

**AGENDA**  
**MANDAN CITY COMMISSION**  
**MAY 15, 2012**  
**ED "BOSH" FROEHLICH MEETING ROOM**  
**5:30 P.M.**  
**[www.cityofmandan.com](http://www.cityofmandan.com)**

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**City Board of Equalization meeting at 7:00 p.m. on May 15, 2012**

- A. ROLL CALL:
1. Roll call of all City Commissioners and Department Heads.
- B. MINUTES:
1. Consider approval of the minutes from the May 1, 2012 Board of City Commission meeting.
- C. PUBLIC HEARING:
1. A Public Hearing to consider an Ad Valorem tax exemption for Glass Concrete Construction.
  2. A Public Hearing to consider for approval the resolution to vacate the public right-of-way of the east quadrant of the intersection of 6<sup>th</sup> Avenue NE and 9<sup>th</sup> Avenue NE, as platted in Helmsworth-McLean Addition.
  3. A Public Hearing to revoke the Class A Liquor and Beer License No. 23 (Little Chicago, LLC) as Licensee has ceased doing business at the location licensed.
- D. BIDS:
1. Consider award of bids for the demolition and installation of radiant heating system at the Water Treatment Plant
- E. CONSENT AGENDA:
1. Consider approval of monthly bills.
  2. Consider permission to accept the ND Board of University and School and Lands Flood Impacted Political Subdivision Infrastructure Development Grants
  3. Consider for approval applications for beer garden and street dance events.
  4. Consider approval of Sunday openings for Stryker Enterprises LLC for May 20-June 24, 2012.
  5. Consider proclaiming May 19, 2012 as National Kids to Parks Day in the City of Mandan.
- F. OLD BUSINESS:
1. Consider purchase & business incentive agreements with Riverwest Development, LLC, for development of property at 1403 27<sup>th</sup> Street NW (approximately 3.10 acres)

2. Consider moving into executive session under North Dakota Century Code Section 44-04-19.1 for attorney consultation regarding contract negotiations and instructions related to the Don McGuire and John Schultz proposal for development of city-owned property.

G. NEW BUSINESS:

1. Consider request to advertise for bids a new fire truck
2. Consider invitation for bids for sale of former water reservoir property off of 8<sup>th</sup> Avenue NW
3. Consider process for awarding additional liquor licenses.
4. Consider recommendation from the Mandan Visitor's Committee regarding funding assistance for the Mandan Progress Organization & Musicians Association for picnic tables and concrete work in Dykshoorn Park.
5. Consider funding requests from the Mandan Progress Organization Funding Committee.
6. Consider the approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Street Improvement District No. 169, Project No. 2012-06(Lincoln Ridge 5th Addition).
7. Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge 5th Addition.
8. Consider the creation of, approval of the feasibility report for, approve the plans and specifications for, and authorize a change order or call for bids on Street Improvement District No. 170, Project No. 2012-08(Keidels South Heart Terrace, Phase III).
9. Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Keidel's South Heart Terrace Addition Phase III.
10. Consider the preparation of a Comprehensive Plan for the City of Mandan
11. Consider placing various city owned lots up for sale.
12. Consider entering into contract with Al Fitterer Architect PC for services related to heating and cooling system upgrades/replacements and possible renovations to Mandan City Hall.

H. RESOLUTIONS & ORDINANCES:

1. First consideration of Ordinance No. 1122, a franchise granting to MDU Resources Group, Inc., a corporate, its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Mandan, Morton County North Dakota and electric distribution system for transmitting and distributing electricity for public and private use.

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2. First consideration of Ordinance No. 1123, a franchise granting to Mor-Gran-Sou Electric Cooperative, Inc., its successors and assigns, the franchise and right to construct, maintain and operate, within and upon, in and under the streets, alleys and public grounds of the City of Mandan, Morton County North Dakota and electric distribution system for transmitting and distributing electricity for public and private use.
- I. OTHER BUSINESS:
- J. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:
1. June 5, 2012
  2. June 19, 2012
  3. July 3, 2012 (Consider alternate date of July 10<sup>th</sup>)
- K. ADJOURN

*Departmental planning meeting will be held the Monday prior to the Commission meeting, all Commissioners are invited, noon, Dykshoorn Conference Room. Please notify the city administrator by 8:30 a.m. that Monday if you plan on attending. If more than two commissioners plan on attending, proper public notice must be given.*

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The Mandan City Commission met in regular session at 5:30 p.m. on May 1, 2012 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Helbling, Tibke, Rohr, Frank, and Jackson. Department Heads present were: Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Fire Chief Nardello, Business Development and Communications Director Huber, and City Assessor Barta. Absent: Engineering Project Manager Bechtel.

MINUTES: *Consider approval of the minutes for April 17, 2012 regular meeting.* Commissioner Rohr moved to approve the minutes of the April 17, 2012 minutes. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

PUBLIC HEARING:

1. *Public hearing to consider tax increment financing request (TIF) by Alvin W. Leingang for improvements to 101 East Main Street and a portion of 103 East Main Street (see New Business No. Iii).* Business Development and Communications Director Huber reviewed an application request for a TIF exemption for 101 East Main Street and a portion of 103 East Main Street (the west 194 ft.) to offset improvement costs. Those costs will include renovation of the existing building to add an elevator tower, in addition to significant site improvements including parking lot upgrades, as well as other improvements such as courtyard landscaping and enhancements. The request is for TIF assistance in the form of a property tax exemption on the improved portion of the property for Year 6 to Year 15 of the project. Years 1–5 have already been approved for Renaissance Zone, for the building itself, but not for the site improvements. Huber reviewed what the project would entail with an estimated investment of \$3.6 million. There is an estimated exemption of \$73,577 annually. Huber reviewed the criteria to become eligible for tax increment financing under the City of Mandan’s policy. Huber stated that the property currently generates \$6,047 in property taxes and the City will continue to collect on the base. The City is being asked to provide exemption for the incremental increase in value of the property. There have been two public notices issued in the newspaper and no comments have been received in opposition. Alvin Leingang and Loran Galpin were available to answer questions.

Commissioner Jackson commented that there is a request from the Mandan Growth Fund Committee (MGF) to change the TIF policy on tonight’s Agenda. He requested Huber provide an explanation as to how that change in the TIF policy would affect this particular application. Huber explained that the MGF recommendation came prior to this request from the property owners and prior to the policy revision. While they (property owners) did not put reconsideration of this item on their agenda, it was the intent to bring all this information before the Board simultaneously for consideration. She stated that when the New Business items are discussed later, the details of the Mandan Growth Fund recommendations and the request that’s before you can be discussed at that time.

Commissioner Jackson stated that his reason for bringing this up is to allow for any public comment as to what effect that change would have on this application. Huber

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stated that the recommendation of the MGF was to approve the exemption in Year 6-15 with a cap as under current policy of 15% of hard construction costs on the amount of assistance and to reduce the administrative fee to 1%, allowing for its collection at the time of implementation of the tax exemption. The cap was in place at the time of making the recommendation. The recommendation for the change in policy is to reduce the application fee from \$5,000 to \$500; to reduce the administrative fee from 5% to 1%; and to change the time of collection for projects of TIF financing to be at the time of implementation rather than upon certificate of occupancy and lastly to maintain the 15% cap for TIF assistance in the form of upfront financing while removing it for projects requesting the TIF exemption form of assistance.

Commissioner Jackson had a question regarding the change in Policy No. 6 as to how much percentage of tax exemption that would amount to approximately? Huber stated that the dollar value difference is \$188,565, the difference with full exemption would be about 2 ½ years of difference exemption.

Mayor Helbling announced that this is a public hearing and invited anyone to come forward to speak for or against the tax increment financing request (TIF) by Alvin W. Leingang for improvements to 101 East Main Street and a portion of 103 East Main Street.

Loran Galpin came forward and extended a thank you to the City of Mandan for allowing them to move forward with this project indicating that this was the first step in the process. The second step was the approval of the architectural review from the Architectural Review Committee. The third step is the TIF financing request before the Board tonight. If approved, Galpin indicated that the process for obtaining tenants could then begin. Galpin reviewed the project with the Board and again extended a thank you for allowing them the opportunity to bring this project to the City of Mandan.

Mayor Helbling again invited anyone to come forward to speak for or against this project. Hearing none, this portion of the public hearing was closed.

BIDS:

CONSENT AGENDA:

1. *Consider approval of annual Liquor License, Special B Liquor Permit and Special Sunday Permit for Dacotah Speedway.* The Board approved of the annual Liquor License, Special B Liquor Permit and Special Sunday Permit for Dacotah Speedway.
2. *Consider proclamation designating May 4, 2012 as Arbor Day in the City of Mandan.* The Board approved of the proclamation designating May 4, 2012 as Arbor Day in the City of Mandan.
3. *Consider for approval the applications for beer garden and street dance events.* The Board approved of the applications for beer garden and street dance events.
4. *Consider for approval the final plat of Lakewood 7<sup>th</sup> Addition.* The Board approved of the final plat of Lakewood 7<sup>th</sup> Addition.

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5. *Consider for approval the final plat of Plainview Heights 13<sup>th</sup> Addition.* The Board approve of the final plat of Plainview Heights 13<sup>th</sup> Addition.
  6. *Consider placing City vehicles in public auction.* The Board approved of placing City vehicles in public auction.
  7. *Considering designating May 14-18, 2012 as Bike to Work Week in the City of Mandan.* The Board approved of designating May 14-18, 2012 as Bike to Work Week in the City of Mandan.

Commissioner Tibke moved to approve the Consent Agenda as presented. Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present. The motion passed.

OLD BUSINESS:

NEW BUSINESS:

1. *Consider Mandan Growth Fund (MGF) Committee recommendations:*
  - (i) *Revisions to Tax Increment Financing (TIF) policy:* Business Development and Communications Director Huber stated that at the April 24, 2012 Mandan Growth Fund meeting the TIF policy was reviewed. She indicated that for comparison, 11 other cities were surveyed regarding their TIF policy. It was Fargo's base policy that the Mandan City Commission adopted in 2008 and their terms remain the same. Huber reviewed some of the other cities' policy criteria. Huber stated that the MGF Committee recommends the following changes to the TIF policy:
    - a. Revise the non-refundable application fee to \$500 (down from \$5,000)
    - b. Revise the administrative fee to 1% (down from 5%).
    - c. Revise the due date for payment of the administrative fee for TIF exemption projects to indicate payment is required prior to implementation of the exemption.
    - d. Revise the cap on TIF assistance of 15% hard capital costs to be applied to projects requesting upfront financing while removing the cap for TIF assistance in the form of an exemption.

Commissioner Jackson moved to approve the Mandan Growth Fund Committee's recommendations to the TIF Policy as presented in the Agenda packet. Commissioner Frank seconded the motion.

Commissioner Frank stated that she had the opportunity to speak with members of the Mandan Growth Fund Committee who indicated they were in agreement with the modifications to this policy. She indicated that she is in favor of the reduced application fee as presented. She requested Huber provide a summary of the composition of the Growth Fund Committee. Huber stated that the MGF is comprised of nine business people appointed by the City Commission. Growth Fund representatives include members from the financial, retail, and professional sectors of the community in efforts to include representation from the three primary business districts including downtown Mandan, Memorial Highway and north Mandan.

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Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed.

(ii) *TIF & business incentive agreements with Alvin W. Leingang for improvements to 101 E Main Street and a portion of 103 E Main Street:* Business Development and Communications Director Huber clarified that the agreement for TIF financing assistance includes the 15% cap that was in place at the time the MGF Committee acted on this application. The agreement in the packets has the 15% cap included; however if you choose to remove that cap level, the agreement would have to be amended to reflect that. The 15% cap equals about 2.5 years of exemption or approximately \$189,000. Huber explained that the agreement before this Board for consideration, the TIF agreement, outlines the amount of assistance that will be provided and the Business Incentive agreement outlines the expectations.

Commissioner Frank moved to approve the Tax Increment Financing Agreement with the provisions recommended by the MGF Committee to assist with improvements to 101 E Main Street and a portion of 103 E Main Street to include the revisions to the policies approved by the Board tonight. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed.

Commissioner Frank moved to approve the Business Incentive Agreement associated with the TIF exemption for improvements to 101 E Main Street and a portion of 103 E Main Street to include the revisions to the policies approved by the Board tonight. Commissioner Jackson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed.

2. *Consider for approval, a request for City cooperation for the Rodeo Days and Buggies N Blues Events:* Vern Cermak presented a request on behalf of the Mandan Musician's Association and Buggies-n-Blues for the City of Mandan to support the festivities on June 9-10, 2012. He stated that these events are entering their 19<sup>th</sup> year.

Del Wetsch, Executive Director of the Mandan Progress Organization presented a request for approval and assistance from the City for the Rodeo Days events scheduled for July 2-4, 2012. He reviewed the schedule of events noting some minor changes having been made along with requests for street closings on certain dates and times.

Commissioner Jackson moved to approve the requests for the Rodeo Days and Buggies-n-Blues Events as presented. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

3. *Consider recommendation from the Mandan Visitor's Committee regarding funding assistance for the Old Red/Old Ten Scenic Byway Committee.* City Administrator Neubauer reviewed with members a request for funding assistance from

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the Old Red/Old Ten Scenic Byway Committee in the amount of \$4,500 to complete the walking trail project. He stated he would recommend approval of the request and that there is sufficient funding available.

Commissioner Tibke moved to approve the recommendation from the Mandan Visitor's Committee regarding funding assistance for the Old Red/Old Ten Scenic Byway Committee to complete the Walking Trail project in the amount of \$4,500.

Commissioner Jackson seconded the motion. The motion received unanimous approval of the members present.

4. *Consider Weed Cutting Proposal.* Fire Chief Nardello reviewed a proposed Weed Cutting Proposal for 2012. He stated that bids were opened for the 2012 season and only one bid was received and that it was three times more than last year's contract. The bid was rejected and the Weed Board met to discuss the possibility of providing weed cutting services through the Public Works Department in addition to amending the 2012 Weed Control Budget to allow for the purchase of equipment and the hiring of a part-time person. Nardello stated that any private property that would have to be cut would be special assessed back to the property owner. He indicated his recommendation would be to work with last year's budget to cover the costs and then to reassess it next year. Nardello indicated that with the equipment purchased the cutting process will be expedited. He provided a summary of how the cutting has been scheduled in the past and how he plans to utilize the same schedule for a part-time person. He outlined plans for how the costs would be allocated and reviewed how a part time position would be staffed.

Commissioner Frank stated she would like to see the position rebid rather than have the Public Works Department maintain it. Commissioner Rohr commented that he holds the portfolio for this and he has been working with Director of Public Works Wright on this matter. He stated they are working on an analysis of the situation and he assured the Board that he will work through this thoroughly with Wright.

Commissioner Tibke moved to amend the 2012 Weed Control Budget to allow for the purchase of weed cutting equipment totaling \$32,500, \$8,000 for part time labor and \$3,500 for fuel and oil and to allow public works to provide weed cutting services for the City of Mandan. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: No; Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed.

#### RESOLUTIONS & ORDINANCES:

1. *Second consideration and final passage of Ordinance No.1121 Zone Change for West Hills Estates 2<sup>nd</sup> – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.*

Commissioner Jackson moved to approve the Second consideration and final passage of Ordinance No.1121 Zone Change for West Hills Estates 2<sup>nd</sup> – An ordinance to amend and reenact section 21-03-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes;

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Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed. *(A copy of the ordinance is on file, open for public inspection, during regular working hours in the Office of the City Administrator.)*

2. *Second consideration of Ordinance No. 1120 – An ordinance to amend and re-enact Section 12-02-04 and to repeal Section 12-02-05 of the Mandan Code of Ordinances relating to alcoholic beverage licenses as amended.* City Attorney Brown stated that this matter was taken off the list when the ordinances were previously reviewed because he was trying to omit language in the ordinance by combining sections. It was pointed out that the special permits for the golf courses and the Speedway to permit them to sell alcoholic beverages on certain occasions, (as opposed to just beer only which is their normal alcoholic beverage sales), was in the ordinance that was to be repealed. Class G license for alcoholic beverages on the riverboat was added to the ordinance.

In summary, the Class A licenses are at 17; this ordinance increases the Class D licenses which is strictly off sale alcoholic beverage sales from 2 to 3 which is increased by 1. Class D-1 off-sale beer and wine licenses are increased from 5 to 7 which is increased by 2. Language was added that if the number of living units in the city increases by 500 over that as of June 20, 2012 the Commission will have the authority to issue one additional license in each Class. City Attorney Brown noted that this does not obligate the Commission to do anything if such an event occurs. If this ordinance is adopted, it will take effect on July 1, 2012.

Commissioner Jackson moved to approve the second consideration of Ordinance No. 1120 as amended – An ordinance to amend and re-enact Section 12-02-04 and to repeal Section 12-02-05 of the Mandan Code of Ordinances relating to alcoholic beverage licenses. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed. *(A copy of the ordinance is on file, open for public inspection, during regular working hours in the Office of the City Administrator.)*

3. *Resolution establishing rates and charges for services from the Solid Waste Utility Fund.* Director of Public Works Wright reviewed with the Board a request to increase rates to cover the costs of maintaining the landfill. The proposed rate increase would go from \$12/ton to \$15/ton for commercial accounts and from \$2 to \$3 for minimum load accounts. He explained that there has been a substantial increase in material coming to the landfill over the last six months making it difficult to keep up with operation costs at the current rate. The proposed increase would go into effect July 1, 2012. He stated that it is anticipated that there will be an increase in revenue at \$65,000 to \$75,000 depending on final tonnage. Wright recommended that a separate equipment fund be established from a portion of the revenue that is collected. He also stated that even with the increase, Mandan would still be lower than what some other cities are charging, (excluding Bismarck). Commissioner Frank commented that she has done some checking on this matter and found that Mandan's rates are lower than other cities as

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alluded to by Wright. Wright stated that the larger loads coming to the landfill are commercial, mostly due to the fee increase that occurred in Bismarck last year.

Mayor Helbling commented that he would like to see a different rate schedule for Mandan residents vs. non-Mandan residents coming from outside the city. Wright indicated that he will research that when he puts the 2013 budget together. Mayor Helbling directed City Administrator Neubauer to include this item within the 2013 budget process. Administrator Neubauer stated that several years ago there was a process in place wherein the driver's license had to be provided at the landfill and at that time there was a different rate for Mandan residents than the non-Mandan residents. He did not know when or why that process was discontinued. Mayor Helbling commented that the County road going to the landfill is in need of repair in order to prevent accidents or fatalities. Director of Public Works Wright mentioned that he had contacted the county regarding the situation.

Commissioner Jackson moved to approve establishing rates and charges for services from the Solid Waste Utility Fund for Mandan city residents at the current cost. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Helbling: Yes; Commissioner Jackson: Yes. The motion passed.

Mayor Helbling directed Administrator Neubauer and Director of Public Works Wright to bring this matter back to the next meeting with a recommendation that addresses a rate schedule for those non-Mandan residents who use the landfill.

OTHER BUSINESS:

1. Spring cleanup week is occurring this week from April 30<sup>th</sup> thru May 4<sup>th</sup>.
2. In addition, May 4, 2012, is Arbor Day in the City of Mandan. There will be a short program at 9:00 a.m. at Lewis and Clark Elementary School.

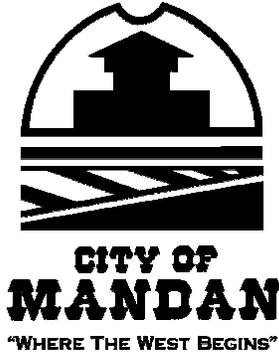
There being no further actions to come before the Board of City Commissioners, Commissioner Jackson moved to adjourn the meeting at 6:45 p.m. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present.

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James Neubauer,  
City Administrator

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Timothy A. Helbling,  
President, Board of City  
Commissioners



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 8, 2012  
**SUBMITTING DEPARTMENT:** Assessing Dept  
**DEPARTMENT DIRECTOR:** Richard L Barta  
**PRESENTER:** Richard L Barta  
**SUBJECT:** Property Tax Incentives for New or Expanding  
Businesses for Glass Concrete Construction

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STATEMENT/PURPOSE: To consider a tax exemption for Glass Concrete Construction pursuant to North Dakota Century Code 40-57.1.

BACKGROUND/ALTERNATIVES: Glass Concrete Construction is asking for an exemption on a new steel building which will be used for a warehouse at the manufacturing plant. The Notice to Competitors was published in the April 4<sup>th</sup> and April 13<sup>th</sup> editions of the Mandan News and no competitors have submitted a written protest.

The Mandan Growth Fund Committee reviewed this project on April 24<sup>th</sup> and the project was recommended for approval by a unanimous vote with the conditions of a 100% exemption for the first two years; 75% for year three; 50% for year four; and 25% for year five.

Also, the County, the School District and the Park District were given notification of this exemption on April 10<sup>th</sup> and again on May 2<sup>nd</sup>.

This parcel is also known as #8522 at 2111 3 St SE on Lot 2 & E1/2 of Vacated 5 St SE & Lot 9B, Block 1, Lark Commercial Park 2<sup>nd</sup> Addition.

ATTACHMENTS: Application.

FISCAL IMPACT: Approximately \$8,060 for years one and two; \$6,045 for year three; \$4,023 for year four; and \$2,011 for year five.

STAFF IMPACT: N/A

LEGAL REVIEW: N/A

Board of City Commissioners

Agenda Documentation

Meeting Date: May 5, 2012

Subject: 5-Year Ad Valorem Tax Exemption for Glass Concrete Construction

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RECOMMENDATION: Approval of a Property Tax Incentive for New or Expanding Businesses for Glass Concrete Construction in accordance with the recommendation from the Mandan Growth Fund Committee with the conditions of a 100% exemption for the first two years, 75% for year three, 50% for year four, 25% for year five according to meeting all criteria under the City of Mandan's Commercial Property Tax Exemption Policy and Guidelines and also under State Statute.

SUGGESTED MOTION: A motion to approve a Property Tax Incentive for New or Expanding Businesses for Glass Concrete Construction in accordance with the recommendation from the Mandan Growth Fund Committee with the conditions of a 100% exemption for the first two years, 75% for year three, 50% for year four, 25% for year five according to meeting all criteria under the City of Mandan's Commercial Property Tax Exemption Policy and Guidelines and also under State Statute.

#8522

**Application For Property Tax Incentives For  
New or Expanding Businesses**

Pursuant to N.D.C.C. Chapter 40-57.1

Project Operator's Application To \_\_\_\_\_  
City or County

File with the City Auditor for a project located within a city; County Auditor for locations outside of city limits.

A representative of each affected school district and township is included as a non-voting member in the negotiations and deliberation of this application.

This application is a public record

**Identification Of Project Operator**

1. Name of project operator	<u>Glass Concrete Construction</u>		
2. Address of project	<u>2111 3rd St SE Mandan</u>		
	City <u>Mandan</u>	County <u>Morton</u>	
3. Mailing address of project operator	<u>1009 Tower Place</u>		
	City <u>Mandan</u>	State <u>N.D</u>	Zip <u>58554</u>
4. Type of ownership of project			
<input type="checkbox"/> Partnership	<input type="checkbox"/> Subchapter S corporation	<input type="checkbox"/> Individual proprietorship	
<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Cooperative	<input type="checkbox"/> Limited liability company	
5. Federal Identification No. or Social Security No.	<u>45-0454004</u>		
6. North Dakota Sales and Use Tax Permit No.	_____		
7. If a corporation, specify the state and date of incorporation	_____		
8. Name and title of individual to contact	<u>Joe Glass Jr Supervisor</u>		
Mailing address	<u>1009 Tower Place</u>		
City, State, Zip	<u>Mandan N.D 58554</u>	Phone No.	<u>701 663-3853</u>

**Project Operator's Application For Tax Incentives**

9. Indicate the tax incentives applied for and terms. Be specific.			
<input checked="" type="checkbox"/> <b>Property Tax Exemption</b>	<input type="checkbox"/> <b>Payments In Lieu of Taxes</b>		
<u>5</u> Number of years	_____ Beginning year	_____ Ending year	
<u>100</u> Percent of exemption	_____ Amount of annual payments (attach schedule if payments will vary)		
10. Which of the following would better describe the project for which this application is being made:			
<input type="checkbox"/> New business project	<input checked="" type="checkbox"/> Expansion of an existing business project		

Board of City Commissioners

Agenda Documentation

Meeting Date: May 5, 2012

Subject: 5-Year Ad Valorem Tax Exemption for Glass Concrete Construction

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Description of Project Property

11. Legal description of project real property

Lot 002 BLK-001 Lark Commercial  
Park 2nd + Lot 9b + E 1/2 vac st + 1st SE

12. Will the project property be owned or leased by the project operator?  Owned  Leased

If the answer to 12 is leased, will the benefit of any incentive granted accrue to the project operator?

Yes  No

If the property will be leased, attach a copy of the lease or other agreement establishing the project operator's benefits.

13. Will the project be located in a new structure or an existing facility?  New construction  Existing facility

If existing facility, when was it constructed? \_\_\_\_\_

If new construction, complete the following:

a. Estimated date of commencement of construction of the project covered by this application Spring

b. Description of project to be constructed including size, type and quality of construction

steel Building 60-125

c. Projected number of construction employees during the project construction 20

14. Approximate date of commencement of operations for this project Spring 2012

15. Estimated market value of the property used for this project:

a. Land ..... \$ 30,700.00

b. Existing buildings and structures for which an exemption is claimed ..... \$ \_\_\_\_\_

c. Newly constructed buildings and structures when completed ..... \$ 400,000.00

d. Total ..... \$ 420,700.00

e. Machinery and equipment ..... \$ \_\_\_\_\_

16. Estimate taxable valuation of the property eligible for exemption by multiplying the market values by 5 percent:

a. Land (not eligible) ..... 

b. Eligible existing buildings and structures ..... \$ \_\_\_\_\_

c. Newly constructed buildings and structures when completed ..... \$ 20,000

d. Total taxable valuation of property eligible for exemption (Add lines b and c) ..... \$ 20,000

e. Enter the consolidated mill rate for the appropriate taxing district ..... 46338

f. Annual amount of the tax exemption (Line d multiplied by line e) ..... \$ 9,060.-

**Description of Project Business**

Note: "project" means a newly established business or the expansion portion of an existing business. Do not include any established part of an existing business.

