of the strategic plan and annual reviews.

Commissioner Dawson notes that she cannot help but beam listening to the presentation and the strategic plan represents a new era for the Park District. She noted that the community engagement was crucial to assist the Park District in guiding its way. Commissioner Rostad noted that the strategic plan was the guidepost for the future and will help the Board and staff decide how to move forward proactively. Commissioner Hill noted that the entire process was extraordinarily well done and that the strategic plan attaches measurables for the Park District. Commissioner Joe Deutsch noted that there were 40 people between community and staff who participated in the process and that the end result is a testament to their efforts.

Commissioner Joe Deutsch moved and Commissioner Vicki Dawson seconded a motion to approve the Fargo Park District Strategic Plan as presented. Upon call of the roll, the motion passed unanimously.

At the conclusion of the above agenda items, a motion to adjourn was made and seconded, and upon unanimous consent the meeting adjourned at approximately 6:40 p.m.

Jeff Gunkelman, Kennelly Business Law, Clerk



MEMORANDUM

DATE: September 10th, 2024

TO: Fargo Park Board Commissioners

FROM: Tony Schmitt, Park Director

RE: Consent Agenda Item (c)-Award bid for Rheault Farm Fencing Replacement Project

Bids for the Rheault Farm Fencing Replacement Project were received and opened Augusts 14, at 1:00 P.M., at the Park District Office. Attached to this memo is the bid tab.

We received bids from Dakota Fence, for a total bid of \$76,787.00, and American Security & Gate Company, for a total bid of \$61,450.00. Staff recommends accepting the bid from American Security & Gate Company, for a bid amount of \$61,450.00. The bid met all specifications, is the lowest bid and is within our budgeted amount of \$116,500.

It was recommended at the August 28, 2024, Facilities Committee to bring this to the full board on the Consent Agenda for consideration and approval.

If you have any questions prior to the Board Meeting, please contact me to discuss.

Thank you.

SAMPLE MOTION: I make a motion to award American Security & Gate Company the bid for the Rheault Farm Fencing Improvement Project, as presented.

Susan Faus, Executive Director
Park Board Commissioners – Zoë Absey * Vicki Dawson * Joe Deutsch * Aaron Hill * Jerry Rostad
Clerk-Jeff Gunkelman

Our Core Values: *Be Authentic * Be Bold * Be Collaborative

Fargo Park District

Rheault Farm Fence Replacement

Bid Opening: 1:00 pm, Wednesday, August 14, 2024

	Item 1	Item2	Item 2				
	Old Fence Removal	New Fence Installation	New Slat Installaion	Acknowledge Addendum No. 1	Acknowledge Addendum No. 2	Total Bid Price	Completion Date, if Different Than Spec
Bidder							
Dakota Fence	\$10,960.00	\$47,138.00	\$18,689.00	X	X	\$76,787.00	
American Security & Gate Company	\$10,000.00	\$41,000.00	\$10,450.00	X	X	\$61,450.00	



MEMORANDUM

DATE: September 10th, 2024

TO: Fargo Park Board Commissioners

FROM: Tony Schmitt, Park Director

RE: Consent Item (d) - Review Memorandum of Understanding Agreements with the City of Fargo for the construction of the Red River Phase 2 Trail and Drain 27 Trail Crossing Projects.

The City of Fargo is planning to construct segments of two shared used paths in 2025 as part of the overall City of Fargo pedestrian transportation system plan. The two segments will be a portion of the Red River Trail from River Drive South from 35th Ave S. to 40th Ave S. and the Drain 27 Trail Crossing from 25th St S. to the Timberline Trail. The City of Fargo and the Fargo Park District both own parcels on which the share use paths will be constructed. Attached please find two Memorandum of Understanding Agreements, between the City of Fargo and the Fargo Park District.

The local cost share will be split between the City of Fargo and the Fargo Park District for both projects. The park district's share is estimated to be \$143,122 for the Red River Trail Phase 2 project and \$151,558 for the Drain 27 Trail Crossing project. The park district's share of the cost of these two projects is budgeted in the 2025 Concrete Improvements Budget. The City of Fargo received Transportation Alternative Program (TAP) grants from the Federal Highway Administration (FHWA) for the remaining costs of the two projects.

It was recommended at the August 28, 2024, Facilities Committee Meeting to bring this to the full board on the Consent Agenda for consideration and approval.

If you have any questions regarding this memo, please contact me prior to the meeting. Thank you.

SAMPLE MOTION: I make a motion to approve the MOU agreements with the City of Fargo for the construction of the Red River Phase 2 Trail and the Drain 27 Trail Crossing projects, as presented.

Susan Faus, Executive Director
Park Board Commissioners – Zoë Absey * Vicki Dawson * Joe Deutsch * Aaron Hill * Jerry Rostad
Clerk-Jeff Gunkelman

Our Core Values: *Be Authentic * Be Bold * Be Collaborative

MEMORANDUM OF UNDERSTANDING REGARDING CONSTRUCTION AND MAINTENANCE

This Memorandum of Understanding ("MOU" or "Agreement") is entered into between the City of Fargo, whose address is 225 4th Street North, Fargo, North Dakota 58102 ("Fargo"), and the Park District of the City of Fargo, whose address is 6100 38th Street South, Fargo, North Dakota 58104 (the "Park District").

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo's Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, North Dakota Century Code § 40-49-04 authorizes the Park District to enter into contracts; and

WHEREAS, Fargo is planning to construct a shared use path as part of the overall City pedestrian transportation system, as shown in Exhibit "A" attached hereto; and

WHEREAS, Fargo will construct certain amenities in conjunction with the shared use path, including vegetation establishment, and pedestrian benches; and

WHEREAS, the parties have agreed to share in the responsibility of construction, maintenance, inspection, and repair of the shared use path and amenities, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Ownership. Fargo and the Park District both own parcels on which the shared use path and other amenities will be constructed, including construction and maintenance of a levee, and shall retain such ownership without regard to maintenance responsibilities. The parties understand and agree that the primary use of the property is for flood control, and such purpose shall not be impaired or impeded by any provisions herein.

2. Access. Fargo hereby grants Park District access to the portions of the shared use path and amenities located upon Fargo's property for ingress and egress, and for purposes of maintenance, repairs, and construction, as necessary to carry out the terms of this Agreement. Park District hereby grants unto Fargo unimpeded access to the shared use path and installed amenities for whatever purpose deemed necessary by Fargo, including patrol, emergency access, and truck access, as necessary.

3. Construction.

- a. Fargo shall be solely responsible for the construction of the shared use path and all agreed upon amenities, including but not limited to vegetation establishment, and installation of pedestrian benches.

- b. Fargo shall be responsible for any levee construction, maintenance and reconstruction, as determined necessary in Fargo's sole discretion.
- c. Park District grants Fargo permission to construct the shared use path and amenities on property owned by Park District within the project area, have access to those properties for purposes of construction, and as necessary in the future for flood patrol, emergency access, and truck access, as necessary.

4. Project Cost.

- a. All project costs incurred by Fargo for project development and construction, including internal markups, shall be split 50/50 between Fargo and Park District.
- b. The total estimated project cost for the initial construction of the shared use path, as described in 3(a) above, is \$783,027. Park District's estimated share is \$143,122. Actual costs incurred shall be used to determine final shared cost amounts.
- c. Notwithstanding the repair and maintenance responsibilities set forth elsewhere herein, Fargo and the Park District shall split any and all costs of a future trial replacement equally.

5. Park District General Maintenance. Park District shall be responsible for the repair and maintenance of all amenities and improvements placed by Fargo for the proposed path and its connections as shown in Exhibit "A" attached hereto, as well as path pavement maintenance and repair (which shall not include maintenance or repair to the existing adjacent sidewalks along River Drive South), and snow and debris removal, as necessary, EXCEPT that in the event the shared use trail or vegetation constructed by Fargo are damaged as a result of Fargo's construction, maintenance or reconstruction, Fargo shall repair the same, at Fargo's cost. Park District understands and agrees that it may not construct any permanent structures on the property, make any modifications to the levees, or plant any trees on Fargo property, or plant any trees within 15-feet of the toe of the levee, unless otherwise agreed to in writing signed by both parties. Fargo and Park District understand and agree that any work to be completed pursuant to this Agreement that may disrupt Park District use of the property shall be coordinated between the parties so as to minimize impacts, to the extent possible.

- a. Park District shall be responsible for tree and vegetation replacement following Fargo's initial installation, at Park District's sole cost.
- b. Park District shall be responsible for mowing and providing all weed control within a 10-foot buffer area on each side of the proposed path and its connections (the "Buffer Area"), regardless of which party owns the property. All Fargo owned property outside this Buffer Area remains the responsibility of Fargo to mow and provide weed control. All Park District owned property remains the responsibility of Park District to mow and provide weed control.

- c. Park District understands and agrees that any work completed by Park District may not impact Fargo's flood control system without prior written consent of Fargo.

6. Dispute Resolution.

- a. Fargo and the Park District will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the improvements and amenities identified herein, which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the preparing an annual schedule of maintenance and repairs.
- b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

7. Term. The term of this Agreement will be 20 years. This Agreement will automatically renew for successive periods of 20 years. If either party intends to terminate this Agreement, at least 180 days' Notice prior to expiration of the current term shall be given to the other party. The parties may agree in writing to terminate this Agreement prior to expiration of the initial term or any renewal term. This Agreement is personal as to the Park District, and may not be assigned or transferred without Fargo's written consent.

8. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this Agreement and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this Agreement, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, direct or indirect, at law or in equity, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this Agreement.

9. Notice. Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo

ATTN: City Auditor
Fargo City Hall
225 Fourth Street North
Fargo, ND 58102

If to the Park District:

Park District of the City of Fargo
ATTN: Finance Director
6100 38th Street South
Fargo, ND 58104

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

10. Time is of the Essence. Time is of the essence of each provision of this Agreement and of all the conditions thereof.

11. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties. It does not negate the parties' rights, duties and obligations under prior agreements related to the shared use path construction and operation, maintenance, and flood control system.

11. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

12. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.

13. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this Agreement.

14. Binding Effect. All covenants, agreements, warranties and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

15. Governing Law. This Agreement has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this Agreement will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

16. Rules of Construction. The parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this Agreement.

17. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

18. Headings. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this _____ day of _____, 2024

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation

By:

Dr. Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Dated this _____ day of _____, 2024

Park District of the City of Fargo

By:

Suan Faus, Executive Director

ATTEST:

Joe Deutsch,
President of the Board of Park Commissioner's

EXHIBIT A

SHARED USE PATH DESIGN DATA				
Traffic	Average Daily			
Current N/A	Pass: N/A	Trucks: N/A	Total: N/A	
Forecast N/A	Pass: N/A	Trucks: N/A	Total: N/A	
Clear Zone Distance: 2'		Design Speed: 20 MPH		
Minimum Sight Dist. for Stopping: N/A		Bridges: N/A		
Sight Dist. for No Passing Zone: N/A				
Pavement Design Life: N/A				

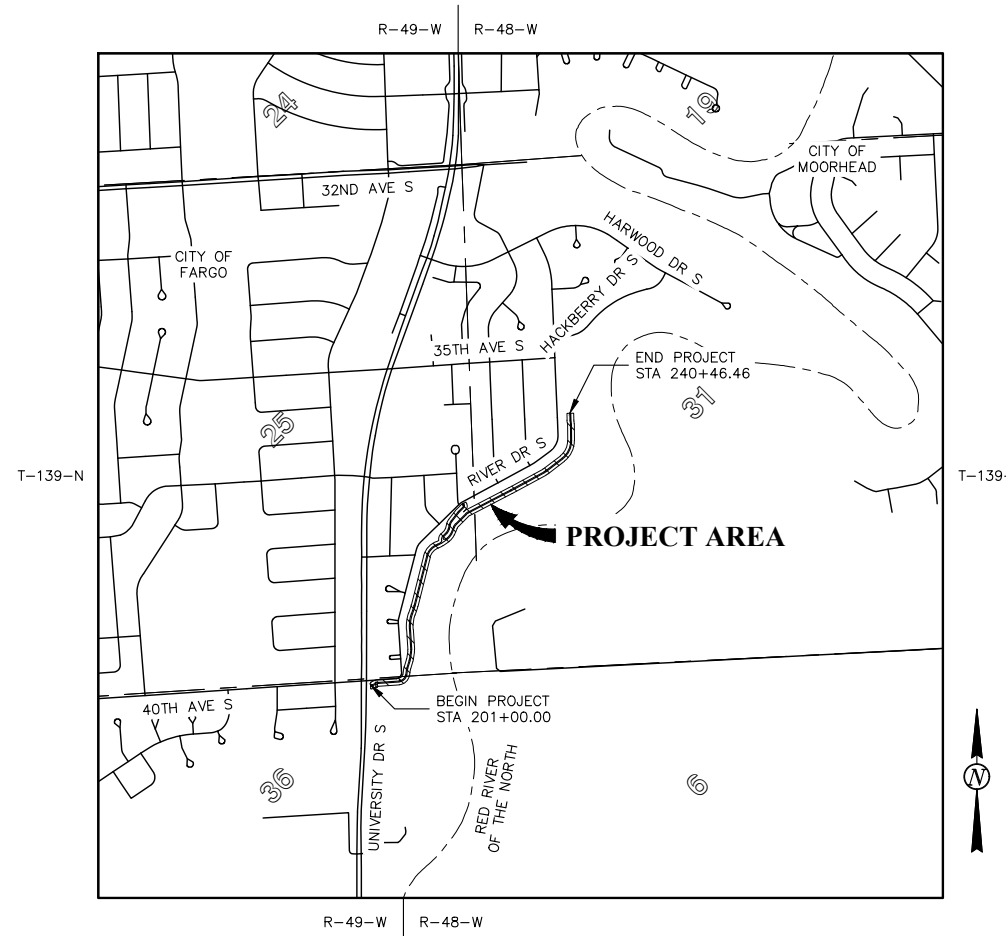
STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	TMA-TAU-8-984(176)	23945	1	1

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

TMA-TAU-8-984(176)
SN-24-A1
CASS COUNTY
RIVER DR TRAIL
40TH AVE S TO SOUTH OF 35TH AVE S
GRADING AND SHARED USE PATH

GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	4/1/2023
Supplemental Specifications	NONE

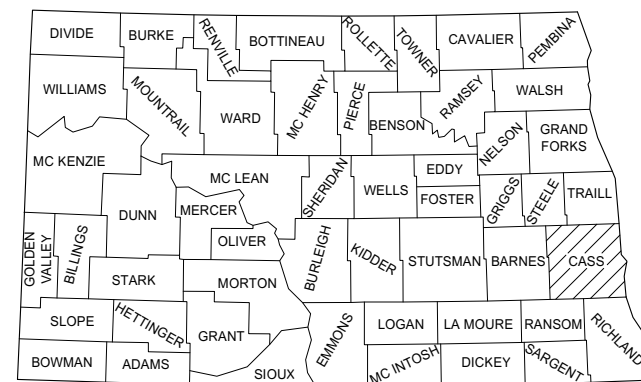
PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
TMA-TAU-8-984(176)	0.747	0.747



Proj. No. 6059-0205
Houston Engineering Inc.
Ph: 701.237.5065

04/08/24 03:47:44PM H:\JBN\6000\6059\6059_0205 Multi-Project RFP\CAD\Plans\Phase 2\001-COVER.dwg

DESIGNERS
GUNNAR COWING



STATE COUNTY MAP

APPROVED DATE _____
FARGO
CITY ENGINEER

I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the state of ND.

