



AGENDA
MANDAN CITY COMMISSION
JULY 16, 2013
ED "BOSH" FROEHLICH MEETING ROOM,
MANDAN CITY HALL
5:30 P.M.
www.cityofmandan.com

-
- A. ROLL CALL:
1. Roll call of all City Commissioners and Department Heads.
- B. APPROVAL OF AGENDA:
- C. PUBLIC COMMUNICATIONS:
- D. MINUTES:
1. Consider approval of the following minutes:
 - i. June 25, 2013 – Working Session
 - ii. July 2, 2013 – Regular Board Meeting
- E. PUBLIC HEARING:
1. Consider approval of a zone change for a part of the SE ¼ in Section 7, Township 139N, Range 81 West, proposed West Hills Estates 3rd Addition. (First consideration of Ordinance #1157) (See *Ordinances No. 1*).
 2. Determine the sufficiency of protest concerning the annexation of certain lands in the general vicinity north of Mandan Middle School and Tesoro Refinery, and north and west of Highway 1806.
- F. BIDS:
- G. CONSENT AGENDA:
1. Consider approval of monthly bills.
 2. Consider approval of games of chance for Taylor Hogue Benefit at Stage Stop from July 16, 2013 to July 27, 2013.
 3. Consider approval of the pledge of securities reports as required by NDCC 21-04.
 4. Update the Commission on the mill and overlay projects.
 5. Consider change order for water main extension on Sunset Dr.
- H. OLD BUSINESS:
- I. NEW BUSINESS:
1. Consider approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition, Project 2013-13. (See *Resolutions No. 2*).

*Agenda
Mandan City Commission
July 16, 2013
Page 2 of 3*

2. Consider revisions to the property tax exemption policy for new and expanding businesses.

J. RESOLUTIONS AND ORDINANCES:

1. *First consideration of Ordinance No. 1157 Zone Change for proposed West Hills Estates 3rd Addition* – An ordinance to amend and reenact section 21-13-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.
2. Consider Resolution approving plans and specifications and authorizing execution of 3-way agreement for water and sewer Improvement Project 2013-13. (Meadows 6th Addition).
3. Consider Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility.
4. Consider Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.
5. Consider Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements.
6. Consider Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

K. OTHER BUSINESS:

L. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:

1. August 6, 2013
2. August 20, 2013
3. September 3, 2013 - 5 p.m. start

M. ADJOURN

Public Communication

A scheduled time for public participation has been placed on the agenda at Mandan City Commission meetings. The Board desires to hear the viewpoints of citizens throughout the City. Individuals wishing to address the Board are encouraged to make arrangements with the Board President or the City Administrator prior to the meeting. Comments should be made to the Board and not to individuals in the audience and be related to City operations and programs. The Board will not hear personal complaints against any person connected with the City. If a citizen would like to add a topic to the agenda, arrangements must be made in advance with the City Administrator or Board President. The Board reserves the right to eliminate or restrict the time allowed for public participation. The Board requests that comments are limited to three (3) minutes or less. Groups of individuals addressing a common concern are asked to designate a spokesperson.

*Agenda
Mandan City Commission
July 16, 2013
Page 3 of 3*

Departmental planning meeting will be held the Monday prior to the Commission meeting, all Commissioners are invited, noon, former Morton County Library 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 a working session at 6:00 p.m. on June 25, 2013 in the former Morton County Library Room at City Hall, 205 2nd Ave NW, Mandan, ND. Commissioners present were Van Beek, Tibke, Rohr, Frank and Braun. City Department Heads present were City Administrator Neubauer, City Attorney Brown, and Business Development and Communications Director Huber and Assessing/Building Official Lalim.

Discussion Items:

Discussion related to the City of Mandan Commercial Property Tax Exemption & Guidelines along with multifamily and single family home exemptions:

Discussions took place relative to exemption requests and comments that have been made that an applicant may have started a business in Mandan even if the exemption were not available. A suggestion was made that a possible roundtable discussion could be held with several real estate brokers or agents to see what their clients are looking for in order to locate in Mandan.

Applications before the Commission over the past three years are as follows:

Year	<u>2011</u>	<u>2012</u>	<u>2013</u>
Apartment Applications (24 units and above)	6	4	4
Business Applications	3	12	3

Discussion centered on possibly adjusting the policy in order to further target those sectors that we are currently lacking; and in addition, providing incentive to locate in certain geographic areas of Mandan.

Suggestions will be brought back to the Commission for their further discussion on July 16th.

Discussion also occurred regarding the possible repeal of the single family housing exemption (first \$75,000 on new construction) and eliminating the multifamily housing exemption. Additional research will be conducted to determine potential effective dates if the Commission wishes to move forward.

City Attorney Brown and Mr. Lalim will review ordinances required for off-street parking for multifamily units and bring back suggestions to the Board.

ADJOURN

There being no further actions to come before the Board Commissioner Rohr moved and Commissioner Braun seconded to adjourn at 7:53 p.m. The motion received unanimous approval of the Board members present and the meeting adjourned.

/s/ James Neubauer
James Neubauer,
City Administrator

/s/ Arlyn Van Beek
Arlyn Van Beek
President, Board of City
Commissioners

The Mandan City Commission met in regular session at 4:30 p.m. on July 2, 2013 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Commissioners present were Van Beek, Tibke, Rohr, Frank, and Braun. Department Heads present were Finance Director Welch, Police Chief Bullinger, City Attorney Brown, City Administrator Neubauer, Director of Public Works Wright, Planning & Engineering Director Froseth, Engineering Project Manager Fettig, and Assessor/Building Official Lalim. Absent: Fire Chief Nardello and Business Development and Communications Director Huber.

B. APPROVAL OF AGENDA: Commissioner Rohr motioned to approve the Agenda as presented. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

C. PUBLIC COMMUNICATIONS:

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission meeting held on June 18, 2013, Regular Board Meeting.* Commissioner Braun moved to approve the minutes from the Board of City Commission meetings of June 18, 2013, Regular Board Meeting. Commissioner Frank seconded the motion. The motion received unanimous approval of the members present. The motion passed.

At this time the Consent Agenda, New Business and Resolution Items No. 1, 3, 4, and 6 were brought before the Board prior to the time set for the Public Hearing which was published to begin at 5:30 p.m.

Commissioner Frank moved to recess the meeting at 4:42 p.m. Commissioner Tibke seconded the motion. The motion received unanimous approval of the members present. The motion passed.

The meeting reconvened and was called to order by Mayor Van Beek at 5:30 p.m.

E. PUBLIC HEARING:

1. *Public Hearing to consider a 2-Year Property Tax exemption for HM4, LLC.* Assessor/Building Official Lalim presented a request for a 2-year tax exemption from HM4 LLC for a 42-unit multi-family apartment building with garages. The notice to competitors was published on June 7th and June 14th and no written protests have been received. The Mandan School District and Mandan Park District did not file any response to the exemption. The Morton County Tax Director filed a written opposition opposing the exemption and requested the City review the application because the company does not generate revenue or create new jobs for the City of Mandan.

Mayor Van Beek announced this is a public hearing to approve a 2-Year Property Tax exemption for HM4, LLC and invited anyone to come forward to speak.

James Moen, a representative from HM4, came forward and stated that he and his brother are involved in this project. He indicated they have a similar building project and the tax exemption was approved for that one approximately 3-4 weeks ago. The details for this project are almost identical to the previous project. The only difference is in the employment. The only employed staff will be members of the management company. There is a definite need in the community to warrant the addition of these two projects.

Commissioner Frank commented that the recently approved projects that have included multi-family dwellings have addressed the affordable housing and green space designation within the projects. She asked Mr. Moen what the plans were for any green space for these projects. Moen stated that green space will be a consideration within the project wherever landscaping will occur. He said they are prepared to participate in the affordable housing request as appropriate for this project. Commissioner Frank stated that by using previous computations to determine how many units to designate, two units would be the appropriate number to designate as affordable housing units according to the plans provided for this project. Mr. Moen concurred that two units is what they have planned for; and if approved, this project will commence in July 2013 with a completion date of March 2014. There will be at least 44 spots for additional parking spaces as well as the 44 garage stalls.

A second announcement was made by Mayor Van Beek to come forward to speak for or against the 2-Year Property Tax exemption for HM4, LLC. Hearing none, this portion of the public hearing was closed.

Commissioner Frank moved to approve a Property Tax Incentive for New or Expanding Businesses for HM4, LLC with a 100% exemption for two years to be determined by the Mandan City Commission contingent upon two of the units being designated as low to moderate income housing units. Commissioner Tibke seconded the motion. Roll call vote: Commissioner Rohr: No; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

F. BIDS:

Consider award of bids for Street Improvement District No. 185, Project 2013-19(Heart Ridge 2nd Addition)(See Resolution No. 5). Engineering Project Manager Fettig presented a request for an award of bids to Northern Improvement, the low bidder for the amount of \$1,273,299.75. The Engineer's Estimate was \$1,026,135.25. The project will be paid for the 78 lots of the benefiting parties within the district. The total construction cost of the project including the administrative costs will be \$1,591,624.69.

Commissioner Rohr moved to approve the bid award for Street Improvement District No. 185, Project 2013-19 (Heart Ridge 2nd Addition) to Northern Improvement, the low bidder in the amount of \$1,273,299.75.

Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

G. CONSENT AGENDA

1. *Consider approval of Beer Garden and Street Dance for Church of St. Joseph on July 6, 2013.*
2. *Consider approval of Joint Powers Agreement with Mandan Park District pursuant to the provisions of Chapter 54-40.3, N.D.C.C., for the cooperation of acquisition of the real property to be utilized for a recreation/wellness center or such other use as may be agreed to by the City in writing.*
3. *Consider approval of Legal Retainer Agreement with Malcolm H. Brown, of Counsel to Crowley Fleck PLLP.*
4. *Consider for approval the final Replat of Lots 27-29, Block 1, Heart Ridge Addition.*
5. *Consider for approval the final plat of South Bay Townhomes Addition.*
6. *Consider for approval the final plat of Addie's Acres Addition.*
7. *Consider the execution of Engineering agreement with AE2S for Mandan Waste Water Odor Control System Project.*

Commissioner Tibke moved to approve the Consent Agenda as presented. Commissioner Frank seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Consider the creation of, approval of the feasibility report for, approve the plans and specifications, approve engineer's report, direct advertisement for bids and approve sufficiency of petition for Street Improvement District No. 178, Project No. 2013-04 (Keidels South Heart Terrace Phase IV). (See Resolution No. 6). Engineering Project Manager Fettig presented a request for the creation of, approval of the feasibility report for and approve the plans and specifications, approve engineer's report and direct advertisement for bids and approval of sufficiency of petition for Street Improvement District No. 178. Fettig stated this is the last section in that area that is scheduled for improvements.*

Commissioner Frank moved to approve the creation of, approval of the feasibility report for, approve the plans and specifications, approve engineer's report, direct advertisement for bids and approve sufficiency of petition for Street Improvement District No. 178, Project No. 2013-04 (Keidels South Heart Terrace Phase IV). Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

J. RESOLUTIONS AND ORDINANCES:

1. *Second consideration and final passage of Ordinance No. 1153 Zone Change for Lot 2, Block 1 of the Replat of Lot 1, Block 1, Hoovestol's 2nd Addition – An ordinance to amend and reenact section 21-13-02 of the Mandan Code of Ordinances relating to*

District Boundaries and Zoning Map. Commissioner Braun moved to approve the Second consideration and final passage of Ordinance No. 1153 Zone Change for Lot 2, Block 1 of the Replat of Lot 1, Block 1, Hoovestol's 2nd Addition – An ordinance to amend and reenact section 21-13-02 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; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

2. *Removed from Agenda.*

3. *Second consideration and final passage of Ordinance No. 1155, An ordinance annexing certain adjoining lands to the City of Mandan, North Dakota, and extending the corporate boundaries thereof (tract of land being a part of Section 7, Township 139N, Range 81W).* Commissioner Frank moved to approve the Second consideration and final passage of Ordinance No. 1155, An ordinance annexing certain adjoining lands to the City of Mandan, North Dakota, and extending the corporate boundaries thereof (tract of land being a part of Section 7, Township 139N, Range 81W). Commissioner Tibke seconded the motion.

Lee Klapprodt came forward and stated that he and his wife are in support of this annexation. There were some issues they had that were discussed at the last meeting. However, those issues have been addressed by Director of Public Works Wright in which Klapprodt and his wife are now in agreement.

Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

4. *Second consideration and final passage of Ordinance No. 1156 Zone Change for the west 280 feet of the south 300 feet of Government Lot 4 in Section 7, T139N, R81W - An ordinance to amend and reenact section 21-13-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map.* Commissioner Tibke moved to approve the Second consideration and final passage of Ordinance No. 1156 Zone Change for the west 280 feet of the south 300 feet of Government Lot 4 in Section 7, T139N, R81W - An ordinance to amend and reenact section 21-13-02 of the Mandan Code of Ordinances relating to District Boundaries and Zoning Map. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

5. *Consider Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 185, Project 2013-19(Heart Ridge 2nd Addition).* Commissioner Tibke moved to approve the Resolution Approving Contract and Contractor's Bond for Street Improvement District No. 185, Project 2013-19 (Heart Ridge 2nd Addition). Commissioner Rohr seconded the motion. Roll call vote:

Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes;
Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

6. *Consider the Resolutions creating district, approving engineer's report, determining sufficiency of protest, approving the plans and specifications and directing advertisement for bids for Street Improvement District No. 178, Project No. 2013-04 (Keidels South Heart Terrace Phase IV).* Commissioner Frank moved to approve the Resolutions creating district, approving engineer's report, determining sufficiency of protest, approving the plans and specifications and directing advertisement for bids for Street Improvement District No. 178, Project No. 2013-04 (Keidels South Heart Terrace Phase IV). Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

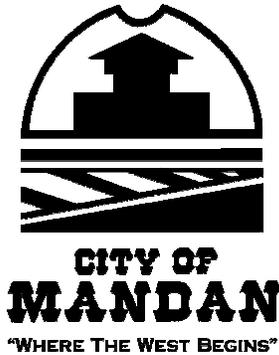
K. OTHER BUSINESS

1. Mayor Van Beek encouraged everyone to come out and enjoy the Rodeo Days Events scheduled in Mandan during the July 4th holiday.

There being no further actions to come before the Board of City Commissioners, Commissioner Frank moved to adjourn the meeting at 5:43 p.m. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present. The motion passed.

James Neubauer,
City Administrator

Arlyn Van Beek,
President, Board of City
Commissioners



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 10, 2013
SUBMITTING DEPARTMENT: Engineering/Planning
DEPARTMENT DIRECTOR: Justin Froseth, Planning & Engineering Director
PRESENTER: Kim Fettig, Project Manager
SUBJECT: Consider a change of zoning of a part of the SE ¼ in Section 7, Township 139N, Range 81W

STATEMENT/PURPOSE: Request to change the zoning of a part of the SE ¼ in Section 7, Township 139N, Range 81W from A (Agricultural) to R3.2 (Two-Family Residential).

BACKGROUND/ALTERNATIVES: Request from Nathan Lamoureux for a zone change from A (Agricultural) to R3.2 (Two-Family Residential). The property is the proposed West Hills Estates 3rd Addition plat. The Planning & Zoning Commission voted unanimously to approve the zone change on June 24, 2013.

ATTACHMENTS:

1. Office Report
2. Map
3. Ordinance

FISCAL IMPACT: Minimal

STAFF IMPACT: Minimal

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

RECOMMENDATION: To approve the zone change to R3.2 (Two-Family Residential).

SUGGESTED MOTION: I move to approve the zone change for the proposed West Hills Estates 3rd Addition in the SE ¼ of Section 7, T139N, Range 81W from A (Agricultural) to R3.2 (Two-Family Residential).

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Zone change for proposed West Hills Estates 3rd Addition in the SE ¼ of Section 7, T139N, Range 81W.

Page 2 of 4

MANDAN PLANNING OFFICE REPORT

July 10, 2013

Applicant(s): Nathan Lamoureux

Owner(s): same

Requested Action: Zone Change Approval

Name of Subdivision: Proposed West Hills Estates 3rd Addition

Legal Description: Part of the SE ¼ of Section 7, Township 139, Range 81W

Location: Crown Point Road NW and Corvette Street NW

Parcel Acreage: 4.64

Existing Land Use: vacant

Proposed Land Use: two-family Residential

Adjacent Land Use: residential and agricultural

Existing Zoning: A (Agricultural)

Proposed Zoning: R3.2 (Two-Family Residential)

Adjacent Zoning: A (Agricultural), LHMHS (Large Scale Mobile Home Residential) and RM (Multi-Family Residential)

Fee(s) Required: \$250.00 Date Received: May 31, 2013

Adjacent Property Owner Notification: June 25, 2013

Dates of Legal Notices: July 5 & 12, 2013

Recommendations: The Planning Office recommends approval.

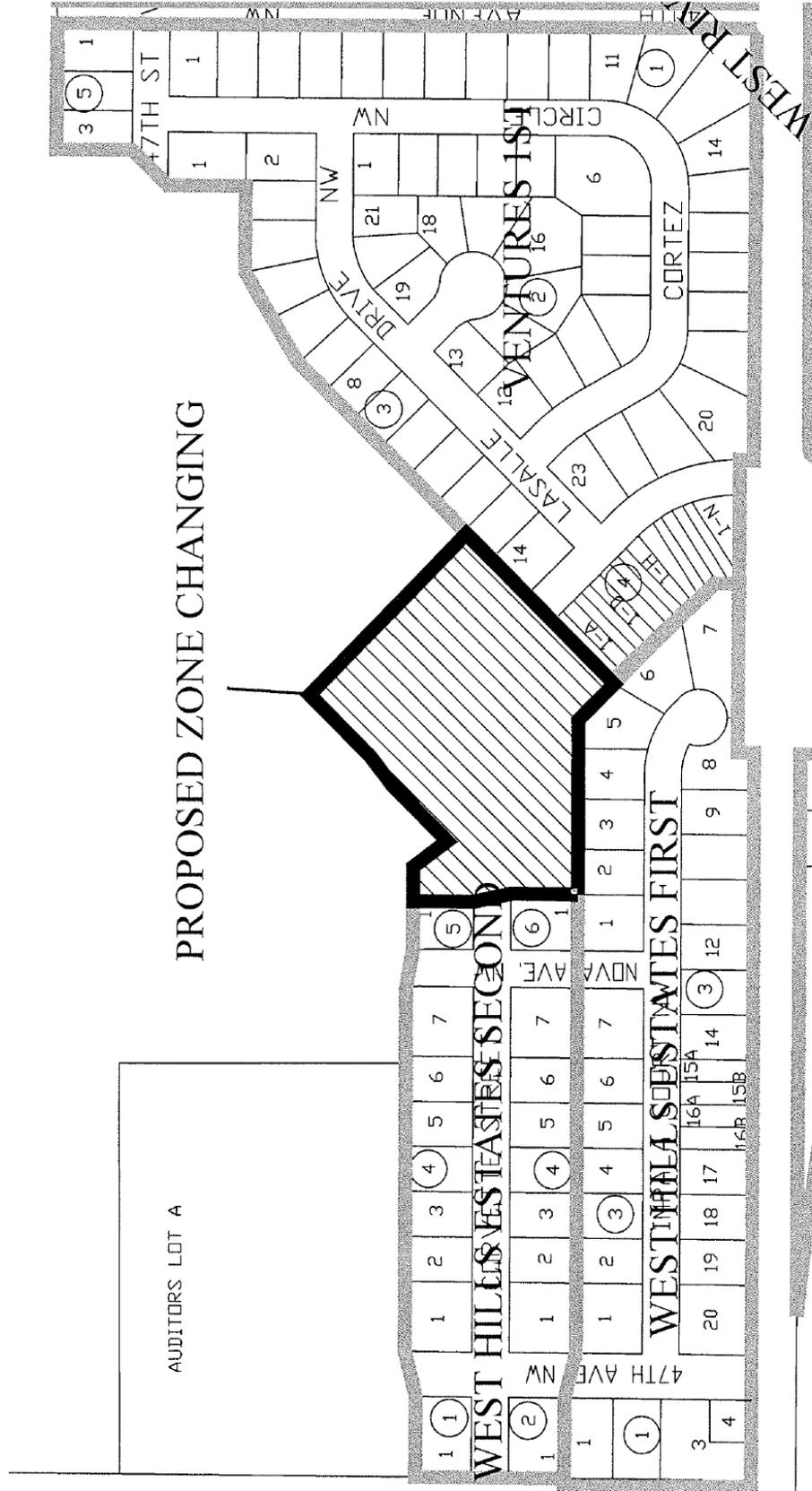
Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Zone change for proposed West Hills Estates 3rd Addition in the SE ¼ of Section 7, T139N, Range 81W.

Page 3 of 4



Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Zone change for proposed West Hills Estates 3rd Addition in the SE ¼ of Section 7, T139N, Range 81W.

Page 4 of 4

ORDINANCE NO. 1157

AN ORDINANCE TO AMEND AND REENACT SECTION 21-03-02 OF ORDINANCE 1088 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

BE IT ORDAINED By the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

SECTION 1. AMENDMENT. Section 21-03-02 of the Mandan Code of Ordinances is amended to read as follows:

The following described property located within the City of Mandan, Morton County, North Dakota shall be excluded from A (Agricultural) and shall be included in the R3.2 (Two-Family Residential) zoning namely,

A part of the SE ¼ in Section 7, Township 139N, Range 81W (the proposed West Hills Estates 3rd Addition)

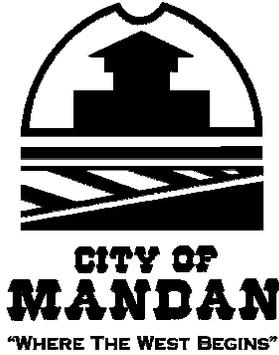
and as so amended said section is hereby reenacted. The city administrator is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

President, Board of City Commissioners

Attest:

City Administrator

Public Hearing:	<u>July 16, 2013</u>
First Consideration:	<u>July 16, 2013</u>
Second Consideration and Final Reading:	<u>August 6, 2013</u>
Publication Date:	_____
Recording Date:	_____



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 11, 2013
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: North Annexation Public Hearing

STATEMENT/PURPOSE: To consider results from the North Annexation proposal.

BACKGROUND/ALTERNATIVES:

- May 21, 2013, proposed resolution for annexation presented to the City Commission for their consideration
- June 4, 2013, resolution for annexation was approved by the City Commission
- July 8, 2013, 4:30 p.m. deadline for protests to the annexation
- July 16, 2013, 5:30 p.m. Public Hearing regarding sufficiency of protests

Several large pieces of property have changed hands over the past few years and new owners have requested city services (water, sanitary sewer, streets) in order to develop their property into urban commercial and residential areas. In order to serve these areas, an annexation of approximately 1,000 acres was proposed.

As of July 16, 2013, protests of the annexation amounted to 32.93% of the land area in the proposed annexation. Therefore, there is sufficient protest (above 25%) to stop the proposed annexation.

The Commission has the following options:

- 1) Drop the annexation
- 2) Ask the Governor to appoint a mediator in an attempt to find some resolution to the matter.