17. Type of business to be engaged in:  Ag processing  Manufacturing  Retailing  
 Wholesaling  Warehousing  Services

18. Describe in detail the activities to be engaged in by the project operator, including a description of any products to be manufactured, produced, assembled or stored (attach additional sheets if necessary).

[Empty box for description of activities]

19. Indicate the type of machinery and equipment that will be installed

10/1

20. Projected annual revenue, expense, and net income of the project for each year for the first five years.

Year	2012	2013	2014	2015	2016
Annual revenue	56,350	60,469	65,004	69,579	75,120
Annual expense	50,625	54,822	58,504	62,879	67,620
Net income	5,725	6,047	6,500	7,000	7,500

*60x125  
60,000  
P.R.*

21. Projected annual average number of persons to be employed by the project at the project location for each year for the first five years and the estimated annual payroll.

Year	2012	2013	2014	2015	2016
No. of Employees (1)				10	
(2)	2	3	4	5	16
Estimated payroll (1)	25,000	30,000	35,000	40,000	45,000
(2)					

(1) - full time  
(2) - part time

**Previous Business Activity**

22. Is the project operator succeeding someone else in this or a similar business?  Yes  No
23. Has the project operator conducted this business at this or any other location either in or outside of the state?  
 Yes  No
24. Has the project operator or any officers of the project received any prior property tax incentives?  Yes  No

If the answer to 22, 23, or 24 is yes, give details including locations, dates, and name of former business (attach additional sheets if necessary).

we had a ~~TAX~~ Incentive on our first Building

Board of City Commissioners

Agenda Documentation

Meeting Date: May 5, 2012

Subject: 5-Year Ad Valorem Tax Exemption for Glass Concrete Construction

Page 6 of 6

**Business Competition**

25. Is any similar business being conducted by other operators in the municipality?  Yes  No

If YES, give name and location of competing business or businesses

**Property Tax Liability Disclosure Statement**

26. Does the project operator own real property in North Dakota which has delinquent property tax levied against it?  Yes  No

27. Does the project operator own a greater than 50% interest in a business that has delinquent property tax levied against any of its North Dakota real property?  Yes  No

If the answer to 26 or 27 is Yes, list and explain

**Use Only When Reapplying**

28. The project operator is reapplying for property tax incentives for the following reason(s):

- To present additional facts or circumstances which were not presented at the time of the original application
- To request continuation of the present property tax incentives because the project has:
  - moved to a new location
  - had a change in project operation or additional capital investment of more than twenty percent
  - had a change in project operators
- To request an additional annual exemption for the year of \_\_\_\_\_ on structures owned by a governmental entity and leased to the project operator. (See N.D.C.C. § 40-57.1-04.1)

**Notice to Competitors of Hearing**

Prior to the hearing, the applicant must present to the governing body of the county or city a copy of the affidavit of publication giving notice to competitors unless the municipality has otherwise determined there are no competitors.

I, *[Signature]*, do hereby certify that the answers to the above questions and all of the information contained in this application, including attachments hereto, are true and correct to the best of my knowledge and belief and that no relevant fact pertaining to the ownership or operation of the project has been omitted.

\_\_\_\_\_  
Signature Title Date  
*[Signature]* *vice president* *2-1-2012*

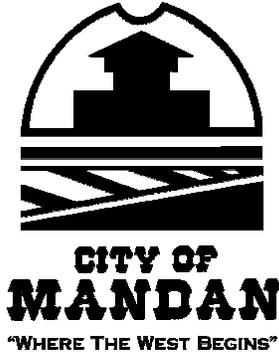
In compliance with the Federal Privacy Act of 1974, Public Law 93-579, the disclosure of the individual's social security number on this form is mandatory pursuant to North Dakota Century Code §§ 40-57.1-03 and 40-57.1-07. An individual's social security number is used as an identification number by the Office of State Tax Commissioner for file control purposes and record keeping.

**Certification of Governing Body (To be completed by the Auditor of the City or County)**

The municipality shall, after granting any property tax incentives, certify the findings to the State Tax Commissioner and Director of Tax Equalization by submitting a copy of the project operator's application with the attachments. The governing body, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, granted the following:

- Property Tax Exemption  Payments in lieu of taxes
- \_\_\_\_\_ Number of years \_\_\_\_\_ Beginning year \_\_\_\_\_ Ending year
- \_\_\_\_\_ Percent of exemption \_\_\_\_\_ Amount of annual payments (Attach schedule if payments will vary)

\_\_\_\_\_  
Auditor



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Engineering/Planning  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Beethel  
**SUBJECT:** Consider for approval the resolution to vacate the public right-of-way of the east quadrant of the intersection of 6<sup>th</sup> Avenue NE and 9<sup>th</sup> Avenue NE, as platted in Helmsworth-McLean Addition.

---

STATEMENT/PURPOSE: To vacate the public right-of-way.

BACKGROUND/ALTERNATIVES:

ATTACHMENTS: 1. Resolution  
2. Vicinity map

FISCAL IMPACT: Minimal

STAFF IMPACT: Minimal

LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION: This office supports the approval of the vacation.

SUGGESTED MOTION: I move to approve the resolution vacating the public right-of-way as platted in Helmsworth-McLean Addition.

**RESOLUTION OF VACATION  
Board of City Commissioners  
City of Mandan, North Dakota**

WHEREAS, the City of Mandan has submitted to the Board of City Commissioners of the City of Mandan a verified petition asking that a public right-of-way as platted in Helmsworth-McLean Addition, to the City of Mandan, Morton County, North Dakota be vacated. Said tract of land being the public right-of-way of the east quadrant of the intersection of 6<sup>th</sup> Avenue NE and 9<sup>th</sup> Avenue NE, as platted in Helmsworth-McLean Addition, lying in Section 26, T139N, R81W of the 5<sup>th</sup> Principal Meridian, City of Mandan, Morton County, North Dakota, more fully described as follows:

Beginning at the northwest lot corner of Lot 24, Block 29, Helmsworth- McLean Addition; thence north 11 degrees 28 minutes 48 seconds west a distance of 80.00 feet; thence south 78 degrees 31 minutes 12 seconds west a distance of 140.00 feet; thence south 11 degrees 28 minutes 48 seconds east a distance of 80.00 feet; thence south 78 degrees 31 minutes 12 seconds east a distance of 140.00 feet to the point of beginning.

WHEREAS, The Board having deemed it expedient to consider such petition and having ordered that said petition be heard by the Board at its regular meeting held at City Hall in the City of Mandan, North Dakota, on May 15, 2012, at 5:30 o'clock p.m., CT, and the City Administrator having published notice of the filing of the petition and the object therein in the official newspaper once each week for four (4) consecutive weeks, as required by law, which notice stated that the petition would be heard and considered on the date and time aforesaid, at which time any persons interested might appear and be heard, and proof of such publication of the notice having been made and filed; and

WHEREAS, on the 15<sup>th</sup> day of May, 2012, at 5:30 o'clock p.m., CT, being not less than thirty days after the first publication of the notice aforesaid, the Board of City Commissioners proceeded to hear the testimony and evidence of persons interested and no one having appeared against said petition of vacation, and it appearing to the satisfaction of the Board of City Commissioners that said petitioners are the owners in fee simple of the property adjoining the street to be vacated; that no objections

to the requested vacation were raised at the public hearing, that said petition was accompanied by a map of the area proposed to be vacated; which map is on file in the office of the City Administrator of Mandan; that by vacating the street described above, the property can be developed and returned to the tax rolls of the City of Mandan; and the facts and reason for the vacation of such area as established by the petition and the testimony and evidence are good and sufficient to justify the vacation of such area;

NOW, THEREFORE, BE IT RESOLVED By the Board of City Commissioners of the City of Mandan, North Dakota, that the public right-of-way of the east quadrant of the intersection of 6<sup>th</sup> Avenue NE and 9<sup>th</sup> Avenue NE, as platted in Helmsworth McLean Addition, City of Mandan, Morton County, North Dakota be and the same are hereby vacated.

BE IT FURTHER RESOLVED, That the within and foregoing Resolution shall become effective from the time of its passage and publication.

Approved and passed May 15, 2012, by at least two-thirds vote of all the members of the Board of City Commissioners.

---

President, City Commission  
City of Mandan, North Dakota

Attest:

---

City Administrator

Public Notice Dates: April 20<sup>th</sup> & 27<sup>th</sup>, May 4<sup>th</sup> & 11<sup>th</sup>, 2012

Public Hearing: May 15, 2012

First Consideration: May 15, 2012

STATE OF NORTH DAKOTA     )  
COUNTY OF MORTON         )ss.  
CITY OF MANDAN             )

**CERTIFICATE**

James Neubauer, the duly appointed city administrator and city auditor of the City of Mandan, Morton County, State of North Dakota, does hereby certify that attached hereto is a true and correct copy of a Resolution of Vacation of the City of Mandan, which was duly and finally passed and adopted by said Board of City Commissioners after notice of the public hearing on the request for vacation of the public right-of-way described therein had been duly published in the official newspaper of said City prior to the public hearing and final passage of said Resolution.

I do further certify that notice of the Board's approval to vacate said public right-of-way has been published and the original copy of said Resolution is on file in the office of the City Administrator of the City of Mandan.

Dated at Mandan, North Dakota, this 15th day of May, 2012.

---

James Neubauer, City Administrator  
City of Mandan, North Dakota

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Helmsworth-McLean Addition public right-of-way vacation.

Page 5 of 6

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**PUBLIC NOTICE OF  
STREET VACATION**

Notice is hereby given that the Mandan City Commission, on Tuesday, May 15, 2012, following a public hearing, approved a resolution vacating the following public right-of-way namely, all of the east quadrant of the intersection of 6<sup>th</sup> Avenue NE and 9<sup>th</sup> Avenue NE, as platted in Helmsworth McLean Addition, lying in Section 26, T139N, R81W of the 5<sup>th</sup> Principal Meridian, City of Mandan, Morton County, North Dakota more fully described in the resolution.

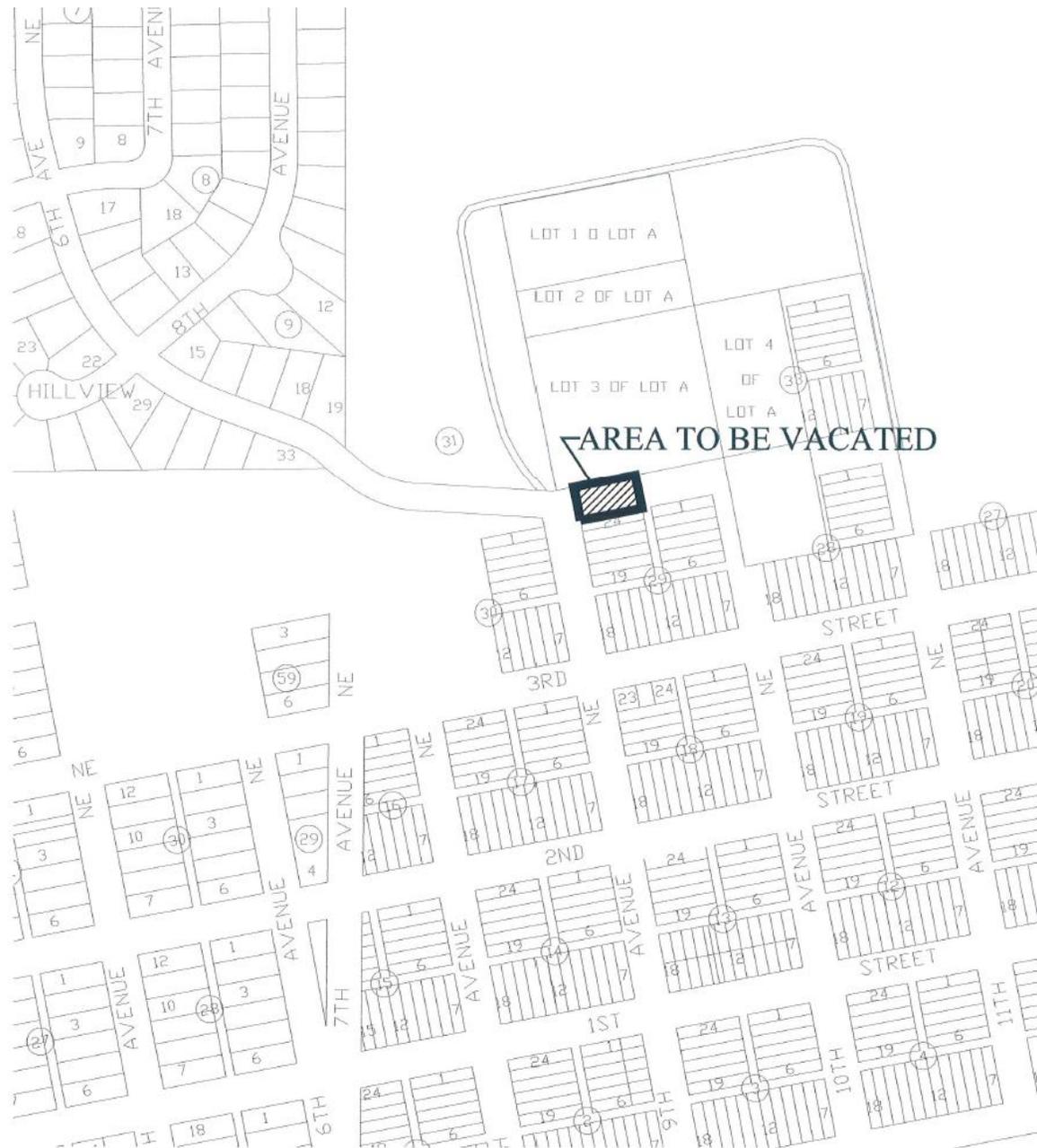
This resolution is available for inspection and copying during normal working hours in the office of the City Administrator.

Dated this 15th day of May, 2012.

By: James Neubauer, City Administrator

**Please Note:**

The city administrator is to cause the above notice to be published once following adoption of the street vacation resolution.



## NOTICE OF HEARING

TO: Little Chicago, LLC  
c/o Donald R. Abrahamsen  
210 West Main Street  
Mandan, ND 58554

RE: Class A Liquor License No. 23

TAKE NOTICE That a hearing will be held before the Mandan City Commission at 5:30 o'clock p.m., on Tuesday, May 15, 2012, at the Mandan City Hall to revoke Class A Liquor and Beer Licenses No. 23 on the grounds that the Licensee has ceased doing business at the location licensed for said permit.

Dated this 24 day of April, 2012.

MALCOLM H. BROWN, P.C.  
Attorney for City of Mandan  
209 East Broadway Avenue, P.O. Box 2692  
Bismarck, ND 58502-2692  
Telephone: (701) 224-8825

By: 

Malcolm H. Brown (ID #02842)



Bids No. 1

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Water Treatment Plant  
**DEPARTMENT DIRECTOR:** Duane Friesz, WTP Superintendent  
**PRESENTER:** Duane Friesz, WTP Superintendent  
**SUBJECT:** Bid for Demolition and Installation of Radiant Heating System

---

STATEMENT/PURPOSE: To consider Bid for Demolition and Installation of Radiant Heating System at Water Treatment Plant.

BACKGROUND/ALTERNATIVES: Installed in 1985, the CoRayVac heating system has deteriorated by the high humidity environment of the Water Treatment Plant to a point where the heat exchanger steel tubing has developed extensive corrosion. The corrosion has caused the heaters to lose their heating efficiency and weakened them structurally.

In July of 2011 the Water Plant received an estimate for the Demolition and Installation of the Radiant Heating System. The estimate was for \$99,800.00 and did not include electrical.

An advertisement was taken out in the Mandan News once each week for two consecutive weeks with a bid opening (April 30<sup>th</sup>, 2012) at least 10 days after the last advertisement on April 20, 2012. In addition the project was also on the City of Mandan web site from April 13<sup>th</sup> to April 30<sup>th</sup> and several Contractors were notified. On April 30<sup>th</sup>, 2012 the Water Treatment Plant received one bid from Cooling & Heating Unlimited, INC for a total amount of \$109,956.00.

ATTACHMENTS: Signed Bid Form.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Bid for Demolition and Installation of Radiant Heating System

Page 2 of 3

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**FISCAL IMPACT:**

- The Water Treatment Plant 2012 budget contains \$105,000.00 in Capital Outlay for the Demolition and Installation of the Radiant Heating System.
- The Bid from Cooling & Heating Unlimited, INC for the Demolition and Installation of Radiant Heating System project cost is \$109,956.00.
- We currently have \$105,000.00 in the Water Treatment Plant 2012 budget Capital Outlay budget for the Demolition and Installation of Radiant Heating System.
- A Budget Amendment to transfer \$4,956.00 from the Water and Sewer Utility Capital Improvement Reserve to the Water Treatment Plant 2012 Capital Outlay budget will be requested.

**STAFF IMPACT:** N/A

**LEGAL REVIEW:** All commission data has been forwarded to the City Attorney for review

**RECOMMENDATION:** Permission for a Budget Amendment to transfer \$4,956.00 from the Water and Sewer Utility Capital Improvement Reserve to the Water Treatment Plant 2012 Capital Outlay budget and accept the bid of \$109,956.00 from Cooling & Heating Unlimited, INC for the Demolition and Installation of Radiant Heating System project.

**SUGGESTED MOTION:** I move to allow for a Budget Amendment to transfer \$4,956.00 from the Water and Sewer Utility Capital Improvement Reserve to the Water Treatment Plant 2012 Capital Outlay budget and accept the bid of \$109,956.00 from Cooling & Heating Unlimited, INC for the Demolition and Installation of Radiant Heating System project.

City of Mandan  
Bid Form  
Demolition and Installation of Radiant Heating Systems

To the Honorable Board of City Commissioners  
Mandan, North Dakota

Commissioners:

We the undersigned agree to the Demolition and Installation of Radiant Heating Systems,  
conforming to the specifications at the bid price:

Company: COOLING & HEATING UNLIMITED, INC  
Address: PO BOX 6182  
City: BISMARCK  
State: ND  
Zip Code: 58506-6182  
  
By: NORMAN SORGE  
Signature:   
Title: VICE PRESIDENT  
Date: APRIL 30, 2012

Able to meet October 1, 2012 deadline

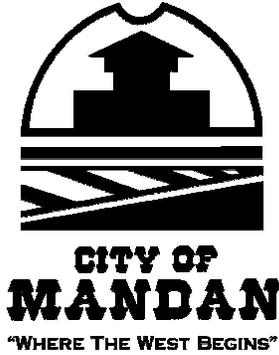
Yes  No

Total Contract Amount:

\$ 109,956.<sup>00</sup>

ONE HUNDRED NINE THOUSAND NINE HUNDRED FIFTY-SIX DOLLARS

\*Bids must meet all specifications or have approved equal



# Board of City Commissioners

## Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 10, 2012  
**SUBMITTING DEPARTMENT:** Administration  
**DEPARTMENT DIRECTOR:** Jim Neubauer, City Administrator  
**PRESENTER:** Jim Neubauer, City Administrator  
**SUBJECT:** Consider Acceptance of Energy Infrastructure and Impact Office Flood-Impacted Political Subdivision Infrastructure Grants

**STATEMENT/PURPOSE:** Consider Acceptance of Energy Infrastructure and Impact Office Flood-Impacted Political Subdivision Infrastructure Grants.

**BACKGROUND/ALTERNATIVES:** Morton County has been allocated \$1M in funds to be utilized for flood related projects. This is a 50% local match program. Jeff Wright, Director of Public Works, and Mike Abul, Morton County Superintendent of Roads have been working in conjunction with Tammy Lapp-Harris in preparing the applications in order to best meet the needs of the City of Mandan and Morton County. The table below shows the top priority projects, with the top three, totaling \$2,000,000. The projects that follow the top three would be projects that could be added in the event additional funding becomes available or projects ahead of them are not constructed.

The projects we have considered and ranked in their priority are as follows:

*On May 2, 2012 we were notified that the top three City of Mandan applications were accepted. The projects are numbers 1, 4 and 5 from the list below.*

Project	Total Cost	Local Share	Grant
1) Lining of the effluent line from the Waste Water Treatment Plan to Missouri River and pump station (enables utilization of this line when M.River at 17' and above)(Mandan)	\$1.4M	\$700,000	\$700,000
2) Grade raise of 0.25 mile on Timberhaven Drive(County)	\$250,000	\$125,000	\$125,000
3) Grade Raise of 0.7 mile on 32 1/2 Street, 22 <sup>nd</sup> Avenue, and Riverplace Drive. (County)	\$350,000	\$175,000	\$175,000
4) Adding control/pumping structure on	\$127,680	\$63,840	\$63,840

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider Acceptance of Energy Infrastructure and Impact Office Flood-Impacted Political Subdivision Infrastructure Grants

Page 2 of 2

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<b>Project</b>	<b>Total Cost</b>	<b>Local Share</b>	<b>Grant</b>
<i>east end of storm water system (Falcon Drive &amp; South Bay Drive intersection). Utilizes existing easement for pumping discharge. (Mandan)</i>			
5) <i>Flood Control Structures Riverbend 2<sup>nd</sup> Addition, Modify existing structures, Additional Control structure and pump. (Mandan)</i>	\$127,122	\$63,561	\$63,561
6) <i>Grade raise of 1.3 miles on 34<sup>th</sup> Street. (County)</i>	\$650,000	\$325,000	\$325,000
7) <i>Memorial Highway Area; Twin City Drive Area. (Mandan)</i>	\$234,564	City \$58,633 ND DOT \$58,6633	\$117,287

**ATTACHMENTS:**

**FISCAL IMPACT:** Project ranking one would increase in the 2013 Water and Sewer Utility Base Rate to finance the \$1,000,000 Grant Match with SRF funding over 20 years at 3%, including the 0.5% administrative fee, would amount to \$0.78/per month for residential account.

**STAFF IMPACT:** Minimal

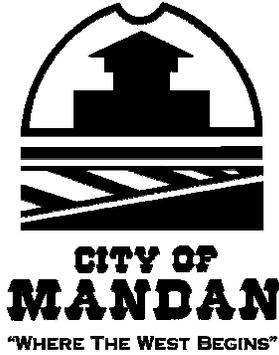
**LEGAL REVIEW:** N/A

**RECOMMENDATION:** To recommend acceptance of Energy Infrastructure and Impact Office Flood-Impacted Political Subdivision Infrastructure Grants for the following three projects:

- 1) *Lining of the effluent line from the Waste Water Treatment Plan to Missouri River and pump station (enables utilization of this line when M.River at 17' and above)*
- 2) *Adding control/pumping structure on east end of storm water system (Falcon Drive & South Bay Drive intersection). Utilizes existing easement for pumping discharge.*
- 3) *Flood Control Structures Riverbend 2<sup>nd</sup> Addition, Modify existing structures, Additional Control structure and pump.*

**SUGGESTED MOTION:** To move acceptance of Energy Infrastructure and Impact Office Flood-Impacted Political Subdivision Infrastructure Grants for the following three projects:

- 1) *Lining of the effluent line from the Waste Water Treatment Plan to Missouri River and pump station (enables utilization of this line when M.River at 17' and above)*
- 2) *Adding control/pumping structure on east end of storm water system (Falcon Drive & South Bay Drive intersection). Utilizes existing easement for pumping discharge.*
- 3) *Flood Control Structures Riverbend 2<sup>nd</sup> Addition, Modify existing structures, Additional Control structure and pump.*



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Engineering  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Bechtel  
**SUBJECT:** Consider for approval the application for beer garden and street dance event.

---

STATEMENT/PURPOSE: To consider approval of the requested beer garden and street dance activities.

BACKGROUND/ALTERNATIVES: Representatives of the Police Dept., Fire Dept, Custer Health, and the Engineering Dept. reviewed the above listed beer garden and street dance application and found them to be in compliance with the ordinance governing their operations. In this round of applications, we have 1 applicant requesting 2 events.

Silver Dollar Bar – June 8-9 – 8AM to 1AM  
Silver Dollar Bar – July 2-4 – 8AM to 1 AM

These requests are similar to past years and have been reviewed by the appropriate City officials for compliance. The application appear to be in order and requirements appear to be met for the events.

ATTACHMENTS: 1 Application

FISCAL IMPACT: Minimal

STAFF IMPACT: Minimal

LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION: This office supports the approval of the subject beer garden and street dance requests as attached.

SUGGESTED MOTION: I move to approve the beer garden and street dance application as recommended by the departments.

JUNE 8-9  
JULY 2-3

# CITY OF MANDAN

1. Type of license being applied for:

Street Dance: \_\_\_\_\_  
Beer Gardens: \_\_\_\_\_  
Both:  \_\_\_\_\_

2. Applicant:

Name: Selin Vollen Dun Lucia Bergin J  
Address: 200 East Main St  
Date of Birth: 8-2-56  
Social Security or Drivers License: 502-92-2950

3. Name of individual or individuals who will manage or conduct the event:

Name: Lucia Bergin J Name: \_\_\_\_\_  
Address: 2520 Lyons Rd Address: \_\_\_\_\_  
Date of Birth: 8-2-56 Date of Birth: \_\_\_\_\_  
S.S. or D.L.: 502-92-2950 S.S. or D.L. \_\_\_\_\_

4. Have any of the individuals listed in answer to questions #2 & #3 ever had a license of any kind revoked or cancelled by any municipal, state or federal authority: \_\_\_\_\_ Yes  No. If yes, explain in detail on a separate sheet giving the date, place and type of business.

5. Have any of the individuals listed in answer to questions #2 & #3 ever been convicted of any crime relating to the sale of alcoholic beverages or controlled substances: \_\_\_\_\_ Yes  No. If yes, explain in detail on a separate sheet giving the date, place and type of business.