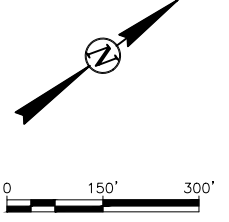
APPROVED DATE 4/9/2024

W. R. C.

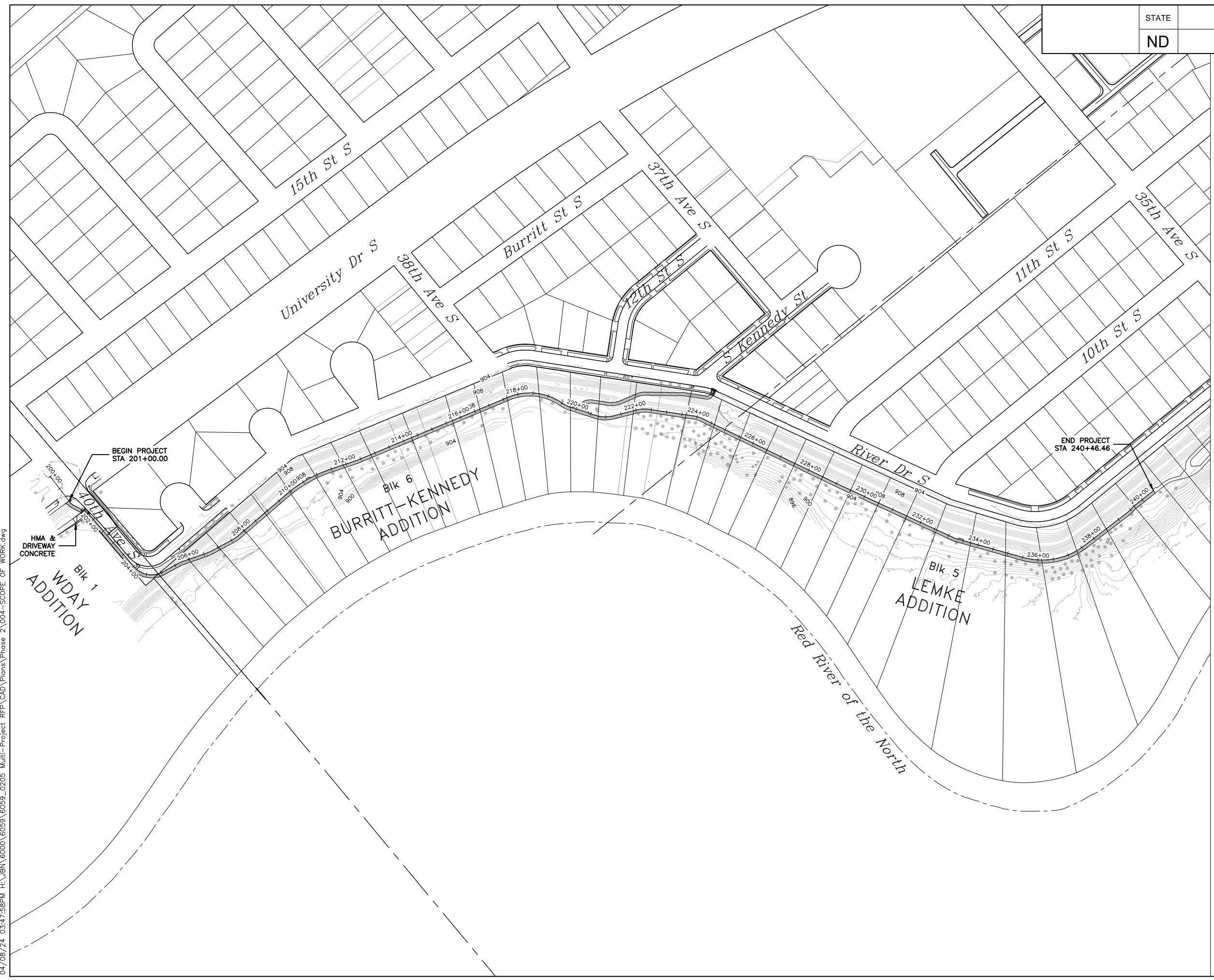
HOUSTON ENGINEERING INC



STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	TMA-TAU-8-984(176)	4	1



- LEGEND:**
- 6" COMMERCIAL GRADE HOT MIX ASPHALT (ON 6" BASE)
 - SIDEWALK CONCRETE 5IN (ON 2" BASE)
 - SIDEWALK CONCRETE 6IN (ON 2" BASE)
 - 7" DRIVEWAY CONCRETE (ON 2" BASE)

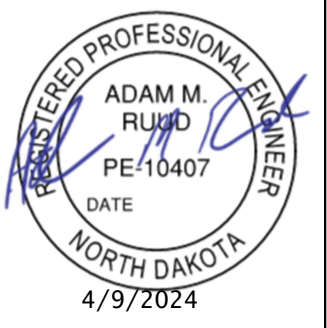


04/08/24 03:47:58PM H:\IBN\6000\6059\6059_0205_Multi-Project RFP\CAD\Plans\Phase 2\004-SCOPE OF WORK.dwg

THE CITY OF
Fargo
 FAR MORE

Proj. No. 6059-0205
Houston
 Engineering Inc.
 Ph: 701.237.5065

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



Scope of Work

River Dr Trail

MEMORANDUM OF UNDERSTANDING REGARDING CONSTRUCTION AND MAINTENANCE

This Memorandum of Understanding ("MOU" or "Agreement") is entered into between the City of Fargo, whose address is 225 4th Street North, Fargo, North Dakota 58102 ("Fargo"), and the Park District of the City of Fargo, whose address is 6100 38th Street South, Fargo, North Dakota 58104 (the "Park District").

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo's Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, North Dakota Century Code § 40-49-04 authorizes the Park District to enter into contracts; and

WHEREAS, Fargo is planning to construct a shared use path as part of the overall City pedestrian transportation system, as shown in Exhibit "A" attached hereto; and

WHEREAS, Fargo will construct certain amenities in conjunction with the shared use path, including vegetation establishment, planters, box culverts, riprap, and pedestrian benches; and

WHEREAS, the parties have agreed to share in the responsibility of construction, maintenance, inspection, and repair of the shared use path and amenities, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Ownership. Fargo and the Park District both own parcels on which the shared use path and other amenities will be constructed, including construction and maintenance of a levee, and shall retain such ownership without regard to maintenance responsibilities. The parties understand and agree that the primary use of the property is for flood control, and such purpose shall not be impaired or impeded by any provisions herein.

2. Access. Fargo hereby grants Park District access to the portions of the shared use path and amenities located upon Fargo's property for ingress and egress, and for purposes of maintenance, repairs, and construction, as necessary to carry out the terms of this Agreement. Park District hereby grants unto Fargo unimpeded access to the shared use path and installed amenities for whatever purpose deemed necessary by Fargo, including patrol, emergency access, and truck access, as necessary.

3. Construction.

- a. Fargo shall be solely responsible for the construction of the shared use path and all agreed upon amenities, including but not limited to vegetation establishment, planters, box culverts, riprap, and installation of pedestrian benches.

- b. Fargo shall be responsible for any levee construction, maintenance and reconstruction, as determined necessary in Fargo's sole discretion.
- c. Park District grants Fargo permission to construct the shared use path and amenities on property owned by Park District within the project area, have access to those properties for purposes of construction, and as necessary in the future for flood patrol, emergency access, and truck access, as necessary.

4. Project Cost.

- a. All project costs incurred by Fargo for project development and construction, including internal markups, shall be split 50/50 between Fargo and Park District.
- b. The total estimated project cost for the initial construction of the shared use path, as described in 3(a) above, is \$873,673. Park District's estimated share is \$151,558. Actual costs incurred shall be used to determine final shared cost amounts.
- c. Notwithstanding the repair and maintenance responsibilities set forth elsewhere herein, Fargo and the Park District shall split any and all costs of a future trail replacement equally.

5. Park District General Maintenance. Park District shall be responsible for the repair and maintenance of all amenities and improvements placed by Fargo for the proposed path and its connections as shown in Exhibit "A" attached hereto, as well as path pavement maintenance and repair, and snow and debris removal, as necessary, EXCEPT that in the event the shared use trail or vegetation constructed by Fargo are damaged as a result of Fargo's construction, maintenance or reconstruction, Fargo shall repair the same, at Fargo's cost. Park District understands and agrees that it may not construct any permanent structures on the property, make any modifications to the levees, or plant any trees on Fargo property, or plant any trees within 15-feet of the toe of the levee, unless otherwise agreed to in writing signed by both parties. Fargo and Park District understand and agree that any work to be completed pursuant to this Agreement that may disrupt Park District use of the property shall be coordinated between the parties so as to minimize impacts, to the extent possible.

- a. Park District shall be responsible for tree and vegetation replacement following Fargo's initial installation, at Park District's sole cost.
- b. Park District shall be responsible for mowing and providing all weed control within a 10-foot buffer area on each side of the proposed path and its connections (the "Buffer Area"), and all weed control within this area. All Fargo owned property outside this Buffer Area remains the responsibility of Fargo to mow and provide weed control. All Park District owned property remains the responsibility of Park District to mow and provide weed control.

- c. Park District understands and agrees that any work completed by Park District may not impact Fargo's flood control system without prior written consent of Fargo.

6. Dispute Resolution.

- a. Fargo and the Park District will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the improvements and amenities identified herein, which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the preparing an annual schedule of maintenance and repairs.
- b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

7. Term. The term of this Agreement will be 20 years. This Agreement will automatically renew for successive periods of 20 years. If either party intends to terminate this Agreement, at least 180 days' Notice prior to expiration of the current term shall be given to the other party. The parties may agree in writing to terminate this Agreement prior to expiration of the initial term or any renewal term. This Agreement is personal as to the Park District, and may not be assigned or transferred without Fargo's written consent.

8. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this Agreement and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this Agreement, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, direct or indirect, at law or in equity, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this Agreement.

9. Notice. Any notice or election required or permitted to be given or served by any party to this Agreement upon any other will be deemed given or served in accordance with the provisions of this Agreement if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo

ATTN: City Auditor
Fargo City Hall
225 Fourth Street North
Fargo, ND 58102

If to the Park District:

Park District of the City of Fargo
ATTN: Finance Director
6100 38th Street South
Fargo, ND 58104

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this Agreement.

10. Time is of the Essence. Time is of the essence of each provision of this Agreement and of all the conditions thereof.

11. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this Agreement and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties. It does not negate the parties' rights, duties and obligations under prior agreements related to the shared use path construction and operation, maintenance, and flood control system.

11. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

12. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.

13. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this Agreement.

14. Binding Effect. All covenants, agreements, warranties and provisions of this Agreement will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

15. Governing Law. This Agreement has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

16. Rules of Construction. The parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this Agreement.

17. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

18. Headings. Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this _____ day of _____, 2024

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation

By:

Dr. Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

Dated this _____ day of _____, 2024

Park District of the City of Fargo

By:

Susan Faus, Executive Director

ATTEST:

Joe Deutsch,
President of the Board of Park Commissioner's

EXHIBIT A

DESIGN DATA			
Traffic	Average Daily		
Current N/A	Pass: N/A	Trucks: N/A	Total: N/A
Forecast N/A	Pass: N/A	Trucks: N/A	Total: N/A
Clear Zone Distance: 2 FT		Design Speed: 20 MPH	
Minimum Sight Dist. for Stopping: N/A		Bridges: N/A	
Sight Dist. for No Passing Zone: N/A			
Pavement Design Life: N/A			

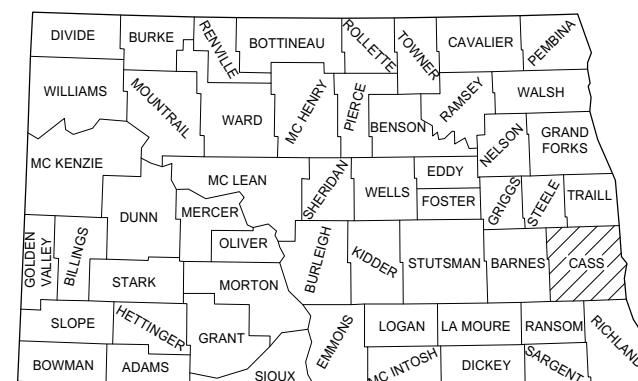
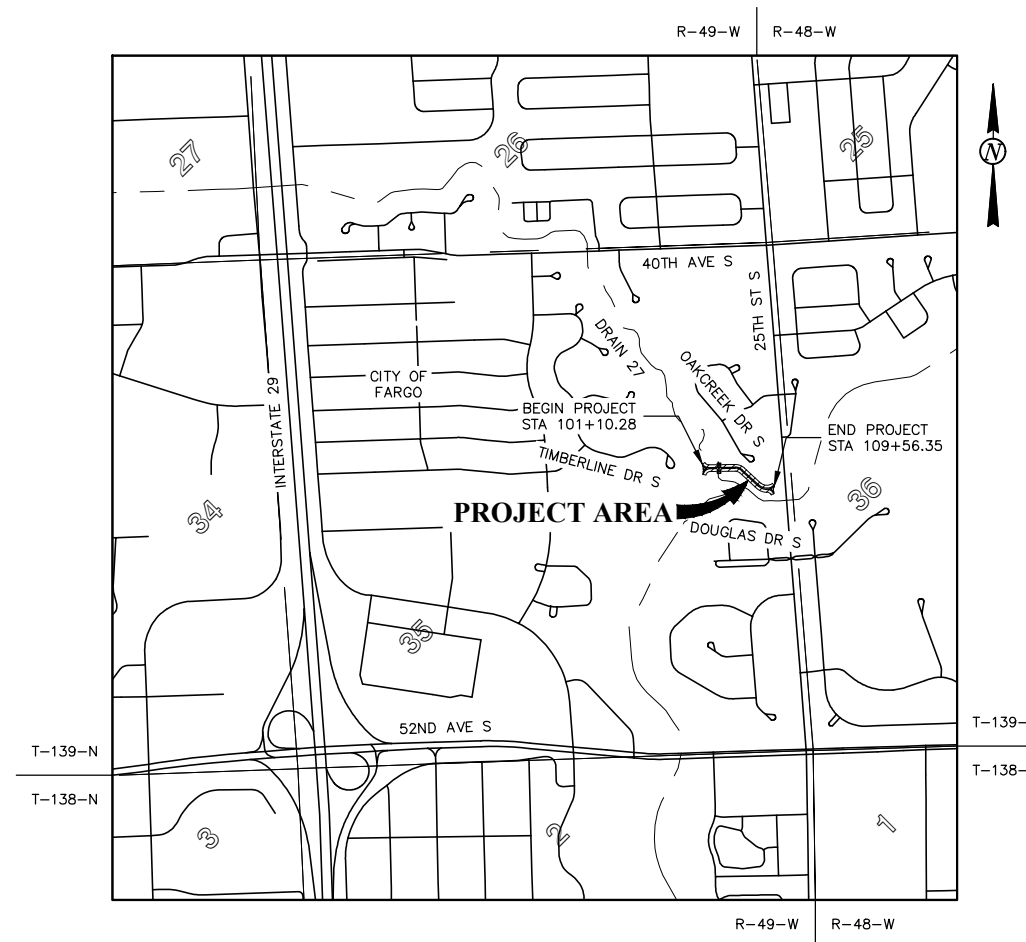
STATE	PROJECT NO.	PCN	SECTION NO.	SHEET NO.
ND	TMA-TAU-8-984(177)	23946	1	1

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

TMA-TAU-8-984(177)
SN-25-A0
CASS COUNTY
DRAIN 27 TRAIL CROSSING
TIMBERLINE TO MILWAUKEE TRAIL
GRADING, SHARED USE PATH, AND BOX CULVERT

GOVERNING SPECIFICATIONS	Date Published and Adopted by the North Dakota Department of Transportation
Standard Specifications	4/1/2023
Supplemental Specifications	NONE

PROJECT NUMBER \ DESCRIPTION	NET MILES	GROSS MILES
TMA-TAU-8-984(177)	0.160	0.160



STATE COUNTY MAP



Proj. No. 6059-0205
Houston
Engineering Inc.
Ph: 701.237.5065

DESIGNERS

APPROVED DATE _____

FARGO
CITY ENGINEER

I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the state of ND.

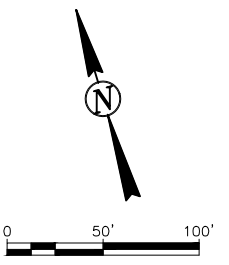
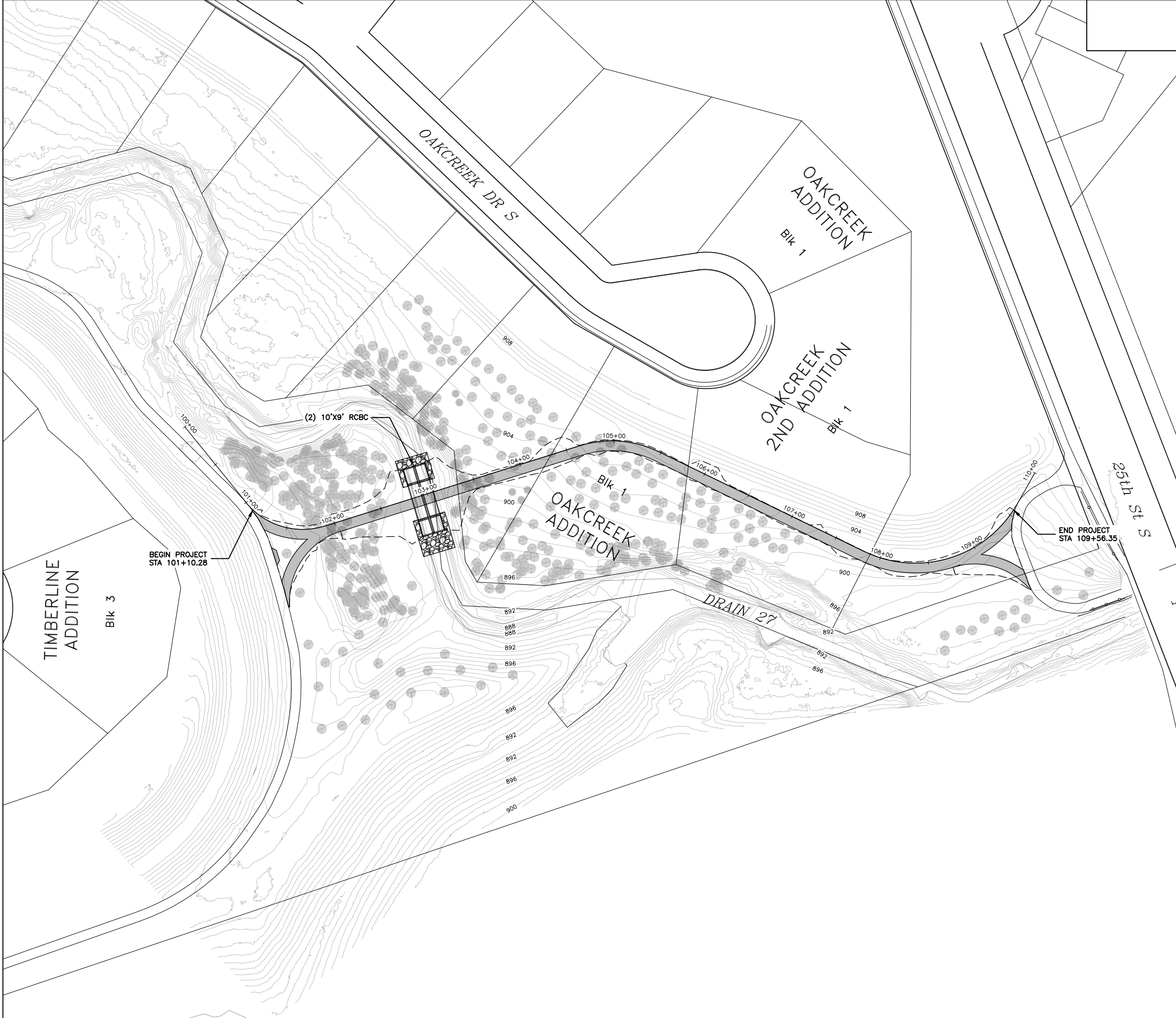
APPROVED DATE _____


HOUSTON ENGINEERING INC

PRELIMINARY

06/20/24 03:48:06PM H:\JBN\6000\6059\6059_0205 Multi--Project RFP\CAD\Plans\Drain 27\001-COVER.dwg

STATE	PROJECT NO.	SECTION NO.	SHEET NO.
ND	TMA-TAU-8-984(177)	4	1



LEGEND:
 SIDEWALK CONCRETE 5IN (ON 2" BASE)

06/20/24 03:48:16PM H:\IBN\6000\6059\6059_0205 Multi-Project RFP\CAD\Plans\Drain 27\004-SCOPE OF WORK.dwg

THE CITY OF
Fargo
 FAR MORE

 Proj. No. 6059-0205
Houston
 Engineering Inc.
 Ph: 701.237.5065

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

PRELIMINARY

Scope of Work

Drain 27 Trail



MEMORANDUM

DATE: September 10th, 2024

TO: Fargo Park Board Commissioners

FROM: Tony Schmitt, Park Director

RE: Consent Item (e) - Permission to apply for the following grant opportunities:
Garrison Diversion Conservancy District Recreation Grant and an Outdoor
Heritage Fund Grant

Staff is requesting permission to apply for two upcoming grant opportunities, Garrison Diversion Conservancy District Recreation Grant and an Outdoor Heritage Fund Grant.

The first one is a Garrison Diversion Recreation Grant. Garrison Diversion Recreation grants may be requested for new recreation facilities and enhancement or expansion of existing facilities. This matching grant is for projects located within the Garrison Diversion boundaries that may be eligible to receive up to 25% of the non-federal share of the cost of the project. The Fargo Park District is planning to upgrade the dugouts at Fields #3 and #4 (east fields) and to add a picnic shelter at the Anderson Softball Complex in 2025 that would qualify for this grant opportunity.

Second is an Outdoor Heritage Grant. North Dakota's Outdoor Heritage Fund was established in 2013 as a multi-million-dollar program to provide grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations, with higher priority given to projects that enhance conservation practices in this state by supporting one or more statutorily identified directives. The park district plans to submit the Southwest Regional Pond Recreation Area enhancements project for consideration for this grant. The project would consist of concrete trails, gravel trails, native plantings establishment along the stormwater ponds, and park benches. This is a matching grant for eligible projects that is 75% OHF/25% Local Share. If awarded funding, this project would take place in 2026.

Both grant opportunities require support of the governing body of an agency applying for the grants.

It was recommended at the August 28, 2024, Facilities Committee Meeting to bring this to the full board on the Consent Agenda for consideration and approval.

SAMPLE MOTION: I make a motion to approve staff to apply for the grant opportunities as presented.

Susan Faus, Executive Director
Park Board Commissioners – Zoë Absey * Vicki Dawson * Joe Deutsch * Aaron Hill * Jerry Rostad
Clerk-Jeff Gunkelman

Our Core Values: *Be Authentic * Be Bold * Be Collaborative

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

4

Type: Memorandum of Understanding

Location: Southwest Metro Regional Storm Water Pond

Date of Hearing: 11/8/2021

<u>Routing</u>	<u>Date</u>
City Commission	11/15/2021
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed the accompanying correspondence from Division Engineer, Nathan Boerboom, regarding the approval of a Memorandum of Understanding between the City and the Fargo Park District, which specifies maintenance responsibilities for the Southwest Metro Regional Storm Water Pond.

This is standard for retention ponds that the City owns and teams with the Park District to program and assist with maintenance. Engineering, Public Works, and Planning have been collaborating on the development of the Southwest Metro Regional Storm Water Pond. During this collaboration, staff also worked with the Fargo Park District so that the final design of the pond could serve the community as both storm water infrastructure and a recreation amenity. Due to uncertainty of when the pond will be complete, staff has drafted an MOU to provide the Park District some discretion on its use of the pond property as long as it does not impact the functionality of the pond.

There will be an 80-acre remnant parcel that the City intends to sell at a future date. The MOU includes a provision agreeing to dedicate up to 8% (approximately 6.5 acres) of the remnant 80-acre parcel the City owns to the Park District. By completing this 8% dedication ahead of selling the parcel, the Park District agrees that the future owner of the remnant parcel will not need to dedicate any additional land to the Park District at the time of platting, which is a typical requirement for new plats. The MOU also has an option/right of first refusal for the Park District to buy additional portions of the remnant parcel at appraised value. As discussions continue on recreational uses, this allows the flexibility to the Park for the purchase of the land necessary to build support structure for programming.

Additional responsibilities detailed in the MOU are as follows:

- City of Fargo
 - Retain ownership of the property
 - Complete construction of the pond
 - Pond maintenance
 - Storm sewer maintenance
- Fargo Park District
 - Responsible for construction, repair, and maintenance of all amenities
 - Grass mowing and weed control
 - Tree planting, maintenance, and replacement

Staff is seeking approval of the Memorandum of Understanding between the City and the Fargo Park District for maintenance responsibilities of the Southwest Metro Regional Storm Water Pond property.

On a motion by Tim Mahoney, seconded by Bruce Grubb, the Committee voted to recommend approval of the Memorandum of Understanding with the Fargo Park District specifying maintenance responsibilities for the Southwest Metro Regional Storm Water Pond property.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Memorandum of Understanding with the Fargo Park District specifying maintenance responsibilities for the Southwest Metro Regional Storm Water Pond property.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A


Yes No
 N/A
 N/A
 N/A

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 Letter of Credit required (per policy approved 5-28-13)

COMMITTEE

	Present	Yes	No	Unanimous
				<input checked="" type="checkbox"/>
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Bruce Grubb, City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- Brenda Derrig, City Engineer
- Kent Costin, Finance Director


 Nathan Boerboom, P.E.
 Division Engineer

ATTEST:

**MEMORANDUM OF UNDERSTANDING REGARDING CONSTRUCTION,
MAINTENANCE AND PURCHASE OPTION**

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into between the City of Fargo, whose address is 225 4th Street North, Fargo, North Dakota 58102 (“Fargo”), and the Park District of the City of Fargo, whose address is 701 Main Avenue, Fargo, North Dakota 58103 (the “Park District”).

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo’s Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, North Dakota Century Code § 40-49-04 authorizes the Park District to enter into contracts; and

WHEREAS, Fargo is in the process of constructing the first phase of a storm water retention pond as part of the overall City storm sewer system, as shown in Exhibit “A” attached hereto (hereinafter the “Pond Property”); and

WHEREAS, Fargo and Park District recognize that the project will be constructed in several phases, and that the completion dates of the various phases are unknown. Nevertheless, Fargo and Park District intend for this MOU to be effective as to all phases of construction of the Pond Project; and

WHEREAS, Fargo and Park District desire to have the Pond Property be a dual- purpose project to serve the community as both storm water infrastructure and a recreational amenity; and

WHEREAS, Park District desires to construct certain amenities on the Pond Property, at its cost; and

WHEREAS, Park District has expressed interest in buying a portion of the City property adjacent to the Pond Parcel (“Remnant Parcel”) in the future if City determines the Remnant Parcel is not needed for the primary purpose of storm water retention, and City agrees Park District should have primacy to the land in the event of its sale; and

WHEREAS, Fargo and Park District recognize that joint operation and programming may improve the ability to secure additional funding and other cooperative relationships to benefit the community; and

WHEREAS, Fargo shall have the responsibility of construction, maintenance, inspection and repair of the storm water retention pond; and

WHEREAS, the Park District shall have the responsibility of construction, maintenance, inspection, and repair of the park amenities, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Ownership. Fargo owns the parcel on which the storm water retention pond and other amenities have been, or will be, constructed in phases, and Fargo and Park District agree and understand that the City shall retain ownership of the Pond Parcel at all times, without regard to maintenance responsibilities. The parties understand and agree that the primary use of the property is for storm water retention and detention, and such purpose shall not be impaired or impeded by any provisions herein.

2. Access. Fargo hereby grants Park District access for ingress and egress, and for purposes of maintenance and construction, as necessary to carry out the terms of this Agreement. Park District agrees to ensure unimpeded access to the installed amenities for whatever purpose deemed necessary by City, including patrol, emergency access, and truck access, as necessary. In the event Park District is permitted to install gates or other access controls to the Pond Parcel, Park District shall ensure access to City is not hindered or impaired in any way, and shall provide such keys, codes or other means to access the Pond Parcel, without delay.

3. Storm Water Retention Pond Construction and Maintenance.

a. Fargo shall be solely responsible for the construction of the storm water retention pond and all necessary appurtenances thereto, including installation of storm water pipe and structures, and, vegetation establishment.

b. Fargo shall be responsible for future pond maintenance, including but not limited to sediment removal, inspection, and bank sloughing repair.

4. Park District General Maintenance. Park District shall be responsible for the construction, repair and maintenance of all amenities , including grass mowing, weed treatment, tree trimming, as well as pavement maintenance and repair, and snow and debris removal, as necessary. Park District understands and agrees that it may not construct any amenities on the Pond Property, unless otherwise agreed to in writing signed by both parties, and that Fargo approval will not be unreasonably withheld. Fargo and Park District understand and agree that any work to be completed pursuant to this Agreement that may disrupt Park District use of the property shall be coordinated between the parties so as to minimize impacts, to the extent possible.

a. Park District understands and agrees that any work completed by Park District may not impact the City storm sewer system or change the retention pond level, without prior written consent of City.

b. Fargo agrees Park District shall have some discretion in its use of the property to the extent that any construction activities must first be approved by Fargo, and this Agreement included in writing, as necessary to detail the parties' responsibilities with respect to the Park District constructed amenities.

5. Joint Responsibilities and Coordination. Fargo and Park District agree that collaboration and coordination between the two entities is a necessary component of the successful

operation of the Pond Parcel as a Park District amenity. To the extent possible, Fargo and Park District agree as follows:

- a) The parties agree to jointly seek an Audubon Society agreement to further enhance the use of the Pond Parcel and amenities.
- b) Fargo agrees to assist the Park District, as appropriate, to secure funding for the construction of shared use paths and trails throughout the Pond Parcel.
- c) Fargo and Park District agree to coordinate timing of any work or construction to be done in accordance with the terms of this Agreement so as to not disrupt Park District programming of the Pond Parcel.

6. Signage and Lighting. Fargo and Park District agree and understand that Fargo shall be responsible for signage pertaining to the retention pond. At its discretion, with City approval, Park District may place additional signage on the Pond Parcel relating to approved programming of the space. Further, Park District may be permitted to install appropriate lighting on the Pond Parcel as an amenity of the Park District, provided such installation is solely at Park District cost, and with City advance written approval so as to ensure the lighting will not be impacted by the varying pool levels of the storm water retention pond following a large rain event.

7. Insurance. Both parties understand and agree that it shall secure the necessary insurance for the proposed use of the Pond Parcel.

8. Dispute Resolution.

- a. Fargo and the Park District will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the improvements and amenities identified herein, which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the preparing an annual schedule of maintenance and repairs.
- b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

9. Option/Right of First Refusal. Fargo and Park District understand and agree that the property acquired by Fargo for the purpose of the storm water retention pond may result in a remnant of approximately 80 acres, more or less, as shown in Exhibit "B" attached hereto ("Remnant Parcel").

- a. City agrees to dedicate up to 8% of the Remnant Parcel to the Park District for park purposes, such dedication to be adjacent to the Pond Parcel and in a location mutually

acceptable to City and Park District, at City's final discretion. To the extent the full 8% is dedicated to the Park District by City pursuant to this Agreement, the parties understand and agree that there shall be no further dedication responsibility with respect to the sale and development of the Remnant Parcel.

b. City further hereby grants Park District an Option/Right of First Refusal to acquire the Remnant Parcel, or any part thereof, at a time City determines appropriate. Fargo shall first offer the Remnant Property to Park District for a price to be determined by appraisal, in the following manner.

(i) Fargo shall give Park District written notice of the decision to sell, delivered by certified mail, return receipt requested.

(ii) Park District shall notify Fargo of its intent to buy the Remnant Parcel, or any part thereof, for the appraised price within 60 days of receipt of notice. Failure to provide written timely notice of intent to purchase/sell be considered a rejection of the offer upon payment of agreed price upon acceptance.

(iii) Fargo shall deed to Park District by Quit Claim Deed the acquired portion of the Remnant Parcel, subject to all easements and encumbrances of record.

(iv) Park District shall secure possession of the acquired portion of the Remnant Parcel upon deed conveyance.

10. Minnkota Power Company Easement. Fargo and Park District understand and agree that a portion of the Pond Parcel is encumbered by an easement to Minnkota Power Company, and Fargo and Park District further recognize and agree that any amenities permitted by this Agreement may not hind, impair or impede Minnkota Power's use of the easement property.

11. Term. The term of this Agreement will be 20 years. This Agreement will automatically renew for successive periods of 20 years. If either party intends to terminate this Agreement at any time, at least 180 days' Notice shall be given to the other party. This Agreement is personal as to the Park District, and may not be assigned or transferred without Fargo written consent.

12. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

13. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo
ATTN: City Auditor
Fargo City Hall
225 4th Street North
Fargo, ND 58102

If to the Park District:

Park District of the City of Fargo
ATTN: Finance Director
701 Main Avenue
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

14. Time is of the Essence. Time is of the essence of each provision of this entire MOU and of all the conditions thereof.

15. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties. It does not negate the parties' rights, duties and obligations under prior agreements/easements related to the floodwall, storm sewer construction and operation, and maintenance of the floodwall and storm sewer.

16. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

17. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

18. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

19. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

20. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

21. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

22. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

23. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this 15 day of November, 2021.

CITY OF FARGO, NORTH DAKOTA, a
municipal corporation

By: 
Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:


Steve Sprague, City Auditor

Dated this 9th day of November, 2021.

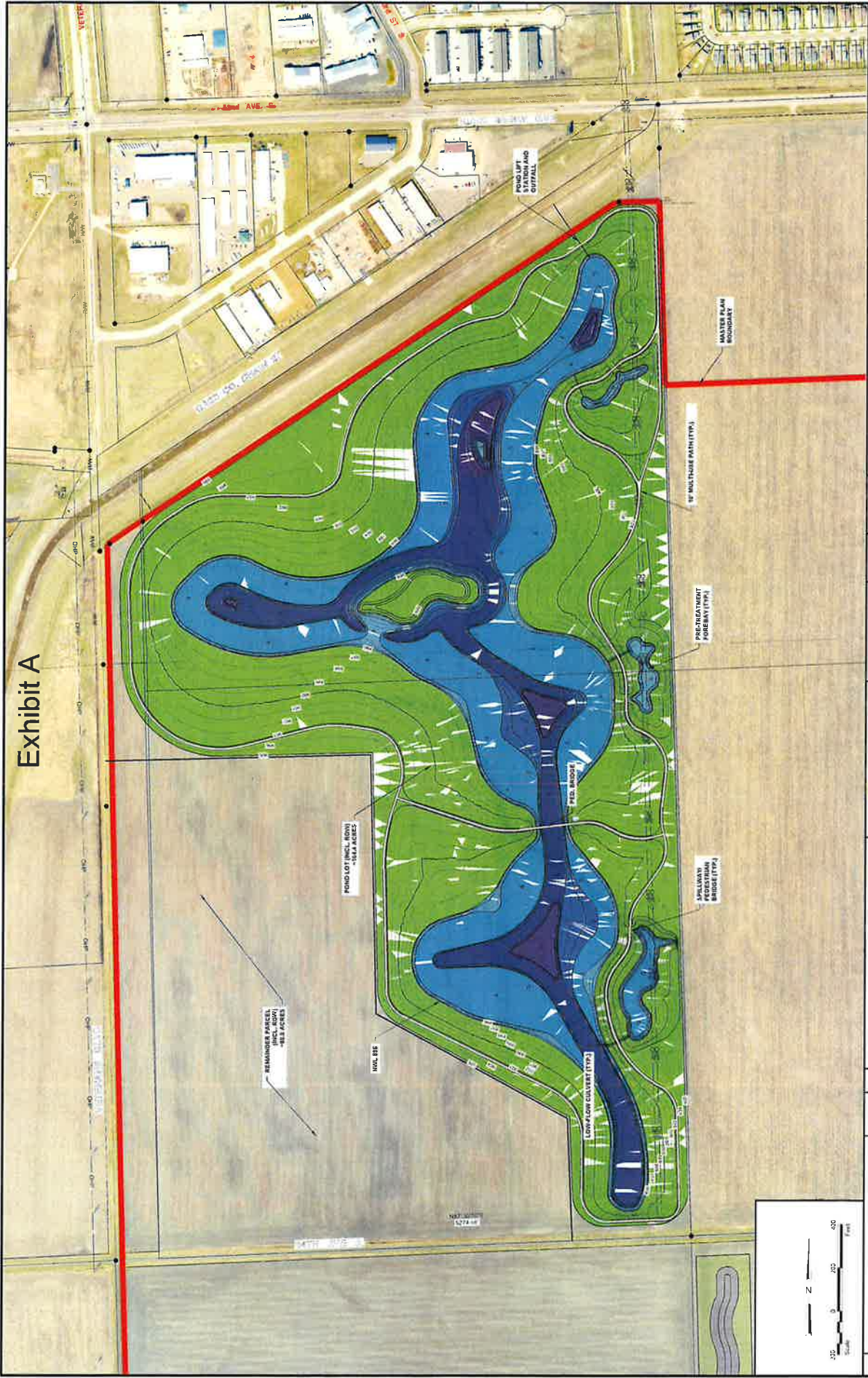
Park District of the City of Fargo

By 
Vicki Dawson
Its: President

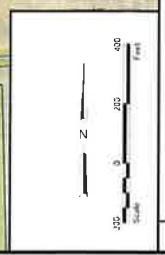
ATTEST:


Dave Leker, Clerk

Exhibit A



<p>PRELIMINARY Not for Construction</p>		<p>HOUSTON ENGINEERING INC.</p>		<p>DATE: 8-4-20 DRAWN BY: BKW CHECKED BY: JPL</p>		<p>PROJECT: SOUTH WEST FARGO STORMWATER POND CITY OF FARGO FARGO, NORTH DAKOTA</p>		<p>SHEET: 1 of 2 PROJECT NO. 6059-0168</p>	
--	--	--	--	---	--	--	--	--	--



11/16/2020 10:59:15 AM C:\Projects\6059-0168 SW Pond Plan\DWG\6059-0168 SW Pond Plan.dwg User: jpl Date: 8/4/2020 8:42 AM (kwj)

Exhibit B

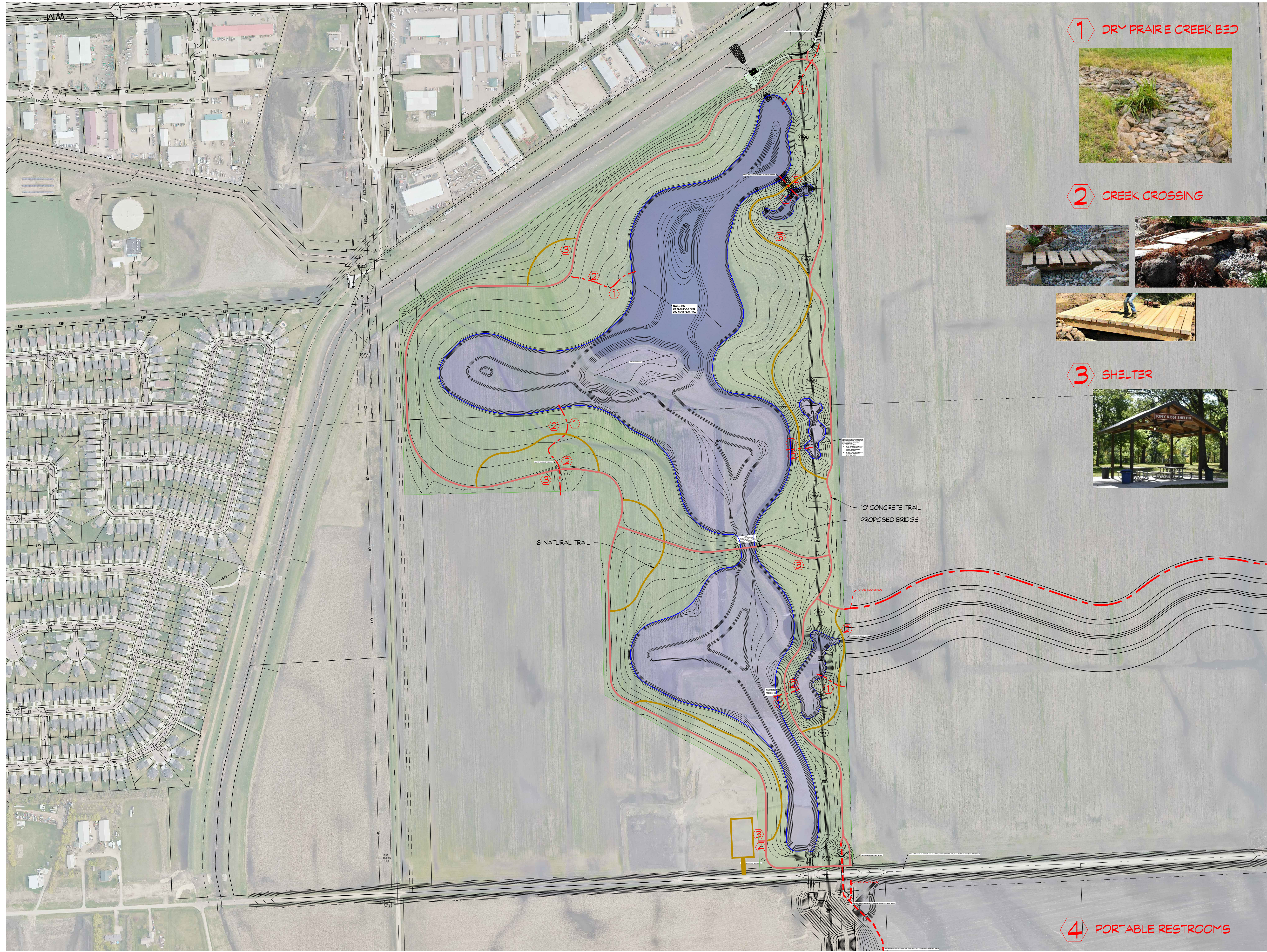


±6.2 ACRES OR 8%
HATCHED IN RED

±80 ACRES TOTAL

SOUTHWEST REGIONAL POND

08/29/24 12:20:59PM C:\Users\Kirchner\Fargo Park District\Operations - Design and Construction\Southwest Regional Pond\Southwest Regional Pond PreDesign 8-7-24.dwg



1 DRY PRAIRIE CREEK BED



2 CREEK CROSSING



3 SHELTER



4 PORTABLE RESTROOMS

SOUTHWEST REGIONAL POND IMPROVEMENTS



THIS SET OF PLANS SHOULD BE CONSIDERED PRELIMINARY AND NOT FOR ANY BIDDING, FINAL ESTIMATE OR CONSTRUCTION. THIS SET OF PLANS SHALL NOT BE DEEMED FINAL UNTIL ALL APPROVALS HAVE BEEN OBTAINED FROM ALL CODE AUTHORITIES HAVING JURISDICTION. ANY BID SUBMITTED, BASED ON THIS SET OF PRELIMINARY PLANS, IS SUBJECT TO CHANGE AND IS INCOMPLETE.

FP JOB #: XXXXX

SITE PLAN

L100

Aug. 12, 2024



MEMORANDUM

DATE: September 10, 2024

TO: Fargo Park Board Commissioners

FROM: Susan Faus, Executive Director

RE: Approve Adopting the City of Fargo Ordinance Enacting Article 10-14 of Chapter 10 of the Fargo Municipal Code Relating to Camping on Public Property

Park District staff have been working closely with the City of Fargo on an ordinance and resolution prohibiting camping on public property and right of ways in the City of Fargo.

The Park District desires to adopt the terms and conditions regarding camping on public property as defined and described in the Fargo Camping Ordinance and Fargo Camping Resolution to create a uniform and consistent policy within the City of Fargo. Much of the riverfront property is owned collectively by either the Park District or the City of Fargo. We are asking the board to pass a resolution that will allow for the enforcement and management of camping on park property and extend the authority for the Fargo Police Department to enforce the city's ordinance on all Park District property.

If adopted, this resolution would take effect on September 11, 2024.

SAMPLE MOTION: Motion to approve the resolution adopting the City of Fargo Ordinance enacting Article 10-14 of Chapter 10 of the Fargo Municipal Code relating to camping on public property as presented.

Susan Faus, Executive Director
Park Board Commissioners – Zoë Absey * Vicki Dawson * Joe Deutsch * Aaron Hill * Jerry Rostad
Clerk-Jeff Gunkelman

Our Core Values: *Be Authentic * Be Bold * Be Collaborative

RESOLUTION
ADOPTING THE CITY OF FARGO ORDINANCE ENACTING
ARTICLE 10-14 OF CHAPTER 10 OF THE FARGO MUNICIPAL CODE
RELATING TO CAMPING ON PUBLIC PROPERTY

Whereas, the city of Fargo adopted an Ordinance Enacting Article 10-14 of Chapter 10 of the City Municipal Code Relating to Code Relating to Camping on Public Property effective as of September 11, 2024 (“Fargo Camping Ordinance”).

Whereas, the city of Fargo adopted a Resolution Regarding Ordinance Prohibiting Camping on Public Property and Right of Ways in the city the Fargo effective as of September 11, 2024 (“Fargo Camping Resolution”).

Whereas, the Park District desires to adopt the terms and conditions regarding camping on public property as defined and described in the Fargo Camping Ordinance and Fargo Camping Resolution to create a uniform and consistent policy within the city of Fargo regarding camping on public property, including Park District property.

Now, therefore, be it resolved by the Park District of the city of Fargo Board of Commissioners:

1. That the Park District adopts all terms and conditions of the Fargo Camping Ordinance and Fargo Camping Resolution as the same shall be enforced by the Fargo Police Department uniformly across the city of Fargo, including on Park District property.

The above resolution was adopted at the regular meeting of the Board of Commissioners held on September 10, 2024, on a motion made by Commissioner _____, and seconded by Commissioner _____, and upon call of the vote, the following voted in favor thereof Commissioners _____; the following voted against the same _____, and the following were absent and not voting _____.

Park District to the City of Fargo

By: Aaron Hill

Its: President

By: Jeffrey Gunkelman

Its: Clerk