

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No.: BR-26-F1

Type: Window Well Abandonment

Location: 35 4th Street North

Date of Hearing: 7/27/2026

Routing

City Commission

PWPEC File

Project File

Date

8/17/2026

X

Rick Larson

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, regarding window well abandonment at 35 4th Street North.

While performing a site inspection earlier this summer, a void between the building and the sidewalk at 35 4th Street North revealed a 5' deep void. A site visit in the basement revealed 4 window wells that have been boarded up on the north side of the building along NP Avenue. After discussion with the Property Owner, we asked them to hire a contractor to fill the 3 eastern most window wells with compacted gravel so no voids below the new sidewalk would exist when poured back in place and agreed to pay for the City's portion based off of current policy (80% up to \$10,000). The owner was unable to get a quote for this work and asked that we have PARAS Contracting add this work to the project.

The City Attorney's Office has created a Hold Harmless and Indemnification Agreement. Staff is seeking approval of the agreement and for the work at 35 4th Street North to be added as a project cost with the City's financial obligation up to a maximum value of \$10,000 per site.

On a motion by Brenda Derrig, seconded by Susan Thompson, the committee voted to recommend approval of the Hold Harmless and Indemnification Agreement with TTC Building, LLC, with an added agreement addressing payment.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Hold Harmless and Indemnification Agreement and the Financial Reimbursement and Special Assessment Agreement with TTC Building, LLC.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Prairie Dog Funds & Special Assessments

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A

COMMITTEE

Present Yes No Unanimous

Joshua Boschee, Mayor

Nicole Crutchfield, Director of Planning

Gary Lorenz, Fire Chief

Brenda Derrig, Assistant City Administrator

Ben Dow, Director of Operations

Tom Knakmuhs, City Engineer

Susan Thompson, Finance Director

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Mark Williams

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ATTEST:

C: Kristi Olson


Tom Knakmuhs, P.E.
City Engineer

Memorandum

To: Members of PWPEC
From: Rick Larson, Project Manager
Date: July 22, 2026
Re: Improvement District No. BR-26-F1 - Window Well Abandonment at 35 4th Street North
TTC Building, LLC of Fargo, North Dakota

Background:

Improvement District No. BR-26-F1 is for the reconstruction of NP Avenue North from 2nd Street North to just east of 4th Street North. This project is for the replacement of the water main and services, sanitary sewer main and services, storm sewer main and inlet leads, concrete curb & gutter, sidewalk, driveways and street scape.

PARAS Contracting of Fargo is the Prime Contractor.

While performing a site inspection earlier this summer, a void between the building and the sidewalk at 35 4th Street North reveled a 5' deep void here. A site visit in the basement of this property revealed a total of 4 window wells that have been boarded up on the north side of this building along NP Avenue. After discussion with the Property Owner, we asked them to hire a contractor to perform this work and agreed to pay for the City's portion based off of current policy (80% up to \$10,000). Patrick Buell with TTC Building, LLC reached out to me asking if we could have PARAS perform this work since he could not get a contractor to quote this work. Patrick stated that he would sign a hold harmless agreement if the City agreed to add this work to the project.

After working with the City's Attorney's Office, a Hold Harmless and Indemnification Agreement was developed, sent, and signed by Patrick Buell at TTC Building, LLC.

If approved, we would have the City's Contractor, PARAS Contracting, fill the 3 eastern most window wells with compacted gravel so no voids below the new sidewalk exist when the new sidewalk are poured back in place. The western most window well would not be addressed this year since it is outside of our project limits, but could be addressed and filled with a future City project as soon as next year.

Recommended Motion:

Recommend acceptance of the Hold Harmless and Indemnification Agreement and approval for the filling of 3 window wells as a project cost at 35 4th Street North – TTC Building, LLC of Fargo North Dakota with the City's financial obligation up to a maximum value of \$10,000 per site.

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

This Hold Harmless and Indemnification Agreement ("Agreement") is entered into by and between the City of Fargo, a North Dakota municipal corporation ("City"), 225 4th Street North, Fargo, ND 58102, and TTC Building, LLC, a North Dakota limited liability company ("TTC"), 35 4th Street North, Fargo, ND 58102. City and TTC are each referred to herein individually as a "Party" and collectively herein as the "Parties."

Recitals

WHEREAS, TTC is the owner of certain real property located at 35 4th Street North, Fargo, ND 58102 (the "Property").

WHEREAS, the Property contains four below-grade window wells along the north side of the building abutting N.P. Avenue, which are currently filled and either partially or wholly located within the public right-of-way.

WHEREAS, the four below-grade window wells constitute encroachments into the public right-of-way.

WHEREAS, the City is currently engaged in a project along N.P. Avenue adjacent to the Property whereby the City is replacing public utilities and road reconstruction.

WHEREAS, the City requested TTC remove the encroaching four below-grade window wells.

WHEREAS, TTC wishes to fill in the four below-grade window wells to remove the encroachments but has been unable to identify a contractor to undertake the work.

WHEREAS, the Parties acknowledge that the work may result in unforeseen consequences to the Property, including but not limited to compaction failure, settlement, subsidence, structural damage, water intrusion, drainage issues, or other property damage.

WHEREAS, Owner acknowledges that the City or its contractor is willing to fill in the window wells as an accommodation to Owner, and not as a service for which the City assumes liability.

WHEREAS, the City or its contractor, at this time, is willing to fill in three of the four below-grade window wells during the City's ongoing project in exchange for TTC holding the City harmless and indemnifying the City from any and all losses which may be occasioned as a result of the work.

NOW, THEREFORE, in consideration of the terms, conditions, rights, and obligations as contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Subject to the terms and conditions of this Agreement, the City or its designated contractor agrees to fill in three of the four existing below-grade window wells located on the north side of the Property abutting N.P. Avenue during the existing project, to be completed in 2026. The three easternmost window wells will be filled in during the existing project in 2026. The City and its designated contractor shall determine, in its sole discretion, the methods, materials, equipment, and schedule for the fill-in work. The City may also agree in the future to fill in the fourth below-grade window well located on the north side of the Property during a future public utility and road reconstruction project anticipated to benefit 4th Street North.

2. The City makes no representation, warranty, or guarantee regarding the quality, suitability, durability, or effectiveness of the fill-in work. The City does not warrant that the fill-in work will be free from defects, that compaction will be adequate or permanent, that settlement or subsidence will not occur, or that the Property will not suffer any adverse consequences as a result of the work.

3. The City's performance of the work does not create any duty, obligation, or liability on the part of the City with respect to the condition, stability, safety, or structural integrity of the Property. The City has no obligation to inspect, monitor, repair, or maintain the Property or any improvements thereon. TTC hereby releases and holds harmless the City from any and all duties, obligations, liabilities, claims, causes of action, damages, losses, expenses, whether arising in contract or negligence, resulting from the City's performance of the work hereunder.

4. TTC acknowledges and agrees that it bears the sole responsibility for assessing the risks to the Property associated with the fill-in work, for taking any protective or remedial measures TTC deems necessary or appropriate, and for the condition of the Property before, during, and after the fill-in work. TTC acknowledges and agrees that it is entering into this Agreement voluntarily and with full knowledge of the risks associated with the fill-in work, such risks to include, but not be limited to, compaction or backfill failure, settlement, subsidence, voids, collapse, structural damage, cracking, shifting, water accumulation and damage, moisture intrusion, foundation damage, mold, diminished value, insurability, marketability, and usability of the Property.

5. TTC acknowledges that it has had the opportunity to conduct, or to retain qualified professionals to conduct, independent investigations, inspections, tests, and analyses regarding the condition of the Property, the nature and location of the window wells, and the potential consequences of the fill-in work. TTC further acknowledges that the City has not made, and TTC has not relied upon, any representations, warranties, or assurances from the City regarding any such matters.

6. TTC, on behalf of it and its successors, assigns, agents, representatives, insurers, and all persons claiming by, through, or under TTC, hereby forever releases, waives, discharges, and covenants not to sue the City or its designated contractor from and against any and all claims arising out of, resulting from, or in any way related to the fill-in work.

7. TTC shall indemnify, defend, and hold harmless the City and its designated contractor from and against any and all claims asserted by any third party (including without limitation tenants, invitees, contractors, lenders, insurers, or other persons claiming an interest in or right to use the Property) arising out of, resulting from, or in any way related to the fill in work,

resultant property damage, condition of the Property before, during, or after the fill-in work is completed, any act or omission of TTC or its agents, employees, tenants, or invitees, and any other matter arising out of or relating to the subject matter of this Agreement. TTC's indemnification obligations include, without limitation, all damages, judgments, awards, settlements, costs, expenses, reasonable attorneys' fees (including fees for appellate and post-judgment proceedings), expert fees, court costs, investigation costs, and any other liabilities or losses of any kind incurred by the City.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota, without regard to its conflicts of law principles.

9. Any action or proceeding arising out of or related to this Agreement shall be brought exclusively in the Cass County District Court located in Cass County, North Dakota, and the Parties hereby consent to the personal jurisdiction and venue of such courts.

10. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, and assigns.

11. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, representations, and negotiations, whether written or oral. This Agreement may be amended only by a written instrument signed by both Parties.

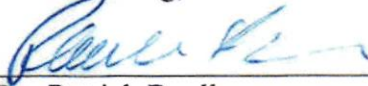
12. No waiver of any term or provision of this Agreement shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. No failure or delay by a Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

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TTC Building, LLC

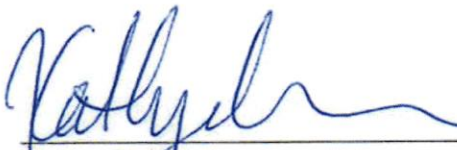
Dated: 7/20/24


By: Patrick Buell
Its: President

STATE NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 20 day of July, 2026, before me, a notary public in and for said county and state, personally appeared Patrick Buell, an authorized signatory of TTC Building, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.




Notary Public
Cass County, ND
My Commission expires:

City of Fargo, a municipal corporation

Dated: _____

Joshua Boschee, Mayor

ATTEST

Angie Bear, Deputy Auditor
on behalf of City Auditor

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

On this ____ day of _____, 2026, before me, a notary public in and for said county and state, personally appeared JOSHUA BOSCHEE and ANGIE BEAR, to me known to be the Mayor and Deputy Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, ND
My Commission expires:

(SEAL)

FINANCIAL REIMBURSEMENT AND SPECIAL ASSESMENT AGREEMENT

This Financial Reimbursement and Special Assessment Agreement ("Agreement") is entered into by and between the City of Fargo, a North Dakota municipal corporation ("City"), 225 4th Street North, Fargo, ND 58102, and TTC Building, LLC, a North Dakota limited liability company ("TTC"), 35 4th Street North, Fargo, ND 58102. City and TTC are each referred to herein individually as a "Party" and collectively herein as the "Parties."

Recitals

WHEREAS, TTC is the owner of certain real property located at 35 4th Street North, Fargo, ND 58102 (the "Property").

WHEREAS, the Property contains four below-grade window wells along the north side of the building abutting N.P. Avenue, which are currently filled and either partially or wholly located within the public right-of-way.

WHEREAS, the City is currently engaged in a project along N.P. Avenue adjacent to the Property whereby the City is replacing public utilities and road reconstruction.

WHEREAS, the City requested TTC remove the encroaching four below-grade window wells but TTC was unable to identify a contractor to undertake the work.

WHEREAS, the City's contractor is willing to fill in the window wells as an accommodation to Owner, but will increase the cost of the City's project.

WHEREAS, the City is willing to update the project scope to include filling in three of the four below-grade window wells (the "Project") during the City's ongoing project in exchange for TTC being financially responsible for the actual cost for filling in the three window wells and TTC agreeing to allow the costs to be assessed to the Property.

WHEREAS, TTC, as owner, acknowledges and agrees that the construction to fill in three of the four below-grade window wells benefits its Property and TTC desires to participate in the cost allocation of the Project as it will benefit the Property; and

WHEREAS, TTC acknowledges that the based upon the current cost participation policy to remove this encroachment between the City and TTC will be an 80/20 split to a maximum of \$10,000 for City's share.

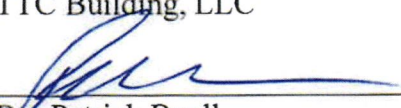
NOW, THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. TTC requested and the City agrees that the Project costs for filling in the three window wells will be assessed to the Property. TTC hereby expressly acknowledges and agrees that the Project provides benefit to the Property and agree to have the Project costs specially assessed against its respective portion of the Property, according to its pro-rata share, in accordance with the City's Infrastructure Funding Policy in effect at the time the Project begins. TTC hereby expressly waives its right to protest the Project costs and specifically consents to the Project and related improvements and to the assessment of the total final Project costs to the Property. TTC hereby further acknowledges and expressly agrees that the special assessments to the Property as a result of the Project will be a twenty-five (25) year assessment.

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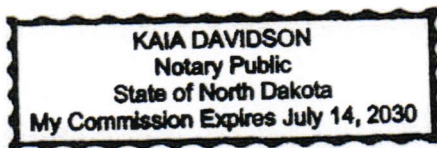
TTC Building, LLC

Dated: 8/4/26


By: Patrick Buell
Its: President

STATE NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this 4 day of August, 2026, before me, a notary public in and for said county and state, personally appeared Patrick Buell, an authorized signatory of TTC Building, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.



Kaia Davidson
Notary Public
Cass County, ND
My Commission expires:

City of Fargo, a municipal corporation

Dated: _____

Joshua Boschee, Mayor

ATTEST

Angie Bear, Deputy Auditor
on behalf of City Auditor

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

On this ____ day of _____, 2026, before me, a notary public in and for said county and state, personally appeared JOSHUA BOSCHEE and ANGIE BEAR, to me known to be the Mayor and Deputy Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

Notary Public
Cass County, ND
My Commission expires:

(SEAL)