6. If you should be applying for a public dance or concert permit has any of the individuals in answer to questions #2 & #3 been convicted within the past five years of any crime against persons, including assault, disorderly conduct, sexual assault, rape and murder. \_\_\_\_\_ Yes  No. If yes, explain on a separate sheet.

7. List the place, date and hours of the proposed event (special note, all applications must be received 30 days in advance of the proposed event). JUNE 8-9 8AM till 1AM  
JULY 2-3-4 8AM till 1AM

8. Site Plan: See attached sheets.

- A. Beer Gardens
- B. Street Dance

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider for approval the application for beer garden and street dance events.

Page 3 of 4

9. Please provide an estimate of the number of persons that the person conducting the event has determined can be safely accommodated at the site and also estimate of the number of persons expected to attend:

Maximum Capacity 600  
Expected Attendance 900

10. Is there going to be advance ticket sales? Yes \_\_\_\_\_ No X

If yes, please list the maximum amount to be sold: \_\_\_\_\_

11. What plans are there to limit attendance if there are no advance ticket sales, Security  
\_\_\_\_\_  
\_\_\_\_\_

12. Please list the number and provide on the site plan the placement of sanitary toilet facilities:

Number of toilet facilities 5

13. Has the City Health Officer reviewed your plan to determine if your proposed toilet facilities are adequate to meet the attendance?

Yes \_\_\_\_\_ No X

14. Fencing & Barricades should be supplied on site plan.

15. List below a description of the signing which is proposed to control pedestrian and vehicular traffic, parking and notices to the persons in attendance. FOUNTAIN & Road Closure Signs  
\_\_\_\_\_  
\_\_\_\_\_

16. Security: Do intend to use private security or city police officers.

Private X City Police \_\_\_\_\_

17. List the number of security people you plan on using. Street dances provide for the use of police officers:

Private 4 City Police \_\_\_\_\_

18. Street Dances & Concerts: Have you enclosed fees for the charges for city police officers? List the amount no.

Lisa Bump  
Signature of applicant  
4-30-12  
Date  
663-5248  
Telephone number



SUNDAY ALCOHOLIC BEVERAGE PERMIT

Date of Application: 5/10/2012

Name of Licensee: Stryker Enterprises LLC

Address of Licensee: 1005 E Main Street Mandan ND 58554

Address of public facility if used: N/A

State the purpose of organization: On and off sale

Date(s) of requested Sunday(s): All May 20th + 27th  
June 3, 10, 17 + 24

Time of day which the applicant desires the permit to be in effect: 12:00 PM to 1:00 AM

Description of the rooms on the premises, which have been specifically reserved, for the dispensing of alcoholic beverages and dancing during the term of the permit: Entire Premises Approved Currently for Sale of Alcohol

State whether the applicant requests permission to open to the general public, and if so an explanation of the reasons for the request: Open to the general public. Normal business day. We would like to be open 7 days a week.

If applicable, estimated number of police officers necessary to provide security at the dance to be open to the public: N/A

I the applicant will abide to the following conditions:

- a. Alcoholic beverages may be distributed for consumption on the premises and Dancing may be permitted only in those rooms specifically reserved for event activities;
- b. Dancing and the dispensing of alcoholic beverages shall be permitted only between the hours of twelve noon on the date specified in the permit and one a.m. on the following Monday;
- c. Any conditions or circumstances delineated by the Board relating to the conduct of the event or to the admission of the general public to the event.

- d. The applicant as a condition to the issuance of such permit consents and agrees that any City police officer may enter upon and inspect the licensed premises or any part thereof at any time for the purpose of determining compliance with the conditions of the permit;
- e. The permit issued under this section may not expand the scope of the class of alcohol license held by the applicant;
- f. An applicant which holds a Class A liquor license must supply copies of the most recent six month's filings of the City food and lodging taxes and allow the City to verify with the ND State Tax Department that said tax payments have been made.
- g. The permittee shall comply with all other applicable ordinances and laws relating to the use and sale of alcoholic beverages in the City.

*Shawn Hyslop*  
Signature of Applicant

*Karen Math*  
Received by: \_\_\_\_\_

Date Received: 5-10-12

Commission Approval: \_\_\_\_\_

Auditor Approval: \_\_\_\_\_

\$5.00 Fee per Sunday-Amount paid \$ 30.00      Receipt # \_\_\_\_\_

Copy to be filed with Mandan Police Department

Eligible Applicants. Pursuant to the provisions of NDCC 05-02-05.1 only the following alcohol licensees or facilities are eligible to apply for a Sunday Event Alcoholic Beverage Permit:

- a. A "qualified alcoholic beverage licensee," which is defined to mean any licensee who has paid the city lodging and restaurant tax imposed by the city and who continues to pay such tax thereafter. Any alcoholic beverage licensee, except the Class B and Special Class B licensee, may become a "qualified alcoholic beverage licensee" by voluntarily paying the city's lodging and restaurant tax prior to the filing of the permit application but the licensee must also continuously pay the tax throughout the license year.
- b. Any publicly owned or operated facility.



# CITY OF MANDAN

MANDAN CITY HALL - 205 2nd Avenue NW  
MANDAN, NORTH DAKOTA 58554  
701-667-3215 • FAX: 701-667-3223 • www.cityofmandan.com

CITY DEPARTMENTS	
ADMINISTRATION	667-3215
ASSESSING/BUILDING INSPECTION	667-3230
BUSINESS DEVELOPMENT	667-3485
CEMETERY	667-6044
ENGINEER/PLANNING & ZONING	667-3225
FINANCE	667-3213
FIRE	667-3288
HUMAN RESOURCES	667-3217
LANDFILL	667-0184
MUNICIPAL COURT	667-3270
POLICE	667-3455
PUBLIC WORKS	667-3240
WASTEWATER TREATMENT	667-3278
SPECIAL ASSESSMENTS	667-3271
UTILITY BILLING	667-3219
WATER TREATMENT	667-3275

## National Kids to Parks Day Proclamation May 19, 2012

**WHEREAS**, May 19<sup>th</sup> is the second National Kids to Parks Day organized and launched by the National Park Trust; and

**WHEREAS**, National Kids to Parks Day empowers kids and encourages families to get outdoors and visit America's parks; and

**WHEREAS**, it is important to introduce a new generation to our nation's parks because of the decline in Park attendance over the last decades; and

**WHEREAS**, we should encourage children to lead a more active lifestyle to combat the issues of childhood obesity, diabetes mellitus, hypertension and hypercholesterolemia; and

**WHEREAS**, National Kids to Parks Day is open to all children and adults across the country to encourage a large and diverse group of participants; and

**WHEREAS**, National Kids to Parks Day will broaden children's appreciation for nature and the outdoors; and

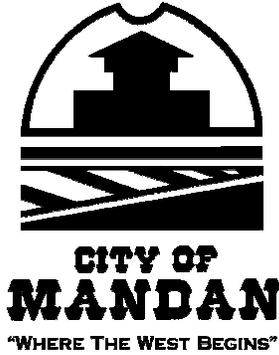
**NOW, THEREFORE**, as the Mayor of the City of Mandan, ND, I do hereby proclaim to participate in **National Kids to Parks Day** May 19, 2012, in the City of Mandan, North Dakota. I urge residents of Mandan to make time May 19<sup>th</sup> to take the children in their lives to a neighborhood, state or national park.

Signed this 15<sup>th</sup> day of May, in the year 2012.

\_\_\_\_\_  
Timothy A. Helbling, President  
Board of City Commissioners

Attest:

\_\_\_\_\_  
James Neubauer, City Administrator



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 10, 2012  
**SUBMITTING DEPARTMENT:** Business Development & Communications  
**DEPARTMENT DIRECTOR:** Ellen Huber, Business Development & Communications Director  
**PRESENTER:** Ellen Huber, Business Development & Communications Director  
**SUBJECT:** Purchase & Business Incentive Agreements with Riverwest Development

---

**STATEMENT/PURPOSE:** To consider purchase and business incentive agreements to facilitate the sale and development of 3.1 acres (135,022 square feet) of city-owned land located at 1403 27<sup>th</sup> Street NW, at the intersection of Sunset Drive NW and 27<sup>th</sup> Street NW.

**BACKGROUND/ALTERNATIVES:** The City Commission at a March 20, 2012, meeting, provided direction to staff to negotiate agreements with Kathy Spilman for the purchase and development of this parcel in northwest Mandan. The selection followed a Request for Proposals (RFP) process that included presentations and interviews with interested entities. Spilman offered to pay \$270,000 (approximately \$2 per square foot) for the property with plans to construct office buildings on the site plus a casual dining restaurant and coffee or sandwich shop. Spilman has since formed Riverwest Development, LLC, to develop the property.

**ATTACHMENTS:**

1. Proposed purchase agreement
2. Proposed business incentive agreement
3. Development concept map

**FISCAL IMPACT:** The developer has committed to pay \$270,000 (approximately \$2 per square foot) for the property with a minimum investment of \$2.3 million in at least 22,300 sf of commercial buildings.

**STAFF IMPACT:** Minimal.

LEGAL REVIEW: Attorney Brown drafted the purchase and business incentive agreements. The business incentive agreement sets forth a maximum timeline and minimum investment and commercial square footage requirements for the development project with clawback provisions if those requirements are not met.

RECOMMENDATION: I recommend approval of the proposed agreements, which are largely consistent with the original proposal presented to the Commission on March 15. One change that may merit discussion is a request by the developer to allow for possibility of attaching studio apartments to the back of office buildings to support traveling staff. The CB zoning does allow for this use.

SUGGESTED MOTION: I move to approve the purchase and business incentive agreements as presented.

## PURCHASE AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Mandan, a North Dakota Municipal Corporation, of 205 Second Avenue NW, Mandan, ND 58554, whether one or more, "SELLER," and Riverwest Development, LLC of 2610 Old Red Trail NW, Suite C, Mandan, ND 58554, whether one or more, "BUYER," under which Seller agrees to sell and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth the following described real property located in the County of Morton, State of North Dakota:

Lot 1, Block 1, School District 5<sup>th</sup> Addition to the City of Mandan

Seller to reserve all oil, gas and other minerals.

(the "Property").

The terms and conditions of such sale and purchase are as follows:

1. **PURCHASE PRICE**: The purchase price shall be \$270,000.00, payable in cash, subject to adjustments herein set forth, at closing. Payment shall be in certified funds or by wire transfer.

2. **"AS IS"**: Buyer has made or will make an inspection of the Property and is relying on its own inspection and judgment as to the condition of the premises and not on any representations of Seller. This sale is made "as is" and without any warranties of any kind, except those set out in this Agreement, and without any implied warranties whatsoever, including those of fitness or merchantability. Furthermore, Seller has not made any representations as to the presence of hazardous substances located on the Property, and Buyer agrees to rely solely upon Buyer's own examination and testing (which is to be done, if at all, at Buyer's expense) in regard to the possible existence of hazardous substances upon the Property. Hazardous substances is intended to include, but not be limited to, the following: asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products or other dangerous, toxic or hazardous pollutant, contaminant, chemical material or substances defined as hazardous pollutant, contaminant, chemical material or substances defined as hazardous or as a pollutant or contaminant in, or the release of disposal of which is regulated by any law or regulation. The provisions of this paragraph shall survive the closing of this

Purchase Agreement regardless of whether it appears in any further documentation implementing the closing of this Purchase Agreement. Should Buyer in its inspection of the premises, discover unacceptable environmental conditions/hazardous substances, or unacceptable soil conditions which would prevent utilization of the property as planned, then Buyer, at its option, may cancel this Agreement prior to closing and demand the return of all monies paid to Seller by Buyer.

3. **EARNEST MONEY**: Buyer has paid \$5,000.00 as earnest money to be credited on the purchase price, receipt of which is hereby acknowledged by Seller. Buyer agrees to perform the other terms and conditions of this contract to be kept and performed by Buyer upon the delivery of the warranty deed by Seller, conveying the Property to Buyer.

4. **DEFAULT**: Should Buyer default in completing the terms and conditions of this Purchase Agreement, the earnest money hereunder paid by Buyer shall be forfeited as liquidated damages. Should Seller default in completing the terms and conditions of this Purchase Agreement, Buyer, at its option, may demand specific performance under the contract or may demand the return of all monies paid by Buyer to Seller. In establishing the amount of earnest money paid hereunder and in designating such as liquidated damages, the undersigned Seller and Buyer specifically acknowledge that actual damages resulting from Buyer's breach are impractical or extremely difficult to ascertain. Seller and Buyer have made a reasonable endeavor to fix a fair and reasonable compensation for Buyer's breach and that the amount thus established is acknowledged by both Seller and Buyer to bear a reasonable relation to probable damages and is not disproportionate to any damages that could reasonably be anticipated.

5. **TITLE INSURANCE**: Within 30 days after execution hereof, Seller shall furnish Buyer with an owner's policy of title insurance in an amount equal to the purchase price to the Property showing marketable title in Seller free and clear of all liens, encumbrances and defects except easements, and mineral grants and reservations of record, and any liens or encumbrances to be satisfied by Seller prior to or at closing.

6. **EXAMINATION OF TITLE**: If title to the Property is unmarketable, Seller shall have a period of 90 days in which to correct the title and make it marketable. If the title to said Property cannot be made marketable within said period of time or such further time as may be granted by Buyer in writing, Buyer shall be entitled to the return of the earnest money paid under this contract, and this contract shall be wholly null, void, and unenforceable.

7. **TAXES AND SPECIAL ASSESSMENTS:** The annual real estate taxes and annual installment of special assessments for 2012 shall be prorated to date of closing. Taxes and all special assessments for all prior years shall have been paid by date of closing. Taxes and installments of future special assessments for 2013 and subsequent years shall be the responsibility of Buyer.

8. **CLOSING AND POSSESSION:** Closing and possession of the Property shall occur on or before July 1, 2012, subject to any extension of time herein granted in the event that title to the Property should be found unmarketable and subject to change by mutual agreement of Seller and Buyer.

9. **CLOSING COSTS:** Seller shall be responsible for the following closing costs:

- (a) cost of Owner's title insurance policy;
- (b) preparation of warranty deed; and
- (c) preparation and recording of all releases, satisfactions and corrective documents.

Buyer shall be responsible for recordation of warranty deed to Buyer.

10. **CUSTODY OF EARNEST MONEY:** The earnest money paid hereunder shall be held by The Mandan Title Company.

11. **OTHER CONDITIONS:**

- (a) Upon execution of this Agreement, Buyer shall have access to the Property for the purpose of a Phase I study, soil boring, and any other tests to determine the suitability of the Property for Buyer's intended purpose.
- (b) The parties intend to enter into a Business Incentive Agreement (BIA) to further condition the Buyer's use of the Property.
- (c) Buyer will furnish to Seller, prior to site development, a conceptual drawing of the improvements to be constructed upon the Property. All building plans subject to approval of the Mandan Architectural Review Commission.

- (d) Buyer shall have 30 days from the date of this Agreement (the Inspection Period), during which time to:
- (1) determine whether the results of reports from engineers, geologists, hydrologists or any other professionals selected by Buyer, are acceptable to Buyer;
  - (2) determine whether zoning change, permits and approvals from all appropriate governmental authorities can be obtained for development of the Property;
  - (3) determine whether, in Buyer's sole opinion, the development of the Property is economically feasible for Buyer;
  - (4) determine whether any and all covenants to which the Property is subject and legal access to the property is acceptable to Buyer; and
  - (5) determine whether the proposed use will be approved by all appropriate governmental authorities including the State of North Dakota, and that these approvals are received in writing; and
  - (6) at the end of the Inspection Period, Buyer shall either (a) indicate its waiver or satisfaction of the above contingencies; or (b) notify Seller of its inability to satisfy such conditions, in which latter case the contract shall terminate and the earnest money shall be refunded to Buyer; or (c) provide Seller written notice to close the Property.

12. **BINDING EFFECT:** This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

13. **GOVERNING LAW:** This Purchase Agreement shall be governed by the laws of the State of North Dakota.

14. **COUNTERPARTS:** This Purchase Agreement shall be executed in counterparts (duplicate originals) with both Seller and Buyer having a fully executed counterpart.

15. **TIME:** Time is of the essence of each provision of this entire contract and of all the conditions thereof.

**IN TESTIMONY WHEREOF**, Seller and Buyer have hereunto set their hands the day and year first above written.

“SELLER”

“BUYER”

THE CITY OF MANDAN

RIVERWEST DEVELOPMENT, LLC

By: \_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_  
Its \_\_\_\_\_

## **BUSINESS INCENTIVE AGREEMENT**

This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between Riverwest Development, LLC of 2610 Old Red Trail NW, Suite C, Mandan, ND 58554 (öDeveloperö) and the City of Mandan, a North Dakota Municipal Corporation, of 205 Second Avenue NW, Mandan, ND 58554 (öCityö).

WHEREAS, The City has agreed to sell to Developer the real property owned by the City as described below:

Lot 1, Block 1, School District 5<sup>th</sup> Addition to the City of Mandan, Morton County, North Dakota (öPropertyö).

WHEREAS, The City has issued requests for proposals for the sale of the Property and the proposal from Developer was accepted by the City to purchase the Property under certain terms and conditions acceptable to the City; and

WHEREAS, the Developer will purchase the above described Property for the sum of \$270,000.00 while assuming responsibility for all site preparation costs, surveying, platting, and construction; and

WHEREAS, the parties acknowledge that the Property has an assessed value of \$416,000.00 which is in excess of the purchase price and that a Business Incentive Agreement is required by Chapter 54-60.1, NDCC, in order for the City to justify the sale; and

WHEREAS, the parties desire to enter into a Business Incentive Agreement to assist in the development of the Property.

The parties agree:

As goals for this project, the Developer will:

1. Conclude purchase of the Property on or before July 1, 2012.
2. Commence construction on or before December 31, 2012, of a mixed use commercial office, retail and/or restaurant development.
3. Agree to the investment of a minimum \$2.3 million in the development of at least 22,300 square feet of office, retail, restaurant and/or residential buildings.
4. Furnish an irrevocable letter of credit in a form acceptable to the City in the amount of \$100,000.00 to insure the development of the Property. The letter of credit is callable at the option of the City in the event that less than

\$1.4 million of site development has occurred or if the development consists of less than two buildings with the foundation installed for the third building by December 31, 2017. At the option of the City, the letter of credit may be released in proportion to the percentage of development that has occurred, and fully released on or before December 31, 2018.

- 5. Install any and all infrastructure required for the development of the Property at no cost to the City and without the use of special assessments.
- 6. No tax exemption will be requested for office buildings. Tax exemption may be considered for other retail and restaurant activities.

City will:

- 1. Transfer the above described Property owned by the City to the Developer for the consideration of \$270,000.00, subject to the terms of a Purchase Agreement of even date.

In the event Developer has not started construction (i.e. site preparation, building permit) by December 31, 2012, title to the Property will revert back to the City of Mandan, and the City will refund the purchase price, less the earnest money to be retained by the City.

The term of this Agreement may be modified by mutual agreement of the parties.

With the consent of the City, Developer may assign all or any part of its interest in the Property and said assignee shall be responsible for all obligations of this Agreement.

DEVELOPER:

CITY:

RIVERWEST DEVELOPMENT, LLC

CITY OF MANDAN

By:\_\_\_\_\_

By:\_\_\_\_\_

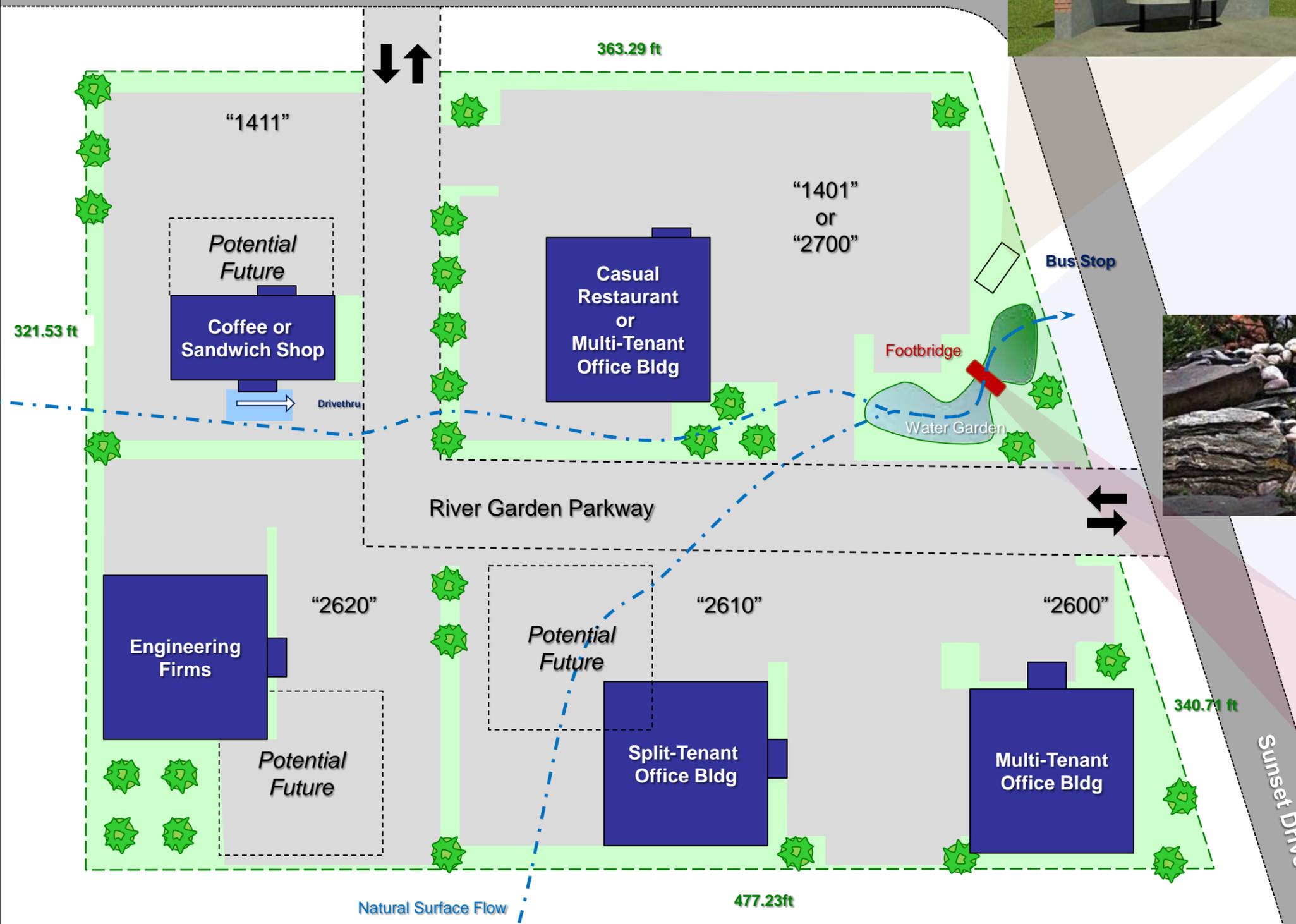
Tim Helbling, President  
Board of City Commissioners

ATTEST:

\_\_\_\_\_  
James Neubauer, City Administrator



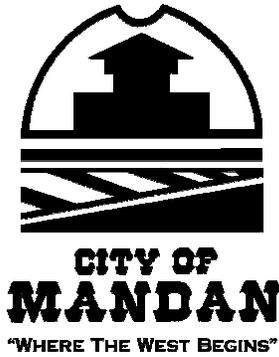
27<sup>th</sup> St NW



2610 Old Red Trail Suite C PO Box 98  
 Mandan ND 58554-0098  
 (701) 667-1800 fax (701) 667-1802

Date:	April 2012
Prepared By:	K. Spilman
Reviewed By:	K. Spilman

**Site Plan – River Garden Office Park**  
 1403 27th Street NW: Mandan, ND Zoned: CB - Commercial  
 Sheet 1 of 1 --- R4.2



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Business Development & Communications  
**DEPARTMENT DIRECTOR:** Ellen Huber, Business Development & Communications Director  
**PRESENTER:** Ellen Huber, Business Development & Communications Director  
**SUBJECT:** Executive Session Regarding Negotiation of Purchase & Business Incentive Agreements with McGuire/Schultz

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**STATEMENT/PURPOSE:** To consider meeting in executive session to seek attorney advice regarding negotiation of purchase and business incentive agreements to facilitate the sale and development of 18.22 acres of city-owned land located at northwest of the intersection of Sunset Drive NW and 27<sup>th</sup> Street NW.

**BACKGROUND/ALTERNATIVES:** The City Commission at a March 20, 2012, meeting, provided direction to staff to negotiate agreements with a partnership being formed by Don McGuire and John Schultz for the purchase and development of this parcel in northwest Mandan.

*Executive Session Format (Mayor to read)*

*This item may be discussed in an executive session. The legal authority to closing this portion of the meeting is North Dakota Century Code section(s)44-04-19.1 for attorney consultation and discussion of contract negotiation strategy. The topic or purpose of the executive session is the pending purchase and business incentive agreements for the sale and development of city-owned property to Don McGuire and John Schultz.*

*A motion would be in order to discuss this topic in executive session rather than in an open meeting. Is there such a motion? .... A second?...Any discussion on the motion?...A roll call vote please.*

*(If motion carries)The executive session will be recorded. Members of the Board of City Commissioners are reminded to limit their discussion during the executive session to the announced topic. Any collective final action must occur after the board reconvenes in an open meeting, but guidance can be provided to our attorney and negotiators.*

*The board will conduct its executive session in the Dykshoorn Room. We anticipate adjourning the executive session and reconvening the open portion of the meeting in this room in approximately \_\_\_\_ (time).*

*The minutes will show that the executive session began at \_\_\_\_ (time) and was attended by \_\_\_\_\_.*

*The minutes will show that the executive session was adjourned at \_\_\_\_ (time). The board of commissioners is now reconvening in the Bosh Froelich meeting room and we are now back in open session.*

**ATTACHMENTS:**

1. N.D. Attorney General guidance on procedure for entering into executive session

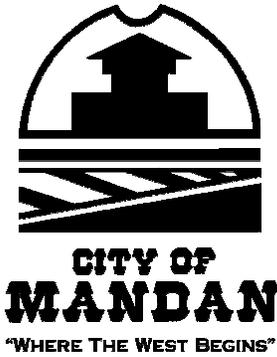
**FISCAL IMPACT:** Not applicable.

**STAFF IMPACT:** Minimal.

**LEGAL REVIEW:** Attorney Brown recommends an executive session.

**RECOMMENDATION:** I recommend meeting in executive session.

**SUGGESTED MOTION:** I move to meet in executive session to receive advice from City Attorney Malcolm Brown and provide negotiation instructions to him, Administrator Jim Neubauer and Business Development Director Ellen Huber regarding purchase and business incentive agreements with Don McGuire and John Schultz for the sale and development of city-owned property.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 7, 2012  
**SUBMITTING DEPARTMENT:** Fire Department  
**DEPARTMENT DIRECTOR:** Steve Nardello, Fire Chief  
**PRESENTER:** Steve Nardello, Fire Chief  
**SUBJECT:** New Fire Engine

---

**STATEMENT/PURPOSE:** Consideration of the Mandan City Commission to approve the advertisement for bids of a new 1500 gallon per minute fire engine.

**BACKGROUND/ALTERNATIVES:** The fire department wishes to purchase a new fire engine to replace our 1989 engine. The 1989 engine has numerous National Fire Protection Association 1901 deficiencies including an open rear cab and lack of integrated air pack seating. All deficiencies on our current truck relate to poor firefighter safety.

Advertisements would occur July 6<sup>th</sup> and July 13<sup>th</sup> 2012 with bid opening on August 13, 2012 at 2:00 p.m.

**ATTACHMENTS:** Picture of 1989 truck to be replaced

**FISCAL IMPACT:** The fire department has an equipment reserve budget that will be used to purchase the new truck and this reserve has a master plan to provide for future fire apparatus needs. The reserve is funded by an average annual North Dakota Insurance payment of \$59,000 and sometimes a \$50,000 transfer from the general budget.

The balance in the equipment reserve fund is \$246,691 with an anticipated addition of approximately \$59,300 from the North Dakota Insurance Department in September 2012. The estimated cost for a new fire engine to meet our specifications is between \$300,000 and \$350,000.

Average delivery time for a new truck is one year from the acceptance of successful bidder however; some manufacturers produce demonstrator models that may meet our specifications. These demonstrator models would be less expensive with quicker delivery time and we could consider this option.

The 1989 Engine is scheduled for replacement in 2012. Upon successful bidding, we will need to amend the equipment reserve budget to allow for expenditure of the required deposit, the amount is not known at this time, but estimated to be roughly \$80,000.

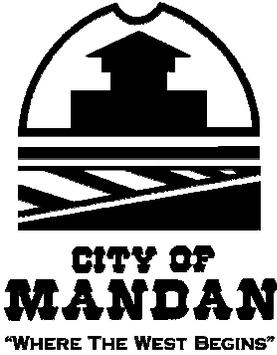
**STAFF IMPACT:** Fire department personnel are near completion of bid specifications and expect some changes once a pre-bid meeting with vehicle manufactures is complete.

**LEGAL REVIEW:** None

**RECOMMENDATION:** I recommend that the Mandan City Board of Commissioners approve the fire department request to advertise for bids of a new fire truck.

**SUGGESTED MOTION:** Move to approve the advertisement of bids for a new 1500 gallon per minute fire engine.





## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 8, 2012  
**SUBMITTING DEPARTMENT:** Business Development & Communications  
**DEPARTMENT DIRECTOR:** Ellen Huber, Business Development & Communications Director  
**PRESENTER:** Ellen Huber, Business Development & Communications Director  
**SUBJECT:** Invitation for Bids for Sale of Former Water Reservoir Property

**STATEMENT/PURPOSE:** To consider issuing an invitation for bids for the sale of the former water reservoir property located northeast of the intersection of Old Red Trail and 8<sup>th</sup> Avenue NW.

**BACKGROUND/ALTERNATIVES:** The water reservoir on this city-owned property has not been used for many years. Demolition of the reservoir will improve aesthetics of the surrounding area. With retail and commercial interest in properties in near I-94, exit 152 and the planned Walmart site, privatization at this time could help facilitate commercial development of adjacent properties. The proposed invitation calls for sealed bids by June 15 at 11 a.m. An advertisement for bids will be placed twice in the official newspaper as required by local ordinance and posted on the city website.

**ATTACHMENTS:** Invitation for bids.

**FISCAL IMPACT:** To be determined. Seeking purchase bids that reflect the cost of demolition, thereby seeking eliminate any cost to the City.

**STAFF IMPACT:** Minimal.

**LEGAL REVIEW:** Attorney Brown has reviewed the proposed invitation for bids.

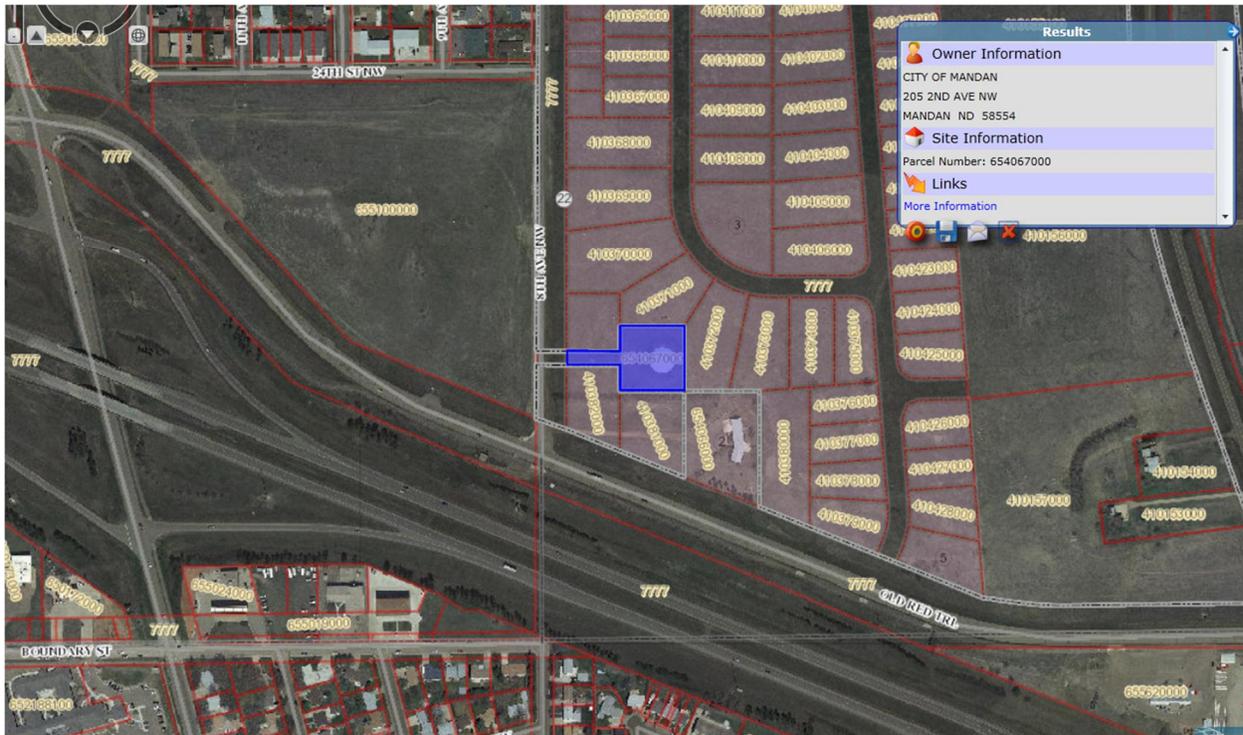
**RECOMMENDATION:** I recommend approval of the invitation for bids for the purchase of the city-owned property to include demolition of the former water reservoir.

**SUGGESTED MOTION:** I move to approve the invitation for bids for the purchase of the city-owned property to include demolition of the former water reservoir.



## Invitation for Bids

# SALE OF PROPERTY & DEMOLITION OF FORMER WATER RESERVOIR



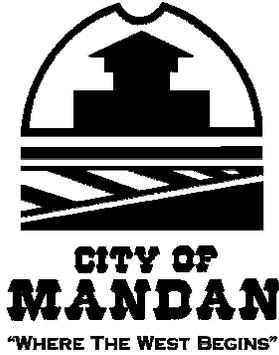
The City of Mandan is accepting sealed bids for the sale of city-owned property located at northeast of the intersection of Old Red Trail and 8<sup>th</sup> Avenue NW. **Bids must be submitted by 11 a.m. on Friday, June 15, 2012**, at which time they will be publicly opened and read aloud. Proposals received after that date and time will not be considered. Submit bids to City Administrator Jim Neubauer, City Hall, 205 Second Avenue NW, Mandan.

The subject property is the site of a former water reservoir that has been out of service and disconnected for many years. It is further identified as City Parcel 08416. The legal description is Lot 28, Block 2, Pioneer Industrial Park. The property is 43,599 square feet, approximately 192 feet square. The City will be reserving all the oil, gas and other mineral rights. Current zoning is MC (light nuisance industrial/heavy commercial). The property is near a single-family residence to the south. The owner of other adjacent property to the north and east has indicated an intent to rezone to commercial.

To enable this property to achieve its highest and best use, the City is requiring the buyer to demolish the reservoir structure with one year of the award of bid. Bids for the purchase of the property should reflect or be inclusive of the buyer's estimated cost of demolition. The successful bidder will be required to make a \$5,000 deposit in addition to payment of the purchase price. In the event the buyer fails to demolish the reservoir structure within one year, the security deposit will be retained by the City of Mandan as an agreed amount of liquidated damages.

Any questions regarding this property should be directed to City Administrator Jim Neubauer, phone 701-667-3215 or e-mail [jneubauer@cityofmandan.com](mailto:jneubauer@cityofmandan.com). To access the site, contact Water Treatment Plant Superintendent Duane Friesz, phone 701-667-3275.

City staff will review proposals and determine a successful bidder based on the purchase price. All bids are public documents upon their receipt. The city reserves the right to accept or reject any or all bids and to waive any informality in bids.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 7, 2012  
**SUBMITTING DEPARTMENT:** Administration  
**DEPARTMENT DIRECTOR:** Jim Neubauer, City Administrator  
**PRESENTER:** Jim Neubauer, City Administrator  
**SUBJECT:** Process for issuing additional liquor licenses

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STATEMENT/PURPOSE: To determine the process for issuing additional liquor licenses resulting a review of existing liquor licenses.

BACKGROUND/ALTERNATIVES: The City Commission has adopted Ordinance 1120 which makes one additional Class D (Exclusive retail off-sale alcoholic beverages.) and two Class D-1 (Exclusive retail off-sale beer and wine) licenses available.

Guidance in the manner in which to issue the licenses can be found in Mandan Code of Ordinances Section 12-02-06, which reads in part:

Whenever the board increases the number of licenses available in any class, or when a license is not renewed, or is revoked, a one-time only issuance fee, in an amount determined by the board in its discretion, shall be paid by any new licensee. The issuance fee shall be in addition to the annual license fee. In lieu of setting an issuance fee, the board may utilize a competitive sealed bidding process for the award of these licenses, may establish a minimum bid or substitute any other procedure for the issuance of a license as determined by the board.

In order to make the licenses available July 1<sup>st</sup>, the following schedule is proposed:

- May 15, 2012 – Commission makes available the additional licenses
- May 15, 2012 – Commission determines the process to award additional licenses
  - Sealed Bids
  - Minimum Bid Class D-1, \$7,500
  - Minimum Bid Class D, \$40,000
- May 16, 2012 – Notice is placed on the City of Mandan Website
- May 25, 2012 – Notice is placed in the Mandan News

- June 13, 2012 – 11:00 a.m. Deadline for applications and sealed bids to be received & opened
- June 19, 2012 – Commission determines apparent successful bidder based on highest bid
- July 1, 2012 – Licenses effective

ATTACHMENTS: n/a

FISCAL IMPACT: unknown at this time

STAFF IMPACT: minimal

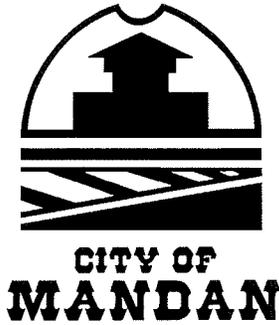
LEGAL REVIEW: City Attorney Brown has completed his review

RECOMMENDATION: I recommend opening one additional Class D (Exclusive retail off-sale alcoholic beverages.) and two Class D-1 (Exclusive retail off-sale beer and wine) licenses.

I recommend awarding the additional licenses based on a sealed bid process, with the award of bid based on the highest bid and meeting all other requirements.

SUGGESTED MOTION: I move to open one additional Class D (Exclusive retail off-sale alcoholic beverages.) and two Class D-1 (Exclusive retail off-sale beer and wine) licenses.

I move to award the additional licenses based on a sealed bid process, with the award of bid based on the highest bid and meeting all other requirements.



"WHERE THE WEST BEGINS"

**MEETING DATE:**

**PREPARATION DATE:**

**SUBMITTING DEPARTMENT:**

**DEPARTMENT DIRECTOR:**

**PRESENTER:**

**SUBJECT:**

New Business No.4

## Board of City Commissioners

### Agenda Documentation

May 15, 2012

May 10, 2012

Administration

Jim Neubauer, City Administrator

Jim Neubauer, City Administrator

Visitors Committee Recommendation – Mandan Progress Organization & Musicians Association Tables and Concrete Work Dykshoorn Park

---

STATEMENT/PURPOSE: To consider a recommendation from the Mandan Visitors Committee.

BACKGROUND/ALTERNATIVES: The Visitors Committee consists of Jay Feil, Shannon Gangl, Wally Joersz and Jim Mellon with Mayor Helbling, City Administrator Jim Neubauer and Finance Director Greg Welch serving as liaisons.

The Mandan Visitors Committee met on May 11, 2012 consider a request from the Mandan Progress Organization & Musicians Association for funding in the amount of \$40,000 to assist in the purchase of 40 picnic tables and concrete work in Dykshoorn Park.

The current picnic tables were handed down from the Mandan Park District and are in need of extensive repair and most need replacement. The MPO and Musicians Association have obtained bids for replacement tables. The tables weigh in at 275 pounds each which is a positive in that they will be durable and also less likely to grow legs and walk away. However the weight of the tables makes it more difficult for park mowing and maintenance as moving them becomes a two to three person job. Therefore, a proposal has been made to construct a stamped concrete arch through the park connecting the parking area to the library sidewalk where the tables would remain throughout the summer without having to be moved and utilized for every evening the bandshell hosts events. Additional concrete work will be done near the entrance to the parking area in Dykshoorn Park which will be utilized to store the fence panels and related items. This will clean up the area behind the bandshell where these items are currently stored.

ATTACHMENTS: Funding Request

FISCAL IMPACT: Net \$40,000 from the Visitors Committee, there are adequate funds on hand to meet this request. The MPO, Musicians Association and Art in the Park

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Visitors Committee Recommendation – Mandan Progress Organization & Musicians Association Tables and Concrete Work Dykshoorn Park

Page 2 of 2

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Committee will be contributing roughly \$1,130 each for a total of \$3,389 towards the project. Available funding exists within the Visitor's Fund

STAFF IMPACT: minimal

LEGAL REVIEW: Funds may be used for capital construction and promotion projects to attract visitors to the community to use travel and tourism facilities.

RECOMMENDATION: The Visitors Committee unanimously passed a recommendation supporting this request.

SUGGESTED MOTION: I move to approve the recommendation from the Visitors Committee for a grant to the MPO & Musicians Association for \$40,000 to be utilized for the purchase of picnic tables and concrete work at Dykshoorn Park.

**TO:** Visitors Fund, Chair

**From:** Mandan Progress Organization

Del Wetsch, MPO Ex. Director

Mandan/Bismarck Musicians Association

Vernon Cermak, Buggies-n-Blues

The purpose of this request is to seek funds for the replacement of the picnic tables that are currently in use at Dykshoorn Park in Mandan as well as adding bike racks adjacent to Dykshoorn Park. According to the Visitor's fund guidelines these projects should qualify for the purchase of new equipment consistent with visitor attraction or promotion.

The use of the funds as outline in the Vision Fund Document is as follows:

1. For the purchase of new equipment
2. Funds used for the purpose of enhancing tourism

#### **I. Park Tables**

The park tables in Dykshoorn Park are used by the community for monthly summer events that are held in the park by the Musicians Association in partnership with the Mandan Progress Organization. These events draw many participants and visitors from outside our city. Quality and safety of equipment should be an essential goal for the park area. The current park tables provide neither.

Efforts were made to acquire bids for tables from businesses in the Mandan area from Running's and UBC. Visitations and meetings were held with each of the businesses to review the style, quality, and kind of tables available through their business. They are not able to provide the type of tables that are designed to withstand the elements of the four seasons nor do they provide the durability and strength.

Contact was made via the internet and phone visitations with a company known as *Park n Pool* that can provide the following tables. (See enclosed picture) These tables have a five year warranty and an anticipated life use of up to 20 years. The tables are all metal and covered with a vinyl for protection with a powder coating protection. The weight is essential (275 lbs) so that theft will not easily occur. These "four season" tables are designed to withstand the weather elements of cold and heat.

The following is being submitted as the purchase of 40 eight foot tables.

**Vendor: Park n Pool** 40 Park Place Lexington, VA 2440 PH: 540-483-6510

#### **I. Purchase of 40 tables: ( Rivendale Style Expanded Metal 11TA-132 / 8 foot tables)**

**List price:** \$582.50 x 40= \$23,000

Shipping & Handling: 2,125

**Table Purchase** **\$25,425**

Following the purchase of the tables, they would become part of Dykshoorn Park area with ownership be transferred to the city of Mandan

Attached to this request is a copy of:

- 1] Invoice
- 2] Cost comparison of other tables
- 3] Large photo of table as per our request
- 4] Park n Pool Power Promise /Mission statement

## II. Bike Racks

Starting this summer the northern bike route that lures bikers to North Dakota has been re-routed through the city of Mandan due to the increased flow and danger of traffic in the Minot/Williston area. This route will also include changes to the 1806 Lewis & Clack bike trail which also will be directed through the city of Mandan.

Because of the increase of cyclists in and through the city, it is important to provide some areas for bike parking. To provide for the increase in cycling activity in the area, funding is being requested for four bike racks that allow the parking of seven bikes each. These bike racks will be placed adjacent to the Heritage Plaza, Mandan Library and Dykshoorn Park. (Attached is a copy of the bike racks being requested.)

**Vendor:** Upbeat site Furnishings  
211 North Lindbergh  
St Louis, MO 63141

Item #	22CCS-VRP 300	
Color-	Black	
Cost:	\$510 Each	\$2040
Shipping		<u>304</u>

**Bike Rack Purchase**                      **\$2344.**

## III. Dykshoorn Park Concrete Enhancements( K & O Concrete Bid)

A. Two concrete slabs along fence area behind for storage of 5 x 12 fence panels. These two areas are currently ground and weeds.  
Dimensions: 18' x 25'

B. An arched concrete area in the park for placement of new tables. Includes two color , stamped concrete. Because of weight of tables, and mowing that is required in the park, this concrete area will allow for placement of tables during the mowing season.  
Size: 12" x 135"

**Estimated concrete Costs: \$16,800**

Contacts were made with Strata and Missouri Basin Materials. However neither provide stamped concrete. A second bid from Alliance Concrete was in the amount of \$18,450.

Cost of combined project:	\$24,245	Table Purchase
	\$2,344	Bike Rack Purchase
	<u>\$16,800</u>	Concrete
	<b>\$43,389.00</b>	

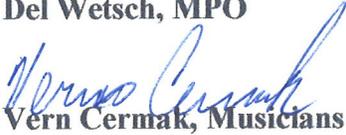
43,389.  
<3,389> - 3 groups  
\$ 40,000

The Mandan Progress Organization, the Musicians Association, and Art in Park have each committed to \$1000 toward this project.

Thank you for considering our request.



Del Wetsch, MPO



Vern Cermak, Musicians Association



*Small handwritten signature and date.*  
3/20/08



*Exceeding Your Expectations,  
Enhancing Your Earnings.*

# Quote

Date	Quote #
4/12/2012	30396

Name / Address
Mandan Progress Organization 410 W Main Street MANDAN, ND 58554 Vernon Cermak

Ship To
MANDAN, ND 58554 Vernon Cermak

*Quote valid for 10 days      \*\* Liftgate is an additional \$150.00 if needed  
\*\* CUSTOMER TO UNLOAD FREIGHT & ASSEMBLE*

SHIP ON	Terms	Acct Mang
ASAP	50/Net 30	SED

Item	Description	GSA?	Qty	Color	Cost	Total
11TA-132PM	Rivendale Expanded Metal Table with 2 Attached Seats, 8' Length, 275	no	40	*please advise	582.50	23,300.00
S & H	Quoted -- Other options available but NOT included in this price. Call Ahead Liftgate Service (to assist offload) Inside Delivery Rush Delivery				2,125.00	2,125.00

\* I assure that the above items are correct or have made corrections. Initial

40-

*Park & Pool  
40 Park Place  
Lexington, VA  
24450*



## Rectangle Picnic Tables

Toll Free: 877-777-3700 **Join the fun from 8:30AM to 7PM EST!** [Home](#) • [Contact Us](#) • [About Us](#) • [Our Team](#) • [Policies](#) • [PnP in the N](#)

You are here: [Home](#) » [Online Catalog](#) » [Picnic Tables](#) » [Rectangle Picnic Tables](#)

### Most Popular Rectangular Picnic Tables

#### On This Page...

Most Popular Rectangular Picnic Tables

Tables with Plastic Coated Tops and Steel Frames

Shenandoah Picnic Table with 2 3/8" Welded Pipe Frame

St. James Picnic Tables with 1 5/8" Welded Pipe Frame

Pocono Picnic Tables with 2 3/8" Bolted Tube Frame

Cascade Picnic Tables with 1 5/8" Bolted Tube Frame

Concrete Picnic Tables with Rectangular and Oval Tops

Tables with Plastisol Tops and Plastisol Frames

Rectangular Resinwood Picnic Tables

#### Browse Other Picnic Tables Subcategories...

Square Picnic Tables

Round Picnic Tables

Plastic Coated Tops with Powder Coated Frame

Plastisol Tops with Plastisol Frame

Recycled Plastic Tops and Frames

Wood Tops with Steel Frame



#### Rivendale Style Expanded Metal

11TA-131 6' \$542.95

Length

11TA-132 ✓ 8' ~~\$574.95~~

Length

582.50



*"275/165"*

*54r / 20 year table 4 Season all tables*



#### Champion Style Rectangular Table with 2 Seats

14TA-012 4' \$567.95

Long

14TA-013 6' \$687.95

Long

14TA-014 8' \$764.95

Long

14TA-015 10' \$1,050.95

Long



#### Shenandoah Style with Wood Plank Top

12TA-00001 6' long \$345.95

12TA-00003 8' long \$379.95

12TA-00004 12' long \$659.95

long



[Return to top](#)

Picnic Table Frame Only

**Browse Main Categories...**

Picnic Tables

Park Benches

Park Grills & Fire Rings

Bike Racks

Trash Cans & Ash Urns

Planters

Security Barriers

Pet Waste Disposal

Drinking Fountains

Pool Furniture

Umbrellas & Shade Solutions

Deck Furniture

Restaurant & Cafe Furniture

Kids picnic tables, playground benches and Adirondack chairs

Sports Equipment

Bleachers & Grandstands

On Sale Now!

Message Centers

Playground Equipment

Quick Ship Items



11TA-122

4' \$348.95

Long

11TA-123

6' \$353.95

Long

11TA-124

8' \$386.95

Long

11TA-125

10' \$483.95

Long



**Perforated Style Pedestal with 2 Seats**



11TA-049

6' Starting at

Long

\$1,035.95

11TA-050

8' Starting at

Long

\$1,225.95



**Classic Style Pedestal with 2 Attached Seats**



11TA-028

6' Starting at

Long

\$779.95

11TA-029

8' Starting at

Long

\$1,114.95



**Innovated Style with 2 Seats**



11TA-060

4' \$657.95

Long

11TA-061

6' \$741.95

Long

11TA-062

8' \$830.95

Long

11TA-063

10' \$1,111.95

Long



**Innovated Style Pedestal with 2 Attached Seats**



11TA-065

6' Starting at

Long

\$837.95

11TA-066

8' Starting at

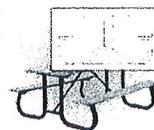
Long

\$1,189.95



[Return to top](#)

**Shenandoah Picnic Table with 2 3/8" Welded Pipe**



**Shenandoah Style Frame (No Top or Benches)**

12FM-00001

for 6' long table \$234.95

table

12FM-00003

for 8' long table \$234.95

table



# PARK<sub>N</sub>POOL POWER PROMISE

It is our mission to create happy clients.  
We accomplish our mission through:

- Providing consistently high-quality commercial furnishings.
- Identifying each client's needs and matching them with relevant products.
- Creating realistic expectations with each client and then exceeding them.

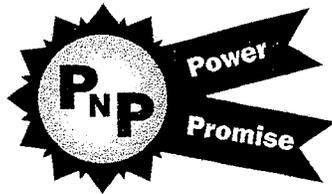
We have a proven track record of competence and excellent customer service; your purchase will go smoothly and we will make sure that our products meet your specific needs.

We are so confident in this that we are offering you our:

**- 30 DAY SATISFACTION GUARANTEE -**

For thirty days after your receipt of goods,  
if you decide that you are dissatisfied with your purchase  
you may send your purchase back.

ParknPool will pay the return shipping and refund your money.  
All you have to do is repackage appropriately and load on the freight truck.\* \*\*



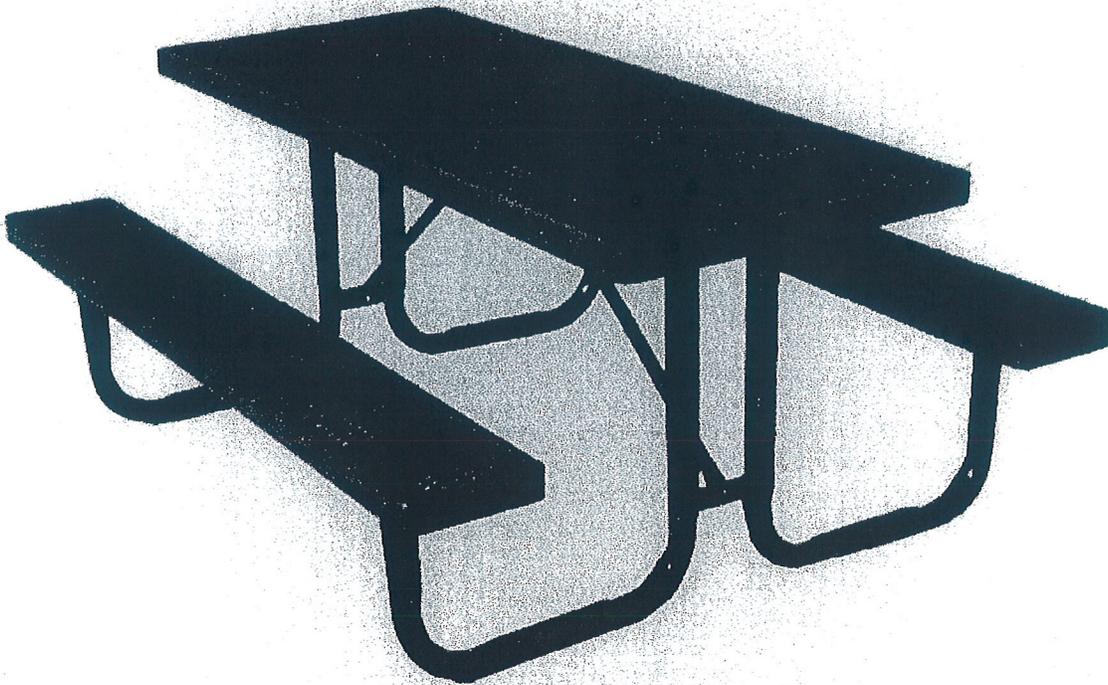
\* The PnP Power Promise provides you additional assurance that  
you are making the correct buying decision.

\*\* Standard Product Warranties are unaffected by the PnP Power Promise.

[Print window](#) [Close window](#)

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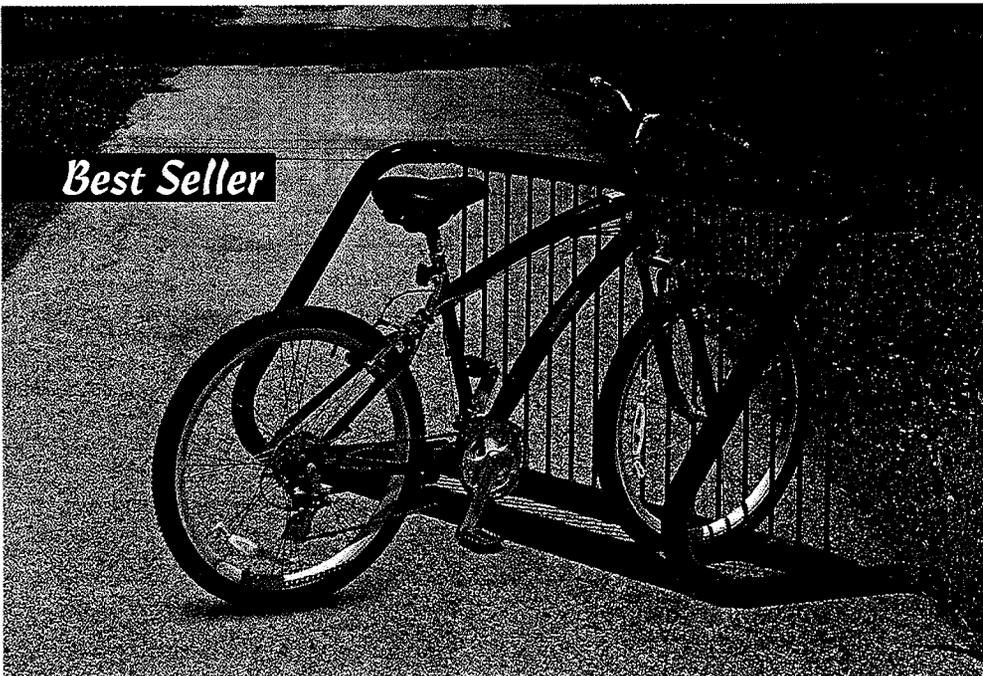
## Rivendale Style Expanded Metal



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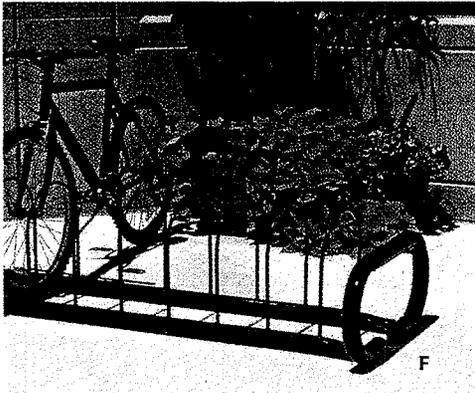
[Print window](#) [Close window](#)

**Best Seller**



Shown in evergreen.

exceptional stability with the Triad bike racks. Round or triangular racks that offer a generous 7" from heavy-gauge steel for stability. Powder coated to prevent fading and maintain extreme rust-



Shown in blue with black ends.

- Racks**
- RP101 Round Hoop • 19"H x 31"W x 77"L • 90 lbs \$510
  - RP102 Triangular Rack • 22"H x 31"W x 77"L • 90 lbs \$510

TopCoat Colors				
Black	White	Gray	Light	Sage
Gold	Bronze	Brown	Charcoal	Navy
Blue	Evergreen	Burgundy	Red	



**See full sign details on page 97.**

Styrene Sign — No Skateboard/Bike Riding  
 H. 21"H x 11"W • 1lb  
 22CCS-MS1106

\$25

H (ex-7244)

KO Investments, LLC  
 DBA KO Construction  
 2611 Old Red Trail  
 Mandan, ND 58554

400-6147 or 226-7048

# Invoice / Estimate

	Estimate #
5-7-2	

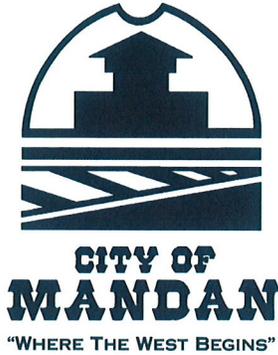
Name / Address
City of mandan

Project

Description	Qty	Rate	Total
stamped concrete 2-colors 135' x 12' 25' x 18'  Thank you! 			
		<b>Total</b>	16,800. <sup>00</sup>

Any alteration or deviation from the above specifications involving extra costs will become an extra charge over and above the estimate. The customer is responsible for watching and protecting green or wet concrete after the job is completed. Owner should seal all joints and cracks with urathane caulking (NP1). At no time should any chemical or de-icer be used on any concrete surface. Always keep ground graded in a manner that will prevent any water runoff onto concrete. Concrete should not be driven on with vehicles for at least 7 days, and up to 14 days with heavier vehicles. KO Construction reserves the right to withdraw this proposal if not accepted within 30 days.

KO Construction is not responsible for any cracking or peeling that is not caused by poor workmanship.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** April 26, 2012  
**SUBMITTING DEPARTMENT:** Mandan Progress Organization  
**DEPARTMENT DIRECTOR:** Del Wetsch  
**PRESENTER:** Del Wetsch  
**SUBJECT:** Funding requests by the Mandan Progress Organization (MPO) Funding Committee

---

STATEMENT/PURPOSE:

To consider funding requests by the Mandan Progress Organization (MPO) Funding Committee.

BACKGROUND/ALTERNATIVES:

The city of Mandan may make contributions to organizations, which work for the betterment of the community. The funding should add to the economic and well being of the community and increase the quality of life. Organizations must provide statements of where the funding awarded to them was spent.

ATTACHMENTS:

- Letter from the MPO Funding Committee
- Approved MPO Grant Funding Request Applications are available upon request.

FISCAL IMPACT:

Provides non profit groups and organizations the ability to bring new events and keep established events working for the betterment of the community. By providing this funding it will grow the economic impact to the community and brings people to Mandan to eat, shop, and play. Each year the city of Mandan budgets \$20,000 for this purpose. This money is provided with 50% in Mandan Bucks and 50% cash. The grant requests are limited to no more than \$5,000.

STAFF IMPACT:

6 hours of prep work and meetings.

LEGAL REVIEW:

Reviewed by the MPO Funding Committee and Board of Directors.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Funding requests by the Mandan Progress Organization (MPO) Funding  
Committee

Page 2 of 2

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RECOMMENDATION:

To approve the funding requests by the MPO Funding Committee.

SUGGESTED MOTION:

Move to approve the funding requests by the MPO Funding Committee.

To: Board of City Commissioners  
 From: Del Wetsch, MPO Executive Director  
 Re: Funding Requests

The Mandan Progress Organization met on April 26th and reviewed 18 application submitted for assistance in funding provided by the city of Mandan for groups or organizations which work for the betterment of the community.

The funding recommendations are based upon information supplied from an application provided by the Mandan Progress Organization. Criteria is based on the following: number of times group is applying, value of the event to the business community, quality of the event, number of spectators event draws and if the event is new to the community. A point system is used to grade each event.

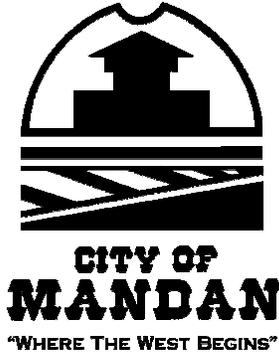
<u>Event</u>	<u>Points</u>	<u>Funding</u>
Wild West Grill Fest	88	\$1,000
Ft. Lincoln Foundation Road Race	43	\$250
Five Nations Arts	47	\$200
Ft. Lincoln Foundation Haunted Fort	43	\$250
Mandan Art Association	52	\$500
Mandan Parks Softball Tourney	64	\$750
Mandan Horse and Saddle Club	51	\$625
Musicians Association	62	\$1,000
Bis-Man Stock Car Club	58	\$875
Mandan Rodeo Committee	73	\$1,250
Art in the Park Committee	77	\$600
Friends of Ft Lincoln	49	\$200
July 4th Parade Committee	74	\$750
Old Red Old Ten Scenic Byway	55	\$250
OktoberFest un Menden	74	\$1,000
Cowboy Action Performers	56	\$250
ND Railroad Museum	48	\$250
Mandan Progress Organization		<u>\$10,000</u>
Total Awarded		<u><u>\$20,000</u></u>

Each year \$20,000 is set aside in the city advertising budget to promote events the sum is awarded 50% Mandan Bucks and 50% cash to sustain events.

The Mandan Historical Society was not awarded funding because there request asked for funding for relocation help and a Heritage Day. Money cannot be used for relocation and there was not enough information on the Heritage Day to grant funding the event.

I would recommend approval from the Board of Directors of the MPO and for distribution of funds to the various groups and organizations approved by the MPO Funding Committee.

Del Wetsch  
 Executive Director  
 Mandan Progress Organization  
 411 West Main  
 Mandan, ND 58554



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Engineering  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Bechtel  
**SUBJECT:** Consider the approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Street Improvement District No. 169, Project No. 2012-06(Lincoln Ridge 5<sup>th</sup> Addition).

---

**STATEMENT/PURPOSE:** To and authorize the required paperwork for the requested project and allow for the project to go out for bid.

**BACKGROUND/ALTERNATIVES:** The Engineering office received a petition from Steve Thilmony requesting the special assessment of the remaining streets within the Lincoln Ridge 5<sup>th</sup> plat. That request was allowed at the April 3<sup>rd</sup> meeting of the City Commission. This item would allow the developer to go out for bids for the paving of the project.

The location of this plat is west of 8<sup>th</sup> Avenue SE at the west terminus of 25<sup>th</sup> Street SE. The roads to be paved would be 25<sup>th</sup> Street/West View Place & South View Place SE. The developer will need to install the needed water and sewer utilities to service the lots within this subdivision and will be required to pay 100% of those costs via a 3-way agreement. The paving of this street will bring approximately 12 lots onto the market for building of single family homes.

**ATTACHMENTS:**

1. District Map
2. Estimate of Cost

**FISCAL IMPACT:** Based on the estimate of cost included with your documentation, the cost of the project would be \$165,352.75, engineering and administration will add \$49,605.83, bring the total to \$214,958.58. The single corner lot would look to receive approximately \$8,598.34 in special assessments for the street as it would be assessed for approximately half the cost of the other lots within this district. All the other lots would expect to receive approximately \$17,196.69 as this street would be the primary street for these residences.

**STAFF IMPACT:** Minimal

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider the approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Street Improvement District No. 169, Project No. 2012-06(Lincoln Ridge 5th Addition).

Page 2 of 4

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LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION: I would recommend approval of this project.

SUGGESTED MOTION: This office recommends approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Street Improvement District No. 169, Project No. 2012-06.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider the approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Street Improvement District No. 169, Project No. 2012-06(Lincoln Ridge 5th Addition).

Page 3 of 4



Board of City Commissioners

Agenda Documentation

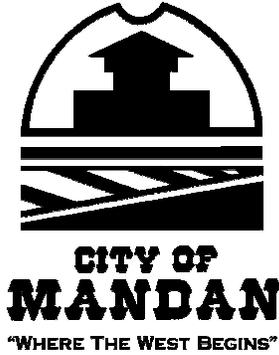
Meeting Date: May 15, 2012

Subject: Consider the approval of the feasibility report for, approve the plans and specifications for, and authorize the call for bids on Street Improvement District No. 169, Project No. 2012-06(Lincoln Ridge 5th Addition).

Page 4 of 4

STREET IMPROVEMENT  
LINCOLN RIDGE 5TH ADDITION

ITEM NO.	ITEM DESCRIPTION	UNIT	PROPOSAL QUANTITY	UNIT PRICE	CONTRACT AMOUNT
1	Unclassified excavation & embankment	CY	700	\$5.00	\$3,500.00
2	Asphalt removal (thickness varies)	SY	5	\$25.00	\$125.00
3	Remove & salvage Road Closed Sign	Each	2	\$350.00	\$700.00
4	Curb & gutter removal	LF	8	\$10.00	\$80.00
5	Subgrade preparation	SY	3,884	\$3.50	\$13,594.00
6	Water for compaction	M.Gal.	7	\$20.00	\$140.00
7	Install mountable curb & gutter	LF	1,539	\$22.00	\$33,858.00
8	2" Surface course	Ton	384	\$90.00	\$34,560.00
9	2-1/2" Base course	Ton	480	\$90.00	\$43,200.00
10	Bituminous tack coat	Gal.	173	\$3.00	\$519.00
11	Bituminous seal coat	Gal.	1,037	\$3.25	\$3,370.25
12	Seal chips 30lb/SY	Ton	52	\$85.00	\$4,420.00
13	Street lights 150W (concrete pole Type "B")	Each	4	\$2,700.00	\$10,800.00
14	Copper condutor circultry (3#2) & (1#8)	LF	619	\$6.00	\$3,714.00
15	Trenching for conduit & circultry	LF	619	\$2.50	\$1,547.50
16	Adjust manhole	Each	4	\$450.00	\$1,800.00
17	Adjust gate valve	Each	7	\$275.00	\$1,925.00
18	Class 5 gravel	Ton	50	\$25.00	\$1,250.00
19	Erosion control (silt fence)	LF	500	\$4.00	\$2,000.00
20	Seeding to include topsoiling	Acre	0.5	\$6,500.00	\$3,250.00
21	Soil Sterilizer	LS	1	\$1,000.00	\$1,000.00
CONSTRUCTION TOTAL					\$165,352.75
ENGINEERING & CONTINGENCY					\$49,605.83
TOTAL COST					\$214,958.58



New Business No. 7

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Engineering  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Bechtel  
**SUBJECT:** Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge 5<sup>th</sup> Addition.

---

**STATEMENT/PURPOSE:** To authorize the installation of water and sewer for the development of the subject area.

**BACKGROUND/ALTERNATIVES:** The subject work would take place on 25<sup>th</sup> Street SE and South View Place SE within the existing Lincoln Ridge 5th subdivision. 25<sup>th</sup> Street SE would connect the current 25<sup>th</sup> Street SE and West View Place SE in an east/west manner and open up approximately 12 additional lots for building. South View Place SE would be a cul-de-sac extending from 25<sup>th</sup> Street SE. These lots are single family R7 zoned lots. The project would provide water and sanitary sewer utilities to these lots.

**ATTACHMENTS:**

1. Letter of request
2. Map of area of work

**FISCAL IMPACT:** The entire cost of the project is being paid by the developer as part of the 3-way agreement. The approximate construction costs and Engineering come to \$100,109.00.

**STAFF IMPACT:** Minimal

**LEGAL REVIEW:** All of my commission data has been forwarded to the City Attorney for his review.

**RECOMMENDATION:** This office supports the authorization to move forward with this project.

**SUGGESTED MOTION:** I move to authorize the execution of the 3-way agreement for the construction of the subject project.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge 5th Addition.

Page 2 of 3

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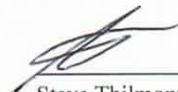
March 28, 2012

2183

**PETITION**

To the Honorable Board of City Commissioners of the City of Mandan, North Dakota.

The undersigned, being the Developer of Lincoln Ridge Estates 5<sup>th</sup> Addition, Mandan, North Dakota, hereby petitions the City of Mandan to create a Special Assessment District for the purpose of performing improvements consisting of asphalt paving, curb and gutter, earthwork and all work and material incidental thereto on a portion of 25<sup>th</sup> Avenue SW and West View Place SE from the west boundary line of Lincoln Ridge Estates 3<sup>rd</sup> Addition, west, northwest to the Intersection of Lincoln Court SE, also South View Place SE in its entirety.

  
\_\_\_\_\_  
Steve Thilmony

Enc See Attached Map

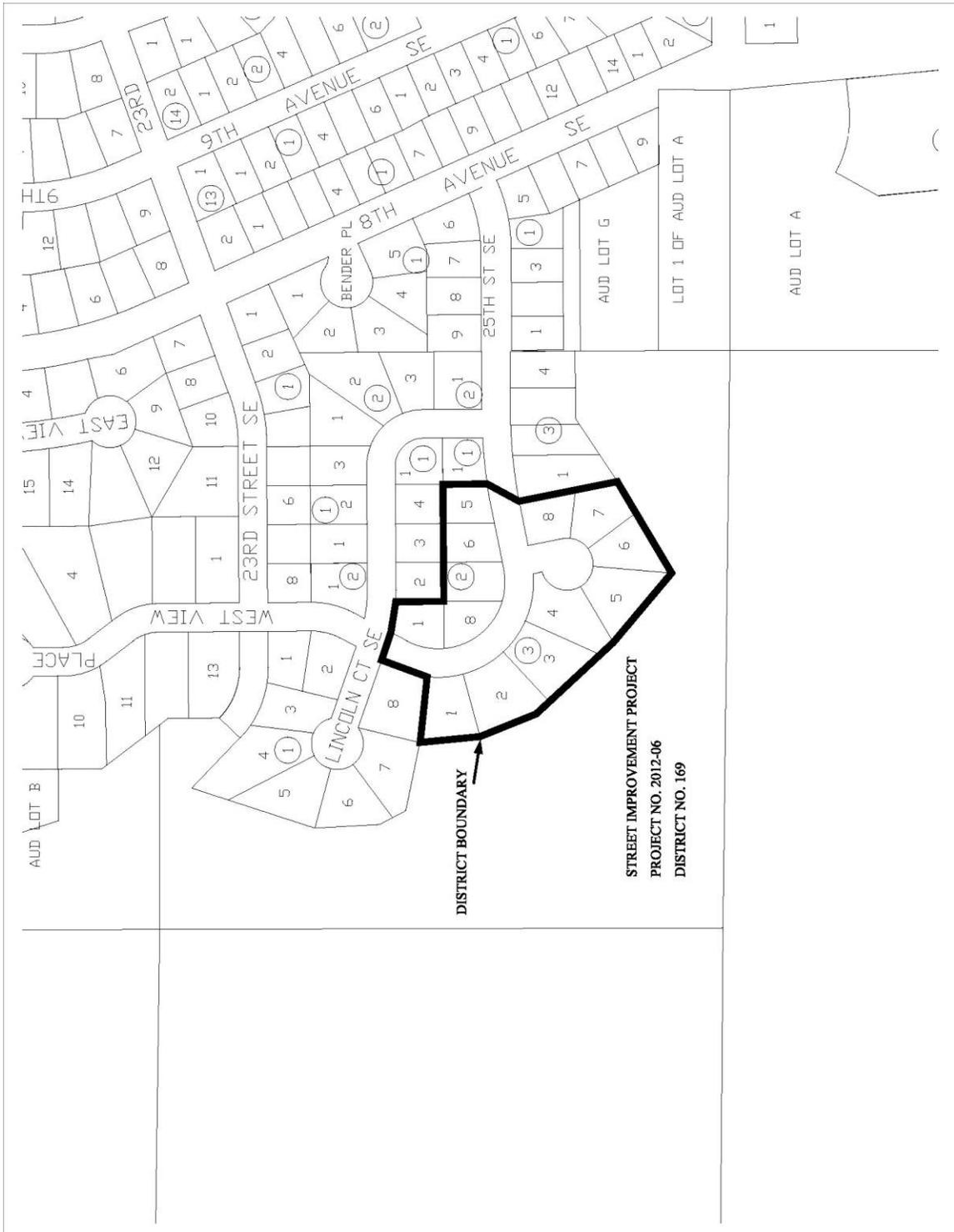
Board of City Commissioners

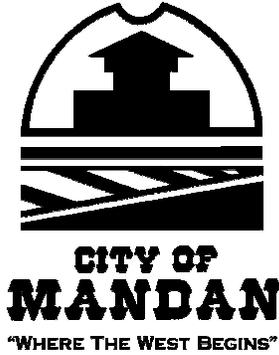
Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge 5th Addition.

Page 3 of 3





New Business No. 8

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Engineering  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Bechtel  
**SUBJECT:** Consider the creation of, approval of the feasibility report for, approve the plans and specifications for, and authorize a change order or call for bids on Street Improvement District No. 170, Project No. 2012-08(Keidels South Heart Terrace, Phase III).

---

**STATEMENT/PURPOSE:** To create and allow the assessments of specials related to, authorize the required paperwork for the requested project, and allow for the project to be change ordered or go out for bid.

**BACKGROUND/ALTERNATIVES:** The developer is requesting that the City allow the special assessment of street costs to the benefitting property for the development of an additional phase of Keidel's South Heart Terrace. This project would construct the streets for the westerly extension of Canyon Road SW and currently unnamed loop and cul-de-sac to the north of Canyon Road SW. The Phase III addition would bring approximately another 30 lots online for building. Water and Sewer would be installed by 3 way agreement to provide City services to all the lots.

The plat will be before the Planning & Zoning Commission as a final plat at their June 25<sup>th</sup> meeting date. The majority of this land is currently in City Limits but a request to annex the remaining area of the plat has been petitioned by the developer and will come in front of the City Commission in the near future.

The developer has approval and is in the process of bidding the phase II portion of Keidel's South Heart Terrace. He is requesting that he be allowed to change order the phase III street improvements to that project if the bids come in adequately and the project is awarded. If for some reason the prices come in too high or other options or things occur, he would like to have the flexibility to also bid this as a separate area.

**ATTACHMENTS:**

1. Letter of Request
2. District Map

**FISCAL IMPACT:** Based on the estimate of cost included with your documentation, the cost of the project would be \$317,042, engineering and administration will add \$79,260.50, bring the total to \$396,302.50. 4 lots would be assessed at half the full lot price as they are corner lots with only one side paved, they would look to receive approximately \$7,076.83 per lot as they

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider the creation of, approval of the feasibility report for, approve the plans and specifications for, and authorize a change order or call for bids on Street Improvement District No. 170, Project No. 2012-08(Keidels South Heart Terrace, Phase III).

Page 2 of 5

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were assessed for approximately or at half the cost with the existing streets. All the other lots would expect to receive approximately \$14,153.66 as this street would be the primary street for these residences.

STAFF IMPACT: Minimal

LEGAL REVIEW: All of my commission data has been forwarded to the City Attorney for his review.

RECOMMENDATION: This office supports moving forward with the project.

SUGGESTED MOTION: I move to approve the creation of, approval of the feasibility report for, approve the plans and specifications for, and authorize a change order or call for bids on Street Improvement District No. 170, Project No. 2012-08.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider the creation of, approval of the feasibility report for, approve the plans and specifications for, and authorize a change order or call for bids on Street Improvement District No. 170, Project No. 2012-08(Keidels South Heart Terrace, Phase III).

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May 9, 2012

City of Mandan  
Board of Commissioners  
205 2<sup>nd</sup> Ave. NW  
Mandan, ND 58554

RE: Keidel's South Heart Terrace 1<sup>st</sup> Addition  
Pavement, Storm Sewer & Street Light Petition  
TECo #TBD

Honorable Commissioners;

Morty's LLC, owner of the property within Keidel's South Heart Terrace 1<sup>st</sup> Addition, intends to move forward with Keidel's South Heart Terrace Second Addition at the June 25<sup>th</sup> Planning Commission agenda and before your Board the evening of July 10, 2012. We respectfully request the ability to have pavement, storm sewer and street light improvements constructed by Special Assessment to the benefitting properties. Furthermore, we desire the ability to have the improvements directed by change order onto a previously approved project that will pave Keidel Trail before August 1 of this year. If that project is not awarded at the end of May, we will proceed with bidding a separate project for this new project as needed.

We ask the engineering associated with the assessed improvements be performed by Toman Engineering Company and request that this work be added to and be made part of Street Improvement Project 2012-08, District 170. As developer/owner of the Keidel's South Heart Terrace First and Second Addition projects, we hereby waive the right to protest the specials levied as part of this improvement project.

Enclosed is a copy of the plat showing the proposed improvement area. Please contact me if you need anything further.

Sincerely,



Kevin Christianson, President  
Morty's LLC  
4265 45<sup>th</sup> Street South #200  
Fargo, ND 58104

Cc: Dave Bechtel – City of Mandan  
Dave Thompson – Toman Engineering



Board of City Commissioners

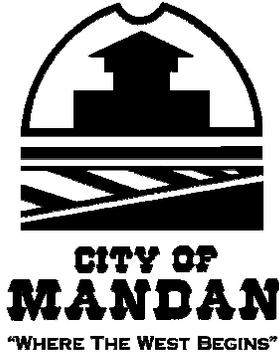
Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider the creation of, approval of the feasibility report for, approve the plans and specifications for, and authorize a change order or call for bids on Street Improvement District No. 170, Project No. 2012-08(Keidels South Heart Terrace, Phase III).

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New Business No. 9

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Engineering  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Bechtel  
**SUBJECT:** Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Keidel's South Heart Terrace Addition Phase III.

---

**STATEMENT/PURPOSE:** To authorize the installation of water and sewer for the development of the subject area.

**BACKGROUND/ALTERNATIVES:** The subject work would take place on Canyon Road SW and currently unnamed loop and cul-de-sac to the north of Canyon Road SW within the existing Keidel's South Heart Terrace subdivision master plan. Currently the only streets completed lie east of 4<sup>th</sup> Avenue SW within the subdivision. This planned infrastructure would open up approximately 30 additional lots for building. The project would provide water and sanitary sewer utilities, including a lift station, to these lots.

**ATTACHMENTS:**

1. Letter of request
2. Map of area of work

**FISCAL IMPACT:** The entire cost of the project is being paid by the developer as part of the 3-way agreement. The approximate construction costs come to \$472,073.

**STAFF IMPACT:** Minimal

**LEGAL REVIEW:** All of my commission data has been forwarded to the City Attorney for his review.

**RECOMMENDATION:** This office supports the authorization to move forward with this project.

**SUGGESTED MOTION:** I move to authorize the execution of the 3-way agreement for the construction of the subject project.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Keidel's South Heart Terrace Addition Phase III.

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May 9, 2012

City of Mandan  
Board of Commissioners  
205 2<sup>nd</sup> Ave. NW  
Mandan, ND 58554

RE: Keidel's South Heart Terrace 2<sup>nd</sup> Addition  
Underground Utility mains and services – phase 2 of 2012  
TECo #TBD

Honorable Commissioners;

Morty's LLC, owner of the property within Keidel's South Heart Terrace 2nd Addition, respectfully petition the Board to permit us to enter into a three way agreement between the City of Mandan, a yet to be determined contractor, and ourselves to allow private installation of public utilities along yet to be named streets in Keidel's South Heart Terrace Second Addition.

Sincerely,



Steve Iverson  
on behalf of Morty's LLC  
4265 45<sup>th</sup> Street South #200  
Fargo, ND 58104

Board of City Commissioners

Agenda Documentation

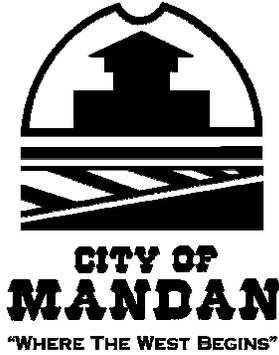
Meeting Date: May 15, 2012

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Keidel's South Heart Terrace Addition Phase III.

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CONSIDER DEDICATING A FUND?



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 9, 2012  
**SUBMITTING DEPARTMENT:** Planning  
**DEPARTMENT DIRECTOR:**  
**PRESENTER:** Dave Bechtel  
**SUBJECT:** Consider the preparation of a Comprehensive Plan for the City of Mandan

---

**STATEMENT/PURPOSE:** To consider the recommendation of the Planning & Zoning Commission to commission a firm to prepare a comprehensive plan for the City of Mandan.

**BACKGROUND/ALTERNATIVES:** The Planning & Zoning Commission has forward a recommendation to the City Commission for their consideration in preparing a comprehensive plan. At the last two meetings of the Commission, they looked over the elements of a plan and chose to tier the elements of the plan to narrow its focus and therefore allow elements to be picked and chose more easily, depending on what the penchant is for price or needs of the Commissions.

With the increase in development, comes zoning issues, infrastructure issues, transportation issues, city service needs and many other issues that need to be addressed to provide consistent decision making without jeopardizing other areas of concerns or creating other problems that may arise later due to lack of foresight.

A comprehensive plan is a working document that City officials, specifically planning, but relevant to all departments, can use to make a wide range of decisions and that facilitates the implementation and management of community investments and actions. Comprehensive plans incorporate many elements into the document for decision and planning purposes. The elements that comprise the plan are many and can vary in relevance and importance based on the needs and wants of community. The elements are listed below and the ranking in which the P&Z Commission ranked the importance to this plan.

- Infrastructure - #1
- Transportation – #1
- Housing - #2
- Parks & Recreation - #2

Board of City Commissioners

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Meeting Date: May 15, 2012

Subject: Consider approval for advertising for a request for qualifications for Engineering Services for the 2010 Sunset Drive NW Improvement project.

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- City Services – #1
- Public Involvement - #1
- Inter-governmental and Intra-governmental coordination - #3
- Future Land Use - #1
- Urban Design - #3
- Economic Development - #2
- Natural Resources - #3
- Cultural Resources - #3
- Implementation - #1
- Review of Zoning Ordinances - #1

Each element is more fully explained within the provided documentation attached with this item.

The planning horizon for the plan should be in the 5 to 10 year range and revisited and updated approximately every 5 years to keep the plan relevant and monitor its success.

One must also keep in mind that although the P&Z ranked them by tier as to what they would like to see within the plan, that we do have existing documents that are a great base to an element listed. For example, with infrastructure, we have existing master plans that are updated regularly for our water and waste water infrastructure. Although it's of first order importance, the plan may only glaze over the needs and reference the existing materials we have in place. This is a great cost saving measure to the City but also adds depth to the plan when pulling all the elements together. Please refer to the "Recent City of Mandan Planning Efforts" portion of the documentation, this makes reference to materials that we can utilize to comprise the plan and will not be lost in this effort but only enhance the plan. Some of the elements can also be combined.

Comprehensive plans can be expensive if we try to incorporate all elements into a plan and in great detail, the plan price can sky rocket. Being as we have important first tier elements in place to utilize within the plan and that some elements have very little desire, we feel the cost can be brought down and therefore price made to be the limiting factor for this study. We would ask to incorporate the first tier elements into the RFP and set the price tag at \$100,000 and work with the successful firm to meet our goals and expectations in the implementation if this plan.

ATTACHMENTS: Comprehensive Planning Document  
Elements of a Comprehensive Plan Document  
Recent City of Mandan Planning Efforts Document

Board of City Commissioners

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Subject: Consider approval for advertising for a request for qualifications for Engineering Services for the 2010 Sunset Drive NW Improvement project.

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FISCAL IMPACT: We would like to limit the plan to an amount of \$100,000 and implement the recommended first tier items into the plan.

STAFF IMPACT: A committee will need to be formed to review the proposals and select the firm based on the elements within the RFP. We would anticipate interaction with the successful firm to provide applicable documents and input to integrate into the plan.

LEGAL REVIEW: All of my commission data has been forwarded to the City attorney.

RECOMMENDATION: Allocate \$100,000 for the preparation of the plan. We would also recommend that the first order elements be considered for implementation within the plan. Allow for the Planning office to write an RFP for solicitation of firms to conduct the effort, for the selection committee, and negotiate and enter into a contract with the successful firm.

SUGGESTED MOTION: I move to approve the recommendation of the Planning & Zoning Commission for a comprehensive plan in the amount of \$100,000.

## **Comprehensive Planning**

### **Types of Comprehensive Plans**

- Vision Plan – establishes a unifying vision for a community that is implemented through a wide-range of actions. Vision plans provide very limited guidance on how to achieve the vision.
- Traditional Master Plan – establishes the long-range infrastructure (streets and infrastructure) framework for a community but provides limited policy direction on subjects use as land use, housing, parks and recreation, urban design, etc.
- Strategic Plan – establishes a strategic framework to promote a community vision or goal but is usually is limited to one subject area.
- Policy Plan – establishes goals, measurable objective and policies on a wide-range of subjects that define a community. A policy plan provides specific policy direction and implementation measures to achieve goals, objectives and policies. A policy plan required extensive data collection and analysis to formulate actionable policies.

A comprehensive policy plan incorporates the best features of each of these types of plans.

### **Planning Horizon**

The planning horizon is the timeframe in which a comprehensive plan is based. A typical comprehensive plan has a planning horizon of 20-25 years. The limitation of a long-term planning horizon is the uncertainty associated with the out-years of the plan. As time passes, a 20 or 25-year comprehensive plan can become outdated and therefore have limited relevance.

The Planning and Zoning Commission should consider recommending a comprehensive plan with a more limited planning horizon, such as 5 or 10 years. In the State of Montana, Growth Policies (the state's equivalent to a comprehensive plan) are required to be updated every five years. A regular update provides a community to revise policies based on changes circumstances and new opportunities or constraints. A periodic update of a comprehensive plan is the best way to keep the plan relevant and monitor the level of success in implementing the plan.

### **The Goal of Comprehensive Planning**

The goal of the comprehensive plan is to create a working document that city officials rely on to make a wide-range of decisions and that facilitates the implementation and management of community investments and actions.

## **Elements of a Comprehensive Plan**

The following is a list of elements or chapters typically contained in a comprehensive plan. Often communities choose to prepare a full comprehensive plan or comprehensive plan update with all of the outlined elements. However, due to funding constraints or the need to strategically focus on specific planning topics, some communities choose to prepare comprehensive plans of a more limited scope. Regardless of the scope of the planning project, communities that plan for the future are better positioned to proactively address community issues.

### **Public Involvement**

Like all other local government activities, planning requires the involvement and support of the community. The public's values and views on planning topics need to be taken into consideration in the development of community goals and policies. The planning process typically includes structured activities such as community meetings and workshops, focus groups, stakeholder interviews and surveys to obtain the community's views and interests.

### **Inter-governmental and Intra-governmental Coordination**

Intergovernmental coordination is required when a planning effort addresses subjects effecting more than one local government. For example, inter-governmental coordination is needed between the city and county and City of Bismarck, and intra-governmental coordination would be beneficial between the city and the park district when a city plans for future growth. Regardless of the planning topic, the goal of inter-governmental coordination is to achieve mutually beneficial agreement on planning issues that affect neighboring local governments and goal of intra-governmental coordination is increased coordination and efficiency of city government.

### **Future Land Use**

Many communities that are experiencing strong development pressures need to plan for the type and location of future growth. A future land use plan takes into account the external economic factors that create opportunities for a community. A future land use plan provides greater predictability for the community, local government and those with plans to develop their property. A future land use plan also assists local government in land development decisions. The basic elements of a future land use plan include:

- An inventory and map of existing land uses
- Growth management strategies/programs that proactively manage the fiscal impacts of future growth
- Future land use policies providing land development guidelines
- Future land use map

### **Urban Design**

Urban design when properly planned and implemented creates quality of place. An urban design plan weaves together the elements that define an urban environment which include buildings, public space, streets and the landscape. High quality urban design addresses the inter-relationships between these elements to create attractive places that people enjoy experiencing. Urban design places an emphasis on how the "public realm" (streets, pedestrian facilities, parks, etc.) physically relate to buildings and

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structures. It is implemented with detailed street and building design policies as well as traffic and pedestrian circulation policies. These policies are further implemented with urban design standards in a community's zoning ordinance.

### **Infrastructure**

Infrastructure planning is the study of water, sewer and drainage systems. Because infrastructure is often required to support new development Infrastructure planning is often combined with future land use planning. The capacity, layout and condition of the systems are studied. Recommendations are prepared to address existing deficiencies and improvements that will be required to service future growth. Infrastructure policy can define or limit a community's financial obligation associated with infrastructure improvements that are required to facilitate future growth.

### **Transportation**

Transportation plans study all modes of transportation including airports, rail, public transportation, motorized vehicles (cars and trucks), bicycling and pedestrians. The existing transportation network is studied to evaluate traffic safety and congestion. Future travel demand is forecasted to identify deficiencies in the transportation network that will arise as a result of increased traffic volumes. Access management plans, bicycle/pedestrian plans, safe routes to schools, truck routes, road maintenance programs and future roadways maps are items that can be prepared as stand-alone plans or be incorporated into a full transportation planning chapter. Access management and street connectivity policies are fundamental topics of transportation planning which promote a safe and efficient roadway system.

### **Housing**

Many communities in rapid growth areas are struggling with housing issues. Due to a strong demand for housing there is a very limited supply of housing for new residents and escalating prices are creating financial burdens on existing residents. A housing plan studies the existing housing market to determine if there are market barriers effecting the development of a sufficient number and variety of housing products. Land costs, the supply of undeveloped residentially zoned property, and the presence of regulatory (zoning and subdivision regulations) barriers are studied. A housing plan includes strategies and recommendations that address:

- Affordable/workforce housing
- Temporary housing for oil and gas industry workers
- Revisions to zoning regulation to increase the number and variety of housing products
- Subsidized housing for low income residents

### **Parks and Recreation**

In coordination with park district officials, a recreation plan identifies all existing recreational facilities in a community. The characteristics (e.g. ownership, location, type and age of facility, recreational programs offered, and patronage) of each facility are identified. With public input unmet recreational needs are identified. A recreation plan includes strategies and recommendations that address:

- The need or demand for new and/or expanded recreational programs and facilities
- Shared use of existing facilities (e.g. schools, libraries, community centers, etc.)

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- The community's desired level of service for parkland and policies to facilitate the acquisition of parkland

### **City Services**

The demand for city services increases as a city grows. The range of services that can be studied includes but is not limited to fire/EMS, police, street maintenance, public works and the various administrative services. City services plans include strategies and recommendations that address:

- Future needs for new or expanded facilities, including the relocation of facilities
- The community's desired level of service for city services and policies to maintain a minimum level of service
- Cost estimates and funding sources for new and/or expanded services and facilities
- An implementation plan specifying thresholds when action is needed

### **Economic Development**

An economic development plan is prepared in coordination with the local economic development organizations. The economic development plan includes a profile of the local economy that identifies the type and number of businesses in the community, characteristics of the local workforce, and an evaluation of existing economic development programs. The plan identifies targeted industries to promote a diversified economy. Economic development plans include strategies and recommendations that address:

- Main street/downtown revitalization
- Regulatory incentives, fast-track permitting and infrastructure cost sharing arrangements
- Participation in regional, state and federal economic development and redevelopment programs
- Coordinated efforts by all local economic development organizations

### **Natural Resources**

Natural resources contribute to the quality of life in a city. A natural resources plan establishes policies to protect and enhance existing natural resources (e.g. tree cover, wetlands, streams and rivers, etc.).

### **Cultural Resources**

Cultural resources also contribute to the quality of life in a city. Cultural resources include historic buildings and sites, museums, libraries, art galleries and studios, etc. All cultural resources in a community are identified and policies and programs are recommended to protect and enhance the cultural resources in the community.

### **Implementation**

A comprehensive plan that is not implemented provides little benefit to a community. The implementation chapter provides a roadmap on how to achieve or put into effect specific recommendations and policies contained in each chapter of a comprehensive plan. Implementation measures include actions and community investments. For each the following is provided:

- A specific description of the action or investment
- The department responsible for implementing the activity or project

Board of City Commissioners

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Subject: Consider approval for advertising for a request for qualifications for Engineering Services for the 2010 Sunset Drive NW Improvement project.

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- A monitoring program with measurable thresholds for the initiation of the action/investment
- Funding sources and financing strategies

### **Review of Zoning Ordinances**

A zoning ordinance is one of the important tools to implement a comprehensive plan.

Regulations contained in a zoning ordinance address many of the topics of a comprehensive plan which include future land use, urban design, transportation, infrastructure, housing, parks and recreation, natural resources, and historic resources. As such, communities often include as part of the preparation of a comprehensive plan a review of the zoning ordinance which includes identifies specific amendments to implement comprehensive plan goals, objectives and policies. Already known and identified shortcomings with a zoning ordinance can also guide the development of comprehensive plan policies.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider approval for advertising for a request for qualifications for Engineering Services for the 2010 Sunset Drive NW Improvement project.

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# **Recent City of Mandan Planning Efforts**

## **2007 to the Present**

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Consider approval for advertising for a request for qualifications for Engineering Services for the 2010 Sunset Drive NW Improvement project.

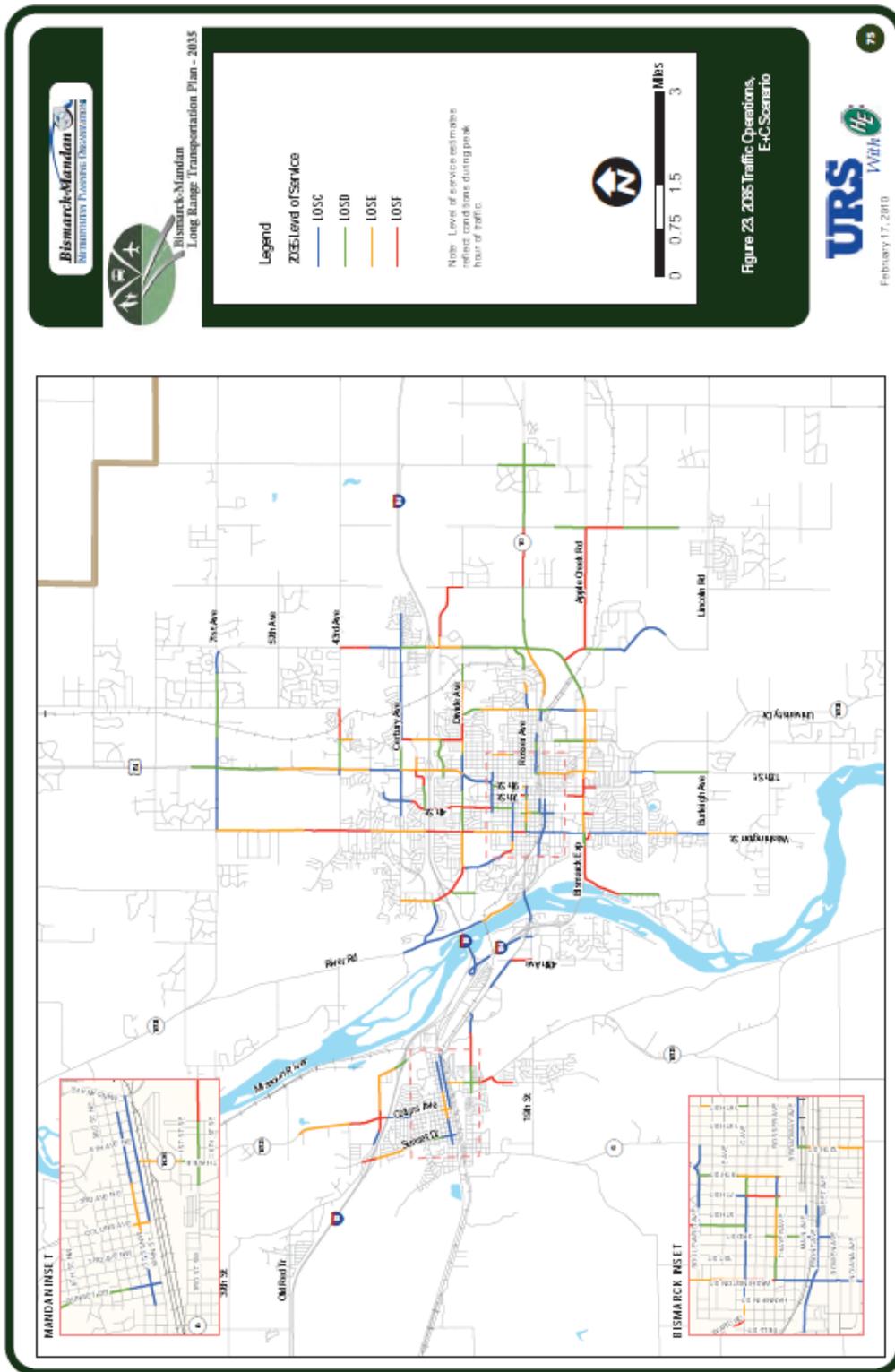
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## **Bismarck-Mandan Long-Range Transportation Plan – 2035 March, 2010**

**City officials participated in the preparation of the long-range transportation plan.**

- **Provided transportation goals and objectives.**
- **The objectives are not measureable.**
- **No policies provided to implement the plan.**
- **Provided an evaluation of the future level of service or capacity of major roads in the city that will assist future land use planning.**



## **Mandan Memorial Highway Corridor Study December, 2010**

**The corridor study provided a detailed evaluation of:**

- **The potential market for (re)development.**
- **The existing multi-modal transportation system.**
- **The visual environment.**
- **Availability of infrastructure**
- **Various environmental considerations.**

**The corridor study identified various community gateway streetscape improvements and specific areas which had an opportunity for new development and redevelopment. The new development and redevelopment opportunity areas were represented in a series of proposed land use plans.**

**The corridor study provided 21 recommended amendments to the city zoning ordinance and zoning map intended to implement the proposed land use plans and vision for the corridor.**

**In essence, the comprehensive planning for this area of the city has been completed. The goal would be incorporate into the comprehensive plan those planning concepts and recommendations from the corridor study the city wishes to implement.**

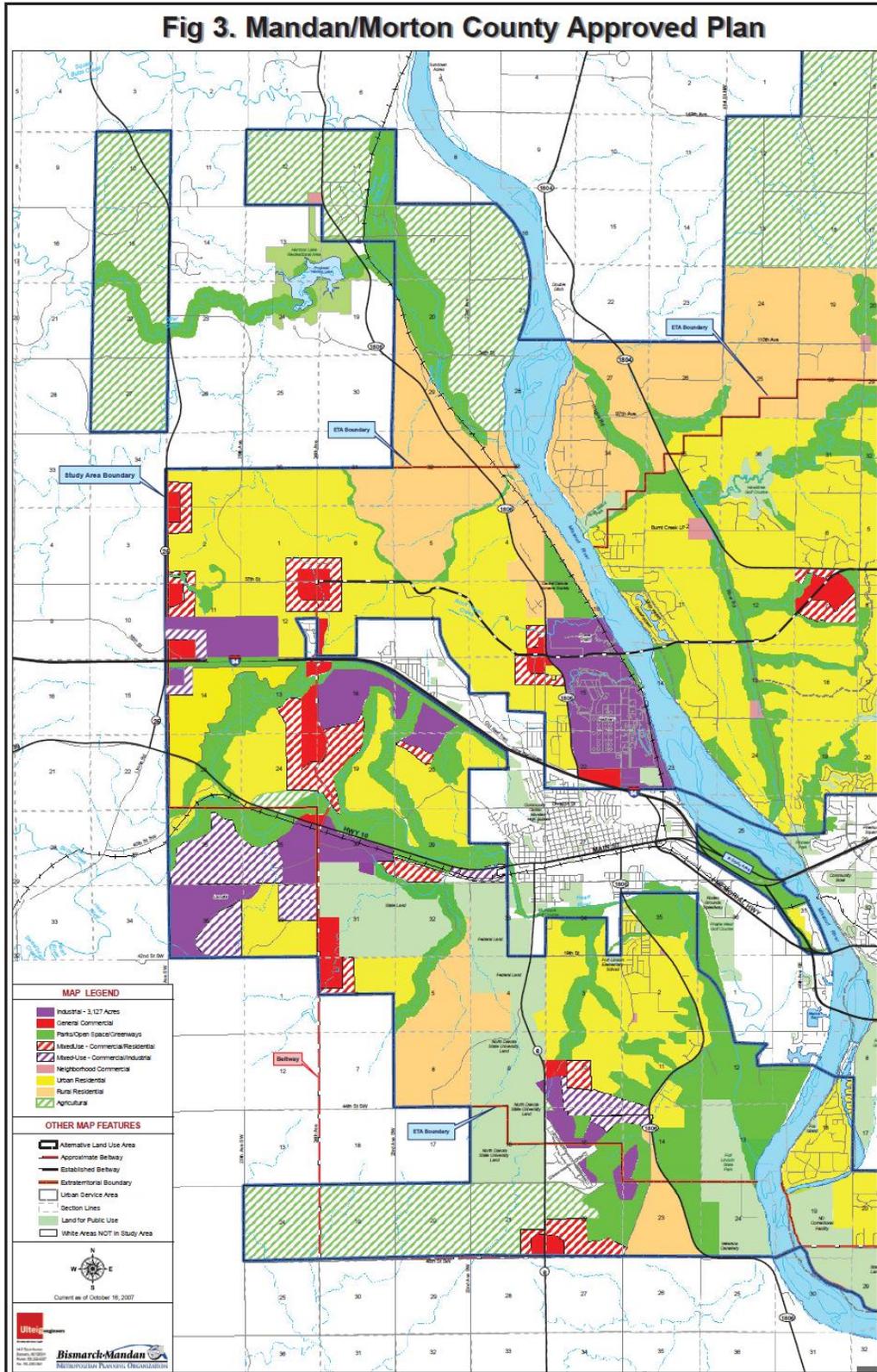
## **Mandan Tomorrow June, 2009**

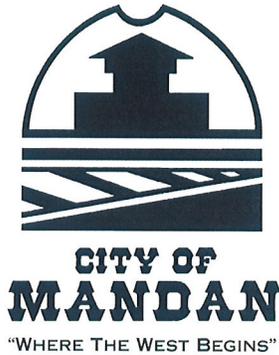
- **Mandan Tomorrow is a strategic economic development plan.**
- **Topics included 1) leadership, pride and image, 2) economic opportunity and prosperity, 3) quality places and destinations, and 4) education and workforce.**
- **For each topic strategies and actions were identified.**
- **Mandan Tomorrow is an excellent reference for the community visioning portion of a comprehensive plan and provides numerous goals and objectives that can be incorporated into an economic development chapter of the comprehensive plan. The comprehensive plan would supplement Mandan Tomorrow with measurable objectives and detailed policies.**

## **Regional Future Land Use Plan October, 2007**

**City officials participated in the preparation of the regional future land use plan.**

- **The plan was prepared to identify growth areas that would provide inputs to the future travel demand model used for the long-range transportation plan.**
- **It was a generalized regional future land use plan.**
- **No policies were provided to implement the plan.**
- **The plan should be referenced during the preparation of the comprehensive plan future land use map but more detailed planning and analysis of future land uses will be required.**





## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 7, 2012  
**SUBMITTING DEPARTMENT:** Administration  
**DEPARTMENT DIRECTOR:** Jim Neubauer, City Administrator  
**PRESENTER:** Jim Neubauer, City Administrator  
**SUBJECT:** Selling City Owned Lots

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STATEMENT/PURPOSE: To consider advertising for sale city owned lots.

BACKGROUND/ALTERNATIVES: Properties over the years come back to the City for non payment of taxes and other reasons.

- A) McKenzie and 46th  
Parcel 65-1804300 Sequence 9606 H  
Lakewood 1st Block 2 a portion of lot 1  
2565 square feet  
Special Assessment Balance \$0
  
- B) 46th Avenue & 29th Street SE  
Parcel 65-5263151 Sequence 8700 A  
Shores of Marina Bay Block 1 Auditors Lot 1  
4332 square feet  
Special Assessment Balance \$275.50
  
- C) 110 ½ 2<sup>nd</sup> Ave NW  
Parcel 65-2332000  
Mandan Proper So 15' of E 40' Lot 16  
Special Assessment Balance \$2,283.47

We would notify adjoining property owners of public sale with a minimum bid of \$1.00. The city would remove any parking and/or signs from property and only maintain in accordance with weed ordinance if properties do not sell.

I would recommend the property remain listed for sale for a minimum of thirty days. If no offers are received within the thirty day period the property would remain for sale and offers would be considered on a basis that would be beneficial to the city.

Any offers on the property would be brought back to the Commission for approval.

ATTACHMENTS: Property information sheet with accompanying map.

FISCAL IMPACT: unknown

STAFF IMPACT: the sale of these lots would remove the maintenance from the City of Mandan.

LEGAL REVIEW:

RECOMMENDATION: I recommend the advertisement for the sale of the aforementioned lots.

SUGGESTED MOTION: I move to advertise the aforementioned lots for sale.

As of :  
5/10/2012

Parcel Number: **65-1804300**

Payable Year: 2011

Previous Year Tax Stmt

Current Year Tax Stmt

[General Info](#) | [Tax Info](#) | [Current Receipts](#) | [Special Asmts](#) | [Unpaid Tax](#) | [History](#) | [View Maps](#)

Taxpayer/Owner Information	General				
Taxpayer #9	MP #9	Re/Mh:	REAL ESTATE		
MORTON COUNTY TAX PROPERTY	Twp/City	School	Fire	Park	Water
MANDAN, ND 58554-3158	65	1	0	65	2

Description				
Sect	Twp	Range	Lot	Block
0	0	0	0	2

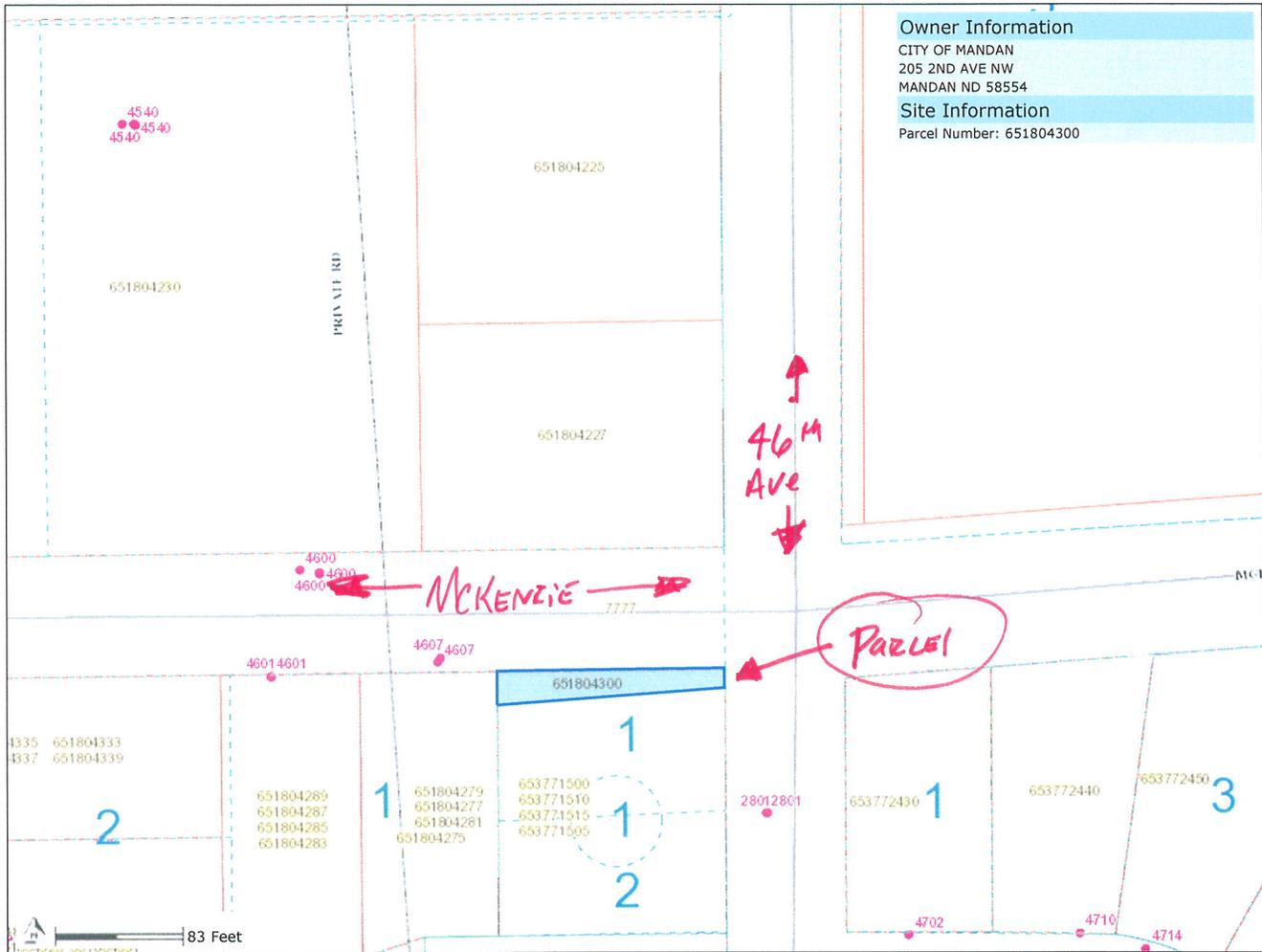
LAKEWOOD 1ST  
A PORTION OF LOT 1 (2,565 SQ FT)  
(9606H)  
(4651 MCKENZIE DR SE)

**Property Address**  
4651 MCKENZIE DR SE

**Escrow**  
0  
**Deeded Acres:** 0.00

[Another Search](#) | [Back to ParcelList](#) |





Please choose **Landscape** when you print. [Print Now](#)

As of :  
5/10/2012

Parcel Number: **65-5263151**

Payable Year: 2011

[Previous Year Tax Stmt](#)

[General Info](#) | [Tax Info](#) | [Current Receipts](#) | [Special Asmts](#) | [Unpaid Tax](#) | [History](#) | [View Maps](#)

[Current Year Tax Stmt](#)

Taxpayer/Owner Information	General				
<b>Taxpayer #3067</b>	<b>MP #3067</b>	Re/Mh: REAL ESTATE			
CITY OF MANDAN 205 2ND AVE NW MANDAN ND 58554	<b>Twp/City</b>	<b>School</b>	<b>Fire</b>	<b>Park</b>	<b>Water</b>
	65	1	0	65	2

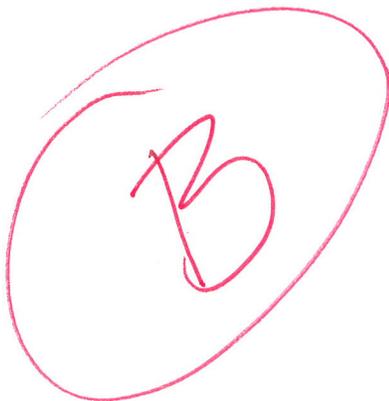
Description				
Sect	Twp	Range	Lot	Block
0	0	0	0	1

THE SHORES OF MARINA BAY REPLAT  
AUDITOR'S LOT 1  
(REPLAT OF LOT 6 BLK 1)  
(8700A)

**Property Address**

**Escrow**  
0  
**Deeded Acres: 0.00**

[Another Search](#) | [Back to ParcelList](#) |





As of : 5/7/2012

Parcel Number: 65-2332000

Payable Year: 2011

[Previous Year Tax Stmt](#)

[General Info](#) | [Tax Info](#) | [Current Receipts](#) | [Special Asmts](#) | [Unpaid Tax](#) | [History](#) | [View Maps](#)

[Current Year Tax Stmt](#)

Taxpayer/Owner Information	General				
<b>Taxpayer #3067</b>	MP #3067 Re/Mh: REAL ESTATE				
CITY OF MANDAN	<b>Twp/City</b>	<b>School</b>	<b>Fire</b>	<b>Park</b>	<b>Water</b>
205 2ND AVE NW	65	1	0	65	2
MANDAN ND 58554					

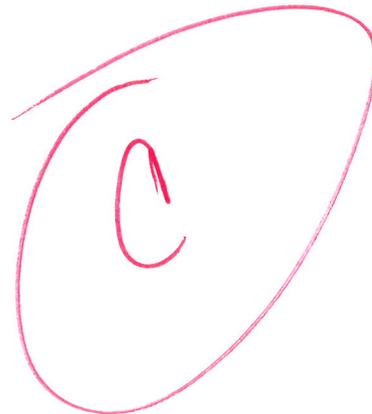
Description				
Sect	Twp	Range	Lot	Block
0	0	0	0	8

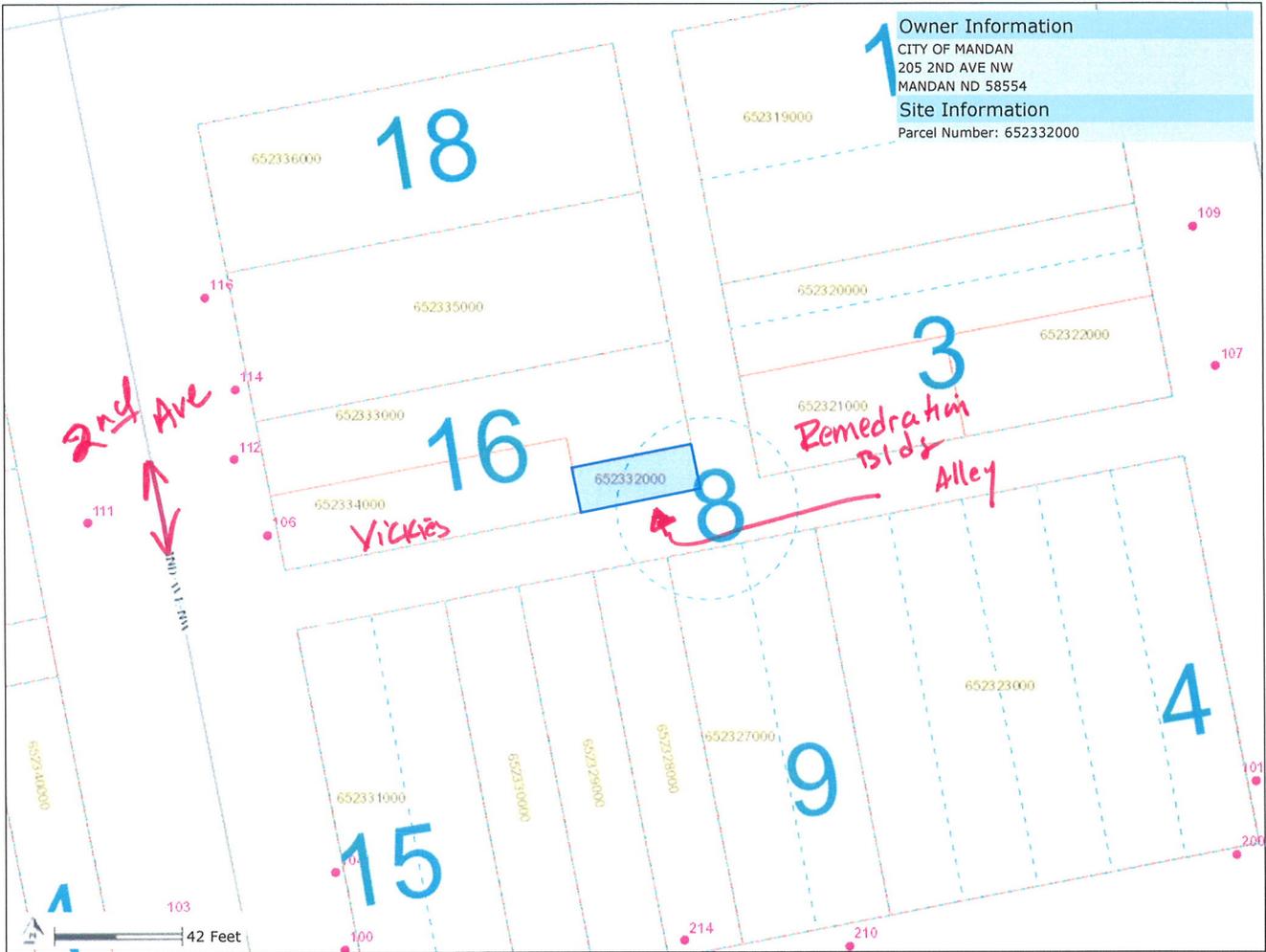
MANDAN PROPER  
SO 15' OF E 40' LOT 16  
(3243)

**Property Address**  
110 1/2 2ND AVE NW

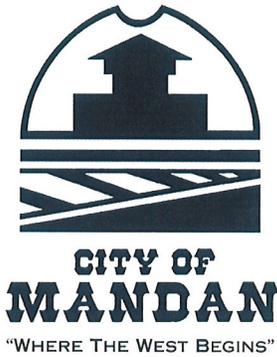
**Escrow**  
0  
**Deeded Acres: 0.00**

[Another Search](#) | [Back to ParcelList](#) |





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## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 15, 2012  
**PREPARATION DATE:** May 11, 2012  
**SUBMITTING DEPARTMENT:** Administration  
**DEPARTMENT DIRECTOR:** Jim Neubauer, City Administrator  
**PRESENTER:** Jim Neubauer, City Administrator  
**SUBJECT:** Contract for Architectural Services related to Mandan City Hall

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STATEMENT/PURPOSE: To consider entering into an agreement for architectural services for Mandan City Hall.

BACKGROUND/ALTERNATIVES: We have been struggling with the heating and cooling system in City Hall for at least the past 12 years. Continuous repairs to the boilers and air handling units have been made at the beginning of each season. At this point we are having trouble getting boilers to pass the inspection.

To date we have had Wenck Associates perform an energy Audit/Assessment in June 2010, which made several recommendations regarding the heating and cooling system. In addition we had the ND Department of Health investigate air quality issues. They found issues low humidity, boilers and old duct work that has collapsed or nonoperational.

Any extensive work done to the heating and cooling system would require substantial disruption to the current working environment. In that vein, we would also like to review the space utilization in City Hall. The last renovation was in the mid 1970's and we think there are more efficient uses and layouts for this building. For example, City Hall no longer houses the Morton County Library or Golden Age Services. Utilization of the 3<sup>rd</sup> floor is nonexistent except for storage and we believe exceptional office space could be created. In addition, there is the need for an elevator to the second and third floors.

While the heating and cooling system replacement is driving force behind the request, we would like to look at a long range plan for this building.

ATTACHMENTS: AIA Agreement between the City of Mandan & Al Fitterer Architect, PC

Board of City Commissioners

Agenda Documentation

Meeting Date: May 15, 2012

Subject: Contract for Architectural Services related to Mandan City Hall

Page 2 of 2

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FISCAL IMPACT: \$10-15,000 from the Building Fund.

STAFF IMPACT: Staff will assist as needed.

LEGAL REVIEW: Contract is attached for Attorney Brown's review.

RECOMMENDATION: I recommend entering into a contract with Al Fitterer Architects for preliminary heating and cooling system design along with a space utilization plan and scope of project.

SUGGESTED MOTION: I move to enter into a contract with Al Fitterer Architects for preliminary heating and cooling system design along with a space utilization plan and scope of project.

 **AIA**® Document B101™ – 2007

**Standard Form of Agreement Between Owner and Architect**

AGREEMENT made as of the \_\_\_\_\_ day of May in the year Two Thousand Eleven

*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

City of Mandan  
205 Second Avenue NW  
Mandan, ND 58554

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

and the Architect:  
*(Name, legal status, address and other information)*

Al Fitterer Architect PC  
200 3rd Avenue NW  
PO Box 129  
Mandan, ND 58554  
Telephone Number: 701-663-7543  
Fax Number: 701-663-7544

for the following Project:  
*(Name, location and detailed description)*

Mandan City Hall / Memorial Building  
ADDITION AND RENOVATIONS  
205 Second Avenue NW  
Mandan, ND 58554

The Owner and Architect agree as follows.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

| to be determined.

.2 Substantial Completion date:

| to be determined.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

#### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

Init.

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§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

\$1,000,000

.2 Automobile Liability

\$1,000,000

.3 Workers' Compensation

Per State of North Dakota

.4 Professional Liability

\$1,000,000

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 ~~and include usual and customary structural, mechanical, and electrical engineering services.~~ Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if ~~necessary,~~ necessary as the Project proceeds until the commencement of construction.

Init.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, ~~including the feasibility of incorporating environmentally responsible design approaches.~~ The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a ~~site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling.~~ preliminary building plans, sections. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

~~§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.~~

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents

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including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, typical construction details, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

##### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by~~

- ~~.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

Init.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

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(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	<u>Owner</u>	
§ 4.1.2 Multiple preliminary designs	<u>NP</u>	
§ 4.1.3 Measured drawings	<u>NP</u>	
§ 4.1.4 Existing facilities surveys	<u>Architect</u>	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	<u>NP</u>	
§ 4.1.6 Building information modeling	<u>NP</u>	
§ 4.1.7 Civil engineering	<u>NP</u>	
§ 4.1.8 Landscape design	<u>NP</u>	
§ 4.1.9 Architectural Interior Design (B252™–2007)	<u>NP</u>	
§ 4.1.10 Value Analysis (B204™–2007)	<u>NP</u>	
§ 4.1.11 Detailed cost estimating	<u>NP</u>	
§ 4.1.12 On-site project representation	<u>NP</u>	
§ 4.1.13 Conformed construction documents	<u>NP</u>	
§ 4.1.14 As-Designed Record drawings	<u>NP</u>	
§ 4.1.15 As-Constructed Record drawings	<u>Architect</u>	
§ 4.1.16 Post occupancy evaluation	<u>NP</u>	
§ 4.1.17 Facility Support Services (B210™–2007)	<u>NP</u>	
§ 4.1.18 Tenant-related services	<u>NP</u>	
§ 4.1.19 Coordination of Owner’s consultants	<u>NP</u>	
§ 4.1.20 Telecommunications/data design	<u>NP</u>	
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	<u>NP</u>	
§ 4.1.22 Commissioning (B211™–2007)	<u>NP</u>	
§ 4.1.23 Extensive environmentally responsible design	<u>NP</u>	
§ 4.1.24 LEED® Certification (B214™–2007)	<u>NP</u>	
§ 4.1.25 Fast-track design services	<u>NP</u>	
§ 4.1.26 Historic Preservation (B205™–2007)	<u>NP</u>	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	<u>NP</u>	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect’s responsibility, if not further described in an exhibit attached to this document.

N.A.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;

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- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 One ( 1 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 One ( 1 ) visits to the site by the Architect over the duration of the Project during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

~~§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

~~§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

~~§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.~~

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

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## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official

regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

~~§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

~~§ 8.2.2~~ The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 8.2.3~~ The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

### ~~§ 8.3~~ ARBITRATION

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations

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purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

~~§ 8.3.2~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

~~§ 8.3.3~~ The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### ~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

~~§ 8.3.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 8.3.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 8.3.4.3~~ The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

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§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, ~~except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

##### 12.75% of Construction Cost

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

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Hourly per attached rate schedule.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Fifteen percent ( 15.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	%)
Bidding or Negotiation Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See Attached.

Employee or Category	Rate
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### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;

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- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent ( 15.00 %) of the expenses incurred.

**§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Hourly to date of termination - Not to Exceed per 11.1.

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

1.50 % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

Asbestos Inspection, Sample collection and testing.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

N.A.

- .3 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Hourly Rate Schedule





**Al Fitterer Architect PC**

**200 Third Avenue NW • PO Box 129 • Mandan, ND 58554 • Phone (701)663-7543 • Fax (701)663-7544**

**FEE SCHEDULE (HOURLY RATE) - JANUARY 1, 2012**

PRINCIPAL	\$145.00 PER HOUR
ARCHITECT III	115.00 PER HOUR
ARCHITECT II	100.00 PER HOUR
ARCHITECT I	90.00 PER HOUR
ARCHITECT IN TRAINING III	80.00 PER HOUR
ARCHITECT IN TRAINING II	65.00 PER HOUR
ARCHITECT IN TRAINING I	50.00 PER HOUR
CAD OPERATOR IV	75.00 PER HOUR
CAD OPERATOR III	65.00 PER HOUR
CAD OPERATOR II	50.00 PER HOUR
CAD OPERATOR I	40.00 PER HOUR
TECHNICAL III	60.00 PER HOUR
TECHNICAL II	50.00 PER HOUR
TECHNICAL I	40.00 PER HOUR
CLERICAL II	60.00 PER HOUR
CLERICAL I	40.00 PER HOUR
PHOTO COPIES 8-1/2 X 11	.20 PER SHEET
COMMERCIAL PRINTER	COST + 15%
PLOTTING COMPUTER DRAWINGS (24 X 36)	\$4 PER SHEET
TELEPHONE/POSTAGE/OFFICE SUPPLIES	COST + 15% or 2% of Fee
MILEAGE	.51 PER MILE



**MONTANA-DAKOTA  
UTILITIES CO.**

A Division of MDU Resources Group, Inc.

909 Airport Road  
P.O. Box 1457  
Bismarck, ND 58502-1457  
(701) 224-5815

Res. + Ord.  
# 1 + 2

SCAN to  
Jim ✓  
+ RETURN

Done  
J

April 20, 2012

Mr. Jim Neubauer  
Mandan City Administrator  
205 2<sup>nd</sup> Avenue NW  
Mandan, ND 58554

Dear Mr. Neubauer,

Enclosed is a copy of the executed Service Area Agreement between Montana-Dakota Utilities Co., and Mor-Gran-Sou Electric Cooperative, Inc. Also enclosed are franchises for both companies that would run concurrent with the Service Area Agreement.

Montana-Dakota Utilities Co. and Mor-Gran-Sou Electric Cooperative, Inc., respectfully request the City of Mandan to approve the Service Area Agreement and to issue franchises to both companies, to run concurrent with the agreement.

Sincerely

Craig Lohstreter  
Region Electric Superintendent

enclose.

cc: Randy Ressler – Mor-Gran-Sou

Res. + Ord. # 1  
Ord. # 1122

FRANCHISE NO. \_\_\_\_\_

A FRANCHISE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A DIVISION OF MDU RESOURCES GROUP, INC., A CORPORATION, IT SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE

\_\_\_\_\_  
CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA

AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR PUBLIC AND PRIVATE USE.

SECTION I. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electricity for public and private use.

To encourage harmony and operational efficiency in the provision of electric distribution service in the Municipality, to promote safety and discourage unreasonable duplication of electric facilities, to assure adequate and reliable service for all consumers within the Municipality, and provide franchise grantees with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the Municipality during the terms of this Franchise, the authority granted by this Franchise to Grantee is limited to the use of the Municipality's streets, alleys and public grounds for the purpose of distributing electric energy for public and private use within the service areas and to the service locations of the Grantee as designated and agreed to in the Service Area Agreement executed by Mor-Gran-Sou Electric Cooperative, Inc. and Grantee and attached as Exhibit A to this Resolution, including any amendments or modifications to the Service Area Agreement as agreed and approved pursuant to the terms of the Service Area Agreement. The Grantee shall have all the rights, privileges, and obligations to provide electric distribution service within such service areas and to such service locations as stated in the Service Area Agreement. This limitation shall not restrict the Grantee's right to occupy and use the streets, alleys and public grounds of the Municipality anywhere within the Municipality to construct, operate, and maintain transmission and distribution line facilities for the purpose of providing adequate electric service within the service areas and to the service locations of the Grantee under the Service Area Agreement as provided in paragraph 11 of such Agreement.

SECTION III. Grantee shall maintain an efficient distribution system for furnishing electricity for public and private use at such rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

SECTION V. The Municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's electric distribution system may be affected by the improvement. If during the period of this franchise the Municipality shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee, upon reasonable notice by the Municipality, at its own expense may remove, relocate or rearrange its electric distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any electric distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the Municipality, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota.

SECTION VI. Unless otherwise provided in any permit or regulation of the Municipality, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the electric distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

SECTION VII. Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

SECTION VIII. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

SECTION IX. Within thirty (30) days after Grantee is notified of approval of this franchise, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

SECTION X. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this franchise shall become effective as provided by law.

Section XI. Termination of Prior Franchise. At the request of the Grantee, the franchise approved September 21, 2010 granting the Grantee the right to construct, maintain and operate an electric distribution system in the Municipality for a term of twenty (20) years, and any other prior franchise granting the Grantee the right to construct, maintain and operate an electric distribution system in the Municipality, are hereby terminated and the Grantee's right to construct, maintain and operate an electric distribution system in the Municipality shall hereafter be governed by this Franchise.

Passed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST: \_\_\_\_\_  
Auditor

\_\_\_\_\_  
Mayor-Chairman

(Seal of the Municipality)

ND



**MONTANA-DAKOTA**  
**UTILITIES CO.**

A Division of MDU Resources Group, Inc.

909 Airport Road  
P.O. Box 1457  
Bismarck, ND 58502-1457  
(701) 224-5815

Res. + Ord.  
# 1 + 2

SCAN to  
Jim ✓  
& RETURN

Done  
J

April 20, 2012

Mr. Jim Neubauer  
Mandan City Administrator  
205 2<sup>nd</sup> Avenue NW  
Mandan, ND 58554

Dear Mr. Neubauer,

Enclosed is a copy of the executed Service Area Agreement between Montana-Dakota Utilities Co., and Mor-Gran-Sou Electric Cooperative, Inc. Also enclosed are franchises for both companies that would run concurrent with the Service Area Agreement.

Montana-Dakota Utilities Co. and Mor-Gran-Sou Electric Cooperative, Inc., respectfully request the City of Mandan to approve the Service Area Agreement and to issue franchises to both companies, to run concurrent with the agreement.

Sincerely

Craig Lohstreter  
Region Electric Superintendent

enclose.

cc: Randy Ressler – Mor-Gran-Sou

Res. + Ord. #2  
Ord. # 1123

FRANCHISE NO. \_\_\_\_\_

A FRANCHISE GRANTING TO MOR-GRAN-SOU ELECTRIC COOPERATIVE, INC., IT SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE

CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA

AN ELECTRIC DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY FOR PUBLIC AND PRIVATE USE.

SECTION I. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Mor-Gran-Sou Electric Cooperative, Inc. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, an electric distribution system for transmitting and distributing electricity for public and private use.

To encourage harmony and operational efficiency in the provision of electric distribution service in the Municipality, to promote safety and discourage unreasonable duplication of electric facilities, to assure adequate and reliable service for all consumers within the Municipality, and provide franchise grantees with equitable participation in the provision of electric distribution service within undeveloped areas annexed to the Municipality during the terms of this Franchise, the authority granted by this Franchise to Grantee is limited to the use of the Municipality's streets, alleys and public grounds for the purpose of distributing electric energy for public and private use within the service areas and to the service locations of the Grantee as designated and agreed to in the Service Area Agreement executed by Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., and Grantee and attached as Exhibit A to this Resolution, including any amendments or modifications to the Service Area Agreement as agreed and approved pursuant to the terms of the Service Area Agreement. The Grantee shall have all the rights, privileges, and obligations to provide electric distribution service within such service areas and to such service locations as stated in the Service Area Agreement. This limitation shall not restrict the Grantee's right to occupy and use the streets, alleys and public grounds of the Municipality anywhere within the Municipality to construct, operate, and maintain transmission and distribution line facilities for the purpose of providing adequate electric service within the service areas and to the service locations of the Grantee under the Service Area Agreement as provided in paragraph 11 of such Agreement.

SECTION III. Grantee shall maintain an efficient distribution system for furnishing electricity for public and private use at such rates as may promulgated and adopted by Grantee's Board of Directors, as duly elected, and pursuant to the laws and regulations of the State of North Dakota and the Rural Utilities Service.

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

SECTION V. The Municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee. The Municipality will give Grantee reasonable notice of plans for improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's electric distribution system may be affected by the improvement. If during the period of this franchise the Municipality shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee, upon reasonable notice by the Municipality, at its own expense may remove, relocate or rearrange its electric distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any electric distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the Municipality, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota.

SECTION VI. Unless otherwise provided in any permit or regulation of the Municipality, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the electric distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

SECTION VII. Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

SECTION VIII. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

SECTION IX. Within thirty (30) days after Grantee is notified of approval of this franchise, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

SECTION X. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this franchise shall become effective as provided by law.

Section XI. Termination of Prior Franchise. At the request of the Grantee, Franchise No. 792 approved January 8, 1992, Franchise No. 829 approved November 1., 1994, and Franchise No. 843 approved March 19, 1996 granting the Grantee the right to construct, maintain and operate an electric distribution system in the Municipality for a term of twenty (20) years, and any other prior franchise granting the Grantee the right to construct, maintain and operate an electric distribution system in the Municipality, are hereby terminated and the Grantee's right to construct, maintain and operate an electric distribution system in the Municipality shall hereafter be governed by this Franchise.





**MONTANA-DAKOTA**

**UTILITIES CO.**

*A Division of MDU Resources Group, Inc.*

909 Airport Road

P.O. Box 1457

Bismarck, ND 58502-1457

(701) 224-5815

Supplement  
to ORD. 1122 & 1123

May9, 2012

Mr. Jim Neubauer  
Mandan City Administrator  
205 2<sup>nd</sup> Avenue NW  
Mandan, ND 58554

Dear Mr. Neubauer,

Enclosed is a copy of Amendment #1 which is to be included with the executed Service Area Agreement between Montana-Dakota Utilities Co., and Mor-Gran-Sou Electric Cooperative, Inc. and the franchise requests that are before the city of Mandan.

Sincerely

Craig Lohstreter  
Region Electric Superintendent

enclose.

cc: Randy Ressler – Mor-Gran-Sou

**AMENDMENT NO. 1 TO  
Service Area Agreement**

This **AMENDMENT No. 1** to the **Service Area Agreement** is entered into by and between **Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.** (Montana-Dakota), and **Mor-Gran-Sou Electric Cooperative** (Mor-Gran-Sou). Montana-Dakota and Mor-Gran-Sou being referred to together as the “**PARTIES**” and individually as “**PARTY**”.

**WHEREAS**, the **PARTIES** entered into a Service Area Agreement (“**AGREEMENT**”) designating the respective service areas of each of the **PARTIES** within the geographic scope of the **AGREEMENT** including the City of Mandan, and

**WHEREAS**, the **PARTIES** desire to amend the **AGREEMENT** as and to the extent provided in this Amendment.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this Amendment, the **PARTIES** covenant and agree as follows:

1. Section 14 of the **AGREEMENT** shall be amended to provide as follows:

Conditions Precedent to Agreement. This Agreement is subject to approval by the North Dakota Public Service Commission and the Mandan Board of City Commissioners. If this Agreement is disapproved by either entity, or if the Mandan Board of City Commissioners does not grant franchises consistent with the terms of this Agreement before June 30, 2012, this Agreement shall be void *ab initio*.

2. Except as expressly amended herein, all other terms, covenants and conditions contained in the **AGREEMENT** shall continue to remain unchanged and in full force and effect and are hereby ratified and confirmed.
3. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same agreement. Counterpart signatures may be delivered by facsimile or electronic transmission, each of which shall have the same force and effect as an original signed copy.

4. Each signatory to this Amendment represents that he/she has the authority to execute and deliver this Amendment on behalf of the party set forth above his/her signature.

IN WITNESS WHEREOF the PARTIES have caused this instrument to be executed, the day and year indicated below.

**Montana-Dakota Utilities Co.,  
a Division of MDU Resources Group, Inc.**

By: Del H. Hebra

Title: PRESIDENT & CEO

Date: 5/8/2012

**Mor-Gran-Sou Electric Cooperative**

By: [Signature]

Title: Board Chair

Date: 5/4/12

## SERVICE AREA AGREEMENT

This Service Area Agreement (Agreement) is between Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. \_\_\_\_\_ (Montana-Dakota), and Mor-Gran-Sou Electric Cooperative, Inc., P.O. Box 297, 202 6<sup>th</sup> Avenue West, Flasher, ND 58535 (Mor-Gran-Sou).

### RECITALS

Montana-Dakota and Mor-Gran-Sou have franchises to construct, maintain and operate electric distribution systems in the City of Mandan, North Dakota granted by the City of Mandan pursuant to §40-05-01 N. D. Cent. Code.

Section 49-03-06 N. D. Cent. Code authorizes agreements among electric providers to encourage harmony and operational efficiency in the provision of electric distribution service; to promote safety; to discourage unreasonable duplication of electric facilities; to assure adequate and reliable electric service; and to obtain anti-trust immunity for agreements such as this.

Montana-Dakota and Mor-Gran-Sou are "electric providers" as defined under §49-03-01.5 N. D. Cent. Code.

Montana-Dakota and Mor-Gran-Sou desire to avoid misunderstanding and disagreement over areas that each party is to serve and over Service Locations within these areas; provide both parties with equitable participation in the provision of electric distribution service in un-served areas governed by this Agreement; encourage operational efficiency and safety and discourage unreasonable duplication of electric facilities; and assure orderly growth of electric infrastructure for adequate and reliable service in the areas governed by this agreement.

### ARTICLE I. SERVICE AREAS, LOCATIONS AND FACILITIES

Montana-Dakota and Mor-Gran-Sou agree to the following:

1. Areas Governed. The areas governed by this Agreement are the City of Mandan and those areas within the two (2) mile extraterritorial jurisdictional boundary defined by the City of Mandan as of the date of this Agreement and such other areas outside of the green and yellow shaded areas on the attached map that are annexed to the City of Mandan during the term of this Agreement. The provision of electric distribution service to Service Locations outside the geographic scope of this Agreement shall be governed by applicable law, any future amendments extending the scope of this Agreement or new service area agreements that may be made between the parties.
2. Definitions. For purposes of this Agreement:

The term "Service Location" shall mean structures, facilities, or improvements located within the areas governed by this Agreement to which retail electric service is provided.

The term "existing Service Location" shall mean the Service Locations to which a party provides service as shown by its books and records as of the date of signing of this Agreement. The term includes all expansions, improvements, or additions to a Service Location made after the date of signing of this Agreement that do not amount to a new Service Location.

The term "new Service Location" shall mean a Service Location that is not an existing Service Location. An existing Service Location is converted to a new Service Location when: (1) retail electric service is provided to a Service Location after electric service has been disconnected and electric service use abandoned at the Service Location for a period of at least 90 days; or (2) a customer makes a material change of use of the Service Location or modifies the structures, facilities or improvements on the Service Location and such change or modification necessitates a replacement or substantial modification of the electric service facilities historically used to serve the Service Location, including but not limited to:

- o Replacement of single phase family/farm use to three phase commercial/industrial or three phase high density residential use (18 or more units);
- o Replacement of single phase commercial/industrial use to three phase commercial/industrial use of 2MW or greater of connected load; and

3. Montana-Dakota Service Area. The service area of Montana-Dakota is that area governed by this Agreement illustrated in yellow on the attached map, incorporated by reference as integral to this Agreement. Montana-Dakota will provide retail electric service in this service area and Mor-Gran-Sou shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Montana-Dakota will serve all of its existing Service Locations and all new Service Locations in its service area while Mor-Gran-Sou will continue to serve only its existing Service Locations in Montana-Dakota's service area. Mor-Gran-Sou may serve new Service Locations within Montana-Dakota's service area only as provided in this Agreement or in any amendment to this Agreement.

4. Mor-Gran-Sou Service Area. The service area of Mor-Gran-Sou is that area governed by this Agreement illustrated in green on the attached map, incorporated by reference as integral to this Agreement. Mor-Gran-Sou will provide retail electric service in this service area and Montana-Dakota shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Mor-Gran-Sou will serve all of its existing Service Locations and all new Service Locations in its service area while Montana-Dakota will continue to serve only its existing Service Locations within Mor-Gran-Sou's service area. Montana-Dakota may serve new Service Locations

within Mor-Gran-Sou's service area only under conditions further stipulated in this Agreement.

5. Separate Agreements Pertaining to Service Locations. With the written consent of the parties:
  - o Electric service may be supplied by one party to a new Service Location in another party's service area on a temporary or permanent basis.
  - o New or existing Service Locations may be exchanged, even though the number or service characteristics of the Service Locations to be exchanged are not equal.

Agreements pertaining to Service Locations shall not alter or stand as precedent to alter the intent of this Agreement regarding the provision of retail electric service in defined service areas.

6. Service Location Disputes. This Agreement is subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle Service Location disputes arising under the Agreement.
7. Duplication of Facilities. The parties will avoid unreasonable duplication of facilities in order to provide electric service for all consumers efficiently and economically. The duplication of some facilities, however, will not violate or serve as grounds to alter this Agreement.
8. Sale, Transfer, Exchange or Lease of Equipment or Facilities. A sale, transfer, exchange or lease of equipment or facilities owned by one party but located in the other party's service area may be made with the written consent of both parties. To the extent applicable, a sale, exchange, transfer or lease of equipment or facilities made under this section of this Agreement is subject to §49-04-05 and §10-13-08.1 5 N. D. Cent. Code.
9. Tapping Facilities. A temporary tap of one party's facilities may be made by the other with the written consent of both parties to an interconnection agreement and/or electric wheeling agreement governing the terms of the tap.
10. Adjustment of Service Areas. It is the intent of the parties that after the Effective Date of this Agreement, each party shall have a reasonable opportunity to serve approximately fifty percent (50%) of the undeveloped potential electric service growth annexed to the City of Mandan during the term of this Agreement. The parties shall meet as needed to determine and designate the service area or service areas within which each new area proposed for annexation outside the green and yellow shaded areas on the attached map should be included. This designation should be provided to the City of Mandan.  
After the tenth calendar year following the effective date of this Agreement, each party has one opportunity to request, in writing, a formal review and adjustment of the boundaries of the service areas described in paragraphs 3 and 4 and as illustrated in yellow and green shaded areas on the attached map if the number of new Service Locations within that party's service area, but excluding any Service Location served by the other party, since the effective date of this

Agreement was less than forty percent (40%) of the total number of new Service Locations within the areas governed by this Agreement, including areas added as a result of annexation to the City of Mandan.

If a party requests adjustment of the service area boundaries under this section 10, the parties shall meet to consider adjustments to the boundaries of the service areas, including, if necessary, the service areas described in paragraphs 3 and 4 and as illustrated in yellow and green shaded areas on the attached map, so as to provide both parties a reasonable opportunity to serve approximately fifty percent (50%) of the undeveloped potential load growth in the area governed by this Agreement. The party requesting adjustment has the burden of showing that it does not have a reasonable opportunity to serve approximately fifty (50%) percent of the undeveloped potential load growth.

If a party requests adjustment of the service area boundaries under this section 10 and the parties are unable to agree upon such adjustment, a party may request the dispute be submitted to mediation with a mediator mutually agreeable to the parties. If the parties are unable to select a mediator or are unable to resolve the dispute through mediation, the party requesting an adjustment may request the dispute be resolved by binding arbitration in accordance with the Rules of the American Arbitration Association by a panel of three arbitrators. Within fifteen days of a request for arbitration, each party shall select one person to act as an arbitrator and the two shall select a third neutral arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The costs and expenses of any mediation or arbitration shall be borne equally by the parties.

11. Scope of the Agreement. This Agreement governs electric distribution service by the parties to Service Locations within the areas governed by this Agreement. This Agreement does not apply to nor does it affect the rights of either party:
  - o To construct transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
  - o To maintain existing transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
  - o To the provision of electric transmission or distribution services outside of the areas governed by this Agreement; or
  - o Under applicable law, except only to the extent specifically enumerated herein.

## ARTICLE II. RELATIONSHIPS WITH OTHER ENTITIES

12. Filing the Agreement for Approval. This Agreement shall be filed with the North Dakota Public Service Commission and the City of Mandan substantially

concurrent with its execution. Both parties will file written statements with and appear before the North Dakota Public Service Commission and the Mandan Board of City Commissioners supporting unconditional approval of this Agreement.

13. Filing Franchise Agreements for Approval. Substantially concurrent with the filing of this Agreement with the City of Mandan, the parties shall jointly request the Mandan Board of City Commissioners to issue new 20-year electric utility franchises to each party. The terms of each franchise is to be substantially in the form attached hereto, authorizing each party to provide electric distribution service to service locations within the areas governed by this Agreement and containing terms otherwise consistent with this Agreement. Both parties will file written statements with and appear before the Mandan Board of City Commissioners supporting unconditional approval of each franchise.
14. Conditions Precedent to Agreement. This Agreement is subject to approval of the North Dakota Public Service Commission and the Mandan Board of City Commissioners. If this Agreement is disapproved by either entity, or if the Mandan Board of City Commissioners does not grant franchises consistent with the terms of this Agreement before May 31, 2012, this Agreement shall be void *ab initio*.
15. Future Requests for Certificates of Public Convenience and Necessity. After the effective date of this Agreement, in all cases under the provisions of Chpt. 49-03 N. D. Cent. Code, when Montana-Dakota applies to the North Dakota Public Service Commission for a certificate of public convenience and necessity to extend its electric service to a new Service Location under the terms of this Agreement, Mor-Gran-Sou shall not object to Montana-Dakota's application.
16. Future Reports to City and Public Service Commission. After the effective date of this Agreement, the parties will report any transactions under paragraph 5 or any adjustment under paragraph 10 to the North Dakota Public Service Commission and the City of Mandan, to the extent required by law, regulation, franchise or ordinance.
17. Annual Review Requirement. It is realized that this Agreement will not cover all conditions that may arise but, if followed in good faith by both parties, will serve as a guide to future development and growth for both parties. The parties shall meet on an annual basis to review the operation of this Agreement and the parties' respective growth in electric service within the areas governed by this Agreement since the effective date of this Agreement.

ARTICLE III.  
EFFECTIVE DATE AND TERM

18. Effective Date. This Agreement shall become effective on the first day of the month following the date of the last of these events:
  - o Approval of this Agreement by the North Dakota Public Service Commission;

- o Approval of this Agreement by the Mandan Board of City Commissioners.
19. Term. Unless terminated sooner by the written consent of both parties, this agreement shall continue from its effective date through May, 2032.

Either party may give written notice to the other on or before May 31, 2031 of its intent to terminate the Agreement at the end of its term.

If neither of the foregoing two events occurs, this Agreement shall remain in force after May 31, 2032 until either party gives twelve months written notice to the other party of its intent to terminate this Agreement or negotiate a new agreement consistent with the intent and purpose of this Agreement. It is the intent of the parties that upon or prior to termination of this Agreement, they will enter into negotiations for a new service area agreement to provide both parties with a reasonable opportunity for equitable participation in the future provision of electric distribution service to new Service Locations within the unserved areas annexed to the City of Mandan.

The party giving notice to terminate under this paragraph must also give contemporaneous notice to the North Dakota Public Service Commission and the City of Mandan.

#### ARTICLE IV. MISCELLANEOUS PROVISIONS

20. Entire Agreement. This Agreement, including the attachments, constitutes the parties' entire agreement. It supersedes and terminates all previous agreements, written or oral, between the parties with respect to matters included within the scope of this Agreement.
21. Waiver of Certain Rules of Construction. This Agreement is the result of good faith negotiations between the parties, each having equal bargaining status and each having participated in the drafting of this Agreement to express the parties' intentions. Accordingly, each party waives the benefit of any rule of contract interpretation premised on the other party's responsibility for drafting the Agreement or the other party's bargaining status.
22. Independence of the Parties. The parties are entirely independent and neither have the right to act for or control the other. This Agreement does not create a joint venture, partnership or other agency relationship between the parties.
23. No Third-Party Rights. This agreement confers no rights or obligations upon anyone other than the parties. It may be enforced solely by the parties. This Agreement creates no third-party beneficiaries.
24. Assignment. Either Party may assign this Agreement in connection with a merger, sale of substantially all of its assets, consolidation or other reorganization resulting in another acquiring the right of a party to provide electric service in the service area of that party.

- 25. Waiver of Right of Enforcement. The failure of either party to require strict performance of any portion of this Agreement or the waiver of a breach of any condition in this Agreement shall not waive or affect that party's right to require full and conforming performance thereafter.
- 26. Partial Invalidity. Each provision of this Agreement is to be interpreted to make this Agreement effective and enforceable under applicable law. If any provision is held invalid or unenforceable, the remainder of this Agreement is not to be affected thereby but is to be reformed only to the extent necessary to make the Agreement effective and enforceable as if the invalid or unenforceable provision had never been included in the Agreement.
- 27. Notices. All notices from one party to the other shall be given in writing to the address for the party stated above, by any means of delivery that provides for confirmation of delivery to that address.

MONTANA-DAKOTA UTILITIES CO.  
a Division of MDU Resources Group, Inc.

  
\_\_\_\_\_  
Vice President *LCFO*

ATTEST:

\_\_\_\_\_  
Assistant Secretary

Date: \_\_\_\_\_

MOR-GRAN-SOU  
ELECTRIC COOPERATIVE, INC.

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Secretary

Date: 3/28/12

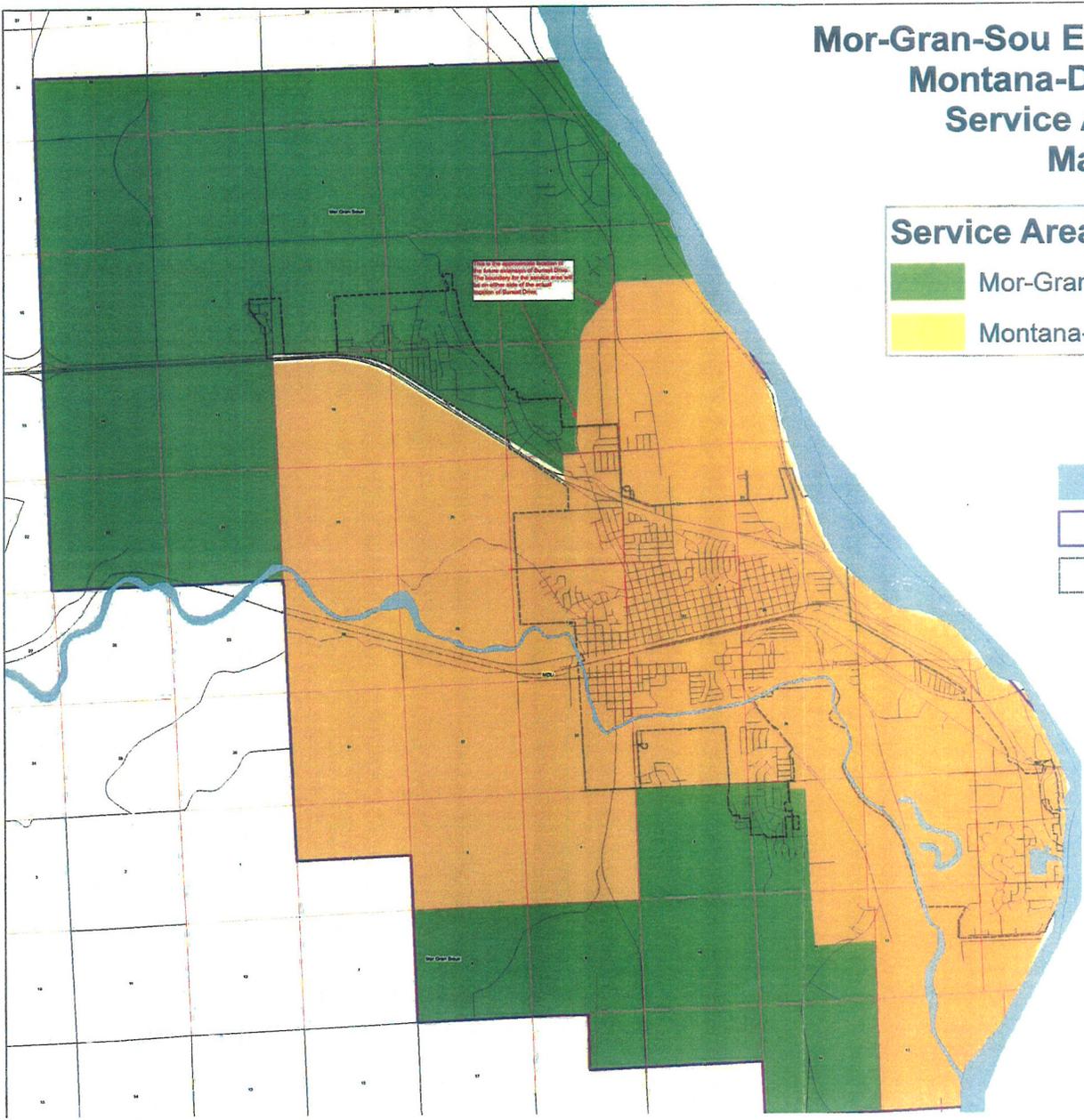
# Mor-Gran-Sou Electric Cooperative, Inc. Montana-Dakota Utilities Co. Service Area Agreement Mandan, ND

## Service Area Boundary

- Mor-Gran-Sou Electric Cooperative, Inc
- Montana-Dakota Utilities Co.

## Map Features

- Water Features
- Mandan 2 Mile
- Mandan City Limits



MOR-GRAN-SOU ELECTRIC COOPERATIVE, INC.

President *[Signature]*

ATTES: *[Signature]*

Secretary *[Signature]*

Date: 4/5/12

MONTANA-DAKOTA UTILITIES CO.

Division of MDU Resources Group, Inc.

President *[Signature]*

ATTES: *[Signature]*

Secretary

Date:

