APPLIED DIGITAL

November 7, 2025

Mayor Mahoney and City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

via e-mail only

Re: Annexation of 303.23 acres and annexation of 256.87 acres in Section 3, Township 140 North, range 49 West

Mayor and Commissioners,

My name is Nick Phillips, and I serve as Executive Vice President External Affairs for Applied Digital Corporation, also known as APLD. We design, build and operate high-performance, sustainably engineered data centers and colocation services for AI, cloud, networking and blockchain workloads. While our headquarters are in Dallas, we operate two facilities in North Dakota, with a third under development near Harwood. These written comments are filed in matters 35 and 36 in the City Commission meeting on November 10, 2025. I will be present and will speak at the public hearing as well.

We strongly oppose the annexation resolution for our Harwood facility. APLD owns the West Half of Section 3 where Harwood has exercised their extra-territorial jurisdiction, as well as having an option on the East Half of Section 3. Timely protests to the annexation were previously filed with the City of Fargo for both parcels. These protests represent 100% of the owners. Harwood voted to retain the areas under their ETA jurisdiction and has expressed their intent to annex all lands which we currently own in the area. We strongly urge the Commission to rescind the annexation resolution to spare Fargo taxpayers the expense of protracted legal proceedings related to this matter. Moreover, continued pursuit of this annexation is only likely to cause issues for Fargo with their neighbors, as well as an infringement on landowners' property rights. Applied Digital is committed to fighting this unwarranted annexation attempt to the full extent of the law, including mediation, administrative law proceeding, District Court, and the state Supreme Court. Not one of the seven factors for contested annexation in Century Code favor Fargo, and we believe there is

a near-zero probability that Fargo will prevail in these legal proceedings, despite the Mayor's vocalization otherwise.

Applied contacted both Fargo and Harwood regarding the possibility of annexation in June of 2025. We expressed from the start that Applied wanted Harwood and Fargo to work together, even though we were told by Fargo not to contact Harwood about this until the lapsed ETA agreement was negotiated and executed. We did not believe that it was fair to Harwood to be unaware of our intent to develop when negotiating the ETA agreement, so we did let Harwood know. On July 30th, we were able to get the Mayors of Fargo and Harwood together, along with Commissioner Piepkorn. I left that meeting having been specifically told by Mayor Mahoney that the City of Fargo would discuss and provide a counteroffer on electricity franchise fees. Instead, this annexation resolution was passed. I had to reach out to staff to speak to Fargo on August 4th to learn about the annexation resolution. The entire Fargo City Commission had already met in a private executive session agreeing to file this annexation, which would not seem to be a legal topic for an executive session. And even though Fargo was aware that they were going to file this resolution on July 31st, the agenda for the Commission meeting was amended at the table on August 4th to include this item without any notice to the property owners, Harwood or the public. It appears this late agenda addition violated open meetings law.

Notwithstanding the violations of law and annexing in an area where the property owners and City that have exercised its extra-territorial jurisdiction both oppose Fargo's annexation; we believe that Fargo is expending considerable legal fees on a losing proposition. The first to file an annexation is not the definitive winner in a contest. We believe Harwood's claim will be found valid by an Administrative Law Judge. Specifically, under North Dakota Century Code § 40-51.2-13, there is no requirement of which City acted first. The requirements that favor Harwood are:

1. The area is part of the community of Harwood. The adjacent parcel to the West of our land in Section 3, which is the front door to our Harwood facility, will be in the city limits of Harwood. Harwood's Planning and Zoning Commission unanimously recommended annexation of the parcel on November 3rd and the Harwood City Council unanimously approved the annexation the same day. There is a final reading scheduled November 12th. All Harwood residents are within 2 miles of the site, and you can see our site from the Harwood Community Center.
2. Services will be provided by Harwood for fire and Cass County for law enforcement. Many times, property within Fargo that is directly East of Harwood has Harwood Fire responding before Fargo Fire can respond. The response time for Fire would be best served through Harwood. There are no governmental services obtained from Fargo

nor needed. The two main roads for the campus are County maintained roads. Water is served through Cass County Rural Water. On-site septic services will be used, and stormwater runoff will use existing drainage on-site that impacts neither City but runs to the North. Fargo has claimed that Harwood cannot handle large development. They have retained a company who has done very large industrial development permitting in North Dakota. Our staff confirms the inspectors are professional and proceeding in a manner consistent with what would be seen in Fargo and Bismarck for permitting. Harwood has stated, and we concur, that they do not need Fargo's help.

3. The relationship between the site and Harwood are very strong as the site is called our Harwood facility and is closest to Main Street in Harwood.

4. The economic impact is a very large factor that favors Harwood. The electricity franchise fee that Fargo charges for every dollar of electricity has a huge negative impact. For what is considered a cost of using the right of way for utilities, the franchise fee instead is a revenue generator, which "for revenue purposes" was removed from Century Code in 2017 with Senate Bill 2326. It is our belief that the City's collection of this Franchise Fee not only violates Century Code but also the takings clause of the US Constitution and believes it would be detrimental to Fargo for this to be tested in the court system as it would be ripe for a class action lawsuit by individuals and businesses who have been abused by this illegal collection for years.

5. The western properties, which make up a majority of the lands we own, are in the extraterritorial zoning of Harwood, who has zoned, given a building permit and otherwise dealt with the development of this land. It is also adjacent to land that Harwood has voted in a first reading to annex. Our intent is for that land as well as the West Half of the section under this resolution to become our Polaris Forge II campus with security fence keeping it as one campus. It is illogical to have portions of it in Fargo and portions in Harwood's city limits.

6. Most importantly, for North Dakota, the landowners are opposed to annexation by Fargo. The amount of taxation for Fargo, to include the franchise taxes, would disproportionately affect our operations. It could stop any further development of the parcels. The project will provide benefits for both Fargo and Harwood. While we were told by Fargo officials in meetings that City residents are happy to pay the electricity franchise tax, it puts our business at a disadvantage compared to other locations. Additionally, the disproportionate application of the amount of tax where residents served by Cass County Rural Electric Cooperative pay a higher rate than

locations served by Xcel Energy picks winners and losers favoring business in the central part of Fargo. We believe it is an illegal tax to your residents under current North Dakota law as well as in application where none of our electricity touches a Fargo right of way, but we could have to pay millions of dollars in franchise tax each year when the campus is fully built, making the project not viable.

If these annexation resolutions are rescinded, we can happily resume discussions regarding the rest of the property that APLD has options on to see if we can find development that would work with the City of Fargo. But the data center land needs to be in the City of Harwood. Property rights are still important in North Dakota. We are asking the City of Fargo to respect those rights and stop the proposed annexation of Section 3.

Best regards,



Nick Phillips