



AGENDA
MANDAN CITY COMMISSION
MARCH 18, 2014
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.
- B. APPROVAL OF AGENDA:
- C. PUBLIC COMMUNICATIONS:
- D. MINUTES:
1. Consider approval of the minutes from the March 4, 2014 Board of City Commission meeting.
- E. PUBLIC HEARING:
- F. BIDS:
1. Consider the award of Bids for the Water Meter Improvements Project.
- G. CONSENT AGENDA:
1. Consider approval of monthly bills.
2. Consider approval of Expenditure Budget amendments for Fiscal Year 2013.
3. Consider transfer of funds from the General Fund 2013 Budget to the 2014 Budget.
4. Consider approval of the 2014 Fire Hydrant Painting agreement with HIT Inc.
5. Consider transfer of funds from the Cemetery and Utility Department's 2013 Budget to the 2014 Budget.
6. Consider transfer of funds from the IT Department 2013 Budget to the 2014 Budget.
7. Consider nomination of SSBCI loan committee alternate
8. Consider transfer of funds from the Police Department 2013 Budget to the 2014 Budget.
9. Consider transfer of funds from the Growth Fund 2013 Budget to the 2014 Budget.
10. Consider Approving Engineering Service Agreement with Wenck Associates for Street Improvement District Projects.
11. Consider deferred market adjustments resulting from the City's Salary Plan.

*Agenda
Mandan City Commission
March 18, 2014
Page 2 of 2*

H. OLD BUSINESS:

I. NEW BUSINESS:

1. Discussion related to a shared use policy.

J. RESOLUTIONS AND ORDINANCES:

1. Consider Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Meter Improvements.
2. Consider Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.

K. OTHER BUSINESS:

L. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:

1. April 1, 2014
2. April 15, 2014
3. April 29, 2014 - 6:00 p.m. - Working Session
4. May 6, 2014

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.

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.

The Mandan City Commission met in regular session at 5:30 p.m. on March 4, 2014 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, Fire Chief Nardello, Business Development and Communications Director Huber, Planning & Engineering Director Froseth, Planner Decker, Engineering Project Manager Fettig, Assessor Shaw, and Building Official Lalim.

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

Mayor Van Beek announced that there is a “Learn About Local Elected Office Opportunities” informational meeting scheduled on March 11, 2014. This is an informational session for people exploring the possibility of running for local, elected leadership positions and will be held Tuesday, March 11th from 7 to 8 p.m. at the Braves Center, 901 Division Street Northwest. Everyone is invited to attend. There is no fee for the session. Advance Registration is encouraged via the City of Mandan website at www.cityofmandan.com or by contacting Laurie Leingang at 400-8631 or leingangl@bis.midco.net. The session is sponsored by Mandan Tomorrow Leadership, Pride and Image Committee. Positions up for election in 2014 include 2 seats on Mandan City Commission, 2 seats on Morton County Commission, 3 seats on Mandan Park Board and 4 seats on the Mandan School Board including 1 rural position. The deadline to file is April 7th.

C. PUBLIC COMMUNICATIONS: Mayor Van Beek invited anyone to come forward to address items on the Agenda.

Mike Aubol, the County Engineer from Morton County, came forward to comment on New Business Item No. 5: *Consider the creation of, approval of the feasibility report for, approve the engineer’s report and approve the resolution of necessity for Street Improvement District 196 Project 2014-14(Mandan Industrial Park)*. Mr. Aubol stated that he received literature on the proposed streets. He drove around and viewed 34th and 37th streets. He indicated that if the project were to go through with concrete, the cost would be in excess of \$400,000. He commented that 30th Avenue appears to be in good condition with no major issues. That is proposed to have a \$320,000 mill and overlay. Thirty-seventh Street, west of 30th is also proposed for approximately \$125,000 mill and overlay. There are parts of 37th Street which run past the Morton County Shop and other businesses that have some areas that do need repair, as there are on 34th. But the majority of the roadway is in good condition. The 37th Street repairs are estimated at \$793,000 with 34th Street repairs estimated at \$993,000. The two worst riding areas on 37th Street appeared last year when utilities were tied in on 37th Street. He recommended that the Commission and the City of Mandan consider the feasibility of doing a dig out patch and repair project rather than a mill and overlay.

Scott Porsborg came forward and commented on the proposed Industrial Park street improvement project. He stated he owns the lot located at 3609 Old Red Trail that abuts to 37th Street which is part of this assessment district. What is being proposed as part of this district is square footage assessment as opposed to foot frontage which is what's usually done which means a higher assessment for the larger lots. City staff has estimated a special assessment on the lot he owns to be about \$108,000. The other smaller lots will also have a significant assessment. He expects if the project is approved to go forward, it will be protested out by the landowners. He suggested that the City consider looking at other alternatives.

A second announcement was made to speak for or against items on the Agenda. Hearing none, this portion of the Public Communications was closed.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission regular meeting held February 18, 2014 and Special Board Meeting of February 24, 2014.* Commissioner Frank moved to approve the minutes as presented. Commissioner Tibke 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.

E. PUBLIC HEARING:

F. BIDS:

1. *Consider award of bid for LWT Floating Dredge.* Justin Froseth, Planning & Engineering Director stated this request is for approval of the award of bid for the LWT Floating Dredge to Spinpro, Inc., in the amount of \$15,000.00. This is a piece of equipment that is no longer needed at the Wastewater Treatment Plant and was declared surplus. One bid was received from Spinpro, Inc. The bid price was determined to be fair and reasonable. The bidder will be responsible for its removal from the Wastewater Treatment Plant and it will have to be removed within the timeframe designated in the bid instructions.

Commissioner Tibke moved to approve the award of bid for LWT Floating Dredge to Spinpro, Inc. in the amount of \$15,000.00. Commissioner Rohr seconded the motion. . The motion received unanimous approval of the members present. The motion passed.

2. *Consider award of bid for Municipal Sidewalk Improvement Project 2014-11 (See Resolution No. 3).* Kim Fettig, Engineering Project Manager, presented a request to award a contract for bids received for the 2014 Municipal Sidewalk repairs throughout the city. She stated that five (5) bids were received. It was recommended that the award be given to the low bidder, Knife River Corporation in the amount of \$32,832.75 which was 13% lower than the engineer's estimate for this project.

Commissioner Frank moved to approve the bid award for Municipal Sidewalk Improvement Project 2014-11 to Knife River Corporation in the amount of \$32,832.75.

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.

G. CONSENT AGENDA

1. *Consider designating April 26-May 3, 2014 as “Spring Clean-Up Week in the City of Mandan.*
2. *Consider approval of site authorization for Mandan Baseball Club at Station West from April 1, 2014 through June 30, 2014.*
4. *Consider reductions in the structure value for the 2013 year due to reassessments.*
5. *Consider approval of Missed Property Tax Incentives for Silver Lake Apt., LLC - Assessor Error.*

Commissioner Frank moved to approve Consent Agenda items No. 1, 2, 4, 5. She requested pulling No. 3 for discussion. 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.

3. *Consider entering into professional services contract with Municode for recodification of our Municipal Code.* Commissioner Frank questioned City Administrator Neubauer as to whether Municode had communicated with the City of Mandan how we have some civic engagement and involvement in how this is re-codified? Administrator Neubauer stated that any new ordinances proposed would have to come in to the City Commission for review and approval. Commissioner Frank clarified that adequate time for preparation be given for any proposed changes to the code and wanted to make that point clear up front and to be transparent with anything that may come up in the future. Administrator Neubauer stated that the process with Municode is that they will review the entire code and prepare a Memorandum of changes they would suggest to bring a code into compliance with state law and anything subsequently to the attention of City staff and the City Commission. He assured the Commission that if anything of substance comes back the Commission will be informed.

Commissioner Frank moved to approve Consent Agenda items No. 3 – entering into professional services contract with Municode for recodification of our Municipal Code. 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.

H. OLD BUSINESS:

1. *Consider Approval of Engineering Services Agreement with KLJ Engineering.* Justin Froseth, Planning & Engineering Director, presented a request to approve the Engineering Services Agreement with KLJ Engineering. He stated the City has been approved by the NDDOT local government division to construct 3 street improvement projects in 2014. Eighty percent or more of the project cost will be funded by the urban roads program that is administered through the NDDOT. All projects must go through the NDDOT bidding process requiring the plans and specifications to adhere to their

guidelines. The Engineering office presented a recommendation at the last City Commission meeting on February 18, 2014 to enter into an Engineering Service Agreement with KLJ Engineering based on the Request for Qualifications they submitted. Their proposal was selected. He, along with Public Works Director Jeff Wright, met with the KLJ representatives to define the project scope and review the associated estimate of costs for services. A site visit has also been conducted for each of the projects. The proposals and design fee summary are fair for the projects. The total fees for all engineering and pre-bid services for the DOT come to \$52,016. It was recommended to approve the Engineering Services Agreement with KLJ Engineering.

Commissioner Braun moved to approve the Engineering Services Agreement with KLJ Engineering for federally funded street improvement projects. 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.

I. NEW BUSINESS:

1. *Consider fiscal sponsorship of Bush Foundation Community Innovation Grant application.* Business Development and Communications Director Huber presented a request to consider fiscal sponsorship of an application for a \$200,000 Bush Foundation Community Innovation grant application in collaboration with the Mandan Tomorrow. The deadline for the application is March 13th. The first grants were awarded in late 2013 and they are seeking community projects for non-profits or a government entity. The Mandan Tomorrow Leadership, Pride and Image Committee is seeking the City of Mandan's endorsement of the sponsorship. The application will be for \$200,000 over a course of 2 years. The sponsorship essentially means that if the funds are awarded or approved by the Bush Foundation they would be deposited with the City of Mandan Growth Fund and there would be no administrative fee on the part of the City in administering this program.

We would bring to it in-kind services in the form of accounting and time from the Business Development Department in executing the program. The concept would be to provide up to \$10,000 per property for commercial and industrial use for the business property owner or tenant to apply. City Attorney Brown has reviewed the Fiscal Sponsorship Agreement. It was recommended to approve the grant application. There is no requirement for a match. However, as in any grant process, the Bush Foundation would look favorably if there were a match. The Leadership, Pride and Image Committee is not making that request of the city at this juncture. This grant is specifically allocated to Minnesota, North Dakota, South Dakota and the Indian Reservations. On the application the businesses would be required to have a 50% match for any storefront or landscape improvements and the criteria would be similar to the existing program.

Commissioner Braun moved to approve the fiscal sponsorship of Bush Foundation Community Innovation Grant application. Commissioner Tibke 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. *Remediation Update by Leggette, Brashears & Graham.* Tim Kenyon, Senior Vice President with Leggette Brashears & Graham (LBG) presented an update on the status of the cleanup of the diesel spill. He said that approximately 2.7 million pounds of product has been collected and he projects the recovery wells to stop by 2016. Over 360 recovery wells were installed for the cleanup. LBG was hired in 2004 by the Mandan Remediation Trust to do the cleanup. The trust was set up with \$25 million settlement from the railway with the majority of the funds earmarked to pay for the cleanup. The plan going forward starting this spring and over the next two years includes shutting down 322 of those wells throughout a yearlong phase shutdown monitoring. If all goes well those wells will be decommissioned in the spring of 2015. In the meantime 55 wells will continue to operate because of pockets left by the diesel with possible plans to decommission those wells in 2016 which would conclude the project. Commissioners Tibke and Rohr extended a thank you to LBG for the many years of service dedicated to this project.

3. *Consider the creation of, approval of the feasibility report for, approve the engineer's report and approve the Resolution of necessity for Street Improvement District 194 Project 2014-12(Developer's West Acres, Ventures, and Crown Point) (See Resolution No. 4).* Justin Froseth, Planning & Engineering Director presented a request for approval of the feasibility report for approval of the engineer's report and approval of the Resolution of necessity for Street Improvement District 194 Project (2014-12 Developer's West Acres, Ventures, and Crown Point). City staff has observed the street surface within the development has been degraded to the extent that street improvements are needed. This is a 4-mile asphalt paving project with an estimated total cost of \$2,549,592.12. The benefiting property owners will be assessed approximately \$7,992 per parcel. The last project was done in 1997 which was an overlay at that time. Property owners will have until April 7, 2014, to submit written protests. On April 15, 2014, a hearing will be held to determine objections to the special assessment district. Affected property owners will be notified by letter by the City of the proposed property tax increase.

Commissioner Frank moved to approve the creation of, approval of the feasibility report for, approve the engineer's report and approve the Resolution of necessity for Street Improvement District 194 Project 2014-12(Developer's West Acres, Ventures, and Crown Point) (See Resolution No. 4). 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.

4. *Consider the creation of, approval of the feasibility report for, approve the engineer's report and approve the resolution of necessity for Street Improvement District 195 Project 2014-13(Roughrider Estates) (See Resolution No. 5).* Justin Froseth, Planning & Engineering Director presented a request for approval of the feasibility report for approval of the engineer's report and approval of the Resolution of necessity for

Street Improvement District 195 Project 2014-13(Roughrider Estates). City staff has observed the street surface within the development has been degraded to the extent that street improvements are warranted. This was confirmed by a professional analysis of the streets conducted by Dynatest Consulting in 2012. An optional public input meeting was held on February 20, 2014. All property owners were notified by letter and approximately 30 property owners attended the public meeting.

This is a pavement project that will consist of a mill and overlay of all streets in the development but not full replacement of curb and gutter and it will include street lighting throughout but no sidewalks. The estimated total cost is \$761,591. The benefiting property owners will be assessed the costs for the project of approximately \$9,402 per parcel. Property owners will have until April 7, 2014 to submit written protests. On April 15, 2014, a public hearing will be held to determine objections to the special assessment district. Affected property owners will be notified by letter by the City of the proposed property tax increase. Commissioners Rohr and Frank requested that Mr. Froseth check into any kind of grants that may be available to decrease the costs for the residents in this area, as well as in regards to the energy efficiency and safety of the street lighting portion of the project.

Commissioner Frank moved to approve the creation of, approval of the feasibility report for, approve the engineer's report and approve the resolution of necessity for Street Improvement District 195 Project 2014-13. 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.

5. *Consider the creation of, approval of the feasibility report for, approve the engineer's report and approve the resolution of necessity for Street Improvement District 196 Project 2014-14(Mandan Industrial Park) (See Resolution No. 6).* Justin Froseth, Planning & Engineering Director presented a request for approval of the feasibility report for, approve the engineer's report and approval of the resolution of necessity for Street Improvement District 196 Project 2014-14 for Mandan Industrial Park. City staff has observed the street surface within the development has been degraded to the extent that street improvements are needed. This was confirmed by a professional analysis of the streets conducted by Dynatest Consulting in 2012. An optional public input meeting was held on February 19, 2014. All property owners were notified by letter and 3 property owners attended the public meeting.

Options that were discussed were for the main east to west roads that being 34th Street and 37th Street through the Industrial Park. The options discussed were if the surface should be a mill and overlay project or asphalt pavement or whether these roads should be reconstructed with concrete. This area experiences heavy truck traffic on all roads and it is felt that it will be beneficial to move forward with a project in this area now rather than wait for any period of time since those roads were determined to be inadequate by Dynatest in 2012.

There were concerns at the public input meeting of square footage property for each lot. The City Engineer's office, (along with Public Works), have concluded that given the nature of the Industrial Park the most fair way to distribute the assessments should be determined by area of property because they would have more room to conduct business in addition to see more traffic flow generated by a larger piece of property.

This recommendation is subject to approval by the Special Assessment Committee as to how the assessments will be assessed. Commissioner Rohr commented that it is important to take into consideration the costs of repair now vs. the cost of a complete replacement of the road. Mr. Froseth pointed out that a road can be expected to last twice as long if concrete is used rather than pavement which equates out to about one-third more of the cost when compared to reconstruction with asphalt.

Commissioner Frank commented that regarding the discussion that was held earlier as far as communicating with the property owners the term that's available as far as the special assessment period and the financial impact. She inquired if there is an option to go from a 20-year assessment term to a 25-year term? Finance Director Welch stated that with a project like this, for example, the majority of the cost is due to concrete product. He recommended consideration of a 20-year assessment and a 20-year bond. When looking at a longer term there is a higher interest component because of the longer financing. If the concrete cost is more than 50% of the cost he would recommend a 20-year term vs. a 15-year term. The total project cost is estimated to be \$2,230,923. Property owners will have until April 7, 2014, to submit written protests. On April 15, 2014, a hearing will be held to determine objections to the special assessment district. Affected property owners will be notified via letter by the City of the proposed property tax increase.

Commissioner Frank moved to approve the creation of, approval of the feasibility report for, approve the engineer's report and approve the resolution of necessity for Street Improvement District 196 Project 2014-14. Commissioner Tibke 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.1179 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. (Schaff's Industrial Park).* Commissioner Tibke moved to approve the Second consideration and final passage of Ordinance No.1179 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. (Schaff's Industrial Park). 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. *Second consideration and final passage of Ordinance No.1180 an Ordinance to Amend and Re-enact Section 13-21-02, and Section 19-06-03 of the Mandan Code of*

Ordinances. Commissioner Tibke moved to approve the Second consideration and final passage of Ordinance No.1180 an Ordinance to Amend and Re-enact Section 13-21-02, and Section 19-06-03 of the Mandan Code of Ordinances. 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.

3. *Consider Resolution Approving Contract and Contractor's Bond for Municipal Sidewalk Improvement Project 2014-11.* Commissioner Frank moved to approve the Resolution Approving Contract and Contractor's Bond for Municipal Sidewalk Improvement Project 2014-11. Commissioner Tibke 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.

4. *Consider the Resolutions creating district, approving engineer's report and resolution of necessity for Street Improvement District 194 Project 2014-12(Roughrider Estates).* Commissioner Frank moved to approve the Resolutions creating district, approving engineer's report and resolution of necessity for Street Improvement District 194 Project 2014-12(Roughrider Estates). 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.

5. *Consider the Resolutions creating district, approving engineer's report and resolution of necessity for Street Improvement District 195 Project 2014-13(Developers West Acres, Ventures, and Crown Point).* Commissioner Frank moved to approve the Resolutions creating district, approving engineer's report and resolution of necessity for Street Improvement District 195 Project 2014-13(Developers West Acres, Ventures, and Crown Point). 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 and resolution of necessity for Street Improvement District 196 Project 2014-14(Mandan Industrial Park).* Commissioner Frank moved to approve the Resolutions creating district, approving engineer's report and resolution of necessity for Street Improvement District 196 Project 2014-14(Mandan Industrial Park). Commissioner Tibke 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

There being no further actions to come before the Board of City Commissioners, Commissioner Rohr moved to adjourn the meeting at 6:40 p.m. Commissioner Frank

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: March 18, 2014
PREPARATION DATE: March 13, 2014
SUBMITTING DEPARTMENT: Finance, Meter Reading, Public Works, and Utility Maintenance
DEPARTMENT DIRECTOR: Greg Welch, Finance Director
 Jeff Wright, Public Works Director
PRESENTER: Ken Weber, AE2S
SUBJECT: Consider for approval the award of Bid for the Mandan Water Meter Replacement Project to Thirkettle Corporation.

STATEMENT/PURPOSE:

Consider for approval the award of Bid for the Mandan Water Meter Replacement Project to Thirkettle Corporation for \$1,520,634.59, which includes alternate addition bid for a Fixed Network Automated Meter Reading system. Notice of Award would be contingent on verification of the Propagation Study showing a minimum of 98% meter coverage.

We received two bids for the project and the engineers estimate was \$2,522,162.48.

BACKGROUND/ALTERNATIVES:

With Board of City Commission approval, the Meter Reading Department began replacing old Water Meters/MXUs in 2002. Since then, approximately 2,750 old Water Meters/MXUs have been replaced by the Department. However, due to the lack of consistency and efficiency, the City is now in the process of establishing a water meter/reading replacement strategy for its existing water meter/reading program. The City currently has approximately 6,600 water meters ranging in size from 5/8" to 6" in diameter. The City uses its water meter readings to bill its customers for water and sewer usage on a monthly basis.

On July 18, 2013, Advanced Engineering and Environmental Services completed a review evaluating the water meter/reading inventory to provide a recommended water meter/reading upgrade and possible replacement strategy. The purpose of the study was to bring consistency and efficiency to the City's water meter reading and billing system by identifying incompatible radio read technology and outdated water meters. A practical approach includes integrating all metered users into a single, consistent data collection

system by replacing old water meter/reading assemblies with new, compatible components and incorporating the data into the current or new billing software.

On August 20, 2013, Advanced Engineering and Environmental Services presented the recommendations from the Technical Memorandum to Board of City Commissioners. The Board approved the recommendations and requested to enter into a Professional Services Agreement with Advanced Engineering and Environmental Services on September 3, 2013.

On September 3, 2013, the Board of City Commissioners approved to enter into an Agreement with Advanced Engineering and Environmental Services for engineering services for the Project.

On October 1, 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 November 18, 2013, the City was approved by the Industrial Commission of North Dakota for a Loan in the amount of \$2,400,000 from the North Dakota Public Finance Authority's Clean Water State Revolving Fund Program to finance the Project. The interest rate on the Loan is 2.0% plus 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 February 4, 2014, the Board of City Commissioners approved the Advertisement for Bids for the Mandan Water Meter Improvements Project.

On March 11, 2014, the Bids were opened for the Mandan Water Meter Improvements Project.

The following is a schedule of Project activities:

- Notice of Award – April 4, 2014
- Notice to Proceed – April 8, 2014
- Start Construction – April 9, 2014
- End Construction – January 31, 2015

ATTACHMENTS:

Letter of recommendation from AE2S, Bid Tabulation Summary, and supporting documentation.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider for approval the award of Bid for the Mandan Water Meter Replacement Project to Thirkettle Corporation.

Page 3 of 3

FISCAL IMPACT:

The total approved SRF Loan = \$2,400,000

The City included this Project in the 2013/2014 Budgets and adjusted the Water and Sewer Base Rate to service the debt on the Loan.

Total low Bid = \$1,520,634.59

STAFF IMPACT:

The Water Meter Maintenance Supervisor and AE2S will manage the Project on behalf of the City.

LEGAL REVIEW:

Bids have been forwarded to Attorney Brown.

RECOMMENDATION:

Recommend the award of Bid for the Mandan Water Meter Replacement Project to Thirkettle Corporation for \$1,520,634.59, which includes alternate addition bid for a Fixed Network Automated Meter Reading system, contingent on verification of the Propagation Study showing a minimum of 98% meter coverage.

SUGGESTED MOTION:

Move to award of the Bid for the Mandan Water Meter Replacement Project to Thirkettle Corporation for \$1,520,634.59, which includes alternate addition bid for a Fixed Network Automated Meter Reading system, contingent on verification of the Propagation Study showing a minimum of 98% meter coverage.



March 13, 2014

To the President and Commissioners
of the Mandan Board of City Commissioners
c/o Jeff Wright, Director of Public Works
411 6th Avenue SW
Mandan, ND 58554-3240

**Re: Mandan Water Meter Improvements Project
City of Mandan, North Dakota**

Honorable Commissioners:

Bids for the referenced Project were opened on Tuesday, March 11, 2014. Two Contractors submitted Bids for the Work. The Contractors submitted the required Bid Bonds, Contractor's Licenses, required SRF documents, completed propagation studies, acknowledged the Addenda, and signed their Bids. The Bids were examined for errors and irregularities, and none were found. A copy of the Bid tabulation summary is attached.

The apparent low bid for Contract No. 1 – General Construction, including Alternates No. B1-B5 was submitted by Thirkettle Corporation. Thirkettle Corporation submitted this bid to act as the prime contractor for this project and will be supplied by Fargo Water Equipment with Sensus brand water meters and a fixed network automated meter reading system. As such, we recommend award of Contract 1 – “Drive-By” Automated Meter Reading System, including Alternates B1-B5 for the fixed network, to Thirkettle Corporation for \$1,520,634.59.

It is also recommended that award should be contingent upon an updated propagation study to include all 6,600 water meters encompassed by the scope of this project. The propagation study originally submitted meets the Engineer's specifications to cover 98% of all meters, yet only took into consideration 6,073 meters rather than the 6,626 meter locations currently in existence. This updated study has been requested from Thirkettle and Sensus.

Included herewith are copies of the certified Bid proposal, with corresponding Bid Bonds, SRF documents, and Contractors' Licenses, and four (4) copies of the Notice of Award for review by the City Attorney and execution, if acceptable.

President and Commissioners
of the Mandan Board of City Commissioners
Re: Mandan Water Meter Improvements Project
March 13, 2014
Page 2 of 2

Once the City executes the Notices of Award, please return them to AE2S. We will forward the Notices of Award and the Construction Agreements to the Contractor. The successful Contractor is required to acknowledge the Award, execute the Agreement (on their part), and return all documents with the required supporting documentation (Performance and Payment Bonds, insurance certificates, tax clearances, etc.) within fifteen days. Upon receipt of the returned documentation, they will be reviewed and if acceptable forwarded to the City for review and final execution. Once the Agreements are fully executed, we will assemble and distribute complete Contract Document sets to all parties, schedule and administer a pre-construction conference, and issue the Notice to Proceed.

Thank you for the continued opportunity to provide professional engineering services to the City of Mandan. Should you have any questions or concerns, please do not hesitate to contact us.

Submitted in Service,

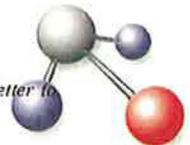
AE2S



Kenneth J. Weber, PE
Project Engineer

Enclosures (Bid Tabulation Summary, Certified Bid Packages, Notice of Award)

C: North Dakota Department of Health
Greg Welch, Finance Director, City of Mandan
Lisa Ansley, Operations Manager, AE2S



Mandan Water Meter Improvements
Mandan, ND
P00510-2013-000
Bid Opening 2:15 PM, March 11, 2014

Contractor		Acknowledge Addenda 1 & 2	Prop Study	EPA Forms	Contractor License	MBE/WBE Solicitation Information	Certificate Regarding Debarment	Bid Bond	Bid Form	Contract No. 1	ALTERNATE ADDITION
1	Thirkettle Corp	✓	✓	✓	✓	✓	✓	✓	✓	\$1,389,194.59	\$131,440.00
2	Ferguson Enterprises	✓	✓	✓	✓	✓	✓	✓	✓	\$1,663,873.17	\$517,430.62
	<i>Engineer's Estimate</i>									\$2,258,318.48	\$263,844.00

Respectfully Submitted by:



Ken Weber, PE



Advanced Engineering and Environmental Services, Inc.
1815 Schafer St Ste 301
Bismarck, ND 58501
Tel: 701-221-0530
Fax: 701-221-0531

BID FORM
00300

IDENTIFICATION OF GOODS AND SPECIAL SERVICES:

The Work shall include the supply, scheduling, and installation of water meters, all hardware and software necessary for a fully functional automated water meter reading system, and any supplementary plumbing or piping appropriately associated with each meter. The project generally consists of the following: furnish and install approximately 2300 residential and 150 commercial water meters sized 5/8", 3/4", 1", 1/1/2" 2", 3", 4", and 6"; furnish and install approximately 6600 radio frequency meter interface units (transceivers); furnish and activate water meter reading hardware; furnish and install water meter reading software; and provide training for City staff to operate the automated meter reading system as detailed in the bid form. The system must be compatible with the City's billing software. Work will also require the communication with home and property owners to schedule and coordinate water meter service appointments, and inspection and replacement of any curb stops. Account information of each metered user will be collected and coordinated with the City for use in billing and GIS software. Alternate bids will be considered for accessories, a fixed-network automated meter reading system, and additional meter reading equipment.

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

City Administrator
City of Mandan
205 2nd Ave NW
Mandan, ND 58554

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Buyer in the form included in the Bidding Documents to furnish all Goods and Special Services as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Invitation to Bid and the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the day of Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Buyer. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Documents to Engineer within 15 days after the date of Buyer's Notice of Award.

- 2.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of its failure to furnish the Goods and Special Services in accordance with the schedule set forth in the Agreement.
- 2.03 Bidder accepts the provisions of the Agreement as to the assignment of the Contract for furnishing Goods and Special Services.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
<u>1</u>	<u>Feb. 19, 2014</u>
<u>2</u>	<u>Mar. 5, 2014</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- B. If specified, or if in Bidder’s judgment, any local condition may affect cost, progress, or the furnishing of Goods and Special Services, Bidder has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress, or the furnishing of Goods and Special Services.
 - C. Bidder is familiar with and is satisfied as to all Federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Goods and Special Services.
 - D. Bidder has carefully studied and correlated the information known to Bidder, and information and observations obtained from Bidder’s visits, if any, to the Point of Destination with the Bidding Documents.
 - E. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
 - F. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Goods and Special Services for which this Bid is submitted.
- 3.02 Bidder further represents that this Bid is genuine and is not made in the Interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Buyer.

ARTICLE 4 – BASIS OF BID

4.01 Bidder will furnish the Goods and Special Services in accordance with the Contract Documents for the following price(s):

CONTRACT 1 – “DRIVE-BY” AUTOMATED METER READING SYSTEM						
	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE	
A	Bonding	1	LS	\$10,341.40	\$10,341.40	
B	Mobilization	1	LS	\$1,500.00	\$1,500.00	
C	Residential Water Meter Assembly					
1	Meter Size: 5/8" w/ Transceiver	279	ea	\$182.58	\$50,939.82	
2	Meter Size: 3/4" w/ Transceiver	1126	ea	\$197.81	\$222,734.06	
3	Meter Size: 1" w/ Transceiver	883	ea	\$231.06	\$204,025.98	
4	Meter Size: 1" w/ Transceiver	200	ea	\$231.06	\$46,212.00	
D	Commercial Water Meter					
1	Meter Size: 1_1/2" w/ Transceiver	58	ea	\$496.34	\$28,787.72	
2	Meter Size: 2" w/ Transceiver	45	ea	\$687.51	\$30,937.95	
3	Meter Size: 3" w/ Transceiver	21	ea	\$1,498.21	\$31,462.41	
4	Meter Size: 4" w/ Transceiver	5	ea	\$2,521.89	\$12,609.45	
5	Meter Size: 6" w/ Transceiver	9	ea	\$4,266.90	\$38,402.10	
E	Meter Interface Units					
1	Radio Transceivers	3900	ea	\$79.35	\$309,465.00	
F	Scheduling and Installation					
1	Scheduling	6326	ea	\$4.00	\$25,304.00	
2	Installation of Residential Water Meter Assemblies	2288	ea	\$49.75	\$113,828.00	
3	Installation of Commercial Water Meter Assemblies	138	ea	\$131.00	\$18,078.00	
4	Installation of Transceivers on existing meters	3900	ea	\$36.00	\$140,400.00	
G	Meter Reading Equipment and Training					
1	Laptop Computer	1	ea	No Charge	No Charge	
2	Mobile data collector	1	ea	No Charge	No Charge	
3	Set-up and integration with existing billing software	1	ea	No Charge	No Charge	
4	Training	1	LS	No Charge	No Charge	
H	Accessories					
1	Curb Stop Replacement	25	ea	\$4,000.00	\$100,000.00	
2	Shut-off Valve Replacement	30	ea	\$138.89	\$4,166.70	

TOTAL UNIT PRICE BID FOR CONTRACT 1 – GENERAL CONSTRUCTION BASE BID
One Million Three Hudred Eighty Nine Thousand One Hundred
Ninety-Four Dollars and Fifty-Nine Cents (use words) **(\$ 1,389,194.59)** (use figures)

ALTERNATE ADDITION - CHANGES TO BASE BID FOR SYSTEM PERFORMANCE AND MANUFACTURER REQUIREMENTS

The scope shall include the supply and construction of hardware and infrastructure to provide a "Fixed-Network" Automated Meter Reading system. In lieu of items G2-F4, above, items B1-B4 ,below, will be supplied at Owner's discretion. Also, the replacement of additional meter interface units is contingent upon supplier.

ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
Accessories				
A1 Transceivers to Replace existing Sensus 510M	300	ea	Not Applicable	Not Applicable
A2 Additional Scheduling, install, set-up to replace existing Sensus 510M	300	ea	Not Applicable	Not Applicable
Fixed-Network Automated Meter Reading System				
B1 Fixed base station radio communicators	1	LS	No Charge	No Charge
B2 Installation/construction	1	LS	No Charge	No Charge
B3 Set-up and Integration with existing billing software	1	LS	No Charge	No Charge
B4 Host software for Fixed-Network	1	ea	\$131,440.00	\$131,440.00
B5 Increased Transceiver Cost for Fixed Network.	6626	ea	No Charge	No Charge
Meter Reading Equipment				
C1 Handheld data collector	2	ea	Not Applicable	Not Applicable
C2 Host software for Drive-by	1	ea	Included	Included

TOTAL UNIT PRICE BID FOR ALTERNATE ADDITION – CHANGES TO BASE BID FOR SYSTEM PERFORMANCE AND MANUFACTURER REQUIREMENTS

One Hundred Thirty-One Thousand Four Hundred Forty Dollars and Zero Cents

(use words)

(\$ **131,440.00**)

(use figures)

ARTICLE 5 – TIME OF COMPLETION

- 5.01 Bidder agrees that the furnishing of Goods will be completed and ready by the dates set forth in the AGREEMENT.
- 5.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the furnishing of Goods and Special Services by the dates set forth in the AGREEMENT.

ARTICLE 6 – DEFINED TERMS

- 6.01 The terms used in this Bid have the meanings indicated in the Instructions to Bidders, the Procurement General Conditions, and the Procurement Supplementary Conditions.

ARTICLE 7 – BID SUBMITTAL

- 7.01 The following documents are attached to and made a condition of this Bid:
 - A. Required Bid security in the form of a bond.
 - B. Contractor's License or Certificate of Renewal.
 - C. Fixed Network Propagation Study

- 7.02 This Bid is submitted by:

An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

Doing business as: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

A Partnership

Partnership Name: _____

By: _____
(Signature of general partner)

Doing business as: _____

Business Address: _____

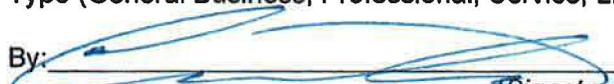
Phone No.: _____ Fax No.: _____

A Corporation

Corporation Name: **Thirkettle Corporation**

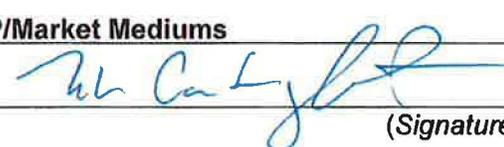
State of Incorporation: **California**

Type (General Business, Professional, Service, Limited Liability): **General Business**

By:  _____
(Signature)

Name (typed or printed): **Christopher Newville**

Title: **VP/Market Mediums**

Attest:  _____
(Signature)

Business address: **6700 Guada Coma Drive, Schertz, TX 78154**

Phone No.: **(210) 967-6304** Fax No.: **(210) 967-6305**

Date of Qualification to do business is **August 29, 2013**

A Joint Venture

Joint Venturer Name: _____

By: _____
(Signature of joint venture partner)

Name (typed or printed): _____

Title: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

Joint Venturer Name: _____

By: _____
(Signature of joint venture partner)

Name (typed or printed): _____

Title: _____

Business Address: _____

Phone No.: _____ Fax No.: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above).

End of Section

BID BOND

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER (Name and Address):

Thirkettle Corporation
6700 Guada Coma Dr.
Schertz, TX 78154

SURETY (Name and Address of Principal Place of Business):

Travelers Casualty and Surety Company of America
One Town Square
Hartford, CT 06183

OWNER (Name and Address):

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

BID

Bid Due Date: March 7, 2014

Project (Brief Description Including Location): Water Meter Improvement Project

BOND

Bond Number: N/A

Date (Not later than Bid due date): March 7, 2014

Penal sum Sixty Eight Thousand Nine Hundred Forty Four Dollars
(Words)

\$68,944.00
(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

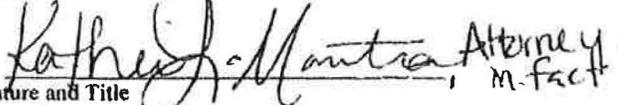
BIDDER

SURETY

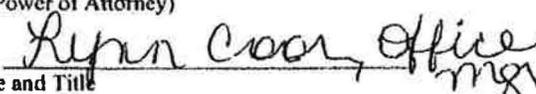
Thirkettle Corporation dba Global Efficiencies Inc. (Seal)
Bidder's Name and Corporate Seal

Travelers Casualty and Surety Company of America (Seal)
Surety's Name and Corporate Seal

By: 
Signature and Title Thomas Thirkettle - General Manager

By: 
Signature and Title Kathryn J. Mantra, Attorney-in-Fact
(Attach Power of Attorney)

Attest: 
Signature and Title Christopher Newville - VP/Market Medlums

Attest: 
Signature and Title Ryan Cook, Office mgr.

Note: Above addresses are to be used for giving required notice.



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 225314

Certificate No. 004955994

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Leslie Swan, Lance Abbott, and Katie LaMantia

of the City of McKinney, State of Texas, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 11th day of July, 2012.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 11th day of July, 2012, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

State of North Dakota

SECRETARY OF STATE



CERTIFICATE OF AUTHORITY OF

THIRKETTLE CORPORATION
Secretary of State ID#: 35,061,000

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that an application of

THIRKETTLE CORPORATION

for a Certificate of Authority to transact business in this State, duly signed and verified pursuant to the provisions of the North Dakota Century Code, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Authority to

THIRKETTLE CORPORATION

to transact business in this State under the name of

THIRKETTLE CORPORATION

Issued: August 29, 2013

A handwritten signature in black ink, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

State of North Dakota

SECRETARY OF STATE



CONTRACTORS LICENSE RENEWAL

NO. 49076 CLASS A

I, Allen A. Jaeger, Secretary of State of the State of North Dakota, and as Registrar of Contractors, hereby certify **THIRKETTLE CORPORATION** whose address is Schurz, TX has filed in this office proper application for Renewal of Class A Contractor License to valid to March 1, 2015, and has paid the required fee, and has complied with all requirements of Chapter 49-07, North Dakota Century Code.

THIRKETTLE CORPORATION therefore is entitled to bid and accept contracts as authorized by law, under this license, without limit as to value of any such contract.

Dated January 21, 2014

A handwritten signature in cursive script, reading "Allen A. Jaeger".

Allen A. Jaeger
Secretary of State

SRF Project Number

United States Environmental Protection Agency
Washington, DC 20460
Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Chris Thirkettle President
Typed Name & Title of Authorized Representative

Chris Thirkettle 2/20/2014
Signature of Authorized Representative Date

I am unable to certify to the above statements. My explanation is attached.

CONTRACTOR'S NAME, ADDRESS & TELEPHONE NUMBER

Thirkettle Corporation

6700 Guada Coma Drive

Schertz, TX 78154

Phone: (210) 967-6304

Return to

USDOL/ESA/OFCCP

Denver District Office

1999 Broadway – Suite 2205

Denver, CO 80201

EMPLOYER ID NUMBER OF CONTRACTOR: 33-0548813

CONTRACT INFORMATION

PROJECT AND LOCATION: City of Mandan, ND Water Meter Improvements Project				
Dollar Amount of Contract	Estimated Start Date	Estimated Completion Date	Contract No.	Geographical Area
\$1,378,872.97	To Be Determined	To Be Determined		Mandan, ND

NOTIFICATION OF SUBCONTRACTORS AWARDED (>\$10,000)

Subcontractor's Name, Address, & Phone Number	Employer ID Number of Subcontractor	Estimated \$ Amount of Subcontract	Estimated Start Date	Estimated Completion Date
Great Southwest Meters Inc. 4361 FM 878, Waxahachie, TX 75165 Phone: (972) 217-5999	43-1966153	\$401,776.90	To Be Determined	To Be Determined
Xact Communications LLC 9750 Kendall Cir, Royce City, TX 75189 Phone: (813) 205-9576	26-1984487	\$34,958.89	To Be Determined	To Be Determined

MBE/WBE SUBCONTRACTOR SOLICITATION INFORMATION

Name, Address, & Phone Number of Subcontractor Contacted	Date that Quote was Requested	Description of Work Offered	Date of Follow-up & Person Contacted	Amount of Quote or Reason Not Quoting *	Quote Accepted? If not, List Reason for Rejection *	Indicate if MBE/WBE or non MBE/WBE
Great Southwest Meters Inc. 4361 FM 878, Waxahachie, TX 75165 Phone: (972) 217-5999	March 3, 2014	Water Meter and Transmitter Installation	March 3, 2014 Sheri Lancon	\$401,776.90	Accepted	Certified WBE through HUB
Xact Communications LLC 9750 Kendall Cir, Royce City, TX 75189 Phone: (813) 205-9576	March 4, 2014	Base Transceiver Station Installation	March 4, 2014 David Hutchinson	\$34,958.89	Accepted	Non - MBE/WBE

* Use additional sheets if necessary.

The undersigned hereby certifies that the above information is true and correct.

Thirkettle Corporation
 Contractor
 By:  _____
 Signature Title VP/Market Mediums Date March 6, 2014 _____



OMB Control No: 2090-0030
 Approved: 8/13/2013
 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
 DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name Great Southwest Meters Inc.		Project Name City of Mandan, ND Water Meter Improvements Project
Bid/ Proposal No. P00510-2013-000	Assistance Agreement ID No. (if known)	Point of Contact Sheri Lancon
Address 4361 FM 878, Waxahachie, TX 75165		
Telephone No. (972) 217-5999		Email Address greatswmeters@aol.com
Prime Contractor Name Thirkettle Corporation		Issuing/Funding Entity:

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor
F.1	Provide Scheduling	\$401,776.90
F.2	Provide Installation of Residential Water Meter Assemblies	
F.3	Provide Installation of Commercial Water Meter Assemblies	
F.4	Provide Installation of Transceivers on Existing Meters	
H.1	Curb Stop Replacement	
H.2	Shut-off Valve Replacement	

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
 Approved: 8/13/2013
 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
 DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name Great Southwest Meters Inc.		Project Name City of Mandan, ND Water Meter Improvements Project
Bid/ Proposal No. P00510-2013-000	Assistance Agreement ID No. (if known)	Point of Contact Sheri Lancon
Address 4361 FM 878, Waxahachie, TX 75165		
Telephone No. (972) 217-5999		Email Address greatswmeters@aol.com
Prime Contractor Name Thirkettle Corporation		Issuing/Funding Entity:

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor
F.1	Provide Scheduling	\$401,776.90
F.2	Provide Installation of Residential Water Meter Assemblies	
F.3	Provide Installation of Commercial Water Meter Assemblies	
F.4	Provide Installation of Transceivers on Existing Meters	
H.1	Curb Stop Replacement	
H.2	Shut-off Valve Replacement	
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA		Meets/ exceeds EPA certification standards?
<input checked="" type="checkbox"/> Other: <u>Historically Underutilized Business</u>		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

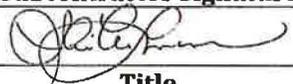


OMB Control No: 2090-0030
Approved: 8/13/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
	Christopher Newville
Title	Date
VP/Market Mediums	March 6, 2014

Subcontractor Signature	Print Name
	Sheri Lancon
Title	Date
President / CEO	March 6, 2014

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.



OMB Control No: 2090-0030
 Approved: 8/13/2013
 Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
 DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name Thirkettle Corporation		Project Name City of Mandan, ND Water Meter Improvements Project	
Bid/Proposal No. P00510-2013-000	Assistance Agreement ID No. (if known)	Point of Contact Christopher Newville / Greg Taylor	
Address 6700 Guada Coma Drive, Schertz, TX 78154			
Telephone No. (210) 967-6304		Email Address cnewville@global-efficiencies.com	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?
Great Southwest Meters Inc.	4361 FM 878, Waxahachie, TX 75165 Phone: (972) 217-5999 greatswmeters@aol.com	\$401,776.90	HUB WBE Certified

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
Approved: 8/13/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

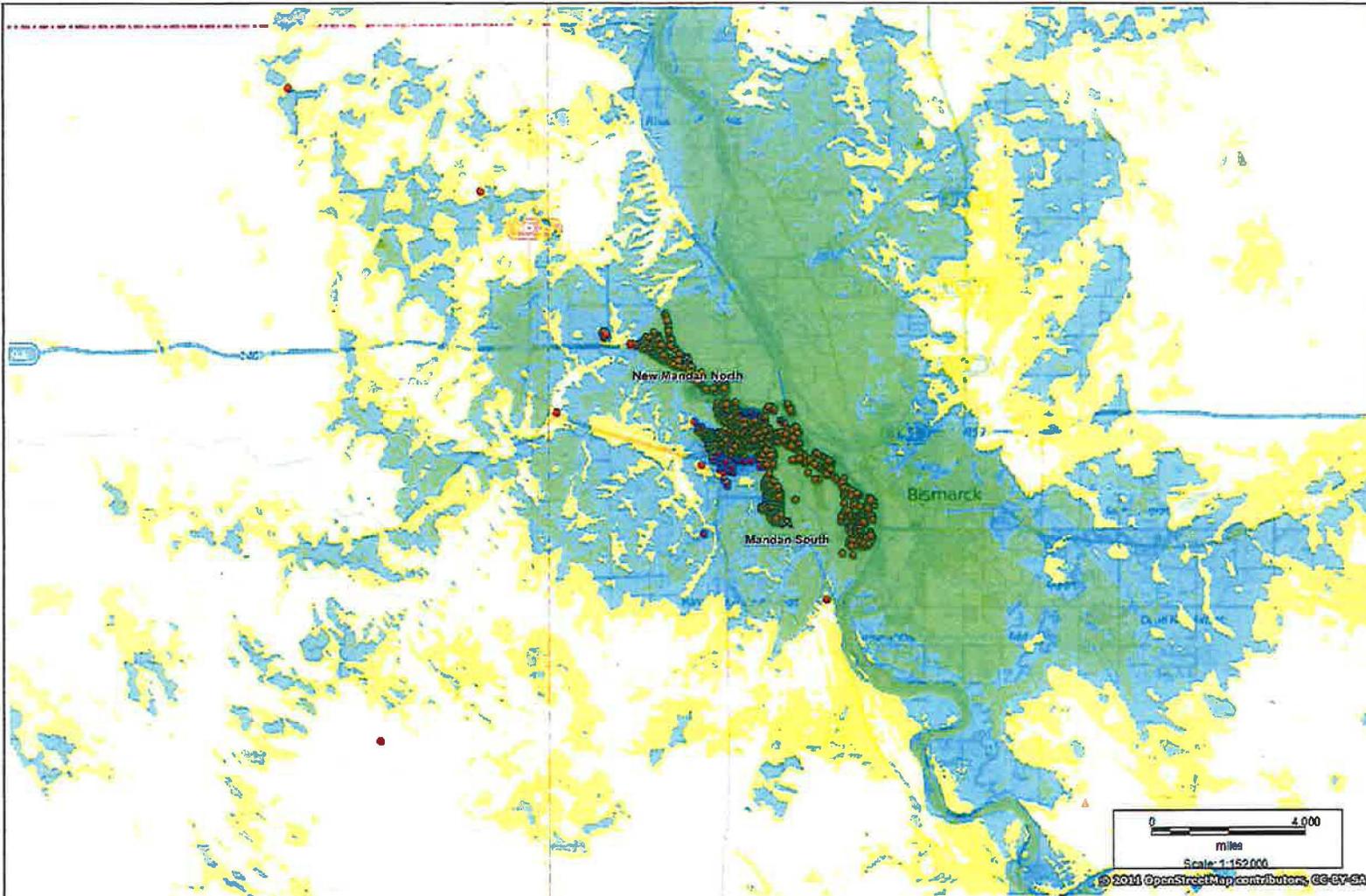
Prime Contractor Signature	Print Name
	Christopher Newville
Title	Date
VP/Market Mediums	March 6, 2014

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

FlexNet Propagation Analysis

Mandan-ND
The City of Mandan
9/16/2013

Best Server Coverage



Signal Strength Ranges	Covered Meters	Percentage of Total Meters
-102 to Max	5,440	89.58%
-112 to -105	525	8.64%
-122 to -112	105	1.73%
-200 to -122	3	0.05%
Total Covered	5,965	
Meters Reviewed	6,073	
Percentage of Meters Reviewed Covered	98.22%	

LEGEND:

-  Base Station
-  Meter

This propagation study is based on actual information provided by the utility pertaining to meter type, meter location, potential antennae height on structure, structure height, and structure location. Any changes, deletions and/or additions that are not provided to the design engineers during the creation of this design may result in a study that does not correlate to actual field conditions.

For all tower mounted antennas, a minimum antenna standoff of 3' is required from the tower.

SENSUS

NOTICE OF AWARD

DATE: _____

TO: THIRKETTLE CORPORATION
6700 GUADA COMA DRIVE
SCHERTZ, TX 78154

PROJECT: Mandan Water Meter Improvements Project
City of Mandan, North Dakota

CONTRACT FOR: Contract 1 – “Drive-By” Automated Meter Reading System and
Alternate Addition - B1-B5

You are notified that your Bid dated MARCH 11, 2014 for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a contract for all work under the above referenced project.

The Contract Price of your contract is ONE-MILLION-FIVE-HUNDRED-TWENTY-THOUSAND-SIX-HUNDRED-THIRTY-FOUR dollars and FIFTY-NINE cents (\$1,520,634.59).

Four (4) copies of the proposed Agreement accompany this Notice of Award.

You must comply with the following conditions precedent within fifteen (15) days of the date of this Notice of Award, that is by _____.

1. You must, immediately, deliver to the ENGINEER four (4) signed copies of this Notice acknowledging its receipt.
2. You must deliver to the ENGINEER four (4) fully executed counterparts of the Agreement including all the Contract Documents.
3. You must deliver with each executed Agreement, Performance and Payment Bonds as specified in the Instructions to Bidders (paragraph 19), and General Conditions (paragraph 5.1).
4. You must deliver with each executed Agreement, Certificates of Insurance as specified in the General Conditions (paragraph 5.04) and Supplementary Conditions (paragraph SC-5.04).

Please note the requirements of Article 5 of the General Conditions. The Certificate of Insurance **MUST** include provision for 30 days prior written notice prior to cancellation. "Will Endeavor to Mail" is not acceptable. Crossing out or X-ing over the words "endeavor to" will not be acceptable. Failure to comply with the required cancellation provision will cause the contracts to be rejected and will delay Notice to Proceed.

5. You must deliver with each executed Agreement, Current Workmen's Compensation Certificate of Premium Paid.
6. You must deliver with each executed Agreement, Contractor's Certificate of North Dakota Income and Sales Tax Clearance.

After execution of the Agreement, please send all copies of the Contract, along with the above items to the Engineer, **Advanced Engineering and Environmental Services, Inc. (AE2S)**, 1815 Schafer Street, Suite 301, Bismarck, ND 58501.

Failure to comply with these conditions within the time specified will entitle Owner to consider your bid in default, to annul this Notice of Award, and to declare your Bid Security Forfeited.

Within 10 days after you comply with the above conditions, OWNER will return to you one fully signed counterpart of the Agreement with the Contract Documents attached.

City of Mandan, ND
Owner

By: _____
Authorized Signature

ACCEPTANCE OF AWARD

Thirkettle Corporation
Contractor

By: _____

Title: _____

Date: _____

AGREEMENT
00500

THIS AGREEMENT is by and between the City of Mandan, 205 2nd Avenue NW, Mandan, ND 58554 (herein after called OWNER) and THIRKETTLE CORPORATION, 6700 GUADA COMA DRIVE, SCHERTZ, TX 78154 (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Contract 1 – “Drive-By” Automated Meter Reading System and Alternate Addition - B1-B5

ARTICLE 2 - THE PROJECT

2.01 The Project, for which the Work under the Contract Documents may be the whole or only a part, is generally described as follows:

Mandan Water Meter Improvements Project
City of Mandan, North Dakota

ARTICLE 3 - THE ENGINEER

3.01 The Project has been designed by Advanced Engineering and Environmental Services, Inc. (hereinafter called ENGINEER) and who is to act as OWNER'S representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of Essence*

A. All time limits for Milestones, if any, Substantial Completion, and Final Completion and readiness for final payment as stated in the Contract Documents are the essence of the Contract.

4.02 *Days to Achieve Milestones, Substantial Completion, and Final Payment*

A. Any Milestone Work will be completed on or before the Dates set forth in Section 01011 – Summary of Project and all Work will be substantially completed on or before December 15, 2014 and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions by January 31, 2015.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed less the aggregate of payments previously made.
2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95 percent of the Work completed, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions and less 100 percent of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of five (5) percent per annum.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:
 - A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. CONTRACTOR has visited the Site and become familiar with and is satisfied to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance for the Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.
- E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of the construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.
- F. CONTRACTOR does not consider that any further examinations, investigations, explorations, test, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
1. Advertisement for Bid;
 2. Instructions to Bidders;
 3. Contractor's Bid Form;
 4. This Agreement (pages 1 to 7, inclusive);
 5. Performance Bond (pages _____ to _____, inclusive);
 6. Payment Bond (pages _____ to _____, inclusive);
 7. Certificates of Insurance (pages _____ to _____, inclusive);
 8. General Conditions (pages 1 to 41 inclusive);
 9. Supplementary Conditions (pages 1 to 8, inclusive);
 10. Specifications as listed in the Table of Contents of the Project Manual;
 11. Addenda (numbers _____ to _____, inclusive);
 12. Notice of Award;
 13. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive);
 - b. Written Amendments;
 - c. Work Change Directives;
 - d. Change Order(s);
 - e. Final Inspection and Acceptance.
- B. The documents listed in paragraphs 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Business Address*

- A. The business address of Contractor given herein is hereby designated as the place of which all notices, letters, and other communication to Contractor will be mailed or delivered. The address of Owner appearing herein is hereby designated as the place to which all notices, letters, and other communication to Owner shall be mailed or delivered. Either party may change its address at any time by an instrument in writing delivered to ENGINEER and the other party.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on _____, 2014 (which is the Effective Date of the Agreement).

OWNER:
_____ City of Mandan _____

CONTRACTOR:
_____ THIRKETTLE CORPORATION _____

By: _____

By: _____
[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:
_____ 205 2nd Avenue NW, _____
_____ Mandan ND, 58554 _____

Address for giving notices:
_____ 700 Guada Coma Drive _____
_____ Schertz, TX 78154 _____

License
No. _____
(Where Applicable)

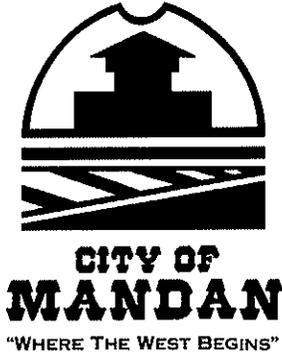
Agent for service of
Process: _____

(If CONTRACTOR is a corporation or a
partnership, attach evidence of authority
to sign.)

Designated Representative:
Name: _____ Jim Neubauer _____
Title: _____ City Administrator _____
Address: _____ City of Mandan _____
_____ 205 2nd Avenue NW, Mandan ND, 58554 _____
Phone: _____ 701-667-3210 _____
Facsimile: _____ 701-667-3223 _____

Designated Representative:
Name: _____
Title: _____
Address: _____

Phone: _____
Facsimile: _____



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 12, 2014
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch
SUBJECT: Expenditure Budget amendments for Fiscal Year 2013

PURPOSE

To amend the Expenditure Budget for Fiscal Year 2013.

BACKGROUND

The City of Mandan has funds that have expenditures exceeding their budgetary appropriations at year-end; however, the City has sufficient revenue collections, receivables, and/or existing cash balances available in those funds at December 31, 2013 to offset these expenditures. The expenditures have already been approved by the Board; however, the formality to amend the Expenditure Budget is needed under NDCC 40-40-15.

ATTACHMENT

2013 Budget Amendments

FISCAL IMPACT

<u>Fund</u>	<u>Total</u>
General	\$125,113
City's Share of Special Assessments	\$17,929
City Sales Tax	\$36,647
Public Transportation System	\$186
Fire Equipment Reserve	\$192,109
Narcotics Task Force Asset	\$164,106
Energy Efficiency Conservation Block Grant	\$44,610
BNSF Settlement	\$725
Mandan SEP Trust	\$110

FISCAL IMPACT

<u>Fund</u>	<u>Total</u>
Flood Control	\$1,321,303
Health and Safety	\$22,377
Mandan Community Center Revenue Bonds	\$281
Refunding Improvement Bonds	\$1,934

STAFF IMPACT

None

LEGAL REVIEW

The Expenditure Budget amendments for Fiscal Year 2013 are needed to comply with NDCC 40-40-15.

RECOMMENDATION

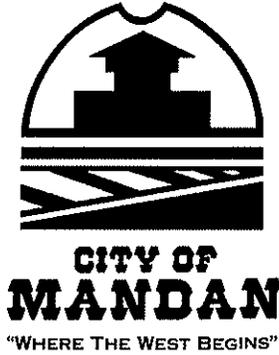
To approve the Expenditure Budget amendments for Fiscal Year 2013.

SUGGESTED MOTION

Move to approve the Expenditure Budget amendments for Fiscal Year 2013.

2013 BUDGET AMENDMENTS

<u>Fund</u>	<u>Description</u>	<u>Total</u>	<u>Funding Source</u>	<u>Notes</u>
General	Mandan Park District	\$ 79,250	State Aid Distribution	District's Share of Funding = 30%
General	Snow Removal Fees	\$ 45,863	Highway Tax Distribution	Record Snowfall During April
City's Share of Special Assessments	City's Share of Special Assessments	\$ 17,929	Cash Balance	
City Sales Tax	Other Fees	\$ 978	Cash Balance	Abstract and Title Fees
City Sales Tax	Memorial Highway- Main Street to 46th Avenue SE	\$ 35,669	Cash Balance	Board Approved-October 16, 2012
Public Transportation System	Bis-Man Transit Board	\$ 186	Tax Collections	Capital Area Transit
Fire Equipment Reserve	New Fire Engine	\$ 192,109	Cash Balance	\$193,886 Prepaid in 2012
Narcotics Task Force Asset	Metro Area Narcotics Task Force	\$ 164,106	Intergovernmental/Forfeitures	Mandan Police Department
Energy Efficiency Conservation Block Grant	Appliances	\$ 44,610	U.S. Department of Energy	Board Approved-June 16, 2009
BNSF Settlement	Repairs and Maintenance	\$ 725	Cash Balance	Dykshoorn Park/Water Fountain
Mandan SEP Trust	Professional Fees and Services	\$ 110	Cash Balance	Brady, Martz & Associates
Flood Control	Disaster of 2011	\$ 14,915	General Fund	
Flood Control	Wastewater Treatment Plant- Outfall Rehabilitation Project	\$ 1,019,103	Flood Impact Grant=50%/ Clean Water SRF=50%	Board Approved-May 15, 2012
Flood Control	Flood Control Structures	\$ 287,285	Flood Impact Grants=\$127,401/ General Fund=\$159,884	Board Approved-May 15, 2012
Health and Safety	Tree Removal Fees	\$ 7,525	Special Assessments	Requested by Property Owners
Health and Safety	Legal Notices	\$ 78	Special Assessments	Mandan News
Health and Safety	Waterline Repairs	\$ 6,311	Special Assessments	Requested by Property Owners
Health and Safety	Sewerline Repairs	\$ 8,463	Special Assessments	Requested by Property Owners
Mandan Community Center Revenue Bonds	Debt Service Charges	\$ 281	City Sales Tax	Starion Bond Services
Refunding Improvement Bonds	Sidewalk Curb and Gutter	\$ 1,934	Special Assessments	Debt Service



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 12, 2014
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch
SUBJECT: Transfer of unexpended funds from the General Fund 2013 Budget to the 2014 Budget.

PURPOSE

To transfer unexpended funds from the General Fund 2013 Budget to the 2014 Budget.

BACKGROUND

Julie Frye, Administrative Assistant, is the City's Records Management Coordinator. Julie was hired by the City in July 2010 as a Data Collector in the Assessing Department. When the City's property value reassessment project was completed in June 2012, she was transferred to the Engineering Department as an Administrative Assistant since that Department was under staffed at the time. In March 2013, she was transferred to the Finance Department as an Administrative Assistant to assist the City in establishing a Records Management & Retention Plan according to the State of North Dakota Records Management Program. Since March, Julie has completed these functions and procedures for the Human Resources Department and Fire Department along with drafting Records Management Policies and Procedures for the City. She is currently performing these tasks for the Building Inspection Department and is also working with Chris Miller on Information Technology related projects. Julie still needs to do Records Management & Retention work in the Public Works Department, Engineering Department, and Finance Department. Her work load is projected to carry over into 2015. At that time, the City will determine the future status of her position. Since the funding for her position ended at the end of 2013, the request is transfer unexpended funds from the General Fund 2013 Budget to the 2014 Budget. The City will also budget the position in the 2015 Budget.

ATTACHMENT

None

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Transfer of unexpended funds from the General Fund 2013 Budget to the 2014 Budget.

Page 2 of 2

FISCAL IMPACT

General Fund = \$49,800

STAFF IMPACT

None

LEGAL REVIEW

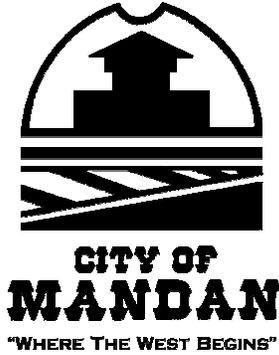
Submitted to Malcolm Brown, City Attorney.

RECOMMENDATION

To approve the transfer unexpended funds from the General Fund 2013 Budget to the 2014 Budget.

SUGGESTED MOTION

Move to approve the transfer unexpended funds from the General Fund 2013 Budget to the 2014 Budget.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 7, 2014
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Painting of Fire Hydrants

STATEMENT/PURPOSE: To have the Board of City Commissioners approve a “Fee for Service Agreement” between H.I.T. and the City of Mandan.

BACKGROUND/ALTERNATIVES: Many of the existing fire hydrants are in need of brushing and painting. Our plan is to have a set number of hydrants painted each year. We have nearly 800 hydrants and HIT will be able to brush the loose material off, rust proof and paint the hydrant for \$7.00 (2013 rate \$6.72) each and will do 150-175 year. We will supply the paint and brushes. This will be the 10th year of this arrangement of this arrangement and it has worked out very well at a nominal cost.

ATTACHMENTS: “Fee for Service Agreement”

FISCAL IMPACT: 2013 we spent \$1,825, including paint and supplies. This is a budgeted line item in the General Fund.

STAFF IMPACT: n/a

LEGAL REVIEW: n/a

RECOMMENDATION: I recommend we enter into the above mention agreement.

SUGGESTED MOTION: I move to approve the “2014 Fee for Service Agreement” between H.I.T. and the City of Mandan for the painting of fire hydrants.



A non-profit organization serving people with disabilities

2014 Fee-for-Service Agreement

City of Mandan
Attn: Jim Neubauer
205 2nd Ave NW
Mandan, ND 58554

HIT Inc.
1007-18th St. NW
Mandan, ND 58554

Description of Service Provided:

The brushing, rust proofing and painting of fire hydrants in Mandan, N.D.

Service Fee

A service fee of \$7.00 will be charged per completed fire hydrant. The maximum number of hydrants to be completed will be 150 to 175. A bill will be submitted on a monthly basis for the hydrants finished in that month.

Materials/Supplies

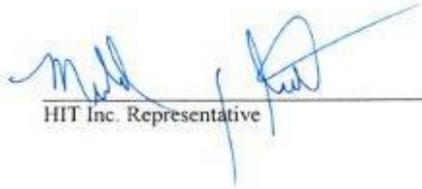
HIT Inc. will provide the labor for the completion of the fire hydrant. The City of Mandan will provide the supplies (brushes, paint, rust-proof, brush cleaner).

Quality Requirements:

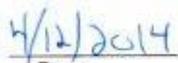
The fire hydrants must be brushed free of any loose material and then rust-proofing must be brushed on. Once the rust proofing is dry the hydrant is completely painted.

City of Mandan Representative

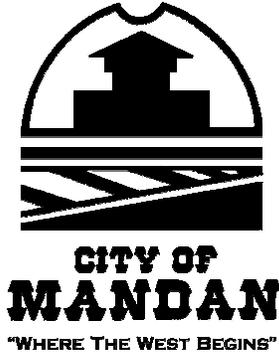
Date



HIT Inc. Representative



Date



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 4, 2014
SUBMITTING DEPARTMENT: Public Works Dept.
DEPARTMENT DIRECTOR: Jeff Wright, Public Works Director
PRESENTER: Jeff Wright
SUBJECT: Transfer of funds from the Cemetery and Utility Department's 2013 Budget to the 2014 Budget.

STATEMENT/PURPOSE:

To request the transfer \$1,650 from the Cemetery 2013 Budget and \$29,273 from the Utility Maintenance 2013 Budget to their respective 2014 Budgets.

BACKGROUND/ALTERNATIVES:

The request to transfer \$1,650 from the Cemetery 2013 Budget will be used to repair equipment that has broken down this winter due to the extent of the frost in the ground from the cold temperatures we have seen this year.

The request to transfer \$29,273 from the Utility Maintenance 2013 Budget will be used to replace additional water mains in areas where we have had numerous breaks due to deterioration of the old ductile iron pipe. These additional funds will be added to the already budgeted amount for water main replacement.

FISCAL IMPACT:

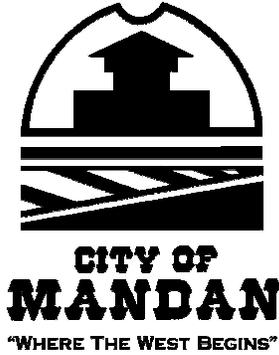
\$1,650 to be transferred to 208.208.60310; \$29,273 to be transferred to 601.660.62212.

RECOMMENDATION:

To approve the request to transfer \$1,650 from the Cemetery 2013 Budget and \$29,273 from the Utility Maintenance 2013 Budget to their respective 2014 Budgets.

SUGGESTED MOTION:

Move to approve the request to transfer \$1,650 from the Cemetery 2013 Budget and \$29,273 from the Utility Maintenance 2013 Budget to their respective 2014 Budgets.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18th, 2014
PREPARATION DATE: March 13th, 2014
SUBMITTING DEPARTMENT: Police Department
Information Technology
DEPARTMENT DIRECTORS: Chief Dennis Bullinger/Lt. Chris Miller
PRESENTERS: Chief Dennis Bullinger/Lt. Chris Miller
SUBJECT: Transfer of funds from the IT Department 2013
Budgets to the 2014 Budgets

STATEMENT/PURPOSE:

To request the transfer of funds from the Information Technology Department's 2013 Budget to the 2014 to purchase thirteen desktop computers and two laptop computers.

BACKGROUND/ALTERNATIVES:

1) After the final approval of the 2014 Information Technology Budget, notice was received that Microsoft will no longer provide support for the Windows XP platform. Due to the age and condition of the few desktops and laptop computers still using the Windows XP platform, it would be cost prohibitive to spend the time and funds necessary to refurbish the older machines by purchasing new software, reloading the operating systems, and all necessary programs on each machine. Even if we were to follow the practice of upgrading new operating system software, it would not change the age of the hardware, most of which are scheduled for rotation in 2015.

2) It is recommended that we purchase the needed number of desktop and laptop computers so as Microsoft support continues. This support provides several advantages, including software patches, security updates, and additional software tools.

ATTACHMENTS:

- None

FISCAL IMPACT:

1) Purchase price of thirteen desktop computers and two laptop computers is \$9955.00.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Transfer of funds from the Information Technology 2013 Budget to the 2014 Budget

Page 2 of 2

According to Finance Director Welch, the funding for the replacement computers would come from the transfer of \$9955.00 from the 2013 Information Technology.

All quotes were provided via a ND State Bid hardware/software provider excluding the \$1804.00 for two laptops.

STAFF IMPACT:

1) Continuous network security and support is vital to maintain the records developed, shared, and stored by each department in the City of Mandan.

2) There will be little to no user interruption and all of the currently known software used throughout the city's departments will be compatible with the upgraded desktops and laptops.

LEGAL REVIEW:

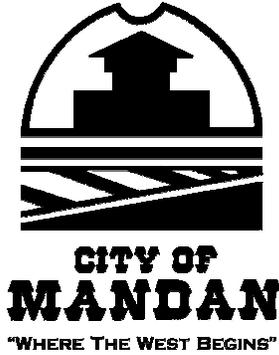
None required.

RECOMMENDATION:

To approve the transfer of funds from the Information Technology 2013 Budget to the 2014 Budget.

SUGGESTED MOTION:

Move to approve the transfer of funds from the Information Technology 2013 Budget to the 2014 Budget.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 12, 2014
SUBMITTING DEPARTMENT: Business Development & Communications Department
DEPARTMENT DIRECTOR: Ellen Huber, Business Development & Communications Director
PRESENTER: Ellen Huber, Business Development & Communications Director
SUBJECT: SSBCI loan committee alternate representation

STATEMENT/PURPOSE: To consider representation for the City Mandan on the loan committee that reviews applications received for the N.D. Opportunity Fund, a loan participation program operating with funding from the U.S. Department of Treasury State Small Business Credit Initiative (SSBCI) awarded to a Mandan-led consortium of 38 other municipalities.

BACKGROUND/ALTERNATIVES: The Mandan consortium has a 15-person loan committee comprised of members experienced in commercial lending, business start-up and expansion, and economic development. The committee makes all credit decisions to include considering and voting on applications for loans with input on rates, terms and conditions. Committee meetings are typically held twice monthly by conference call.

The City of Mandan is allotted one representative. Appointments are for two years. Because of a lack of quorum at several loan committee meetings scheduled throughout the year and the need to reschedule meetings, the SSBCI steering committee recently took action to allow for alternate representation on the loan committee if a primary appointee is unavailable to participate. Nominations by municipalities are subject to approval by the SSBCI steering committee.

Mandan's representative on the loan committee for the 2012-2014 term is Jim Goetz, chairman and chief executive officer of Security First Bank of North Dakota. He is willing to continue serving.

Business Development Director Ellen Huber attends nearly all loan committee meetings as a representative of the lead municipality. She also serves as the SSBCI steering committee chair. If she had the authority to vote on the loan committee in the absence of Mandan's primary representative, quorum would often have been achieved, which allows loan applications to move forward in a timely manner.

ATTACHMENTS: none

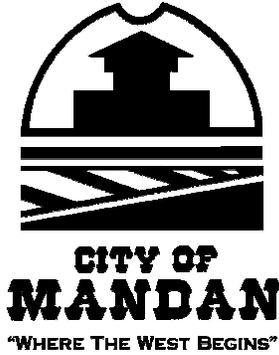
FISCAL IMPACT: n/a

STAFF IMPACT: Huber already attends most SSBCI loan committee meetings, so no additional staff time will be required.

LEGAL REVIEW: n/a

RECOMMENDATION: I recommend nomination of Ellen Huber as an alternate representative for Mandan on the SSBCI loan committee.

SUGGESTED MOTION: I move to approve nomination of Ellen Huber as an alternate representative for Mandan on the SSBCI loan committee.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18th, 2014
PREPARATION DATE: March 13th, 2014
SUBMITTING DEPARTMENT: Police Department
Information Technology
DEPARTMENT DIRECTORS: Chief Dennis Bullinger/Lt. Chris Miller
PRESENTERS: Chief Dennis Bullinger/Lt. Chris Miller
SUBJECT: Transfer of funds from the Police Department 2013
Budgets Balances to the 2014 Budgets

STATEMENT/PURPOSE:

To request the transfer of funds from the Police Department's 2013 Budget balances to the 2014 Budget to upgrade five mobile data terminals.

BACKGROUND/ALTERNATIVES:

1) After the final approval of the 2014 Police Budget, notice was received that Microsoft will no longer provide support for the Windows XP platform. Due to the age and condition of five mobile data terminals still using the Windows XP platform, it would be cost prohibitive to spend the time and funds necessary to refurbish the older machines by purchasing new software, reloading the operating systems, and all necessary programs on each machine. Even if we were to follow the practice of upgrading new operating system software, it would not change the age of the hardware, most of which are scheduled for rotation in the next few years.

2) It is recommended that we upgrade the needed number of mobile data terminals so that Microsoft support continues. This support provides several advantages, including software patches, security updates, and additional software tools. These upgrades are necessary for the continued use of the State of North Dakota's Netmotion VPN system.

ATTACHMENTS:

- DATA911 Quote

FISCAL IMPACT:

1) Upgrade price of five mobile data computers is \$15,854.00.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Transfer of funds from the Information Technology 2013 Budget to the 2014 Budget

Page 2 of 3

According to Finance Director Welch, the funding for the upgrades would come from the transfer of \$15,854.00 from the 2013 Police Budget.

STAFF IMPACT:

1) Continuous network security and support is vital to maintain connectivity to the State of North Dakota Netmotion VPN system. This system ensures secure connections to the host servers at the Mandan Police Department.

2) There will be little to no user interruption and all of the currently known software used throughout the Police Department will be compatible with the upgraded mobile data terminals.

LEGAL REVIEW:

None required.

RECOMMENDATION:

To approve the transfer of funds from the Police 2013 Budget balances to the 2014 Budget.

SUGGESTED MOTION:

Move to approve the transfer of \$15,854.00 from the Police 2013 Budget balances to the 2014 Budget.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Transfer of funds from the Information Technology 2013 Budget to the 2014 Budget

Page 3 of 3



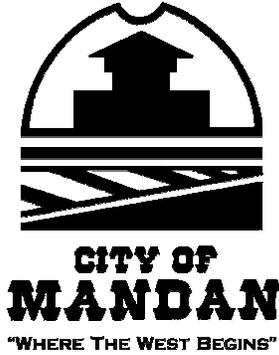
Quote Number:	101255
Printed Date:	10 Mar 2014
Ship Method:	
Assigned To:	Super Admin

Invoice to:
Chris Miller
Mandan Police Dept (ND)
205 1st Ave. NW
Mandan ND 58554
United States

Deliver to:
Chris Miller
Mandan Police Dept (ND)
205 1st Ave. NW
Mandan ND 58554
United States

Qty	Part Number	Item Description	Unit Price	Ext Price
5	M7C30080	M7 CPU; Core i7 Processor, 8GB RAM, 12 Month Warranty - Expansion: LVDS - Storage: 64GB SSD - Operating System: Windows 7 (64 BIT) - Mount: Universal Mount	\$3,303.0000	\$16,515.00
5	EC10455	Blank PCB, 4-Port USB Expansion, M7 CPU	\$28.8000	\$144.00
5.00	CR099999	Special Package Discount (M6 CPU Trade In)	\$-200.0000	\$-1,000.00
5.00	SH00004	Shipping - For Product: CPU - Method: Ground	\$39.0000	\$195.00
Subtotal				\$15854.00
Reseller Certificate Required @ 0%				\$0.00
Total				\$15854.00
Paid to date				\$0.00

Remit Payments To:
Hubb Systems, LLC, d.b.a. Data911
California Bank of Commerce
P.O. Box 570
San Jose, Ca. 95108



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 13, 2014
SUBMITTING DEPARTMENT: Business Development & Communications Department
DEPARTMENT DIRECTOR: Ellen Huber, Business Development & Communications Director
PRESENTER: Ellen Huber, Business Development & Communications Director
SUBJECT: Transfer of funds from the Growth Fund 2013 Budget to the 2014 Budget.

STATEMENT/PURPOSE: To consider transferring funds from the Growth Fund 2013 Budget to the 2014 Budget for approved business development operations.

BACKGROUND/ALTERNATIVES: The 2013 Budget was underspent by nearly \$40,000. This was in part due to budgeting of \$17,500 for a retail recruitment consultant, a contract we chose not to renew. The remainder of the underspending is largely due to projects that were planned but not completed in 2013 due to time constraints. I would like to transfer the following amounts to the 2014 Budget to allow for completion of certain projects and initiatives:

Business Development O&M section

TRAVEL & TRAINING (224.224.55110) – \$6,000

Requesting transfer of \$3,000 in unspent funds from this line item and \$3,000 from unspent funds in the printing line item (224.224.57113) for \$6,000 in total additional funds in 2014 for course registration (4 online and 2 in person), manuals, exam registration and travel associated with International Economic Development Council certification in 2014.

ADVERTISING/PUBLIC RELATIONS (224.224.57110) - \$3,100

Requesting to transfer unspent funds from this line item; \$2,500 for joint community marketing projects funded (in part by Park District and School District) but not completed in 2013; \$600 for start-up of e-news bulletin also budgeted for but not completed in 2013.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Transfer of funds from the Growth Fund 2013 Budget to the 2014 Budget.

Page 2 of 2

PRINTING (224.224.57113) - \$600

Requesting to transfer \$600 of unspent funds from this line item for joint community marketing project funded but not completed in 2013.

SMALL TOOLS & EQUIPMENT (224.224.59215) - \$1,300

- Requesting a transfer from this line item from 2013 to 2014 for publication design and layout software. Purchase was delayed until February due to timing for installation of a new computer.

ATTACHMENTS: n/a

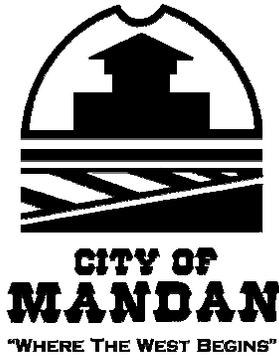
FISCAL IMPACT: Finance Director Welch indicates the funding from the 2013 Budget is still available.

STAFF IMPACT: n/a

LEGAL REVIEW: n/a

RECOMMENDATION: I recommend transferring the amounts outlined totaling \$11,000 from the Mandan Growth 2013 Budget to the 2014 Budget.

SUGGESTED MOTION: I move to approve the outlined budget transfers from the Mandan Growth 2013 Budget to the 2014 Budget for business development operations.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 14, 2014
SUBMITTING DEPARTMENT: Engineering
DEPARTMENT DIRECTOR: Justin Froseth
PRESENTER: Justin Froseth
SUBJECT: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196

STATEMENT/PURPOSE: Consider approving Engineering Services Agreement to provide design engineering and pre-bid services for Street Improvement Districts 194, 195 and 196.

BACKGROUND/ALTERNATIVES: It has been observed by city staff that the street surface within several areas in Northwest Mandan have been degraded to the extent that street improvements are warranted. This was confirmed by a professional analysis of these streets conducted by Dynatest Consulting Inc. in the spring of 2012. The areas have been identified and three (3) street improvement districts have been created, those being Developers West, Roughriders, and Mandan Industrial Park.

Wenck Associates, Inc. is an engineering firm located in Mandan with the competency to perform these design and pre-bid services. Their competency has been demonstrated by past projects with the city, and further shown by their submittal of a Request for Qualifications submitted for similar scoped projects just last month.

ATTACHMENTS:

- 1) Consulting Services Agreement
- 2) Attachment A, Scope of Services
- 3) Design Fee Summary

FISCAL IMPACT: As part of the projects' total cost, these services would be paid for by assessments to benefiting properties.

STAFF IMPACT: Collaboration with Wenck throughout design and bidding will be necessary.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Page 2 of 11

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

RECOMMENDATION: Approve the Engineering Services Agreement with Wenck Associates, Inc. for Street Improvement District 194, 195 and 196.

SUGGESTED MOTION: I move to approve the Engineering Services Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Page 3 of 11

CONSULTING SERVICES AGREEMENT

This Engineering Services Agreement (Agreement) for the "***Street Improvement Projects 2014-12 District #194, 2014-13 District # 195, and 2014-14 District #196***" outlines the terms and conditions under which Wenck Associates, Inc. (Wenck) will provide design engineering and consulting services to the City of Mandan (City).

1. **Scope of Services.** The parties to this Agreement intend that the terms of this Agreement will apply to a range of different services as spelled out in Attachment A. Services in connection with any specific project and changes in a previously agreed scope of services shall be undertaken only after a written Authorization is executed by both parties. Wenck is solely responsible for determining the means and methods of performing the services described in any Authorization, and shall have complete responsibility for ensure the qualifications of all personnel (including subcontractor personnel) performing services described in any Authorization.
2. **Standard of Care.** In performing these services, Wenck shall assign qualified personnel and perform its service with the skill, diligence, and quality control measures ordinarily exercised by a recognized professional engineering consulting firm performing services of a similar nature at the same time and in the same geographical area. Wenck acknowledges that the City will be relying upon the accuracy, competence, and full performance of Wenck's services.
3. **Compliance with Laws and Facility Safety Rules.** Wenck shall comply with applicable laws, ordinances, statutes, rules and regulations in effect at the time the services are performed.
4. **Fees.** The fees set forth in Attachment A to this Agreement shall apply to all domestic services rendered by Wenck pursuant to any Authorization.
5. **Payment for Services Rendered Pursuant to an Authorization.** Payment by the City for properly rendered services shall be due within 30 days of receipt of an invoice. Wenck invoices will be submitted to the City on a monthly basis. If the City objects to any portion of an invoice, the City shall notify Wenck of the objection within fifteen days and shall work diligently, and in good faith, with Wenck to resolve any objections.

6. **Confidentiality.** With regards to "Confidential Information:"
- a. Wenck shall keep all Confidential Information in a secure location and shall not disclose any Confidential Information to any party except as authorized by the terms of this Agreement, or specifically authorized in writing by the City, or as required by a subpoena, warrant or court order.
 - b. Wenck shall not use Confidential Information for any purpose except to perform services pursuant to the terms of this Agreement.
 - c. Wenck shall immediately notify the City, in writing, upon receipt of a request for disclosure of any Confidential Information.
7. **Indemnity.** Wenck agrees to indemnify and hold the City harmless from any claim, cause of action, demand or other liability of any nature or kind (including the costs of reasonable attorney's fees and expert witness fees) arising out of any negligent act or omission of Wenck or any subcontractor of Wenck in connection with work performed under the terms of this Agreement.
8. **Insurance.** During the terms of this Agreement, Wenck shall maintain, at its expense, worker's compensation insurance, liability insurance covering bodily injury and property damage, and other insurance with the minimum coverage's listed below. These policies are to be issued in the broadest form commercially available under standard terms and conditions and shall be underwritten by insurers with adequate financial resources.

<u>Coverage Type</u>	<u>Coverage Limits</u>
Worker's Compensation	Statutory
Automobile Liability Insurance	\$1,000,000 combined single limit
CGL (General Liability Insurance)	\$2,000,000 aggregate and \$1,000,000 each occurrence
Professional Liability	\$1,000,000 per claim and in the aggregate

Upon receipt by the City, Wenck shall submit certificates of insurance evidencing compliance with these requirements.

9. **Nature of Relationship.** Wenck is an independent contractor and will not act as an agent or employee of the City for any purpose.
10. **Representatives.** Kevin Magstadt will be the representative for Wenck for the purpose of this Agreement. Jim Neubauer (City Administration) will be the City's representative for the purposes of this Agreement.

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Page 5 of 11

11. **Termination.** This Agreement shall be terminable at will by either party upon written notice to the other party via certified mail. Termination of this Agreement does not relieve either party of its obligations with regard to Authorizations or work orders executed prior to the time of termination.
12. **Governing Law.** This Agreement is made in the State of North Dakota and shall be governed by its laws.
13. **Severability.** Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.
14. **Entirety of Agreement.** This Agreement, along with any exhibits, appendices, addendums, schedules, and amendments hereto, encompasses the entire agreement of the parties and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby acknowledge and represent that said parties have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement, made by or on behalf of any other party or any other person or entity whatsoever, prior to the execution of this Agreement.

ON BEHALF OF
CITY OF MANDAN, ND

WENCK ASSOCIATES INC.

Name: Jim Neubauer
Title: City Administrator
Date: _____

Name: Kevin J. Magstadt P.E.
Title: Principal/Regional Manager
Date: _____

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Page 6 of 11



Wenck Associates, Inc.
301 1st ST NE STE 202
Mandan, ND 58554

(701) 751-3370
Fax (701) 751-3372
E-mail: kmagstadt@wenck.com

Attachment A

March 14, 2014

Mr. Justin Froseth
Planning & Engineering Director
City of Mandan
205 Second Avenue NW
Mandan, ND 58554

RE: 2014 Mandan Street Improvement Districts 194, 195, & 196; Project No.'s 2014-12, 2014-13, & 2014-14
Mandan, North Dakota

Dear Mr. Froseth:

At your request, Wenck Associates, Inc. (Wenck) has prepared this proposal to provide engineering services for preparing construction plans and specifications for the "**2014 Mandan Street Improvement Districts 194, 195, & 196; Project No.'s 2014-12, 2014-13, & 2014-14**" as identified on the attached figures.

The project areas will be separated into three street improvement districts:

- Developer's West Acres, Ventures, and Crown Point – 2014-12
- Roughrider – 2014-13
- Mandan Industrial Park – 2014-14

The following identifies work included in the design scope:

Design (Time and Materials Based Fees)

- Project management
- Coordinate geotechnical testing services
- Preliminary topographic survey (reconstruction areas)
- Inspection and evaluation of existing concrete curb, sidewalk, and valley gutter for replacement
- Design and coordinate street light installation
- Prepare construction plans and specifications including all necessary bid documents
- Available to respond to bidder questions and coordinate addenda
- Provide information to assist city in preparation of assessment roll
- Attend public meetings necessary to obtain approval of the project

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Page 7 of 11

Timing considerations

- Bid ready plans and specifications for the proposed work in accordance to the timeline identified by the City.

Fee Breakdown

Project	Estimated Construction Cost	Estimated Wenck Fees
SID 194, Project 2014-12	\$ 1,961,224.79	\$ 76,262.45
SID 195, Project 2014-13	\$ 585,839.39	\$ 51,229.92
SID 196, Project 2014-14	\$ 1,716,095.11	\$ 86,619.61
Total	\$ 4,263,159.29	\$ 214,111.98

The estimated total engineering cost for the above scope including design and bidding services is \$214,111.98. The design fee estimate is based off anticipated design hours per Wenck's review of the preliminary scope of construction. Therefore, these estimated fees are subject to change. This work will be completed on an hourly time and materials compensation basis, and Wenck will not exceed the authorized budget unless approved otherwise prior to proceeding. . Wenck will invoice monthly for each project separately.

Should you have any questions, or need clarification of anything presented in this proposal, please do not hesitate to call me at (701) 751-3370.

Sincerely,

WENCK ASSOCIATES, INC.



Kevin J. Magstadt, PE
Principal/Regional Manager

Board of City Commissioners

Agenda Documentation

Meeting Date: March 18, 2014

Subject: Consider approving Engineering Service Agreement with Wenck Associates, Inc. for Street Improvement Districts 194, 195 and 196.

Page 8 of 11

Project	Estimated Construction Cost	Estimated Wenck Fees	Percent Fee
SID 194	\$ 1,961,224.79	\$ 76,262.45	3.89%
SID 195	\$ 585,538.39	\$ 51,229.92	8.74%
SID 196	\$ 1,716,095.11	\$ 86,619.61	5.05%
Total	\$ 4,263,158.29	\$ 214,111.98	5.02%

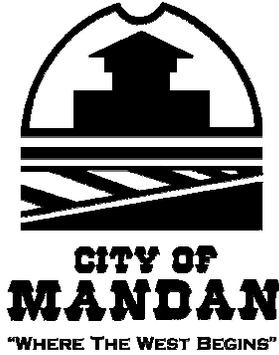
Staff Member	Kevin Magstadt	Vince Vander Top	Dennis Johnson	Steve Palleiter	Ed Terhaar	Michael Greer	Jason Quisberg	Kevin Mattson	Peter Christianson	Jared Ward	Marcus Krall	Roshain Grieme	Kara Knutson	Luke Nelson	Holly Ruenick
Responsibility	Senior O&OC Public Relations	Senior Pavement Design	Senior Concrete Design	Senior Electrical Design	Traffic/Signage	Project Manager	Compliance/Pavement Design	Project Engineer/Design	Electrical Design	Project Engineer/Drafting	Project Engineer	Project Engineer/Drafting	Drafting	Project Engineer/Drafting	Project Engineer/ Admin.
Hourly Rate	\$180	\$180	\$180	\$180	\$152	\$144	\$136	\$128	\$120	\$120	\$96	\$96	\$68	\$60	\$72
Total Hours	77	25	23	15	20	292.7	13	75.9	51	88	124	348	89	340	27.5
Mts. per week, over 6 wks	12.8	4.2	3.8	2.5	3.3	47.1	2.2	12.7	8.5	14.7	20.7	58.0	14.8	56.7	4.6

Wenck Associates, Inc. 2014 Standard Rates	
Classification	Hourly Rate
Administrative Support / Technician	58
Professional I	64
Professional II	72
Professional III	80
Professional IV	88
	96
	104
	112
	120
	128
	136
	144
	152
	160
	170
	180
	190
	200



Estimated Design Fee Breakdown

City of Mandan
2014 SID Estimated Design Fees.xlsx:Design Summary



Consent No. #11

Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 13, 2014
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Salary Plan

STATEMENT/PURPOSE:

To consider deferred salary market adjustments resulting from the City's Salary Plan.

BACKGROUND/ALTERNATIVES:

On June 18, 2013, the Board of City Commissioners approved a new Salary Plan by adjusting the minimum and maximum position salary ranges to 95% of the comparable position salary ranges in the City of Bismarck. Annual market adjustments based on the Plan were capped at 5% per year. Future market adjustments for the City are determined by the results of the City of Bismarck's annual Salary Study. This practice allows the City's Salary Plan to stay current with the market without making adjustments every 7 to 10 years. As a result, the City had to defer salary market adjustments for several employees due to the annual cap of 5% per year. Therefore, due to the City's General Fund Balance availability at December 31, 2013, there is now an opportunity to catch-up with the deferred salary market adjustments.

The new hourly rate for the deferred salary market adjustments would be calculated before performance increases for 2014 and would be effective for the first pay period after April 1, 2014.

ATTACHMENTS:

None

FISCAL IMPACT:

Salaries and Benefits = \$95,450

STAFF IMPACT:

None

LEGAL REVIEW:

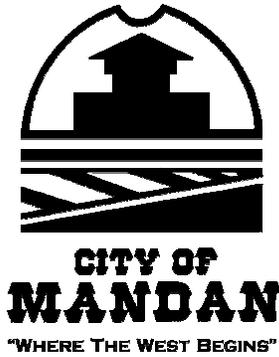
Submitted to Malcolm Brown, City Attorney.

RECOMMENDATION:

To approved the deferred salary market adjustments effective for the first pay period after April 1, 2014.

SUGGESTED MOTION:

Move to approved the deferred salary market adjustments effective for the first pay period after April 1, 2014.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 13, 2014
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Shared Leave Policy

STATEMENT/PURPOSE: To consider an ordinance that would provide for a “Shared Leave Policy”.

BACKGROUND/ALTERNATIVES: In reviewing our personnel ordinances, we found we did not have a shared leave policy. Attached, with suggested changes is the State of North Dakota’s policy/statute that seems to cover all bases. Changes we would make are underscored and those removed are struck through. In essence employees may donate annual and sick leave to other employees and employees may also receive donated leave.

Highlights of the policy:

- A city employee may donate annual leave to another employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment
- The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory time off due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature, and involves the employee, a relative of the employee, or a household member of the employee.
- All donated leave must be given voluntarily. No employee may be coerced, threatened, intimidated, or financially induced into donating annual leave for purposes of the leave sharing program.
- The employee may not donate more than five percent of the employee’s accrued leave hours, and all leave must be donated in full-hour increments.
- The mayor may grant a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow.

The attached draft has been submitted to departments for their review and comments have been incorporated.

I would anticipate the Morton Mandan Public Library and Mandan Airport Authority to adopt a similar policy, and in turn, we would include them as a “department” and thus “city” employees and Library and Airport employees would be able to share amongst eachother.

ATTACHMENTS: State Leave Sharing Program with suggested amendments.

FISCAL IMPACT: n/a

STAFF IMPACT: n/a

LEGAL REVIEW: City Attorney Brown has reviewed the policy and pending approval by the City Commission will draft an ordinance which provides for a “Shared Leave Policy”.

RECOMMENDATION: I recommend moving forward with an ordinance which provides for a “Shared Leave Policy”, and for staff prepare a formalized Shared Leave Policy.

SUGGESTED MOTION: I move to have City Attorney Brown draft an ordinance which provides for a “Shared Leave Policy”, and for staff prepare a formalized Shared Leave Policy.

Annual Leave Sharing NDCC § 54-06-14.1

Sick Leave Sharing NDCC § 54-06-14.2

State Employee Leave for Organ or Bone Marrow Donation, NDCC § 54-06-14.4

Page 1 of 4

State Leave Sharing Program

Employees may donate annual and sick leave to other [statecity](#) employees. Employees may also receive donated leave. Employees requesting shared leave must use the leave donation request form, SFN 58960

NDCC 54-06-14.1 [StateCity](#) leave sharing program.

1. Terms used in the section:
 - a. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term includes foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house when the living style is primarily that of a dormitory or commune.
 - b. "Relative of the employee" is limited to the spouse, child, stepchild, grandchild, grandparent, or parent of an employee.
 - c. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.
 - d. "[CityState](#) employee" means a permanent employee with over six months of continuous service with the [statecity](#). It does not include employees in probationary status or employees on temporary or other limited term appointments.
2. A [citystate](#) employee may donate annual leave to another [citystate](#) employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.
3. A [citystate](#) employee is eligible to receive shared leave pursuant to the following conditions:
 - a. The ~~city administrator~~~~chief administrative officer of the employee~~ determines that the employee meets the criteria described in this section.
 - b. The employee has abided by [citystate](#) policies regarding the use of annual leave.
 - c. The employee's use of shared leave, including both annual and sick leave, does not exceed four months in any twelve-month period.
4. A [citystate](#) employee may donate annual leave to another [citystate](#) employee only pursuant to the following conditions:
 - a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory time off due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature, and involves the employee, a relative of the employee, or a household member of the employee.

Annual Leave Sharing NDCC § 54-06-14.1

Sick Leave Sharing NDCC § 54-06-14.2

State Employee Leave for Organ or Bone Marrow Donation, NDCC § 54-06-14.4

Page 2 of 4

- b. The condition has caused, or is likely to cause, the receiving employee to go on leave without pay or terminate employment.
 - c. The donating employee donates leave in full-hour increments and retains a leave balance of at least forty hours.
5. The ~~city administrator~~ ~~chief administrative officer~~ shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.
 6. Donated annual leave is transferable between employees in different ~~departments~~ ~~state entities~~.
 7. One hour of donated annual leave must be regarded as one hour of shared leave for the recipient.
 8. Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.
 9. All forms of paid leave available for use by the recipient must be used prior to using shared leave.
 10. Any shared leave not used by the recipient during each occurrence as determined by the ~~city administrator~~ ~~chief administrative officer of the employee~~ may be retained by the recipient.
 11. All donated leave must be given voluntarily. No ~~city~~ ~~state~~ employee may be coerced, threatened, intimidated, or financially induced into donating annual leave for purposes of the leave sharing program.

NDCC § 54-06-14.2 State sick leave sharing program

1. As used in this section:
 - a. "Severe" or "extraordinary" means serious, extreme, or life threatening. These terms do not include conditions associated with normal pregnancy.
 - b. "~~City~~ ~~State~~ employee" means a permanent employee with over six months of continuous service with the ~~city~~ ~~State~~. It does not include employees in probationary status or employees on temporary or other limited term appointments.
2. A ~~city~~ ~~state~~ employee may donate sick leave to a fellow ~~city~~ ~~state~~ employee who is suffering from and extraordinary or severe illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the employee to take leave without pay or terminate employment.
3. A ~~city~~ ~~state~~ employee may be eligible to receive shared leave pursuant to the following conditions:
 - a. The ~~city administrator~~ ~~chief administrative officer of the employee~~ determines that the employee meets the criteria described in this section.
 - b. The employee has abided by ~~city~~ ~~state~~ policies regarding use of sick leave.

Annual Leave Sharing NDCC § 54-06-14.1

Sick Leave Sharing NDCC § 54-06-14.2

State Employee Leave for Organ or Bone Marrow Donation, NDCC § 54-06-14.4

Page 3 of 4

- c. The employee's use of shared leave, including both sick and annual leave, does not exceed four months in any twelve-month period.
4. A [city/state](#) employee may donate sick leave to another [city/state](#) employee only pursuant to the following conditions:
 - a. The receiving employee has exhausted, or will exhaust, all annual leave, sick leave, and compensatory leave due to an illness, injury, impairment, or physical or mental condition, that is of an extraordinary or severe nature;
 - b. The condition has caused, or likely to cause, the receiving employee to go on leave without pay or terminate employment; and
 - c. The employee may not donate more than five percent of the employee's accrued leave hours, and all leave must be donated in full-hour increments.
5. The [city administrator](#)~~chief administrative officer of the state employee~~ shall require the employee to submit, prior to approval or disapproval, a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the employee's condition.
6. Donated sick leave is transferable between employees in different [departments/state](#) entities.
7. One hour of donated sick leave must be regarded as one hour of shared leave for the recipient.
8. Any donated leave may only be used by the recipient for the purposes specified in this section and is not payable in cash.
9. All forms of paid leave available for use by the recipient must be used prior to using shared leave.
10. Any shared leave not used by the recipient during each occurrence as determined by the [city administrator](#)~~chief administrative officer of the employee~~ may be retained by the recipient.
11. All donated leave must be given voluntarily. No [city/state](#) employee may be coerced, threatened, intimidated, or financially induced into donating sick leave for purposes of the leave sharing program.

NDCC 54-06-14.4 State employee leave for organ or bone marrow donation.

The [mayor](#)~~executive officer in charge of a state agency~~ may grant a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow. Notwithstanding the limitations for the donation and use of donated leave under NDCC § 54-06-14.1 and 54-06-14.2, an employee may request and use donated annual leave or sick leave for the purpose of donating an organ or bone marrow. If an employee request donations of sick leave or annual leave, but does not receive the full amount needed for the donation of an organ or bone marrow, the [mayor](#)~~executive officer of the state agency~~ may grant a paid leave of absence for the remainder of the leave up to the maximum total of twenty workdays. The [mayor](#)~~executive officer of the agency~~ may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the

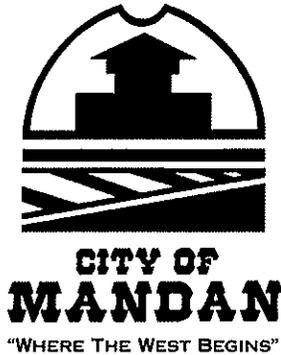
Annual Leave Sharing NDCC § 54-06-14.1

Sick Leave Sharing NDCC § 54-06-14.2

State Employee Leave for Organ or Bone Marrow Donation, NDCC § 54-06-14.4

Page 4 of 4

length of the leave requested. Any paid leave of absence granted under this section may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.



Board of City Commissioners

Agenda Documentation

MEETING DATE: March 18, 2014
PREPARATION DATE: March 12, 2014
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch
SUBJECT: Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Meter Improvements; and Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.

PURPOSES

1. To consider a Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Meter Improvements.
2. To consider a Resolution Authorizing the Issuance of Water Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.

BACKGROUND

With Board of City Commission approval, the Meter Reading Department began replacing old Water Meters/MXUs in 2002. Since then, approximately 2,750 old Water Meters/MXUs have been replaced by the Department. However, due to the lack of consistency and efficiency, the City is now in the process of establishing a water meter/reading replacement strategy for its existing water meter/reading program. The City currently has approximately 6,600 water meters ranging in size from 5/8" to 6" in diameter. The City uses its water meter readings to bill its customers for water and sewer usage on a monthly basis.

On July 18, 2013, Advanced Engineering and Environmental Services completed a review evaluating the water meter/reading inventory to provide a recommended water meter/reading upgrade and possible replacement strategy. The purpose of the study was to bring consistency and efficiency to the City's water meter reading and billing system by identifying incompatible radio read technology and outdated water meters. A practical

approach includes integrating all metered users into a single, consistent data collection system by replacing old water meter/reading assemblies with new, compatible components and incorporating the data into the current or new billing software.

On August 20, 2013, Advanced Engineering and Environmental Services presented the recommendations from the Technical Memorandum to Board of City Commissioners. The Board approved the recommendations and requested to enter into a Professional Services Agreement with Advanced Engineering and Environmental Services on September 3, 2013.

On September 3, 2013, the Board of City Commissioners approved to enter into an Agreement with Advanced Engineering and Environmental Services for engineering services for the Project.

On October 1, 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 November 18, 2013, the City was approved by the Industrial Commission of North Dakota for a Loan in the amount of \$2,400,000 from the North Dakota Public Finance Authority's Clean Water State Revolving Fund Program to finance the Project. The interest rate on the Loan is 2.0% plus 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 February 4, 2014, the Board of City Commissioners approved the Advertisement for Bids for the Mandan Water Meter Improvements Project.

On March 11, 2014, the Bids were opened for the Mandan Water Meter Improvements Project.

The following is a schedule of Project activities:

- Bid Recommendations to Board of City Commissioners – March 18, 2014
- Notice of Award – April 4, 2014
- Notice to Proceed – April 8, 2014
- Start Construction – April 9, 2014
- End Construction – January 31, 2015

ATTACHMENTS

- E-mail from the City's Bond Counsel Steven L. Vogelpohl, Attorney At Law.
- Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Meter Improvements.
- Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.

FISCAL IMPACT

- The total approved SRF Loan = \$2,400,000
- The City included this Project in the 2013/2014 Budgets 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 Meter Improvements.
2. To approve the Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.

SUGGESTED MOTIONS

1. Move to approve the Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Meter Improvements.
2. Move to approve the Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.

Greg Welch

From: Steven Vogelpohl <slv@slvlaw.net>
Sent: Friday, March 07, 2014 1:50 PM
To: Greg Welch
Cc: Brown, Malcolm H.
Subject: Mandan Water Meter CWSRF Financing
Attachments: Resolution Authorizing Undertaking.pdf; Resolution Authorizing Issuance.pdf

Greg,

Attached are two resolutions for adoption by the City Commission on March 18 in the order listed, as follows:

- 1. Resolution Authorizing Undertaking for Municipal Improvement Consisting of Water Meter Improvements; and**
- 2. Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, Series A.**

After adoption of the Resolutions, please provide me voting record information (pages 2 and 9, respectively) and I will then prepare copies of the Resolutions for execution.

Please do not hesitate to contact me if there are any questions.

Thank you for your assistance.

Steve

CITY
OF
MANDAN
NORTH DAKOTA

**RESOLUTION AUTHORIZING UNDERTAKING
FOR
MUNICIPAL IMPROVEMENT
CONSISTING OF
WATER METER 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, upgrade of water meters and meter reading systems, as well as all other items of work and materials which are reasonably necessary or incidental to the completion of such project (the "Water 2014A Undertaking");

2. That it has further been determined that the cost of the Water 2014A Undertaking has been estimated by the engineer therefor to be approximately \$2,400,000 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 2014A Undertaking may best be provided through the issuance of revenue bonds of the City in amounts not to exceed \$2,400,000 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 2014A 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 2014A 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 2014A Undertaking heretofore commenced with proceedings for the Water 2014A 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 18th day of March, 2014.

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 March 18, 2014, 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 2014, SERIES A
AND
WATER IMPROVEMENT REVENUE BONDS OF 2014, 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, upgrade of water meters and meter reading systems, 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 \$2,400,000;

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 2014, Series A (the "Interim Certificates") and its Water Improvement Revenue Bonds of 2014, 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 the Project;

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 \$2,400,000; 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 \$2,400,000 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 \$2,400,000 (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.

Dated and adopted this 18th day of March, 2014.

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 March 18, 2014, 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 2014, SERIES A

AND

WATER IMPROVEMENT
REVENUE BONDS OF 2014, SERIES A

SCHEDULE OF MATURITIES AND INTEREST RATES

The principal amount of Water Improvement Revenue Bonds of 2014, 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, 2018 or 2019, with final maturity in 2033, 2034, 2035, 2036, 2037 or 2038. 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 2014, 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 2014, 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 2014, 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 \$2,400,000 (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 2014, Series A and Water Improvement Revenue Bonds of 2014, 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 2014, 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 \$2,400,000.00, 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 meter and meter reading system 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 2014, Series A and Water Improvement Revenue Bonds of 2014, 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 March 18, 2014

(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 18th day of March, 2014, 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 ½ 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 March 18, 2014 and entitled "Resolution Authorizing the Issuance of Water Improvement Interim Certificates of 2014, Series A and Water Improvement Revenue Bonds of 2014, 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)