ATTACHMENTS: Map of the annexation area, protested in green, not protested in yellow. (Please note the areas are very close, however, we are still matching protests, we received some letters and some via petition, to the map)

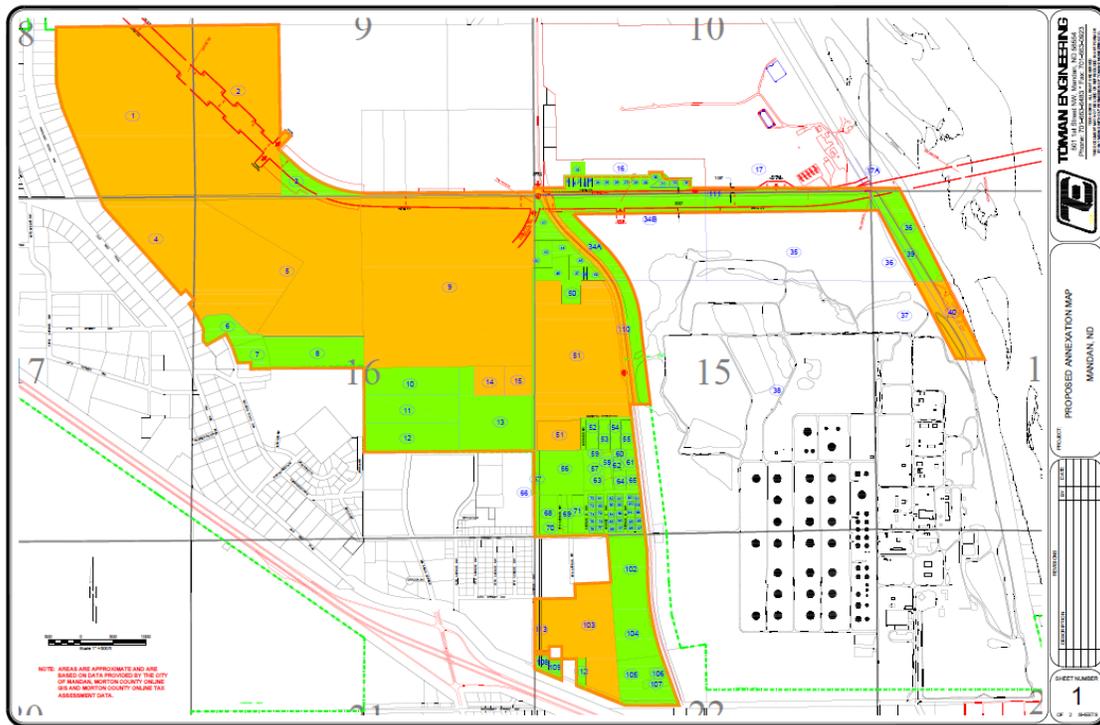
FISCAL IMPACT: uncertain at this time

STAFF IMPACT:

LEGAL REVIEW:

RECOMMENDATION: I recommend the public hearing be held, the commission in turn take the comments received under advisement and return on August 6 with a motion.

SUGGESTED MOTION: I move to postpone until August 6, a decision regarding the north annexation.





LOCAL PERMIT OR CHARITY LOCAL PERMIT
 NORTH DAKOTA OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 17926 (10/2012)

Consent No. 2

Type: Local Permit * Charity Local Permit

Permit Number
2013-37

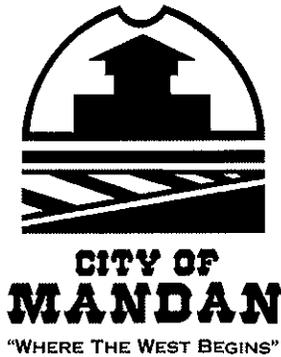
Name of Organization Taylor Hogue Benefit		Date(s) Authorized (Read instruction 2)		
Contact Person Trevor Langemo	Business Phone Number	7/16/2013 Beginning	to 7/27/2013 Ending	
Mailing Address 614 3rd Avenue Se	City Mandan	State ND	Zip Code 58554-0000	
Site Name Stage Stop	Site Address 611 6th Avenue Se			
City Mandan	State ND	ZIP Code 58554-0000	County Morton	
Check the Game(s) Authorized: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.				
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker* <input type="checkbox"/> Twenty-one* <input type="checkbox"/> Paddlewheels*				
Restriction:				
Requirement: For a "Charity Local Permit," the organization must file a "Report on a Charity Local Permit" with the city or county auditor <u>and</u> Office of Attorney General within 30 days of the event.				
Date 7/3/2013	Signature of: <input checked="" type="checkbox"/> City Auditor <input type="checkbox"/> County Auditor <i>Jay Gruebele</i>		Printed Name of City or County Auditor Jay Gruebele	
			Auditor Telephone Number (701) 667-3250	

Please see the instructions on the backside of this form on how to complete the Permit.
 For a raffle or calendar raffle, read "Information Required to be Preprinted on a Standard Raffle Ticket" below.

 cut along this line

INFORMATION REQUIRED TO BE PREPRINTED ON A STANDARD RAFFLE TICKET:

1. Name of organization;
2. Ticket number;
3. Price of the ticket, including any discounted price;
4. Prize, description of an optional prize selectable by a winning player, or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or four thousand dollars. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding twenty dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a permit, print the authorizing city or county and permit number;
6. A statement that a person is or is not required to be present at a drawing to win;
7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on a same day of the week or month, print the day and time of the drawing;
8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
10. If a purchase of a ticket or winning prize is restricted to a person of minimum age, a statement that a person must be at least "___" years of age to buy a ticket, or win a prize;
11. A statement that a purchase of the ticket is not a charitable donation;
12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and
13. If a prize is live beef or dairy cattle, horse, bison, sheep or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the market value of the animal or four thousand dollars.



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 10, 2013
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch
SUBJECT: Pledge of securities reports.

PURPOSE

The City of Mandan is required semiannually to approve pledges of securities reports.

BACKGROUND

Except for the Bank of North Dakota, financial institutions must pledge security for all public deposits at a ratio of \$1.10 for every \$1.00 above the FDIC coverage amount.

ATTACHMENTS

- Pledge of securities report from Wells Fargo Bank
- Pledge of securities report from Starion Financial

FISCAL IMPACT

None

STAFF IMPACT

None

LEGAL REVIEW

In accordance with the provisions of NDCC 21-04.

RECOMMENDATION

To approve the following pledge of securities reports:

- Wells Fargo Bank
- Starion Financial

SUGGESTED MOTION

Move to approve the following pledge of securities reports:

- Wells Fargo Bank
- Starion Financial

STAGECOACH SWEEP
WELLS FARGO BANK, N.A.
Confirmation
Repurchase Agreement

CITY OF MANDAN
205 2ND AVE NW
MANDAN ND 58554

ACCOUNT SUMMARY

Date : 06/28/2013
Account :

ACCOUNT DETAIL

Investment : Repurchase Agreement

From Date : 06/28/2013
To Date : 07/01/2013

Rate : .02000000 %
Principal : \$ 8,608,319.44
Interest : \$ 14.35

REPURCHASE AGREEMENT DETAIL

Collateralized By : \$ 8,524,537.06
FH-30 : 1B8632
% Due : 2.73 %
Maturity Date : 09/01/2041

CUSIP : 3128UG6U6
Sequence : 062813
Price : 102.968972
Accrued Interest : \$ 18,160.10

REPURCHASE AGREEMENT DETAIL

Collateralized By : \$ 645,225.03
FHG-3 : A93748
% Due : 4.00 %
Maturity Date : 09/01/2040

CUSIP : 312942EV3
Sequence : 062813
Price : 104.049882
Accrued Interest : \$ 2,007.37

INVESTMENTS NOT FDIC INSURED



BNY MELLON

**Broker/Dealer Services
One Wall Street, Fourth Floor
New York, NY 10286**

Date: 06/28/13

000056 XBGSC301
ATTN: GREG WELCH, FINANCE DIRECTOR
CITY OF MANDAN
205 2ND AVE NW
MANDAN, ND 58554

Account Id: Tax Id Number:

This advice is supplied as part of the Tri-Party Collateral agreement among the Customer, Wells Fargo Bank, N.A. and The Bank of New York Mellon. Any questions should be directed to Vinnette Frater, Senior Associate, BDS/Tri-Party Services, (973)569-2411.

As agent we confirm the following collateralized deposit information received from Wells Fargo Bank, N.A. as of close of business the last business day of the month.

Date: 06/28/13

The collateral segregated on your behalf on 06/28/13 is as follows:

CUSIP	DESCRIPTION	QUANTITY	MARKET VALUE
3138NXES2	FNMA FNMS 3.000% 01/01/43	55,000.00	52,717.71
3138WQA28	FNMA FNMS 3.000% 05/01/43	5,000.00	4,882.86
31416VBD5	FNMA FNMS 4.500% 04/01/39	560,000.00	123,131.71
31417DAK9	FNMA FNMS 3.000% 09/01/42	70,000.00	63,993.25
31417EM57	FNMA FNMS 3.000% 01/01/43	5,000.00	4,790.13
31419AGZ4	FNMA FNMS 4.000% 12/01/39	190,000.00	97,014.98
TOTAL MKT VALUE			346,530.64

Starion FINANCIAL

109 1st St NW Mandan, ND 58554
701-663-6434 • 701-667-1619 (fax)

FAX

To:	Greg Welch	From:	Janice Richter
Company:	City of Mandan	Pages:	5
Fax #:	701-667-3223	Date:	07/01/2013
RE:	Pledge Report		

• The following is the pledge report for the month of June 2013. *This report lists all securities currently pledged for your deposit account(s).*

The pledges are reviewed and approved on a monthly basis by the Starion Financial Asset/Liability Management Committee and presented to the Board of Directors.

** If there is an increase in the balance of your account(s) prior to the month end check, please contact us, so that we may increase the amount of pledging if necessary.

If you have any questions, please feel free to contact me at 667-1620.

Thank you.

IMPORTANT: This message intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you receive this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the United States Postal Service. Thank you.

Pledges By Pledgee And Maturity



Pledged To: City of Mandan

Starion Financial - Mandan, ND

As Of 6/30/2013

Page 14 of 51

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged			
							Original Face	Par	Book Value	Market Value
WELL: Wells Fargo	087787JX6	AFS	BEULAH ND 05/01/14	1.00	N/A N/A	285,000.00 100.00%	285,000.00	285,000.00	285,000.00	285,544.35
WELL: Wells Fargo	97072NAJ7	AFS	WILLISTON ND SALES TAX I 05/01/15	3.00	A2 N/A	155,000.00 100.00%	155,000.00	155,000.00	155,684.65	161,541.00
WELL: Wells Fargo	091933CY5	AFS	BISMARCK ND PK DIST 05/01/16	2.90	N/A N/A	195,000.00 100.00%	195,000.00	195,000.00	195,000.00	200,032.95
WELL: Wells Fargo	596782RJ3	AFS	MIDDLETON WIS 09/01/17	3.00	Aa1 N/A	250,000.00 100.00%	250,000.00	250,000.00	258,622.69	267,367.50
WELL: Wells Fargo	924478BS8	AFS	VERNON COUNTY WIS-NAT 04/01/18	4.20	A1 N/A	250,000.00 100.00%	250,000.00	250,000.00	255,512.59	259,715.00
WELL: Wells Fargo	31377PLA0	AFS	MBS FNMA-382921 12/01/18	382921 7.24		1,421,500.00 100.00%	1,421,500.00	1,186,781.59	1,245,328.91	1,375,290.32
WELL: Wells Fargo	611424KD3	AFS	MONROE WIS SCH DIST 04/01/19	3.50	N/A A+	395,000.00 100.00%	395,000.00	395,000.00	402,204.20	428,657.95
WELL: Wells Fargo	31381U4F1	AFS	MBS FNMA >7 Yr Balloon 07/01/19	471622 1.88		993,673.00 100.00%	993,673.00	977,168.85	999,946.90	967,244.31
WELL: Wells Fargo	689146LJ5	AFS	OTSEGO MINN-AGM INSD 12/01/19	2.60	A2 AA-	250,000.00 100.00%	250,000.00	250,000.00	250,870.47	263,147.50
WELL: Wells Fargo	091933DK4	AFS	BISMARCK ND PK DIST 05/01/20	3.00	N/A N/A	280,000.00 100.00%	280,000.00	280,000.00	280,000.00	278,619.60
WELL: Wells Fargo	3128MCU29	AFS	MBS FHLMC Gold 15 Yr 06/01/20	G14001 4.00		1,050,000.00 100.00%	1,050,000.00	382,277.82	394,415.96	402,879.74
WELL: Wells Fargo	3128MCU29	AFS	MBS FHLMC Gold 15 Yr 06/01/20	G14001 4.00		1,000,000.00 100.00%	1,000,000.00	364,074.11	377,736.14	383,694.99
WELL: Wells Fargo	31417YQM2	AFS	MBS FNMA 10-YR 07/01/20	MA0459 4.00		1,000,000.00 100.00%	1,000,000.00	370,617.21	385,874.16	390,001.93

Although the information in this report has been obtained from sources believed to be reliable, its accuracy cannot be guaranteed.

8/28/2013 8:00 AM - JHK / BISM

Pledges By Pledgee And Maturity

IPA

Pledged To: City of Mandan
Starion Financial - Mandan, ND

Page 15 of 51

As Of 6/30/2013

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged			
							Original Face	Par	Book Value	Market Value
WELL: Wells Fargo	952753DG3	AFS	WEST FARGO ND WTR & Sv 11/01/20	5.40	A1 N/A	235,000.00 100.00%	235,000.00	235,000.00	235,000.00	263,369.20
WELL: Wells Fargo	385443K54	AFS	GRAND FORKS ND 12/01/21	2.80	Aa2 N/A	165,000.00 100.00%	165,000.00	165,000.00	164,344.47	174,103.05
WELL: Wells Fargo	144537NV5	AFS	CARRINGTON ND 05/01/22	4.05	N/A N/A	160,000.00 100.00%	160,000.00	160,000.00	160,000.00	164,568.00
WELL: Wells Fargo	917219KN6	AFS	URBANDALE IA CMNTY SCH 06/01/22	2.25	Aa3 N/A	400,000.00 100.00%	400,000.00	400,000.00	400,000.00	402,916.00
WELL: Wells Fargo	672132AG2	AFS	OAKES ND SALES TAX 11/01/23	4.30	N/A N/A	400,000.00 100.00%	400,000.00	400,000.00	400,000.00	406,552.00
WELL: Wells Fargo	307489LR3	AFS	FARGO ND PK DIST 04/01/24	4.00	Aa1 N/A	230,000.00 100.00%	230,000.00	230,000.00	235,328.93	246,684.20
WELL: Wells Fargo	578660EW8	AFS	MAYVILLE ND 05/01/24	2.30	N/A N/A	250,000.00 100.00%	250,000.00	250,000.00	250,000.00	234,847.50
WELL: Wells Fargo	672121FS4	AFS	OAKES ND 05/01/24	3.00	N/A N/A	275,000.00 100.00%	275,000.00	275,000.00	275,000.00	277,120.25
WELL: Wells Fargo	665480EZ9	AFS	MAPLETON ND 05/01/25	2.50	N/A N/A	385,000.00 100.00%	385,000.00	385,000.00	385,000.00	345,468.20
WELL: Wells Fargo	265867AN1	AFS	DUNSEITH ND PUBLIC SCH 08/01/25	1.50	Aa3 N/A	230,000.00 100.00%	230,000.00	230,000.00	230,000.00	204,191.70
WELL: Wells Fargo	31419GSJ4	AFS	MBS FNMA 15-Yr 10/01/25	AE5920 3.50		1,725,000.00 100.00%	1,725,000.00	1,041,205.03	1,095,774.09	1,100,493.11
WELL: Wells Fargo	3138ASS78	AFS	MBS FNMA 15-Yr 09/01/26	AJ1441 3.50		1,000,000.00 100.00%	1,000,000.00	556,045.81	575,590.09	582,619.24
WELL: Wells Fargo	3138ASS94	AFS	MBS FNMA 15-Yr 09/01/26	AJ1443 4.00		1,075,000.00 100.00%	1,075,000.00	864,734.78	938,089.98	929,958.40

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6/28/2013 8:00 AM - JHK / BISM

Pledges By Pledgee And Maturity



Pledged To: City of Mandan

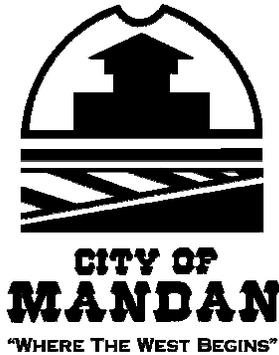
Starion Financial - Mandan, ND

As Of 6/30/2013

Page 16 of 51

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged			
							Original Face	Par	Book Value	Market Value
WELL: Wells Fargo	3138E0KF5	AFS	MBS FNMA 15-Yr 12/01/26	AJ7493 3.00		1,000,000.00 100.00%	1,000,000.00	736,024.33	767,042.69	767,727.30
WELL: Wells Fargo	31417AM30	AFS	MBS FNMA 15-Yr 12/01/26	AB3977 4.00		1,500,000.00 100.00%	1,500,000.00	1,078,008.39	1,151,872.29	1,163,022.56
WELL: Wells Fargo	3138E7TW4	AFS	MBS FNMA 15-Yr 02/01/27	AK3264 3.00		1,000,000.00 100.00%	1,000,000.00	747,474.87	775,749.31	771,035.28
WELL: Wells Fargo	3128P7QP1	AFS	MBS FHLMC 20-Yr 03/01/31	C91362 4.50		1,170,000.00 100.00%	1,170,000.00	734,936.66	793,703.70	784,112.82
WELL: Wells Fargo	36225EZC9	AFS	MBS GNMA II 1-Yr Tsy ARM 05/20/40	082538 3.50		1,300,000.00 100.00%	1,300,000.00	757,851.78	808,448.83	801,754.84
WELL: Wells Fargo	3137AMNN3	AFS	FHR 4012 JK 12/15/40	EXCH 3.50		1,000,000.00 100.00%	1,000,000.00	847,585.41	890,660.22	896,879.41
32 Securities Pledged To: 170 - City of Mandan							21,025,173.00	15,434,786.64	16,018,801.27	16,181,160.19

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Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
 PREPARATION DATE: July 11, 2013
 SUBMITTING DEPARTMENT: Public Works
 DEPARTMENT DIRECTOR: Jeff Wright, Public Works Director
 PRESENTER: Jeff Wright
 SUBJECT: Update the Commission on the mill and overlay projects.

STATEMENT/PURPOSE: Update the Commission on the mill and overlay projects proposed on 2nd St NW and 46th Ave SE and update on additional projects to be done.

BACKGROUND/ALTERNATIVES: The two projects on 46th Ave SE from 29th St SE to South Bay Dr SE and on 2nd St NW from Collins Ave to 6th Ave NW are on Northern Improvement's schedule for mid to late July to complete at an estimated cost of \$216,718. The 2nd St NW project has changed slightly to only include an overlay and chip seal, but we have extended the limits to include the off-street parking areas along 2nd Street and we also included the Post Office area east of Collins Avenue. Manholes along 2nd Street will be adjusted by City Staff with only the cost of materials added to the project. The elimination of the milling has absorbed the additional costs of adding more to the project.

The new grade school work has begun north of Old Red Trail on 37th Ave NW, as you know we had problems on 37th Avenue with wet conditions and all the new construction going on in the area and needed to repair the streets last year. The new street repairs are holding up great, but we are seeing similar break ups from Old Red Trail north to where we began our repairs last year. I am putting together some costs and will get a quote from Northern Improvement to do similar repair work in this new area. My estimate is around \$70,000 based on last year's numbers.

We have also submitted our list of Urban Road projects that could become available for repairs if federal money becomes available. These projects were mainly the concrete maintenance projects and the costs are generally substantially less than total re-construction costs. As information becomes available I will bring these potential projects to your attention and get moving on them.

ATTACHMENTS: N/A

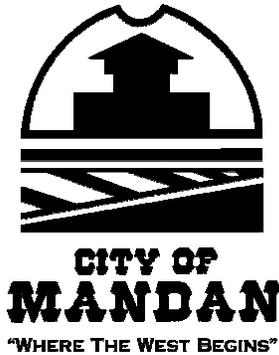
FISCAL IMPACT: The City of Mandan received \$843,243.59 from the State Treasurer and the funds have been placed in the Highway Distribution Fund for use on roadway maintenance purposes, we would have \$626,525.59 remaining for other proposed projects.

STAFF IMPACT: N/A

LEGAL REVIEW: N/A

RECOMMENDATION: No recommendation needed, just an update.

SUGGESTED MOTION: No motion needed.



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 12, 2013
SUBMITTING DEPARTMENT: Public Works
DEPARTMENT DIRECTOR: Jeff Wright, Public Works Director
PRESENTER: Jeff Wright
SUBJECT: Consider change order for water main extension on Sunset Dr.

STATEMENT/PURPOSE: Consider moving forward with the water main extension on Sunset Dr. through a change order with Knife River, the current contractor on the project.

BACKGROUND/ALTERNATIVES: During the Sunset Dr. Preliminary design it was decided that the project end where the street was widened between 15th St and 18th St NW in 2006. That portion of the street was in good shape and was at the required width, but during the 2006 reconstruction the water main was not replaced, leaving us with old water mains and limited water supply in case of emergency. By extending the water main north 275 feet to 18th St NW it would give us the alternate water feed if we have troubles with the water main that is west of the old hospital along the steep bank with very limited access. In fact, if that water main breaks we would use this alternative water main to bypass and just abandon it. This is going to be very important to have this option because at some point that old line will fail. This also will eliminate 275 feet of old rusty cast iron water main, which we do have troubles with breaks and rusty conditions.

Knife River estimated the project at \$143,421.83 and I did get a quote from Quam just to see how good a price we got, Quam's bid was \$168,675. We feel we have a good bid and it is the right time to do the project.

ATTACHMENTS: Bid Proposal

FISCAL IMPACT: I met with Greg Welch, Finance Director, and he felt the Utility Fund could support the project at this time.

STAFF IMPACT: N/A

LEGAL REVIEW: N/A

RECOMMENDATION: Move forward with the water main extension on Sunset Dr. through a change order with Knife River, the current contractor on the project.

SUGGESTED MOTION: Move to award Knife River the water main extension on Sunset Dr. for \$143,421.83, through a change order on the Sunset Dr. Project.

PROPOSAL



Knife River Corporation- North Central

3303 Rock Island Place

Bismarck, ND 58504

Contact: Craig Griesbach

Phone: (701) 223-5480

Fax: (701) 223-5557

Quote To: City of Mandan
Kim Fettig
Phone: 701-667-3225
Fax:

Job Name: Sunset Drive
Bid Date: 7/2/2013
Addendum: 0

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
100	REMOVAL OF CONCRETE	28.00	SY	7.00	196.00
200	SAW CONCRETE	98.00	LF	7.26	711.48
300	REMOVAL OF CURB & GUTTER	96.00	LF	3.80	364.80
400	REMOVAL OF BITUMINOUS SURFACING	483.00	SY	3.60	1,738.80
500	SAW BITUMINOUS SURFACING-FULL DEPTH	561.00	LF	8.20	4,600.20
600	REMOVAL OF PIPE ALL TYPES AND SIZES	171.00	LF	4.50	769.50
700	SALVAGED BASE COURSE	589.00	TN	31.60	18,612.40
800	SS1H OR CSS1H OR MS1 EMULSIFIED ASPHALT	22.00	GA	2.50	55.00
900	HOT BITUMINOUS PAVEMENT CL 29	371.00	TN	108.65	40,309.15
1000	SEEDING-TYPE A-CL I	77.00	SY	5.00	385.00
1100	GATE VALVE & BOX 6IN	1.00	EA	1,600.00	1,600.00
1200	GATE VALVE & BOX 12IN	2.00	EA	3,500.00	7,000.00
1300	6IN HYDRANT	1.00	EA	4,500.00	4,500.00
1400	REMOVE HYDRANT	1.00	EA	450.00	450.00
1500	WATER SERVICE LINE 1IN COPPER	246.00	LF	61.00	15,006.00
1600	WATERMAIN 6IN PVC	13.00	LF	250.00	3,250.00
1700	WATERMAIN 12IN PVC	278.00	LF	63.00	17,514.00
1800	CURB STOP & BOX 1IN	6.00	EA	225.00	1,350.00
1900	WATER SERVICE CONNECTION 1IN	6.00	EA	1,225.00	7,350.00
2000	CURB & GUTTER - TYPE I	65.00	LF	23.50	1,527.50
2100	VALLEY GUTTER - TYPE I 60IN	18.00	SY	65.00	1,170.00
2200	SIDEWALK CONCRETE 4IN	22.00	SY	45.00	990.00
2300	DRIVEWAY CONCRETE - HIGH EARLY STRENGTH	37.00	SY	50.00	1,850.00
2400	WATER MAIN TIE-INS & FITTINGS	1.00	LS	12,122.00	12,122.00
GRAND TOTAL					\$143,421.83

NOTES:

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Consider change order for water main extension on Sunset Dr.

Page 3 of 3

The above prices assume the same specifications will be followed in regards to the execution of the work as NDDOT Job SU-1-988(033)044 Sunset Drive, Mandan, ND Morton County.

City of Mandan

Knife River Corporation - North Central

(Signature)

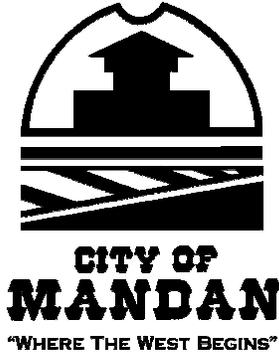
(Signature)

By

By

Date

Date



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 10, 2013
SUBMITTING DEPARTMENT: Engineering & Planning
DEPARTMENT DIRECTOR: Justin Froseth, Planning & Engineering Director
PRESENTER: Kim Fettig, Project Manager
SUBJECT: Consider approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

STATEMENT/PURPOSE: To authorize the installation of water and sewer for the development of Meadows 6th Addition.

BACKGROUND/ALTERNATIVES: The Meadows 6th Addition plat is located east of 37th Ave. NW and north of 45th Street NW. The proposed utilities only serve the developer of the benefiting land; therefore, this is being paid for under a 3-way agreement. A letter of credit has been secured for the project.

ATTACHMENTS:

1. 3 way agreement
2. Resolution Approving Plans and Specifications and Authorizing Execution of 3-way Agreement

FISCAL IMPACT: The entire cost of the project is being paid by the developer as part of the 3 way agreement.

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: July 16, 2013

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

Page 2 of 7

3 – WAY AGREEMENT

THIS AGREEMENT, Made on the _____ day of _____, 2013, between the City of Mandan, a municipal corporation, hereinafter called the City and Mitzel Builders, Inc. hereinafter called the Developer, and Basaraba Excavating & Dirtworks, LLC hereinafter called the Contractor. The Engineer mentioned in this contract shall be KLJ.

WHEREAS, The Developer wishes to enter upon the public streets and rights-of-way to construct under private contract the following improvements:

<u> X </u>	Water Mains
<u> X </u>	Sanitary Sewer Mains
<u> X </u>	Storm Sewer
<u> </u>	Streets
<u> X </u>	Others: Water and Sewer Services

For property to be developed and offered for sale by the Developer, and

WHEREAS, The City wishes to safeguard the public interest in assuring that said construction work will be in accord with the plans, specifications and requirements of the City and will be completed in a proper and safe manner in accord with said City plans and specifications for said type of work and

WHEREAS, the Developer has filed a petition to the Board of City Commissioners to permit the Developer to contract directly for said improvements;

NOW, THEREFORE, It is agreed between the parties, for the considerations herein named, as follows:

1) LICENSE TO CONSTRUCT

The City grants to the Developer the right, privilege, and license to enter upon and construct in the public rights-of-way of the City the above improvements in the following streets:

Meadows 6th Addition

34th Avenue NW
48th Street NW

Which license shall continue so long as the Developer performs the agreements assumed by it herein.

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

Page 3 of 7

2) SCOPE OF WORK

The Developer will through a contractor licensed under the laws of North Dakota, to do said work, furnish all materials, and all equipment and labor, necessary to perform all of the work shown on the plans and specifications prepared by a licensed professional engineer, which are hereby referred to and made apart of this Agreement. Construction staking shall be done by Kadrmass, Lee & Jackson, Inc., and testing by the Contractor as required by the engineer at the expense of the Developer. The Developer shall complete all stubouts to the property line on utilities to be constructed under this contract.

All work incidental to the project, such as grading, taps to the water main, and any other usual charges as determined by the Engineer shall be borne by the Developer.

3) TIME OF COMPLETION

The work to be performed under this Agreement shall be commenced within 10 days of the date of the execution of this Agreement, and shall be completed no later than August 16, 2013.

4) SUPERVISION AND INSPECTION OF WORK

The City and the City Engineering Department shall at all times have access to the work, in its preparation and progress. The licensed professional engineer and his authorized representatives will give all grades or locations for all work and no work depending upon such grades or locations shall be commenced until the same have been established. Upon all questions concerning the interpretation and compliance with the plans and specifications and the performance and execution of the work called for by them, the decisions of the City Engineer shall be final and binding upon the Developer and its contractors, servants, employees or agents.

5) ENGINEER'S DECISIONS

The Project Engineer shall have general supervision and direction of the work. He has authority to stop the work when such stoppage may in his opinion be necessary to insure proper execution of the contract. He shall also have the authority to reject all work and materials which do not conform to the plans and specifications, and to decide all questions which arise in the execution of the work. All such decisions of the Project Engineer shall be final.

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

Page 4 of 7

11) PROTECTION OF PUBLIC AND WORK

The Developer shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for protection of the public, and shall further maintain at all times adequate protection of the work from damage. The Developer shall also take out and furnish general liability insurance to protect itself and the City with an insurer licensed to do business in North Dakota, in the sum of \$1,000,000 for one accident, against and from all suits, actions, or claims of any character, name and description brought for an account of any injuries or damages received or sustained by any person or persons or property on account of any negligent act of fault of the Developer, its contractor, or officers, agents or employees in execution of the contract or on account of its failure to provide necessary barricades, warning lights, or signs, and as will protect the City from any contingent liability under this contract. In no case shall the liability insurance be less than specified in Section 100-33 of the City of Mandan Construction Specifications for Municipal improvements.

12) UTILITIES

It shall be the responsibility of the Developer and Contractor to familiarize itself with the location of all existing sewer, water mains and service lines, gas mains and service lines, telephone cable, power, light, telephone poles, guys, valve boxes, stop boxes, and all utilities installations that might be affected in the performance of the work. The developer shall notify all utility companies 48 hours in advance of any construction affecting said utilities, and shall work out with said utilities any conflicts or changes.

13) CHANGES

The board of City Commissioners reserves the right to make any necessary changes in the alignment, grade, or design of the proposed work deemed by them advisable.

14) CLEAN UP

Extra materials, tools, and temporary structures shall be removed by the Developer and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the City Engineer. The Developer shall maintain for a period of three months after completion of the work the surface of unpaved trenches, adjacent curbs and gutters, sidewalks, driveways, shrubbery, fences, sod and other surfaces disturbed. The Developer shall conduct its operations in such a manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved area shall be restored to as good as or better than prior to construction by the Developer. The Developer will be required to replace paving or gravel surface removed or damaged in the construction work or repair any area disturbed as a result of construction work.

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

Page 5 of 7

15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS

The Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the total contract amount as security for the faithful performance of the contract and also a payment bond in an amount of not less than one hundred percent (100%) of the total contract amount as security for the payment of all persons performing labor on the project under the contract and furnishing materials in connection with the contract.

IN WITNESS WHEREOF, The Parties have executed the within and foregoing contract.

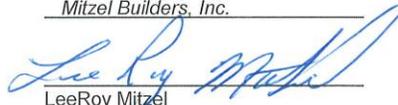
CITY OF MANDAN

Arlyn Van Beek, President
Board of City Commissioners

Attest:

James Neubauer, City Administrator

DEVELOPER
Mitzel Builders, Inc.



Lee Roy Mitzel
Owner

2401 46th Ave. SE, #101

Mandan, ND 58554
Address

CONTRACTOR

Basaraba Excavating & Dirtworks, LLC
Firm Name



Brent Koser
Authorized Representative

Owner

37610 12th St NE

Wilton ND 58579
Address

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

Page 6 of 7

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

UNIT PRICE BID

Item No.	Spec No.	Item	Unit	Qty	Unit Amount	Total Amount
1	SP	MOBILIZATION	LS	1	9700 ⁻	9700 ⁻
2	801	PIPE BEDDING	TON	636	14 ⁻	8904 ⁻
3	801	SUBCUT GRAVEL	TON	52	40 ⁻	2080 ⁻
4	801	INSTALL 8" SDR-35 PVC SANITARY SEWER	LF	704	20 ⁻	14,080 ⁻
5	801	INSTALL 8" SANITARY SEWER CAP	EA	1	10 ⁻	10 ⁻ <i>P.B.</i>
6	801	TELEWISE SEWER MAIN	LF	704	15 ⁻	1056 ⁻
7	802	18" RCP STORM SEWER	LF	38	60 ⁻	2280 ⁻
8	802	24" RCP STORM SEWER	LF	47	80 ⁻	3760 ⁻
9	802	INSTALL 36" RCP STORM SEWER	LF	40	50 ⁻	2000 ⁻
10	802	36" RCP STORM SEWER	LF	272	110 ⁻	29,920 ⁻
11	802	RIP RAP 12" NOMINAL DIAMETER	CY	22	80 ⁻	1,760 ⁻
12	900	INSTALL 6" PVC C-900 WATERMAIN	LF	30	27 ⁻	810 ⁻
13	900	INSTALL 8" PVC C-900 WATER MAIN	LF	958	19 ⁻	18,202 ⁻
14	900	INSTALL 6" HYDRANT	EA	2	1100 ⁻	2200 ⁻
15	900	REMOVE & RESET 6" HYDRANT	EA	2	1,000 ⁻	2,000 ⁻
16	900	INSTALL 6" GATE VALVE AND BOX	EA	2	350 ⁻	700 ⁻
17	900	INSTALL 8" GATE VALVE AND BOX	EA	7	350 ⁻	2,450 ⁻
18	1205	48" SANITARY SEWER MANHOLES	EA	3	3,400 ⁻	10,200 ⁻
19	1205	INSTALL 60" STORM SEWER MANHOLE	EA	1	2,000 ⁻	2,000 ⁻
20	1205	INSTALL 72" STORM SEWER MANHOLE	EA	1	2,000 ⁻	2,000 ⁻
21	1205	TYPE 24" INLET	EA	1	1,500 ⁻	1,500 ⁻
22	1205	TYPE 72" INLET	EA	1	3,100 ⁻	3,100 ⁻
23	1209	INSTALL 4" SDR-35 PVC SEWER SERVICE	LF	505	15 ⁻	7,575 ⁻
24	1209	INSTALL 8" X 4" SEWER SERVICE CONNECTION	EA	15	15 ⁻	225 ⁻
25	1209	INSTALL 1" WATER SERVICE LINE	LF	518	13 ⁻	15,540 ⁻
26	1209	1" CURB STOP AND BOX	EA	15	50 ⁻	750 ⁻
27	1209	INSTALL 8" X 1" WATER SERVICE CONNECTION	EA	15	60 ⁻	900 ⁻
28	1211	TRAFFIC CONTROL	LS	1	0 ⁻	0 ⁻
					TOTAL BID =	145,702

*Contractor shall install owner provided materials indicated above as "Install." Contractor shall furnish and install materials not specifically identified above as "Install."

Board of City Commissioners

Agenda Documentation

Meeting Date: July 16, 2013

Subject: Consider for approval the plans and specifications for and the execution of a 3-way agreement for the installation of water & sewer in Meadows 6th Addition Project 2013-13.

Page 7 of 7

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND
AUTHORIZING EXECUTION OF 3-WAY AGREEMENT FOR WATER AND
SEWER IMPROVEMENT PROJECT NO. 2013-13**
(Meadows 6th Addition)

BE IT RESOLVED BY the Board of City Commissioners of the City of Mandan, North Dakota, as follows:

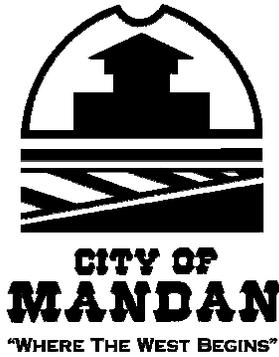
1. That the plans and specifications for the Water and Sewer Project No. 2013-13 serving Meadows 7th Addition in the City of Mandan, as presented by Leeroy Mitzel, Mitzel Builders Inc., on behalf of themselves, are hereby approved, ratified and confirmed as the plans and specifications for said project, in accordance with which said improvement project will be constructed, subject to any further modifications of the plans and specifications by the Board as provided by law. The plans and specifications shall be filed in the Office of the City Administrator and City Engineer and open for public inspection. The named streets within the subdivision to receive the improvements are: 34th Avenue NW and 48th Street NW.
2. That the President of the Board is hereby authorized to enter into a 3-way agreement between the City of Mandan; the developer, Leeroy Mitzel, Mitzel Builders Inc., and the developer's contractor, contingent upon the City's receipt of an irrevocable escrow account covering construction costs.
3. This resolution shall be in full force and effect from the date of its passage.

President, Board of City Commissioners

ATTEST:

James Neubauer, City Administrator

Date of Passage: July 16th, 2013



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 11, 2013
SUBMITTING DEPARTMENT: Business Development & Communications Department
DEPARTMENT DIRECTOR: Ellen Huber, Business Development & Communications Director
PRESENTER: Ellen Huber, Business Development & Communications Director
SUBJECT: Possible changes to property tax exemption policy

STATEMENT/PURPOSE: To consider possible changes to the policy for property tax exemption for new and expanding businesses.

BACKGROUND/ALTERNATIVES: The Mandan City Commission revamped its policy for property tax exemption for new and expanding businesses in 2012 with the new policy becoming effective in 2013. The Commission held a working session June 24 to review changing market dynamics as well as the impact of Senate Bill 2314, passed by the 2013 Legislature. Key changes to local policy discussed at the June 24 session are as follows:

- Tying consideration of any exemption for a retail-sector business to a more targeted approach whereby it must fall within a retail category lacking in the community. This might also apply to services missing in the community if the Commission were to consider payments in lieu of taxes (PILOT).
 - Previously the targeted portion of the policy related to retail market gaps had a provision for only the first business among the targets listed. Consensus at the working session was to allow for the first of the targeted businesses in each of 3 major business districts.
- Elimination of consideration for speculative commercial building projects with a possible exception for a major retail center.

Since the working session, clarification has been received from the N.D. Tax Department regarding the date of effectiveness for SB2314. The act is for property tax exemptions granted by a municipality to initially become effective for taxable years beginning after Dec. 31, 214. The Tax Department indicates a project must be “operational” in calendar year 2013 in order to not be subject to the new restrictions. The information received

notes, “The reason for this is that any exemption granted in 2014 won’t go into effect until 2015, which falls under the new law.” As to how to handle applications for property tax exemption by new and expanding businesses going forward, it would appear the Commission may want to consider some options or a combination thereof:

1. Put a moratorium on consideration of applications for non-primary sector businesses until after a possible November 2014 vote of citizens regarding the use of the tool for retail sector businesses.
2. Consider applications by non-primary sector businesses, noting a contingency on any approvals of the need for a passing vote in a November 2014 election.
3. Consider revisions to policies for the use of payments in lieu of taxes for non-primary sector businesses that meet targeted goals and/or generate significant public benefits.
4. Consider other alternatives should situations arise where an incentive is needed to attract or foster the growth of non-primary sector businesses that meet targeted goals and/or generate significant public benefits.

Other items of note: At the June 24 working session, the Commission also discussed possible changes to an ordinance for exemption of the first \$75,000 in value for two years for new single family homes and to its practice of providing an exemption for multi-family projects of 24 units or more. Staff members are researching dates for potential implementation. Separately, building official Lalim plans to work with Attorney Brown on a potential change in ordinance to increase off-street parking requirements for apartment buildings.

ATTACHMENTS: Property tax exemption policy for new and expanding businesses showing possible changes.

FISCAL IMPACT: To be determined.

STAFF IMPACT: To be determined.

LEGAL REVIEW: Attorney Brown has not yet had the opportunity to review this agenda documentation nor the draft revisions to policy.

RECOMMENDATION:

SUGGESTED MOTION:

Adopted by the City Commission - February 15, 2011

Revised June 5, 2012 & December 18, 2012

Effective January 1, 2013

Possible revisions per June 24 working session

CITY OF MANDAN COMMERCIAL PROPERTY TAX EXEMPTION POLICY AND GUIDELINES

The City of Mandan is committed to high quality development in all parts of the city, to growing its commercial property base and to the improvement of the quality of life for its citizens through enhanced employment opportunities, reduced property taxes, increased sales and use tax revenues, and better access to needed products and services. To help meet these goals, the City Commission has adopted guidelines and criteria for granting business incentives. Applications are subject to the review and approval by the Mandan Growth Fund Committee and, ultimately, the Mandan City Commission.

Businesses that are primarily industrial, commercial, retail or service are eligible for property tax incentives for new and expanding businesses if they meet state requirements (NDCC 40.57.1).

It is the policy of the City to provide business incentives for the purpose of attracting new business and industry to the City and to encourage expansion and modernization of existing business facilities. The City will generally consider a property tax exemption only for business facilities and/or properties that provide one or more measureable public benefits.

The criteria outlined in this document are guidelines only. Each application will be evaluated on its own merits and is subject to the review and approval by the Mandan City Commission. The criteria are to be reviewed and updated at least annually and may be modified at any time to assure that the criteria address current priorities and needs.

2013 Legislative Changes

The North Dakota Legislature in 2013 approved Senate Bill 2314, which requires certification from the N.D. Department of Commerce Division of Economic Development and Finance that a project is a primary sector business.

Cities such as Mandan, with a population of less than 40,000, may grant a partial or complete exemption for a project operating in the retail sector if the governing body has obtained approval for exemptions of retail-oriented businesses from qualified electors during a city election held in conjunction with a statewide general election (November 2014). The governing body must also establish by resolution or ordinance the criteria that will be applied by the governing body to determine whether it is appropriate to grant an exemption for a project in the retail sector. Criteria must include:

- Potential positive or adverse consequences for existing retail sector businesses.
- Evaluation of short-term and long-term effects for other property taxpayers.
- A written agreement with the project operator, including performance requirements for which the exemption may be terminated if those requirements are not met.
- Evaluation of whether the project operator would locate within the municipality without the exemption.

Payments in lieu of taxes (PILOT) are not impacted by the legislation.

The legislative changes are effective for property tax exemptions granted by a municipality to initially become effective for taxable years beginning after Dec. 31, 2014. The N.D. Tax Department indicates this means a project must be operation in calendar year 2013 in order to not be subject to the new restrictions. Any exemption granted in calendar year 2014 would not go into effect until 2015, falling under the new law.

CRITERIA FOR THREE LEVELS OF EXEMPTION

SIGNIFICANT MEASURABLE BENEFITS				
PRIMARY SECTOR BUSINESSES ¹ (or service sector for potential PILOT consideration)		TARGETED RETAIL & SERVICES ²		
		Validated market demand exceeds supply or service is missing from community. Examples include hardware/home improvement; clothing, shoe or department store; dry cleaning; movie theater; full-service car wash; restaurants, hotels. 1 st to build in each of 3 general business districts: 1) Main Street/Downtown, 2) Memorial Highway/SE Mandan (south of Main), 3) I-94 Corridor.		
JOBS CREATION Numbers of Jobs ³	JOB QUALITY Wages & Benefits ⁴	INCREASED LOCAL USE TAXES ⁵ <ul style="list-style-type: none">• 1% Sales• 1% Restaurant & lodging• 2% hotel occupancy	ANNUAL SALES	TYPE & SCOPE OF PROJECT
BASE LEVEL/TIER 1 — 100% exemption for 2 years <i>Project should provide at least 1 of the significant, measureable benefits listed below.</i>				
Minimum 3 FTEs	Minimum \$9/hr, \$18,720/yr or 30% of median household income	\$5,000 to \$10,000 in local use tax collections	\$500,000 to \$1 million annual sales	<ul style="list-style-type: none"> • Retail/Services – Under 5,000 sf • Restaurants – fast food (counter service or drive-up only) • Hotels – minimum 20 rooms, investment of \$45,000/rm construction cost, no amenities
INTERMEDIATE LEVEL/TIER 2 — Exemption of 100% for 2 years, 75% year 3, 50% year 4, 25% year 5 <i>Project should provide: 1) at least 2 of the tier 1 benefits listed above, OR 2) at least 1 of the tier 2 benefits listed below</i>				
Minimum 3 FTEs, PLUS an additional FTE for each \$100,000 in structural value subject to exemption	Minimum \$20.35/hr, \$42,326/yr or 70% of median household income	\$10,001 to \$100,000 in local use taxes	\$1,000,001 million to \$10 million in annual sales	<ul style="list-style-type: none"> • Retail/Services – 5,000 to 10,000 sf • Restaurants – limited service (order w/ cashier, food brought to table) • Hotels – 21 to 40 rooms, \$60,000/rm construction cost, meeting room
TOP LEVEL/TIER 3 — 100% exemption for 5 years <i>Project should provide: 1) at least 3 of the tier 1 benefits listed above, OR 2) at least 1 of the tier 3 benefits listed below, OR 3) Be a primary sector business⁸</i>				
Minimum 3 FTEs, PLUS an additional 2 FTEs for each \$100,000 in structural value subject to exemption	Minimum \$29.07/hr, \$60,466/yr or 100% of median household income	\$100,001+ in local use taxes	More than \$10 million in annual sales	<ul style="list-style-type: none"> • Retail/Services – 10,000+ sf • Restaurants – full service – (table side service) • Hotels – 40+ rooms, \$75,000/rm construction cost; meeting rooms and pool or convention center

1. Primary Sector Business — Through the employment of knowledge or labor, the business adds value to a product, process, or service that results in the creation of new wealth. The term includes tourism but does not include production agriculture.
2. Filling Market Gaps — A) Based on Nielsen Claritas, ESRI or other market data for Morton County. Community surveys may also be considered. Applicant, if approved, shall be required to submit annual sales tax report. B) Based on 2008 City of Mandan household survey of retail preferences.
3. Numbers of Jobs — By first anniversary of certificate of occupancy for owner occupied projects (or first anniversary of occupancy for lease projects)
4. Wages & Benefits — Based on 2011 City of Mandan average household income estimated at \$60,466. Employee benefits including retirement and insurance contributions may be quantified on an hourly basis and applied toward the threshold. Applicant, if approved, shall be required to submit annual payroll report.
5. Local Use Taxes — Applicant, if approved, shall be required to submit annual sales tax report.

The Board of Commissioners may waive any of these requirements if they deem a business should receive additional incentives because of its benefits to the community.

OTHER POTENTIAL IMPACTS (POSITIVE AND NEGATIVE)

- Diversification of economic base (an industry not represented or under-represented in our business community)
- Ability of the project to attract people from other communities
 - Radius of draw for customers and frequency of patronage (often an inverse relationship with the market area increasing as the frequency decreases)
 - Uniqueness of business
 - Breadth of customer base
- Synergies with existing businesses in the community
 - Enhancing an industry sector that is a base of the local economy
 - Filling a gap in the supply chain for a core industry or business sector
 - Providing a product or service needed by other businesses in the region
- Growth potential of company and industry and potential spin-off benefits
- Adding value to local resources
- Making use of an underutilized asset (either facilities or land)
- Economic impact through increased construction activity, equipment purchases, additional product purchases, additional work activity, immediate and projected increases in property values, and impact on future tax collections.
- Impact on city services
 - Can the company be accommodated within existing service levels, or will additional capacity be needed?
 - Is the company locating where better use of existing services will take place or further the development plans of the City?
- Fostering entrepreneurship (boosting the economic feasibility of the project)

ADDITIONAL LIMITATIONS AND STANDARDS

- A new or expanded business in the community must not gain unfair advantage with existing competitors through use of the exemption. Applicant should be prepared to demonstrate that an unfair advantage is not gained over any possible existing competitor for the amount of exemption received.
- Property tax incentives must be approved prior to the start of construction.
- Projects that are primarily warehousing (for the storage of goods, raw materials or commodities) would not receive an incentive unless the owner proves need or provides other information to justify the exemption.
- **Projects that are primarily speculative in nature, with unidentified business tenants or occupants, will not receive an incentive unless the owner can provide information to justify the exemption. An exception to this may be a major retail shopping center generating significant local sales tax revenue.**
- Projects involving relocation of an existing business from another N.D. community to Mandan will not generally receive an incentive unless the business is expanding in some manner such as square footage, number of employees, or scope of products and services.
- Jobs created in the 12 months prior to the date of application may be considered toward meeting job creation thresholds as indicated in the criteria.
- Jobs must be based at the project location to apply toward the jobs creation thresholds. Out-of-town or traveling jobs stemming from the project location may be awarded partial credit in situations where permanent local residency of employees is likely.

- Annual reports — By February 15 of each year, the recipient of the exemption will file an annual employment verification report with the Bismarck – Mandan Development Association.
- An exemption that has been granted will be considered lapsed and invalid if construction has not begun in one year and completed in two years. Notice will be sent to the project operator 90 days prior to the exemption lapsing.

Improvements to Commercial

NDCC 57-02.02 allows exemptions for property renovations, remodeling, alterations, and additions. A property tax exemption is available for all improvements to commercial buildings or structures. The value of qualifying improvements is exempt. The last assessment on the building or structure prior to commencement of the improvements remains for the duration of the exemption period, unless equalization or revaluation of building values is necessary. The exemption does not apply to land values, which may be changed whenever justified. The exemption is valid for the prescribed period and does not terminate upon the sale or exchange of the property. It is transferable to subsequent owners.

Payments in Lieu of Taxes (May warrant discussion and consideration for revisions)

The City of Mandan may consider up to a five-year payment in lieu of tax (PILOT) in years 6-10 for a new or expanded business whereby a project may be required to pay only an approved percentage of taxes that would otherwise be due. This incentive is generally used only in rare circumstances for projects of extraordinary public benefit. Such requests shall be considered directly by the City Commission.

Sale to Non-Profit

If a property receiving a tax exemption is sold or in any way transferred within a period of time equal to 2.5 times the length of the exemption to an entity exempt from property tax, the property owner will be required to pay back all tax revenue given as part of the exemption.

Non-profits may be asked to make payments in lieu of taxes for essential services.

Other Clawback Provisions

If the project fails to deliver on public benefits that were the basis for approval of an exemption, or any other requirements including timely reporting, the City Commission may revoke the exemption and/or require that all or part of the exemption be paid back. **Project applicant may be required to enter into a performance or business incentive agreement if approved for assistance before any exemption becomes effective.**

ORDINANCE NO. 1157

AN ORDINANCE TO AMEND AND REENACT SECTION 21-03-02 OF ORDINANCE 1088 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

BE IT ORDAINED By the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, as follows:

SECTION 1. AMENDMENT. Section 21-03-02 of the Mandan Code of Ordinances is amended to read as follows:

The following described property located within the City of Mandan, Morton County, North Dakota shall be excluded from A (Agricultural) and shall be included in the R3.2 (Two-Family Residential) zoning namely,

A part of the SE ¼ in Section 7, Township 139N, Range 81W (the proposed West Hills Estates 3rd Addition)

and as so amended said section is hereby reenacted. The city administrator is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

President, Board of City Commissioners

Attest:

City Administrator

Public Hearing:	<u>July 16, 2013</u>
First Consideration:	<u>July 16, 2013</u>
Second Consideration and Final Passage:	<u>August 6, 2013</u>
Publication Date:	<u>August 30, 2013</u>
Recording Date:	_____

PROPOSED ZONE CHANGING

AUDITORS LC7 A



WESTHILLS ESTATES SECTION

WESTHILLS ESTATES FIRST

7

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING
EXECUTION OF 3-WAY AGREEMENT FOR WATER AND SEWER IMPROVEMENT
PROJECT NO. 2013-13
(Meadows 6th Addition)**

BE IT RESOLVED BY the Board of City Commissioners of the City of Mandan, North Dakota, as follows:

1. That the plans and specifications for the Water and Sewer Project No. 2013-13 serving Meadows 7th Addition in the City of Mandan, as presented by Leeroy Mitzel, Mitzel Builders Inc., on behalf of themselves, are hereby approved, ratified and confirmed as the plans and specifications for said project, in accordance with which said improvement project will be constructed, subject to any further modifications of the plans and specifications by the Board as provided by law. The plans and specifications shall be filed in the Office of the City Administrator and City Engineer and open for public inspection. The named streets within the subdivision to receive the improvements are: 34th Avenue NW and 48th Street NW.

2. That the President of the Board is hereby authorized to enter into a 3-way agreement between the City of Mandan; the developer, Leeroy Mitzel, Mitzel Builders Inc., and the developer's contractor, contingent upon the City's receipt of an irrevocable escrow account covering construction costs.

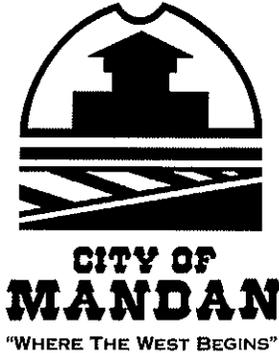
3. This resolution shall be in full force and effect from the date of its passage.

President, Board of City Commissioners

ATTEST:

James Neubauer, City Administrator

Date of Passage: July 16th, 2013



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 11, 2013
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch
SUBJECT: Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility; and Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.

PURPOSES

1. To consider a Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility.
2. To consider a Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.

BACKGROUND

The Mandan Water Treatment Facility Master Plan Update, completed in 2006, identified a 20-year Capital Improvements Plan (CIP) for the Facility. As the City continues to following the CIP recommendations to optimize the operation of the Facility the City is preparing to proceed with the next Project, which is the Phase II Optimization Project. This Project will address a number of Facility improvements, including recoating of basins, installation of new plate settlers in the pretreatment basin, replacement of filter valves, lime silo OSHA compliance modifications, instrumentation and control upgrades, chemical feed upgrades, and architectural improvements to address aging infrastructure.

On February 5, 2013 the Board of City Commissioners approved to enter into an Agreement with Advanced Engineering and Environmental Services for engineering services for the Mandan Water Treatment Plant – Phase II Improvements Project.

Construction will begin during the summer of 2013 and will be completed during the summer of 2014.

On March 19, 2013 the Board of City Commissioners approved a Resolution authorizing filing of application with the North Dakota Department of Health for a Loan under the Safe Drinking Water Act.

On April 23, 2013 the City was approved by the Industrial Commission of North Dakota for a Loan in the amount of \$1,200,000 from the North Dakota Public Finance Authority's Drinking Water State Revolving Fund Program to finance the Phase II Optimization Improvements Project scheduled for fiscal years 2013 and 2014 at the Water Treatment Plant. The interest rate on the Loan is 2.5%, which includes a 0.5% administrative fee, and the maturity date is September 1, 2033. The Loan will be repaid from user fees. The City is only obligated for the Loan draw requests.

ATTACHMENTS

- Letter from the City's Bond Counsel Steven L. Vogelpohl, Attorney At Law.
- Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility.
- Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.

FISCAL IMPACT

The total approved SRF Loan and Project cost estimate = \$1,200,000

The City included this Project in the 2013 Budget and adjusted the Water and Sewer Base Rate to service the debt on the Loan.

STAFF IMPACT

None

LEGAL REVIEW

The Resolutions were prepared by the City's Bond Counsel Steven L. Vogelpohl, Attorney At Law.

RECOMMENDATIONS

1. To approve the Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility.
2. To approve the Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.

SUGGESTED MOTIONS

1. Move to approve the Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility.
2. Move to approve the Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.

STEVEN L. VOGELPOHL
ATTORNEY AT LAW

Suncrest Office Park
1120 College Drive, Suite 207
P.O. Box 7068
Bismarck, ND 58507-7068

Phone: (701) 258-9847
FAX: (701) 258-9854
E-Mail: siv@slvlaw.net

July 11, 2013

Greg Welch
City of Mandan
205 2nd Ave. NW
Mandan, ND 58554

Re: Mandan Water Treatment Facility Improvements DWSRF Loan

Dear Greg:

Enclosed is the original copy of each of two resolutions which need to be adopted by the City Commission on **July 16** in the order listed, as follows:

1. Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Treatment Facility Improvements; and
2. Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A.

Upon adoption of the resolutions, please have the signature pages of same (pages 2 and 10, respectively) executed and sealed and their voting records (also on page 2 and 10, respectively) completed. These originals should be kept for the City record.

Please provide me a photocopy of the above referenced page 2 and page 10.

Thank you for your assistance and please call if you would have any questions.

Sincerely,



Steven L. Vogelpohl
Attorney at Law

SLV/dl
13-008/071113.ltr

Encs

c: Malcolm H. Brown (w/Encs)

CITY
OF
MANDAN
NORTH DAKOTA

**RESOLUTION AUTHORIZING UNDERTAKING
FOR
MUNICIPAL IMPROVEMENT
CONSISTING OF
WATER TREATMENT FACILITY IMPROVEMENTS**

BE IT RESOLVED by the Board of City Commissioners (the "Board") of the City of Mandan, North Dakota (the "City"), as follows:

1. That this Board has investigated the facts necessary to ascertain and does hereby find, determine and declare that the City has compelling cause to proceed with construction, improvement and betterment of the City's Water and Sewer Utility by an undertaking defined by North Dakota Century Code Section 40-35-02, to consist of, but not limited to, water treatment facility optimization improvements, as well as all other items of work and materials which are reasonably necessary or incidental to the completion of such project (the "Water 2013A Undertaking");

2. That it has further been determined that the cost of the Water 2013A Undertaking has been estimated by the engineer therefor to be approximately \$1,200,000 which sum includes all construction costs, construction interest, legal, engineering, and administrative fees and contingencies;

3. That it has also been determined that the amount necessary to finance the Water 2013A Undertaking may best be provided through the issuance of revenue bonds of the City in amounts not to exceed \$1,200,000 to be sold to the North Dakota Public Finance Authority to evidence a State Revolving Fund Loan;

4. That the officers of the City are hereby authorized to complete such work and arrangements necessary to effect completion of the Water 2013A Undertaking and its financing;

5. It is hereby determined that all preliminary proceedings initiated for the project referred to herein are hereby modified to the extent that all such proceedings shall be incorporated within the Water 2013A Undertaking and that this Board does hereby adopt by reference all of the previous resolutions and actions approved and taken by this Board and the City or its authorized officials in connection herewith; and

6. It is expressly resolved that it is the intent of the City to proceed with the Water 2013A Undertaking heretofore commenced with proceedings for the Water 2013A Undertaking to be hereafter followed as prescribed by North Dakota Century Code Chapter 40-35 and Mandan Code of Ordinances Chapter 9-01.

Dated this 16th day of July, 2013.

CITY OF MANDAN, NORTH DAKOTA

Attest:

President, Board of City Commissioners

City Administrator

(S E A L)

The governing body of the political subdivision acted on the foregoing resolution on July 16, 2013, as follows:

Adoption moved by _____ Seconded by _____

"Aye" _____

"Nay" _____

Absent _____

and after vote the presiding officer declared the resolution adopted.

CITY OF MANDAN, NORTH DAKOTA

**RESOLUTION AUTHORIZING THE ISSUANCE OF
WATER IMPROVEMENT INTERIM CERTIFICATES OF 2013, SERIES A
AND
WATER IMPROVEMENT REVENUE BONDS OF 2013, SERIES A**

WHEREAS, the City of Mandan, North Dakota (the "City") owns, operates and maintains a water and sewer utility as described and defined in Section 9-01-01 of Mandan Code of Ordinances Chapter 9-01 (the "Utility");

WHEREAS, it is necessary to make improvements to the Utility including, but not limited to, water treatment facility optimization improvements, as well as all other items of work and materials which are reasonably necessary or incidental to the completion of such project (the "Project") at a total estimated cost of \$1,200,000;

WHEREAS, the best interests of the City, its taxpayers and the users of the Utility would be properly and effectively served by financing the cost of the Project by issuance by the City of its Water Improvement Interim Certificates of 2013, Series A (the "Interim Certificates") and its Water Improvement Revenue Bonds of 2013, Series A (the "Bonds") pursuant to the provisions of Chapter 40-35 of the North Dakota Century Code (the "NDCC") and Mandan Code of Ordinances Chapter 9-01 (the "Ordinance");

WHEREAS, the City has heretofore issued and has outstanding its Sewer Improvement Revenue Bonds of 1997 (the "1997 Bonds"), its Water Improvement Revenue Bonds of 2002 (the "2002 Bonds"), its Water and Sewer Revenue Bonds, Series 2005 (the "2005 Bonds"), its Sewer Improvement Revenue Bonds of 2008, Series A (the "2008 Series A Sewer Bonds"), its Sewer Improvement Revenue Bonds of 2008, Series B (the "2008 Series B Sewer Bonds"), its Water Improvement Revenue Bonds of 2008, Series A (the "2008 Series A Water Bonds"), its Water Improvement Revenue Bonds of 2008, Series B (the "2008 Series B Water Bonds") and its Water Improvement Revenue Bonds of 2010, Series A (the "2010 Series A Water Bonds"), which 1997 Bonds, 2002 Bonds, 2005 Bonds, 2008 Series A Sewer Bonds, 2008 Series B Sewer Bonds, 2008 Series A Water Bonds, 2008 Series B Water Bonds and 2010 Series A Water Bonds pursuant to the respective resolutions authorizing issuance thereof are payable from net revenues of the Utility as defined in Subsection 3 of Section 9-01-06 of the Ordinance (the "Net Revenues");

WHEREAS, other than the 1997 Bonds, the 2002 Bonds, the 2005 Bonds, the 2008 Series A Sewer Bonds, the 2008 Series B Sewer Bonds, the 2008 Series A Water Bonds, the 2008 Series B Water Bonds and the 2010 Series A Water Bonds (together, the "Outstanding Bonds"), the City has no outstanding bonds or evidences of indebtedness payable from the Revenue Bond Account (the "Revenue Bond Account") of the Water and Sewer Utility Fund (the "Fund") as described and defined in the Ordinance;

WHEREAS, the North Dakota Public Finance Authority (the "Authority") was created and is authorized to lend money to political subdivisions of the State of North Dakota, to acquire and hold municipal securities issued by such political subdivisions, including those issued to construct, maintain, repair, and operate or cause to be operated, public water and sewer system utilities, and to issue its bonds to pay the costs of acquiring such municipal securities;

WHEREAS, certain funds have been deposited in the drinking water treatment revolving loan fund created by NDCC Chapter 61-28.1 (the "Revolving Loan Fund") from which Revolving Loan Fund loans will be made to political subdivisions of the State, including the City to finance the costs of public water system utilities and to assist public entities in connection with the financing of such facilities;

WHEREAS, the City has made timely application to the North Dakota Department of Health (the "Department") pursuant to the requirements of the Revolving Loan Fund to finance all or a portion of the cost of the Project;

WHEREAS, the Authority and the Department have approved the City's application for a loan from the Revolving Loan Fund in an amount not to exceed \$1,200,000; and

WHEREAS, the City will issue its Interim Certificates and Bonds to the Authority to evidence the loan to the City from the Revolving Loan Fund in accordance with the provisions of the North Dakota State Revolving Fund Program Loan Agreement (the "Loan Agreement") between the Authority and the City;

NOW, THEREFORE, be it resolved by the governing body of the City that the City covenants and agrees as follows:

Section 1. Authorization, Sale, Terms, Preparation and Execution of Interim Certificates. Prior to and in anticipation of the issuance of the Bonds authorized by this Resolution, the issuance of the Interim Certificates is hereby authorized in the total principal amount of not to exceed \$1,200,000 at such time or times as funds are needed to pay the costs of the Project as such costs are incurred and approved

by the Department and the Authority (but in no case for a principal amount that is greater than the actual cost of the Project and related costs of issuance and any other expenses, administrative or otherwise, incurred by the City in the completion of the Project). The sale of the Interim Certificates by the City to the Authority on the terms and conditions set forth herein at a purchase price of par is hereby authorized and approved. Within three days following the payment of such incurred and approved costs, the City shall provide a copy of the payment voucher, or other document evidencing the payment, to the Authority.

The Interim Certificates shall be dated as of the date of authentication, and shall be numbered in consecutive numerical order from R-1 upwards as issued and shall be issued in such amounts, subject to the limitations established in this Resolution, as are determined to be required from time to time by the President of the Board of City Commissioners and the City Administrator at the interest rate established for the Bonds. The Interim Certificates shall be payable on demand by the holder thereof and shall be callable on demand by the City at such time as the City determines that the entire cost of the Project is determined as set out in this Resolution, and shall be redeemable with the proceeds from the sale of the Bonds or by exchange therefor. The Interim Certificates shall not bear interest until the date of their authentication. Interest on the Interim Certificates shall be payable in the manner and on the dates as set forth in Attachment 1 and Attachment 2 to this Resolution.

The Interim Certificates shall be reproduced in substantially the form attached to this Resolution as Attachment 2.

The Interim Certificates shall be prepared under the supervision and at the direction of the City Administrator, executed by the manual or facsimile signature of the President of the Board of City Commissioners and attested to by the manual or facsimile signature of the City Administrator and delivered to the purchaser upon receipt of the purchase price. The Interim Certificates shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been dated and executed by manual signature of an authorized representative of the registrar named in Attachment 2. The Interim Certificates shall be registered as to both principal and interest and such registrar shall establish and maintain a register for the purposes of recording the names and addresses of the registered owners or assigns, the dates of such registration and the due dates and amount for payment of principal and interest on the Interim Certificates; and the City and the registrar may deem and treat the person in whose name any Interim Certificate is registered as the absolute owner thereof, whether the Interim Certificate is overdue or not, for the purpose of

receiving payment and for all other purposes, and neither the City nor the registrar shall be affected by any notice to the contrary.

Section 2. Authorization and Sale of Bonds. The issuance of the Bonds is hereby authorized in the total principal amount of not to exceed \$1,200,000 (but in no case for a principal amount that is greater than the actual cost of the Project and related costs of issuance and any other expenses, administrative or otherwise, incurred by the City in the completion of the Project as evidenced by the Bonds or the Interim Certificates herein authorized to be issued). The sale of the Bonds is hereby awarded to the Authority on the terms and conditions set forth herein at a purchase or exchange price of par. Capitalized terms used in this Resolution and not defined herein shall have the meanings given to such terms in the Ordinance.

Section 3. Terms of the Bonds. The Bonds delivered for the purpose of redeeming the Interim Certificates shall be initially dated the last date to which interest has been paid in full on the Interim Certificates redeemed. Bonds issued upon exchanges and transfers of Bonds before the first interest payment date of the Bonds shall also be dated as of the date of initial issuance. Bonds issued upon exchanges or transfers after the first interest payment date of the Bonds shall be dated as of March 1 or September 1 next preceding their issuance, or if the date of issuance shall be a March 1 or September 1, as of such date; provided, however, that if interest on the Bonds shall be in default, the Bonds shall be dated as of the date to which interest has been paid in full on the Bonds being transferred. The Bonds shall be issued in fully registered form in denominations of \$1,000 or any integral multiple thereof or as otherwise agreed by the Authority and the President of the Board of City Commissioners and City Administrator, of single maturities. The Bonds shall be numbered in consecutive numerical order from R-1 upwards as issued and shall mature on September 1 in the years and in the amounts and shall bear interest at the rate as set forth in Attachment 1 to this Resolution.

Interest on the Bonds and, upon presentation and surrender thereof to the Bank of North Dakota as paying agent and registrar of the Bonds (the "Paying Agent" or "Registrar") or its successor, the principal thereof, shall be payable in lawful money of the United States of America by check or draft or by deposit to the registered owner's account at the Bank of North Dakota. Interest shall be payable on March 1 and September 1 in each year, commencing on the next March 1 or September 1 after the date upon which the Bonds commenced the accrual of interest, to the person in whose name the bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Bonds shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

The Bonds shall be payable from the Revenue Bond Account, as set out in Section 8 hereof.

Section 4. Late Charge. The City shall pay a late charge for any payment that is received by the Authority later than the due date in an amount equal to the greater of twelve percent (12%) per annum or the base rate of the Bank of North Dakota plus one half of one percent per annum on such late payment from its due date to the date it is actually paid; however, the interest rate payable on the Bonds, including such late charge, shall not be in excess of the maximum rate permitted by law as of the date hereof.

Section 5. Redemption. The Bonds are subject to redemption and prepayment prior to maturity only with the written consent of the Authority. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

Section 6. Transfer and Registration. The Bonds are transferable upon the books of and at the principal office of the Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Bonds shall be required to be made during the fifteen days next preceding an interest payment date, nor during the forty-five days next preceding the date fixed for redemption of such Bonds.

The Bonds shall be registered as to both principal and interest and the Registrar shall establish and maintain a register for the purposes of recording the names and addresses of the registered owners or assigns, the dates of such registration and the due dates and amounts for payment of principal and interest on the Bonds; and the City and the Registrar may deem and treat the person in whose name any Bond is registered as the absolute owner thereof, whether the Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

Section 7. Preparation and Execution of Bonds _____. The Bonds shall be prepared under the supervision and at the direction of the City Administrator, executed by the manual or facsimile signature of the President of the Board of City

Commissioners and attested to by the manual or facsimile signature of the City Administrator and delivered to the purchaser at closing upon receipt of the purchase price or exchanged at par for the Interim Certificates. The Bonds shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by manual signature of an authorized representative of the Registrar.

The Bonds shall be reproduced in substantially the form attached to this Resolution as Attachment 3.

Section 8. Security. In accordance with the Ordinance, Net Revenues are hereby pledged and appropriated for the payment of the principal of and the interest on the Bonds, and subject to a computation in accordance with Subsection 2 of Section 9-01-07 of the Ordinance and written certification thereof by the City Administrator delivered to the Authority prior to issuance of the Bonds determining that the Bonds are payable from the Revenue Bond Account in the manner provided in Subsection 3 of Section 9-01-06 of the Ordinance, said principal and interest payments on the Bonds shall constitute a first and prior lien and charge on the Net Revenues accruing to the Revenue Bond Account on a parity with the lien and charge in favor of the Outstanding Bonds and other bonds, if any, which are issued before issuance of the Bonds and payable from the Revenue Bond Account in accordance with the Ordinance, without preference or priority of one bond over any other by reason of date of issue or for any other reason except as expressly provided in the Ordinance, and the Bonds and interest thereon, together with the Outstanding Bonds and such other bonds and interest thereon payable from the Revenue Bond Account, shall constitute a lien and charge on the Net Revenues prior to that in favor of all improvement warrants and refunding improvement bonds heretofore and hereafter issued and made payable from the Improvement Warrant Account of the Fund. Upon adoption of this Resolution by this governing body, the City Administrator shall segregate in a separate account within the Fund surplus Net Revenues timely and in amounts sufficient in order to make payments when due on the Interim Certificates, and prior to issuance of the Bonds, the City Administrator shall credit to the Revenue Bond Account Monies on Hand in the Fund in such amount as necessary to fully fund the reserve in the Revenue Bond Account at the amount required by Subsection 3 of Section 9-01-06 of the Ordinance.

The City Administrator is hereby directed to timely perform the computation and certification specified in this Section 8, and in order to facilitate the determination to be so certified, the City covenants to take all actions necessary therefor, including, but not limited to, increases in rates for water and sewerage service.

The City further covenants that it will at all times maintain a schedule of rates and charges for all services, facilities, commodities and benefits furnished by the Utility and will impose and collect the same in amounts such that the Net Revenues received in each fiscal year are not less than 120% of the amount of Net Revenues required to be paid or credited to the Revenue Bond Account for such fiscal year under Section 9-01-06 of the Ordinance and will revise such schedule as and whenever needed to perform this covenant.

Each and all of the provisions of the Ordinance are hereby approved, ratified and confirmed and shall remain in full force and effect for the security of all holders of the Bonds until the Bonds and the interest thereon are fully paid or otherwise discharged in accordance with the provisions of this Resolution.

Section 9. Construction Account. There shall be created a Construction Account within the Fund which shall be established and maintained as a separate account to be used only to pay the cost of the Project and costs of issuance of the Interim Certificates and Bonds. To this account shall be credited all proceeds from the sale of the Interim Certificates and the earnings received from time to time from investment of such account. All costs and expenses of the Project and the costs of issuance shall be paid from time to time as incurred and allowed from the Construction Account and the moneys in the Construction Account shall be used for no other purposes; provided, that if upon completion of the Project, there remains any unexpended balance in the Construction Account, such balance shall be transferred to the Revenue Bond Account. Expenditure of monies from the Construction Account shall be made and accounted for by the officers of the City empowered to expend and required to account for the City's general funds.

Section 10. Defeasance and Discharge. When all of the Bonds, and the interest thereon have been defeased and discharged as provided in this Section 10, all pledges, covenants and other rights granted by this Resolution and the Ordinance shall cease. The City may defease and discharge all Bonds and interest due on any date by depositing with the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon should not be paid when due, the same may nevertheless be defeased and discharged by depositing with the Paying Agent a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The City may also defease and discharge all prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Paying Agent on or before that date a sum sufficient for the payment thereof in full, provided that notice of the redemption thereof has been duly given as provided herein. The City may also defease and discharge all Bonds at any time by irrevocably depositing in escrow with a suitable banking institution, for the purpose of paying all principal and interest due

on such Bonds prior to a date upon which all of the same will be prepayable according to their terms, and paying all remaining Bonds on that date, a sum of cash and securities of the types described in NDCC §40-36-13(3) in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose; provided that notice of the redemption of all prepayable Bonds on or before such date has been duly given as required herein.

Section 11. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Interim Certificates and the Bonds in such manner and to such extent as may be necessary, in view of the City's reasonable expectations at the time of issuance of the Interim Certificates and the Bonds, so that the Interim Certificates and the Bonds will not constitute "arbitrage bonds" under Section 148 of the Internal Revenue Code of 1986 and regulations prescribed under such Section, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Interim Certificates and the Bonds) so that the interest on the Interim Certificates and the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 12. Other Proceedings. The City authorizes its officers to furnish certified copies of all proceedings had with regard to the Interim Certificates and the Bonds by its governing body and authorizes the President of the Board of City Commissioners and City Administrator to execute the Loan Agreement on behalf of the City, which Loan Agreement shall be in substantially the form attached to this Resolution as Attachment 4. The City agrees to furnish additional certifications of its officers as are necessary to establish the validity of the Interim Certificates and the Bonds, the tax-exempt status of interest payable thereon, the absence of litigation materially affecting the Interim Certificates and the Bonds and any other certifications or information reasonably necessary to insure marketability and compliance with the conditions of underwriting.

Section 13. Bonds Payable from Revenues. The Bonds shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the City be subject to any pecuniary liability thereon. No holder or holders of the Bonds shall ever have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the City. The Bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the City. The Bonds, including interest thereon, are payable solely from the revenue pledged to the

payment thereof, and do not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

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Dated and adopted this 16th day of July, 2013.

CITY OF MANDAN, NORTH DAKOTA

President, Board of City Commissioners

Attest:

City Administrator

(S E A L)

The governing body of the City acted on the foregoing resolution on July 16, 2013, as follows:

Adoption moved by _____ Seconded by _____

Roll Call Vote (List Last Names)

"Aye" _____

"Nay" _____

Absent _____

and after vote the presiding officer declared the Resolution adopted.

CITY OF MANDAN, NORTH DAKOTA
WATER IMPROVEMENT
INTERIM CERTIFICATES OF 2013, SERIES A

AND

WATER IMPROVEMENT
REVENUE BONDS OF 2013, SERIES A

SCHEDULE OF MATURITIES AND INTEREST RATES

The principal amount of Water Improvement Revenue Bonds of 2013, Series A (the "Bonds"), as finally determined pursuant to the terms of the annexed resolution, will mature in annual amounts payable on September 1 in each year as agreed by the Authority and the President of the Board of City Commissioners and City Administrator at the date of original issuance, commencing in 2014, 2015, 2016, 2017 or 2018, with final maturity in 2033, 2034, 2035, 2036 or 2037. The interest on the outstanding principal amount of the Bonds shall be payable at an annual rate of 2.00% on each March 1 and September 1 during which the Bonds are outstanding. The principal maturing in each of the years shall be determined as of the date of issuance of the Bonds for the redemption of the Water Improvement Interim Certificates of 2013, Series A (the "Interim Certificates") by determining, to the nearest denomination of \$1,000 or other amount agreed to by the Authority and the President of the Board of City Commissioners and City Administrator, the closest amount to equal annual payment of principal and interest on the Bonds as agreed to by the Authority and the President of the Board of City Commissioners and City Administrator.

The Interim Certificates shall bear interest at an annual rate of 2.00% from their date of authentication until the date of their redemption which accrued interest shall be payable on each March 1 and September 1 until the date of redemption.

(INTERIM CERTIFICATE FORM)

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF MORTON
CITY OF MANDAN

WATER IMPROVEMENT INTERIM CERTIFICATE OF 2013, SERIES A

No. R-

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
2.00%	Payable on Demand	

Registered Owner: North Dakota Public Finance Authority, Bismarck, North Dakota

Principal Amount:

The City of Mandan, North Dakota (the "Issuer"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to exchange for or pay with the proceeds from the sale of its Water Improvement Revenue Bonds of 2013, Series A (the "Bonds"), to the registered owner specified above, the Principal Amount specified above on the Maturity Date set forth above, upon the presentation and surrender hereof, and to pay to the registered owner hereof interest on such Principal Amount from the date of authentication hereof at the annual Interest Rate set forth above on each March 1 and September 1 while this Interim Certificate is outstanding. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by the Bank of North Dakota, Bismarck, North Dakota, as registrar and paying agent under the Resolution hereinafter described or its successor, by check or draft or by deposit to the registered owner's account at the Bank of North Dakota.

This Interim Certificate is one of a series of interim certificates authorized for issuance in the aggregate principal amount of not to exceed \$1,200,000 (the "Interim Certificates"), all of like tenor except as to denomination, serial number and date of issue, issued pursuant to and in full conformity with the constitution and laws of the state of North Dakota, including North Dakota Century Code Chapter 40-35 (the "Act"). This Interim Certificate and the series of which it is a part are issued pursuant to a Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A adopted by Issuer's governing body (the "Resolution").

This Interim Certificate is not transferable. Except for payment of interest on this Interim Certificate to be paid from the sources as provided therefor in the Resolution, this Interim Certificate shall not be payable from nor charged upon any funds other than from the sale or exchange of the Bonds pledged to the payment hereof, nor shall the Issuer be subject to any pecuniary liability thereon. No holder or holders of the Interim Certificates shall ever have the right to compel any exercise of the taxing power of the Issuer to pay any such Interim Certificates or the interest thereon, nor to enforce payment thereof against any property of the Issuer. Such Interim Certificates shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the Issuer. This Interim Certificate does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation.

It is further certified, recited and declared that all acts, conditions and things required by the constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of this Interim Certificate have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Interim Certificate to be executed in its name by the manual signatures of the President of the Board of City Commissioners and City Administrator of the Issuer, all as of the Date of Original Issue set forth above.

ATTEST:

CITY OF MANDAN, NORTH DAKOTA

City Administrator

President, Board of City Commissioners

CERTIFICATE OF AUTHENTICATION

This Interim Certificate is one of the Interim Certificates delivered pursuant to the within-mentioned Resolution.

Dated: _____.

Bank of North Dakota
Bismarck, North Dakota, as Registrar

By _____
Authorized Representative

(BOND FORM)

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF MORTON
CITY OF MANDAN

WATER IMPROVEMENT REVENUE BOND OF 2013, SERIES A

No. R-

INTEREST RATE

2.00%

MATURITY DATE

DATE OF ORIGINAL ISSUE

REGISTERED OWNER: North Dakota Public Finance Authority, Bismarck, North Dakota

PRINCIPAL AMOUNT:

KNOW ALL PERSONS BY THESE PRESENTS that the City of Mandan, Morton County, North Dakota (the "Issuer"), a duly organized and existing municipal corporation, acknowledges itself specially indebted and for value received hereby promises to pay to the registered owner specified above or registered assigns, the principal amount specified above, but only from the Revenue Bond Account (the "Revenue Bond Account") of its Water and Sewer Utility Fund (the "Fund") on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above, payable on March 1 and September 1 in each year, commencing _____, 20__, to the person in whose name this Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by the Bank of North Dakota, Bismarck, North Dakota, as Registrar and Paying Agent or its successor, by check or draft or by deposit to the registered owner's account at the Bank of North Dakota.

This Bond is one of a single series of Bonds authorized for issuance in the aggregate principal amount of not to exceed \$1,200,000.00, all of like date of original issue, and tenor except as to serial number, denomination, interest rate and

maturity date, issued for the purpose of providing funds for water treatment facility optimization improvements for the Issuer's Water and Sewer Utility (the "Utility"), and is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including North Dakota Century Code Chapter 40-35, and pursuant to and in full conformity with ordinances and resolutions duly adopted by the City, including Mandan Code of Ordinances Chapter 9-01 (the "Ordinance") and the Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A adopted by Issuer's Board of City Commissioners (the "Resolution"). This Bond, including interest hereon, is payable solely from the net revenue of the Utility pledged pursuant to the Ordinance and the Resolution to the payment thereof and does not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The Bonds of this series are issuable only as registered bonds in the denominations as provided in the Resolution, of single maturities.

The Bonds of this series are subject to redemption and prepayment prior to maturity only with the written consent of the North Dakota Public Finance Authority. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the Issuer at the principal office of the Registrar by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The Issuer and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Registrar shall be affected by any notice to the contrary.

It is hereby certified, recited, covenanted and agreed that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of this Bond, have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Issuer has duly established the Revenue Bond Account as a separate and special account of the Fund and will credit and pay into the Revenue Bond Account as received, out of the

net revenues of the Utility as defined in the Ordinance, sums sufficient to pay the principal and interest when due on each and all of the Bonds of this series and all other bonds payable from the Revenue Bond Account, and to create and maintain a reserve securing such payments, and will use the moneys in the Revenue Bond Account for no other purposes; that the Issuer has fixed and established, and will collect reasonable rates, charges and rentals for all services, facilities, commodities and benefits furnished by the Utility and by any improvements, betterments, extensions and enlargements thereof and will amend and revise the same from time to time to the extent required to produce net revenues sufficient to pay into the Revenue Bond Account the sums herein agreed; that in and by the Resolution and the Ordinance the Issuer has made the Bonds of this series subject to all of the terms and provisions contained in the Ordinance and has made other and further covenants and agreements with the holders from time to time of each and all of the Bonds, which covenants and agreements will be fully and promptly complied with by the Issuer and each and all of its officers and agents at all times until this Bond and interest hereon have been fully paid or the obligation of the Issuer hereon has been otherwise defeased and discharged as provided in the Resolution; and that the Bonds of this series are issued payable on a parity with the Issuer's Sewer Improvement Revenue Bonds of 1997, Water Improvement Revenue Bonds of 2002, Water and Sewer Revenue Bonds, Series 2005, Sewer Improvement Revenue Bonds of 2008, Series A, Sewer Improvement Revenue Bonds of 2008, Series B, Water Improvement Revenue Bonds of 2008, Series A, Water Improvement Revenue Bonds of 2008, Series B and Water Improvement Revenue Bonds of 2010, Series A *[and title of other outstanding parity bonds, if any, to be inserted]* and that no additional obligations will be issued or incurred and made payable from the aforementioned net revenues of the Utility on a parity with the Bonds of this series except as set forth in the Ordinance, to which reference is hereby made for details and covenants and recitals of the City with respect thereto.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed on its behalf by the signatures of the President of its Board of City Commissioners and its City Administrator and has caused this Bond to be dated as of the date set forth below.

DATED:

ATTEST:

CITY OF MANDAN, NORTH DAKOTA

City Administrator

President, Board of City Commissioners

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds delivered pursuant to the within-mentioned Resolution.

Bank of North Dakota
Bismarck, North Dakota, as Registrar

By _____
Authorized Representative

NORTH DAKOTA
STATE REVOLVING FUND PROGRAM
LOAN AGREEMENT
BETWEEN
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
AND
CITY OF MANDAN, NORTH DAKOTA

Dated as of July 16, 2013

(To be completed by Authority)

Dated Date of Loan Agreement:	
SRF Program (circle one):	Clean Water SRF Drinking Water SRF
State Act (circle one):	N.D.C.C. ch. 61-28.2 (Clean Water) N.D.C.C. ch. 61.28.1 (Drinking Water)
Summary Description of Project:	
Approved Loan amount:	
Construction Period:	
Form of municipal securities:	
First payment date:	
Final payment date:	

TABLE OF CONTENTS

ARTICLE I DEFINITIONS

SECTION 1.01. Definitions	1
SECTION 1.02. Additional Terms	3

ARTICLE II LOAN; OBLIGATIONS; DISCLAIMER; DELIVERY OF DOCUMENTS

SECTION 2.01. The Loan	4
SECTION 2.02. Draws of Municipal Securities Proceeds (Loan Proceeds)	4
SECTION 2.03. Unconditional Obligations	4
SECTION 2.04. Disclaimer of Warranties	4
SECTION 2.05. Delivery of Documents	5

ARTICLE III COVENANTS AND REPRESENTATIONS OF MUNICIPALITY

SECTION 3.01. Covenants and Representations of Municipality	6
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ARTICLE IV ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority	12
SECTION 4.02. Assignment by Municipality	12

ARTICLE V DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default	14
SECTION 5.02. Notice of Default	15
SECTION 5.03. Remedies on Default	15

SECTION 5.04. Application of Moneys 15
SECTION 5.05. No Remedy Exclusive; Waiver; Notice 15
SECTION 5.06. Retention of Authority's Rights 15
SECTION 5.07. Default by Authority 16

ARTICLE VI
MISCELLANEOUS

SECTION 6.01. Notices 17
SECTION 6.02. Binding Effect 17
SECTION 6.03. Severability 17
SECTION 6.04. Amendments, Supplements and Modifications 18
SECTION 6.05. Execution in Counterparts 18
SECTION 6.06. Applicable Law 18
SECTION 6.07. Consents and Approvals 18
SECTION 6.08. Captions 18
SECTION 6.09. Further Assurances 18

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of the 16th day of July, 2013, by and between the North Dakota Public Finance Authority (the "Authority"), an agency and instrumentality of the State of North Dakota (the "State"), and the City of Mandan, North Dakota (the "Municipality"), a political subdivision of the State, and in consideration of the agreements and covenants contained herein, the Authority and the Municipality agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Administrative Fee" means an annual fee of $\frac{1}{2}$ of one percent (.50%) of the outstanding principal amount of the Loan or such lesser amount, if any, as the Authority may approve from time to time.

"Authority Act" means N.D.C.C. Chapter 6-09.4.

"Authority Bonds" or "Bonds" means bonds of the Authority authorized, authenticated, and delivered in order to finance or refinance the Project pursuant to this Loan Agreement and to enable the Department, through the Authority, to draw EPA capitalization grant funds for deposit in the SRF.

"Code" means the Internal Revenue Code of 1986 as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

"Costs" means those costs associated with the Project and the Loan that are eligible to be funded from the SRF, as determined by the Department and the Authority.

"Department" means the North Dakota Department of Health.

"EPA" means the United States Environmental Protection Agency.

"Event of Default" means any occurrence or event specified in Section 5.01 of this Loan Agreement.

"General Records" shall have the meaning given to such term in Section 3.01(f) of this Loan Agreement.

"Loan" means the loan evidenced by the Municipal Securities, made by the Authority to the Municipality pursuant to this Loan Agreement to finance or refinance all or a portion of the Costs of the Project.

"Loan Agreement" means this Loan Agreement, including any exhibits attached to, and hereby made a part hereof, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing" means the date upon which the Municipality shall issue and deliver the documents listed in Section 2.05 and shall be eligible to receive the Loan.

"Loan Commitment" means the offer by the Department to provide financial assistance to the Municipality through the SRF, subject to approval by the Authority. The Loan Commitment, when accepted by the Municipality through appropriate action of its governing body, shall be a "binding commitment" within the meaning of that term in the SRF Act.

"Municipal Bond Resolution" means the resolution of the governing body of the Municipality authorizing the issuance of the Municipal Securities adopted July 16, 2013 and entitled "Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2013, Series A and Water Improvement Revenue Bonds of 2013, Series A".

"Municipal Securities" means the municipal securities, as such term is defined in the Authority Act, executed and delivered by the Municipality to the Authority to evidence the Loan in accordance with the Municipal Bond Resolution.

"Project" means the undertaking or improvements to the wastewater treatment facility of the Municipality for purposes of the State Water Pollution Control Revolving Loan Fund and the Federal Clean Water Act, or to the public water system of the Municipality for purposes of the State Safe Drinking Water Act and the Federal Safe Drinking Water Act, all or a portion of the Costs of which are financed or refinanced by the Authority from the SRF through the making of the Loan under this Loan Agreement.

"SRF" means the revolving loan fund(s) created by the State Act.

"SRF Act" means, for purposes of the State Water Pollution Control Revolving Loan Fund Act, the Federal Clean Water Act, and for purposes of the State Safe Drinking Water Act, the Federal Safe Drinking Water Act, including any regulations and guidelines promulgated thereunder.

"State Act" means, for purposes of the Federal Clean Water Act, N.D.C.C. ch. 61-28.2 (the State Water Pollution Control Revolving Loan Fund Act), and, for purposes of the Federal Safe Drinking Water Act, N.D.C.C. ch. 61-28.1 (the State Safe Drinking Water Act).

"System Records" shall have the meaning given to such term in Section 3.01 (f) of this Loan Agreement.

"Trustee" means the Trustee appointed by the Authority pursuant to the State Revolving Fund Program Master Trust Indenture or Indentures and its successor or successors and any other trustee which may at any time be substituted in its place as Trustee pursuant to the Indenture.

SECTION 1.02. Additional Terms. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

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ARTICLE II
LOAN; OBLIGATIONS; DISCLAIMER; DELIVERY OF DOCUMENTS

SECTION 2.01. The Loan. The Authority hereby agrees to loan and disburse to the Municipality, and the Municipality agrees to borrow and accept from the Authority, the Loan, provided that the Authority shall be under no obligation to make the Loan if the Municipality does not deliver the documents listed in Section 2.05 to the Authority on the Loan Closing in forms acceptable to the Authority and its counsel or if an Event of Default under this Loan Agreement has occurred and is continuing.

SECTION 2.02. Draws of Municipal Securities Proceeds (Loan Proceeds). The proceeds of the Municipal Securities are appropriated by the Municipality to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. The Authority will disburse the Loan upon (a) execution and delivery by the Municipality of this Loan Agreement, (b) issuance by the Municipality of the Municipal Securities and delivery to the Authority, and (c) submission to and approval by the Department and the Authority of Requisitions for Payment in the form approved by the Department. Requests for draws on the Loan, in the form of Requisitions for Payment, shall be submitted by the Municipality to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Authority and the Trustee for approval and funding. After all claims and expenses with respect to the Project and the issuance of the Municipal Securities have been duly paid and satisfied, the amortization schedule for the Municipal Securities shall be adjusted to reflect the total principal amount drawn under this Loan Agreement.

SECTION 2.03. Unconditional Obligations. The Municipality shall not be obligated to make any payments required to be made by any other political subdivision with respect to the lending of funds by the Authority from the SRF.

SECTION 2.04. Disclaimer of Warranties. The Municipality acknowledges and agrees that (i) neither the Authority nor the Department has made or makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; and (ii) in no event shall the Authority, nor the Department or their respective officers, directors, employees, or agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project.

SECTION 2.05. Delivery of Documents. Concurrently with the execution and delivery of this Loan Agreement, the Municipality will cause each of the following items to be delivered to the Authority in a form acceptable to the Authority and its counsel:

(a) Executed counterparts of this Loan Agreement.

(b) Copies of the form of the Municipal Securities and any resolutions or ordinances of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement and the Municipal Securities, certified by an authorized officer of the Municipality.

(c) An arbitrage certificate and a closing certificate covering such matters as may be agreed upon by the Municipality and the Authority. The certificates required by this section may be provided as one certificate.

(d) An opinion or opinions of the Municipality's counsel, which may be given by one or more counsel, covering such matters concerning the validity and tax status of the Municipal Securities as may be agreed upon by the Municipality and the Authority.

(e) Such other certificates, documents, opinions and information as the Authority may require.

The documents referred to above must be prepared and provided by the Municipality to the Authority prior to the Loan Closing for review and approval.

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ARTICLE III
COVENANTS AND REPRESENTATIONS OF MUNICIPALITY

SECTION 3.01. Covenants and Representations of Municipality.

(a) Performance Under Loan Agreement. The Municipality covenants and agrees (i) to maintain the Project in good repair and operating condition and (ii) to cooperate with the Authority and the Department in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and the Authority under this Loan Agreement.

(b) Completion of Project and Provision of Moneys Therefor. The Municipality covenants and agrees (i) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date; and (ii) to provide from its own fiscal resources all moneys in excess of the total amount of the Loan required to complete the Project.

(c) Disposition of Project. The Municipality covenants and agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or any other system which provides revenues for upkeep and maintenance of the Project except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Municipality, with the approval of the Authority, shall assign this Loan Agreement and its rights and interests hereunder in accordance with Section 4.02 to the purchaser or lessee of the Project which must be a political subdivision as defined in the Authority Act, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Municipality under this Loan Agreement; and (ii) the Authority, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect (A) the ability of the Municipality or its assignees to meet its duties, covenants, obligations and agreements under the Municipal Bond Resolution, (B) the value of this Loan Agreement as security for the payment of Authority Bonds and interest thereon, (C) the eligibility of interest on Authority Bonds then outstanding or which could be issued in the future for exclusion from gross income for purposes of federal income taxation, or (D) any agreement entered into by the Authority or the State through the Department with, or any condition of any grant received by the Authority or the State through the Department from, the United States of America, which is related to any SRF capitalization grant received by the Authority or the State through the Department.

(d) Operation and Maintenance of Project. The Municipality covenants and agrees that it will, in accordance with prudent waste water or drinking water treatment

utility practice, as the case may be, (i) at all times operate the Project and the properties associated with and operated in conjunction with the Project and any business in connection therewith in an efficient manner, (ii) maintain the Project in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the Project so that at all times the enterprise or business carried on in connection therewith shall be properly and advantageously conducted; provided, that this covenant shall not be construed as requiring the Municipality to expend any funds which are derived from sources other than the operation of the Project or other receipts of such Project which are not pledged under the Municipal Bond Resolution for such purpose, and provided further that nothing herein shall be construed as preventing the Municipality from doing so.

(e) The Municipality covenants and agrees that the proceeds of the Loan shall be used and expended in a manner consistent with the State Act and the SRF Act, all regulations and guidelines promulgated thereunder, and this Loan Agreement. The Authority affirms that expenditure for the Project as described in the loan application is consistent with the foregoing laws and documents.

(f) Records.

(i) The Municipality will keep accurate records and accounts for the Project (the "System Records") separate from its other records and accounts (the "General Records"). Such System Records will be maintained in accordance with generally accepted government accounting principles and generally accepted government auditing standards and, in accordance with state law, shall be audited annually or biennially, or as otherwise required by law, by an independent accountant, which audit may be part of the annual or biennial audit of the General Records of the Municipality. Such System Records and General Records shall be made available for inspection by the Authority and the Department at any reasonable time. The auditing requirements of this subsection do not apply to cities with populations of less than three hundred or to other political subdivisions with less than one hundred thousand dollars of annual receipts which, by law, are not required to have annual or biennial audits.

(ii) The Municipality agrees that its financial reports for the year or years which it receives draws under Section 2.02 shall be prepared in accordance with the Federal Single Audit Act and the Federal Office of Management and Budget's Circular A-128. A copy of the Municipality's independent annual or biennial audit or annual report, as required by law, including all written comments and recommendations, shall be furnished to the Authority within 150 days of the close of the fiscal year(s) being so audited. A copy of the annual

financial statement required by N.D.C.C. Section 40-16-04(2) shall be submitted to the Authority on or before February first of each year.

(iii) The Municipality will keep, or cause to be kept, accurate records, if such records must be kept for compliance with the requirements of Section 148 of the Code, of each investment it makes in investment property (as that term is defined in Section 148(b) of the Code) acquired, directly or indirectly, with proceeds of the Authority Bonds used to fund the Loan. The Authority will advise the Municipality if the Loan is not being funded with the proceeds of Authority Bonds. Further, with respect to such investments made by the Municipality which are not excepted from the computation of rebate under Section 148(f)(4) of the Code, the Municipality (A) will calculate, or cause to be calculated, the amount (the "rebate amount") that is to be rebated to the United States Treasury pursuant to Section 148(f) of the Code, and (B) will for each computation date under Section 148(f) of the Code (or on any further periodic basis requested in writing by the Authority) remit the following to the Authority: (1) the calculations supporting the determination of the rebate amount and (2) an amount of money equal to the rebate installment then owed. To the extent any such rebate amounts (or the investment income thereon) are in excess of the Authority's rebate requirement allocable to the Municipal Securities, such amounts will be promptly returned by the Authority to the Municipality.

(g) Inspections. The Municipality will permit the Authority, the Department and the Trustee, and any designated party to examine, visit and inspect, at any and all reasonable times, the property constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its Systems Records, General Records, and any other records regarding receipts, disbursements, contracts, investments and any other matters relating to its financial standing, and will supply such reports and information as the Authority, the Department and the Trustee may reasonably require.

(h) Insurance. The Municipality shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining works of the nature of the Project, including liability coverage, all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements. The Authority, the Department and the Trustee may require the Municipality to provide them with evidence of insurance on the Project.

(i) Continuing Disclosure.

(i) So long as the Municipality shall constitute an obligated person within the meaning of S.E.C. Rule 15c2-12 (the "Rule") as in effect from time to time, the Municipality agrees to furnish to the Authority such financial information, including audited financial statements, and operating data with respect to the Municipality at such time and in such forms as the Authority shall reasonably request in order to comply with the provisions of the Rule and to provide the Authority, in a timely manner not in excess of ten business days after occurrence of the event, notice of any of the following events with respect to the Municipal Securities:

- (A) Principal and interest payment delinquencies.
- (B) Non-payment related defaults, if material.
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (E) Substitution of credit or liquidity providers, or their failure to perform.
- (F) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Municipal Securities, or other material events affecting the tax status of the Municipal Securities.
- (G) Modifications to rights of registered owners of the Municipal Securities, if material.
- (H) Bond calls, if material, and tender offers.
- (I) Defeasances.
- (J) Release, substitution or sale of property securing repayment of the Municipal Securities, if material.
- (K) Rating changes.
- (L) Bankruptcy, insolvency, receivership or similar event of the Municipality.
- (M) The consummation of a merger, consolidation, or acquisition involving the Municipality or the sale of all or substantially all of the assets of the Municipality, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (N) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(ii) The Municipality agrees that from time to time it will also provide notice to the Authority of the occurrence of other events, in addition to those listed above, if such other events are material with respect to the Municipal Securities.

(iii) The Municipality will provide, in a timely manner, to the Authority, notice of a failure to satisfy the requirements of this Section.

(iv) The intent of the Municipality's undertaking pursuant to this Section is to facilitate the Authority's ability to comply with the requirements of the Rule. Accordingly, the Municipality agrees to provide the Authority with any information the Authority may reasonably require in order to comply with the requirements of the Rule, as in effect from time to time.

(v) The sole remedy available to the Authority or to any other person for the failure of the Municipality to comply with any provision of this paragraph (i) shall be an action for specific performance of the Municipality's obligations under this paragraph.

(j) No Free Service. The Municipality will not furnish or supply or cause to be furnished or supplied, any use, output, capacity or service of the Project free of charge to any person, firm, corporation (public or private), public agency or instrumentality other than the Municipality itself.

(k) Commencement of Construction. If construction of the Project has not begun as of the date of this Agreement, the Municipality shall initiate construction of the Project within twelve (12) months after the Loan Closing.

(l) Archeological Artifacts. In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Municipality shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historical Board of North Dakota and the Authority or the Department of such unearthing and follow all applicable state and federal laws and regulations governing such occurrence.

(m) No Lobbying. No portion of the Loan may be used for lobbying or propaganda as prohibited by 18 U.S.C. §1913 or Section 607(a) of Public Law 96-74.

(n) Additional Covenants and Requirements. If necessary in connection with the Authority's issuance of the Authority Bonds or the making of the Loan, additional covenants and requirements will be evidenced by certificates or other documents in the form or forms attached as an exhibit to, and hereby made a part of, this Loan Agreement.

(o) Continuing Representations. The covenants and representations of the Municipality contained herein shall be true at the time of the execution of this Loan Agreement and the Municipality agrees that such covenants and representations will be binding and enforceable at all times during the term of this Loan Agreement.

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ARTICLE IV
ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority.

(a) The Municipality acknowledges that, other than the Administrative Fees payable pursuant to the Municipal Bond Resolution, all interests of the Authority in and under this Loan Agreement and the Municipal Securities have been pledged as security for the Authority Bonds, and that if any Event of Default shall occur, the Authority or the Trustee shall be entitled to act hereunder. The Municipality hereby acknowledges and consents that the Authority or the Trustee may compel or enforce the right to receive payments required to be made by the Municipality under this Loan Agreement and may compel or otherwise enforce observance and performance by the Municipality of its other duties, covenants, obligations and agreements under this Loan Agreement, and that the right and authority to enforce such requirements may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees without the necessity of obtaining the consent of, but after giving prior written notice to, the Municipality.

(b) In the event of any assignment or transfer of this Loan Agreement and the Municipal Securities, the Authority shall retain the right to compel or otherwise enforce observance and performance by the Municipality of its obligations and agreement to pay Administrative Fees.

SECTION 4.02. Assignment by Municipality.

(a) This Loan Agreement may not be assigned by the Municipality unless the following conditions shall be satisfied: (i) the Authority shall have approved the assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code (unless waived in writing by the Authority), shall be a political subdivision as defined in the Authority Act and shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, agreements and obligations under this Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Municipality under this Loan Agreement; (iv) if the Loan is funded with proceeds of Authority Bonds issued on a tax-exempt basis, the Authority shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of Federal income taxation under Section 103(a) of the Code; and (v) the Authority shall have received an opinion of its counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority or the State through the

Department with, or any condition of any grant received by the Authority or the State through the Department from, the United States of America, which is related to any SRF capitalization grant received by the Authority or the State through the Department.

(b) No assignment under this Section shall relieve the Municipality from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Municipality shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

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ARTICLE V
DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If any of the following events occur, it is hereby defined and declared to be and to constitute an Event of Default:

(a) Failure by the Municipality to pay, or cause to be paid, any payment, including the payment of principal and interest on the Municipal Securities, required to be paid hereunder when due.

(b) Failure by the Municipality to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Municipality for borrowed money (other than the Loan and the Municipal Securities and after giving effect to any applicable grace period), the payments of which are secured by any revenues derived or to be derived from the Project.

(c) Failure by the Municipality to pay, or cause to be paid, the Administrative Fee or any portion thereof when due or to perform or observe any other covenant, agreement or condition on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by the Authority, unless the Authority shall agree in writing to an extension of the time prior to its expiration; however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Authority may not unreasonably withhold its consent to an extension of time up to 120 days from the delivery of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected.

(d) Any representation made by or on behalf of the Municipality contained in this Loan Agreement or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan or in connection with the Municipal Securities, is false or misleading in any material respect.

(e) A petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Municipality shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee

of the Municipality or any of its property) shall be appointed by court order or take possession of the Municipality or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 5.02. Notice of Default. The Municipality shall give the Authority prompt telephonic notice of the occurrence of any Event of Default at such time as any senior administrative or financial officer of the Municipality becomes aware of the existence thereof. Any telephone notice pursuant to this Section 5.02 shall be confirmed in writing as soon as practicable by the Municipality.

SECTION 5.03. Remedies on Default. Whenever an Event of Default referred to in Section 5.01 shall have occurred and be continuing, the Authority shall have the right to take, or to direct the Trustee or its authorized agent to take, any action permitted or required to be taken under the Bond Resolution or this Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Municipality hereunder.

SECTION 5.04. Application of Moneys. Any moneys collected by the Authority pursuant to Section 5.03 shall be applied (a) first, to pay interest due and payable on the Municipal Securities, (b) second, to pay principal due and payable on the Municipal Securities, (c) third, to pay any other amounts due and payable hereunder this Loan Agreement.

SECTION 5.05. No Remedy Exclusive; Waiver; Notice. No remedy conferred upon or reserved to the Authority or the Trustee, if any, is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

SECTION 5.06. Retention of Authority's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Bond Resolution, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Municipality at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the

obligations of the Municipality to the Authority pursuant to this Loan Agreement and the Municipal Bond Resolution.

SECTION 5.07. Default by Authority. In the event of any default by the Authority under any covenant, agreement or obligation of this Loan Agreement, the Municipality may pursue any available remedy at law or in equity, including without limitation suit for damages or injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority hereunder as may be necessary or appropriate.

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ARTICLE VI
MISCELLANEOUS

SECTION 6.01. Notices. All notices, certificates or other communications under this Loan Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Municipality, the Authority and the Department at the following addresses:

(a) Authority:

North Dakota Public Finance Authority
1200 Memorial Highway
P.O. Box 5509
Bismarck, North Dakota 58506-5509
Attention: Executive Director

(b) Department:

North Dakota State Department of Health
Municipal Facilities
1200 Missouri Avenue
Box 5520
Bismarck, ND 58502-5520

(c) Municipality:

Mandan City Administrator
205 2nd Avenue NW
Mandan, ND 58554

Any of the foregoing parties may designate any further or different addresses to which subsequent notice, certificates or other communications shall be sent, by notice in writing given to the others.

SECTION 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Department, the Authority and the Municipality and their respective successors and assigns.

SECTION 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

SECTION 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without prior written consent of the Authority and the Municipality.

SECTION 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 6.06. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

SECTION 6.07. Consents and Approvals. Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law or by rules, regulations or resolutions of the Authority or unless expressly delegated to the Authority's agent.

SECTION 6.08. Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

SECTION 6.09. Further Assurances. The Municipality shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement and the Municipal Securities.

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NORTH DAKOTA PUBLIC FINANCE AUTHORITY

By _____
DeAnn Ament, Executive Director

ATTEST:

CITY OF MANDAN, NORTH DAKOTA

By _____
City Administrator

By _____
President, Board of City Commissioners

(S E A L)



Board of City Commissioners

Agenda Documentation

MEETING DATE: July 16, 2013
PREPARATION DATE: July 11, 2013
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch
SUBJECT: Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements; and Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

PURPOSES

1. To consider a Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements.
2. To consider a Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

BACKGROUND

The City of Mandan is currently developing three Projects to optimize the City's Wastewater System. These three Projects include the Mandan Wastewater Treatment Facility Outfall Rehabilitation, the Roughrider Estates Collection System Extension Improvements, and the Central Lift Station Alarm System. Each of these Projects is described in detail in the Mandan Wastewater and Collection System Master Plan.

On April 30, 2012 the City was awarded \$672,938 from the State Land Board for a Flood-Impacted Political Subdivision Infrastructure Development Grant for the repair of the Wastewater Treatment Plant Outfall Pipe. The award is for up to 50% of approved Project costs.

On June 19, 2012 the Board of City Commissioners approved to enter into an Agreement with Advanced Engineering and Environmental Services for engineering services for the Mandan Wastewater Treatment Plant Effluent Lift Station and Outfall Pipeline Rehabilitation Project.

On September 18, 2012 the Board of City Commissioner approved to enter into a Contact with Swanberg Construction for the Mandan Wastewater Treatment Facility Outfall Rehabilitation Project.

On December 18, 2012 the Board of City Commissioners approved to enter into an Agreement with Advanced Engineering and Environmental Services for engineering services for the Mandan Roughrider Estates Sanitary Sewer Extension Project and the Mandan Lift Station Central Alarm Project.

Construction will begin during the spring of 2013 and will be completed during the spring of 2014.

On March 19, 2013 the Board of City Commissioners approved a Resolution authorizing filing of application with the North Dakota Department of Health for a Loan under the Clean Water Act.

On April 23, 2013 the City was approved by the Industrial Commission of North Dakota for a Loan in the amount of \$2,230,000 from the North Dakota Public Finance Authority's Clean Water State Revolving Fund Program to finance the Wastewater Treatment Facility Outfall Rehabilitation Project, the Roughrider Estates Collection System Extension Improvements Project, and the Central Lift Station Alarm System Project scheduled for fiscal years 2013 and 2014. The interest rate on the Loan is 2.5%, which includes a 0.5% administrative fee, and the maturity date is September 1, 2033. The Loan will be repaid from user fees. The City is only obligated for the Loan draw requests.

On June 4, 2013 the Board of City Commissioners approved to enter into a Contact with Kvamsdal Construction for the Roughrider Estates Collection System Extension Improvements Project.

ATTACHMENTS

- Letter from the City's Bond Counsel Steven L. Vogelpohl, Attorney At Law.
- Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements.
- Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

FISCAL IMPACT

The total approved SRF Loan and Projects cost estimate = \$2,230,000

- Mandan Wastewater Treatment Facility Outfall Rehabilitation Project = \$1,073,300
- Roughrider Estates Collection System Extension Improvements Project = \$668,000
- Central Lift Station Alarm System Project = \$488,700

The City included these Projects in the 2013 Budget and adjusted the Water and Sewer Base Rate to service the debt on the Loan.

STAFF IMPACT

None

LEGAL REVIEW

The Resolutions were prepared by the City's Bond Counsel Steven L. Vogelpohl, Attorney At Law.

RECOMMENDATIONS

1. To approve the Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements.
2. To approve the Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

SUGGESTED MOTIONS

1. Move to approve the Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements.
2. Move to approve the Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

STEVEN L. VOGELPOHL
ATTORNEY AT LAW

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Bismarck, ND 58507-7068

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E-Mail: slv@slvlaw.net

July 11, 2013

Greg Welch
City of Mandan
205 2nd Ave. NW
Mandan, ND 58554

Re: Mandan Wastewater System Improvements CWSRF Loan

Dear Greg:

Enclosed is the original copy of each of two resolutions which need to be adopted by the City Commission on **July 16** in the order listed, as follows:

1. Resolution Authorizing Undertaking for Municipal Improvement Consisting of Wastewater System Improvements; and
2. Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A.

Upon adoption of the resolutions, please have the signature pages of same (pages 2 and 10, respectively) executed and sealed and their voting records (also on page 2 and 10, respectively) completed. These originals should be kept for the City record.

Please provide me a photocopy of the above referenced page 2 and page 10.

Thank you for your assistance and please call if you would have any questions.

Sincerely,



Steven L. Vogelpohl
Attorney at Law

SLV/dl
13-007/071113.ltr

Encs

c: Malcolm H. Brown (w/Encs)

CITY
OF
MANDAN
NORTH DAKOTA

**RESOLUTION AUTHORIZING UNDERTAKING
FOR
MUNICIPAL IMPROVEMENT
CONSISTING OF
WASTEWATER SYSTEM IMPROVEMENTS**

BE IT RESOLVED by the Board of City Commissioners (the "Board") of the City of Mandan, North Dakota (the "City"), as follows:

1. That this Board has investigated the facts necessary to ascertain and does hereby find, determine and declare that the City has compelling cause to proceed with construction, improvement and betterment of the City's Water and Sewer Utility by an undertaking defined by North Dakota Century Code Section 40-35-02, to consist of, but not limited to, wastewater system optimization improvements, as well as all other items of work and materials which are reasonably necessary or incidental to the completion of such project (the "Sewer 2013A Undertaking");

2. That it has further been determined that the cost of the Sewer 2013A Undertaking has been estimated by the engineer therefor to be approximately \$2,230,000 which sum includes all construction costs, construction interest, legal, engineering, and administrative fees and contingencies;

3. That it has also been determined that the amount necessary to finance the Sewer 2013A Undertaking may best be provided through the issuance of revenue bonds of the City in amounts not to exceed \$2,230,000 to be sold to the North Dakota Public Finance Authority to evidence a State Revolving Fund Loan;

4. That the officers of the City are hereby authorized to complete such work and arrangements necessary to effect completion of the Sewer 2013A Undertaking and its financing;

5. It is hereby determined that all preliminary proceedings initiated for the project referred to herein are hereby modified to the extent that all such proceedings shall be incorporated within the Sewer 2013A Undertaking and that this Board does hereby adopt by reference all of the previous resolutions and actions approved and taken by this Board and the City or its authorized officials in connection herewith; and

6. It is expressly resolved that it is the intent of the City to proceed with the Sewer 2013A Undertaking heretofore commenced with proceedings for the Sewer 2013A Undertaking to be hereafter followed as prescribed by North Dakota Century Code Chapter 40-35 and Mandan Code of Ordinances Chapter 9-01.

Dated this 16th day of July, 2013.

CITY OF MANDAN, NORTH DAKOTA

Attest:

President, Board of City Commissioners

City Administrator

(S E A L)

The governing body of the political subdivision acted on the foregoing resolution on July 16, 2013, as follows:

Adoption moved by _____ Seconded by _____

"Aye" _____

"Nay" _____

Absent _____

and after vote the presiding officer declared the resolution adopted.

CITY OF MANDAN, NORTH DAKOTA

**RESOLUTION AUTHORIZING THE ISSUANCE OF
SEWER IMPROVEMENT INTERIM CERTIFICATES OF 2013, SERIES A
AND
SEWER IMPROVEMENT REVENUE BONDS OF 2013, SERIES A**

WHEREAS, the City of Mandan, North Dakota (the "City") owns, operates and maintains a water and sewer utility as described and defined in Section 9-01-01 of Mandan Code of Ordinances Chapter 9-01 (the "Utility");

WHEREAS, it is necessary to make improvements to the Utility including, but not limited to, wastewater system optimization improvements, as well as all other items of work and materials which are reasonably necessary or incidental to the completion of such project (the "Project") at a total estimated cost of \$2,230,000;

WHEREAS, the best interests of the City, its taxpayers and the users of the Utility would be properly and effectively served by financing the cost of the Project by issuance by the City of its Sewer Improvement Interim Certificates of 2013, Series A (the "Interim Certificates") and its Sewer Improvement Revenue Bonds of 2013, Series A (the "Bonds") pursuant to the provisions of Chapter 40-35 of the North Dakota Century Code (the "NDCC") and Mandan Code of Ordinances Chapter 9-01 (the "Ordinance");

WHEREAS, the City has heretofore issued and has outstanding its Sewer Improvement Revenue Bonds of 1997 (the "1997 Bonds"), its Water Improvement Revenue Bonds of 2002 (the "2002 Bonds"), its Water and Sewer Revenue Bonds, Series 2005 (the "2005 Bonds"), its Sewer Improvement Revenue Bonds of 2008, Series A (the "2008 Series A Sewer Bonds"), its Sewer Improvement Revenue Bonds of 2008, Series B (the "2008 Series B Sewer Bonds"), its Water Improvement Revenue Bonds of 2008, Series A (the "2008 Series A Water Bonds"), its Water Improvement Revenue Bonds of 2008, Series B (the "2008 Series B Water Bonds") and its Water Improvement Revenue Bonds of 2010, Series A (the "2010 Series A Water Bonds"), which 1997 Bonds, 2002 Bonds, 2005 Bonds, 2008 Series A Sewer Bonds, 2008 Series B Sewer Bonds, 2008 Series A Water Bonds, 2008 Series B Water Bonds and 2010 Series A Water Bonds pursuant to the respective resolutions authorizing issuance thereof are payable from net revenues of the Utility as defined in Subsection 3 of Section 9-01-06 of the Ordinance (the "Net Revenues");

WHEREAS, other than the 1997 Bonds, the 2002 Bonds, the 2005 Bonds, the 2008 Series A Sewer Bonds, the 2008 Series B Sewer Bonds, the 2008 Series A Water Bonds, the 2008 Series B Water Bonds and the 2010 Series A Water Bonds (together, the "Outstanding Bonds"), the City has no outstanding bonds or evidences of indebtedness payable from the Revenue Bond Account (the "Revenue Bond Account") of the Water and Sewer Utility Fund (the "Fund") as described and defined in the Ordinance;

WHEREAS, the North Dakota Public Finance Authority (the "Authority") was created and is authorized to lend money to political subdivisions of the State of North Dakota, to acquire and hold municipal securities issued by such political subdivisions, including those issued to construct, maintain, repair, and operate or cause to be operated, public water and sewer system utilities, and to issue its bonds to pay the costs of acquiring such municipal securities;

WHEREAS, certain funds have been deposited in the water pollution control revolving loan fund created by NDCC Chapter 61-28.2 (the "Revolving Loan Fund") from which Revolving Loan Fund loans will be made to political subdivisions of the State, including the City to finance the costs of public sewer system utilities and to assist public entities in connection with the financing of such facilities;

WHEREAS, the City has made timely application to the North Dakota Department of Health (the "Department") pursuant to the requirements of the Revolving Loan Fund to finance all or a portion of the cost of the Project;

WHEREAS, the Authority and the Department have approved the City's application for a loan from the Revolving Loan Fund in an amount not to exceed \$2,230,000; and

WHEREAS, the City will issue its Interim Certificates and Bonds to the Authority to evidence the loan to the City from the Revolving Loan Fund in accordance with the provisions of the North Dakota State Revolving Fund Program Loan Agreement (the "Loan Agreement") between the Authority and the City;

NOW, THEREFORE, be it resolved by the governing body of the City that the City covenants and agrees as follows:

Section 1. Authorization, Sale, Terms, Preparation and Execution of Interim Certificates. Prior to and in anticipation of the issuance of the Bonds authorized by this Resolution, the issuance of the Interim Certificates is hereby authorized in the total principal amount of not to exceed \$2,230,000 at such time or times as funds are needed to pay the costs of the Project as such costs are incurred and approved

by the Department and the Authority (but in no case for a principal amount that is greater than the actual cost of the Project and related costs of issuance and any other expenses, administrative or otherwise, incurred by the City in the completion of the Project). The sale of the Interim Certificates by the City to the Authority on the terms and conditions set forth herein at a purchase price of par is hereby authorized and approved. Within three days following the payment of such incurred and approved costs, the City shall provide a copy of the payment voucher, or other document evidencing the payment, to the Authority.

The Interim Certificates shall be dated as of the date of authentication, and shall be numbered in consecutive numerical order from R-1 upwards as issued and shall be issued in such amounts, subject to the limitations established in this Resolution, as are determined to be required from time to time by the President of the Board of City Commissioners and the City Administrator at the interest rate established for the Bonds. The Interim Certificates shall be payable on demand by the holder thereof and shall be callable on demand by the City at such time as the City determines that the entire cost of the Project is determined as set out in this Resolution, and shall be redeemable with the proceeds from the sale of the Bonds or by exchange therefor. The Interim Certificates shall not bear interest until the date of their authentication. Interest on the Interim Certificates shall be payable in the manner and on the dates as set forth in Attachment 1 and Attachment 2 to this Resolution.

The Interim Certificates shall be reproduced in substantially the form attached to this Resolution as Attachment 2.

The Interim Certificates shall be prepared under the supervision and at the direction of the City Administrator, executed by the manual or facsimile signature of the President of the Board of City Commissioners and attested to by the manual or facsimile signature of the City Administrator and delivered to the purchaser upon receipt of the purchase price. The Interim Certificates shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been dated and executed by manual signature of an authorized representative of the registrar named in Attachment 2. The Interim Certificates shall be registered as to both principal and interest and such registrar shall establish and maintain a register for the purposes of recording the names and addresses of the registered owners or assigns, the dates of such registration and the due dates and amount for payment of principal and interest on the Interim Certificates; and the City and the registrar may deem and treat the person in whose name any Interim Certificate is registered as the absolute owner thereof, whether the Interim Certificate is overdue or not, for the purpose of

receiving payment and for all other purposes, and neither the City nor the registrar shall be affected by any notice to the contrary.

Section 2. Authorization and Sale of Bonds. The issuance of the Bonds is hereby authorized in the total principal amount of not to exceed \$2,230,000 (but in no case for a principal amount that is greater than the actual cost of the Project and related costs of issuance and any other expenses, administrative or otherwise, incurred by the City in the completion of the Project as evidenced by the Bonds or the Interim Certificates herein authorized to be issued). The sale of the Bonds is hereby awarded to the Authority on the terms and conditions set forth herein at a purchase or exchange price of par. Capitalized terms used in this Resolution and not defined herein shall have the meanings given to such terms in the Ordinance.

Section 3. Terms of the Bonds. The Bonds delivered for the purpose of redeeming the Interim Certificates shall be initially dated the last date to which interest has been paid in full on the Interim Certificates redeemed. Bonds issued upon exchanges and transfers of Bonds before the first interest payment date of the Bonds shall also be dated as of the date of initial issuance. Bonds issued upon exchanges or transfers after the first interest payment date of the Bonds shall be dated as of March 1 or September 1 next preceding their issuance, or if the date of issuance shall be a March 1 or September 1, as of such date; provided, however, that if interest on the Bonds shall be in default, the Bonds shall be dated as of the date to which interest has been paid in full on the Bonds being transferred. The Bonds shall be issued in fully registered form in denominations of \$1,000 or any integral multiple thereof or as otherwise agreed by the Authority and the President of the Board of City Commissioners and City Administrator, of single maturities. The Bonds shall be numbered in consecutive numerical order from R-1 upwards as issued and shall mature on September 1 in the years and in the amounts and shall bear interest at the rate as set forth in Attachment 1 to this Resolution.

Interest on the Bonds and, upon presentation and surrender thereof to the Bank of North Dakota as paying agent and registrar of the Bonds (the "Paying Agent" or "Registrar") or its successor, the principal thereof, shall be payable in lawful money of the United States of America by check or draft or by deposit to the registered owner's account at the Bank of North Dakota. Interest shall be payable on March 1 and September 1 in each year, commencing on the next March 1 or September 1 after the date upon which the Bonds commenced the accrual of interest, to the person in whose name the bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month. Interest on the Bonds shall cease at maturity or on a date prior thereto on which they have been duly called for redemption unless the holder thereof shall present the same for payment and payment is refused.

The Bonds shall be payable from the Revenue Bond Account, as set out in Section 8 hereof.

Section 4. Late Charge. The City shall pay a late charge for any payment that is received by the Authority later than the due date in an amount equal to the greater of twelve percent (12%) per annum or the base rate of the Bank of North Dakota plus one half of one percent per annum on such late payment from its due date to the date it is actually paid; however, the interest rate payable on the Bonds, including such late charge, shall not be in excess of the maximum rate permitted by law as of the date hereof.

Section 5. Redemption. The Bonds are subject to redemption and prepayment prior to maturity only with the written consent of the Authority. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

Section 6. Transfer and Registration. The Bonds are transferable upon the books of and at the principal office of the Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Bonds shall be required to be made during the fifteen days next preceding an interest payment date, nor during the forty-five days next preceding the date fixed for redemption of such Bonds.

The Bonds shall be registered as to both principal and interest and the Registrar shall establish and maintain a register for the purposes of recording the names and addresses of the registered owners or assigns, the dates of such registration and the due dates and amounts for payment of principal and interest on the Bonds; and the City and the Registrar may deem and treat the person in whose name any Bond is registered as the absolute owner thereof, whether the Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

Section 7. Preparation and Execution of Bonds. The Bonds shall be prepared under the supervision and at the direction of the City Administrator, executed by the manual or facsimile signature of the President of the Board of City

Commissioners and attested to by the manual or facsimile signature of the City Administrator and delivered to the purchaser at closing upon receipt of the purchase price or exchanged at par for the Interim Certificates. The Bonds shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under this Resolution until the Certificate of Authentication thereon shall have been executed by manual signature of an authorized representative of the Registrar.

The Bonds shall be reproduced in substantially the form attached to this Resolution as Attachment 3.

Section 8. Security. In accordance with the Ordinance, Net Revenues are hereby pledged and appropriated for the payment of the principal of and the interest on the Bonds, and subject to a computation in accordance with Subsection 2 of Section 9-01-07 of the Ordinance and written certification thereof by the City Administrator delivered to the Authority prior to issuance of the Bonds determining that the Bonds are payable from the Revenue Bond Account in the manner provided in Subsection 3 of Section 9-01-06 of the Ordinance, said principal and interest payments on the Bonds shall constitute a first and prior lien and charge on the Net Revenues accruing to the Revenue Bond Account on a parity with the lien and charge in favor of the Outstanding Bonds and other bonds, if any, which are issued before issuance of the Bonds and payable from the Revenue Bond Account in accordance with the Ordinance, without preference or priority of one bond over any other by reason of date of issue or for any other reason except as expressly provided in the Ordinance, and the Bonds and interest thereon, together with the Outstanding Bonds and such other bonds and interest thereon payable from the Revenue Bond Account, shall constitute a lien and charge on the Net Revenues prior to that in favor of all improvement warrants and refunding improvement bonds heretofore and hereafter issued and made payable from the Improvement Warrant Account of the Fund. Upon adoption of this Resolution by this governing body, the City Administrator shall segregate in a separate account within the Fund surplus Net Revenues timely and in amounts sufficient in order to make payments when due on the Interim Certificates, and prior to issuance of the Bonds, the City Administrator shall credit to the Revenue Bond Account Monies on Hand in the Fund in such amount as necessary to fully fund the reserve in the Revenue Bond Account at the amount required by Subsection 3 of Section 9-01-06 of the Ordinance.

The City Administrator is hereby directed to timely perform the computation and certification specified in this Section 8, and in order to facilitate the determination to be so certified, the City covenants to take all actions necessary therefor, including, but not limited to, increases in rates for water and sewerage service.

The City further covenants that it will at all times maintain a schedule of rates and charges for all services, facilities, commodities and benefits furnished by the Utility and will impose and collect the same in amounts such that the Net Revenues received in each fiscal year are not less than 120% of the amount of Net Revenues required to be paid or credited to the Revenue Bond Account for such fiscal year under Section 9-01-06 of the Ordinance and will revise such schedule as and whenever needed to perform this covenant.

Each and all of the provisions of the Ordinance are hereby approved, ratified and confirmed and shall remain in full force and effect for the security of all holders of the Bonds until the Bonds and the interest thereon are fully paid or otherwise discharged in accordance with the provisions of this Resolution.

Section 9. Construction Account. There shall be created a Construction Account within the Fund which shall be established and maintained as a separate account to be used only to pay the cost of the Project and costs of issuance of the Interim Certificates and Bonds. To this account shall be credited all proceeds from the sale of the Interim Certificates and the earnings received from time to time from investment of such account. All costs and expenses of the Project and the costs of issuance shall be paid from time to time as incurred and allowed from the Construction Account and the moneys in the Construction Account shall be used for no other purposes; provided, that if upon completion of the Project, there remains any unexpended balance in the Construction Account, such balance shall be transferred to the Revenue Bond Account. Expenditure of monies from the Construction Account shall be made and accounted for by the officers of the City empowered to expend and required to account for the City's general funds.

Section 10. Defeasance and Discharge. When all of the Bonds, and the interest thereon have been defeased and discharged as provided in this Section 10, all pledges, covenants and other rights granted by this Resolution and the Ordinance shall cease. The City may defease and discharge all Bonds and interest due on any date by depositing with the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or if any Bond or interest thereon should not be paid when due, the same may nevertheless be defeased and discharged by depositing with the Paying Agent a sum sufficient for the payment thereof in full with interest accrued from the due date to the date of such deposit. The City may also defease and discharge all prepayable Bonds called for redemption on any date when they are prepayable according to their terms, by depositing with the Paying Agent on or before that date a sum sufficient for the payment thereof in full, provided that notice of the redemption thereof has been duly given as provided herein. The City may also defease and discharge all Bonds at any time by irrevocably depositing in escrow with a suitable banking institution, for the purpose of paying all principal and interest due

on such Bonds prior to a date upon which all of the same will be prepayable according to their terms, and paying all remaining Bonds on that date, a sum of cash and securities of the types described in NDCC §40-36-13(3) in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose; provided that notice of the redemption of all prepayable Bonds on or before such date has been duly given as required herein.

Section 11. Arbitrage. The City covenants that (i) it will restrict the use of the proceeds of the Interim Certificates and the Bonds in such manner and to such extent as may be necessary, in view of the City's reasonable expectations at the time of issuance of the Interim Certificates and the Bonds, so that the Interim Certificates and the Bonds will not constitute "arbitrage bonds" under Section 148 of the Internal Revenue Code of 1986 and regulations prescribed under such Section, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Interim Certificates and the Bonds) so that the interest on the Interim Certificates and the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 12. Other Proceedings. The City authorizes its officers to furnish certified copies of all proceedings had with regard to the Interim Certificates and the Bonds by its governing body and authorizes the President of the Board of City Commissioners and City Administrator to execute the Loan Agreement on behalf of the City, which Loan Agreement shall be in substantially the form attached to this Resolution as Attachment 4. The City agrees to furnish additional certifications of its officers as are necessary to establish the validity of the Interim Certificates and the Bonds, the tax-exempt status of interest payable thereon, the absence of litigation materially affecting the Interim Certificates and the Bonds and any other certifications or information reasonably necessary to insure marketability and compliance with the conditions of underwriting.

Section 13. Bonds Payable from Revenues. The Bonds shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the City be subject to any pecuniary liability thereon. No holder or holders of the Bonds shall ever have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon, nor to enforce payment thereof against any property of the City. The Bonds shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the City. The Bonds, including interest thereon, are payable solely from the revenue pledged to the

payment thereof, and do not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

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Dated and adopted this 16th day of July, 2013.

CITY OF MANDAN, NORTH DAKOTA

President, Board of City Commissioners

Attest:

City Administrator

(S E A L)

The governing body of the City acted on the foregoing resolution on July 16, 2013, as follows:

Adoption moved by _____ Seconded by _____

Roll Call Vote (List Last Names)

"Aye" _____

"Nay" _____

Absent _____

and after vote the presiding officer declared the Resolution adopted.

CITY OF MANDAN, NORTH DAKOTA

SEWER IMPROVEMENT
INTERIM CERTIFICATES OF 2013, SERIES A

AND

SEWER IMPROVEMENT
REVENUE BONDS OF 2013, SERIES A

SCHEDULE OF MATURITIES AND INTEREST RATES

The principal amount of Sewer Improvement Revenue Bonds of 2013, Series A (the "Bonds"), as finally determined pursuant to the terms of the annexed resolution, will mature in annual amounts payable on September 1 in each year as agreed by the Authority and the President of the Board of City Commissioners and City Administrator at the date of original issuance, commencing in 2014, 2015, 2016, 2017 or 2018, with final maturity in 2033, 2034, 2035, 2036 or 2037. The interest on the outstanding principal amount of the Bonds shall be payable at an annual rate of 2.00% on each March 1 and September 1 during which the Bonds are outstanding. The principal maturing in each of the years shall be determined as of the date of issuance of the Bonds for the redemption of the Sewer Improvement Interim Certificates of 2013, Series A (the "Interim Certificates") by determining, to the nearest denomination of \$1,000 or other amount agreed to by the Authority and the President of the Board of City Commissioners and City Administrator, the closest amount to equal annual payment of principal and interest on the Bonds as agreed to by the Authority and the President of the Board of City Commissioners and City Administrator.

The Interim Certificates shall bear interest at an annual rate of 2.00% from their date of authentication until the date of their redemption which accrued interest shall be payable on each March 1 and September 1 until the date of redemption.

(INTERIM CERTIFICATE FORM)

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF MORTON
CITY OF MANDAN

SEWER IMPROVEMENT INTERIM CERTIFICATE OF 2013, SERIES A

No. R-

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
2.00%	Payable on Demand	

Registered Owner: North Dakota Public Finance Authority, Bismarck, North Dakota

Principal Amount:

The City of Mandan, North Dakota (the "Issuer"), a political subdivision of and existing under and pursuant to the laws of the State of North Dakota, for value received, hereby promises to exchange for or pay with the proceeds from the sale of its Sewer Improvement Revenue Bonds of 2013, Series A (the "Bonds"), to the registered owner specified above, the Principal Amount specified above on the Maturity Date set forth above, upon the presentation and surrender hereof, and to pay to the registered owner hereof interest on such Principal Amount from the date of authentication hereof at the annual Interest Rate set forth above on each March 1 and September 1 while this Interim Certificate is outstanding. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by the Bank of North Dakota, Bismarck, North Dakota, as registrar and paying agent under the Resolution hereinafter described or its successor, by check or draft or by deposit to the registered owner's account at the Bank of North Dakota.

This Interim Certificate is one of a series of interim certificates authorized for issuance in the aggregate principal amount of not to exceed \$2,230,000 (the "Interim Certificates"), all of like tenor except as to denomination, serial number and date of issue, issued pursuant to and in full conformity with the constitution and laws of the state of North Dakota, including North Dakota Century Code Chapter 40-35 (the "Act"). This Interim Certificate and the series of which it is a part are issued pursuant to a Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A adopted by Issuer's governing body (the "Resolution").

This Interim Certificate is not transferable. Except for payment of interest on this Interim Certificate to be paid from the sources as provided therefor in the Resolution, this Interim Certificate shall not be payable from nor charged upon any funds other than from the sale or exchange of the Bonds pledged to the payment hereof, nor shall the Issuer be subject to any pecuniary liability thereon. No holder or holders of the Interim Certificates shall ever have the right to compel any exercise of the taxing power of the Issuer to pay any such Interim Certificates or the interest thereon, nor to enforce payment thereof against any property of the Issuer. Such Interim Certificates shall not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the Issuer. This Interim Certificate does not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation.

It is further certified, recited and declared that all acts, conditions and things required by the constitution and the statutes of the State of North Dakota to exist, to have happened and to have been performed precedent to and in connection with the issuance of this Interim Certificate have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Interim Certificate to be executed in its name by the manual signatures of the President of the Board of City Commissioners and City Administrator of the Issuer, all as of the Date of Original Issue set forth above.

ATTEST:

CITY OF MANDAN, NORTH DAKOTA

City Administrator

President, Board of City Commissioners

CERTIFICATE OF AUTHENTICATION

This Interim Certificate is one of the Interim Certificates delivered pursuant to the within-mentioned Resolution.

Dated: _____.

Bank of North Dakota
Bismarck, North Dakota, as Registrar

By _____
Authorized Representative

(BOND FORM)

UNITED STATES OF AMERICA
STATE OF NORTH DAKOTA
COUNTY OF MORTON
CITY OF MANDAN

SEWER IMPROVEMENT REVENUE BOND OF 2013, SERIES A

No. R-

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATE OF ORIGINAL ISSUE</u>
2.00%		

REGISTERED OWNER: North Dakota Public Finance Authority, Bismarck, North Dakota

PRINCIPAL AMOUNT:

KNOW ALL PERSONS BY THESE PRESENTS that the City of Mandan, Morton County, North Dakota (the "Issuer"), a duly organized and existing municipal corporation, acknowledges itself specially indebted and for value received hereby promises to pay to the registered owner specified above or registered assigns, the principal amount specified above, but only from the Revenue Bond Account (the "Revenue Bond Account") of its Water and Sewer Utility Fund (the "Fund") on the maturity date specified above, with interest thereon from the date hereof at the annual rate specified above, payable on March 1 and September 1 in each year, commencing _____, 20__, to the person in whose name this Bond is registered at the close of business on the 15th day (whether or not a business day) of the immediately preceding month, all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by the Bank of North Dakota, Bismarck, North Dakota, as Registrar and Paying Agent or its successor, by check or draft or by deposit to the registered owner's account at the Bank of North Dakota.

This Bond is one of a single series of Bonds authorized for issuance in the aggregate principal amount of not to exceed \$2,230,000.00, all of like date of original issue, and tenor except as to serial number, denomination, interest rate and

maturity date, issued for the purpose of providing funds for wastewater system optimization improvements for the Issuer's Water and Sewer Utility (the "Utility"), and is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota, including North Dakota Century Code Chapter 40-35, and pursuant to and in full conformity with ordinances and resolutions duly adopted by the City, including Mandan Code of Ordinances Chapter 9-01 (the "Ordinance") and the Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A adopted by Issuer's Board of City Commissioners (the "Resolution"). This Bond, including interest hereon, is payable solely from the net revenue of the Utility pledged pursuant to the Ordinance and the Resolution to the payment thereof and does not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The Bonds of this series are issuable only as registered bonds in the denominations as provided in the Resolution, of single maturities.

The Bonds of this series are subject to redemption and prepayment prior to maturity only with the written consent of the North Dakota Public Finance Authority. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the owner without charge, representing the remaining principal amount outstanding.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the Issuer at the principal office of the Registrar by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The Issuer and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Registrar shall be affected by any notice to the contrary.

It is hereby certified, recited, covenanted and agreed that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of this Bond, have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Issuer has duly established the Revenue Bond Account as a separate and special account of the Fund and will credit and pay into the Revenue Bond Account as received, out of the

net revenues of the Utility as defined in the Ordinance, sums sufficient to pay the principal and interest when due on each and all of the Bonds of this series and all other bonds payable from the Revenue Bond Account, and to create and maintain a reserve securing such payments, and will use the moneys in the Revenue Bond Account for no other purposes; that the Issuer has fixed and established, and will collect reasonable rates, charges and rentals for all services, facilities, commodities and benefits furnished by the Utility and by any improvements, betterments, extensions and enlargements thereof and will amend and revise the same from time to time to the extent required to produce net revenues sufficient to pay into the Revenue Bond Account the sums herein agreed; that in and by the Resolution and the Ordinance the Issuer has made the Bonds of this series subject to all of the terms and provisions contained in the Ordinance and has made other and further covenants and agreements with the holders from time to time of each and all of the Bonds, which covenants and agreements will be fully and promptly complied with by the Issuer and each and all of its officers and agents at all times until this Bond and interest hereon have been fully paid or the obligation of the Issuer hereon has been otherwise defeased and discharged as provided in the Resolution; and that the Bonds of this series are issued payable on a parity with the Issuer's Sewer Improvement Revenue Bonds of 1997, Water Improvement Revenue Bonds of 2002, Water and Sewer Revenue Bonds, Series 2005, Sewer Improvement Revenue Bonds of 2008, Series A, Sewer Improvement Revenue Bonds of 2008, Series B, Water Improvement Revenue Bonds of 2008, Series A, Water Improvement Revenue Bonds of 2008, Series B and Water Improvement Revenue Bonds of 2010, Series A [and *title of other outstanding parity bonds, if any, to be inserted*] and that no additional obligations will be issued or incurred and made payable from the aforementioned net revenues of the Utility on a parity with the Bonds of this series except as set forth in the Ordinance, to which reference is hereby made for details and covenants and recitals of the City with respect thereto.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed on its behalf by the signatures of the President of its Board of City Commissioners and its City Administrator and has caused this Bond to be dated as of the date set forth below.

DATED:

ATTEST:

CITY OF MANDAN, NORTH DAKOTA

City Administrator

President, Board of City Commissioners

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds delivered pursuant to the within-mentioned Resolution.

Bank of North Dakota
Bismarck, North Dakota, as Registrar

By _____
Authorized Representative

NORTH DAKOTA
STATE REVOLVING FUND PROGRAM
LOAN AGREEMENT
BETWEEN
NORTH DAKOTA PUBLIC FINANCE AUTHORITY
AND
CITY OF MANDAN, NORTH DAKOTA

Dated as of July 16, 2013

(To be completed by Authority)

Dated Date of Loan Agreement:	
SRF Program (circle one):	Clean Water SRF Drinking Water SRF
State Act (circle one):	N.D.C.C. ch. 61-28.2 (Clean Water) N.D.C.C. ch. 61.28.1 (Drinking Water)
Summary Description of Project:	
Approved Loan amount:	
Construction Period:	
Form of municipal securities:	
First payment date:	
Final payment date:	

TABLE OF CONTENTS

ARTICLE I
DEFINITIONS

SECTION 1.01. Definitions 1
SECTION 1.02. Additional Terms 3

ARTICLE II
LOAN; OBLIGATIONS; DISCLAIMER; DELIVERY OF DOCUMENTS

SECTION 2.01. The Loan 4
SECTION 2.02. Draws of Municipal Securities Proceeds (Loan Proceeds) 4
SECTION 2.03. Unconditional Obligations 4
SECTION 2.04. Disclaimer of Warranties 4
SECTION 2.05. Delivery of Documents 5

ARTICLE III
COVENANTS AND REPRESENTATIONS OF MUNICIPALITY

SECTION 3.01. Covenants and Representations of Municipality 6

ARTICLE IV
ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority 12
SECTION 4.02. Assignment by Municipality 12

ARTICLE V
DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default 14
SECTION 5.02. Notice of Default 15
SECTION 5.03. Remedies on Default 15

SECTION 5.04. Application of Moneys	15
SECTION 5.05. No Remedy Exclusive; Waiver; Notice	15
SECTION 5.06. Retention of Authority's Rights	15
SECTION 5.07. Default by Authority	16

ARTICLE VI
MISCELLANEOUS

SECTION 6.01. Notices	17
SECTION 6.02. Binding Effect	17
SECTION 6.03. Severability	17
SECTION 6.04. Amendments, Supplements and Modifications	18
SECTION 6.05. Execution in Counterparts	18
SECTION 6.06. Applicable Law	18
SECTION 6.07. Consents and Approvals	18
SECTION 6.08. Captions	18
SECTION 6.09. Further Assurances	18

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of the 16th day of July, 2013, by and between the North Dakota Public Finance Authority (the "Authority"), an agency and instrumentality of the State of North Dakota (the "State"), and the City of Mandan, North Dakota (the "Municipality"), a political subdivision of the State, and in consideration of the agreements and covenants contained herein, the Authority and the Municipality agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Administrative Fee" means an annual fee of $\frac{1}{2}$ of one percent (.50%) of the outstanding principal amount of the Loan or such lesser amount, if any, as the Authority may approve from time to time.

"Authority Act" means N.D.C.C. Chapter 6-09.4.

"Authority Bonds" or "Bonds" means bonds of the Authority authorized, authenticated, and delivered in order to finance or refinance the Project pursuant to this Loan Agreement and to enable the Department, through the Authority, to draw EPA capitalization grant funds for deposit in the SRF.

"Code" means the Internal Revenue Code of 1986 as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder and any administrative or judicial interpretations thereof.

"Costs" means those costs associated with the Project and the Loan that are eligible to be funded from the SRF, as determined by the Department and the Authority.

"Department" means the North Dakota Department of Health.

"EPA" means the United States Environmental Protection Agency.

"Event of Default" means any occurrence or event specified in Section 5.01 of this Loan Agreement.

"General Records" shall have the meaning given to such term in Section 3.01(f) of this Loan Agreement.

"Loan" means the loan evidenced by the Municipal Securities, made by the Authority to the Municipality pursuant to this Loan Agreement to finance or refinance all or a portion of the Costs of the Project.

"Loan Agreement" means this Loan Agreement, including any exhibits attached to, and hereby made a part hereof, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Closing" means the date upon which the Municipality shall issue and deliver the documents listed in Section 2.05 and shall be eligible to receive the Loan.

"Loan Commitment" means the offer by the Department to provide financial assistance to the Municipality through the SRF, subject to approval by the Authority. The Loan Commitment, when accepted by the Municipality through appropriate action of its governing body, shall be a "binding commitment" within the meaning of that term in the SRF Act.

"Municipal Bond Resolution" means the resolution of the governing body of the Municipality authorizing the issuance of the Municipal Securities adopted July 16, 2013 and entitled "Resolution Authorizing the Issuance of Sewer Improvement Interim Certificates of 2013, Series A and Sewer Improvement Revenue Bonds of 2013, Series A".

"Municipal Securities" means the municipal securities, as such term is defined in the Authority Act, executed and delivered by the Municipality to the Authority to evidence the Loan in accordance with the Municipal Bond Resolution.

"Project" means the undertaking or improvements to the wastewater treatment facility of the Municipality for purposes of the State Water Pollution Control Revolving Loan Fund and the Federal Clean Water Act, or to the public water system of the Municipality for purposes of the State Safe Drinking Water Act and the Federal Safe Drinking Water Act, all or a portion of the Costs of which are financed or refinanced by the Authority from the SRF through the making of the Loan under this Loan Agreement.

"SRF" means the revolving loan fund(s) created by the State Act.

"SRF Act" means, for purposes of the State Water Pollution Control Revolving Loan Fund Act, the Federal Clean Water Act, and for purposes of the State Safe Drinking Water Act, the Federal Safe Drinking Water Act, including any regulations and guidelines promulgated thereunder.

"State Act" means, for purposes of the Federal Clean Water Act, N.D.C.C. ch. 61-28.2 (the State Water Pollution Control Revolving Loan Fund Act), and, for purposes of the Federal Safe Drinking Water Act, N.D.C.C. ch. 61-28.1 (the State Safe Drinking Water Act).

"System Records" shall have the meaning given to such term in Section 3.01(f) of this Loan Agreement.

"Trustee" means the Trustee appointed by the Authority pursuant to the State Revolving Fund Program Master Trust Indenture or Indentures and its successor or successors and any other trustee which may at any time be substituted in its place as Trustee pursuant to the Indenture.

SECTION 1.02. Additional Terms. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

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ARTICLE II
LOAN; OBLIGATIONS; DISCLAIMER; DELIVERY OF DOCUMENTS

SECTION 2.01. The Loan. The Authority hereby agrees to loan and disburse to the Municipality, and the Municipality agrees to borrow and accept from the Authority, the Loan, provided that the Authority shall be under no obligation to make the Loan if the Municipality does not deliver the documents listed in Section 2.05 to the Authority on the Loan Closing in forms acceptable to the Authority and its counsel or if an Event of Default under this Loan Agreement has occurred and is continuing.

SECTION 2.02. Draws of Municipal Securities Proceeds (Loan Proceeds). The proceeds of the Municipal Securities are appropriated by the Municipality to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. The Authority will disburse the Loan upon (a) execution and delivery by the Municipality of this Loan Agreement, (b) issuance by the Municipality of the Municipal Securities and delivery to the Authority, and (c) submission to and approval by the Department and the Authority of Requisitions for Payment in the form approved by the Department. Requests for draws on the Loan, in the form of Requisitions for Payment, shall be submitted by the Municipality to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Authority and the Trustee for approval and funding. After all claims and expenses with respect to the Project and the issuance of the Municipal Securities have been duly paid and satisfied, the amortization schedule for the Municipal Securities shall be adjusted to reflect the total principal amount drawn under this Loan Agreement.

SECTION 2.03. Unconditional Obligations. The Municipality shall not be obligated to make any payments required to be made by any other political subdivision with respect to the lending of funds by the Authority from the SRF.

SECTION 2.04. Disclaimer of Warranties. The Municipality acknowledges and agrees that (i) neither the Authority nor the Department has made or makes any warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portions thereof or any other warranty or representation with respect thereto; and (ii) in no event shall the Authority, nor the Department or their respective officers, directors, employees, or agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the Project.

SECTION 2.05. Delivery of Documents. Concurrently with the execution and delivery of this Loan Agreement, the Municipality will cause each of the following items to be delivered to the Authority in a form acceptable to the Authority and its counsel:

(a) Executed counterparts of this Loan Agreement.

(b) Copies of the form of the Municipal Securities and any resolutions or ordinances of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement and the Municipal Securities, certified by an authorized officer of the Municipality.

(c) An arbitrage certificate and a closing certificate covering such matters as may be agreed upon by the Municipality and the Authority. The certificates required by this section may be provided as one certificate.

(d) An opinion or opinions of the Municipality's counsel, which may be given by one or more counsel, covering such matters concerning the validity and tax status of the Municipal Securities as may be agreed upon by the Municipality and the Authority.

(e) Such other certificates, documents, opinions and information as the Authority may require.

The documents referred to above must be prepared and provided by the Municipality to the Authority prior to the Loan Closing for review and approval.

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ARTICLE III
COVENANTS AND REPRESENTATIONS OF MUNICIPALITY

SECTION 3.01. Covenants and Representations of Municipality.

(a) Performance Under Loan Agreement. The Municipality covenants and agrees (i) to maintain the Project in good repair and operating condition and (ii) to cooperate with the Authority and the Department in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and the Authority under this Loan Agreement.

(b) Completion of Project and Provision of Moneys Therefor. The Municipality covenants and agrees (i) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date; and (ii) to provide from its own fiscal resources all moneys in excess of the total amount of the Loan required to complete the Project.

(c) Disposition of Project. The Municipality covenants and agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or any other system which provides revenues for upkeep and maintenance of the Project except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon or otherwise dispose of the same unless the following conditions are met: (i) the Municipality, with the approval of the Authority, shall assign this Loan Agreement and its rights and interests hereunder in accordance with Section 4.02 to the purchaser or lessee of the Project which must be a political subdivision as defined in the Authority Act, and such purchaser or lessee shall assume all duties, covenants, obligations and agreements of the Municipality under this Loan Agreement; and (ii) the Authority, in its sole discretion, by appropriate action determines that such sale, lease, abandonment or other disposition will not adversely affect (A) the ability of the Municipality or its assignees to meet its duties, covenants, obligations and agreements under the Municipal Bond Resolution, (B) the value of this Loan Agreement as security for the payment of Authority Bonds and interest thereon, (C) the eligibility of interest on Authority Bonds then outstanding or which could be issued in the future for exclusion from gross income for purposes of federal income taxation, or (D) any agreement entered into by the Authority or the State through the Department with, or any condition of any grant received by the Authority or the State through the Department from, the United States of America, which is related to any SRF capitalization grant received by the Authority or the State through the Department.

(d) Operation and Maintenance of Project. The Municipality covenants and agrees that it will, in accordance with prudent waste water or drinking water treatment

utility practice, as the case may be, (i) at all times operate the Project and the properties associated with and operated in conjunction with the Project and any business in connection therewith in an efficient manner, (ii) maintain the Project in good repair, working order and operating condition, (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the Project so that at all times the enterprise or business carried on in connection therewith shall be properly and advantageously conducted; provided, that this covenant shall not be construed as requiring the Municipality to expend any funds which are derived from sources other than the operation of the Project or other receipts of such Project which are not pledged under the Municipal Bond Resolution for such purpose, and provided further that nothing herein shall be construed as preventing the Municipality from doing so.

(e) The Municipality covenants and agrees that the proceeds of the Loan shall be used and expended in a manner consistent with the State Act and the SRF Act, all regulations and guidelines promulgated thereunder, and this Loan Agreement. The Authority affirms that expenditure for the Project as described in the loan application is consistent with the foregoing laws and documents.

(f) Records.

(i) The Municipality will keep accurate records and accounts for the Project (the "System Records") separate from its other records and accounts (the "General Records"). Such System Records will be maintained in accordance with generally accepted government accounting principles and generally accepted government auditing standards and, in accordance with state law, shall be audited annually or biennially, or as otherwise required by law, by an independent accountant, which audit may be part of the annual or biennial audit of the General Records of the Municipality. Such System Records and General Records shall be made available for inspection by the Authority and the Department at any reasonable time. The auditing requirements of this subsection do not apply to cities with populations of less than three hundred or to other political subdivisions with less than one hundred thousand dollars of annual receipts which, by law, are not required to have annual or biennial audits.

(ii) The Municipality agrees that its financial reports for the year or years which it receives draws under Section 2.02 shall be prepared in accordance with the Federal Single Audit Act and the Federal Office of Management and Budget's Circular A-128. A copy of the Municipality's independent annual or biennial audit or annual report, as required by law, including all written comments and recommendations, shall be furnished to the Authority within 150 days of the close of the fiscal year(s) being so audited. A copy of the annual

financial statement required by N.D.C.C. Section 40-16-04(2) shall be submitted to the Authority on or before February first of each year.

(iii) The Municipality will keep, or cause to be kept, accurate records, if such records must be kept for compliance with the requirements of Section 148 of the Code, of each investment it makes in investment property (as that term is defined in Section 148(b) of the Code) acquired, directly or indirectly, with proceeds of the Authority Bonds used to fund the Loan. The Authority will advise the Municipality if the Loan is not being funded with the proceeds of Authority Bonds. Further, with respect to such investments made by the Municipality which are not excepted from the computation of rebate under Section 148(f)(4) of the Code, the Municipality (A) will calculate, or cause to be calculated, the amount (the "rebate amount") that is to be rebated to the United States Treasury pursuant to Section 148(f) of the Code, and (B) will for each computation date under Section 148(f) of the Code (or on any further periodic basis requested in writing by the Authority) remit the following to the Authority: (1) the calculations supporting the determination of the rebate amount and (2) an amount of money equal to the rebate installment then owed. To the extent any such rebate amounts (or the investment income thereon) are in excess of the Authority's rebate requirement allocable to the Municipal Securities, such amounts will be promptly returned by the Authority to the Municipality.

(g) Inspections. The Municipality will permit the Authority, the Department and the Trustee, and any designated party to examine, visit and inspect, at any and all reasonable times, the property constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its Systems Records, General Records, and any other records regarding receipts, disbursements, contracts, investments and any other matters relating to its financial standing, and will supply such reports and information as the Authority, the Department and the Trustee may reasonably require.

(h) Insurance. The Municipality shall maintain or cause to be maintained, in force, insurance policies with responsible insurers or self insurance programs providing against risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining works of the nature of the Project, including liability coverage, all to the extent available at reasonable cost but in no case less than will satisfy all applicable regulatory requirements. The Authority, the Department and the Trustee may require the Municipality to provide them with evidence of insurance on the Project.

(i) Continuing Disclosure.

(i) So long as the Municipality shall constitute an obligated person within the meaning of S.E.C. Rule 15c2-12 (the "Rule") as in effect from time to time, the Municipality agrees to furnish to the Authority such financial information, including audited financial statements, and operating data with respect to the Municipality at such time and in such forms as the Authority shall reasonably request in order to comply with the provisions of the Rule and to provide the Authority, in a timely manner not in excess of ten business days after occurrence of the event, notice of any of the following events with respect to the Municipal Securities:

- (A) Principal and interest payment delinquencies.
- (B) Non-payment related defaults, if material.
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (E) Substitution of credit or liquidity providers, or their failure to perform.
- (F) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Municipal Securities, or other material events affecting the tax status of the Municipal Securities.
- (G) Modifications to rights of registered owners of the Municipal Securities, if material.
- (H) Bond calls, if material, and tender offers.
- (I) Defeasances.
- (J) Release, substitution or sale of property securing repayment of the Municipal Securities, if material.
- (K) Rating changes.
- (L) Bankruptcy, insolvency, receivership or similar event of the Municipality.
- (M) The consummation of a merger, consolidation, or acquisition involving the Municipality or the sale of all or substantially all of the assets of the Municipality, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (N) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(ii) The Municipality agrees that from time to time it will also provide notice to the Authority of the occurrence of other events, in addition to those listed above, if such other events are material with respect to the Municipal Securities.

(iii) The Municipality will provide, in a timely manner, to the Authority, notice of a failure to satisfy the requirements of this Section.

(iv) The intent of the Municipality's undertaking pursuant to this Section is to facilitate the Authority's ability to comply with the requirements of the Rule. Accordingly, the Municipality agrees to provide the Authority with any information the Authority may reasonably require in order to comply with the requirements of the Rule, as in effect from time to time.

(v) The sole remedy available to the Authority or to any other person for the failure of the Municipality to comply with any provision of this paragraph (i) shall be an action for specific performance of the Municipality's obligations under this paragraph.

(j) No Free Service. The Municipality will not furnish or supply or cause to be furnished or supplied, any use, output, capacity or service of the Project free of charge to any person, firm, corporation (public or private), public agency or instrumentality other than the Municipality itself.

(k) Commencement of Construction. If construction of the Project has not begun as of the date of this Agreement, the Municipality shall initiate construction of the Project within twelve (12) months after the Loan Closing.

(l) Archeological Artifacts. In the event that archaeological artifacts or historical resources are unearthed during construction excavation, the Municipality shall stop, or cause to be stopped, construction activities and will notify the superintendent of the State Historical Board of North Dakota and the Authority or the Department of such unearthing and follow all applicable state and federal laws and regulations governing such occurrence.

(m) No Lobbying. No portion of the Loan may be used for lobbying or propaganda as prohibited by 18 U.S.C. § 1913 or Section 607(a) of Public Law 96-74.

(n) Additional Covenants and Requirements. If necessary in connection with the Authority's issuance of the Authority Bonds or the making of the Loan, additional covenants and requirements will be evidenced by certificates or other documents in the form or forms attached as an exhibit to, and hereby made a part of, this Loan Agreement.

(o) Continuing Representations. The covenants and representations of the Municipality contained herein shall be true at the time of the execution of this Loan Agreement and the Municipality agrees that such covenants and representations will be binding and enforceable at all times during the term of this Loan Agreement.

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ARTICLE IV
ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority.

(a) The Municipality acknowledges that, other than the Administrative Fees payable pursuant to the Municipal Bond Resolution, all interests of the Authority in and under this Loan Agreement and the Municipal Securities have been pledged as security for the Authority Bonds, and that if any Event of Default shall occur, the Authority or the Trustee shall be entitled to act hereunder. The Municipality hereby acknowledges and consents that the Authority or the Trustee may compel or enforce the right to receive payments required to be made by the Municipality under this Loan Agreement and may compel or otherwise enforce observance and performance by the Municipality of its other duties, covenants, obligations and agreements under this Loan Agreement, and that the right and authority to enforce such requirements may be further transferred, assigned, and reassigned in whole or in part to one or more assignees or subassignees without the necessity of obtaining the consent of, but after giving prior written notice to, the Municipality.

(b) In the event of any assignment or transfer of this Loan Agreement and the Municipal Securities, the Authority shall retain the right to compel or otherwise enforce observance and performance by the Municipality of its obligations and agreement to pay Administrative Fees.

SECTION 4.02. Assignment by Municipality.

(a) This Loan Agreement may not be assigned by the Municipality unless the following conditions shall be satisfied: (i) the Authority shall have approved the assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code (unless waived in writing by the Authority), shall be a political subdivision as defined in the Authority Act and shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, agreements and obligations under this Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Municipality under this Loan Agreement; (iv) if the Loan is funded with proceeds of Authority Bonds issued on a tax-exempt basis, the Authority shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of Federal income taxation under Section 103(a) of the Code; and (v) the Authority shall have received an opinion of its counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority or the State through the

Department with, or any condition of any grant received by the Authority or the State through the Department from, the United States of America, which is related to any SRF capitalization grant received by the Authority or the State through the Department.

(b) No assignment under this Section shall relieve the Municipality from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Municipality shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

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ARTICLE V
DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If any of the following events occur, it is hereby defined and declared to be and to constitute an Event of Default:

(a) Failure by the Municipality to pay, or cause to be paid, any payment, including the payment of principal and interest on the Municipal Securities, required to be paid hereunder when due.

(b) Failure by the Municipality to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Municipality for borrowed money (other than the Loan and the Municipal Securities and after giving effect to any applicable grace period), the payments of which are secured by any revenues derived or to be derived from the Project.

(c) Failure by the Municipality to pay, or cause to be paid, the Administrative Fee or any portion thereof when due or to perform or observe any other covenant, agreement or condition on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by the Authority, unless the Authority shall agree in writing to an extension of the time prior to its expiration; however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period, the Authority may not unreasonably withhold its consent to an extension of time up to 120 days from the delivery of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected.

(d) Any representation made by or on behalf of the Municipality contained in this Loan Agreement or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan or in connection with the Municipal Securities, is false or misleading in any material respect.

(e) A petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Municipality shall become insolvent or bankrupt or make an assignment for the benefit of its creditors; or a custodian (including, without limitation, a receiver, liquidator or trustee

of the Municipality or any of its property) shall be appointed by court order or take possession of the Municipality or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 5.02. Notice of Default. The Municipality shall give the Authority prompt telephonic notice of the occurrence of any Event of Default at such time as any senior administrative or financial officer of the Municipality becomes aware of the existence thereof. Any telephone notice pursuant to this Section 5.02 shall be confirmed in writing as soon as practicable by the Municipality.

SECTION 5.03. Remedies on Default. Whenever an Event of Default referred to in Section 5.01 shall have occurred and be continuing, the Authority shall have the right to take, or to direct the Trustee or its authorized agent to take, any action permitted or required to be taken under the Bond Resolution or this Loan Agreement and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Municipality hereunder.

SECTION 5.04. Application of Moneys. Any moneys collected by the Authority pursuant to Section 5.03 shall be applied (a) first, to pay interest due and payable on the Municipal Securities, (b) second, to pay principal due and payable on the Municipal Securities, (c) third, to pay any other amounts due and payable hereunder this Loan Agreement.

SECTION 5.05. No Remedy Exclusive; Waiver; Notice. No remedy conferred upon or reserved to the Authority or the Trustee, if any, is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

SECTION 5.06. Retention of Authority's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof or of the Bond Resolution, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Municipality at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the

obligations of the Municipality to the Authority pursuant to this Loan Agreement and the Municipal Bond Resolution.

SECTION 5.07. Default by Authority. In the event of any default by the Authority under any covenant, agreement or obligation of this Loan Agreement, the Municipality may pursue any available remedy at law or in equity, including without limitation suit for damages or injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority hereunder as may be necessary or appropriate.

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ARTICLE VI
MISCELLANEOUS

SECTION 6.01. Notices. All notices, certificates or other communications under this Loan Agreement shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Municipality, the Authority and the Department at the following addresses:

(a) Authority:

North Dakota Public Finance Authority
1200 Memorial Highway
P.O. Box 5509
Bismarck, North Dakota 58506-5509
Attention: Executive Director

(b) Department:

North Dakota State Department of Health
Municipal Facilities
1200 Missouri Avenue
Box 5520
Bismarck, ND 58502-5520

(c) Municipality:

Mandan City Administrator
205 2nd Avenue NW
Mandan, ND 58554

Any of the foregoing parties may designate any further or different addresses to which subsequent notice, certificates or other communications shall be sent, by notice in writing given to the others.

SECTION 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Department, the Authority and the Municipality and their respective successors and assigns.

SECTION 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

SECTION 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without prior written consent of the Authority and the Municipality.

SECTION 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 6.06. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

SECTION 6.07. Consents and Approvals. Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law or by rules, regulations or resolutions of the Authority or unless expressly delegated to the Authority's agent.

SECTION 6.08. Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

SECTION 6.09. Further Assurances. The Municipality shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement and the Municipal Securities.

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NORTH DAKOTA PUBLIC FINANCE AUTHORITY

By _____
DeAnn Ament, Executive Director

ATTEST:

CITY OF MANDAN, NORTH DAKOTA

By _____
City Administrator

By _____
President, Board of City Commissioners

(S E A L)