



City of Fergus Falls Committee of the Whole Agenda

January 11, 2023

7:00 am

City Council Chambers

A. Call to Order

B. Roll Call

C. Discussion Items

1. Consultation for Tax Increment Financing Request

Klara Beck

Requested Action: Recommendation to the council to authorize staff to retain the services of a consultant at Baker Tilly regarding an application for Tax Increment Financing from FM Bank

2. Housing Tax Rebate Program Overview

Klara Beck

3. Pebble Lake Golf Course Rates

Kevin Swenson

Requested Action: Recommendation to the council to approve the 2023 rates for the Pebble Lake Golf Course

4. State/Federal Delegating Contracting Process (DCP) Agreement No. 1052055

Brian Yavarow

Requested Action: Recommendation to the council to authorize staff to execute the MnDOT Agreement

5. PI 5314 – Union Avenue: Fir to Lincoln, Lincoln: Union to Friberg Resurfacing Project

Brian Yavarow

Requested Action: Recommendation to the council to pursue Option No. 2 in the final bidding documents

6. PI 5362 – Fir Avenue and Friberg Avenue Round About Improvement Project

Brian Yavarow

Requested Action: Recommendation to the council to initiate PI 5362 and accept Otter Tail County's Agreement for the Intersection Improvement for C.S.A.H 1 and Friberg Avenue (MSAS No. 126)

7. PI 9504, Aquatics Center Improvement Project
Brian Yavarow
Requested Action: Recommendation to the council to accept JLG Architect's professional services proposal for design development, final design and construction administration in the amount of \$681,820
8. City Council Salary Discussion
Scott Kvamme

D. Additional Agenda Items

E. Announcements

- January 11 Christmas tree pickup
- January 16 Most city facilities closed for the observance of the Martin Luther King Jr. holiday. Garbage and recycling normally picked up on Monday will be picked on Tuesday. Tuesday collection is moved to Wednesday
- January 17 City Council meeting 5:30 pm
- February 1 Committee of the Whole meeting 7:00 am

Adjourn



Memo

Page 1 of 1

Meeting Date:

January 11- COW

Subject:

Consultation for Tax Increment Financing Request

Recommendation:

Allow city staff to retain the services of consultant(s) at Baker Tilly regarding an application for Tax Increment Financing from FM Bank.

Background/Key Points:

FM Bank has entered into an agreement with River's Edge Investment for the purchase of the former Shopko lot and is pursuing the creation of a redevelopment TIF district for up to 3.5 years (based on their own calculations). In this case, TIF is requested to offset demolition costs for the removal of blight (i.e., the old Shopko building) and may serve as a match for a MN Deed Redevelopment Grant.

Before creating a TIF district, a municipality must find that in its opinion the subsidized development would not occur *but for* the use of TIF. This finding requires a financial analysis that Baker Tilly can perform. Baker Tilly may also provide valuable consultation throughout the TIF process. This request to engage services is part of the formal process for requesting TIF from the city. Approving this request to work with Baker Tilly does not guarantee TIF for the applicant. Further conversations regarding the applicant's eligibility for TIF will be held with council upon return of the project's financial analysis.

Budgetary Impact:

All fees are to be paid by the developer.

Originating Department:

Community Development

Respectfully Submitted:

Klara Beck, Community Development Manager

Attachments:

Exhibit B, narrative section, from FM Bank's application for Tax Increment Financing
City of Fergus Falls Subsidy Policy
The But For Test- MN House Research

Project Description

FM BANK (formerly Security State Bank of Fergus Falls) is planning a \$9 million redevelopment of the former Shopko site located at 226 E. Lincoln Ave in downtown Fergus Falls. The proposed redevelopment will include a tear-down of the existing 32,000 sf blighted structure and subsequent new construction of a two-story 17,700 sf commercial building. This site would offer 9,400 sf of main level commercial space and 8,300 sf of upper level commercial space intended to house FM BANK and additional tenants. FM BANK is discussing potential leases/sales with build-outs to accommodate two professional service businesses as well as one retail/hospitality business such as a coffee shop and ample parking.

**The proposed project is contingent on FM BANK securing tenants and/or development partners as described above. At a minimum, FM BANK would use a smaller footprint for a bank only, estimated at 11,000 sf and an approximate capital investment of \$8 million, which would allow FM BANK to sell additional property for adjacent development.*

This project will redevelop and modernize a high-profile, blighted building that anchors the east end of downtown, further contributing to the economic revitalization of the community. Furthermore, the balance of this property will be available for sale to provide opportunities for developers interested in commercial and/or mixed-use developments, particularly if combined with the adjacent city-owned property. The investment in demolition, new construction, and beautification of this outdated building and property will more than double the property taxes, and provide significant economic benefits for the community.

The benefits to the community include blight removal, redevelopment, job retention, and tax base growth. FM BANK, alone, will retain 20-22 full-time jobs, improve access to professional services for nearby residents in walking distance, and expand the tax base with an estimated 146% property tax increase. Cumulatively, the potential for three additional businesses will result in supplementary job retention and tax base growth.

This project will not only expand 65-year old local businesses, but will also provide expansion opportunities for 2-3 additional professional and retail service businesses while attracting subsequent commercial and/or mixed-use developments, including the potential for housing. FM BANK currently serves 1,659 customers over a large geographic area, bolstering opportunities to draw in more foot traffic to the immediate downtown area and enhance indirect and induced economic impact to neighboring businesses and services. This redevelopment would improve local access to service for senior populations and downtown residents and has the potential to attract new clientele.

FM BANK has provided a tremendous amount of philanthropic support to other community projects over its 65 years in business in Fergus Falls, including many

projects that amplify our local economy. Throughout the years, these donations have ranged from \$250,000 to the Lake Region Healthcare Cancer Center and \$30,000 each to the Fergus Falls Area College Foundation for scholarships and Greater Fergus Falls to support continued economic development growth as well as a multitude of other non-profits like Otter Cove Children's Museum and Dr. Alan Magnuson Park. When businesses like FM BANK give back, their contributions have a positive ripple effect on our economy, locally. The non-profit businesses and community development projects they financially support spurs capital investment, creates jobs, and increases the spending power of area employees. Furthermore, they provide extensive commercial, agricultural, and home mortgage lending, all of which are integral to the continued growth of our local and regional economy.

Description of Need

FM BANK is requesting consideration for pay as you go redevelopment Tax Increment Financing (TIF) from the City of Fergus Falls totalling \$143,000 over a period of no more than 3.5 years. TIF would serve as a one-to-one local cash match for a MNDEED Redevelopment Grant request to be used solely for demolition costs as defined by Minn. Stat. § 116J.572, including but not limited to demolition, destruction, removal, and clearance of all structures and other improvements on the site.

Though this project will be financed in full, leaving no gap, TIF would significantly reduce the increasingly high cost of labor and materials relating to the demolition and could foster subsequent new development activity. The new estimated valuation is approximately \$2.7MM with estimated annual tax impacts as follows:

Otter Tail County- \$21,800
 City of Fergus Falls- \$31,604
 School District #544- \$13,881
 HRA- \$892
 Port Authority- \$270
 State General Tax- Not included in the estimate
TOTAL TAX- \$68,447

We are seeking a tax increment to cover the one-to-one local cash match, estimated at \$143,000. With an estimated increment of \$40,591, we are requesting TIF annually over a period not to exceed 3.5 years.

The requested amount is based on a demolition estimate totaling \$286,000 for the following uses:

- Phased demolition of existing structure and off-site disposal
 - Interior walls and flooring and exterior structure steel and block walls
 - Demolition of foundation and footings
 - Cap utilities (water, sprinkler, and septic)
- Bring parking lot to grade

- Safety certifications, permits

FM BANK is seeking eligible expenses for TIF not to exceed \$143,000 in addition to a one-to-one cash match from a MNDEED Redevelopment Grant. The applicant will self-finance the remainder of the demolition and new construction costs, estimated at over \$9,00,000.

City of Fergus, Minnesota
Business Subsidy Policy
Amended: May 3, 2019

Table of Contents

- 1. Purpose and Authority**
 - 2. Public Purpose - Criteria**
 - 3. Valuation of a Business Subsidy**
 - 4. Evaluation of a Business Subsidy**
 - 5. Business Subsidy Agreement**
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1.0 PURPOSE AND AUTHORITY

- 1.1** The purpose of this document is to establish the criteria for the City of Fergus Falls, Minnesota (the "Grantor") for granting of business subsidies for private development. These criteria shall be used as a guide in the processing and reviewing of applications requesting business subsidies.
- 1.2** The City's ability to grant business subsidies is governed by the limitations established in Minnesota Statutes 1161.993 through 116J.995 (the "Statutes").
- 1.3** Unless specifically excluded by the Statutes, business subsidies include grants by state or local government agencies, contributions of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient of the subsidy, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business.
- 1.4** These criteria are to be used in conjunction with other relevant policies of the Grantor.
- 1.5** The City may deviate from these criteria by documenting in writing the reason(s) for the deviation. The documentation shall be submitted to the Department of Employment & Economic Development (DEED) with the next annual report.
- 1.6** The Grantor may amend this document at any time. Amendments to these criteria are subject to public hearing requirements contained in the Statutes. The Grantor may waive provisions of these criteria without holding a public hearing.

2 PUBLIC PURPOSE REQUIREMENT - CRITERIA

- 2.1** All business subsidies must meet a public purpose. The City hereby expresses its support for the use of business subsidies that meet the below listed "Public Purpose" criteria.

- a. But-for Test. There is a substantial likelihood that the project would not go forward without the business subsidy requested. These criteria must be supported by representations of the applicant for business subsidy.
 - b. Redevelopment. The project will remove, prevent or reduce blight or other adverse conditions of the property, thereby protecting the City's property values and the general public health, safety, and welfare.
 - c. Attraction of New Business. The project will attract or retain competitive and financially strong commercial and industrial companies, which offer the potential for significant growth in employment and tax base.
 - d. Highest and Best Land Use. The use of the business subsidy will encourage quality construction and promote the highest and best use of land.
 - e. Needed Services. The project will provide a needed service in the community, including health care, convenience and social services which are not currently available.
 - f. Unmet Housing Needs. The project will provide housing alternatives the community currently needs but are not available.
 - g. Economic Feasibility. The recipient can demonstrate that it has experience and adequate financing for the project, and that the project can be completed in a timely manner.
 - h. Impact on City Services and Infrastructure. The project will not significantly and adversely increase the demands for service needs in the City.
 - i. Job Creation. The project will create or retain jobs which pay at least the higher of State or Federal minimum wage as adjusted periodically.
 - j. Tax Base. The project will increase the City's tax base and generate new property tax revenue.
 - k. Linkages. The project has link to local business and will result in strengthening local business.
 - l. Promote Agricultural: Projects that support and strengthen agricultural opportunities.
 - m. Environmental: Projects that do not adversely affect the environment and recreational resources in and around the community.
- 2.2 The creation or retention of jobs may be, but is not required to be, a public purpose for granting a subsidy. The determination that jobs are not a public purpose for the subsidy and that the related wage and job goals are zero shall be made following a public hearing. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable. The City shall document in the information used to determine the nature of the job loss.
- 2.3 The creation of tax base shall not be the sole public purpose of a subsidy.

- 2.4 The City will seek to create jobs with higher wages as appropriate for the overall public purpose of the subsidy.

3 VALUATION OF A BUSINESS SUBSIDY

- 3.1 The City will calculate the value of assistance provided to a business in the following manner.
 - a. If the subsidy is a contribution or sale of real or personal property, the amount of the subsidy will be the fair market value of the property as determined by the City, less any amount paid.
 - b. If the subsidy is a loan provided at rates below those commercially available, the amount of the subsidy will be the principal amount of the loan provided to the recipient.
 - c. If the subsidy is a loan guarantee, the amount of the subsidy will be principal amount of the loan guaranteed.
 - d. If the subsidy takes the form of payments over time (such as pay-as-you-go tax increment) the amount of the subsidy will be the sum of projected payments, discounted to a present value using a discount factor determined by the City which approximates the interest rate available to the business from a commercial lender.

4 EVALUATION

- 4.1 The City will evaluate each request for a business subsidy on a case by case basis. Applicants for assistance shall complete an application form and supply all additional information requested by the City.
- 4.2 Any applicable application fees must accompany the application in order to be considered complete. Upon approval to move forward with the project assistance, the Developer will be required to deposit funds with the City sufficient to cover legal, consultant and/or administrative costs associated with completing the assistance package. The City will provide an estimate of these costs and any funds not used will be returned to the Developer. If additional costs are incurred, the developer will be responsible for the costs.
- 4.3 Meeting all or a majority of our criteria does not mean a subsidy will be awarded or denied. A decision to approve or reject a request for subsidy will be based on the merits of the project and the overall benefit to the community.
- 4.4 All new projects approved by the Grantor should meet the following minimum approval criteria. However, it should not be presumed that a project meeting these criteria will automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer.
 - a. The subsidy must achieve a public purpose.
 - b. The project must comply with local plans and ordinances.
 - c. The recipient shall provide information demonstrating that granting the subsidy is necessary for the proposed development to occur.
 - d. The recipient must enter into an agreement pursuant to these criteria and the Statutes.

- 4.5 The business subsidy shall be provided within applicable state legislative restrictions, debt limit guidelines and other appropriate financial requirements and policies.
- 4.6 The project must be in accord with the Comprehensive Plan and Zoning Ordinances, or required changes to the plan and Ordinances must be under active consideration by the City at the time of approval.
- 4.7 Any developer requesting a business subsidy should be able to demonstrate the need for assistance and past successful general development capability as well as specific capability in the type and size of development proposed.
- 4.8 The developer must retain ownership of the project at least long enough to complete it, to stabilize its occupancy, to establish the project management, and to initiate repayment of the business subsidy, if applicable.
- 4.9 A recipient of a business subsidy must enter into a subsidy agreement with the City as described in Section 5 and meet the requirements of statute.
- 4.10 A recipient of a business subsidy must make a commitment to continue operations within the City for at least five years after the benefit date.
- 4.11 Any business subsidy will be at the lowest possible level and for the least amount of time necessary, after the recipient maximizes the use of private debt and equity financing first.

5 SUBSIDY AGREEMENT

- 5.1 In granting a business subsidy, the Granter shall enter into a subsidy agreement with the recipient that provides the information, wage and job goals, commitments to provide necessary reporting data and recourse for failure to meet goals required by the Statutes. The wage goals shall be fixed at the time of entering into the subsidy agreement.
- 5.2 The subsidy agreement may be incorporated into a broader development agreement for a project.
- 5.3 The subsidy agreement will describe the requirements for the recipient to provide the reporting information required by the Statutes.

Adopted May 3, 2019

Minnesota House Research Department

Please note, Minnesota House Research Department staff are best contacted by email (which can be found in the [staff directory](#)). ✕

The But-For Test

What is the "but-for" test?

The "but-for" test is actually a finding requirement. Before creating a TIF district or subdistrict, a local government must find that in its opinion the subsidized development would not have happened *but for* the use of TIF (hence, the term "but-for" test).

What is the purpose of the but-for test?

The but-for test is generally thought to have two purposes:

1. To prevent excessive use of TIF—i.e., to prevent unnecessary use of TIF. If a development would have been done anyway, why should TIF be used to assist it?
2. To protect the interests of overlapping governmental units (typically the county and school district). If authorities use TIF for developments that would be built anyway, TIF diverts tax revenue from the county and school to the development authority and city.

Source: Office of Legislative Auditor, *Tax Increment Financing* p. 42 (1986).

Which local government unit is required to make the but-for finding?

The statute requires the municipality (usually the city in which the TIF district is located) to make the but-for finding. [Minn. Stat. § 469.175](#), subd. 3. However, for hazardous substance subdistricts, the development authority (e.g., a housing and redevelopment authority or economic development authority) makes the finding. [Minn. Stat. § 469.175](#), subd. 7(b).

When must the but-for finding be made?

The municipality must make the but-for finding before it approves the TIF plan. [Minn. Stat. § 469.175](#), subd. 3. This is apparently a one-time requirement that applies to the first approval of the TIF plan. The law is somewhat unclear on this point. The law does not explicitly require additional but-for findings for amendments to the TIF plan, even if the amendments make substantial changes (e.g., adding a new area to a district or changing the purposes for which increment may be spent).

What must the municipality find to satisfy the statute?

There are two basic components to the required but-for finding:

1. The development would not happen solely through private investment in the "reasonably foreseeable future."
2. The induced development will yield a net increase in market value for the site compared to the likely development that would occur without TIF.

The findings represent "the opinion" of the municipality.

What is required to find a net increase in market value for the site?

The statute requires the municipality to compare two values:

1. The increase in market value of "the site" that would be reasonably be expected to occur without using TIF
2. The increase in market value of the proposed TIF development, minus the present value of the TIF assistance.

The municipality may not make the finding if, in its opinion, the value of #2 is less than or equal to #1. For example, assume the city is considering using \$16 million of TIF to assist development of a parcel as a hotel. Before any development, the parcel has a market value of \$20 million. The city determines that the block would develop as an office building within a few years without using TIF, increasing the total value to \$110 million without using TIF. The city projects that the hotel development will have a total market value of \$125 million. In this instance, the city cannot make the but-for finding, since the TIF development yields a smaller market value increase. The calculations are displayed in the table below.

	Development w/o TIF Item #1 above	Development w/ TIF Item #2 above
1. Base value of area	\$20,000,000	\$20,000,000
2. Value after development	110,000,000	125,000,000
3. TIF assistance (present value)	0	16,000,000
4. Net increase in value (=2 – 1 – 3)	\$90,000,000	\$89,000,000

What geographic area does the but-for finding relate to?

The 2003 Legislature clarified that the finding relates to parcels on which the development or redevelopment assisted with TIF will be located. Before this change, the statute was not clear on this issue. Cities took varying approaches to this issue, according to the Legislative Auditor's 1986 report, including the project area or smaller areas within the project area or the district that will be assisted with TIF.

What form requirements apply to the but-for finding?

The municipality must make the finding in writing and must set out of "the reasons and supporting facts" for the finding. [Minn. Stat. § 469.175](#), subd. 3. These statements must explicitly include the dollar amount of the municipality's alternative market value estimates. [Minn. Stat. § 469.175](#), subd. 3(d).

Are any districts or projects exempt from the but-for finding?

Yes, the market value finding requirement does not apply to qualified housing districts. These districts are designed to provide low-income housing. The public benefit of these districts is considered to be providing types of housing that otherwise would not be available. In many instances, these developments will not generate the highest market value for a site. Thus, the but-for test could not be satisfied.

Are failures to satisfy the but-for test subject to judicial enforcement?

Violations of the but-for requirements can be divided into two categories:

1. **Failure to make a finding altogether.** Violations of this type clearly would be subject to judicial or administrative enforcement.
2. **Making a finding that is false or contrary to fact.** The statute is not clear as to whether judicial actions (or administrative enforcement) applies. Based on the text of the statute, two arguments can be made that there is no remedy for these violations: First, the finding is simply as to a matter of the municipality's "opinion." Even if an opinion is not factually based, one may still consider it to be a view genuinely held by the governing body of the municipality. (It may have been unaware of the facts or simply refused to believe them.) Second, the law provides that once approved, the determination of the authority "shall be conclusive of the findings therein and of the public need for the financing." This provision appears intended to preclude a court or another administrative entity (State Auditor or Attorney General) from "second guessing" the basis for the finding. Thus, this provision buttresses the notion that the finding is simply a matter of good faith and discretion on the part of the municipality. The Court of Appeals in the *Walser* case, however, held that this provision did not preclude judicial review of the blight test findings. *Walser Auto Sales, Inc. v. City of Richfield*, 635 N.W.2d 391, 399 fn.4 (Minn. App. 2001). Similar consideration may apply to permit judicial review of the but-for findings.

Moreover, the statute requires the municipality to document in writing the supporting facts for its finding. Why would this be required, if the municipality could not to be held legally accountable for a false finding? It is possible that the required documentation was simply a mechanism to guarantee some accountability to the electorate, rather than providing a basis for legal enforcement. On balance,

it seems likely to be very difficult to obtain judicial or administrative relief for but-for findings that are counterfactual, except perhaps in very extreme circumstances.

What criticisms have been made of the but-for test?

The 1986 report of the Legislative Auditor made numerous criticisms of the but-for test. Some of these include:

1. The most basic criticism is that the test tends to be treated not just as a *necessary* condition to the use of TIF, but also a *sufficient* condition. The auditor's report points out that the test does not indicate whether public benefits of a development justify the public costs. According to most public finance experts, passing a cost-benefit test should be a litmus test for any proposed use of public money.
2. The language of the test is vague and permits cities to interpret it in a number of ways.
3. The test does not require the city to consider the displacement effects of the use of TIF—e.g., using TIF at one location for a retail or office development likely will affect development of other sites.
4. The test may permit cities to use TIF to fund public improvements, even though using TIF generally to fund public improvements (other than in connection with stimulating specific developments) is often considered questionable.

Following the 1986 Report of the Legislature Auditor, the legislature made a number of changes to address some of these concerns. The most important of these was to add the requirement that the city find that the use of TIF will yield a net increase in market value of the site.

**Pebble Lake Golf Club
2022 Rates**

	Monthly Rate	Yearly Rate	Amount Paid
<u>Season Passes</u>			
Single	\$ 98.83	\$1,186	
Single -(New Passholder)****	\$ 76.58	\$919.00	
Single - (19-22 yrs)	\$ 39.50	\$474.00	
Single - (19-22 yrs New)****	\$ 32.17	\$386.00	
Single - (23-29 yrs)	\$ 69.09	\$829.00	
Single - (23-29 yrs New)****	\$ 56.83	\$ 682.00	
Couple	\$ 143.34	\$ 1,720.00	
Couple - (New Passholders)****	\$ 111.25	\$ 1,335.00	
Junior (10-18)	\$ 22.25	\$ 267.00	
Junior - (add on - 10-18 yrs)	\$ 9.92	\$ 119.00	
Punch Card - 9-hole	\$ 25.75	\$ 309.00	
Punch Card - 18-hole	\$ 42.50	\$ 510.00	
<u>Driving Range</u>			
Season Range Pass Piggy Back		\$ -	INCLUDED
Season Family Range Pass		\$ -	INCLUDED
Season Range Pass	\$ 19.69	\$ 236.25	
Season Range Pass Junior	\$ 7.42	\$ 89.00	
<u>Handicap Fee</u>	\$ 3.67	\$ 44.00	
<u>Locker Rent</u>	\$ 4.58	\$ 55.00	
<u>Season Cart Rental</u>			
Single***	\$ 64.17	\$ 770.00	
Couple pass***	\$ 88.92	\$ 1,067.00	
<u>Private Cart Fees</u>			
Annual Trail Fee*	\$ 47.20	\$ 566.34	
Annual Cart Storage**	\$ 29.17	\$ 350.00	
Multiple Cart Piggyback	\$ 17.98	\$215.75	
Yearly payments must be made in full	Total Amount includes Tax		

Passholder Information

Name(Primary): _____

Name(Spouse): _____

Name(Child): _____

Name(Child): _____

Address: _____

Email: _____

Phone- _____

Place of Employment: _____

* Licensed only to purchaser of trail fee

** PLGC is not responsible for security of personal items

*** Please reserve when calling in for Tee Times to ensure availability

**** One time purchase only

*Private cart owners and immediate family up to age 18 ONLY can operate private cart with trail fee purchase. Additional trail fees can be purchased for additional operators.

*PLGC season cart members are the ONLY operators of PLGC carts unless "Couple Pass" is purchased. Only cart member, spouse and family members 16-18 years of age can use cart.

Mail To:
Pebble Lake Golf Club, Inc
P.O. Box 772
Fergus Falls, MN 56538

READ AND UNDERSTOOD: _____

2023 PEBBLE LAKE GOLF CLUB

DAILY RATE SCHEDULE

9 - Hole Green Fee Weekday	\$29.70
9 – Hole Green Fee Weekend	\$33.00
18 – Hole Green Fee Weekday	\$47.40
18 – Hole Green Fee Weekend	\$58.50
9 – Hole PLGC Power Cart	\$15.40
18 – Hole PLGC Power Cart	\$22.00
Junior – unlimited golf	\$23.00
Twilight w/ PLGC Cart	\$55.00 (Season Dependent)
Driving Range Bucket	\$6.00

- These prices exclude sales tax
- Driving Range / Practice Facilities are included with all Green Fee transactions throughout the golf season



Council Action Recommendation

Page 1 of 1

Meeting Date:

January 11, 2023 – Committee of the Whole
January 17, 2023 – City Council

Subject:

State/Federal Delegating Contracting Process (DCP) Agreement No. 1052055

Recommendation:

- Resolution authorizing staff to execute the MnDOT Agreement

Background/Key Points:

Pursuant to federal law and Minnesota Statute Sec. 161.36 the City of Fergus Falls is required to pass a resolution designating, the Commissioner of Transportation as the appointed Agent of the City to accept federal aid funds which may be made available for eligible local transportation related projects. These agreements cover the roles and responsibilities associated with federal aid funds and allow for MnDOT to act as a local agency's agent in accepting these funds for construction projects. The attached Agreement is intended to cover all federally funded projects that the City is awarded for eligible projects.

Budgetary Impact:

There is no budgetary impact other than general staff time.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, PE - City Engineer

Attachments:

DCP Agency Agreement No. 1052055 w/ Sample Resolution



STATE OF MINNESOTA

AGENCY AGREEMENT

for

FEDERAL PARTICIPATION IN CONSTRUCTION

This Agreement is entered into by and between City of Fergus Falls (“Local Government”) and the State of Minnesota acting through its Commissioner of Transportation (“MnDOT”).

RECITALS

1. Pursuant to Minnesota Statutes Section 161.36, the Local Government desires MnDOT to act as the Local Government’s agent in accepting federal funds on the Local Government’s behalf for the construction, improvement, or enhancement of transportation financed either in whole or in part by Federal Highway Administration (“FHWA”) federal funds, hereinafter referred to as the “Project(s)”; and
2. This Agreement is intended to cover all federal aid projects initiated by the Local Government and therefore has no specific State Project number associated with it, and
 - 2.1. The Assistance Listing Number (ALN) is 20.205, 20.224, 20.933 or another Department of Transportation ALN as listed on SAM.gov and
 - 2.2. This project is for construction, not research and development.
 - 2.3. MnDOT requires that the terms and conditions of this agency be set forth in an agreement.

AGREEMENT TERMS

1. Term of Agreement; Prior Agreement

- 1.1. **Effective Date.** This Agreement will be effective on the date that MnDOT obtains all required signatures under Minn. Stat. §16C.05, Subd. 2. This Agreement will remain effective until it is superseded or terminated pursuant to section 14.
- 1.2. **Prior Agreement.** This Agreement supersedes the prior agreement between the parties, MnDOT Contract Number 1029947.

2. Local Government’s Duties

- 2.1. **Designation.** The Local Government designates MnDOT to act as its agent in accepting federal funds on its behalf made available for the Project(s). Details on the required processes and procedures are available on the State Aid Website.
- 2.2. **Staffing.**
 - 2.2.1. The Local Government will furnish and assign a publicly employed and licensed engineer, (“Project Engineer”), to be in responsible charge of the Project(s) and to supervise and direct the work to be performed under any construction contract let for the Project(s). In the alternative, where the Local Government elects to use a private consultant for construction engineering services, the Local Government will provide a qualified, full-time public employee of the Local Government to be in responsible charge of the Project(s). The services of the Local Government to be performed hereunder may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This

written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.

2.2.2. During the progress of the work on the Project(s), the Local Government authorizes its Project Engineer to request in writing specific engineering and/or technical services from MnDOT, pursuant to Minnesota Statutes Section 161.39. Such services may be covered by other technical service agreements. If MnDOT furnishes the services requested, and if MnDOT requests reimbursement, then the Local Government will promptly pay MnDOT to reimburse the state trunk highway fund for the full cost and expense of furnishing such services. The costs and expenses will include the current MnDOT labor additives and overhead rates, subject to adjustment based on actual direct costs that have been verified by audit. Provision of such services will not be deemed to make MnDOT a principal or co-principal with respect to the Project(s).

2.3. **Pre-letting.** The Local Government will prepare construction contracts in accordance with Minnesota law and applicable Federal laws and regulations.

2.3.1. The Local Government will solicit bids after obtaining written notification from MnDOT that the FHWA has authorized the Project(s). Any Project(s) advertised prior to authorization **without permission** will not be eligible for federal reimbursement.

2.3.2. The Local Government will prepare the Proposal for Highway Construction for the construction contract, which will include all federal-aid provisions supplied by MnDOT.

2.3.3. The Local Government will prepare and publish the bid solicitation for the Project(s) as required by state and federal laws. The Local Government will include in the solicitation the required language for federal-aid construction contracts as supplied by MnDOT. The solicitation will state where the proposals, plans, and specifications are available for the inspection of prospective bidders and where the Local Government will receive the sealed bids.

2.3.4. The Local Government may not include other work in the construction contract for the authorized Project(s) without obtaining prior notification from MnDOT that such work is allowed by FHWA. Failure to obtain such notification may result in the loss of some or all of the federal funds for the Project(s). All work included in a federal contract is subject to the same federal requirements as the federal project.

2.3.5. The Local Government will prepare and sell the plan and proposal packages and prepare and distribute any addenda, if needed.

2.3.6. The Local Government will receive and open bids.

2.3.7. After the bids are opened, the Local Government will consider the bids and will award the bid to the lowest responsible bidder or reject all bids. If the construction contract contains a goal for Disadvantaged Business Enterprises (DBEs), the Local Government will not award the bid until it has received certification of the Disadvantaged Business Enterprise participation from the MnDOT Office of Civil Rights.

2.3.8. The Local Government must disclose in writing any potential conflict of interest to the Federal awarding agency or MnDOT in accordance with applicable FHWA policy.

2.4. **Contract Administration.**

2.4.1. The Local Government will prepare and execute a construction contract with the lowest responsible bidder, hereinafter referred to as the "Contractor," in accordance with the special provisions and the latest edition of MnDOT's Standard Specifications for Construction when the contract is awarded and all amendments thereto. All contracts between the Local Government and third parties or subcontractors must contain all applicable provisions of this Agreement, including the applicable

federal contract clauses, which are identified in Appendix II of 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and as identified in Section 18 of this Agreement.

- 2.4.2. The Project(s) will be constructed in accordance with the plans, special provisions, and standard specifications of each Project. The standard specifications will be the latest edition of MnDOT Standard Specifications for Highway Construction and all amendments thereto. The plans, special provisions, and standard specifications will be on file at the Local Government Engineer's Office. The plans, special provisions, and specifications are incorporated into this Agreement by reference as though fully set forth herein.
- 2.4.3. The Local Government will furnish the personnel, services, supplies, and equipment necessary to properly supervise, inspect, and document the work for the Project(s). The services of the Local Government to be performed hereunder may not be assigned, sublet, or transferred unless the Local Government is notified in writing by MnDOT that such action is permitted under 23 CFR 1.33 and 23 CFR 635.105 and state law. This written consent will in no way relieve the Local Government from its primary responsibility for performance of the work.
- 2.4.4. The Local Government will document quantities in accordance with the guidelines set forth in the Construction Section of the Electronic State Aid Manual that are in effect at the time the work was performed.
- 2.4.5. The Local Government will test materials in accordance with the Schedule of Materials Control in effect at the time each Project was let. The Local Government will notify MnDOT when work is in progress on the Project(s) that requires observation by the Independent Assurance Inspector, as required by the Independent Assurance Schedule.
- 2.4.6. The Local Government may make changes in the plans or the character of the work, as may be necessary to complete the Project(s), and may enter into Change Order(s) with the Contractor. The Local Government will not be reimbursed for any costs of any work performed under a change order unless MnDOT has notified the Local Government that the subject work is eligible for federal funds and sufficient federal funds are available.
- 2.4.7. The Local Government will request approval from MnDOT for all costs in excess of the amount of federal funds previously approved for the Project(s) prior to incurring such costs. Failure to obtain such approval may result in such costs being disallowed for reimbursement.
- 2.4.8. The Local Government will prepare reports, keep records, and perform work so as to meet federal requirements and to enable MnDOT to collect the federal aid sought by the Local Government. Required reports are listed in the MnDOT State Aid Manual, Delegated Contract Process Checklist, available from MnDOT's authorized representative. The Local Government will retain all records and reports and allow MnDOT or the FHWA access to such records and reports for six years.
- 2.4.9. Upon completion of the Project(s), the Project Engineer will determine whether the work will be accepted.

2.5. Limitations.

- 2.5.1. The Local Government will comply with all applicable Federal, State, and local laws, ordinances, and regulations.
- 2.5.2. **Nondiscrimination.** It is the policy of the Federal Highway Administration and the State of Minnesota that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (42 U.S.C. 2000d). Through expansion of the mandate

for nondiscrimination in Title VI and through parallel legislation, the proscribed bases of discrimination include race, color, sex, national origin, age, and disability. In addition, the Title VI program has been extended to cover all programs, activities and services of an entity receiving Federal financial assistance, whether such programs and activities are Federally assisted or not. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies is expected to take affirmative action to assure that no person is excluded from participation in, or is denied the benefits of, the program or activity on the grounds of race, color, national origin, sex, age, or disability. It is the responsibility of the Local Government to carry out the above requirements.

2.5.3. **Utilities.** The Local Government will treat all public, private or cooperatively owned utility facilities which directly or indirectly serve the public and which occupy highway rights of way in conformance with 23 CFR 645 "Utilities", which is incorporated herein by reference.

2.6. **Maintenance.** The Local Government assumes full responsibility for the operation and maintenance of any facility constructed or improved under this Agreement.

3. MnDOT's Duties

3.1. **Acceptance.** MnDOT accepts designation as Agent of the Local Government for the receipt and disbursement of federal funds and will act in accordance herewith.

3.2. Project Activities.

3.2.1. MnDOT will make the necessary requests to the FHWA for authorization to use federal funds for the Project(s) and for reimbursement of eligible costs pursuant to the terms of this Agreement.

3.2.2. MnDOT will provide to the Local Government copies of the required Federal-aid clauses to be included in the bid solicitation and will provide the required Federal-aid provisions to be included in the Proposal for Highway Construction.

3.2.3. MnDOT will review and certify the DBE participation and notify the Local Government when certification is complete. If certification of DBE participation (or good faith efforts to achieve such participation) cannot be obtained, then Local Government must decide whether to proceed with awarding the contract. Failure to obtain such certification will result in the Project becoming ineligible for federal assistance, and the Local Government must make up any shortfall.

3.2.4. MnDOT will provide the required labor postings.

3.3. **Authority.** MnDOT may withhold federal funds, where MnDOT or the FHWA determines that the Project(s) was not completed in compliance with federal requirements.

3.4. **Inspection.** MnDOT, the FHWA, or duly authorized representatives of the state and federal government will have the right to audit, evaluate and monitor the work performed under this Agreement. The Local Government will make all books, records, and documents pertaining to the work hereunder available for a minimum of six years following the closing of the construction contract.

4. Time

4.1. The Local Government must comply with all time requirements described in this Agreement. In the performance of this Agreement, time is of the essence.

4.2. The period of performance is defined as beginning on the date of federal authorization and ending on the date defined in the federal financial system or federal agreement ("end date"). **No work completed** after the **end date** will be eligible for federal funding. Local Government must submit all contract close out paperwork to MnDOT at least twenty-four months prior to the **end date**.

5. Payment

- 5.1. **Cost.** The entire cost of the Project(s) is to be paid from federal funds made available by the FHWA and by other funds provided by the Local Government. The Local Government will pay any part of the cost or expense of the Project(s) that is not paid by federal funds. MnDOT will receive the federal funds to be paid by the FHWA for the Project(s), pursuant to Minnesota Statutes § 161.36, Subdivision 2. MnDOT will reimburse the Local Government, from said federal funds made available to each Project, for each partial payment request, subject to the availability and limits of those funds.
- 5.2. **Indirect Cost Rate Proposal/Cost Allocation Plan.** If the Local Government seeks reimbursement for indirect costs and has submitted to MnDOT an indirect cost rate proposal or a cost allocation plan, the rate proposed will be used on a provisional basis. At any time during the period of performance or the final audit of a Project, MnDOT may audit and adjust the indirect cost rate according to the cost principles in 2 CFR Part 200. MnDOT may adjust associated reimbursements accordingly.
- 5.3. **Reimbursement.** The Local Government will prepare partial estimates in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify each partial estimate. Following certification of the partial estimate, the Local Government will make partial payments to the Contractor in accordance with the terms of the construction contract for the Project(s).
 - 5.3.1. Following certification of the partial estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified partial estimate.
 - 5.3.2. Upon completion of the Project(s), the Local Government will prepare a final estimate in accordance with the terms of the construction contract for the Project(s). The Project Engineer will certify the final estimate. Following certification of the final estimate, the Local Government will make the final payment to the Contractor in accordance with the terms of the construction contract for the Project(s).
 - 5.3.3. Following certification of the final estimate, the Local Government may request reimbursement for costs eligible for federal funds. The Local Government's request will be made to MnDOT and will include a copy of the certified final estimate along with the required records.
 - 5.3.4. Upon completion of the Project(s), MnDOT will perform a final inspection and verify the federal and state eligibility of all payment requests. If the Project is found to have been completed in accordance with the plans and specifications, MnDOT will promptly release any remaining federal funds due the Local Government for the Project(s). If MnDOT finds that the Local Government has been overpaid, the Local Government must promptly return any excess funds.
 - 5.3.5. In the event MnDOT does not obtain funding from the Minnesota Legislature or other funding source, or funding cannot be continued at a sufficient level to allow for the processing of the federal aid reimbursement requests, the Local Government may continue the work with local funds only, until such time as MnDOT is able to process the federal aid reimbursement requests.
- 5.4. **Matching Funds.** Any cost sharing or matching funds required of the Local Government in this Agreement must comply with 2 CFR 200.306.
- 5.5. **Federal Funds.** Payments under this Agreement will be made from federal funds. The Local Government is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for failure to comply with any federal requirements including, but not limited to, 2 CFR Part 200. If, for any reason, the federal government fails to pay part of the cost or expense incurred by the Local Government, or in the event the total amount of federal funds is not available, the Local Government will be responsible for any and all costs or expenses incurred under this Agreement. The Local Government further

agrees to pay any and all lawful claims arising out of or incidental to the performance of the work covered by this Agreement in the event the federal government does not pay the same.

- 5.6. **Closeout.** The Local Government must liquidate all obligations incurred under this Agreement for each Project and submit all financial, performance, and other reports as required by the terms of this Agreement and the Federal award at least twenty-four months prior to the **end date** of the period of performance for each Project. MnDOT will determine, at its sole discretion, whether a closeout audit is required prior to final payment approval. If a closeout audit is required, final payment will be held until the audit has been completed. Monitoring of any capital assets acquired with funds will continue following project closeout.
6. **Conditions of Payment.** All services provided by Local Government under this Agreement must be performed to MnDOT's satisfaction, as determined at the sole discretion of MnDOT's Authorized Representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Local Government will not receive payment for work found by MnDOT to be unsatisfactory or performed in violation of federal, state, or local law.

7. Authorized Representatives

7.1. MnDOT's Authorized Representative is:

Name: Kristine Elwood, or her successor.

Title: State Aid Engineer

Phone: 651-366-4831

Email: Kristine.elwood@state.mn.us

MnDOT's Authorized Representative has the responsibility to monitor Local Government's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, MnDOT's Authorized Representative will certify acceptance on each invoice submitted for payment.

7.2. The Local Government's Authorized Representative is:

Name: Brian Yavarow or their successor.

Title: Fergus Falls City Engineer

Phone: 218-332-5413

Email: brian.yavarow@ci.fergus-falls.mn.us

If the Local Government's Authorized Representative changes at any time during this Agreement, the Local Government will immediately notify MnDOT.

8. Assignment Amendments, Waiver, and Agreement Complete

- 8.1. **Assignment.** The Local Government may neither assign nor transfer any rights or obligations under this Agreement without the prior written consent of MnDOT and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 8.2. **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.
- 8.3. **Waiver.** If MnDOT fails to enforce any provision of this Agreement, that failure does not waive the provision or MnDOT's right to subsequently enforce it.
- 8.4. **Agreement Complete.** This Agreement contains all negotiations and agreements between MnDOT and the

Local Government. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

- 8.5. **Severability.** If any provision of this Agreement, or the application thereof, is found to be invalid or unenforceable to any extent, the remainder of the Agreement, including all material provisions and the application of such provisions, will not be affected and will be enforceable to the greatest extent permitted by the law.
- 8.6. **Electronic Records and Signatures.** The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.
- 8.7. **Certification.** By signing this Agreement, the Local Government certifies that it is not suspended or debarred from receiving federal or state awards.

9. Liability and Claims

- 9.1. **Tort Liability.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of any others and the results thereof. The Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, governs MnDOT liability.
- 9.2. **Claims.** The Local Government acknowledges that MnDOT is acting only as the Local Government's agent for acceptance and disbursement of federal funds, and not as a principal or co-principal with respect to the Project. The Local Government will pay any and all lawful claims arising out of or incidental to the Project including, without limitation, claims related to contractor selection (including the solicitation, evaluation, and acceptance or rejection of bids or proposals), acts or omissions in performing the Project work, and any *ultra vires* acts. To the extent permitted by law, the Local Government will indemnify, defend (to the extent permitted by the Minnesota Attorney General), and hold MnDOT harmless from any claims or costs arising out of or incidental to the Project(s), including reasonable attorney fees incurred by MnDOT. The Local Government's indemnification obligation extends to any actions related to the certification of DBE participation, even if such actions are recommended by MnDOT.

10. Audits

- 10.1. Under Minn. Stat. § 16C.05, Subd.5, the books, records, documents, and accounting procedures and practices of the Local Government, or any other party relevant to this Agreement or transaction, are subject to examination by MnDOT and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later. The Local Government will take timely and appropriate action on all deficiencies identified by an audit.
- 10.2. All requests for reimbursement are subject to audit, at MnDOT's discretion. The cost principles outlined in 2 CFR 200.400-.476 will be used to determine whether costs are eligible for reimbursement under this Agreement.
- 10.3. If Local Government expends \$750,000 or more in Federal Funds during the Local Government's fiscal year, the Local Government must have a single audit or program specific audit conducted in accordance with 2 CFR Part 200.

11. **Government Data Practices.** The Local Government and MnDOT must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by MnDOT under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Local Government under this Agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Local Government or MnDOT.
12. **Workers Compensation.** The Local Government certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Local Government's employees and agents will

not be considered MnDOT employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way MnDOT's obligation or responsibility.

- 13. Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.
- 14. Termination; Suspension**
- 14.1. Termination by MnDOT.** MnDOT may terminate this Agreement with or without cause, upon 30 days written notice to the Local Government. Upon termination, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 14.2. Termination for Cause.** MnDOT may immediately terminate this Agreement if MnDOT finds that there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made, that fraudulent or wasteful activity has occurred, that the Local Government has been convicted of a criminal offense relating to a state agreement, or that the purposes for which the funds were granted have not been or will not be fulfilled. MnDOT may take action to protect the interests of MnDOT of Minnesota, including the refusal to disburse additional funds and/or requiring the return of all or part of the funds already disbursed.
- 14.3. Termination for Insufficient Funding.** MnDOT may immediately terminate this Agreement if:
- 14.3.1. It does not obtain funding from the Minnesota Legislature; or
- 14.3.2. If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Local Government. MnDOT is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Local Government will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. MnDOT will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MnDOT will provide the Local Government notice of the lack of funding within a reasonable time of MnDOT's receiving that notice.
- 14.4. Suspension.** MnDOT may immediately suspend this Agreement in the event of a total or partial government shutdown due to the failure to have an approved budget by the legal deadline. Work performed by the Local Government during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.
- 15. Data Disclosure.** Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Local Government consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to MnDOT, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Local Government to file state tax returns and pay delinquent state tax liabilities, if any.
- 16. Fund Use Prohibited.** The Local Government will not utilize any funds received pursuant to this Agreement to compensate, either directly or indirectly, any contractor, corporation, partnership, or business, however organized, which is disqualified or debarred from entering into or receiving a State contract. This restriction applies regardless of whether the disqualified or debarred party acts in the capacity of a general contractor, a subcontractor, or as an equipment or material supplier. This restriction does not prevent the Local Government from utilizing these funds to pay any party who might be disqualified or debarred after the Local Government's contract award on this Project.

17. Discrimination Prohibited by Minnesota Statutes §181.59. The Local Government will comply with the provisions of Minnesota Statutes §181.59 which requires that every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause 1 of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this contract may be canceled or terminated by the state of Minnesota, or any county, city, town, township, school, school district or any other person authorized to contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Agreement.

18. Federal Contract Clauses

- 18.1. Appendix II 2 CFR Part 200.** The Local Government agrees to comply with the following federal requirements as identified in 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and agrees to pass through these requirements to its subcontractors and third-party contractors, as applicable. In addition, the Local Government shall have the same meaning as “Contractor” in the federal requirements listed below.
- 18.1.1. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- 18.1.2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- 18.1.3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- 18.1.4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

- for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- 18.1.5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 18.1.6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 18.1.7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 18.1.8. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 18.1.9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must

also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

18.1.10. Local Government will comply with 2 CFR § 200.323.

18.1.11. Local Government will comply with 2 CFR § 200.216.

18.1.12. Local Government will comply with 2 CFR § 200.322.

18.2. **Drug-Free Workplace.** The Local Government will comply with the Drug-Free Workplace requirements under subpart B of 49 C.F.R. Part 32.

18.3. **Title VI/Non-discrimination Assurances.** The Local Government hereby agrees that, as a condition of receiving any Federal financial assistance under this Agreement, it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d), related nondiscrimination statutes (i.e., 23 U.S.C. § 324, Section 504 of the Rehabilitation Act of 1973 as amended, and the Age Discrimination Act of 1975), and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Local Government receives Federal financial assistance.

The Local Government hereby agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. If federal funds are included in any contract, the Local Government will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. State may conduct a review of the Local Government's compliance with this provision. The Local Government must cooperate with State throughout the review process by supplying all requested information and documentation to State, making Local Government staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by State.

18.4. **Buy America.** The Local Government must comply with the Buy America domestic preferences contained in the Build America, Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58) and as implemented by US DOT operating agencies.

18.5. **Federal Funding Accountability and Transparency Act (FFATA)**

18.5.1. This Agreement requires the Local Government to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Local Government is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Local Government provides information to the MnDOT as required.

a. Reporting of Total Compensation of the Local Government's Executives.

b. The Local Government shall report the names and total compensation of each of its five most highly compensated executives for the Local Government's preceding completed fiscal year, if in the Local Government's preceding fiscal year it received:

i. 80 percent or more of the Local Government's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <https://www.sec.gov/answers/execomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.

- c. Total compensation means the cash and noncash dollar value earned by the executive during the Local Government's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
- 18.5.2. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- 18.5.3. The Local Government must report executive total compensation described above to the MnDOT by the end of the month during which this Agreement is awarded.
- 18.5.4. The Local Government will obtain a Unique Entity Identifier number and maintain this number for the term of this Agreement. This number shall be provided to MnDOT on the plan review checklist submitted with the plans for each Project.
- 18.5.5. The Local Government's failure to comply with the above requirements is a material breach of this Agreement for which the MnDOT may terminate this Agreement for cause. The MnDOT will not be obligated to pay any outstanding invoice received from the Local Government unless and until the Local Government is in full compliance with the above requirements.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.]

City of Fergus Falls

Local Government certifies that the appropriate person(s) have executed the contract on behalf of the Local Government as required by applicable articles, bylaws, resolutions or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Title: _____

Date: _____

COMMISSIONER OF ADMINISTRATION

By: _____

Date: _____

SAMPLE RESOLUTION FOR AGENCY AGREEMENT

BE IT RESOLVED, that pursuant to Minnesota Stat. Sec. 161.36, the Commissioner of Transportation be appointed as Agent of the **local agency** to accept as its agent, federal aid funds which may be made available for eligible transportation related projects.

BE IT FURTHER RESOLVED, the * (Mayor/Chairman) and the * (Clerk/Auditor) are hereby authorized and directed for and on behalf of the **local agency** to execute and enter into an agreement with the Commissioner of Transportation prescribing the terms and conditions of said federal aid participation as set forth and contained in "Minnesota Department of Transportation Agency Agreement No. **XXXXXXX**", a copy of which said agreement was before the City Council/County Board and which is made a part hereof by reference.

Titles of persons authorized to sign on behalf of the Local government

SAMPLE CERTIFICATION

STATE OF MINNESOTA

CITY/COUNTY OF _____

I hereby certify that the foregoing Resolution is a true and correct copy of the Resolution presented to and adopted by local agency name at a duly authorized meeting thereof held on the ____ day of _____, 20____, as shown by the minutes of said meeting in my possession.

Clerk/Auditor

Notary Public

My Commission expires _____

(SEAL)



Council Action Recommendation

Page 1 of 2

Meeting Date:

January 11, 2023 – Committee of the Whole
January 17, 2023 – City Council

Subject:

PI 5314 – Union Avenue from Fir Avenue to Lincoln Avenue, Lincoln Avenue from Union Avenue to Friberg Avenue, Resurfacing Project
State Transportation Improvement Program (STIP) SFY 2022 (MSAS 104, 109)

Recommendation:

- Motion to pursue Option No. 2 in final bidding documents

Background/Key Points:

About a month ago, I requested authorization to re advertise for bids and noted a few bid document revisions that were made since the last bidding attempt in efforts to receive a lower price. Based on post bid discussion with the contractors it was evident paving around the existing street pavers on Lincoln Avenue, while protecting them, was perceived as time consuming, high risk, and expensive. Therefore, the bid documents were revised to include an Alternate bid consisting of the removal of the deteriorated street pavers (with concrete border) and installing a full bituminous street section. This type of replacement is proposed at each intersection along Lincoln Avenue from Union to Cascade Street. I also had noted the State has not fully consented to this particular Alternate bid method yet.

Based on recent feedback from the State it appears the alternate bid method is not pre-approved by Federal Highway Administration (FHWA). Either/Or (alternate) bidding is considered by the FHWA as a form of 'shopping' instead of seeking the lowest possible bid for a complete project, and therefore not allowed without seeking permission through FHWA and submitting proper documentation as to why this method should be used. The permission and documentation would need to be firstly approved by consensus with the District State Aid Engineer and the State Aid Engineer in Central Office before being forwarded to the FHWA office in St. Paul for their consideration.

In my opinion and others from the State, this approval process could be extremely time consuming. Because of this, I have two (2) options for this Council to consider so the final bid documents can be completed and sent to the State for final approval. Please refer to the attached Lincoln Avenue intersection exhibits and description of each type of work. Based on current cost estimates, Option No. 2 appears to be less expensive (25k) than Option No. 1 that was previously bid. I also believe Option No. 2 will provide longer pavement longevity because a new full pavement section will be constructed versus only the top 2-inches (resurfaced) with Option No. 1. Although the existing street pavers are an aesthetic feature constructed decades ago, the associated maintenance for pedestrians and City staff during snow removal operations has been problematic.

Budgetary Impact:

This project is proposed be funded 100-percent thru Federal and State Aid funds. The preliminary cost shares are:

Federal Share: 80-percent for construction only (max. rate) subject to change based on bid prices.

State Aid Share: 20-percent construction, 100-percent for engineering design and contract administration

Originating Department:

Engineering Department

Respectfully Submitted:

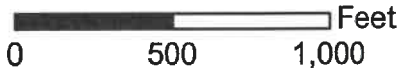
Brian Yavarow, P.E. – City Engineer

Attachments:

PI 5314 – Project Location Map

PI 5314- Alternate Bid Exhibit

Otter Tail County

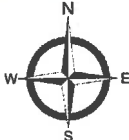


- Project Area
- Roads
- Railroad
- Water
- Parcels

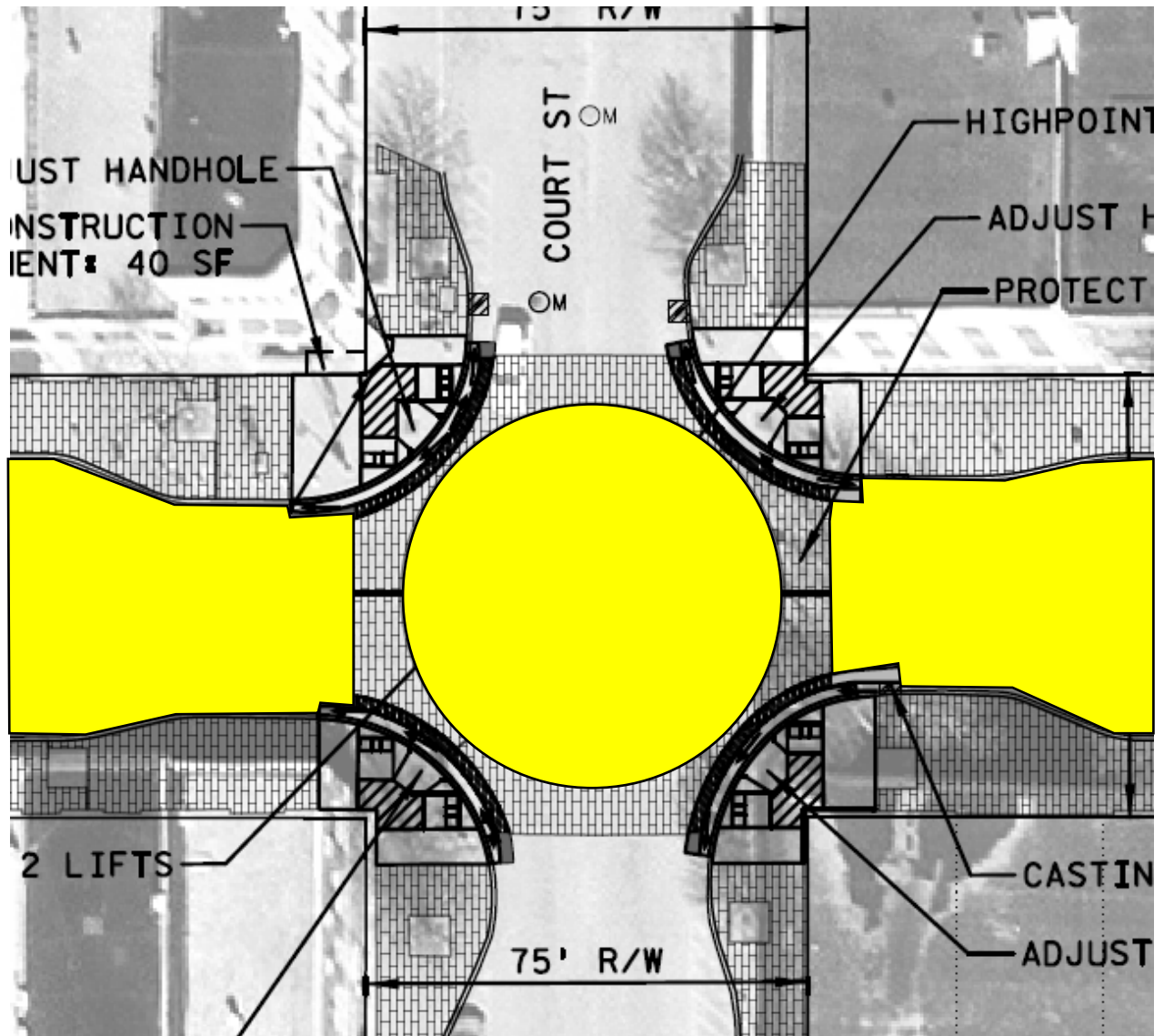


PROJECT AREA FERGUS FALLS, MINNESOTA

Created By: LH Date Created: 06/15/21 Date Saved: 6/15/2021 Date Plotted: Date Exported: 6/15/2021
 Plotted By: luke.henderson Parcel Date: County 2021 Aerial Image: N/A Elevation Data: N/A
 Spatial Reference: NAD 1983 HARN Adj MN Ottertail Feet
 W:\MN_Regional\MN_SiCloud\GIS_SiCloud\Projects_GIS\21702_Fergus_Falls_Lincoln_Union\21702\21702.aprx

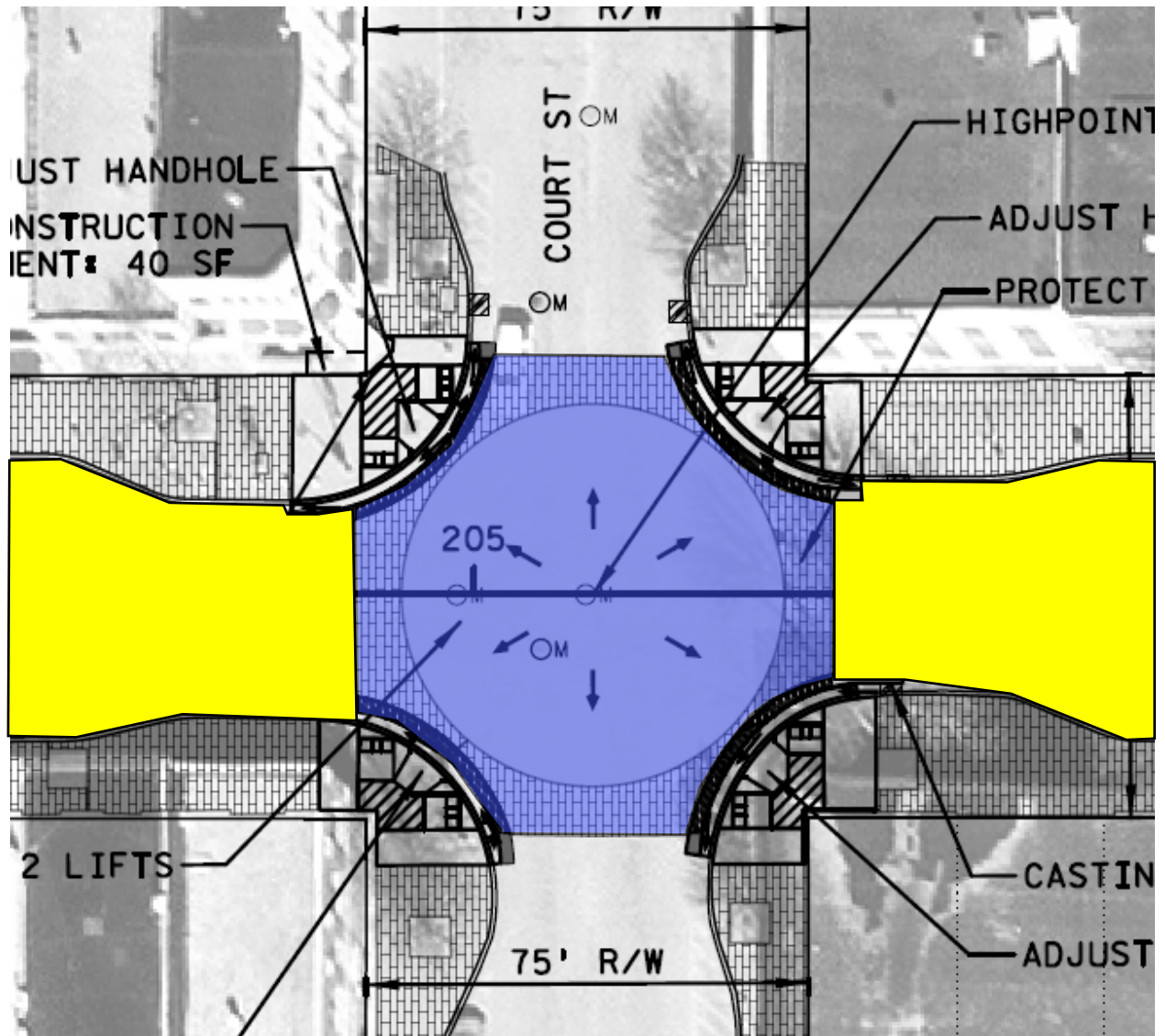


OPTION No. 1



Mill & resurface area shown in 'yellow' and leave existing street pavers in place. Previously bid as shown.

OPTION No. 2



Mill & resurface area shown in 'yellow'. Remove all street pavers with concrete ribbon and bituminous in area 'Blue' and construct full depth bituminous based with final wearing lift during resurfacing process.



Council Action Recommendation

Page 1 of 2

Meeting Date:

January 11, 2023 – Committee of the Whole
January 17, 2023 – City Council

Subject:

PI 5362 – Fir Avenue (C.S.A.H 1) and Friberg Avenue (MSAS No. 126) Round About Improvement Project

Recommendation:

1. Initiate Public Improvement No. 5362
2. Accept Otter Tail County's Agreement for the Intersection Improvement for C.S.A.H 1 and Friberg Avenue (MSAS No. 126)

Background/Key Points:

In March, 2020, the City and Otter Tail County initiated a joint agency effort to study round about design feasible in the City. The primary intersections of interest were the Fir Avenue and Friberg Avenue intersection. The intersections of Union and Tower Road were added to the study as it progressed.

Since then, funding thru Local Roads Improvement Program (LRIP) has been unsuccessful. To my understanding, Otter Tail County intends to proceed with funding a portion of their share with bonding and has contacted the City with the attached agreement for this Council to consider.

Budgetary Impact:

Pursuant to this Agreement and past joint ventures, the City shall pay for the following project costs:

- 1) One-third (1/3) of the cost of the street repair, sidewalk and lighting including the resurfaced area.
- 2) 100 percent of the cost of the non-storm sewer municipal utilities. To be determined and quantified during the final design phase.
- 3) One-third (1/3) of the cost of storm sewer placement based on the Mn/DOT stormwater analysis.
- 4) 100 percent of costs for permanent and/or temporary easements adjoining Friberg Avenue.
- 5) A pro rata portion of the total engineering costs for the project, in an amount representing the same ratio to the total engineering costs as Municipality's portion of the construction costs bears to the total construction contract cost.

Recently, Transportation Collaborative & Consultants, updated the cost estimates prepared in 2020. The total estimated project cost for this intersection is \$2,200,000. In general, the City's portion would be approximately \$730,000 plus any municipal storm, sanitary sewer, and/or watermain relocations or replacements, if needed.

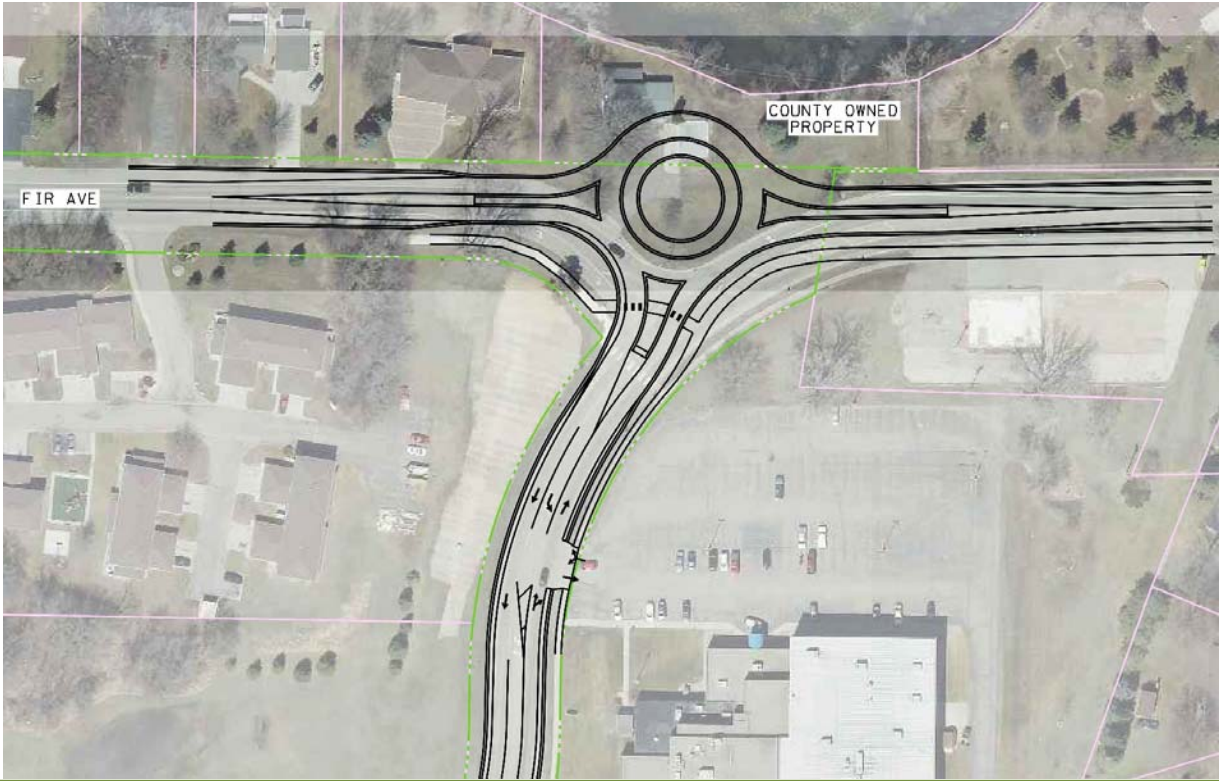
The City funding sources could consist of Municipal State Aid Construction for the street and surface improvements and the appropriate City utility enterprise funds as needed.

Originating Department:
Engineering Department

Respectfully Submitted:
Brian Yavarow, P.E. – City Engineer

Attachments:
PI 5362 – Preliminary Layout Exhibit
PI 5362 - Agreement for the Intersection Improvement for C.S.A.H 1 and MSAS No. 126

Intersection Concepts - Fir Avenue/Friberg Avenue



Est Cost:
~\$2.2M



**AGREEMENT FOR THE INTERSECTION IMPROVEMENT
OF COUNTY STATE AID HIGHWAY NO. 1
AND MUNICIPAL STATE AID STREET NO. 126
(Fir Avenue and Friberg Avenue)**

**Project No. S.A.P. 056-601-076
Project No. S.A.P. 126-123-006**

THIS AGREEMENT made and entered on the last day of execution below, between the County of Otter Tail, Minnesota, referred to herein as “County”, and the City of Fergus Falls, Minnesota, referred to herein as “Municipality”.

WITNESSETH:

WHEREAS, the County is the road authority for Otter Tail County State Aid Highway (CSAH) 1 (Fir Avenue), which runs through the corporate limits of the Municipality; and

WHEREAS, the Municipality is the road authority for Fergus Falls Municipal State Street (MSAS) 126 (Friberg Avenue), which runs through the corporate limits of the Municipality; and

WHEREAS, the County and Municipality desire to make improvements to the intersection of CSAH 1 and MSAS 126 by removing the exiting tee intersection and constructing a roundabout. Two-thirds (2/3) of the intersection is CSAH 1 and one-third (1/3) of the intersection is MSAS 126; and

WHEREAS, the County and Municipality wish to clearly identify their mutual duties and responsibilities with respect to intersection improvements of CSAH 1 and MSAS 126.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, and other good and valuable consideration, the parties agree as follows:

1. Purpose. The purpose of this Agreement is to define the rights and obligations of the parties with respect to the repair and replacement of utilities and intersection improvements located on CSAH 1 and MSAS 126.

2. Recitals. The recitals set forth in the whereas clauses above are incorporated by reference as if fully set forth herein.

3. Scope of Work. The County and Municipality shall coordinate the preparation of plans and construction for the joint effort work of street, sidewalk, lighting and utilities replacement at the intersection of CSAH 1 and MSAS 126, jointly to be designated as State Aid Projects (S.A.P.) 056-601-076 and 126-123-006.

4. Responsibilities of County for S.A.P. 056-601-076 and S.A.P. 126-123-006:

a. The County Engineer shall contract with a consulting engineer for preparation of plans, specifications and bid documents in accordance with Minnesota Department of Transportation (Mn/DOT) State Aid Division requirements.

b. Review preliminary plans, specifications and bid documents with Municipality and Mn/DOT State Aid Division officials. Direct revision of plans, specifications and bid documents as required.

c. Submit final plans, specifications and bid documents to Municipality and the Mn/DOT State Aid Division for approval.

d. Conduct bid opening

e. Contract with consulting engineer for construction administration and engineering services and provide such additional engineering services as may be required.

f. County shall pay for the following project costs:

- 1) Two-thirds (2/3) of the cost of the street repair, sidewalk and lighting including the resurfaced area.
- 2) Two-thirds (2/3) of the cost of storm sewer placement based on the Mn/DOT stormwater analysis.
- 3) 100 percent of costs for permanent and/or temporary easements adjoining CSAH 1.
- 4) A pro rata portion of the total engineering costs for the project, in an amount representing the same ratio to the total engineering costs as County's portion of the construction costs bears to the total construction contract cost.

5. Responsibilities of Municipality for S.A.P. 056-601-076 and S.A.P. 126-123-006:

a. Municipality shall review and approve all preliminary plans, specifications and bid documents provided by the County.

b. Municipality shall pay for the following project costs:

- 1) One-third (1/3) of the cost of the street repair, sidewalk and lighting including the resurfaced area.
- 2) 100 percent of the cost of the non-storm sewer municipal utilities.
- 3) One-third (1/3) of the cost of storm sewer placement based on the Mn/DOT stormwater analysis.
- 4) 100 percent of costs for permanent and/or temporary easements adjoining MSAS 126.

5) A pro rata portion of the total engineering costs for the project, in an amount representing the same ratio to the total engineering costs as Municipality's portion of the construction costs bears to the total construction contract cost.

6. Payment of Costs.

a. County shall account for and administer payment of all project design, project administration, construction engineering and construction costs necessary for S.A.P. 056-601-076 and S.A.P. 126-123-006, as identified in paragraph 4, above.

b. Municipality shall account for and reimburse County for its share of all costs associated with project design, project administration, construction engineering and construction costs necessary for S.A.P. 056-601-076 and S.A.P. 126-123-006, as identified in paragraph 5, above.

c. At the completion of the design phase, the County shall provide Municipality an invoice for its share of the project design costs, detailing the total costs paid by County to date and the portion to be reimbursed by Municipality. Payment to County shall be made by the Municipality within thirty (30) days of receipt on an invoice from the County.

d. Beginning at the construction phase, County shall provide Municipality a monthly invoice for its share of projects costs, detailing the total costs paid by County to date and the portion to be reimbursed by Municipality. Payment to County shall be made by Municipality within thirty (30) days of receipt of an invoice from County.

7. Termination. This Agreement may be terminated by the County or Municipality upon seven (7) days written notice should either party fail substantially to perform in accordance with the terms of this Agreement. In the event of termination, the County or Municipality shall be compensated for all services performed and costs paid or incurred to the termination date. All provisions of this Agreement allocating responsibility or liability between the County and Municipality shall survive the completion of the project hereunder and/or the termination of this Agreement.

8. Notice. Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid and depositing the same in the United States Postal Service, addressed to:

For the County:

Otter Tail County Engineer
Otter Tail County Highway Department
505 South Court Street, Suite 1
Fergus Falls, MN 56537

For the Municipality:

Fergus Falls City Engineer
City of Fergus Falls
112 West Washington Avenue
Fergus Falls, MN 56537

9. Records. The County shall make available for review and copying, at reasonable times upon request by the Municipality, any documents, records, memoranda or other such items relating to the project in the County's possession. The County shall specifically keep concise records verifying any work for which compensation is requested or any other extraordinary or miscellaneous expenses arising out of the performance of this Agreement. The County shall keep detailed records pertaining to any controversies, disputes or problems, which affect or could affect the quality or acceptance of the work by Municipality.

10. Reuse of Documents. Drawings and specifications are and shall remain the property of the County whether the project for which they are made is executed or not. The Municipality shall be permitted to retain copies, including reproducible copies of drawings and specifications for information and reference in connection with the Municipality's use and occupancy of the project and for use in any future construction.

11. Insurance. The County and Municipality agree that they will, at all times during this Agreement, be prepared to meet the statutory limits for municipal liability. Any insurance costs incurred shall be the costs and expenses of the insured party and shall not be included as a cost of the project or reimbursed in any way by the other party.

12. Controlling Law. This Agreement shall be governed by the applicable laws of the State of Minnesota.

13. Successors and Assigns. The County and Municipality respectfully bind themselves, their partners, successors and assigns and all legal representatives of such party with respect to all covenants of this Agreement. Neither the County nor Municipality shall assign, sublet or transfer any interest in this Agreement without written consent of the other.

14. Equal Employment and Nondiscrimination. In connection with the work under this Agreement, the County and Municipality agree to comply with the applicable provisions of federal and state equal employment opportunity and nondiscrimination statutes and regulations.

15. Changes. Except as provided herein, the parties agree that no change or modification to this Agreement or any attachments hereto shall have any force or effect unless the change is reduced to writing, dated and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as for this Agreement.

16. Severability. In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties unless such invalidity or nonenforceability would cause the Agreement to fail its purpose. One or more waivers by

covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

17. Entire Agreement. This Agreement, including all exhibits, constitutes the entire Agreement between the County and the Municipality and supersedes all prior written or oral Agreements. Any term, condition, prior course of dealing, course of performance, usage of trade, understanding, purchase order or agreement purporting to modify, vary, supplement or explain any provision of this Agreement is null and void and of no effect unless in writing and signed by representatives of both parties authorized to amend this Agreement.

18. Effective Date. The Agreement shall be effective upon execution by the parties.

OTTER TAIL COUNTY

BY _____
County Board Chair

DATE _____

ATTEST _____
County Board Clerk

DATE _____

CITY OF FERGUS FALLS

BY _____
Mayor

DATE _____

ATTEST _____
City Administrator

DATE _____

Approved as to Form and Execution

Otter Tail County Attorney



Council Action Recommendation

Page 1 of 2

Meeting Date:

January 11, 2023 – Committee of the Whole
January 17, 2023 – City Council

Subject:

PI 9504 – Aquatic Center Improvement Project

Recommendation:

- Resolution accepting JLG Architect's professional services proposal for design development, final design, and construction administration in the amount of \$681,820.00

Background/Key Points:

Since the voters approved the local option sales tax projects (Aquatic Center and Delagoon Improvements) last fall, I have procured a professional services proposal from JLG Architects for the Aquatic Center project. For informational purposes, JLG Architects acquired the 292 Design Group that assisted with the Aquatic Center Study update presented and accepted by the City Council in August 2022. JLG Architects is a reputable firm qualified for projects such as this. JLG is proposing to work with the same subconsultants utilized during the recent update. JLG's experience, project understanding, and City goals can be reviewed in the attachment.

If this proposal is acceptable, I would initiate the Design Development (DD) phase right away with staff and volunteers. At the conclusion of the DD phase, final design and the bidding documents phase would then start. Advertising for bids anticipated in late June or July, 2023. If favorable bids are received and accepted, construction could begin late summer and completed summer of 2024.

Budgetary Impact:

The local option sales tax to publicly finance the project bonds is the current funding mechanism. Presently, the City has the legislative authority for a \$7.8 million dollar Aquatic Center improvement however, the recently updated total estimated project cost is \$9.5 million dollars. The legislative request to increase the local option sales tax collection to fully fund this project is anticipated to occur in May, 2023. Because this pending action is unknown, I requested JLG to revise their professional services proposal to accommodate for this aspect in efforts to start final design in the next few months.

By chance if the City is not successful with the legislative request approval, bid alternates will be identified during the final design phase and incorporated into the bidding documents as deductions to align with the current authorized \$7.8 million dollar budget. Although I believe legislative approval will happen, this is the most reasonable approach with alternates given the current circumstances.

Originating Department:

Engineering Department

Respectfully Submitted:

Brian Yavarow, P.E. – City Engineer

Attachments: