

**AGENDA**  
**MANDAN CITY COMMISSION**  
**MAY 6, 2014**  
**ED "BOSH" FROEHLICH MEETING ROOM,**  
**MANDAN CITY HALL**  
**5:30 P.M.**  
**[www.cityofmandan.com](http://www.cityofmandan.com)**

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- A. ROLL CALL:  
1. Roll call of all City Commissioners.
- B. APPROVAL OF AGENDA:
- C. PUBLIC COMMUNICATIONS:
- D. MINUTES:  
1. Consider approval of the following minutes:  
i. April 15, 2014 – Regular Board Meeting  
ii. April 15, 2014 – Board of Equalization  
iii. April 21, 2014 – Special Board Meeting – Jail Presentation  
iv. April 29, 2014 – Special Meeting - Working Session
- E. PUBLIC HEARING:
- F. BIDS:  
1. Consider resolution approving contractor and contractor's bond for Street Improvement District 195 Project 2014-13 (Roughrider's).  
2. Consider resolution approving contractor and contractor's bond for Street Improvement District 186 Project 2013-22 (Macedonia Hills 1<sup>st</sup> Addition). (SEE NEW BUSINESS NO. 9 first).
- G. CONSENT AGENDA:  
1. Consider for approval adding Telecommunication Facilities to the Utility Service Group Zoning Category  
2. Consider the following proclamations:  
i. May 17, 2014 as National Kids to Parks Day.  
ii. May 18, 2014 as STRIDES: Lions Walk for Diabetes Awareness Day.  
3. Update on low bid for sidewalk and incidentals as bid through NDDOT Safe Routes to School program.  
4. Consider correction of accurate vacant lot value in equalization for Gas U Up LLC.  
5. Consider approval of sale of 1987 Sludge Truck and transfer \$2500 of total sale for new dump truck.  
6. Consider approval to create the position of Assistant Utility Maintenance Superintendent.

*Agenda*  
*Mandan City Commission*  
*May 6, 2014*  
*Page 2 of 3*

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7. Acting as the Board of Adjustment, consider for approval setback and Floor Area Ratio variances for Heart River Storage.
8. Consider for approval Plat for Heart Ridge Third Addition.
9. Consider for approval replat of Lot 3, Block 94, First Northern Pacific Addition.
10. Consider for approval Longhorn First Addition Replat.
11. Consider approval of the following site authorizations for the Fort Abraham Lincoln Foundation from July 1, 2014 through June 30, 2015:
  - i. Midway Lanes
  - ii. Broken Oar
  - iii. Lonesome Dove
  - iv. Seven Seas
12. Acting as the Board of Adjustment, consider for approval a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition.
13. Consider approval of games of chance for Chapter B, Vietnam Vets Legacy Vets Motorcycle Club at Colonial Lounge May 28, 2014 through August 23, 2014.
14. Consider for approval the Water Meter Replacement Project Change Order 1 deduct and accept the new AMI Agreement between the City of Mandan and Sensus, water meter supplier.

H. OLD BUSINESS:

I. NEW BUSINESS:

1. Consider funding requests from the Mandan Progress Organization Funding Committee.
2. Introduction of new employee, Rob Gaskill, engineering technician.
3. Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-01(Keidel's South Heart Terrace 3<sup>rd</sup> Addition).
4. Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-03(Lincoln Ridge 6<sup>th</sup> Addition).
5. Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-05(West Hills Estates 3<sup>rd</sup> Addition).
6. Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water and sewer improvement Project 2014-21(Heart Ridge 3<sup>rd</sup> Addition).
7. Consider resolution approving plans and specifications and resolution directing advertisement for bid for Street Improvement District 196 Project 2014-14 (Mandan Industrial Park).

*Agenda  
Mandan City Commission  
May 6, 2014  
Page 3 of 3*

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8. Consider resolution amending engineer's report and resolution directing advertisement for bid for Street Improvement District 189 Project 2013-30 (Lakewood 6<sup>th</sup> Lot 10B Block 1 Replat).
  9. Consider approving the amended 3-way agreement for water and sewer improvement Project 2013-21(Macedonia Hills 1<sup>st</sup> Addition).
- J. RESOLUTIONS AND ORDINANCES:
1. First consideration of Ord. 1183 Changes to Chapters 1 & 2 of Title 21 related to Planning and Zoning
  2. First consideration of Ord. 1184 – Amendment to Chapter 13-15 of the Mandan Code of City Ordinances regulating door-to-door sales.
- K. OTHER BUSINESS:
- L. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:
1. May 20, 2014
  2. June 3, 2014
  3. June 17, 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.

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The Mandan City Commission met in regular session at 5:30 p.m. on April 15, 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, Assessor Shaw, and Building Official Lalim.

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

C. PUBLIC COMMUNICATIONS: Mayor Van Beek invited anyone to come forward to address items on the Agenda. A second announcement was made to speak for or against items on the Agenda. Hearing none, this portion of the Public Communications forum was closed.

D. MINUTES:

1. *Consider approval of the following minutes from the Board of City Commission regular meeting held April 1, 2014.* Commissioner Rohr moved to approve the minutes as presented. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The motion passed.

E. PUBLIC HEARING:

1. *Consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 194 Project 2014-12(Developers West Acres, Ventures and Crown Point).* Planning & Engineering Director Froseth stated that this is an action to consider a resolution determining insufficiency of protests for street improvement district No. 194 for Developer’s West Acres, Ventures and Crown Point areas. On March 4, 2014, the City Commission approved the creation of the Street Improvement District No. 194 and approved Resolution of the Engineer’s Report and the Resolution of Necessity. On April 1, 2014, the City Commission approved the plans and specifications and the resolution directing advertisement for bids. There were 52.5% written protests, (168 out of 320 parcels received). Therefore, the project has enough protest to bar the project from moving forward. He reviewed some of the concerns of homeowners as noted on the letters of protest. He explained that Old Red Trail was one of the main inquiries as to why that is not included in the scope of this street improvement district and the reason for that is because it has been programmed in by the DOT to receive funding for reconstruction until 2016.

He also explained that the roads that are within the project are in the local area and even though they are not in really bad shape, the roads would benefit from a resurfacing project to prolong the life for another 15+ years. Many of the roads in this area are in a state of degradation and it would be in the City’s best interest to repair them before they become a state of being unsatisfactory.

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Planning & Engineering Director Froseth reviewed the process for determining estimates for the project and explained that the final assessment amount will be determined based on fairness as outlined by the Special Assessment Commission. Finally he pointed out that if the streets get to a point where reconstruction is necessary, the cost amounts for the assessments will likely be much greater than the amount presented at this time. Based on the explanations given, he recommended denying the resolution determining sufficiency of protests for street improvement District No. 194, Project No. 2014-12 Developers West Acres, Ventures and Crown Point.

Mayor Van Beek stated this is a public hearing and invited anyone to come forward to speak for or against the request for approval of the Resolution of Insufficiency of Protest for Street Improvement District 194 Project 2014-12(Developers West Acres, Ventures and Crown Point).

Audrey Cody, Venture's Addition, came forward and stated she was asked by the landowners from that area to speak on their behalf. She indicated that she and two other residents went door-to-door to the people in that neighborhood and they could not find one person to say that the streets in that area need improvement. She mentioned that there is one small hole in a corner of LaSalle and Crown Point that has never been fixed while Old Red Trail remains to be a hazard. She provided photos of areas where the blade operators have damaged curbs and gutters in that area.

John Barnhard, Roughrider's Addition, came forward and said that he does not understand why the City does not put road restrictions on the roads to keep the heavy truck traffic to a minimum on Old Red Trail. Director of Public Works Wright stated that the City of Mandan follows the DOT and Morton County load restrictions they put on the roads. The only unrestricted streets in Mandan would be Main Street, Highway 1806 and the main arterials. Those roads are not restricted by the DOT thus there is no restriction in town. If they use any of those streets, the restrictions would be 6 tons per axle. He stated that at this time of year with the frost coming out of the ground, the load restrictions are placed because of the softness of the sub-base and the road has to give. He stated that there should be enforcement if trucks exceed the restriction.

Al Austad, Developer's West, came forward and stated that the roads in this area have degraded significantly because the city or a contractor has dug in or replaced sewer lines. Those are the worst areas of the roads, not something caused by traffic. He reminded the Commission that 50 years ago truck traffic was not allowed out there. The signs are gone and there are trucks going through the residential neighborhoods. He stated that regular maintenance is not being done on the road in front of his home giving the example that there is a 6-inch crack that has been there for a long time, unrepaired.

Rick Setterlund, Crown Point Subdivision came forward and stated he has lived there since 1984. His concern is that the water table keeps rising. He inquired if anyone would know why that is happening. In August of every year, 36<sup>th</sup> Avenue has problems. He asked whether anyone has looked into that problem and mentioned that he had heard that Bismarck has the same issue and have put in a French drain in that situation. Planning &

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Engineering Director Froseth stated that he has heard that the water tables have been rising. He said that along with this project, the consultants have been requested to look into possible ways to install a shallow drain which is similar to a French drain.

Mayor Van Beek again announced that this is a public hearing and invited anyone to come forward to speak for or against the project request. Hearing none, this portion of the hearing was closed.

Commissioner Frank questioned Planning & Engineering Director Froseth regarding what their “Plan B” is to ensure there is safe access and that it is as affordable as possible? Planning & Engineering Director Froseth stated that there are no plans this year to take this project forward again. However some options that are available would be changing the size of the districts and bringing the project forward again in 2015 with hopes of getting the street improvement project approved and to a level before the fix is greater than it is now. Commissioner Frank encouraged any community member who has ideas on how to address these issues to share that information with the City Commission. She stressed the importance of maintaining the streets is important as the costs will more than likely increase in future years.

Commissioner Rohr stated that the City has never had a really good plan for future improvement projects. He mentioned that the City is now taking a proactive approach to addressing immediate and future street projects. Mayor Van Beek concurred with Commissioner Rohr’s concern for improving the street maintenance project and indicated that the City is doing its best to minimize the cost to the taxpayers and homeowners in these developments. City Attorney Brown clarified there are no options to the proposed street improvement project at this time since it’s protested out.

Commissioner Frank moved to approve to deny the resolution determining sufficiency of protests for Street Improvement District 194 Project 2014-12(Developers West Acres, Ventures and Crown Point). 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. *Consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 195 Project 2014-13(Roughriders).* Planning & Engineering Director Froseth stated that this is an action to consider a resolution determining insufficiency of protests for street improvement district 195 Project 2014-13 (Roughriders). On March 4, 2014, the City Commission approved the creation of the Street Improvement District No. 195 and approved Resolution of the Engineer’s Report and the Resolution of Necessity. On April 1, 2014, the City Commission approved the plans and specifications and the resolution directing advertisement for bids. The scope of the project at that time was for street resurfacing and street lighting throughout the neighborhood. The streetlights were an option for this project. The project would be a mine and blend which would cost a little less than the mill and overlay. At that time there was an option for street lighting which was approved. The deadline for protests was April 8<sup>th</sup>. There were 66 out of 81 protests filed stating they would like to move forward

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with the street project, but not the street lighting portion of the project. Director Froseth pointed out that all the roads in the Roughrider's area are deemed unsatisfactory. Based on that protest petition the Engineering Department's recommendation would be to approve the resolution of insufficiency with the street lighting portion of the project removed so this project can be completed this year.

Mayor Van Beek announced this is a public hearing to consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 195 Project 2014-13(Roughriders). He invited anyone to come forward to speak for or against the project.

Mark Landis, Roughrider's Addition came forward and respectfully urged the City Commission to approve the Engineer's recommendation to move ahead with the street improvement project without the street lights. He stated that the streets are badly in need of repair; however the street lights are not necessary.

Bill Schuh, Roughrider's Addition came forward and stated that he supports what Mark Landis presented and not only for the financial reasons. He provided a short background of the area in that it is a safe neighborhood. He referred to the character of the residents who lived there. They wanted to see the stars. He stated that he supports the motion/recommendation as presented.

James Renner, Roughrider's Addition came forward and inquired about the partial street lighting option and he wanted to know why that was eliminated. He said that it was discussed at the public input meeting. He said his biggest concern is the limited curb and gutter repair and he is wondering if that is necessary as part of this project.

Planning & Engineering Director Froseth stated that at the public input meeting some of the residents mentioned they would like street lights in certain areas such as access to the development area, the park, the mailboxes and bus stops. He indicated that the Engineering department had considered that. In order to do that, wiring would still have to be run throughout and there would be less than 50% coverage for an approximate figure of 30% less cost. Seeing the value of safety throughout and that the numbers did not make it as feasible to lessen the amount of light coverage while still realizing 30% less cost. With regard to the curb and gutter, there is 820 lineal ft. of curb and gutter, (out of about 4,600), that has been spotted and deemed necessary to remove and replace. Wenck and Associates had 3 categories looking at the curb and gutter and the 1<sup>st</sup> category "need to repair" is when it is not functioning as it should be in order to channel water properly; 2<sup>nd</sup> category "broken and damaged and still functional" and 3<sup>rd</sup> category is strictly "superficial". He said residents can call the City Engineer's office if they have questions on the project.

Mayor Van Beek again announced this is a public hearing to consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 195 Project 2014-13 (Roughriders). He invited anyone to come forward to speak for or against the project. Hearing none, this portion of the public hearing was closed.

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Commissioner Tibke moved to approve the Resolution of Insufficiency of Protest for Street Improvement District 195 Project 2014-13 (Roughriders) with the street lighting option being removed from the project. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

3. *Consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 196 Project 2014-14(Mandan Industrial Park).* Planning & Engineering Director Froseth stated that this is an action to consider a resolution determining insufficiency of protests for Street Improvement District 196 Project 2014-13 (Mandan Industrial Park). On March 4, 2014, the City Commission approved the creation of the Street Improvement District No. 196 and approved the Resolution of the Engineer's Report and the Resolution of Necessity. The Resolution for the approval of plans and specifications or a Resolution to advertise for bids has not been brought forward due to a reconstruction requiring more intense planning. This project is located within an industrial park with nearly all properties being industrial zoning. The plan is to reconstruct with concrete allowing for double the lifetime as opposed to a regular pavement project. The Engineers office has received 47.33% written protests therefore the project has insufficient amount of protests. He reviewed some of the concerns raised in the protest letters. Because the insufficiencies received were less than 50% the Engineer's Department recommends moving forward with the project at this time. The final assessment amount will be determined based on fairness perceived by the City Assessment Committee.

Mayor Van Beek announced this is a public hearing to consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 196 Project 2014-13 (Mandan Industrial Park). He invited anyone to come forward to speak for or against the project.

Robert Johnson, a representative from the First Church of the Nazarene on Old Red Trail, came forward to speak and stated that he has a parcel of land within the Mandan Industrial Park. He said that they are opposed to this project because (1) The work on 34<sup>th</sup> and 37<sup>th</sup> Streets account for about 85% of the project cost; (2) Their parcel is on 30<sup>th</sup> Avenue NW and will receive no benefit done on those streets; (3) The assignment of cost has been inequitably distributed because the primary benefit goes to those on 34<sup>th</sup> and 37<sup>th</sup> Streets with no benefit to those on 30<sup>th</sup> Avenue where they will be paying the same price per square foot than those benefiting directly. Finally, this area has been paying special assessments for a long time already and they do not want to see another assessment especially since they will not be benefiting from the project. Commissioner Rohr asked about the location of the church's property. Johnson indicated that the land that they own on 30<sup>th</sup> is a vacant piece of property that is not in use at this time. The access to the church is off Old Red Trail.

Engineering Director Froseth stated that even though the property on 30<sup>th</sup> Avenue is vacant at this time, there is potential for a business in that area at some time. The City

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Engineer's Department attempts to be as fair as possible when creating assessment districts for projects such as these.

Carl Jacobsen, Monte Drive, came forward and inquired about the zoning in this area. Is it industrial? Is it residential? Housing? Multi-residential? The reply was it is Industrial and you cannot put a home on it.

Mayor Van Beek announced once again that this is a public hearing to consider the approval of the Resolution of Insufficiency of Protest for Street Improvement District 196 Project 2014-13(Mandan Industrial Park). He invited anyone to come forward to speak for or against the project. Hearing none, this portion of the public hearing was closed.

Commissioner Rohr requested clarification that the two major streets being discussed are 30<sup>th</sup> and 34<sup>th</sup> for this project? Engineering Director Froseth replied that the project consists of 34<sup>th</sup> and 37<sup>th</sup> Streets (east-west) and 30<sup>th</sup> Avenue (north-south). 34<sup>th</sup> and 37<sup>th</sup> needing major repairs that will be concrete and 30<sup>th</sup> Avenue will be a mill and asphalt overlay project. This will be one full assessment district wherein property owners will pay equal proportions per square foot. Finance Director Welch commented that a previous meeting because of the concrete option in certain locations within this district, the overall cost, and consideration is being given to have a 20-year assessment versus 15-year assessment to help with the principal and interest costs for this project. The City will be considering this if this district would be approved and the construction would go forward as a means to provide some relief.

Mayor Van Beek inquired why 30<sup>th</sup> Avenue Northwest will be an asphalt project rather than concrete. Planning & Engineering Director Froseth stated that is because that road is newer on the north end and the south end is in better shape and it does not have the heavy traffic 34<sup>th</sup> and 37<sup>th</sup> Streets have. The Engineering department recommends this improvement even though it is not in as bad as shape as the other roads in that area.

Commissioner Tibke moved to approve the Resolution of Insufficiency of Protest for Street Improvement District 196 Project 2014-13 (Mandan Industrial Park).

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.

F. BIDS:

G. CONSENT AGENDA

1. *Consider approval of monthly bills.*
2. *Consider the following games of chance (i) ND Mounted Shooters Association at Dean's Steak House from Apr. 15, 2014 to Oct. 7, 2014 (ii) Pearl Larson Benefit at the Stage Stop on April 26, 2014.*
3. *Consider approval of annual Liquor License, Special B Liquor Permit and Special Sunday Permit for Dacotah Speedway from May 1, 2014 through October 30, 2014.*

4. *Consider proclaiming April 22, 2014 Earth Day in the City of Mandan.*
5. *Consider entering into a professional services agreement with Hepper Olson Architects for services related to the Depot and Beanery.*
6. *Consider approval of the following Site Authorizations: (i) American Foundation for Wildlife at The Lakewood Bar and Grill from July 1, 2014 through June 30, 2015 (ii) American Foundation for Wildlife at the Last Call Bar from July 1, 2014 through June 30, 2015.*
7. *Consider advertising for construction engineering services related to safe routes to school grant.*

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

H. OLD BUSINESS:

I. NEW BUSINESS:

1. *Consider approval of 2014 Budget Amendment – Mandan Fire Department.*  
Fire Chief Nardello presented a request to amend the 2014 Fire Department Budget for the purchase of ergonomic office equipment. He provided a brief background that the 2014 Budget included the purchase for new training chairs. The chairs currently in use do not meet ergonomic standards. Subsequently he found out that the ND WSI has an ergonomic grant program available with a 25% local match which was applied for and approved. Subsequently, they sent out an occupational professional who evaluated our office furniture. Based on this, a budget amendment is being requested of \$7,281.12 and that 75% would be reimbursed to the City so \$1,820.28 would come from the Equipment Reserve Fund.

Commissioner Tibke moved to approve to amend the Mandan Fire Department 2014 Budget to include \$7,281.12 for the purchase of six office chairs, six sit to stand work stations, six document holders, six wireless mouse and keyboards. The 75% ND WSI grant reimbursement shall be placed back into the Fire Department Equipment Reserve Account. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Tibke: Yes; Commissioner Frank: Yes; Commissioner Braun: Yes; Commissioner Van Beek: Yes. The motion passed.

J. RESOLUTIONS AND ORDINANCES:

1. *Second consideration and final passage of Ordinance 1181 related to Shared Leave Policy.* Commissioner Tibke moved to approve the Second consideration and final passage of Ordinance 1181 related to Shared Leave Policy. 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.

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2. *Second consideration and final passage of Ordinance 1182 annexing Collins Substation property.* Commissioner Tibke moved to approve the Second consideration and final passage of Ordinance 1182 annexing Collins Substation property. 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 establishing rates and charges for services from the Street Light Utility Fund.* Finance Director Welch stated that this change in the Resolutions for street light utility charges is before the Commission due to the result of the conversion from our current utility billing software to the City's new utility billing software which should be up and running the first week in May. There is wording in Section 4 of the existing street light utility resolution that is not compatible with the base programming of the new software. Analyzing what it would take to correct this, there would be a cost to reprogram the proposed software that the City is migrating to. It is recommended to eliminate the wording in Section 4 that says up to a maximum of 3 units. There are 22 utility accounts that would be impacted by this Resolution change and there are currently 80 units that are not being charged and they would then pay the additional \$1.00 per month. This will align with other multi-unit billing requirements for residential properties and trailer parks that are being charged and not a limit like the commercial properties are being charged.

Commissioner Frank moved to approve the Resolution establishing rates and charges for services from the Street Light Utility Fund. 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.

K. OTHER BUSINESS

There being no further actions to come before the Board of City Commissioners, Commissioner Frank moved to adjourn the meeting at 6:36 p.m. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present. The motion passed.

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James Neubauer,  
City Administrator

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Arlyn Van Beek,  
President, Board of City  
Commissioners

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The Mandan Board of Equalization met in regular session at 7:00 p.m. on April 15, 2014 in the Ed “Bosh” Froehlich Room at City Hall. Present were Commissioners Van Beek, Braun, Tibke, Rohr and Frank. Also present were Finance Director Greg Welch, City Attorney Malcolm Brown, City Administrator Neubauer, and City Assessor Shaw.

*PRESENTATION OF THE BOARD OF EQUALIZATION DOCUMENTATION DATA:* Shirley Shaw, Mandan City Assessor, presented the Mandan Board of Equalization Report for 2014 summarized as follows:

The 2014 annual report of the Mandan Assessing Division is a summary of the 2014 assessment roll and a review of what has occurred in terms of real estate value and appraisal activity of the division through December 2013. The procedures of assessment and appraisals are conducted under the guidance of the North Dakota State Tax Commissioner Office, the North Dakota Century Code, and the nationally recognized standards of mass appraisal of real properties. North Dakota law requires assessors to value or appraise property at true and full value as of February 1<sup>st</sup> of every year. This amount is also referred to as a market property value. It is the value most people will likely pay for property in its present condition. Assessors apply mass appraisal techniques.

The Assessing Department is responsible for determining the true and full value of each tract of property subject to taxation and all taxable improvements and structures located on the property. The Assessing Department maintains all property records for each parcel within its jurisdiction. The following condensed report is a summary of the final assessment roll for 2013. Any changes in the values that the local, county or state Boards of Equalization may make will be reflected in the final assessment. The 2014 Annual Assessment Report is as follows:

- The 2014 assessment roll total market value after exemptions is \$1,267,394,414;
- The increase from 2013 was \$154,219,463 or a 11.38% increase;
- New construction contributed \$94,092,540 million; North Annexation contributed \$4,910,800. An extensive review of existing properties indicated that an update in market values was needed to accurately reflect Mandan’s increasing market, that average increase for residential properties was 9%. To comply with the ND State Tax Dept. guidelines, the State Board of Equalization 2013 recommended that the City of Mandan reappraise all vacant land and equalize improved commercial properties for 2014, the review indicated that existing vacant lots saw an average increase of 15% and existing commercial properties saw an average increase of 3%. Adjustments have been made on individual properties within all classes of real estate.
- The City Assessor’s Office sent out 1,079 notices of increase this year, and of those there were 21 phone calls received. The City has a total parcel count of 8,624.
- An introduction of the Assessor’s Office Staff was provided: Jon Benz, Assessor/Building & Plumbing Inspector; George Railsback, Assessor/Building

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Inspector; Steve Roe Assessor/Building & Plumbing Inspector; Rachel Hastings, Administrative Assistant and Data Collector.

Assessor Shaw reviewed the following numbers - and provided comparisons back to the 2010 statistics on record. The following are the 2014 figures:

- ~ Commercial Properties:
  - o \$376,996,433 = True and Full value for Commercial buildings
  - o True and Full value less exemption: \$305,931,000
- ~ Residential Properties:
  - o \$1,013,054,650 = True and Full value for Residential structures
  - o True and Full value less exemption: \$961,463,414
- ~ Total before exemptions: \$1,390,051,983
- ~ Total after exemptions: \$1,267,394,414
- ~ Total parcels = 8,624

Assessor Shaw reviewed the exemptions allowed under state statute:

- Public Hospital
- Churches
- Cemeteries
- Nursing Home
- Non Profit Lodges/Organizations
- Public Schools
- City/County/State owned property
- Utilities and Northern Pacific

Total of Fully Exempt Properties: 830

Total Market Value: \$80,489,900

Discretionary Exemptions (Left to or regulated by one's own discretion or judgment.

Voted on and Approved by City Commission as offered to the public NDCC 57-02)

- New & Expanding Business
- Commercial remodeling
- Residential remodeling
- Renaissance Zone
- 2 year new home construction
- Blind
- Wheelchair

Total: 246

Total Market Value: \$42,166,769

2014 New Business Exemptions

Total: 16

New Construction Values

~ Residential	\$63,075,800
~ Commercial	\$31,016,740
Total:	\$94,092,540

2014 Completed Exemptions New Values added to the City of Mandan:

1. 61 2 yr. new home construction, structural value added \$4,575,000
2. 9 Renaissance Zone, structural value added \$3,032,400
3. 3 New Business, structural value added \$2,444,300
4. 31 New Subdivisions were added 2014
5. 162 Single Family Dwellings
6. 8 Apartment Buildings
7. 18 Commercial Buildings
8. 1,899 Total permits issued

State of North Dakota Office of State Tax Commissioner 2013-2014 Ratio Adjustment Worksheet – is within the medians of 90-100%:

1. Commercial Sales: 95.8%
2. Residential Sales: 91.5%

2013 Real Estate Property Tax Breakdown “Where do your local property taxes go?”

- 24.7% City
  - 33.6% School
  - 29.3% State and County
  - 11.3% Parks
  - 1.1% Water District
- 100%

2013 Comparison of the 12 Largest Cities in North Dakota:

18, 978 Mandan Population  
 \$51,346,602 2013 Taxable Valuation  
 81.78 City 2013 Mill Levy for a Total of 331.16

Finance Director Welch directed the Commission’s attention to a handout on the overhead that was provided to everyone. He stated that the work the Board of Equalization performs eventually translates into taxable valuations of which the City’s Budget and Finance Committee uses to determine what the value of one mill will be, for example, for the 2015 budget. This also assists in determining what the mill levy will be and also the property taxes. Finance Director Welch provided information from the last five years as to what the increase has been in the City taxable valuation. This would include residential and commercial for new values and existing increases in valuations for residential and commercial property. The City has “turned the corner” as far as property taxes and the reliance on them and there was actually a 1% decrease in city property tax in 2012 for the 2013 budget. In 2013 we reduced reliance on city property taxes by an additional 4%. This turning of the corner for the City is largely due to the growth of the local economy due to increased sales tax due to construction activity. For 2014, the City Commission approved 10% of sales taxes to be transferred to the General Fund to help with property tax relief. The total contribution from sales tax is .50 on the dollar which has helped in stepping down the property taxes. It is uncertain where the 2015 budget will be but this is a start in the step down to support the local budget.

Marshall Feland came forward to speak. He stated that Assessor Shaw said approximately 15% is average valuation. He indicated that they raised the valuation on his house 12.674%. He has no problem with that but said that he has not lived in the house yet. He stated that his other lots are different. One that is an 98.82% increase; another one at 96.296%, and another one at 98.89%, all increased in one year. He questioned how this can be done in one year.

Assessor Shaw stated that to address Feland's concern; he is referring to property that he owns along the strip in Mandan. That is part of the property areas that were focused on up in the northwest part where a lot of new construction is going on. Because the sales in 2012 and 2013 indicated tremendous increases and the values were really low. That fell into where the State Board mandated that the City reassess all of the vacant lots and existing commercial properties for 2014. She indicated that on the property he is referring to, all the lots are approximately one acre or less and he had only \$1.02 per acre value on these properties so they were increased to \$2.00 per square foot for the values. That was done on all the properties in that area and Assessor Shaw stated that all the lots in those areas received the same increase. So his value went from \$41,200 in 2013 to \$84,300 in 2014. The sales show that the properties in that area run anywhere from \$3 to \$6 per square foot.

Commissioner Tibke questioned that since this is a State mandate, what would happen if the City does not follow a State mandate from the City's perspective? Assessor Shaw replied that the State would come in and increase the valuation and it would be higher than what the City has determined. Linda Morris from Morton County was available for questions/answers. Mayor Van Beek indicated this matter can be addressed at a later time at the proper venue, if needed.

Assessor Shaw indicated that if there are questions, citizens can contact her at the City Assessors Office at (701) 667-3232.

Commissioner Frank moved to approve the City of Mandan Board of Equalization Report and assessments as determined by the City Assessor's Office as presented.

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

There being no further action to come before the Board, Commissioner Frank moved to adjourn the City Board of Equalization meeting. Commissioner Braun seconded the motion. The motion received unanimous approval of the members present. The meeting adjourned at 7:26 p.m.

/s/ Shirley Shaw

Shirley Shaw, City Assessor

/s/ Arlyn Van Beek

Mayor Arlyn Van Beek

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The Mandan City Commission, along with the Bismarck City, Morton County, and Burleigh County Commissions met in a Joint Special Meeting at 7:00 p.m. on April 21, 2014 in the Tom Baker Meeting Room at the City/County Building at 221 N Fifth Street, Bismarck. In attendance for the Mandan City Commission were Mayor Van Beek, Commissioners Rohr and Braun. Commissioners absent were Tibke and Frank. Also in attendance was City Administrator Neubauer.

NEW BUSINESS:

1. *Venture Architects and Ubl Design Jail Presentation.* Jeff Ubl, UBL Designs presented findings of jail study.

Additional presentations will be at the Bismarck Mandan Chamber of Commerce Office in Bismarck, (7:30 a.m., April 22, 2014), and at the Mandan Seven Seas Hotel in Mandan, (7:00 p.m., April 22, 2014). For more information visit [www.co.burleigh.nd.us](http://www.co.burleigh.nd.us). The presentation is also available on the City's website at [www.cityofmandan.com](http://www.cityofmandan.com) and available upon request.

The presentation ended at 8:05 p.m.

/s/ James Neubauer

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James Neubauer,  
City Administrator

/s/ Arlyn Van Beek

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Arlyn Van Beek  
President, Board of City  
Commissioners

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The Mandan City Commission met in a working session at 6:00 p.m. on April 29, 2014 in the former Morton County Library Room at City Hall, 205 2<sup>nd</sup> Ave NW, Mandan, ND. Commissioners present were Van Beek, Tibke, Rohr, Frank and Braun. City Department Heads present were City Attorney Brown, City Administrator Neubauer, Finance Director Welch, Planning & Engineering Director Froseth, Police Chief Bullinger, Fire Chief Nardello, and Director of Public Works Wright. Absent: Assessor Shaw, Building Official Lalim, and Business Development and Communications Director Huber. In addition, State Representatives Karen Rohr, Jim Schmidt along with citizen Wayne Papke were present.

Discussion Items:

*Discussion regarding potential use of sales tax dollars over next 10 years.:* Discussion centered on the 10-year projections for the City Sales Tax Fund with a spreadsheet referencing topics such as revenues, expenditures, assumptions, capital outlay, debt service, transfers, etc.. Projects discussed were Water & Sewer Rate Stabilization, North Side Fire Station, Public Works Land & Building, City Hall, Downtown Street Maintenance Project – I, Memorial Hwy, 46th & 40th Traffic Signals, Downtown Street Maintenance Project – II, Public Safety Records Management System, Old Red Trail Reconstruction (Highland Rd to 47th Ave NW), Main & Twin City Drive Traffic Signals, Downtown Street Maintenance Project – III, Widen 27th St from 1806 to 8th Ave NW, South Side Street Maintenance Project, Memorial Hwy, Division from Sunset to Lohstreter, Main Street Traffic Signals, Sunset Drive Extension to North, 8th Ave, Widening of 1806 from Old Red Trail to 38<sup>th</sup>, 40th Ave NW Extension, Division from Mandan Ave to 8th St NE, Extension of Boundary Road to West, McKenzie Extension West, Potential Interchange and Potential Heart River Flood Control.

ADJOURN

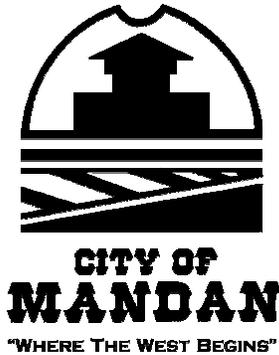
There being no further actions to come before the Board Commissioner Rohr moved and Commissioner Braun seconded to adjourn at 8:11 p.m. The motion received unanimous approval of the Board members present and the meeting adjourned.

/s/ James Neubauer

James Neubauer,  
City Administrator

/s/ Arlyn Van Beek

Arlyn Van Beek  
President, Board of City  
Commissioners



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 2, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth  
**SUBJECT:** Consider award of bid for Street Improvement District No. 195, Project 2014-13 (Roughriders).

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**STATEMENT/PURPOSE:** Review and possible award of bid for Street Improvement District No. 195, Project 2014-13 (Roughriders)

**BACKGROUND/ALTERNATIVES:** On March 4, 2014 the Mandan City Commission approved the creation of Street Improvement District No. 195 and approved the resolution of Engineer's Report and the Resolution of Necessity. On April 1, 2014 the Mandan City Commission approved the plans and specifications and approved the resolution directing advertisement for bids. On April 15<sup>th</sup> Mandan City Commission approved the Resolution of insufficiency of protests contingent upon the proposed street lighting option not allowed as part of the project scope based on the protest petition that was received.

On April 29<sup>th</sup> bids were opened for the project. There were two bidders; Northern Improvement bid \$721,777.91 and Mariner Construction was low at \$701,719.07. If awarded, the project is scheduled for substantial completion by October 31<sup>st</sup> of 2014, and a completion of the surface seal coat by July 15<sup>th</sup> of 2015.

**ATTACHMENTS:**

1. Bid Tabulation
3. District Map
4. Resolution to Award Bid

**FISCAL IMPACT:** The Project will be paid for by special assessments from the benefiting properties within the District. The construction cost of the project is \$701,719.07 plus the estimated engineering and administrative cost of \$175,429.77 totaling an estimated project cost of \$877,148.84. The bid amount is approximately 20% over the original construction estimate of \$585,839 largely due to the change in approach to resurface as it was discovered that the mill and overlay approach would be ineffective due to base pavement conditions. Per North Dakota Century Code, city commission is allowed to award a bid within 40% of the engineer's estimate.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Award of Bids for Street Improvement District 195, Project 2014-13  
(Roughriders).

Page 2 of 5

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It will be recommended to the Special Assessment Commission that the total be assessed equally among the 81 benefitting lots in which case each would be assessed approximately \$10,829.00.

STAFF IMPACT: Minimal

LEGAL REVIEW: These documents have been forwarded to the City Attorney for his review.

RECOMMENDATION: Our office recommends awarding the project to low bidder, Mariner Construction.

SUGGESTED MOTION: I move to award the project to Mariner Construction as the low bidder of Street Improvement District 195 Project 2014-13 in the amount of \$701,719.07.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Award of Bids for Street Improvement District 195, Project 2014-13 (Roughriders).

Page 3 of 5

City of Mandan  
Street Improvement District 195  
Mandan Project No. 2014-13

BID FORM

Bid Opening: 4/29/2014

Bid Item	Spec	TYPE	QUANTITY	UNIT	UNIT PRICE	TOTAL COST
1	304-6.1B	AC STABILIZED BASE (CLASS B)	1,367	TON	\$ 110.33	\$ 150,821.11
2	401-6.1B	AC LEVELING COURSE (CLASS B)	12	TON	\$ 140.00	\$ 1,680.00
3	401-6.2B	AC SURFACE COURSE (CLASS B)	1,857	TON	\$ 110.33	\$ 204,882.21
4	402-4.2	BITUMINOUS TACK COAT	820	GAL	\$ 4.00	\$ 3,280.00
5	403-4.1	BITUMINOUS SEAL COAT	20,815	SY	\$ 2.26	\$ 47,041.90
6	403-4.2	BLOTTER SAND	43	TON	\$ 45.00	\$ 1,935.00
7	404-4.1	MILLING PAVEMENT SURFACE	19,270	SY	\$ 4.50	\$ 86,715.00
8	406-4.1	ASPHALT REMOVAL	194	SY	\$ 18.00	\$ 3,492.00
9	602-4.1	6-INCH CONCRETE DRIVEWAY	1,000	SF	\$ 6.60	\$ 6,600.00
10	602-4.1	6-INCH CONCRETE VALLEY GUTTER	1,750	SF	\$ 6.60	\$ 11,550.00
11	603-5.1	CURB & GUTTER REPAIR	820	LF	\$ 38.50	\$ 31,570.00
12	1202-4.2	SEEDING CLASS II	182	SY	\$ 60.50	\$ 11,011.00
13	1206-4.1	ADJUST MANHOLE CASTING - ASPHALT PAVEMENT	12	EA	\$ 800.00	\$ 9,600.00
14	1206-4.11	ADJUST VALVE BOX - ASPHALT PAVEMENT	0	EA	\$ 800.00	\$
15	1211-4.B	TRAFFIC CONTROL	1	LS	\$ 15,000.00	\$ 15,000.00
16	SP2	FABRIC PETROMAT OR APPROVED EQUAL	4,412	SY	\$ 6.00	\$ 26,472.00
17	SP3	AC TACK	993	GAL	\$ 6.00	\$ 5,958.00
18	SP4	CONCRETE REMOVAL ALL THICKNESSES	111	SY	\$ 14.85	\$ 1,648.35
19	SP5	BLENDED BASE COURSE	16,169	SY	\$ 5.10	\$ 82,461.90
<b>TOTAL BID</b>						<b>\$ 701,719.07</b>

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Award of Bids for Street Improvement District 195, Project 2014-13  
(Roughriders).

Page 4 of 5



Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Award of Bids for Street Improvement District 195, Project 2014-13  
(Roughriders).

Page 5 of 5

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**RESOLUTION**  
**APPROVING CONTRACT AND CONTRACTOR'S BOND FOR**  
**STREET IMPROVEMENT DISTRICT NO. 195**  
(Project No. 2014-13)

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

1. It is hereby found and determined that this Board has heretofore caused Notice for Advertisement for Bids to be made for an improvement Street Improvement District No. 195 of said City, and has duly and publicly opened and considered said bids received pursuant to said Notice.
2. Said improvement is hereby ordered to be constructed in accordance with the plans and specifications therefore as heretofore adopted by this Board pursuant to a resolution duly adopted by this Board.
3. It is hereby found and determined that the lowest responsible bidder for various categories of the work, material and skill required for said improvement is Northern Improvement Company whose bid provides for the construction of said improvement at a total base price of \$701,719.07.
4. The President of the Board of City Commissioners of the City of Mandan and City Auditor are hereby authorized and directed to make and enter into a contract with said bidder on the part of the City, in the form prescribed by Sections 40-22-35 and 40-22-35, N.D.C.C. as amended, provided that said bidder shall within ten (10) days from this date execute said contract and a construction bond conditioned in accordance with the provisions of Sections 40-22-30 and 40-22-32 of said Code.

Dated this 6<sup>th</sup> day of May, 2014.

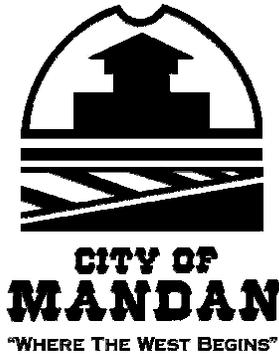
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Arlyn Van Beek, President of the  
Board of City Commissioners

Attest:

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James Neubauer,  
City Administrator



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 5, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Planning & Engineering Director  
**SUBJECT:** Consider bids for Street Improvement District No. 186, Project 2013-22(Macedonia Hills 1st Addition).

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**STATEMENT/PURPOSE:** This is a review of bids for Street Improvement District No. 186, Project 2013-22 (Macedonia Hills 1st Addition).

**BACKGROUND/ALTERNATIVES:** Bids were received on February 11, 2014 for the project. There were two bids for this project and Mariner Construction was the low bidder. The bid amount was \$716,513.05. The Engineer's estimate was \$671,330.00. The bid is 6.7% higher than the Engineer's estimate.

As an obligee of the performance bond for the Macedonia Hills water and sewer project, since we, the City, would own that infrastructure after installation, we had been contacted by the surety for the water and sewer project that agreed to provide the required performance bond for it. In those conversations, the surety had relayed their objections to how the payments for the water and sewer project have been handled, and that it is not in line with their indemnity agreement with Manitou Construction.

Given those uncertainties, the engineering department, after consulting with our city attorney, thought it would be prudent to ask Mariner Construction to hold their bid for street improvements until the contractual issues with the water and sewer project had been worked out as not to approve a project that could not be performed if water and sewer didn't get installed. Mariner Construction agreed to that for a finite period of time, until May 8<sup>th</sup>.

We were notified that the original water and sewer contractor for this development would not be able to finish the project due to their own financial circumstances and recently the developer has found a contractor that can, Cimarron Construction, Inc. Given that a new

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider bids for Street Improvement District No. 186, Project 2013-22(Macedonia Hills 1st Addition).

Page 2 of 6

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contractor is in place to finish the water and sewer we believe that awarding the Street Improvement District contract for this development is warranted.

ATTACHMENTS:

1. Bid Tabulation
2. District Map
3. Mariner Construction Agreement to Hold Bid Price
4. Resolution Approving Contract and Contractors Bond

FISCAL IMPACT: The Project would be paid for by special assessments from the benefiting properties within the District. The construction cost of the project is \$716,513.05 plus the engineering and administrative cost of \$250,779.57 totaling \$967,292.62. The special assessments will be assessed per lots. There are 44 lots in this area that will be receiving approximately \$21,983.92 each. Lots in this area are zoned R3.2 which allows single family and two family dwellings on each lot. The lots that are developed with 2 units will be splitting the cost of the lot at \$10,991.96 each.

STAFF IMPACT: Minimal

LEGAL REVIEW: All documentation has been forwarded to the City attorney.

RECOMMENDATION: I would recommend awarding the project to Mariner Construction and approving the Resolution Approving Contract and Contractors Bond.

SUGGESTED MOTION: I would move to approve awarding Street Improvement District 186 Project 2013-22 to Mariner Construction in the amount of \$716,513.05 and approve the Resolution Approving Contract and Contractors Bond.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider bids for Street Improvement District No. 186, Project 2013-22(Macedonia Hills 1st Addition).

Page 3 of 6

BID OPENING FEBRUARY 11, 2014 4:00 P.M.  
 MACEDONIA HILLS FIRST ADDITION  
 STREET IMP. DISTRICT NO. 186  
 CITY PROJECT NO. 2013-22  
 BID TABULATION

SPEC NO.	DESCRIPTION	UNIT	QUAN.	ENGINEER'S ESTIMATE		MARINER CONSTRUCTION		NORTHERN IMPROVEMENT	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
203-3-1	WATERING	M GAL	15	\$ 22.00	\$ 330.00	\$ 40.00	\$ 600.00	\$ 16.80	\$ 252.00
205-3-3	WEIGHTED FIBER ROLL	LF	100	\$ 12.00	\$ 1,200.00	\$ 20.00	\$ 2,000.00	\$ 6.60	\$ 660.00
302-4-1	STABILIZED GRAVEL BASE	TON	3550	\$ 23.50	\$ 83,425.00	\$ 28.40	\$ 100,820.00	\$ 31.00	\$ 110,050.00
304-6-1B	AC STABILIZED BASE (CLASS B 1/2-1/2")	TON	1654	\$ 105.00	\$ 173,670.00	\$ 111.10	\$ 183,759.40	\$ 116.70	\$ 193,021.80
401-6-2B	AC SURFACE COURSE (CLASS B)2"	TON	1323	\$ 105.00	\$ 138,915.00	\$ 111.10	\$ 146,985.30	\$ 116.70	\$ 154,394.10
402-4-2	BITUMINOUS TACK COAT	GAL	558	\$ 2.50	\$ 1,395.00	\$ 2.75	\$ 1,534.50	\$ 2.30	\$ 1,283.40
403-4-1	BITUMINOUS SEAL COAT	SY	11136	\$ 3.00	\$ 33,408.00	\$ 2.77	\$ 30,846.72	\$ 2.50	\$ 27,840.00
602-4-1	6" CONCRETE	SF	1946	\$ 7.50	\$ 14,595.00	\$ 5.53	\$ 10,761.38	\$ 7.20	\$ 14,011.20
603-5-3	STANDARD CURB & GUTTER	LF	4866	\$ 19.00	\$ 92,454.00	\$ 15.70	\$ 76,396.20	\$ 18.20	\$ 88,561.20
802-4-5	24" RCP STORM SEWER PIPE	LF	415	\$ 80.00	\$ 33,200.00	\$ 110.00	\$ 45,650.00	\$ 115.00	\$ 47,725.00
801-4-60	BEDDING MATERIAL	TON	135	\$ 18.00	\$ 2,430.00	\$ -	\$ -	\$ 23.00	\$ 3,105.00
802-4-55	24" RCP FLARED END SECTION	EA	2	\$ 1,500.00	\$ 3,000.00	\$ 3,300.00	\$ 6,600.00	\$ 3,450.00	\$ 6,900.00
1001-2-8	STREET LIGHT CONTROL PANEL	EA	1	\$ 10,000.00	\$ 10,000.00	\$ 6,710.00	\$ 6,710.00	\$ 7,015.00	\$ 7,015.00
1001-4-11	2" CONDUIT (LAID)	LF	2576	\$ 2.00	\$ 5,152.00	\$ 1.49	\$ 3,838.24	\$ 1.60	\$ 4,121.60
1001-4-1	TYPE B STREET LIGHT UNIT	EA	13	\$ 2,500.00	\$ 32,500.00	\$ 4,097.50	\$ 53,267.50	\$ 4,283.80	\$ 55,689.40
1001-4-12	TRENCHING 27" DEEP	LF	2576	\$ 2.25	\$ 5,796.00	\$ 3.03	\$ 7,805.28	\$ 3.20	\$ 8,243.20
1001-4-20	JUNCTION BOXES	EA	2	\$ 750.00	\$ 1,500.00	\$ 1,045.00	\$ 2,090.00	\$ 1,092.50	\$ 2,185.00
1001-4-21	2-NO. 4 CONDUCTORS	LF	350	\$ 5.00	\$ 1,750.00	\$ 3.63	\$ 1,270.50	\$ 3.80	\$ 1,330.00
1001-4-22	3-NO. 4 CONDUCTORS	LF	1740	\$ 7.00	\$ 12,180.00	\$ 5.39	\$ 9,378.60	\$ 5.60	\$ 9,744.00
1001-4-25	NO. 6 COPPER GROUND	LF	2090	\$ 2.00	\$ 4,180.00	\$ 1.16	\$ 2,424.40	\$ 1.20	\$ 2,508.00
1205-4-2	60" CONCRETE MANHOLE (STORM)	EA	3	\$ -	\$ -	\$ 0.01	\$ 0.03	\$ 0.01	\$ 0.03
1205-4-9	TYPE 108" INLET	EA	3	\$ 4,900.00	\$ 14,700.00	\$ 6,325.00	\$ 18,975.00	\$ 6,612.50	\$ 19,837.50
1206-4-7	ADJUST INLET CASTING ALL SIZES	EA	3	\$ 350.00	\$ 1,050.00	\$ 50.00	\$ 150.00	\$ 63.30	\$ 189.90
SP6	STOP SIGN & STREET NAME SIGN ON 1 POST	EA	6	\$ 500.00	\$ 3,000.00	\$ 350.00	\$ 2,100.00	\$ 501.40	\$ 3,008.40
SP7	ROAD CLOSED, BARRICADE	EA	3	\$ 500.00	\$ 1,500.00	\$ 850.00	\$ 2,550.00	\$ 713.00	\$ 2,139.00
				\$ -	\$ 671,330.00		\$ 716,513.05		\$ 763,814.73

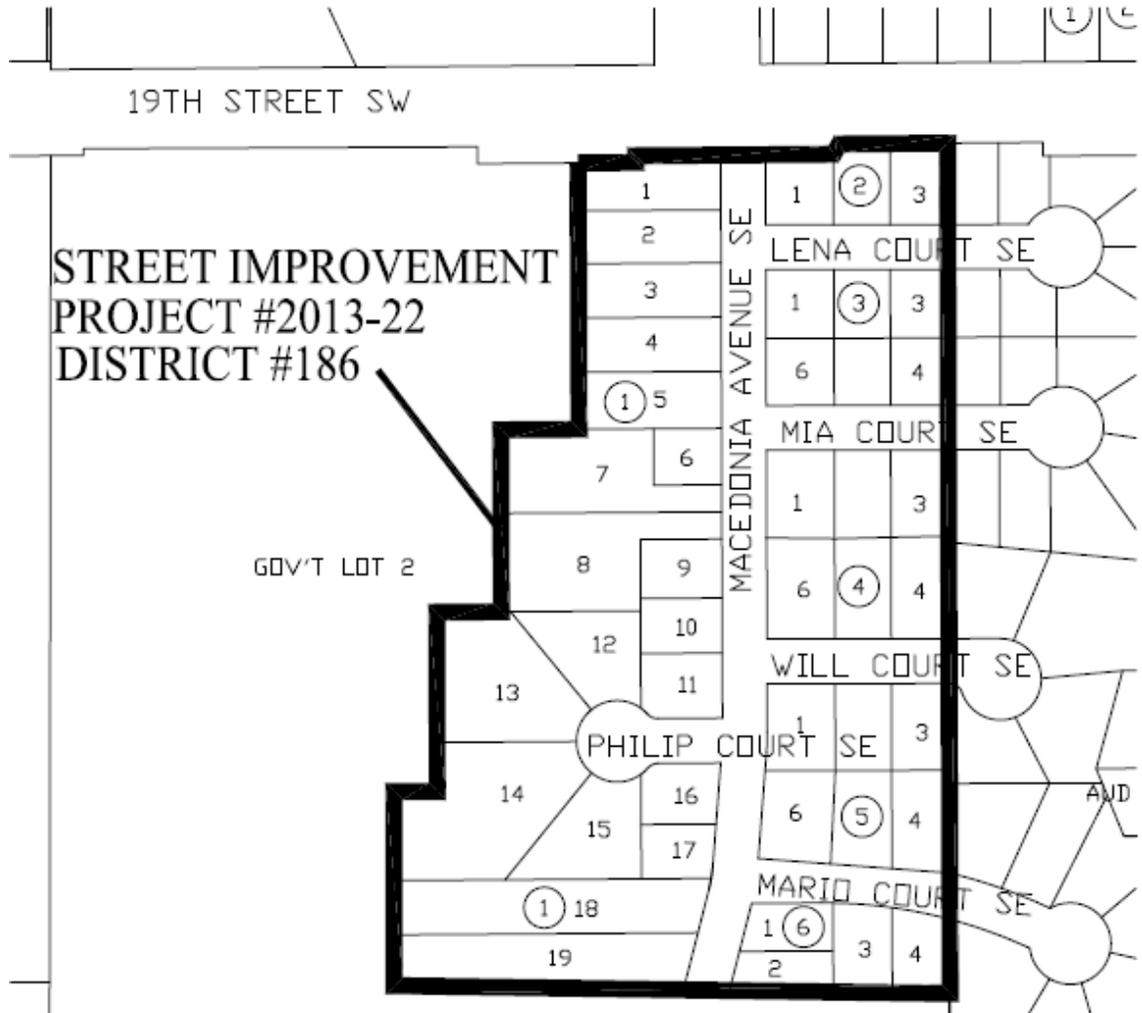
Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider bids for Street Improvement District No. 186, Project 2013-22(Macedonia Hills 1st Addition).

Page 4 of 6



Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider bids for Street Improvement District No. 186, Project 2013-22(Macedonia Hills 1st Addition).

Page 5 of 6



"WHERE THE WEST BEGINS"

# CITY OF MANDAN

MANDAN CITY HALL - 205 2nd Avenue NW  
MANDAN, NORTH DAKOTA 58554

CITY DEPARTMENTS	
ADMINISTRATION	667-3215
ASSESSING/BUILDING INSPECTION	667-3230
ENGINEER/PLANNING	667-3225
FINANCE	667-3213
FIRE	667-3288
PERSONNEL	667-3217
POLICE	667-3250
PUBLIC WORKS	667-3240
SPECIAL ASSESSMENTS	667-3211
WASTE WATER PLANT	667-3278
WATER BILLING	667-3219
FAX	667-3223

March 5, 2014

Mariner Construction  
1771 W. Cavalry Drive  
Bismarck, ND 58504

Re: Street Improvement District 186 Project No. 2013-22  
(Macedonia Hills 1<sup>st</sup> Addition)

Dear Owner:

The City of Mandan is requesting that you sign and date below acknowledging that you are holding your bid price of \$716,513.05 on Street Improvement District 186 Project 2013-22 until May 8<sup>th</sup>, 2014.

Sincerely,

Justin Froseth  
City of Mandan Engineering & Planning Director

Mariner Construction representative to fill in below.

Print Name

Nick Mariner

Title

Project Estimator

Sign Name

[Handwritten Signature]

Date

5/6/2014

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider bids for Street Improvement District No. 186, Project 2013-22(Macedonia Hills 1st Addition).

Page 6 of 6

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**RESOLUTION**  
**APPROVING CONTRACT AND CONTRACTOR'S BOND FOR**  
**STREET IMPROVEMENT DISTRICT NO. 186**  
(Project No. 2013-22)

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

1. It is hereby found and determined that this Board has heretofore caused Notice for Advertisement for Bids to be made for an improvement Street Improvement District No. 186 of said City, and has duly and publicly opened and considered said bids received pursuant to said Notice.
2. Said improvement is hereby ordered to be constructed in accordance with the plans and specifications therefore as heretofore adopted by this Board pursuant to a resolution duly adopted by this Board.
3. It is hereby found and determined that the lowest responsible bidder for various categories of the work, material and skill required for said improvement is Mariner Construction whose bid provides for the construction of said improvement at a total estimated base price of \$716,513.05.
4. The President of the Board of City Commissioners of the City of Mandan and City Auditor are hereby authorized and directed to make and enter into a contract with said bidder on the part of the City, in the form prescribed by Sections 40-22-35 and 40-22-35, N.D.C.C. as amended, provided that said bidder shall within ten (10) days from this date execute said contract and a construction bond conditioned in accordance with the provisions of Sections 40-22-30 and 40-22-32 of said Code.

Dated this 6<sup>th</sup> day of May, 2014

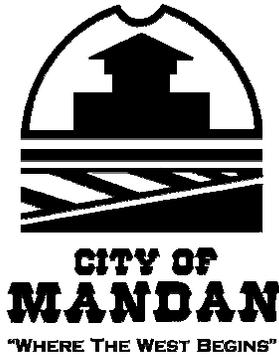
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Arlyn Van Beek, President of the  
Board of City Commissioners

Attest:

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James Neubauer,  
City Administrator



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker  
**SUBJECT:** Acting as the Board of Adjustment, consider for approval addition of Telecommunication Facilities to the Utility Service Group Zoning Category

---

**STATEMENT/PURPOSE:** Telecommunication facilities are defined in the code but not listed in any use group or zoning district as a permitted use. The intent of this action is to add this category as a permitted use.

**BACKGROUND/ALTERNATIVES:** The code defines a Telecommunication Facility as follows:

*"Telecommunication Facilities" means facilities which include all devices, equipment, machinery, structures or supporting elements necessary to produce non-ionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message. Facilities may be self-supporting, guyed, or mounted on poles, light posts, power poles, buildings or other structures. This category shall also include interconnection translators, connections from over-the-air to cable, fiber optic, or other landline transmission system. Examples include broadcast towers, attached telecommunication facilities, telecommunication support towers, point-to-point microwave towers, and amateur radio facilities that are owned and operated by a federally-licensed amateur radio station operator.*

There is a need to recognize that location of telecommunications facilities within the city is necessary. In addition to providing a private consumer service, these facilities have become an integral part of the emergency services network. Gaps in the system present a safety and security concern.

Without formally recognizing this as a permitted use, there will be unnecessary impediments placed in the path of providing what has become an integral part of the communications environment.

The code provides a procedure for adding a use:

*Section 21-06-02.4. Allocation of Unlisted Uses. Upon application of a property owner or upon a request of the building inspector or other administrative official or of any official, agency or board of the city, or on its own initiative, the board of adjustment shall add to any use group established by Section 21-03-07 of this title, any other similar use which conforms to the conditions set forth in the special finding required by this subsection as listed below:*

- a. Such use is not listed in any other use group nor is it listed individually as a permitted use.*
- b. Such use is more appropriate in the use group to which it is added than in any other use group.*
- c. Such use conforms to the basic characteristics of the use group to which it is added as set forth in the general description of the use group.*
- d. Such use does not adversely affect the character of any of the districts in which the use group to which it is added is permitted.*
- e. Such use is not likely to create any more traffic than the other uses listed in the use group to which it is added, nor does it create any more offensive noise, vibration, dust, heat, smoke, odor, glare, health or safety hazard or other objectionable influence than the minimum amount normally resulting from the other uses listed in the use group to which it is added.*
- f. When any use has been added to any use group in accordance with procedure set forth in this section, such use shall thereafter be deemed to be permitted in any district in which such use group is permitted, and to be prohibited from any district in which such use group is prohibited. Such use shall be added to the use group in the published text of this title at the first convenient opportunity, with a notation indicating that the addition was made in accordance with this section.*

The Utility Service Group currently consists of the following uses:

- Electric transformer station, but not a steam generating plant;
- Electric transmission line;
- Sewage pumping station;
- Water pumping station; and
- Water reservoir.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Add Telecommunication Facilities to the Utility Service Group

Page 3 of 3

---

Adding Telecommunication Facilities to this group is appropriate.

- These are not occupied structures. A telecommunication facility is not an occupied structure.
- The current list includes electric transmission line but not telephone or cable service line even though they are ubiquitous throughout the city and normally mounted on the same poles. Telecommunication facility includes land lines in the definition so this omission would be solved.
- A telecommunications facility is less intrusive than a water or sewage pumping station that can generate noise from pumps. There is typically a constant hum from an electric transformer station. Most telecommunication facilities are virtually silent.

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

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

RECOMMENDATION: The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of this request. Staff recommends approval of this request.

SUGGESTED MOTION: I move to add Telecommunication Facilities to the Utility Service Group.



# CITY OF MANDAN

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

CITY DEPARTMENTS

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

## National Kids to Parks Day: Saturday, May 17, 2014

### A Proclamation

WHEREAS, May 17<sup>th</sup>, 2014 is the fourth National Kids to Parks Day organized and launched by the National Park Trust; and

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

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

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

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

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

NOW THEREFORE, I, Arlyn Van Beek, Mayor of Mandan, ND do hereby proclaim to participate in National Kids to Parks Day. We urge residents of Mandan to make time May 17<sup>th</sup>, 2014 to take the children in their lives to a neighborhood, state or national park.

Dated this 6th day of May, 2014

\_\_\_\_\_  
Arlyn Van Beek, President  
Mandan Board of City Commissioners

Attest:

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



Consent No. 2ii

# CITY OF MANDAN

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

CITY DEPARTMENTS	
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ENGINEER/PLANNING & ZONING	667-3225
FINANCE	667-3213
FIRE	667-3200
HUMAN RESOURCES	667-3217
LANDFILL	667-0104
MUNICIPAL COURT	667-3270
POLICE	667-3455
PUBLIC WORKS	667-3240
WASTEWATER TREATMENT	667-3278
SPECIAL ASSESSMENTS	667-3271
UTILITY BILLING	667-3219
WATER TREATMENT	667-3275

## PROCLAMATION

### Mandan Dacotah Lions Club STRIDES: Lions Walk for Diabetes Awareness Saturday, May 18, 2014

*WHEREAS*, the **Mandan Dacotah Lions Club** is working to increase diabetes awareness, by sponsoring “STRIDES: Lions Walk for Diabetes Awareness” on **Saturday, May 18**; and

*WHEREAS*, the **Mandan Dacotah Lions Club**, through “STRIDES” is participating in an international activity with Lions clubs throughout the world; and

*WHEREAS*, the **Mandan Dacotah Lions Club** is keeping with the challenge Helen Keller issued to the association in 1925, to become “knights of the blind in the crusade against darkness;” and

*WHEREAS*, the **Mandan Dacotah Lions Club**, established in **2004**, is composed of men and women volunteers who dedicate their time to the betterment of our community and aiding those in need; and

*WHEREAS*, the **Mandan Dacotah Lions Club** is a member of Lions Clubs International, the world’s largest service club organization with 1.35 million members in 45,000 clubs in 205 countries and geographical areas:

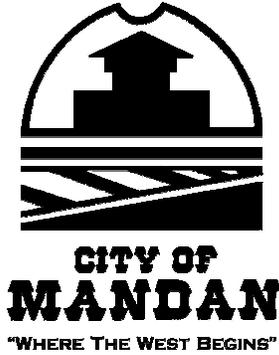
*NOW THEREFORE*, I, **Mayor Arlyn Van Beek**, of the **City of Mandan, USA**, in recognition of this important event sponsored by the **Mandan Dacotah Lions Club**, do hereby proclaim **Saturday, May 18, 2014** as “STRIDES: Lions Walk for Diabetes Awareness Day.”

Signed this 6<sup>th</sup> day of May, in the year 2014.

\_\_\_\_\_  
Arlyn Van Beek, President  
Board of City Commissioners

Attest:

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



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 2, 2014  
**SUBMITTING DEPARTMENT:** Planning and Engineering  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth  
**SUBJECT:** Safe Routes to School Bid Update

---

**STATEMENT/PURPOSE:** To update the board on low bids received for the Safe Routes to School sidewalk project along the east property line of the new Red Trail Elementary School.

**BACKGROUND/ALTERNATIVES:** With the construction of a new elementary school in northwest Mandan, projected to open in the fall of 2014, there are concerns with youngsters crossing Old Red Trail. To address this, an application was submitted to the NDDOT's Safe Routes to School grant program. The project was successful in obtaining funding.

The attached letter is a summary of the low bid received. The City of Mandan is a sponsoring agency for this project and as such has no cost share participation requirements.

**ATTACHMENTS:** 1) NDDOT Bid Results Letter

**FISCAL IMPACT:** Mandan Public Schools will be funding any portion of the project not covered by the SRTS grant.

**STAFF IMPACT:** Minimal

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

**RECOMMENDATION:** No recommendation, for information only.

**SUGGESTED MOTION:** No motion necessary.



## North Dakota Department of Transportation

Grant Levi, P.E.  
*Director*

Jack Dalrymple  
*Governor*

April 15, 2014

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

SRTS PROJECT: SRU-1-988(036)047, PCN 20348 – MANDAN FROM 37<sup>TH</sup> AVE NW TO 48<sup>TH</sup> ST NW

Bids for the construction on the above noted project were taken at our bid opening of April 11, 2014. A copy of the Contract Detail Estimate and Abstract of Bids are enclosed.

The low bid for Concrete Sidewalks, Storm Drain, Flashing Beacon, Signing, Marking, & Incidentals was submitted by Concrete Services, LLC of Bismarck, ND in the amount of \$101,607.77. According to the agreement with the City of Mandan, the City's share is estimated to be \$0. Federal Funds obligated for this project shall not exceed 100 percent of the total eligible project cost up to a maximum of \$184,800. The balance of the project cost is the obligation of the City.

The Department will review the low bidder's proposal to assure that the Disadvantaged Business Enterprise Program requirements have been met. Upon review of the contractor's Disadvantaged Business Enterprise Program, the Department will advise you whether this project may be awarded. The Department's awards meeting is tentatively scheduled for May 1, 2014.

Questions should be addressed to the Construction Services Division at (701)328-2566.

A handwritten signature in black ink, appearing to read "Cal J. Gendreau".

CAL J. GENDREAU, P.E. - CONSTRUCTION SERVICES ENGINEER

80/cjg/lp  
Enclosure



"WHERE THE WEST BEGINS"

# Board of City Commissioners

## Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 17, 2014  
**SUBMITTING DEPARTMENT:** Assessing Dept.  
**DEPARTMENT DIRECTOR:** Shirley Shaw, City Assessor  
**PRESENTER:** Shirley Shaw, City Assessor  
**SUBJECT:** Correction to be made to reflect accurate vacant lot value in equalization to other like properties

---

**STATEMENT/PURPOSE:** City assessor requests to correct the accurate vacant lot value in equalization to other like properties.

**BACKGROUND/ALTERNATIVES:** City Assessor is requesting to correct the accurate vacant lot value in equalization to other like properties due to the reassessment of vacant land for 2013.

The land value was assessed at \$813,200 and should be \$261,400; a difference of \$551,800.

This parcel is also known as Parcel # 1425 at 2700 46<sup>th</sup> Ave SE on Lot 5, Blk. 1, West Bay Estates 2<sup>nd</sup> Replat.

**ATTACHMENTS:** Abatement application

**FISCAL IMPACT:** \$ 9137.00

**STAFF IMPACT:** N/A

**LEGAL REVIEW:** N/A

**RECOMMENDATION:** Approval to correct the accurate vacant lot value in equalization to other like properties for 2013.

**SUGGESTED MOTION:** A motion to approve the correction of the accurate vacant lot value in equalization to other like properties for 2013.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Correction to be made to reflect accurate vacant lot value in equalization to other like properties

Page 2 of 3

Application For Abatement And Settlement Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1st of the year following the year in which the tax becomes delinquent.

State of North Dakota

County of Morton

Name Gas U up LLC

Address 2700 46 AVE SE

Legal Description of the property involved in this application

Lot: 5

Block: 1

WEST BAY EST 2ND-REPLAT

Property ID Number

City 1425

County 65-5393740

Total true and full value of the property described above for the year 2013 is:

Land \$813,200
Improvements \$0
Total (1) \$813,200

Total true and full value of the property described above for the year 2013 should be:

Land \$261,400
Improvements \$0
Total (2) \$261,400

The difference of \$551,800 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
X 2. Residential or commercial property's true and full value exceeds the market value
3. Error in property description, entering the description, or extending the tax
4. Nonexisting improvement assessed
5. Complainant or property is exempt from taxation (Attach a copy of Application for Property Tax Exemption)
6. Duplicate assessment
7. Property improvement was damaged by fire, flood or tornado (see N.D.C.C. § 57-23-04(1)(g))
8. Error in noting payment of taxes, taxes erroneously paid
9. Property qualifies for Homestead Credit According to N D C C. § 57-02-08.1 (Attach a copy of Homestead Credit Application)
10. Other (Explain)

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go to question #5.

1. Purchase price of property: \$ \_\_\_\_\_ Date of Purchase: \_\_\_\_\_
Terms: Cash \_\_\_\_\_ Contract \_\_\_\_\_ Trade \_\_\_\_\_ Other (explain) \_\_\_\_\_
Was there personal property involved in the purchase price? \_\_\_\_\_ Estimated value: \$ \_\_\_\_\_
2. Has the property been offered for sale on the open market? \_\_\_\_\_ If yes, how long? \_\_\_\_\_
Asking price: \$ \_\_\_\_\_ Terms of sale: \_\_\_\_\_
3. The property was independently appraised: \_\_\_\_\_ Purpose of appraisal: \_\_\_\_\_
Market value estimate: \$ \_\_\_\_\_
Appraisal was made by whom? \_\_\_\_\_
4. The applicant's estimate of market value of the property involved in this application is \$ \_\_\_\_\_
5. The estimated agricultural productive value of this property is excessive because of the following condition(s): \_\_\_\_\_

The Applicant asks that CORRECTIONS BE MADE TO REFLECT ACCURATE VACANT LOT VALUE IN EQUALIZATION TO OTHER LIKE PROPERTIES. for 2013.

By filing this application, I consent to an inspection of the above-described property by an authorized assessment official for the purpose of making an appraisal of the property. I understand the official will give me reasonable notification of the inspection. See N.D.C.C. § 57-23-05.1

I declare under the penalties of N.D.C.C. § 12-1-11-02, which provides for a Class A misdemeanor for making a false statement in a government matter, that this application is, to the best of my knowledge and belief, a true and correct application.

Signature of Preparer (if other than applicant) \_\_\_\_\_ Date \_\_\_\_\_ Signature of Applicant \_\_\_\_\_ Date 4/16/14

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Correction to be made to reflect accurate vacant lot value in equalization to other like properties

Page 3 of 3

4/16/14  
AS1057

Mandan Assessing Dept  
Property Data Sheet

Page 1

GAS U UP LLC  
450 12 ST W  
DICKINSON ND 58601

City Parcel No. 01425  
County No. 65-005393745  
Assessment Year 2014

Property Address: 2700 46 AVE SE

Property Type: VACANT

Legal Description  
LESS AUD LOT A OF LOT 5

Lot 5 Block 1 Addition 0312 WEST BAY EST 2ND-REPLAT

-----  
**Total Property - Land**

Area Factor 40 RESIDENTIAL & COMMERCIA  
Zoning CB  
Lot Width 0 Ft  
Lot Depth 0 Ft  
Lot Sq Ft 87128 SqFt  
Irregular Shape Yes  
Alley No  
Cul-De-Sac No  
Corner Yes  
Utilities Yes  
Underground Util Yes  
Street Hard Surface  
Sidewalk Yes  
Location Restricted Access  
Flood Plain Degree  
Acres 2.00  
Lot Sale Price Confidential  
Lot Sale Date 05/24/2013

Interior Walls  
Interior Finish  
Fireplace No  
Floors  
Apartment None

-----  
**Garage**

None 0 Stall with 0 SqFt  
Quality None

-----  
**Additional Data**

Electronics No  
Home Theater No  
Smart Home No  
Swimming Pool No  
Sump Pump No

-----  
**Additional Area**

-----  
**Other Area**

-----  
**Building Data**

Year Built 0  
Effective Year 0  
Basement Walls  
Condition  
Quality None  
Construction Type  
Stories None  
Roof Cover  
Roof Type  
Heating Fuel  
Heating Type  
Air Conditioning None  
Flr Tot Rms Bed Bath  
Tot Finished Area 0 SqFt  
Basement None  
Dining Room Area  
Kitchen Cabinets  
Built-Ins No

-----  
**Listing Date**

Listing Price 0  
Review Date

-----  
**Final App. Date**

2014 Mrkt Value 261400 Land 261400  
Bldg 0

2013 Mrkt Value 789500 Land 789500  
Bldg 0

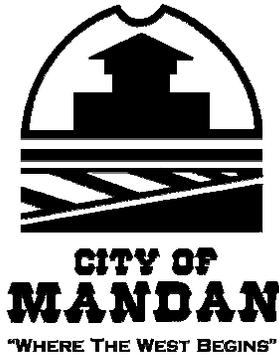
Selling Price Includes Special Assessments

Current Sale Price  
Current Sale Date

Previous Sale Price 2030403

Previous Sale Date 05/24/2013

Data Sheet Printed By: Shirley Shaw



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 1, 2014  
**SUBMITTING DEPARTMENT:** Public Works  
**DEPARTMENT DIRECTOR:** Jeff Wright  
**PRESENTER:** Jeff Wright, Director of Public Works  
**SUBJECT:** Approve sale of 1987 Sludge Truck and transfer \$2500 of total sale for new dump truck.

---

STATEMENT/PURPOSE: Approve sale of 1987 Sludge Truck through Northland Auction for \$8,665 and transfer \$2500 of total sales for new truck, box and 2-way radio.

BACKGROUND/ALTERNATIVES: The Utility Department had a used Tandem Axle truck in the 2014 Budget which included the trade in of the 1987 Sludge Truck. The Department was unable to get a trade in cost for the truck. Jim Lawler, Mandan Airport was interested, but declined to purchase the truck stating mechanical issues too great for him to handle. Our last option was to take to auction; we put it in the auction in April and received a great bid on it.

Since we were unable to trade, as approved in the 2014 Budget, we are asking for Commission approval selling the truck through public auction as stated in the Mandan Municipal Code.

ATTACHMENTS: N/A

FISCAL IMPACT: Transfer \$2500 from total sales of truck to Utility Fund 601.660.62115 for the new dump truck, box and 2-way radio.

STAFF IMPACT: N/A

LEGAL REVIEW: N/A

RECOMMENDATION: Recommend approval of sale of 1987 Sludge Truck and the transfer of \$2500 from total sale for new dump truck, box and 2-way radio.

Board of City Commissioners

Agenda Documentation

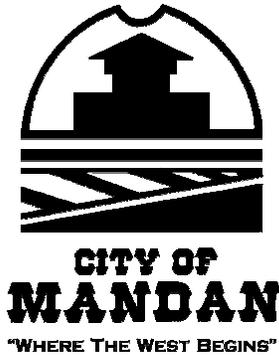
Meeting Date: May 6, 2014

Subject: Approve sale of 1987 Sludge Truck and transfer \$1960 of total sale for new dump truck.

Page 2 of 2

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SUGGESTED MOTION: Move to approve the sale of 1987 Sludge Truck and transfer \$2500 from total sale for new dump truck, box and 2-way radio.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 1, 2014  
**SUBMITTING DEPARTMENT:** Public Works Dept.  
**DEPARTMENT DIRECTOR:** Jeff Wright, Public Works Director  
**PRESENTER:** Jeff Wright  
**SUBJECT:** Create Assistant Superintendent position in the Utility Maintenance Department and advertise for position as part of the 2014 Budget.

---

STATEMENT/PURPOSE:

Request to create the position of Assistant Utility Maintenance Superintendent under Dave Auch, Superintendent.

BACKGROUND/ALTERNATIVES:

The 2014 Utility Maintenance Department Budget includes the salary for a Utility Operator I, we are in need of operators, but we are also concerned about the lack of an assistant position to fulfill chain of command issues within the Department and having the experience and Health Department Certifications within the Department needed for the City of Mandan. The Assistant Utility Maintenance Superintendent job description and salary classification have been generated.

The Utility Maintenance Department would like to see what we get for applications for the Assistant Superintendent and try to fill that position, if no interest we would re-advertise for the Utility Operator I position.

The existing staff are working on Certification and getting the experience needed to step into these supervisory positions, and we anticipate some staff being ready to fill these positions as retirement approaches for Dave Auch in the coming years.

FISCAL IMPACT:

Utility Operator I is a Grade 14 position and the Assistant Utility Maintenance Superintendent is a Grade 18 position. As of May 1, 2014 the City has saved \$11,374 in salaries by not filling the Grade 14 position. These savings will cover the Grade 18 difference for the rest of the year.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Create Assistant Superintendent position in Utility Department and advertise for position as part of the 2014 Budget.

Page 2 of 2

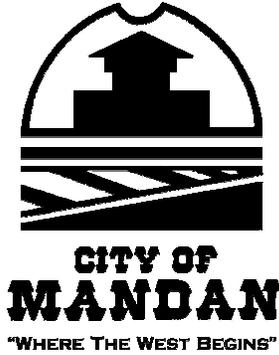
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RECOMMENDATION:

To approve the request to create the Assistant Utility Maintenance Superintendent position in Utility Maintenance Department and advertise for position as part of the 2014 Budget.

SUGGESTED MOTION:

Move to approve the request to create the Assistant Utility Maintenance Superintendent position in Utility Maintenance Department and advertise for position as part of the 2014 Budget.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker  
**SUBJECT:** Acting as the Board of Adjustment, consider for approval setback and Floor Area Ratio variances for Heart River Storage

---

**STATEMENT/PURPOSE:** This parcel is Lot 2 of Block 1 of the replat of Lot 1, Block 1 Hoovestol's Second Addition. It is located east of 6<sup>th</sup> Ave. SE behind Centre Inc. and south of the BNSF rail yard. At the recommendation of staff, the zoning was changed from CC to MB to allow the Industrial Group A use that includes Storage Building and Warehouse. A problem arose when the setback and floor area ratio requirements for MB were applied. The requirements in CC are not as restrictive.

**BACKGROUND/ALTERNATIVES:** Section 21-06-02.2 of the city code provides a procedure for granting a variance.

*Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this title in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the title would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case. No adjustment in the strict application of any provisions of this title shall be granted by the board of adjustment unless it finds:*

*a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this title, whether in violation of the provisions of the title, or not;*

*b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this title would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant;*

*c. That the grant of the variance will be in harmony with the general purposes and intent of this title, and not be injurious to the neighborhood or otherwise detrimental to the public welfare*

This is a unique parcel in that it is effectively a flag lot with no direct street access. The proposed use is appropriate for this lot and this area.

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

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

RECOMMENDATION: The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of this request. Staff recommends approval of this request.

SUGGESTED MOTION: Move to grant a setback variance to allow a building to be constructed within 5 feet of the west property line and allow a Floor Area Ratio of 0.8 for Lot 2 of Block 1 of the replat of Lot 1, Block 1 Hoovestol's Second Addition.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of setback and Floor Area Ratio variances for Heart River Storage

Page 3 of 6

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Mandan Planning and Zoning Commission Agenda Item  
 For Meeting on April 28, 2014  
 Mandan Engineering and Planning Office Report

**Heart River Storage**

**Requested Action**  
 Grant variance under current zoning or rescind zone change made in 2013

**Reason for Action**  
 FAR & setbacks restrict use of property in MB. CC requirements are not as stringent.

**Staff comments**  
 Property owner was advised to rezone property by City staff.

Application Details				
<b>Applicant</b> Toman	<b>Owner</b> Heart River Partners, Dave Mees	<b>Subdivision</b> Hoovestol's Second Addition	<b>Legal Description</b> Lot 2 of Block 1 of the replat of Lot 1, Block 1 Hoovestol's Second Addition	
<b>Location</b> 106 6 <sup>th</sup> Ave. SE		<b>Proposed Land Use</b> Storage units	<b>Parcel Size</b> 1.85 AC	<b>Number of Lots</b> 1
<b>Existing Land Use</b> vacant	<b>Adjacent Land Uses</b> Vacant, railroad, commercial & residential		<b>Current Zoning</b> MB	<b>Proposed Zoning</b> MB
<b>Fees</b>	<b>Date Paid</b>	<b>Adjacent Property Notification Sent</b>	<b>Legal Notices Published</b>	

Agency & Staff Comments	
<b>USPS</b> No Comments	<b>NDDOT</b> No Comments
<b>Morton County Assessor/Recorder/Auditor</b> No Comments	<b>Morton County Emergency Management</b> No Comments
<b>Morton County Engineer</b> No Comments	<b>Morton County Planning</b> No Comments
<b>Mor-gran-sou</b> No Comments	<b>Montana Dakota Utilities</b> No Comments
<b>School District</b> No Comments	<b>Park District</b> No Comments
<b>MPO</b> No Comments	<b>Fire Department</b> No Comments
<b>Building &amp; Assessing</b> No Comments	<b>Police Department</b> No Comments
<b>Water</b> No Comments	<b>Wastewater</b> No Comments
<b>Streets</b> No Comments	<b>Solid Waste</b> No Comments

**Engineering & Planning**

Comparison between CC and MB.

1. Lot area minimum for CC is 7,000 square feet and 10,000 square feet for MB. This property is 80,400 square feet.
2. Lot width minimum for CC is 50 feet and 75 feet for MB measured at the front building line. This lot is 205.51 feet wide at the southwest end tapering to 66.21 feet at the northeast end. Since there is no main building, the measurement would be taken at the first row of units near the southwest end of the lot since this faces the nearest public street.
3. Floor Area Ratio for CC is 1.0 and 0.3 for MB for 1 story buildings. This is the critical issue. The

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of setback and Floor Area Ratio variances for Heart River Storage

Page 5 of 6

proposed use will occupy approximately 75% of the lot area. A case could be made for recommending a variance and leaving the zoning unchanged. The BNSF railroad yard is to the north and is between 200 feet & 360 feet deep. There is a drainageway to the southeast that is approximately 150' deep. The mobile home court is beyond the drainageway to the southeast with the nearest unit another 50' beyond the drainageway. Nothing will be built in these areas. Combining the railroad, the proposed development and the drainageway encompasses more than 7 acres. The proposed buildable area on this parcel is less than 20% of a 7 acre area.

4. Front yard minimum for CC is 35 feet and is 50 feet for MB. The property does not front on a public street. It is approximately 400 feet from the public street (6<sup>th</sup> Ave. SE). The access is an easement over the adjoining property. It is functionally a "flag lot" and has a 400 foot front yard setback. No additional setback would be required. However a minimum 5 foot setback should be required to allow for some separation between the property line and the wall of any storage unit. Wherever there is a driving lane, the fire department requires a minimum of 20 feet.
5. Side yard minimum for CC is 0 unless the property abuts a public street. The side yard minimum for MB is 20% of the average lot width for both sides with a minimum for any side yard of 7.5 feet. At the widest, the lot is 205.51 feet tapering to 66.21 feet at the northeast boundary. This makes the average width 135.86 and a total requirement for both side yards of 27.2 feet. Most of the southeast side will have a minimum 20 foot wide driving lane. The northwest side will have a minimum 10 foot setback. The total minimum for the 2 side yards will be 30 feet. This proposed configuration meets the side yard requirements for MB.
6. Rear yard minimum for CC is 10 feet and is 25 feet for MB. There are storm and sanitary sewer lines crossing the northeast portion of the lot within a 60 foot wide easement. This provides a buffer to the mobile home court that is greater than the minimum rear yard setback.

Previous city staff advised the applicant to rezone the property. The proposed use is part of Industrial Group A. Industrial Group A is not allowed in CC but is allowed in MB. However, the intended use is allowed in CC as a standalone use. The FAR in the previous zone would not have created a problem. The requirement of the new zone does create a problem. The front yard setback in either zone is excessive for this parcel. These issues could have been dealt with as adjustments added to the rezoning but were not. This issue only recently came to staff's attention while reviewing the drainage plan for the parcel.

There are 2 options: 1) approve a variance for the front yard setback and the Floor Area Ratio under the current zoning; 2) rescind the zoning change and reduce the front yard setback requirement.

A proposed variance meets all the tests contained in 21-09-16.

*a. Strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider, as distinguished from a mere inconvenience, because of the particular physical surroundings, shape or topographical conditions of the specific property involved, or because of other conditions not caused by the action of the subdivider.*

This is an irregular shaped parcel uniquely situated a substantial distance from a public street. The only adjustment is to the FAR.

*b. The granting of the variance would not have the effect of reducing the traffic capacity of any major or secondary street.*

This parcel does not front on a public street so it can't reduce street capacity.

*c. The granting of the variance would be beneficial to the public safety, health or welfare, and not injurious to other property located adjacent to the proposed modification.*

This proposed use is a low intensity use ideally suited for this parcel due to the proximity of potential

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of setback and Floor Area Ratio variances for Heart River Storage

Page 6 of 6

customers. There will be no conflict with surrounding uses.

The adjacent mobile home court development and other similar developments to the south are where potential customers of this proposed project live. Providing these people with a safe and secure place to store personal goods would improve public safety by reducing the potential for burglary and improve health by reducing the potential for attracting vermin to improperly stored items within the mobile home courts.

*d. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.*

As stated above, this is a uniquely situated parcel with substantial undevelopable land bordering the parcel.

*e. The variance is consistent with provisions of the zoning ordinance, comprehensive plan and proper development of the area.*

There is market for this use within the city and thus it will provide public benefit. This proposed development will put this undeveloped parcel to use and thus provide an economic benefit.

**Engineering & Planning Recommendation**

Options are either approval of a variance or a rezoning. Variance is the simpler and shorter process. Staff recommends a variance.

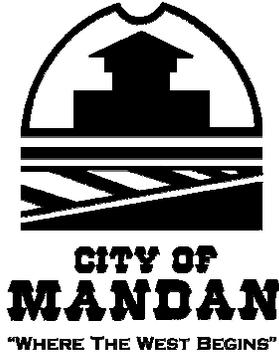
**Proposed Motion**

Option 1.

Based on staff's recommendation, move to recommend that the City Commission approve a variance to allow a Floor Area Ratio of 0.8 for single story buildings and a minimum front yard setback of 5 feet.

Option 2.

Move to recommend that the City Commission approve the rezoning back to CC and place a condition on the rezoning that the required front yard setback be reduced to 5 feet.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker  
**SUBJECT:** Consider for approval Plat for Heart Ridge Third Addition

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**STATEMENT/PURPOSE:** The area including Lot 9, Heart Ridge Addition & Lots 1-22, Heart Ridge 2<sup>nd</sup> Addition is being replatted to realign the street.

**BACKGROUND/ALTERNATIVES:**

This area is on a ridge and the topography is quite steep. The current street alignment does not allow enough room to build houses and provide yard space on one side of the street. The street location has been adjusted to equalize the available building area between the two sides of the street.

**FISCAL IMPACT:** minimal

**STAFF IMPACT:** minimal

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

**RECOMMENDATION:** The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of this request. Staff recommends approval of this request.

**SUGGESTED MOTION:** Move to approve plat of Heart Ridge Third Addition.



Mandan Planning and Zoning Commission Agenda Item  
 For Meeting on April 28, 2014  
 Mandan Engineering and Planning Office Report  
**Heart Ridge Third Addition**

Requested Action  
 replat

Reason for Action  
 Adjust building pad locations due to topography

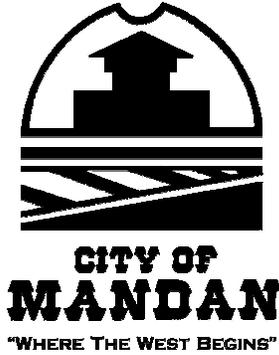
Staff comments  
 Original street location did not provide sufficient buildable area on some lots

Application Details				
<b>Applicant</b> Swenson, Hagen & Co.	<b>Owner</b> Wachter Development	<b>Subdivision</b> Heart Ridge Third Addition	<b>Legal Description</b> Lot 9, Heart Ridge Addition & Lots 1- 22, Heart Ridge 2 <sup>nd</sup> Addition	
<b>Location</b> 7 <sup>th</sup> Ave. SE & 14 <sup>th</sup> St. SE		<b>Proposed Land Use</b> Single family	<b>Parcel Size</b> 14.82 Acres	<b>Number of Lots</b> 23
<b>Existing Land Use</b> vacant	<b>Adjacent Land Uses</b> residential		<b>Current Zoning</b> R7	<b>Proposed Zoning</b> R7
<b>Fees</b>	<b>Date Paid</b>	<b>Adjacent Property Notification Sent</b>	<b>Legal Notices Published</b>	

Agency & Staff Comments	
<b>USPS</b> No Comments	<b>NDDOT</b> No Comments
<b>Morton County Assessor/Recorder/Auditor</b> No Comments	<b>Morton County Emergency Management</b> No Comments
<b>Morton County Engineer</b> No Comments	<b>Morton County Planning</b> No Comments
<b>Mor-gran-sou</b> No Comments	<b>Montana Dakota Utilities</b> No Comments
<b>School District</b> No Comments	<b>Park District</b> No Comments
<b>MPO</b> No Comments	<b>Fire Department</b> No Comments
<b>Building &amp; Assessing</b> No Comments	<b>Police Department</b> No Comments
<b>Water</b> No Comments	<b>Wastewater</b> No Comments
<b>Streets</b> No Comments	<b>Solid Waste</b> No Comments

**Engineering & Planning**  
 After initial construction it was determined that there was a bust in the topographic information and the road alignment needed to be adjusted in order to provide adequate buildable area on each lot. Some of the installed water and sewer will have to be relocated.

Engineering & Planning Recommendation
Approve as presented
Proposed Motion
Based on staff comments and hearing no objection, move to recommend approval of Heart Ridge third Addition.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker  
**SUBJECT:** Consider for approval replat of Lot 3, Block 94,  
First Northern Pacific Addition

---

STATEMENT/PURPOSE: This area is zoned R3.2 that allows duplex units. The request is to split the lot to allow individual ownership of each duplex unit.

BACKGROUND/ALTERNATIVES:

Section 21-04-02 of the City Code allows for the splitting of a duplex lot to allow individual ownership of each half of the duplex.

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

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

RECOMMENDATION: The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of this request. Staff recommends approval of this request.

SUGGESTED MOTION: Move to approve replat of Lot 3, Block 94, First Northern Pacific Addition.

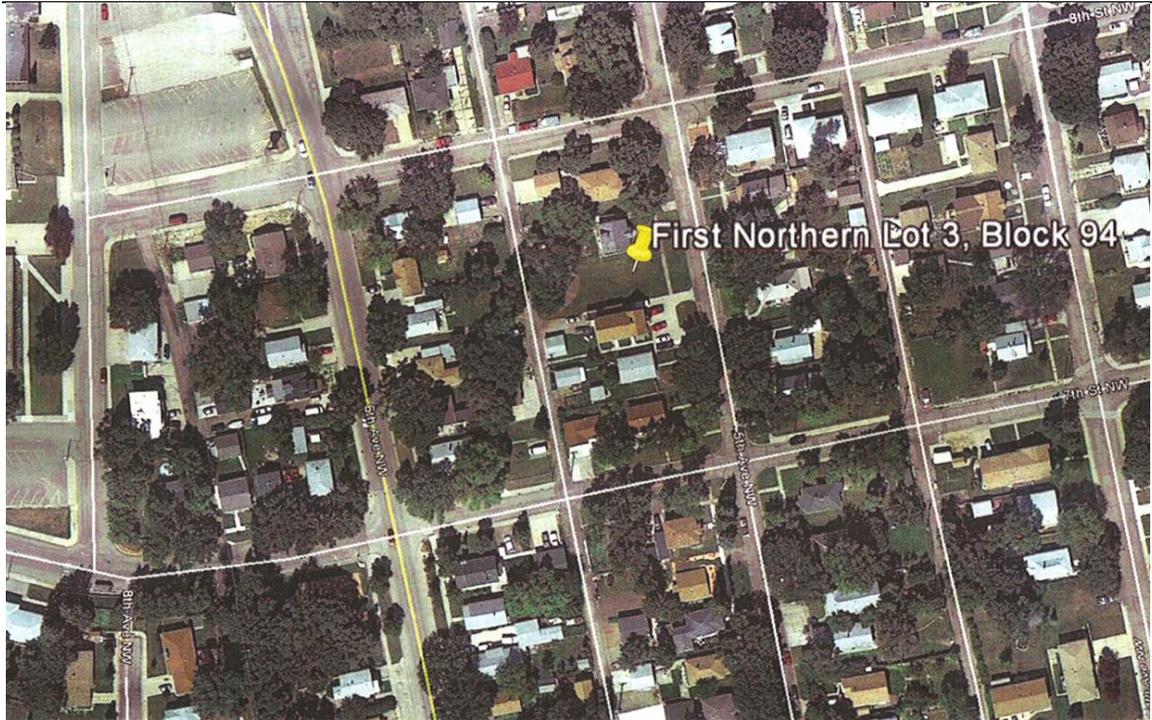
Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of replat of Lot 3, Block 94, First Northern Pacific Addition

Page 2 of 3

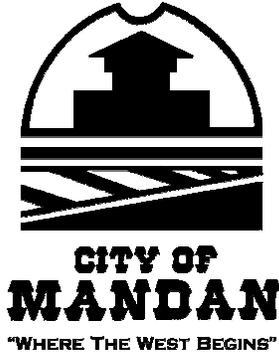


Mandan Planning and Zoning Commission Agenda Item  
 For Meeting on April 28, 2014  
 Mandan Engineering and Planning Office Report  
**First Northern Pacific Addition, Block 94, Lot 3**  
**Replat**  
 Requested Action  
 Approve replat  
 Reason for Action  
 Create lots for sale  
 Staff comments  
 Allowed within R3.2 District

Application Details					
Applicant NLC	Owner M3 Design Homes, Inc.	Subdivision First Northern Pacific Addition	Legal Description Part of the NW ¼ of Section 27, T139N, R81W		
Location 807 5 <sup>th</sup> Ave. NW		Proposed Land Use residential	Parcel Size 7,000 sf	Number of Lots 2	
Existing Land Use vacant	Adjacent Land Uses R3.2 residential		Current Zoning R3.2	Proposed Zoning R3.2	Adjacent Zoning R3.2
Fees	Date Paid	Adjacent Property Notification Sent	Legal Notices Published		

Agency & Staff Comments	
USPS No Comments	NDDOT No Comments
Morton County Assessor/Recorder/Auditor No Comments	Morton County Emergency Management No Comments
Morton County Engineer No Comments	Morton County Planning No Comments
Mor-gran-sou No Comments	Montana Dakota Utilities No Comments
School District No Comments	Park District No Comments
MPO No Comments	Fire Department No Comments
Building & Assessing No Comments	Police Department No Comments
Water No Comments	Wastewater No Comments
Streets No Comments	Solid Waste No Comments
Engineering & Planning Splitting of a lot in R3.2 so each half of a duplex can be owned separately is allowed.	

Engineering & Planning Recommendation
Staff recommends approval of the lot split.
Proposed Motion
Based on staff's recommendation and hearing no objections, move to recommend approval of the replat of Lot 3, Block 94 of First Northern Pacific Addition.



Consent No. 10

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker  
**SUBJECT:** Consider for approval Longhorn First Addition Replat

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STATEMENT/PURPOSE: This replat is located along the east side of 1806 in the extraterritorial zone. The request is to modify the arrangement of lots in the current plat.

BACKGROUND/ALTERNATIVES:

This area was originally platted in 1998 but no development has occurred.

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

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

RECOMMENDATION: The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of this request. Staff recommends approval of this request.

SUGGESTED MOTION: Move to approve Longhorn First Addition Replat.



Mandan Planning and Zoning Commission Agenda Item  
 For Meeting on April 28, 2014  
 Mandan Engineering and Planning Office Report  
**Longhorn First Addition Replat**  
 Requested Action  
 Approve replat  
 Reason for Action  
 Create lots for sale  
 Staff comments  
 Within extraterritorial zone

Application Details				
<b>Applicant</b> Toman	<b>Owner</b> Elmer & Alvina Madler	<b>Subdivision</b> Longhorn First Addition	<b>Legal Description</b> Part of the NW ¼ of the NW ¼ of Section 10, T139N, R81W	
<b>Location</b> 1806 & 37 <sup>th</sup> St.		<b>Proposed Land Use</b> residential	<b>Parcel Size</b> 17.59 Acres	<b>Number of Lots</b> 6
<b>Existing Land Use</b> vacant	<b>Adjacent Land Uses</b> Vacant & residential		<b>Current Zoning</b> County Residential	<b>Proposed Zoning</b> R7
<b>Adjacent Zoning</b> County Ag. & Res.		<b>Fees</b>	<b>Date Paid</b>	<b>Adjacent Property Notification Sent</b>
<b>Legal Notices Published</b>				

Agency & Staff Comments	
<b>USPS</b>	<b>NDDOT</b>
No Comments	No Comments
<b>Morton County Assessor/Recorder/Auditor</b>	<b>Morton County Emergency Management</b>
No Comments	No Comments
<b>Morton County Engineer</b>	<b>Morton County Planning</b>
No Comments	No Comments
<b>Mor-gran-sou</b>	<b>Montana Dakota Utilities</b>
No Comments	No Comments
<b>School District</b>	<b>Park District</b>
No Comments	No Comments
<b>MPO</b>	<b>Fire Department</b>
No Comments	No Comments
<b>Building &amp; Assessing</b>	<b>Police Department</b>
No Comments	No Comments
<b>Water</b>	<b>Wastewater</b>
No Comments	No Comments
<b>Streets</b>	<b>Solid Waste</b>
No Comments	No Comments

**Engineering & Planning**

This was originally platted in 1998. No development has occurred. Multiple electric transmission lines cross the property. No city services are available to the site. This area is developing with large lot rural subdivisions.

Engineering & Planning Recommendation
Recommend approval.
Proposed Motion
Hearing no objections and based on staff recommendation, move to recommend approval of Longhorn First Addition replat.

Consent No. 11i



GAMING SITE AUTHORIZATION  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02-2011)

G - \_\_\_\_\_ (\_\_\_\_\_)\_\_\_\_\_  
Site License Number  
(Attorney General Use Only)

Fort Abraham Lincoln Foundation is hereby authorized to conduct games of  
(Full, Legal Name of Gaming Organization)

chance under the license granted by the Attorney General of the State of North Dakota at the following  
location: Midway Lanes the address of which is:

3327 Memorial Hwy Mandan 58554 Morton  
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning 7/1/14 Ending 6/30/15

Specific location where games of chance will be conducted and played at the site (required):  
Whole Bar area excluding the bathrooms

Number of twenty-one tables (required) (if zero, enter "0") : 2

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)  
1. Days of week of gaming operations \_\_\_\_\_  
2. Hours of gaming \_\_\_\_\_  
3. List each specific game type prohibited \_\_\_\_\_

\_\_\_\_\_  
Attorney General Date Signature of City/County Auditor Date

PRINT Name / Official Position of person signing above

**INSTRUCTIONS:**

- 1. City/County Auditors - Retain a **copy** of the Site Authorization for your files.
- 2. City/County Auditors - Return the **original** Site Authorization form to the Organization.
- 3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

**RETURN ALL DOCUMENTS TO:**

Office of Attorney General  
Licensing Section  
600 E Boulevard Ave, Dept. 125  
Bismarck, ND 58505-0040  
Telephone: 701-328-2329 OR 800-326-9240



**RENTAL AGREEMENT**  
 OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9413 (Rev. 08-2013)

License Number (Office Use Only)

Site Owner (Lessor) Midway Lanes Inc.		Site Name King Pin/b52		Site Phone Number (701) 663-0277
Site Address 3327 Memorial Highway	City Mandan	State ND	Zip Code 58554	County Morton
Organization (Lessee) Fort Abraham Lincoln Foundation		Rental Period 7/1/2014 to 6/30/2015		Monthly Rent Amount
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
2. Is a raffle drawing going to be conducted at this site?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
3. Is Prize Boards involving a dispensing device conducted at this site?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
4. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		\$
Number of Tables with wagers over \$5 <u>2</u> X Rent per Table \$ <u>300.00</u>				\$ 600.00
5. Is Paddlwheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
6. Is Pull Tabs involving either a jar bar and/or a dispensing device conducted at this site? Please check: <input type="checkbox"/> Jar Bar Only <input type="checkbox"/> Dispensing Device Only <input type="checkbox"/> Jar Bar and Dispensing Device		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		\$ 175.00
				Total Monthly Rent \$ 775.00

**TERMS OF RENTAL AGREEMENT:**

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab or prize boards involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.

The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor <i>James B. Mollan</i>	Title <i>President</i>	Date <i>3-6-14</i>
Signature of Lessee (Top Executive Official) <i>Tracy A. Patten</i>	Title <i>President</i>	Date <i>3-6-14</i>

(over)



Consent No. 11ii

GAMING SITE AUTHORIZATION  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02-2011)

G - \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
Site License Number  
(Attorney General Use Only)

Fort Abraham Lincoln Foundation is hereby authorized to conduct games of  
(Full, Legal Name of Gaming Organization)

chance under the license granted by the Attorney General of the State of North Dakota at the following  
location: Broken Oar the address of which is:

4724 Pintail Loop Mandan 58554 Morton  
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning 7/1/14 Ending 6/30/15

Specific location where games of chance will be conducted and played at the site (required):  
Whole Bar area excluding the bathrooms

Number of twenty-one tables (required) (if zero, enter "0") : 1

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)  
1. Days of week of gaming operations \_\_\_\_\_  
2. Hours of gaming \_\_\_\_\_  
3. List each specific game type prohibited \_\_\_\_\_

\_\_\_\_\_  
Attorney General Date Signature of City/County Auditor Date

PRINT Name / Official Position of person signing above

**INSTRUCTIONS:**

- 1. City/County Auditors - Retain a **copy** of the Site Authorization for your files.
- 2. City/County Auditors - Return the **original** Site Authorization form to the Organization.
- 3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

**RETURN ALL DOCUMENTS TO:**

Office of Attorney General  
Licensing Section  
600 E Boulevard Ave, Dept. 125  
Bismarck, ND 58505-0040  
Telephone: 701-328-2329 OR 800-326-9240



**RENTAL AGREEMENT**  
 OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SPN 9413 (Rev. 08-2013)

License Number (Office Use Only)

Site Owner (Lessor) Band B Inc.		Site Name Broken Oar		Site Phone Number (701) 667-2159
Site Address 4724 Pintail Loop		City Mandan	State ND	Zip Code 58554
Organization (Lessee) Fort Abraham Lincoln Foundation		Rental Period 7/1/2014	to 6/30/2015	
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.				Monthly Rent Amount \$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes				
2. Is a raffle drawing going to be conducted at this site?				\$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
3. Is Prize Boards involving a dispensing device conducted at this site?				\$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
4. Is Twenty-One conducted at this site?				\$
Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____ <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes				
Number of Tables with wagers over \$5 <u>1</u> X Rent per Table \$ <u>300.00</u>				\$ 300.00
5. Is Paddlewheels conducted at this site?				\$
Number of Tables _____ X Rent per Table \$ _____ <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
6. Is Pull Tabs involving either a jar bar and/or a dispensing device conducted at this site?				\$
Please check: <input type="checkbox"/> Jar Bar Only <input type="checkbox"/> Dispensing Device Only <input type="checkbox"/> Jar Bar and Dispensing Device <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes				\$ 200.00
				Total Monthly Rent
				\$ 500.00

**TERMS OF RENTAL AGREEMENT:**

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab or prize boards involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.

The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor <i>Laura Hata</i>	Title Manager	Date 3/7/14
Signature of Lessee (Top Executive Official) <i>Tracy A. Fitts</i>	Title President	Date 3-6-14

(over)



Consent No. 11iii

GAMING SITE AUTHORIZATION  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02-2011)

G - \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
Site License Number  
(Attorney General Use Only)

Fort Abraham Lincoln Foundation Is hereby authorized to conduct games of  
(Full, Legal Name of Gaming Organization)  
chance under the license granted by the Attorney General of the State of North Dakota at the following  
location: Lonesome Dove the address of which is:  
3929 Memorial Hwy Mandan 58554 Morton  
(Street) (City) (Zip Code) (County)  
Date(s) Authorized: Beginning 7/1/14 Ending 6/30/15  
Specific location where games of chance will be conducted and played at the site (required):  
Whole Bar area excluding the bathrooms

Number of twenty-one tables (required) (if zero, enter "0") : 3

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)  
1. Days of week of gaming operations \_\_\_\_\_  
2. Hours of gaming \_\_\_\_\_  
3. List each specific game type prohibited \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attorney General Date Signature of City/County Auditor Date

PRINT Name / Official Position of person signing above

**INSTRUCTIONS:**

- 1. City/County Auditors - Retain a **copy** of the Site Authorization for your files.
- 2. City/County Auditors - Return the **original** Site Authorization form to the Organization.
- 3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

**RETURN ALL DOCUMENTS TO:**

Office of Attorney General  
Licensing Section  
600 E Boulevard Ave, Dept. 125  
Bismarck, ND 58505-0040  
Telephone: 701-328-2329 OR 800-326-9240



**RENTAL AGREEMENT**  
 OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9413 (Rev. 08-2013)

License Number (Office Use Only)

Site Owner (Lessor) Lonesome Dove Inc.		Site Name Lonesome Dove		Site Phone Number (701) 663-2793
Site Address 3929 Memorial Highway		City Mandan	State ND	Zip Code 58554
County Morton		Rental Period 7/1/2014 to 6/30/2015		Monthly Rent Amount
Organization (Lessee) Fort Abraham Lincoln Foundation				
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
2. Is a raffle drawing going to be conducted at this site?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
3. Is Prize Boards involving a dispensing device conducted at this site?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
4. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		\$
Number of Tables with wagers over \$5 <u>3</u> X Rent per Table \$ <u>300.00</u>				\$ 900.00
5. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
6. Is Pull Tabs involving either a jar bar and/or a dispensing device conducted at this site? Please check: <input type="checkbox"/> Jar Bar Only <input type="checkbox"/> Dispensing Device Only <input type="checkbox"/> Jar Bar and Dispensing Device		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		\$ 175.00
				<b>Total Monthly Rent</b> \$ 1,075.00

**TERMS OF RENTAL AGREEMENT:**

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab or prize boards involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.

The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor 	Title Owner	Date 3-6-14
Signature of Lessee (Top Executive Official) 	Title President	Date 3-6-14

(over)



Consent No. 11iv

GAMING SITE AUTHORIZATION  
OFFICE OF ATTORNEY GENERAL  
SFN 17996 (02-2011)

G - \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
Site License Number  
(Attorney General Use Only)

Fort Abraham Lincoln Foundation is hereby authorized to conduct games of  
(Full, Legal Name of Gaming Organization)

chance under the license granted by the Attorney General of the State of North Dakota at the following  
location: Seven Seas the address of which is:

2611 Old Red Trail Mandan 58554 Morton  
(Street) (City) (Zip Code) (County)

Date(s) Authorized: Beginning 7/1/14 Ending 6/30/15

Specific location where games of chance will be conducted and played at the site (required):  
Whole Bar area excluding the bathrooms

Number of twenty-one tables (required) (if zero, enter "0") : 2

RESTRICTIONS: (to be completed ONLY if restrictions are set by the local governing body)  
1. Days of week of gaming operations \_\_\_\_\_  
2. Hours of gaming \_\_\_\_\_  
3. List each specific game type prohibited \_\_\_\_\_

\_\_\_\_\_  
Attorney General Date Signature of City/County Auditor Date

PRINT Name / Official Position of person signing above

**INSTRUCTIONS:**

- 1. City/County Auditors - Retain a **copy** of the Site Authorization for your files.
- 2. City/County Auditors - Return the **original** Site Authorization form to the Organization.
- 3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

**RETURN ALL DOCUMENTS TO:**

Office of Attorney General  
Licensing Section  
600 E Boulevard Ave, Dept. 125  
Bismarck, ND 58505-0040  
Telephone: 701-328-2329 OR 800-326-9240



**RENTAL AGREEMENT**  
 OFFICE OF ATTORNEY GENERAL  
 LICENSING SECTION  
 SFN 9413 (Rev. 08-2013)

License Number (Office Use Only)

Site Owner (Lessor) Best Western Seven Seas		Site Name Montanna Mikes		Site Phone Number (701) 663-7401
Site Address 2611 Old Red Trail	City Mandan	State ND	Zip Code 58554	County Morton
Organization (Lessee) Fort Abraham Lincoln Foundation		Rental Period 7/1/2014	to 6/30/2015	
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.				Monthly Rent Amount \$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes				
2. Is a raffle drawing going to be conducted at this site?				\$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
3. Is Prize Boards involving a dispensing device conducted at this site?				\$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
4. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____ Number of Tables with wagers over \$5 <u>2</u> X Rent per Table \$ <u>75.00</u>				\$ \$ 150.00
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes				
5. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____				\$
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
6. Is Pull Tabs involving either a jar bar and/or a dispensing device conducted at this site? Please check: <input type="checkbox"/> Jar Bar Only <input type="checkbox"/> Dispensing Device Only <input type="checkbox"/> Jar Bar and Dispensing Device				\$ 100.00
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes				
				Total Monthly Rent \$ 250.00

**TERMS OF RENTAL AGREEMENT:**

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab or prize boards involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.

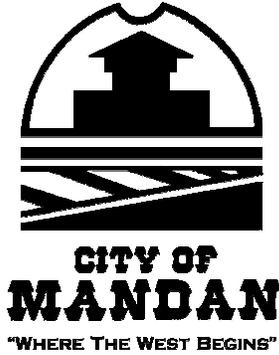
The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

The LESSOR agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee.

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor 	Title GM	Date 3/6/14
Signature of Lessee (Top Executive Official) 	Title President	Date 3-6-14

(over)



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker  
**SUBJECT:** Acting as the Board of Adjustment, consider for approval a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition

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**STATEMENT/PURPOSE:** Existing buildings on the site limit options for location of an additional building. Setbacks for corner lots can significantly limit use of a lot when the lot is relatively narrow. The request is to reduce the setback along 19<sup>th</sup> St. SE to 22 feet.

**BACKGROUND/ALTERNATIVES:** Section 21-06-02.2 of the city code provides a procedure for granting a variance.

*Variances. On appeal from an order, requirement, decision or determination made by an administrative official, the board of adjustment may vary or adjust the strict application of any of the requirements of this title in the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical or topographical condition, by reason of which the strict application of the provisions of the title would result in unnecessary hardship that would deprive the owner of a reasonable use of the land or building involved, but in no other case. No adjustment in the strict application of any provisions of this title shall be granted by the board of adjustment unless it finds:*

- a. That there are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this title, whether in violation of the provisions of the title, or not;*
- b. That, for reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this title would deprive the applicant of the reasonable use of said*

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition

Page 2 of 6

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*land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant;*

*c. That the grant of the variance will be in harmony with the general purposes and intent of this title, and not be injurious to the neighborhood or otherwise detrimental to the public welfare*

If this were not a corner lot, the side yard setback would apply and this proposed building would be within the side yard setback.

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

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

RECOMMENDATION: The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of this request. Staff recommends approval of this request.

SUGGESTED MOTION: Move to grant a setback variance to allow a building to be constructed within 22 feet of the property line along 19<sup>th</sup> St. SE on Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition

Page 3 of 6

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Mandan Planning and Zoning Commission Agenda Item  
 For Meeting on April 28, 2014  
 Mandan Engineering and Planning Office Report  
**Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition**  
 Requested Action  
 Grant variance under current zoning  
 Reason for Action  
 Allow building to be located on front portion of lot  
 Staff comments  
 Existing buildings restrict options for locating new building

Application Details					
<b>Applicant</b>  Toman	<b>Owner</b> HoHerz Investments Management Co LLC	<b>Subdivision</b>  Sylvester's Industrial Park 2 <sup>nd</sup> Addition	<b>Legal Description</b>  Lot 5 in Block 1		
<b>Location</b> 1916 40 <sup>th</sup> Ave. SE		<b>Proposed Land Use</b> Construction yard	<b>Parcel Size</b> 0.87 AC	<b>Number of Lots</b> 1	
<b>Existing Land Use</b> Cement batch plant	<b>Adjacent Land Uses</b>  industrial		<b>Current Zoning</b>  MD	<b>Proposed Zoning</b>  MD	<b>Adjacent Zoning</b>  MA & MD
<b>Fees</b>	<b>Date Paid</b>	<b>Adjacent Property Notification Sent</b>	<b>Legal Notices Published</b>		
Agency & Staff Comments					
<b>USPS</b>			<b>NDDOT</b>		
No Comments			No Comments		
<b>Morton County Assessor/Recorder/Auditor</b>			<b>Morton County Emergency Management</b>		
No Comments			No Comments		
<b>Morton County Engineer</b>			<b>Morton County Planning</b>		
No Comments			No Comments		
<b>Mor-gran-sou</b>			<b>Montana Dakota Utilities</b>		
No Comments			No Comments		
<b>School District</b>			<b>Park District</b>		
No Comments			No Comments		
<b>MPO</b>			<b>Fire Department</b>		
No Comments			No Comments		
<b>Building &amp; Assessing</b>			<b>Police Department</b>		
No Comments			No Comments		
<b>Water</b>			<b>Wastewater</b>		
No Comments			No Comments		
<b>Streets</b>			<b>Solid Waste</b>		
No Comments			No Comments		
Engineering & Planning					
MD points to MB for requirements.					
1. Lot area minimum for MB is 10,000 square feet. This property has 37,773 square feet.					
2. Lot width minimum for MB is 75 feet measured at the front building line. This lot is 137 feet wide.					
3. Floor Area Ratio for MB is 0.3 for 1 story buildings. The maximum allowable for this parcel is 11,332 square feet. The 2 existing buildings have a combined total of approximately 2,780 square feet. The proposed new building will add 7,200 square feet for a combined total of 9,980 square feet that computes to an FAR of 0.26.					

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition

Page 5 of 6

4. Front yard minimum for MB is 50 feet. The property is addressed off 40<sup>th</sup> Ave. SE. The existing building has a 50 foot setback. The proposed setback for the new building is 50 feet.
5. Side yard minimum for MB is 20% of the average lot width for both sides with a minimum for any side yard of 7.5 feet. With a width of 137 feet, the combined side yard setbacks must be equal to or greater than 27.4 feet. The northwest existing building is 10 feet off the north property line. The southeast existing building is 29.62 feet from the south property line. The outer cylinder of the former cement batch plant was less than 25 feet from the south property line. The proposed building will be 22 feet off the south property line for a total side yard setback of 32 feet. The south lot line is the front lot line for parcels to the east. They are required to meet the front yard setback (50 feet) although the nearest building to the east (storage units) scales at 33 feet. The street pavement is over 20 feet from the property line so the distance between pavement and the new building would be about 45 feet.
6. Rear yard minimum for MB 25 feet. The existing building is 15 feet from the east lot line. The proposed building will be approximately 106 feet from the east lot line. This can be interpreted as a rear yard or side yard because it is a side yard for the adjoining property. Applicant owns the adjoining lot.

Setbacks for other nearby buildings vary but are generally greater than 40 feet.

A proposed variance must meet the tests contained in 21-09-16.

*a. Strict compliance with the requirements of these regulations would result in extraordinary hardship to the subdivider, as distinguished from a mere inconvenience, because of the particular physical surroundings, shape or topographical conditions of the specific property involved, or because of other conditions not caused by the action of the subdivider.*

The proposed building was originally purchased for another site that was later determined to be unbuildable due to floodplain restrictions.

*b. The granting of the variance would not have the effect of reducing the traffic capacity of any major or secondary street.*

The proposed variance will not reduce traffic capacity on the adjoining streets.

*c. The granting of the variance would be beneficial to the public safety, health or welfare, and not injurious to other property located adjacent to the proposed modification.*

The variance would not be injurious to other property.

*d. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.*

The location of two small existing buildings and the fact that this is a corner lot are the issues for siting this proposed building on this lot. Past use of the lot is also a consideration when considering setbacks.

*e. The variance is consistent with provisions of the zoning ordinance, comprehensive plan and proper development of the area.*

The proposed use fits the character of the area.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Approval of a setback variance for Lot 5, Block 1 Sylvester's Industrial Park 2<sup>nd</sup> Addition

Page 6 of 6

Previous use encroached on setbacks. The proposed use is a less intense use (noise, dust and runoff) than the previous use (cement batch plant). This is a corner lot that requires 2 front yard setbacks. The lot is not very large and this requirement limits buildable area. Building location would comply if 19<sup>th</sup> is treated as a side yard. Setback for existing building is less than 30 feet. Old batch plant was even closer to the street. Recommend that developer remove some of the concrete slabs in the ROW along 19<sup>th</sup> and plant trees or grass to help with rainwater catchment.

**Proposed Motion**

Based on staff's recommendation and hearing no objection, move to recommend granting of setback variance along 19<sup>th</sup> Street SE to reduce the required setback from 50 feet to 22 feet.



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

Consent No. 13

Type:  Local Permit \*  Charity Local Permit

Permit Number  
2014-30

Name of Organization Chapter B, Vietnam Vets Legacy Vets Mc		Date(s) Authorized (Read instruction 2)		
Contact Person Jeff Schneider	Business Phone Number (701) 400-2352	5/28/2014 Beginning	to 8/23/2014 Ending	
Mailing Address 2020 46th Avenue Se	City Mandan	State ND	Zip Code 58554-6229	
Site Name Colonial Lounge	Site Address 4631 Memorial Highway			
City Mandan	State ND	ZIP Code 58554-000	County Morton	
Check the Game(s) Authorized: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.				
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker* <input type="checkbox"/> Twenty-one* <input type="checkbox"/> Paddlewheels*				
Restriction:				
Requirement: For a "Charity Local Permit," the organization must file a "Report on a Charity Local Permit" with the city or county auditor and Office of Attorney General within 30 days of the event.				
Date 4/29/2014	Signature of: <input checked="" type="checkbox"/> City Auditor <input type="checkbox"/> County Auditor	Printed Name of City or County Auditor Jay Gruebele		Auditor Telephone Number (701) 667-3250

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

cut along this line

**INFORMATION REQUIRED TO BE PREPRINTED ON A STANDARD RAFFLE TICKET:**

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

2014-30



**APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT**  
 OFFICE OF ATTORNEY GENERAL  
 SFN 9338 (9-2009)

Application for:  Local Permit \*  Charity Local Permit (one event per year)

Name of Non-profit Organization Chapter B, Vietnam Vets/legacy Vets Mc		Date(s) of Activity 5/28/2014 to 8/23/2014	
Person Responsible for the Gaming Operation and the Disbursement of Net Income Jeff Schneider		Title Treasurer	Business Phone Number (701) 400-2352
Business Address 2020 46th Ave Se	City Mandan	State ND	Zip Code 58554-6229
Mailing Address (if different)	City	State	Zip Code
Name of Site Where Game(s) will be Conducted Colonial Lounge		Site Address 4631 Memorial Hwy	
City Mandan	State ND	Zip Code 58554-6229	County Morton
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlwheels may be Conducted only by a Charity Local Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlwheels *			

**DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED**

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	AR15 Rifle	\$756.00	Raffle	Surviv. Food Pk	\$119.00
Raffle	7.62x39 Rifle	\$599.00	Raffle	SOG Hatchet	\$64.25
Raffle	12ga Shotgun	\$448.18	Raffle	SOG Hatchet	\$64.25
Raffle	9mm Pistol	\$334.00	Raffle	Water Purifier	\$62.99
Raffle	12ga Shotgun	\$275.00	Raffle	Survival Kit	\$19.79
Raffle	.223 Ammo 200	\$108.90	Raffle	First Aid Kit	\$12.99
Raffle	9mm Ammo 200	\$72.90			
Raffle	7.62x39 Ammo 200	\$68.90			
Raffle	Shotgun Ammo 200	\$60.99			
Total:					(Limit \$12,000 per year) \$ 3,067.14

Intended uses of gaming proceeds: Rental & Charitable donation

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Does the organization presently have a state gaming license?  No  Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30?  No  Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30?  No  Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ \_\_\_\_\_. This amount is part of the total prize limit of \$12,000 per year.

Signature of Organization's Top Executive Official 	Date 4/25/2014	Title Chap. President	Business Phone Number 701-426-8483
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**GUNS, AMMO & SURVIVAL RAFFLE**      TICKET #  
**CHAPTER B, VIET NAM VETS/ LEGACY VETS MOTORCYCLE CLUB**

- |                                 |                                       |
|---------------------------------|---------------------------------------|
| 1. AR-15 Rifle or \$500         | 9. 100 rds 12ga Ammo or \$50          |
| 2. AK-47 Rifle or \$400         | 10. 2 week survival food pack or \$50 |
| 3. 12ga HC Shotgun or \$250     | 11. SOG Hatchet or \$25               |
| 4. 9mm Pistol or \$250          | 12. SOG Hatchet or \$25               |
| 5. 12ga Shotgun or \$200        | 13. Water Purifier or \$25            |
| 6. 200 rds .223 ammo or \$100   | 14. Survival Kit or \$10              |
| 7. 200 rds 9mm ammo or \$50     | 15. First Aid Kit or \$10             |
| 8. 200 rds of AK47 ammo or \$50 |                                       |

**\$10**

Front



Drawing to be held 3:00pm, Sat. August 23, 2014 at The Colonial Lounge, 4631 Memorial HWY, Mandan, ND  
Mandan Permit # \_\_\_\_\_      Need not be present to win.

**THANK YOU FOR YOUR SUPPORT**

Purchase of this ticket is not a charitable donation

Federal Law requires a background check to claim prizes 1 through 5

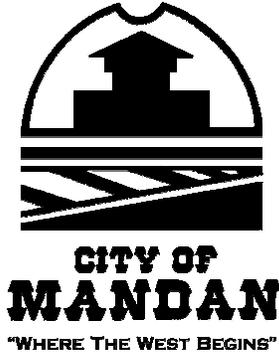
You must be 21 years or older to claim prize 4.

You must be 18 years or older to claim prizes 1, 2, 3, 5, 6, 7, 8, & 9.

All state and federal laws apply. Need not be present to win

Back





## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 1, 2014  
**SUBMITTING DEPARTMENT:** Public Works Dept.  
**DEPARTMENT DIRECTOR:** Jeff Wright, Public Works Director  
**PRESENTER:** Jeff Wright  
**SUBJECT:** Consider for approval the Water Meter Replacement Project Change Order 1 deduct and accept the new AMI Agreement between the City of Mandan and Sensus, water meter supplier.

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STATEMENT/PURPOSE:

- Consider approval of Change Order 1 - \$131,440.00 price deduct from original Contract between the City of Mandan and Thirkettle Corp., the contractor.
- Consider AMI Agreement with Sensus USA, Inc – Includes price of \$115,360.00 for services provided by Sensus on this project.

BACKGROUND/ALTERNATIVES:

Under the original contract between Thirkettle Corp. and the City of Mandan, Thirkettle Corp. planned to use Sensus to provide the software needed for the meter reading equipment, but for Sensus to provide such software, the agreement needed to be between Sensus and the owner of the project, the City of Mandan. To solve this problem, Change Order 1(attached) will deduct the bid amount of \$131,440.00 from Thirkettle Corp contract and the Advanced Metering Infrastructure (AMI) Agreement (attached) will include the new cost of the software agreement from Sensus, \$115,360.00, this includes a 5 year agreement invoiced as a single up-front payment saving us \$16,080.

FISCAL IMPACT:

Net cost savings of \$16,080.

LEGAL REVIEW:

Agreement has been sent to Attorney Brown for his review.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider for approval the Water Meter Replacement Project Change Order 1 deduct and accept the new AMI Agreement between the City of Mandan and Sensus, water meter supplier.

Page 2 of 2

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RECOMMENDATION:

To approve Change Order 1 contingent on proper Contractor signatures and Health Department approval and approve the AMI agreement contingent on City Attorney review.

SUGGESTED MOTION:

Move to approve Change Order 1 contingent on proper Contractor signatures and Health Department approval and approve the AMI agreement contingent on City Attorney review.



May 2, 2014

Mr. Jeff Wright, Public Works Director  
City of Mandan  
205 Second Ave NW  
Mandan, ND 58554

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

Dear Jeff:

Enclosed herewith please find one (1) copy of Change Order No 1 for Thirkettle Corporation for review and approval. This change order reflects a deduction in contract price for the Mandan Water Meter Improvements Project for line item B4 in the amount of \$131,440.00.

We recommend approval of this Change Order contingent upon the following conditions: receipt of the Contractor's signature on this Change Order, and Review by the North Dakota Department of Health. If this Change Order is acceptable, copies executed by the Contractor will be forwarded to the City for final execution.

We sincerely appreciate the opportunity to provide professional engineering services to the City of Mandan and look forward to the successful completion of this Project. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully Submitted,

AE2S

Kenneth J. Weber, PE  
Project Manager

Encl.

# Change Order No. 1

Date of Issuance: May 1, 2014

Effective Date: April 22, 2014

Project: <u>Water Meter Improvements</u>	Owner: <u>City of Mandan</u>
Contract: <u>General Construction</u>	Date of Contract: <u>April 17, 2014</u>
Contractor: <u>Thirkettle Corp.</u>	Owner's Contract No.:
Engineer: <u>Advanced Engineering and Environmental Services</u>	Engineer's Project No.: <u>P00510-2013-000</u>

**The Contract Documents are modified as follows upon execution of this Change Order:**

Description: The following changes are hereby incorporated:

Deduct price for line item B4 from the original contract price.

TOTAL (this Change Order): (\$131,440.00)

Attachments: Direction per Preconstruction Meeting Minutes.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price:  <u>\$ 1,520,634.59</u>	Original Contract Times: <input type="checkbox"/> Working days <input checked="" type="checkbox"/> Calendar days
Increase (Decrease) from previously approved Change Orders: No. <u>N/A</u> to No. <u>N/A</u> :  <u>\$ N/A</u>	Substantial completion (days or date): <u>December 15, 2014</u> Ready for final payment (days or date): <u>January 31, 2015</u>
Contract Price prior to this Change Order:  <u>\$ 1,520,634.59</u>	Increase (Decrease) from previously approved Change Orders No. <u>N/A</u> to No. <u>N/A</u> : Substantial completion (days): _____ Ready for final payment (days): _____
Increase (Decrease) of this Change Order:  <u>\$ (131,440.00)</u>	Contract Times prior to this Change Order: Substantial completion (days or date): <u>December 15, 2014</u> Ready for final payment (days or date): <u>January 31, 2015</u>
Contract Price incorporating this Change Order:  <u>\$ 1,389,194.59</u>	Increase (Decrease) Time of this Change Order: Substantial completion (days or date): <u>0</u> Ready for final payment (days or date): <u>0</u>
	Contract Times with all approved Change Orders: Substantial completion (days or date): <u>December 15, 2014</u> Ready for final payment (days or date): <u>January 31, 2015</u>

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (Authorized Signature)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Date: _____	Date: _____	Date: _____
Approved by Funding Agency (if applicable): _____		Date: _____



May 2, 2014

Mr. Jeff Wright, Public Works Director  
City of Mandan  
205 Second Ave NW  
Mandan, ND 58554

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

Dear Jeff:

Enclosed herewith please find one copy of the Advanced Metering Infrastructure (AMI) Agreement for the referenced project. Please note that this Agreement with Sensus USA Inc contains 2 parts: Part 1, The FCC Notification for Spectrum Manager Lease to be filed with the FCC by Sensus on behalf of the Customer; and Part 2, AMI Agreement between Sensus and Customer. This Agreement carries with it a onetime payment of \$115,360.00, an outline of which is provided in the quote attached at the end of the Agreement. This cost is an amount reimbursable through the SRF funding previously secured for the referenced project.

We recommend approval of this AMI Agreement contingent upon the following items: review and approval by the North Dakota Department of Health (NDDH), execution of this Agreement by Sensus USA Inc, and review of this Agreement by the City Attorney. If this Agreement is acceptable, four (4) copies executed by Sensus USA Inc. will be forwarded to the City for final execution.

We appreciate the continued opportunity to provide professional engineering services to the City of Mandan and look forward to working with you and the staff on completing this important project. Should you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

**AE2S**

A handwritten signature in blue ink, appearing to read "Ken Weber", is written over a large, faint, light blue circular graphic that is part of a background design consisting of several interconnected circles and lines.

Kenneth J. Weber, PE  
Project Manager



**Advanced Metering Infrastructure (AMI) Agreement**

between

**City of Mandan  
("Customer")**

and  
**Sensus USA Inc.  
("Sensus")**

IN WITNESS WHEREOF, the parties have caused this AMI Agreement ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Effective Date."

This Agreement shall commence on the Effective Date and continue for/until: 5 Years ("Term"), provided that it may be extended for a longer period by written agreement.

This Agreement contains two parts: Part (1) is The FCC Notification for Spectrum Manager Lease, to be filed with the FCC by Sensus on behalf of the Customer and Part (2) is a AMI Agreement between Sensus and Customer. Together, these two parts create the Agreement.

**Sensus USA Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Customer: City of Mandan**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Per the attached Quote, pricing remains firm until 7/1/2019 ("Trigger Date")

All purchase orders shall be sent to the address provided by Sensus. Sensus may change this address upon notice to Customer.

- Contents of this Agreement:
- Part 1: Notification for Spectrum Manager Lease
  - Part 2: AMI Agreement
    - Exhibit A Software as a Service
    - Exhibit B Technical Support
    - Exhibit C Pricing

Part 1: Notification for Spectrum Manager Lease

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through ten (10) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, and if Customer does not already have one, ownership disclosure information on FCC Form 602.

1

Customer/Lessee Name:			
Attention To:		Name of Real Party in Interest:	
Street Address:			City:
State:	Zip:	Phone:	
Fax:	Email:		

Is Customer contact information same as above?  Yes  No (If No, complete box 2 below)

Additional Customer/Lessee Contact Information

2

Company Name:			
Attention To:			
Street Address:			City:
State:	Zip:	Phone:	
Fax:	Email:		

3

Customer/Lessee is a(n) (Select one):  Individual |  Unincorporated Association |  Trust  
 Government Entity |  Corporation |  Limited Liability Company |  General Partnership  
 Limited Partnership |  Limited Liability Partnership |  Consortium |  Other \_\_\_\_\_

4

FCC Form 602: FCC File Number of Customer's Form 602 Ownership Information: \_\_\_\_\_. If Customer has not filed a Form 602, Sensus will file one for Customer. Please complete questions 5, 6, and 7 below if Customer does not have a Form 602 on file. Customer must complete items 8, 9 and 10 irrespective of whether Customer has an ownership report on file.

5

Customer Tax ID: \_\_\_\_\_

6

**Individual Contact For FCC Matters**  
Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system. This person would need to obtain his or her own personal FRN (FCC Registration Number) by going to the link below and completing the individual FRN registration.

Name	
Title:	
Email:	Phone:
Personal FRN:	
Link for obtaining personal FRN: <a href="https://apps.fcc.gov/coresWeb/regEntityType.do">https://apps.fcc.gov/coresWeb/regEntityType.do</a>	

Ownership Disclosure Information

7

If Customer/Lessee is a government entity, list the names of the Mayor and all Council Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a mayor/council member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation.

	US Citizen?	Ownership Disclosure?
Mayor:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

**8** Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

1) Is the Customer/Lessee a foreign government or the representative of any foreign government?  Yes  No

**9** Basic Qualification Information

1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?  Yes  No

2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?  Yes  No

3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?  Yes  No

**10** Customer/Lessee Certification Statements

1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.  Yes

2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.  Yes

3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)  Yes

4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.  Yes

5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that it has association with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.  Yes

6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.  Yes

7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.  Yes

8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.  Yes

The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

Type or Printed Name of Party Authorized to Sign

First Name:	MI:	Last Name:	Suffix:
Title:		Customer Name:	
Signature:			Date:

**FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.**

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).**

Part 2: AMI AGREEMENT

1. **Equipment.**
  - A. **Purchase of Equipment.** Customer shall purchase all Equipment from Sensus' authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Sensus' authorized distributor. This Agreement shall not affect any terms and conditions, including any warranty terms, agreed by Customer and Sensus' authorized distributor. If Customer elects to purchase any equipment or services directly from Sensus, or if Customer pays any fees or other costs to Sensus, then Sensus' Terms of Sale shall apply. The "Terms of Sale" are available at: <http://na.sensus.com/TC/TermsConditions.pdf>, or 1-800-METER-IT.
  - B. THERE ARE NO WARRANTIES IN THIS AGREEMENT, EXPRESS OR IMPLIED. THERE ARE NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.
2. **Services.**
  - A. **Installation of Equipment.** Installation services will be as agreed between the Customer and Sensus' authorized distributor. Sensus will not provide installation services pursuant to this Agreement.
  - B. **Software Implementation.** Sensus shall install and configure the Software and shall install the Software on the Server Hardware.
  - C. **IT Systems Integration Services.** Integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement.
  - D. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit B.
  - E. **Project Management.** Project Management of the AMI System is not included in this Agreement.
3. **Software.**
  - A. **Software as a Service (SaaS).** Sensus shall provide Customer with Software as a Service, as defined in Exhibit A, only so long as Customer is current in its payments for such services, as provided in Exhibit C.
4. **Spectrum**
  - A. **Definitions in this Section 4.** In this Section 4 only, "Sensus" shall mean Sensus USA Inc. and its wholly owned subsidiary, Sensus Spectrum LLC.
  - B. **Spectrum Lease.** Sensus hereby grants to Customer, and Customer accepts, a spectrum manager lease ("Lease") over the frequencies of certain FCC license(s) ("FCC License") solely within Customer's Service Territory. (The frequencies of the FCC License within Customer's geographic Service Territory are called the "Leased Spectrum"). Customer shall pay the Ongoing Fees for use of the Leased Spectrum; if no Ongoing Fees are specifically listed for use of the Leased Spectrum, then Sensus shall partition \$900 from the other Ongoing Fees and such amount is hereby allocated to this spectrum lease pursuant to this Agreement.
  - C. **FCC Forms.** At the Federal Communications Commission (FCC), Sensus will: (1) obtain an FCC Registration Number (FRN) for Customer; (2) submit on behalf of Customer the FCC Form 602 Ownership Disclosure Information if Customer has not already done so; and (3) file a FCC Form 608, notification/application for long-term spectrum manager lease. This Lease becomes effective when the FCC accepts the FCC Form 608.
  - D. **Lease Application.** In order to complete the FCC lease application, Customer will promptly:
    - i. Complete and sign the representations in Part 1 of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer's signature will indicate that Customer authorizes Sensus to; (1) obtain an FRN on behalf of Customer; (2) submit the FCC Form 602 Ownership Disclosure Information on behalf of Customer if Customer has not already done so; and (3) file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum lessee.
    - ii. Give Sensus the coordinates of the boundaries of Customer's Service Territory or, alternatively, approve Sensus' estimation of the same.
    - iii. If Customer has not already done so, Customer hereby authorizes Sensus to apply on Customer's behalf and obtain for Customer a Federal Registration Number (FRN, the FCC's unique identifier for each licensee) and shall supply Sensus with Customer's Taxpayer Identification Number (TIN).
    - iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.
  - E. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Territory and only using FlexNet equipment manufactured by Sensus and used in accordance with Sensus' specifications. Customer may use the Leased Spectrum only to read and direct meters in support of Customer's primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.
  - F. **Term of Spectrum Lease.** Unless terminated earlier (because, for example, Customer stops using the FlexNet equipment or because this Agreement terminates or expires for any reason), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and is current on any payments owed to Sensus, when the FCC License renews, the Parties will apply to the FCC to renew this Lease.
  - G. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with FlexNet equipment manufactured by Sensus; (b) upon termination, revocation or expiration of the FCC License; (c) upon Customer's breach of this Agreement; or (d) upon termination or expiration of this Agreement for any reason.
  - H. **FCC Compliance.** The following FCC requirements apply
    - i. Pursuant to 47 CFR 1.9040(a):
      - (a) Customer must comply at all times with applicable FCC rules. This Agreement may be revoked by Sensus or the FCC if Customer fails to so comply;
      - (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
      - (c) This Agreement is not an assignment, sale or other transfer of the FCC License;
      - (d) This Agreement may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
      - (e) In any event, Sensus will not consent to an assignment that does not satisfy FCC rules.
    - ii. Referencing 47 CFR 1.9010, Sensus retains *de jure* and *de facto* control over the applicable radio facilities, including that,
      - (a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the FlexNet equipment and accompanying software and other programs to comply with FCC rules. Customer will operate the FlexNet equipment subject to Sensus' supervision and control and solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate this Agreement or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and

- (b) Sensus will file any necessary FCC forms or applications and Customer agrees reasonably to assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to this Agreement, the FCC License or FlexNet equipment.
- I. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission.
5. **General Terms and Conditions.**
- A. **Payment.** All payment and pricing is subject to the terms in Exhibit C
- B. **Limitation of Liability.**
- i. Sensus' aggregate liability in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed the greater of; (a) the total amount paid by Customer directly to Sensus under this Agreement; or (b) ten thousand US dollars (USD 10,000.00). This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. As separate and independent limitations on liability, Sensus' liability shall be limited to direct damages. Sensus shall not be liable for; (i) any indirect, incidental, special or consequential damages; nor (ii) any revenue or profits lost by Customer or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; nor (iii) any In/Out Costs; nor (iv) manual meter read costs and expenses; nor (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure. The limitations on liability set forth in this Agreement are fundamental inducements to Sensus entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Sensus the maximum protection permitted under law.
- ii. To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Sensus more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.
- C. **Termination.** Either party may terminate this Agreement earlier if the other party commits a material breach of this Agreement and such material breach is not cured within forty-five (45) days of written notice by the other party. Upon any expiration or termination of this Agreement, Sensus' and Customer's obligations hereunder shall cease and the software as a service and spectrum lease shall immediately cease.
- D. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party affected by the force majeure will take reasonable steps to mitigate the Force Majeure. "Force Majeure" means an event beyond a party's reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- E. **Intellectual Property.** No Intellectual Property is assigned to Customer hereunder. Sensus shall own or continue to own all Intellectual Property used, created, and/or derived in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property. Customer agrees not to reverse engineer any Equipment purchased or provided hereunder. "Intellectual Property" means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- F. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. As used herein, "Confidential Information" means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either party. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.
- G. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
- H. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate, (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
- I. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.
- J. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance or termination ("Disputes") shall first be resolved by the Parties attempting mediation in Delaware. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the state or federal courts located in Delaware. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
- K. **Restriction on Discovery.** The Parties acknowledge the abundance of documents, data, and other information stored in an electronic manner and the time and costs associated with retrieving relevant electronic data from the Parties during the Discovery portion of a claim. Accordingly, the Parties shall utilize only printed or hard-copy documents, data, and other information in Discovery and shall not use or request electronic or e-Discovery methods for any claim, demand, arbitration or litigation subject to this Agreement. All relevant and unprivileged printed or hard-copy materials shall be subject to Discovery, but

neither Party has an obligation to maintain printed or hard-copy files in anticipation of a claim, demand, litigation, or arbitration proceeding.

- L. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
  - M. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
  - N. **Four Corners.** This written Agreement represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations. All obligations are specifically set forth in this Agreement. Further, there are no representations that induced this Agreement that are not included in it. The ONLY operative provisions are set forth in writing in this Agreement.
  - O. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies, all of which shall be considered an original for all purposes.
6. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
- A. **"Affiliate"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either: (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
  - B. **"AMI System"** identifies the Sensus FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Sensus. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
  - C. **"Echo Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
  - D. **"End User"** means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas, as applicable.
  - E. **"Field Devices"** means the meters and SmartPoint Modules.
  - F. **"FlexNet Base Station"** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
  - G. **"FlexWare™ Software"** identifies the Sensus proprietary software used in the RNI and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
  - H. **"Harris Software"** means the specific items of software provided by N. Harris Computer Corporation only to the extent Customer: (i) has been provided pricing for that specific item of Harris Software; and (ii) is current in its payments for that specific item of Harris Software.
  - I. **"In/Out Costs"** means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User's premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.
  - J. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
  - K. **"LCM"** identifies the load control modules.
  - L. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by Customer during the Term of this Agreement.
  - M. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.
  - N. **"Permitted Use"** means only for reading Customer's meters in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.
  - O. **"Release"** means both Updates and Upgrades.
  - P. **"Remote Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
  - Q. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
  - R. **"RNI"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.
  - S. **"Service Territory"** identifies the geographic area where Customer provides electricity, water, and/or gas (as applicable) services to End Users as of the Effective Date. This area will be described in the parties' spectrum lease filing with the FCC.
  - T. **"Server Hardware"** means the RNI hardware.
  - U. **"SmartPoint™ Modules"** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.
  - V. **"Software"** means all the Sensus proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
  - W. **"TouchCoupler Unit"** identifies an inductive coupler connection from a water register to the SmartPoint Module.
  - X. **"Updates"** means releases of the Software that constitute a minor improvement in functionality.
  - Y. **"Upgrades"** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.
  - Z. **"WAN Backhaul"** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.



Exhibit A  
Software as a Service

I. Description of Services

This exhibit contains the details of the Software as a Service that Sensus shall provide to Customer if both: (i) pricing for Software as a Service has been provided to the Customer, and (ii) the Customer is current in its payments for Software as a Service.

- A. **Termination of Software as a Service.** Customer shall have the option at any time after full deployment but before the end of the Term to terminate the Software as a Service by giving Sensus one hundred twenty (120) days prior written notice. Upon delivery of the notice, Customer shall purchase the necessary RNI(s) and shall pay all applicable fees, including any unpaid Software as a Service fees. Such notice, once delivered to Sensus, is irrevocable. Should Customer elect to terminate the Software as a Service, Customer acknowledges that: (a) Customer shall purchase the RNI hardware; (b) Customer will purchase the necessary software license(s); (c) Sensus will cease to provide the Software as a Service.

B. **Software as a Service Definition.**

1. **"Software as a Service"** means only the following services:

- i. Use of RNI hardware, located at Sensus' or a third party's data center facility (as determined by Sensus), that is necessary to operate the AMI System.
- ii. Initial training (not to exceed five days) on the use of the AMI System and all product documentation, including any updates to product documentation.
- iii. Providing Patches, Updates, and Upgrades to latest Sensus FlexWare Software releases.
- iv. Providing FCC spectrum, pursuant to the terms of the spectrum lease, to operate the AMI System (for USA customers).
- v. Providing remote firmware maintenance for FlexNet Base Stations and SmartPoint Modules (Customer must provide IP access to each FlexNet Base Station in order to perform secure shell (SSH) functions).
- vi. Providing certain third party software required to operate the RNI (specifically, Microsoft SQL server, Microsoft Windows Server, Red Hat Linux OS, and other Bundled Software).
- vii. Providing secure Web portal access to the hosted FlexWare Software application for the Customer (Customer system administrator grants RNI access to authorized Customer personnel as they are added).
- viii. If requested, submitting a "daily reading file" in standard file format containing hourly consumption reads and all available alarms collected by the AMI System, including exception reports, such as zero consumption reads and non-responding meters (including traceability to the meter location when the meter installer provides the location information).
- ix. 24x7x365 server and network monitoring and trouble ticket generation, advanced security monitoring and preventative maintenance monitoring using diagnostic software tools.
- x. Network optimization after the final propagation study and FlexNet Base Station site plan is verified by Sensus, and network tuning of endpoints deployed in the Service Territory.
- xi. Performing daily off-site vaulting of encrypted backup tapes containing one year of history for auditing purposes.
- xii. Providing current Sensus fixed base reporting software (for up to 50,000 SmartPoint Modules) for up to thirteen (13) months of hourly data retention for basic reporting, route processing and querying functionality.
- xiii. Providing telephone support consistent with the Sensus Technical Support as set forth in Exhibit B.
- xiv. Providing "hot failover" disaster recovery solution within twenty four (24) hours.
- xv. Providing FlexNet Base Station parts repair or replacement, at Sensus' discretion. This excludes field repair labor and field maintenance labor.

2. **"Software as a Service"** does not include any of the following services:

- i. Normal periodic processing of accounts or readings for Customer's billing system for billing or other analysis purposes (other than daily file delivery).
- ii. Field labor to troubleshoot any SmartPoint Modules in the field in meter populations that have been previously accepted.
- iii. First response labor to troubleshoot FlexNet Base Station, Echo Transceivers, Remote Transceivers or other field network equipment.
- iv. Parts or labor required to repair damage to any field network equipment that is the result of a Force Majeure event.
- v. Customer understands that the Sensus route manager meter data management (MDM) application is limited to 50,000 or fewer SmartPoint Modules, and Customer must utilize an enterprise MDMS (or other suitable solution) to manage reading data when system size exceeds 50,000 SmartPoint Modules.

If an item is not listed in subparagraphs (1) or (2) above, such item is excluded from the Software as a Service and is subject to additional pricing.

II. Further Agreements

A. **System Uptime Rate**

1. Sensus (or its contractor) shall host the FlexWare Software application on computers owned or controlled by Sensus (or its contractors) and shall provide Customer access to the hosted FlexWare Software application via internet or point to point connection (i.e., Hosted-Access use), according to the terms below. Sensus endeavors to maintain an average System Uptime Rate equal to ninety-nine (99.0) per Month (as defined below). The System Uptime Rate shall be calculated as follows:

$$\text{System Uptime Rate} = 100 \times \frac{\text{TMO} - \text{Total Non-Scheduled Downtime minutes in the Month}}{\text{TMO}}$$

2. **Calculations**

- i. **"Targeted Minutes of Operation"** or **"TMO"** means total minutes in the applicable month ("Month") minus the Scheduled Downtime in the Month.
- ii. **"Scheduled Downtime"** means the number of minutes during the Month, as measured by Sensus, in which access to the FlexWare Software is scheduled to be unavailable for use by Customer due to planned system maintenance. Sensus shall provide Customer notice (via email or otherwise) at least seven (7) days in advance of commencement of the Scheduled Downtime.
- iii. **"Non-Scheduled Downtime"** means the number of minutes during the Month, as measured by Sensus, in which access to FlexWare Software is unavailable for use by Customer due to reasons other than Scheduled Downtime or the Exceptions, as defined below (e.g., due to a need for unplanned maintenance or repair).

3. **Exceptions.** "Exceptions" mean the following events:

- i. Force Majeure;
- ii. Emergency Work, as defined below; and
- iii. Lack of Internet Availability, as described below.

4. **Emergency Work.** In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO,

Sensus shall be entitled to take any actions that Sensus, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Host Systems or the FlexWare Software ("Emergency Work"). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the FlexWare Software by the Customer is made available (the "Host Systems"). Sensus shall endeavor to provide advance notice of such Emergency Work to Customer when practicable and possible.

5. **Lack of Internet Availability.** Sensus shall not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Sensus does not and cannot control the flow of data to or from Sensus' networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Sensus will use commercially reasonable efforts to take actions Sensus may deem appropriate to mitigate the effects of any such events, Sensus cannot guarantee that such events will not occur. Accordingly, Sensus disclaims any and all liability resulting from or relating to such events.

B. **Host Site-Security.** Although Sensus may modify such security arrangements without consent or notice to Customer, Customer acknowledges the following are the current arrangements regarding physical access to and support of the primary hardware components of the Host Systems:

1. The computer room(s) in which the hardware is installed is accessible only to authorized individuals.
2. Power infrastructure includes one or more uninterruptible power supply (UPS) devices and diesel generators or other alternative power for back-up electrical power.
3. Air-conditioning facilities (for humidity and temperature controls) are provided in or for such computer room(s) and can be monitored and adjusted for humidity and temperature settings and control. Such air systems are supported by redundant, back-up and/or switch-over environmental units.
4. Such electrical and A/C systems are monitored on an ongoing basis and personnel are available to respond to system emergencies (if any) in real time.
5. Dry pipe pre-action fire detection and suppression systems are provided.
6. Data circuits are available via multiple providers and diverse paths, giving access redundancy.

C. **Responsibilities of Customer**

1. Customer shall promptly pay all Software as a Service fees.
2. Customer may not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the FlexWare Software, Host Systems or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to, Sensus, a Sensus employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Customer's access to or use of the FlexWare Software application.
3. The provisioning, compatibility, operation, security, support, and maintenance of Customer's hardware and software ("Customer's Systems") is exclusively the responsibility of Customer. Customer is also responsible, in particular, for correctly configuring and maintaining (i) the desktop environment used by Customer to access the FlexWare application hosted by Sensus; and (ii) Customer's network router and firewall, if applicable, to allow data to flow between the Customer's Systems and Sensus' Host Systems in a secure manner via the public Internet.
4. Each of Customer's authorized users will receive a username and password upon completion of the applicable Sensus registration process ("Authorized Users"). Such usernames and passwords will allow Authorized Users to access the FlexWare Software application. Customer shall be solely responsible for maintaining the security and confidentiality of each user ID and password pair associated with Customer's account, and Sensus will not be liable for any loss, damage or liability arising from Customer's account or any user ID and password pairs associated with Customer. Customer is fully responsible for all acts and omissions that occur through the use of Customer's account and any user ID and password pairs. Customer agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Customer's account or any user ID and password pairs at any time; (ii) to notify Sensus immediately of any actual or suspected unauthorized use of Customer's account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Sensus-recommended steps to log out from and otherwise exit the FlexWare Software application and Host Systems at the end of each session. Customer agrees that Sensus shall be entitled to rely, without inquiry, on the validity of the user accessing the FlexWare Software application through Customer's account, account ID, usernames or passwords.

D. **Disaster Recovery.** In the case of a disaster and loss of access to or use of the FlexWare Software application, Sensus shall use commercially reasonable efforts to restore operations at the same location or at a backup location within twenty four (24) hours. Customer acknowledges and agrees that such an event may result in partial or degraded service when restored. The pre-disaster/loss level of service shall be restored as a soon as commercially reasonable.

If Sensus is providing Customer with a license to use Harris Software, Customer agrees to the following:

**Customer License Agreement**

1. No license is given to the Customer for the source code to the Harris Software. The Customer agrees that it will not attempt to derive, or permit or help others to derive the source code relating to the Harris Software or attempt to otherwise convert or alter the Harris Software into human readable code. The Customer further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the source code relating to the Harris Software.
2. The Customer shall have no right to modify the Harris Software supplied by Sensus for Customer's use under this Customer License Agreement without the prior written approval and direction of Sensus and Harris.
3. Customer shall not sublicense or permit the sublicense of any of the rights granted to the Customer related to the Harris Software.
4. The Customer agrees that it will not, except as otherwise expressly provided in this Customer License Agreement or except as dictated by Customer's standard computer system's backup procedures and/or test environments, make or allow others to make copies or reproductions of the Harris Software or other proprietary information in any form.
5. The Customer will ensure that the Universal Copyright Convention symbol and other copyright and proprietary notices of Harris will remain on the Harris Software in machine-readable form.
6. The Customer will take the same care to safeguard the Harris Software as it takes to safeguard its own confidential information and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
7. No third party, other than duly authorized agents or employees of the Customer authorized pursuant to the licenses issued hereunder, shall have access to or use of the Harris Software.
8. To enable Harris to provide effective support, the Customer shall allow Harris to have remote access to the Harris Software and shall permit Harris to use online diagnostics if required during problem diagnosis

**Exhibit B  
Technical Support**

**1. Introduction**

Sensus Technical Services provides utility customers with a single point of contact for Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

**2. Support Categories**

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products and Sensus Lighting Control.
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

**3. Support Hours**

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00AM EST to 6:00PM EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

**4. Support Procedures**

- 4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a Support ticket.
- 4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state in which the call originated. The nature of the problem and severity levels will be agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into a support ticket for creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

**Severity Levels Description:**

**Sev1** Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM).

**Sev2** Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

**Sev3** The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

**Sev4** Minor system issues, questions, new features, or enhancement requests to be corrected in future versions.

Examples: Minor system issues, general questions, and "How-To" questions.

- 4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.

- 4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-serve basis. A first level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.

- a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.

- b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.

- c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Support system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2

support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. **Response and Resolution Targets.**

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction.	<ul style="list-style-type: none"> <li>• Satisfactory workaround is provided.</li> <li>• Program patch is provided.</li> <li>• Fix incorporated into future release.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> </ul>
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur.	<ul style="list-style-type: none"> <li>• Satisfactory workaround is provided.</li> <li>• Program patch is provided.</li> <li>• Fix incorporated into future release.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> </ul>
3	1 Business Day	90 business days	<ul style="list-style-type: none"> <li>• Answer to question is provided.</li> <li>• Satisfactory workaround is provided.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> <li>• Fix incorporated into future release.</li> </ul>
4	2 Business Days	12 months	<ul style="list-style-type: none"> <li>• Answer to question is provided.</li> <li>• Fix or workaround incorporated into the Support Knowledge Base.</li> </ul>

6. **Problem Escalation Process**

6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.

- 6.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
- 6.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Support ticket number and the reason why the issue is being escalated.
- 6.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given Support ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. **General Support Provisions and Exclusions.**

- 7.1. A Dell-provided three-year ProSupport hardware service plan plus a 4 hour "Mission Critical" upgrade accompanies the server/system hardware that Sensus procures on behalf of the customer. Sensus does not warrant third party server hardware. The customer may renew the ProSupport service plan directly with Dell. The "Dell Master Services Agreement" and "Pro Support for IT Services Description" documents may be found at [www.dell.com/service](http://www.dell.com/service) contracts.
- 7.2. Sensus procures certain third party software licenses (e.g. Red Hat Enterprise Linux) required to operate the FlexNet-based applications on the Dell hardware. Sensus registers all the applicable third party software licenses in the customer's name and ships all documentation and licensing information to the customer with the server. The customer is responsible for maintaining all third party software licenses.
- 7.3. In the event of a server hardware failure at the customer site, Sensus will provide replacement Sensus proprietary software (e.g., FlexWare) either on digital media or downloadable from an internet site, as necessary. The method of software redistribution is at Sensus' discretion. The customer is responsible for re-installing the replacement software. Sensus installation support is not covered under this standard Technical Support program but may be provided as a fee-based service.
- 7.4. Sensus provides online documentation for Sensus products through the Sensus User Forum (<http://myflexnetsystem.com/Module/User/Login>). All Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. Sensus also hosts periodic user group teleconferences to facilitate the interchange of product ideas, product enhancements, and overall customer experiences. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the Portal.
- 7.5. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.



Exhibit C  
Pricing

Pricing			
Item Description	Quantity	Price per Unit	Notes
<b>Goods</b>			
<b>Services</b>			
See attached pricing quote			
<b>Ongoing Fees</b>			
	Annually		

**Payment Terms**

**Escalation.** Customer shall pay for all goods and services rendered by Sensus hereunder at the prices set forth in this Exhibit C (or in the Quote if one is referenced on the first page. If there is a Quote referenced on the first page, such Quote is incorporated into this Exhibit C by reference). The pricing in Exhibit C shall remain firm until the Trigger Date (as defined on the first page of the Agreement). Starting on the Trigger Date, and on each anniversary of the Trigger Date thereafter, the pricing in Exhibit C shall automatically adjust to equal the summation of (i) the amount charged for such pricing component during the immediately preceding year ("Base Amount"); plus (ii) the product of the Base Amount multiplied by the percentage rate of increase in the Escalator(s) during the immediately preceding year (which product shall not be less than zero, such that the pricing in Exhibit C cannot decrease under this section). The Escalator(s) will be calculated utilizing the Escalator(s) published the month prior to the anniversary of the Trigger Date compared to the equivalent month from one year earlier to determine the escalation. For example, if the Trigger Date occurs in January 2015, the Escalator(s) will be calculated by comparing December 2013 and December 2014 figures.

**Equipment.** Invoices for all Field Devices, RF Field Equipment, Server Hardware and any other goods sold by Sensus hereunder shall be delivered along with the relevant goods.

**Third Party Devices.** In cases where Customer requests or requires Sensus to deliver SmartPoint Modules to a third party meter manufacturer (or any other third party), payment for such modules is due within thirty (30) days of the invoice date to such manufacturer or other third party, irrespective of how long it takes such third party to deliver the SmartPoint Modules to Customer.

**Services.** Invoices for Ongoing Fees and services shall be delivered annually or monthly, as applicable, in advance. Invoices for other services shall be delivered upon completion of the applicable service.

**Invoices and Payment.** Customer shall pay all invoices within thirty (30) days of the invoice date. Sensus reserves the right to establish credit limits for Customer and may require full or partial payment prior to shipment of any goods or commencement of any services provided hereunder. All payments shall be made via electronic payment to the account(s) indicated by Sensus from time to time, unless Sensus requests a change in payment methods in writing.

**Late Payments.** Any invoices not disputed in good faith by Customer which Customer does not pay within the time provided in this Agreement shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year; or (ii) the highest rate permitted by applicable law (collectively, "Interest Rate").

**Disputed Invoices.** If Customer disputes an invoice, it shall give written notice of the dispute to Sensus within 30 days of the invoice date. If it does not do so, the entire invoice shall be deemed payable without reduction, set off, or claim. If Customer gives written notice of the dispute within the required thirty (30) days, it shall, at such time as the notice is given, pay the undisputed amount of the invoice and the disputed portion shall be resolved by the parties or, if necessary, under the dispute resolution provisions of this Agreement. If it is ultimately determined that some or all of the disputed amount was payable, that amount shall bear interest from the original due date until Customer pays it at the Interest Rate.

**Withholding.** Customer may withhold payment on an invoice for defective goods and services. Payment by Customer of an invoice shall deem Sensus to have fully complied with this Agreement for all goods and services represented in the invoice and with all other terms and conditions of this Agreement prior to the date of such payment.

**Taxes.** All prices quoted are exclusive of federal, state and municipal taxes. Customer shall be liable for all sales, use and other taxes (whether local, state or federal) imposed on this Agreement or the goods, services, licenses, and/or other rights provided to Customer hereunder.

**Delivery and Packaging.** Customer shall pay for delivery of the Equipment from Sensus' or Sensus' contracted manufacturers' factory to Customer's warehouse. Sensus reserves the right to select the manner in which Equipment is packaged. Quoted prices include regular packing. Special requirements for packing will be subject to extra charges. Shipping and completion dates quoted by Sensus are made in good faith but are not guaranteed.

**Address for Purchase Orders.** All purchase orders shall be sent to the address listed below. Sensus may change this address at any time, upon written notice to the Customer (such notice may be provided via email).

Sensus USA Inc.  
 PO Box 487  
 Uniontown, PA 15401  
 Attn: Customer Service  
 Fax: 800-888-2403  
 Email: icon.support@sensus.com

██████████ 450 North Gallatin Avenue  
 ██████████ P.O. Box 487  
 ██████████ Uniontown, PA 15221 USA

1-800-MeterIt  
 1-800-638-3748  
 www.sensus.com

QUOTATION  
 Your Quote Number: 25273  
 Reference: MANDAN, ND



Bill to Customer: 528110

Ship to Customer:

MANDAN CITY OF  
 205 2ND AVE NW  
 MANDAN ND 58554

MANDAN CITY OF  
 205 2ND AVE NW  
 MANDAN ND 58554

USA

Salesman: CUTLER BRADLEY J  
 Terms: NET 30 DAYS

Effective Date: 5/06/14  
 Expiration Date: 6/30/19

Line	Description	Quantity	U/M	US Dollar Unit Price
1	Part#: SSX32XXXXXXXXXX SAAS LOGIC 5-10K SERVICES WTR 5,001 - 10K SERVICES WATER  YEAR 1 -	1	EA	18,000.000
2	Part#: 5396383700122B ANNUAL FEE SAAS LOGIC 5-10K WTR/GAS 5,001-10K  YEARS 2 THRU 4 -	4	EA	18,000.000
3	Part#: 5396383700108 IMPLEMENT & STD LOGIC INTEGRATION PACKAGE	1	EA	6,000.000
4	Part#: 5396383700017 RNI SETUP FEE ONE TIME CHARGE	1	EA	6,000.000
5	Part#: 5396383700053 STANDARD EDUCATION RNI W/LOGIC TRAINING	1	EA	5,360.000
6	Part#: 5396383700116 EXT WARNTY METRO M50/M100 4-YR 4-YR EXTENDED MAINTENANCE	2	EA	4,000.000
7	Part#: MISC. SEE BELOW	1	EA	.000

This Quotation is an offer to sell which includes and is subject to the Sensus Metering Systems Terms of Sale available for viewing and downloading at <http://www.sensus.com/tc> Please contact Customer Service at 1-800-638-3748 if you are unable to access this site and require a printed copy of the Terms of Sale.

450 North Gallatin Avenue  
 P.O. Box 487  
 Uniontown, PA 15221 USA

1-800-MeterIt  
 1-800-638-3748  
 www.sensus.com

Your Quote Number: 25273

**SENSUS**

US Dollar

Line	Description	Quantity	U/M	Unit Price
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CUSTOMER HAS ELECTED TO PAY THE ANNUAL SAAS LOGIC FEES FROM LINES 1 & 2; & EXTENDED WARRANTY FROM LINE 6 AS A LUMP SUM AT THE START OF THE CONTRACT.

-  
 PROJECT GRAND TOTAL \$115,360.00

-  
 FREIGHT ALLOWED ON \$5000 OR MORE PER ORDER.  
 FOB SHIPPING POINT.

IF MODIFICATIONS IN METER MATERIALS OR PROCESSING ARE REQUIRED TO MEET NEW REGULATIONS, THE PRICING SUBMITTED IS SUBJECT TO IMMEDIATE CHANGE  
 Thank you for your interest in quality products by Sensus.

Current as of: 5/01/14

Correspondence:

SENSUS  
 19598 QUINN CIRCLE NW  
 ELK RIVER, MN 55330

Purchase Orders:

SENSUS  
 PO BOX 487  
 UNIONTOWN, PA 15401

PHONE: 800-METER-IT  
 800-638-3748

JIM GRILLO

Regional Sales Manager

This Quotation is an offer to sell which includes and is subject to the Sensus Metering Systems Terms of Sale available for viewing and downloading at <http://www.sensus.com/te> Please contact Customer Service at 1-800-638-3748 if you are unable to access this site and require a printed copy of the Terms of Sale.



## ADVANCED ENGINEERING AND ENVIRONMENTAL SERVICES, INC. PRECONSTRUCTION CONFERENCE MINUTES

Project: **Mandan Water Meter Improvements Projects**

Date: **April 22, 2014**

Location: **AE2S North Conference Room**

Owner: **City of Mandan**

Contractor(s): **Thirkettle Corporation**

Name	Representing	Title	Phone #
Greg Taylor	Thirkettle Corporation	VP Project Management	210-441-9462
Jeremy Lancon	Thirkettle Corporation/Utiliuse	VP Operations	469-337-1177
Mike Wood	Thirkettle Corporation/Aquametric	Chief of Technology	713-504-2484
Brad Cutler	Sensus	Territory Manager	612-845-4811
Richard Parker	Total Backflow	CEO	712-574-0674
Barb Parker	Total Backflow	Office Manager	712-574-3269
Gene Jordan	Fargo WaterWorks	Sales	701-226-2642
Ken Weber	AE2S	Project Manager	701-221-0530
Brian Viall	AE2S	Project Engineer	701-641-8961
Rachel Wolff	AE2S	Project Coordinator	701-221-0530
Dave Bergsagel	NDDoH	Env. Engineer CWSRF	701-328-5212
Elizabeth TokachDuran	NDDoH	Env. Engineer CWSRF	701-328-5256
Greg Welch	City of Mandan	Finance Director	701-667-3213
Jeff Wright	City of Mandan	Public Works Director	701-667-3240
Jay Perkins	City of Mandan	Water Meter Superintendent	701-220-0825

**NOTE:** The use of "Thirkettle et al." indicates Thirkettle Corporation, Utiliuse, and Aquametric.

## DISCUSSION TOPICS

### I. GENERAL:

- a. Responsibilities of Consulting Engineer:
  - i. Engineer will serve as Owner's representative. All shop drawings and pay requests from Contractor will be submitted through Engineer and all direction from Owner to Contractor will be submitted through Engineer. Refer to Article 9 of General Conditions.
- b. Responsibilities of Owner:
  - i. The Owner will:
    - 1. Assume the position of the contracting organization with all rights and powers thereof
    - 2. Keep various funding, State, and other involved agencies informed of project progress as applicable.
    - 3. Communicate with the Engineer. Refer to Article 8 of the General Conditions.
  - ii. Owner is responsible for paying project related bills in a timely manner, providing reasonable changes to daily operations to facilitate completion of the Work by Contractor, and working with Engineer to clarify contract and construction issues, as required.
  - iii. Maintain separate ledger for the project to be in compliance with the funding agency requirements.
- c. Responsibilities of Contractor:
  - i. The Contractor will:
    - 1. Perform the work in accordance with the Plans, Specifications, and Contract Documents
    - 2. Coordinate Installation of Meter with City Resident Engineer (RPR).
    - 3. Be fair and ethical in Contract performance. Refer to Article 6 of the General Conditions.
- d. Contract Documents:
  - i. Distribution:
    - 1. **Received from Thirkettle Corporation on 4/18/14.**
    - 2. **City of Mandan's Attorney to complete review by end of this week.**
    - 3. **AE2S will distribute copies to all parties when complete – along with Notice to Proceed**
  - ii. **AMI Agreement between City of Mandan and Sensus**
    - 1. **Under original Contract between Thirkettle Corp. and the City of Mandan (Contract), Thirkettle Corp planned to use Sensus to provide Line Item B4. For Sensus to provide software to the City of Mandan, Sensus requires an additional "Advanced Metering Infrastructure (AMI) Agreement." It was agreed that this AMI Agreement should carry full cost of services**



- provided by Sensus – costs originally included in Thirkettl'es bid package to Contract as Alternate Addition B4. A Change Order will be processed to deduct price for line item B4 from original Contract. Sensus agreed to provide updated AMI Agreement between city of Mandan and Sensus USA Inc with attached pricing for the aforementioned services included under the Agreement. Engineer will then recommend execution of the AMI Agreement to the City of Mandan.
- 2. 5 year agreement will be invoiced as a single up-front cost.
- 3. Change Order and AMI Agreement to be presented at May 6 City Commission Meeting.

- e. Plans and Specifications:
  - i. Additional Sets (Distributed Previously): None needed
    - 1. **AE2S to distribute Schedule of Accounts.**
- f. Major Subcontractors:
  - i. Thirkettle et al.:
    - 1. **Total Backflow**
    - 2. **Xact Communications, LLC**
- g. Major Supplier:
  - i. Thirkettle et al.:
    - 1. **Fargo Water Equipment, Inc.**

## II. SCHEDULES:

- a. Construction Initiation: Notice to Proceed/Anticipated Start Date:
  - i. Notice to Proceed: **After Review & Processing of Contracts**
  - ii. Anticipated Start/Mobilization:
    - 1. **Total Backflow -**
      - a. **May 15: Begin contacting residents**
      - b. **June 15: Begin installing meters and radio units**
      - c. **Contractor plans to begin installation of meters prior to the installation of base stations and reprogram meters remotely once base stations are installed.**
      - d. **Contractor plans to work with 6 crews.**
      - e. **Contractor will work Mon-Sat, 8 am – 6 pm.**
      - f. **Contractor plans to install 500 meters (+/-) per week.**
    - 2. **Thirkettle et al.–**
      - a. **Order radio base stations after change order and AMI agreement is processed between the City of Mandan and Sensus.**
      - b. **90 day lead time on equipment after ordering.**

- b. Requirements: Refer to Section 01011, 01015, and 01300

- i. Construct Work in Logical sequence and stages to accommodate the following priority of critical Work:
  1. Substantial Completion: December 15, 2014
  2. Final Completion: January 31, 2015
- ii. Allow for City to maintain regularly scheduled meter reading cycles as much as possible. City of Mandan is divided into 3 Sets of roughly 10 meter reading routes. When and where reasonable, Strategize Work to focus on completing all work in an individual route and attempt to finish all routes in a given Set before starting work in the next Set of routes.

### III. Construction Activities

#### a. Staging and Storage:

- i. Contractor shall make provisions to provide and secure any staging areas, office space, or protected and secure storage space for construction materials, tools, or other equipment, as required. Contractor shall be responsible for accepting all shipments of materials and ensuring proper storage and security of materials as required.
  1. **Contractor will coordinate with City to set up storage containers to park in secure area at Public Works. Contractor will inform City of dimensions.**

#### b. Curb Stop Inspection and Replacement:

- i. If water service cannot be shut off from the interior valves at any property, contractor may shut off water service from the curb stop to facilitate meter installation. If any curb stop is then found to be inoperable, Contractor shall notify the city for inspection. City will notify the property owner, and with subsequent approval, City will direct contractor to remove and re-install a new and operable curb stop assembly. Installation and operation of curb stops must be to the satisfaction of the City. No curb stop may be replaced without the City's written direction to do so. "Written direction" may be provided by e-mail.

#### c. Meter Shut Off Valves:

- i. If contractor finds existing shut-off valves to be inoperable for continued service and should be replaced for installation of a new meter to function correctly, Contractor shall notify the City for inspection. City will notify the property owner, and with subsequent approval, City will direct contractor to install a new shut-off valve where required. No shut-off valve may be replaced without the City's written direction to do so. "Written direction" may be provided via e-mail.

#### d. Identification of "difficult installations"

- i. If, in Contractor's opinion, a particular location's existing conditions fall outside the parameters of "typical" and therefore require extensive work and repair beyond that of a typical water service appointment, Contractor will populate all data fields EXCEPT "Date of Installation" in reading



software database and keep record of why service could not be completed. City will direct further action at the identified locations.

**1. Agreed upon reviewing “difficult installation” locations on a periodic basis. Will be a topic of discussion at progress meetings.**

- e. Recording physical location of meters:
  - i. **AE2S to provide simple data parameters for indicating physical locations of meters. All other data to be collected in accordance with specifications.**

IV. Submittals:

- a. General (review and process time): Refer to Section 01300
- b. Schedule of Values (SOV): Refer to Section 01027
  - i. Submit to AE2S for approval prior to any pay requests.
- c. Progress Schedule: Refer to Article 2 and Article 6 of the General Conditions
  - i. Submit Updated schedule with Pay Requests, as project progresses, or as timelines change.
- d. Within 15 days after the date of Owner-Contract Agreement, submit background checks completed by independent third party on any and all employees who will be entering or visiting private properties to conduct Work. Submittal shall include the following:
  - i. **Copy of completed background check.**
  - ii. **Copy of employees drivers license.**
  - iii. **Record of employees SSN.**
- e. Submit copies of photo identification badges for all employees who will be entering private properties to conduct Work. Submittal shall include the following:
  - i. Digital copy of each employees Contractor-issued Photo ID badge
    - 1. **Badge shall clearly associate employee to Contractor.**
    - 2. **City of Mandan will also issue identification cards**
      - a. **Meter installers and employees entering private property must carry both cards at all times while working as outlined in specifications.**
- f. Submit a written description of Contractor’s planned process of scheduling meter service appointment. Submittal shall include, at the minimum:
  - i. Contractor’s local or toll-free telephone number.
  - ii. Contractor’s local or toll-free emergency telephone number, if different.
  - iii. One copy of each letter, mailing, or any other form of contact Contractor will be initiating with home and property owners, including emergency contact information. Submit copies digitally in PDF format.
  - iv. **Public will be referred to the City’s website for more information.**
- g. Data reports should be submitted, at a minimum, on a weekly basis.



- h. Contractors shall submit a tabulation of the actual Contractor and Subcontractor MBE/WBE anticipated scope and fees for the project as required by NDDH SRF Funding.
  - i. **If any changes occur, update forms as appropriate.**
- i. The Contractor shall submit all subcontracts over \$10,000 as required by NDDH SRF Funding

V. PROCEDURES:

- a. Submittals: Refer to Section 01300, Article 1.02.
  - i. Shop Drawings – Plan to process electronically with Newforma software with hard copies supplied to City at closeout.
  - ii. Applications for Payment:
    - 1. Cut-off dates for submittal of pay applications will be the **last Saturday of the month.**
    - 2. Engineer will submit to the City for approval and payment. See Article 14 of the General Conditions, Article 6 of the Agreement Form, and Section 01027
    - 3. **Submit four (4) original copies and copies of invoices for stored materials to AE2S.**
    - 4. Substitutions / Extensions:
      - a. If a problem develops, request should be made in a timely manner (don't wait until the last minute). See Article 10 and 12 of the General Conditions.
    - 5. Change Orders/Work Directives:
      - a. **Change orders over \$25,000.00 must be approved by the City Commission.**
      - b. All parties concerned will sign all Change Orders. See Section 01028 of the Specifications and Article 10 of the General Conditions.
    - 6. **Owner will be last signatory.**
  - iii. Payroll Reports
    - 1. **The Contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the Engineer.**
- b. Other:
  - i. Test Reports: Submit via e-mail for Engineer's and Owner's records.
  - ii. Set-up and Integration with Existing Billing Software
    - 1. **City's database shall be maintained weekly – at a minimum.**
    - 2. Section 13500 (3.05).

VI. SAFETY:

- a. Contractor will at all times take the necessary precautions with regards to safety. All safety requirements are to be met with respect to the various aspects of the Work. On-site safety is the responsibility of the Contractor(s) and/or



Subcontractor(s). Owner and Engineer are not responsible for work site safety issues. Refer to Article 6 of the General Conditions.

VII. SPECIAL TOPICS:

- a. Work: The contractor shall at all times employ sufficient labor and approved equipment for performance and completion of the Work. Refer to individual Specification sections for requirements.
- b. Material Storage/Protection: Materials shall be stored in such a manner so as to assure the preservation of their quality and fitness for incorporation into the Work. Stored materials will be inspected prior to use.
- c. Coordination: Contractor will provide advance notification to all parties (including Owner, Engineer, and all subcontractors) for scheduling Work, as it may affect other Work progress and/or Owner's operations. Progress Meetings will be conducted in accordance with Section 01039.
- d. Progress Meeting Schedule:
  - i. **Periodic progress meetings during active construction periods. ONSITE – frequency to be discussed.**
    - 1. **Meetings will be done Bi-weekly.**
- e. Field offices/Temp Facilities: Required by all Contractors. Refer to Section 01500.
  - i. Field Office: to be provided by General Contractor.
  - ii. Contractor Parking: In an area acceptable to Owner and applicable to property owners.
  - iii. Sanitary Facilities: To be provided by General Contractor
- f. Subcontracts: Contractor shall have full responsibility over subcontractors. Any reference to the Contractor for this project is also applicable to subcontractors.
- g. Security Issues:
  - i. Provide security and facilities to protect Work, existing facilities, and Owner's operations from unauthorized entry, vandalism, or theft.
  - ii. Coordinate with Owner regarding security program.
  - iii. **Work shall generally be permitted in private homes or properties between the hours of 8 a.m. and 7 p.m. Monday – Saturday. Appointments outside this timeframe may be allowed by Owner if negotiated and agreed upon by individual homeowners on a case-by-case basis.**
  - iv. **Thirkettle et al. shall supply a list of names of employees whom City Staff may expect to be working on site. Need to run background checks on all employees working in the City.**
- h. Other Discussion Items
  - i. Testing Services (Section 01400): Contractor to pay for independent testing firm for the following items: **radio frequency interference testing, bacteriological tests where directed by engineer.**

- ii. Payroll reports shall be submitted weekly to Engineer and must include subcontractor's payroll. Reports must be submitted within one week of payroll.
- i. Owner Occupancy Requirements: Contractor must coordinate and cooperate with Owner to ensure existing facilities and services remain in operation during the construction period. Refer to Section 01011.

#### VIII. UTILITIES:

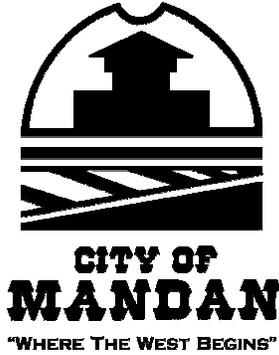
- a. Location/Verification: Contractor responsibility.
- b. Coordination: Coordinate with Owner's operators, utility providers, and other Contractors, as required or applicable.

#### IX. North Dakota Department of Health (NDDH) – Clean Water SRF

- a. Requirements:
  - i. Project Must comply with Davis Bacon Wage Schedules
  - ii. Wage interviews will be conducted by engineer.
  - iii. The Contractor shall submit weekly payroll reports to the Engineer
  - iv. Project must follow the EEO requirements
  - v. Project must follow the American Iron & Steel for CWSRF and DWSRF Projects.
  - vi. Contractor plans on displaying bulletin board with labor information in common area of employee housing on location. Bulletin board must include the following information:
    - 1. EEO Poster
    - 2. Davis Bacon Poster
    - 3. Davis Bacon current wage rates.
  - vii. Safety – Project is subject to OSHA regulations and requirements
  - viii. Safety meetings: Contractors to provide documentation for safety meetings as available. Documentation to include subject of meeting and attendance roster.
  - ix. Owner of Project must have a separate ledger for the project.
  - x. SRF inspections will be performed at random and without interference to work of contractor.
  - xi. Contractor to provide copies of progress schedules to NDDH
  - xii. Letter from City confirming receipt of O&M Manuals from Contractors must be supplied at closeout.
  - xiii. 5% of contract price to be withheld until final documents are processed.
  - xiv. NDDH to receive copies of Change Orders and documentation to review.
  - xv. NDDH to receive copies of Certificate of Substantial completion and Certificate of Final Inspection and Acceptance.

#### X. CONTRACT CLOSEOUT

- a. Acceptance: Owner will determine final acceptance of Work after a pre-final inspection by Owner, Engineer, and Contractor. Refer to Section 01700 which includes specific items Contractor must adhere to, such as:
    - i. Closeout procedures
    - ii. Adjusting/balancing change order.
    - iii. Record documents
    - iv. Operation and maintenance data
    - v. Spare parts and maintenance materials
  - b. Substantial completion certificate, punch list items, and Certificates of Final Inspection and Acceptance, and balancing change orders will be issued by Engineer and signed by all parties as appropriate.
  - c. Liquidated damages: Refer to Agreement.
  - d. As-built Drawings: Contractor shall maintain a complete set of Plans and Specifications on-site at all times for recordation of project construction. Contractor shall be responsible for indicating any and all changes to the Work that differ from that shown in the Plans and Specifications.
- XI. OPEN DISCUSSION:
- a. Questions/Answers
    - i. **AE2S, Thirkettle et. al., Fargo Water, and City of Mandan met after the preconstruction meeting to visit the 2 tower sites indicated on the propagation study as locations for base station antennas. City of Mandan to provide AE2S with a list of users currently existing on radio tower sites along with usage frequencies. AE2S will review and distribute data to Contractor. Contractor responsible for acquiring permission to install radio communications on existing tower sites. Expect radio frequency interference testing to be required to certify non-interference with existing communications before permission to utilize space on existing towers.**
    - ii. **Thirkettle et al. will provide the City of Mandan and Engineer with access to web-based account to monitor project progress. Web-interface reports most up-to-date progress of installations and other project activities.**
    - iii. **See attached "Documents Required for Final Payment Inspection."**



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6<sup>th</sup> 2014  
**PREPARATION DATE:** April 25<sup>th</sup> 2014  
**SUBMITTING DEPARTMENT:** Mandan Progress Organization  
**DEPARTMENT DIRECTOR:** Del Wetsch  
**PRESENTER:** Del Wetsch  
**SUBJECT:** City of Mandan Grant Funding

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STATEMENT/PURPOSE: To consider funding from the City of Mandan's advertising budget of \$20,000. Applications reviewed by the MPO Funding Committee for recommendation to the City Commission for approval.

BACKGROUND/ALTERNATIVES: Organizations needed to provide criteria of where the monies are spent and each organization had a representative who was interviewed by the Committee on the impact of the event to the community. Funding should add to the economic and well being of the community and increase the quality of life in the community.

ATTACHMENTS: MPO letter from the Board of Directors approval of applications for funding and funding applications are available upon request.

FISCAL IMPACT: Provides organizations and groups the ability to bring new events to the community and keep those established events growing for the betterment of the community. This provides a basis for economic impact on the business community by dropping a large amount of people to Mandan. People who come to Mandan eat, shop and play in the community also allows people living in Mandan and attending the events to have a better quality of life. The grant money awarded is allocated in 50% Mandan Bucks and 50% cash with the Mandan Bucks being spent in the business community. Each organization is limited to no more than a \$5,000 grant

STAFF IMPACT: 4 hours of prep work and meetings

LEGAL REVIEW: Applications are reviewed by the MPO Funding Committee and then approved by the MPO Board of Directors before going before the City Commission for final approval

RECOMMENDATION: Accept the approval of applications from the MPO Board of Directors and the MPO Funding Committee.

SUGGESTED MOTION: Approve the funding recommendations by the MPO Funding Committee and reviewed and approved by the MPO Board of Directors on April 25<sup>th</sup> Board of Directors meeting.

411 West Main Street,  
Mandan, North Dakota 58554  
For More Information  
701-751-2983  
www.mandanprogress.org



To: Mandan Progress Organization Board of Directors  
Fr: MPO Funding Committee  
Re: City of Mandan Grant Funding Requests

The Mandan Progress Organization funding committee, a subcommittee for the city of Mandan met on Thursday, April 17<sup>th</sup> to review the 16 applications submitted by groups and organizations in the community requesting funding that is available to their organizations which work toward the betterment of the Mandan community. Besides reviewing the written grant forms each organization had a representative present to answer and explain their request for funding this year.

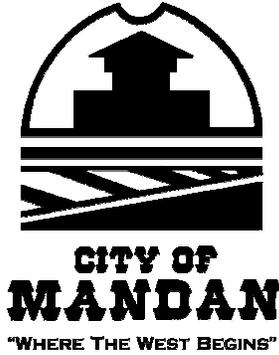
Each year the city of Mandan budgets \$20,000 from its advertising budget to help organizations promote community events. Grant funding is awarded to each organization Based upon the quality of the event, number of spectators it draws, value of the event to the community and if the event is new or ongoing. Grant funding is awarded 50% in Mandan Bucks and 50% in the form of a check to the organization.

As Executive Director of the MPO I would recommend the following action be taken and that is to approve the distribution of funds to the following organizations based on the recommendations of the MPO funding committee.

Event:	Amount of Funding:	
Heritage Plaza Foundation	\$1,000	
Art in the Park Committee	\$1,300	
Mandan Horse and Saddle Club	\$1,500	
Wild West Grill Fest Committee	\$2,500	
July 4 <sup>th</sup> Road Race Committee	\$750	
Mandan Rodeo Committee	\$2,700	
Bis-Man Stockcar Assoc.	\$750	
ND Railroad Museum	\$500	
Mandan Parade Committee	\$1,500	
Friends of Ft. Lincoln	\$300	
Mandan Park District	\$2,400	
Musicians Association	\$2,300	
Oktoberfest	\$2,500	
		Total Awarded \$20,000
		50 % checks
		50% Mandan Bucks

MAKING A DIFFERENCE!





New Business No. 2

## Board of City Commissioners

### Agenda Documentation

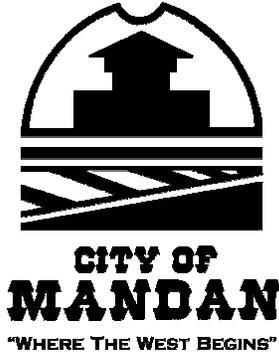
**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 1, 2014  
**SUBMITTING DEPARTMENT:** Planning and Engineering  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth  
**SUBJECT:** New Employee, Rob Gaskill

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STATEMENT/PURPOSE: Introduction of new employee

BACKGROUND/ALTERNATIVES:

As of April 15, 2014, Rob Gaskill is Mandan's new Engineering Technician, in the Planning and Engineering Office. Rob most recently came to the city from Ulteig Engineers in Bismarck, ND where he was also an Engineering Technician and was tasked with CAD design work with subdivisions, and cellular towers. He also spent 5 ½ years with the Public Works Department at the City of Havre in Montana as a CAD/Construction Technician, working to re-design the cities mapping system. Rob earned his Bachelors of Science degree in Design Drafting Technology from Montana State University Northern.



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 28, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Engineering & Planning Director  
**SUBJECT:** Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

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**STATEMENT/PURPOSE:** To authorize the installation of water and sewer for the development of Keidel's South Heart Terrace 3<sup>rd</sup> Addition.

**BACKGROUND/ALTERNATIVES:** The Keidel's South Heart Terrace 3rd Addition plat is located South of 19<sup>th</sup> Street and east of Highway 6 in Southwest Mandan. The proposed utilities only serve the developer of the benefiting land; therefore, this is being paid for under a 3-way agreement. A letter of credit has been secured for the project.

**ATTACHMENTS:**

1. Project Vicinity Map
2. 3 way Agreement
3. Resolution Approving Plans and Specifications and Authorizing Execution of 3-way Agreement

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

**STAFF IMPACT:** Minimal

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

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

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

Page 2 of 11

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SUGGESTED MOTION: I move to approve the resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

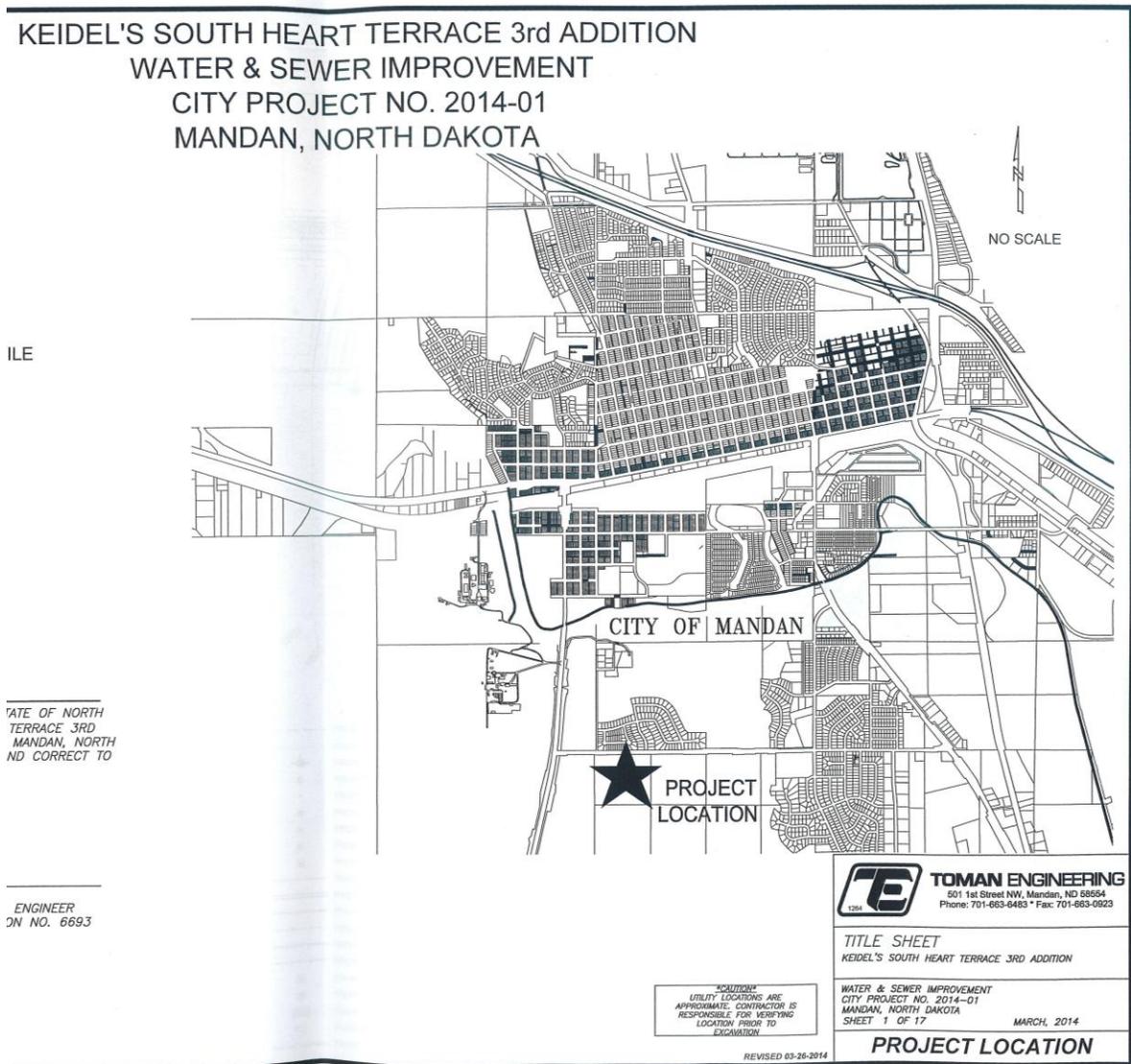
Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01 (Keidel's South Heart Terrace 3rd Addition).

Page 3 of 11



Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

Page 4 of 11

3-WAY AGREEMENT

1264

Keidel's South Heart Terrace 3<sup>rd</sup> Addition

Water & Sewer IMPROVEMENT PROJECT No. 2014-01.

THIS AGREEMENT, made on this 22 day of May, 2014, between the City of Mandan, a municipal corporation, hereinafter called the CITY, *Manna Development Co*, hereinafter called the DEVELOPER, and Cofell's Plumbing & Heating, Inc., hereinafter called the CONTRACTOR. The ENGINEER mentioned in this contract shall be Toman Engineering Company.

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

- Water Mains
- Streets
- Sanitary Sewer Mains
- Other:
- Storm Sewer Mains

for property to be developed and offered for sale by the DEVELOPER; and

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

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

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

(1) LICENSE TO CONSTRUCT.

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

STREETS in Keidel's South Heart Terrace  
3<sup>rd</sup> Addition

which license shall continue so long as the DEVELOPER performs the agreements by it herein.

(2) SCOPE OF WORK.

The DEVELOPER will, through a CONTRACTOR licensed under the laws of North Dakota, do said work, including furnishing all materials, equipment and labor necessary to perform all of the work shown on the plans and specifications prepared by a licensed professional engineer, which are hereby referred to and made a part of this Agreement. Construction staking as required by the CITY shall be done by the ENGINEER at the expense of the DEVELOPER. The CONTRACTOR shall complete all stubouts to the property line on utilities to be constructed under this contract.

All work incidental to the project, such as grading, taps to the watermain, seeding, chlorine, clean up, and any other usual charges as determined by the ENGINEER shall be borne by the CONTRACTOR.

(3) TIME OF COMMENCEMENT AND COMPLETION

The anticipated date for allowing construction to start will be 4/28/14. The CONTRACTOR shall have until July 15, 2014, to complete the project to the satisfaction of the ENGINEER and the CITY. If the earthwork contractor completes their grading work sooner than 4/28/14, the CONTRACTOR may be allowed an earlier start date.

(4) CITY AUTHORITY AND RESPONSIBILITY

The City Engineer, other City staff and agents for the city shall at all times have access to the project site during construction of the public improvements. The City Engineer shall be the final arbiter when questions arise concerning interpretation and compliance with the plans, specifications, City design requirements and City ordinances. Failure of the developer, design engineer or contractor to comply with the directives of the City Engineer shall be sufficient grounds to issue a stop work order or require installed work to be removed and reconstructed.

(5) DESIGN ENGINEER AUTHORITY AND RESPONSIBILITY

The ENGINEER hired by the DEVELOPER is responsible for providing day to day monitoring and direction of the work. Daily logs shall be maintained and made available to the City. The ENGINEER is responsible to provide the CONTRACTOR in a timely manner with all needed information regarding grades and locations of work. Should a dispute arise between the CONTRACTOR and the ENGINEER over interpretation of the plans, the City Engineer shall be consulted and the City Engineer shall render a decision. Any deviation from the location of facilities shown on the plans must be approved in writing by the City Engineer before commencing with construction of the deviation. All deviations from the approved plans shall be documented with as-built drawings prepared by the ENGINEER. Approval by the CITY of the as-built drawings is a condition of project approval and acceptance by the CITY.

(6) PAYMENT.

The DEVELOPER shall provide an irrevocable letter of credit or a certificate of deposit from a bona fide financial institution in the amount of the project cost including services provided by the CITY. The irrevocable letter of credit expiration date shall be a minimum of 60 days past the time of completion or any extensions of this agreement. The project cost is \$717,855.00. Final payment will be for actual quantities used. A copy of the accepted proposal is attached to the back of and made a part of this Agreement.

The DEVELOPER will be responsible to pay the CONTRACTOR for all of the Agreement work in accordance with the plans, specifications, and proposal prepared by the DEVELOPER'S representative and made a part of this Agreement. The ENGINEER shall measure the work completed and submit to the ENGINEER. The ENGINEER will submit approved progress payments to the DEVELOPER. The CITY shall have no obligations, liability or responsibility for any payment due to any party under this Agreement or otherwise arising from the work under this Agreement. In no event shall the CITY be responsible for any payments whatsoever, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.

(7) CONTENTS OF CONTRACTOR'S CONTRACT.

All contracts made by the CONTRACTOR with any person, firm, or corporation in connection with or in carrying out the contract work shall provide: "This contract is subject to all the terms and conditions of a contract dated \_\_\_\_\_, between the CITY, the DEVELOPER and the CONTRACTOR."

(8) OWNERSHIP OF WORK LINES.

All contract work, except utility stubouts, furnished or placed in the public streets, alleys, or rights-of-way shall become the property of the City of Mandan. The placing and furnishing of all contract work by the DEVELOPER, its CONTRACTOR, its subcontractors, if any, and by an person, firm or corporation, as labor or material or otherwise, shall be under the provisions of this contract and with the express waiver of any right to claim against the CITY, or to make claims or lien against the contract work.

(9) WARRANTY.

The CONTRACTOR shall guarantee all work against faulty materials and workmanship for a period of one year from the date of final acceptance and the performance bond of the contract shall remain in full force and effect for that period.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

Page 7 of 11

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(10) VERBAL AGREEMENTS.

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(11) PROTECTION OF PUBLIC AND WORK.

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

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It shall be the responsibility of the CONTRACTOR to familiarize itself with the location of all existing sewer, water mains and service lines, gas mains and service lines, telephone cable, power, light, and telephone poles, guys, valve boxes, stop boxes and all utilities installations that might be affected in the performance of the work. The CONTRACTOR shall notify all utility companies at least 48 hours in advance excluding Saturdays, Sundays, holidays, and in accordance with N. D. Century Code Chapter 49-23 North Dakota One Call of any construction affecting said utilities, and shall work out with said utilities any conflicts or changes.

(13) CHANGE.

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

(14) CLEAN UP.

Extra materials, tools and temporary structures shall be removed by the CONTRACTOR and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the ENGINEER, and the CITY. The CONTRACTOR shall maintain for a period of three months after completion of the work the surface of unpaved trenches, adjacent curbs and gutter, sidewalks, driveways,

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Meeting Date: May 6, 2014

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Page 8 of 11

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shrubbery, fences, sod or other surfaces disturbed. The CONTRACTOR shall conduct its operations in such manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved areas shall be restored to as good as or better than prior to construction by the CONTRACTOR. The CONTRACTOR shall be required to replace paving or gravel surface removed or damaged in the construction work or repair any area disturbed as a result of construction work to the satisfaction of and subject to the approval of the CITY.

(15) LIQUIDATED DAMAGES

The CONTRACTOR shall pay to the OWNER the amount of \$1,000.00 per day for liquidated damages for time in excess of authorized or adjusted completion time.

Board of City Commissioners

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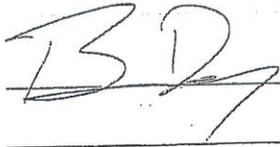
Page 9 of 11

Proposal

From: Cofell's Plumbing & Heating, Inc.  
 1000 Industrial Drive  
 P.O. Box 875  
 Bismarck, ND 58502-0875  
 Phone: 701-268-6500  
 Fax: 701-268-6502

Project: MDN 2014 - KEIDEL'S 3RD ADD  
 Description: MDN 2014 - Keidel's 3rd Add.

ITEM	DESCRIPTION	BID QTY	U/M	UNIT BID	AMOUNT
01	801-4.2 8 Inch Sanitary Sewer Pipe	4,033.000	LF	55.00	\$221,815.00
02	801-4.50 8"x4" Wye Branch	51.000	EA	50.00	\$2,550.00
04	801-4.62 Rock Excavation	50.000	CY	0.00	\$0.00
05	801-4.64 Televiser Sewermain	4,033.000	LF	2.00	\$8,066.00
06	801-4.67 8 Inch Cleanout	6.000	EA	575.00	\$3,450.00
07	901-4.10 6 Inch Watermain	111.000	LF	28.00	\$3,108.00
08	901-4.11 8 Inch Watermain	4,351.000	LF	31.00	\$134,881.00
09	901-4.51 6 Inch Gate Valve & Box	10.000	EA	1,250.00	\$12,500.00
10	901-4.62 8 Inch Gate Valve & Box	23.000	EA	1,750.00	\$40,250.00
11	901-4.70 6 Inch Hydrant	16.000	EA	4,600.00	\$73,600.00
12	1205-4.1 Concrete Manhole	12.000	EA	4,600.00	\$55,200.00
13	1205-4.3 Concrete Drop Manhole	2.000	EA	11,000.00	\$22,000.00
<b>Alternate #2</b>					
14a	1209-4.12 1 Inch Poly Water Service Pipe	1,611.000	LF	19.00	\$30,609.00
15	1209-4.1 4 Inch Sewer Pipe	1,827.000	LF	28.00	\$51,156.00
16	1209-4.1B 2 1/2 Inch Water Service Pipe	10.000	LF	200.00	\$2,000.00
<b>Alternate #2</b>					
17a	1209-4.41 1 Inch Water Service Connection (Poly)	51.000	EA	140.00	\$7,140.00
18	1209-4.45 2 1/2 Inch Water Service Connection	1.000	EA	500.00	\$500.00
<b>Alternate #2</b>					
19a	1209-4.51 1 Inch Curb Stop & 1-1/4 Inch Curb Box (Poly)	51.000	EA	180.00	\$9,180.00
20	1209-4.66 2 1/2 Inch CB Stop & Box	1.000	EA	800.00	\$800.00
21	1209-4.6 4 Inch 45-Deg Bend	51.000	EA	50.00	\$2,550.00
22	SP #1 Mobilization & Bonds	1.000	LS	21,500.00	\$21,500.00
23	SP #12 Lower Rural Watermain (approx 200LF)	1.000	LS	15,000.00	\$15,000.00
<b>TOTAL BID:</b>					<b>\$717,855.00</b>

Signature: 

Cofell's Plumbing & Heating, Inc.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

Page 10 of 11

(15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS.

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

IN WITNESS WHEREOF, the parties have executed the following agreement.

CITY OF MANDAN

\_\_\_\_\_  
Justin Froseth  
Planning and Engineering Director

\_\_\_\_\_  
Arlyn Van Beek, President  
Board of City Commissioners

Attest:

\_\_\_\_\_  
Jim Neubauer  
City Administrator

DEVELOPER

Mandan Development Company, LLC  
Firm Name

\_\_\_\_\_  
Authorized Representative Sign

Kevin Christianson, President  
Owner, Title

4265 45th St. S Suite 200  
Street Address

Fargo, ND 58104  
City, State, Zip

CONTRACTOR

Cofell's Plumbing & Heating Inc.  
Firm Name

\_\_\_\_\_  
Authorized Representative

PRESIDENT  
Owner, Title

1000 Industrial Drive, Box 875  
Street Address

Bismarck, North Dakota 58502-0875  
City, State, Zip

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND  
AUTHORIZING EXECUTION OF 3-WAY AGREEMENT FOR WATER AND  
SEWER IMPROVEMENT PROJECT NO. 2014-01**

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-01(Keidel's South Heart Terrace 3rd Addition).

Page 11 of 11

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(Keidels South Heart Terrace 3rd Addition)

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

1. That the plans and specifications for the Water and Sewer Project No. 2014-01 serving Keidels South Heart Terrace 3rd Addition in the City of Mandan, as presented by, Mandan Development Company, on behalf of themselves, are hereby approved, ratified and confirmed as the plans and specifications for said project, in accordance with which said improvement project will be constructed, subject to any further modifications of the plans and specifications by the Board as provided by law. The plans and specifications shall be filed in the Office of the City Administrator and City Engineer and open for public inspection. The named streets within the subdivision to receive the improvements are: Cobblestone Loop SW, 2<sup>nd</sup> Avenue SW, 4<sup>th</sup> Avenue SW, 6<sup>th</sup> Avenue SW, 8<sup>th</sup> Avenue SW and 20<sup>th</sup> Street SW.

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

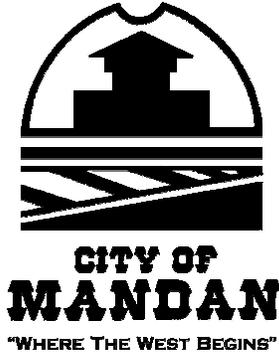
3. This resolution shall be in full force and effect from the date of its passage.

\_\_\_\_\_  
President, Board of City Commissioners

ATTEST:

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

Date of Passage: May 6th, 2014



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 28, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Engineering & Planning Director  
**SUBJECT:** Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement water & sewer improvement Project 2014-03(Lincoln Ridge Estates 6th Addition).

---

**STATEMENT/PURPOSE:** To authorize the installation of water and sewer for the development of Lincoln Ridge Estates 6<sup>th</sup> Addition.

**BACKGROUND/ALTERNATIVES:** The Lincoln Ridge Estates 6th Addition plat is located south of 19<sup>th</sup> Street and directly west of Fort Lincoln Elementary School in southeast Mandan. The proposed utilities only serve the developer of the benefiting land; therefore, this is being paid for under a 3-way agreement. A letter of credit has been secured for the project.

On May 7, 2013 the Mandan City Commission approved the final plat for Lincoln Ridge Estates 6<sup>th</sup> with the understanding that the developer Steve Thilmony, would either sell Lots 25, 26, and 27 to the residents of Lincoln Ridge 1<sup>st</sup> or if an agreement didn't work out the said lots would be added to lots 24 and 28 of Lincoln Ridge 6<sup>th</sup>. Therefore we would recommend approving the three way agreement contingent on Mr. Thilmony taking care of this issue and recording the plat.

**ATTACHMENTS:**

1. Project Vicinity Map
2. 3 way agreement
3. Resolution Approving Plans and Specifications and Authorizing Execution of 3-way Agreement
4. Letter from Steve Thilmony
5. Lincoln Ridge Estates 6<sup>th</sup> Addition plat

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

**STAFF IMPACT:** Minimal

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge Estates 6th Addition, Project 2014-03.

Page 2 of 13

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

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

SUGGESTED MOTION: I move to approve the resolution approving the plans and specifications and authorizing the execution of a 3-way agreement water & sewer improvement Project 2014-03(Lincoln Ridge Estates 6th Addition) contingent on the Lincoln Ridge Estates 6<sup>th</sup> Addition plat being recorded.

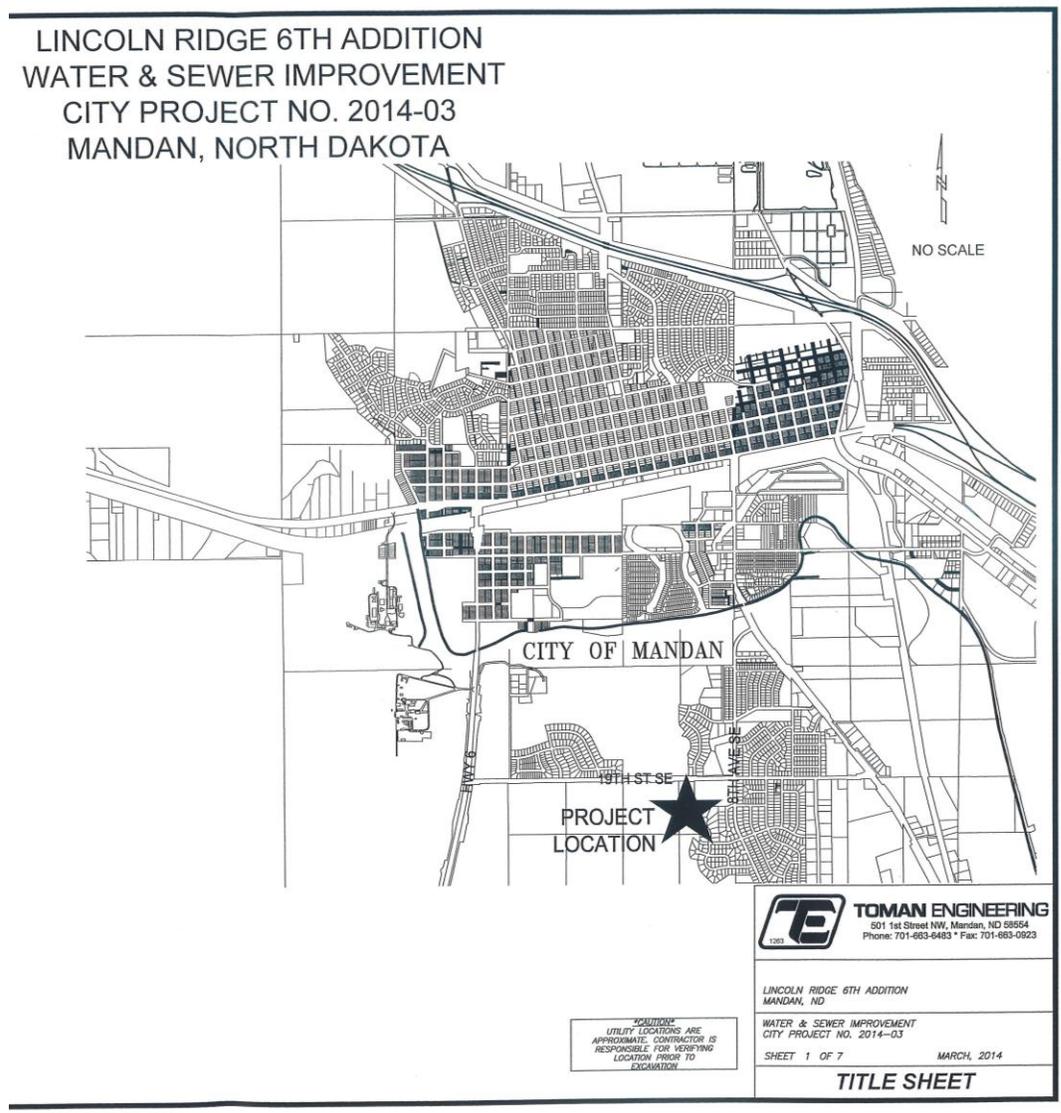
Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge Estates 6th Addition, Project 2014-03.

Page 3 of 13



Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge Estates 6th Addition, Project 2014-03.

Page 4 of 13

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3-WAY AGREEMENT

1263

Lincoln Ridge 6<sup>th</sup> Addition

Water & Sewer IMPROVEMENT PROJECT No. 2014-03

THIS AGREEMENT, made on this \_\_\_\_ day of \_\_\_\_\_, 2014, between the City of Mandan, a municipal corporation, hereinafter called the CITY, Steve Thilmony, hereinafter called the DEVELOPER, and Bowers Excavating, LLC, hereinafter called the CONTRACTOR. The ENGINEER mentioned in this contract shall be Toman Engineering Company.

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

Water Mains                       Sanitary Sewer Mains       Storm Sewer Mains  
 Streets                                       Other:

for property to be developed and offered for sale by the DEVELOPER; and

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

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

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

(1) LICENSE TO CONSTRUCT.

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

*Lenz Court & Mira Court*

which license shall continue so long as the DEVELOPER performs the agreements by it herein.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

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Page 5 of 13

---

(2) SCOPE OF WORK.

The DEVELOPER will, through a CONTRACTOR licensed under the laws of North Dakota, do said work, including furnishing all materials, equipment and labor necessary to perform all of the work shown on the plans and specifications prepared by a licensed professional engineer, which are hereby referred to and made a part of this Agreement. Construction staking as required by the CITY shall be done by the ENGINEER at the expense of the DEVELOPER. The CONTRACTOR shall complete all stubouts to the property line on utilities to be constructed under this contract.

All work incidental to the project, such as grading, taps to the watermain, seeding, chlorine, clean up, and any other usual charges as determined by the ENGINEER shall be borne by the CONTRACTOR.

(3) TIME OF COMMENCEMENT AND COMPLETION

The anticipated date for allowing construction to start will be \_\_\_\_\_. The CONTRACTOR shall have until Phase 1 – June 15, 2014, and Phase 2 – June 30, 2014 to complete the project to the satisfaction of the ENGINEER and the CITY. If the earthwork contractor completes their grading work sooner than \_\_\_\_\_, the CONTRACTOR may be allowed an earlier start date.

(4) CITY AUTHORITY AND RESPONSIBILITY

The City Engineer, other City staff and agents for the city shall at all times have access to the project site during construction of the public improvements. The City Engineer shall be the final arbiter when questions arise concerning interpretation and compliance with the plans, specifications, City design requirements and City ordinances. Failure of the developer, design engineer or contractor to comply with the directives of the City Engineer shall be sufficient grounds to issue a stop work order or require installed work to be removed and reconstructed.

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Page 6 of 13

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The DEVELOPER shall provide an irrevocable letter of credit or a certificate of deposit from a bona fide financial institution in the amount of the project cost including services provided by the CITY. The irrevocable letter of credit expiration date shall be a minimum of 60 days past the time of completion or any extensions of this agreement. The project cost is \$ 148,636.00. Final payment will be for actual quantities used. A copy of the accepted proposal is attached to the back of and made a part of this Agreement.

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Page 7 of 13

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Page 8 of 13

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Agenda Documentation

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Page 9 of 13

Bowers Excavating, LLC

160 Riverwood Ave SE  
PO Box 145  
Mandan ND 58554

**Estimate**

Date	Estimate #
4/1/2014	1231

Name / Address
Toman Engineering Co

*LRG*

			Project
			Lena Court & Mia C...
Description	Qty	Cost	Total
8" Sanitary Sewer Pipe	408	32.00	13,056.00
8" X 4" Wye Branch	20	350.00	7,000.00
Bedding Material	397	10.00	3,970.00
Rock Excavation	25	1.00	25.00
Televise Sewermain	408	4.00	1,632.00
6" Watermain	50	32.00	1,600.00
8" Watermain	414	38.00	15,732.00
6" Gate Valve & Box	4	2,000.00	8,000.00
8" Gate Valve & Box	2	2,300.00	4,600.00
6" Hydrant	4	5,000.00	20,000.00
Concrete Manhole	4	4,500.00	18,000.00
1" Water Service Pipe	747	20.00	14,940.00
4" Sewer Pipe	829	20.00	16,580.00
1" Water Service Connection	20	350.00	7,000.00
1" Curb Stop & 1 1/4" Curb Box	20	350.00	7,000.00
4" 45 degree bend	20	250.00	5,000.00
Mobilization & Bonds	1	4,500.00	4,500.00
		<b>Total</b>	<b>\$148,635.00</b>

Customer Signature \_\_\_\_\_

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge Estates 6th Addition, Project 2014-03.

Page 10 of 13

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(15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS.

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

IN WITNESS WHEREOF, the parties have executed the following agreement.

CITY OF MANDAN

\_\_\_\_\_  
Justin Froseth  
Planning and Engineering Director

\_\_\_\_\_  
Arlyn Van Beek, President  
Board of City Commissioners

Attest:

\_\_\_\_\_  
Jim Neubauer  
City Administrator

DEVELOPER

Steve Thimony  
Firm Name

[Signature]  
Authorized Representative

Owner  
Owner, Title

4705 S. Bay Dr  
Street Address

Mandan ND 58554  
City, State, Zip

CONTRACTOR

Bowers Excavating, LLC  
Firm Name

Jeff Bowers  
Authorized Representative

Jeff Bowers, Owner  
Owner, Title

160 Riverwood Avenue SE, Box 145  
Street Address

Mandan, North Dakota 58554  
City, State, Zip

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge Estates 6th Addition, Project 2014-03.

Page 11 of 13

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**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND  
AUTHORIZING EXECUTION OF 3-WAY AGREEMENT FOR WATER AND  
SEWER IMPROVEMENT PROJECT NO. 2014-03  
(Lincoln Ridge Estates 6th Addition)**

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

1. That the plans and specifications for the Water and Sewer Project No. 2014-03 serving Lincoln Ridge Estates 6th Addition in the City of Mandan, as presented by Steve Thilmony, on behalf of themselves, are hereby approved, ratified and confirmed as the plans and specifications for said project, in accordance with which said improvement project will be constructed, subject to any further modifications of the plans and specifications by the Board as provided by law. The plans and specifications shall be filed in the Office of the City Administrator and City Engineer and open for public inspection. The named streets within the subdivision to receive the improvements are: Lena Court SE and Mia Court SE.

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

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

\_\_\_\_\_  
President, Board of City Commissioners

ATTEST:

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

Date of Passage:            May 6th, 2014

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for the installation of water & sewer in Lincoln Ridge Estates 6th Addition, Project 2014-03.

Page 12 of 13

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S & B Enterprises  
Steve Thilmony  
4705 South Bay Dr.  
Mandan ND 58554  
663-4457

May 6, 2013

City of Mandan  
105 2<sup>nd</sup> St NW  
Mandan ND 58554

Re: Lincoln Ridge 6<sup>th</sup>

To Whom It May Concern:

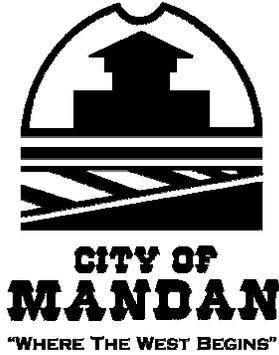
I Steve Thilmony, developer of Lincoln Ridge 6<sup>th</sup>, agree to sell Lots 25, 26 and 27 to the residents of Lincoln Ridge 1<sup>st</sup>. If an agreement can't be worked out the said lots will be added to Lots 24 and 28 of Lincoln Ridge 6<sup>th</sup>. The lots will not be stand alone lots.

S&B Enterprises



Steve Thilmony





New Business No. 5

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 28, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Engineering & Planning Director  
**SUBJECT:** Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

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

**BACKGROUND/ALTERNATIVES:** The West Hills Estates 3rd Addition plat is located north of Old Red Trail and west of Crown Point. The proposed utilities only serve the developer of the benefiting land; therefore, this is being paid for under a 3-way agreement. A letter of credit has been secured for the project.

**ATTACHMENTS:**

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

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

**STAFF IMPACT:** Minimal

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

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

**SUGGESTED MOTION:** I move to approve the resolution approving the plans and specifications and authorizing execution of 3-way agreement for water and sewer improvement Project 2014-05 (West Hills Estates 3<sup>rd</sup> Addition).

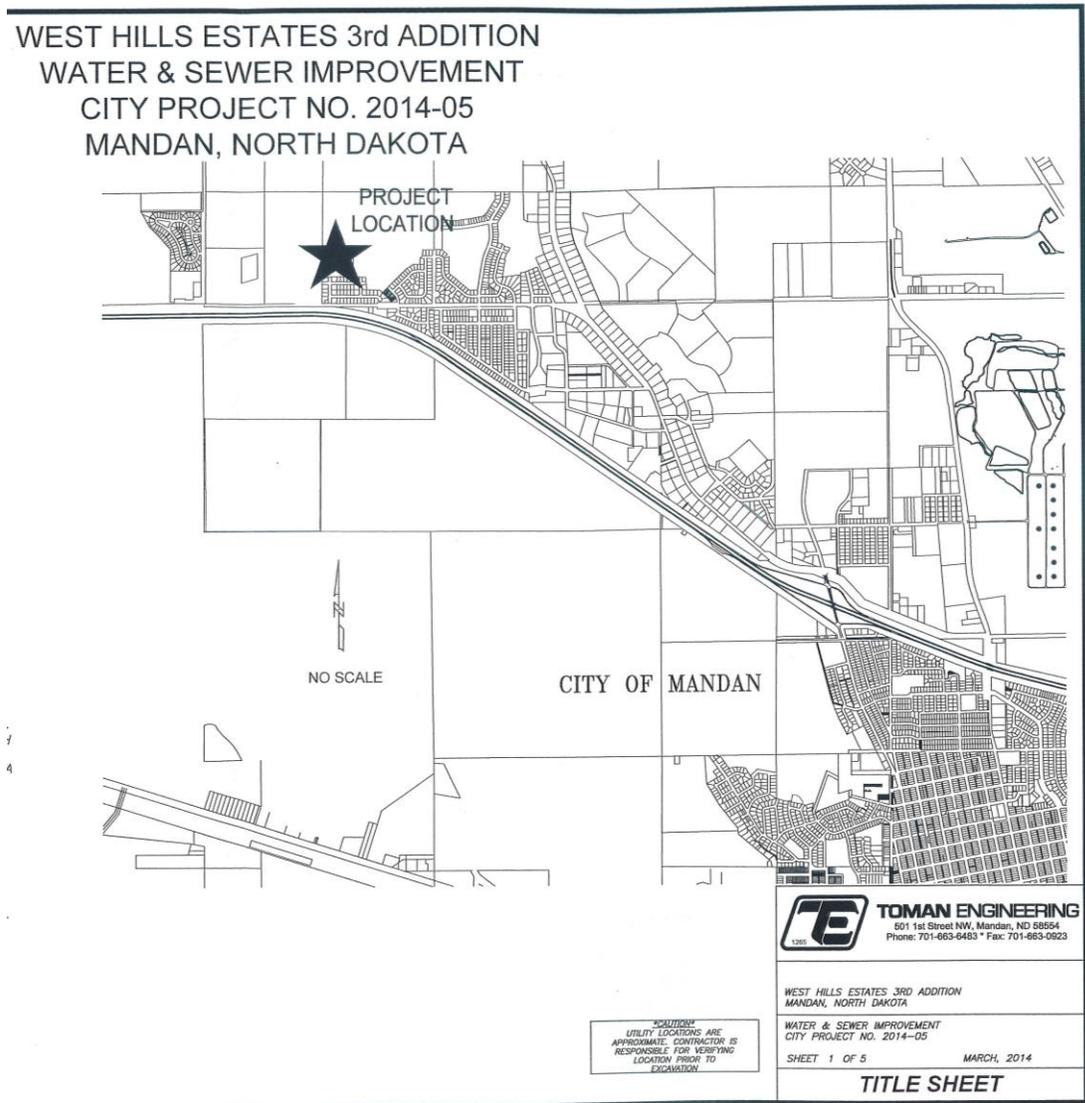
Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 2 of 10



Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 3 of 10

3-WAY AGREEMENT

1265

West Hills Estates 3<sup>rd</sup> Addition

Water & Sewer IMPROVEMENT PROJECT No. 2014-05

THIS AGREEMENT, made on this \_\_\_\_ day of \_\_\_\_\_ 2014, between the City of Mandan, a municipal corporation, hereinafter called the CITY, Nathan Lamareux, hereinafter called the DEVELOPER, and Markwed Excavating, Inc., hereinafter called the CONTRACTOR. The ENGINEER mentioned in this contract shall be Toman Engineering Company.

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

Water Mains       Sanitary Sewer Mains       Storm Sewer Mains  
 Streets                       Other:

for property to be developed and offered for sale by the DEVELOPER; and

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

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

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

(1) LICENSE TO CONSTRUCT.

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

*Corvette Street NW & Crown Point Road NW*

which license shall continue so long as the DEVELOPER performs the agreements by it herein.

Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 4 of 10

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(2) SCOPE OF WORK.

The DEVELOPER will, through a CONTRACTOR licensed under the laws of North Dakota, do said work, including furnishing all materials, equipment and labor necessary to perform all of the work shown on the plans and specifications prepared by a licensed professional engineer, which are hereby referred to and made a part of this Agreement. Construction staking as required by the CITY shall be done by the ENGINEER at the expense of the DEVELOPER. The CONTRACTOR shall complete all stubouts to the property line on utilities to be constructed under this contract.

All work incidental to the project, such as grading, taps to the watermain, seeding, chlorine, clean up, and any other usual charges as determined by the ENGINEER shall be borne by the CONTRACTOR.

(3) TIME OF COMMENCEMENT AND COMPLETION

The anticipated date for allowing construction to start will be \_\_\_\_\_. The CONTRACTOR shall have until July 1, 2014 to complete the project to the satisfaction of the ENGINEER and the CITY. If the earthwork contractor completes their grading work sooner than \_\_\_\_\_, the CONTRACTOR may be allowed an earlier start date.

(4) CITY AUTHORITY AND RESPONSIBILITY

The City Engineer, other City staff and agents for the city shall at all times have access to the project site during construction of the public improvements. The City Engineer shall be the final arbiter when questions arise concerning interpretation and compliance with the plans, specifications, City design requirements and City ordinances. Failure of the developer, design engineer or contractor to comply with the directives of the City Engineer shall be sufficient grounds to issue a stop work order or require installed work to be removed and reconstructed.

(5) DESIGN ENGINEER AUTHORITY AND RESPONSIBILITY

The ENGINEER hired by the DEVELOPER is responsible for providing day to day monitoring and direction of the work. Daily logs shall be maintained and made available to the City. The ENGINEER is responsible to provide the CONTRACTOR in a timely manner with all needed information regarding grades and locations of work. Should a dispute arise between the CONTRACTOR and the ENGINEER over interpretation of the plans, the City Engineer shall be consulted and the City Engineer shall render a decision. Any deviation from the location of facilities shown on the plans must be approved in writing by the City Engineer before commencing with construction of the deviation. All deviations from the approved plans shall be documented with as-built drawings prepared by the ENGINEER. Approval by the CITY of the as-built drawings is a condition of project approval and acceptance by the CITY.

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Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 5 of 10

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(6) PAYMENT.

The DEVELOPER shall provide an irrevocable letter of credit or a certificate of deposit from a bona fide financial institution in the amount of the project cost including services provided by the CITY. The irrevocable letter of credit expiration date shall be a minimum of 60 days past the time of completion or any extensions of this agreement. The project cost is \$125,158.00. Final payment will be for actual quantities used. A copy of the accepted proposal is attached to the back of and made a part of this Agreement.

The DEVELOPER will be responsible to pay the CONTRACTOR for all of the Agreement work in accordance with the plans, specifications, and proposal prepared by the DEVELOPER'S representative and made a part of this Agreement. The ENGINEER shall measure the work completed and submit to the ENGINEER. The ENGINEER will submit approved progress payments to the DEVELOPER. The CITY shall have no obligations, liability or responsibility for any payment due to any party under this Agreement or otherwise arising from the work under this Agreement. In no event shall the CITY be responsible for any payments whatsoever, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.

(7) CONTENTS OF CONTRACTOR'S CONTRACT.

All contracts made by the CONTRACTOR with any person, firm, or corporation in connection with or in carrying out the contract work shall provide: "This contract is subject to all the terms and conditions of a contract dated \_\_\_\_\_, between the CITY, the DEVELOPER and the CONTRACTOR."

(8) OWNERSHIP OF WORK LINES.

All contract work, except utility stubouts, furnished or placed in the public streets, alleys, or rights-of-way shall become the property of the City of Mandan. The placing and furnishing of all contract work by the DEVELOPER, its CONTRACTOR, its subcontractors, if any, and by an person, firm or corporation, as labor or material or otherwise, shall be under the provisions of this contract and with the express waiver of any right to claim against the CITY, or to make claims or lien against the contract work.

(9) WARRANTY.

The CONTRACTOR shall guarantee all work against faulty materials and workmanship for a period of one year from the date of final acceptance and the performance bond of the contract shall remain in full force and effect for that period.

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Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 6 of 10

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(10) VERBAL AGREEMENTS.

No verbal agreements or conversation with any officer, agent, or employee of the CITY or ENGINEER before or after the execution of this contract shall affect or modify any of their terms or obligations contained in the documents comprising the contract.

(11) PROTECTION OF PUBLIC AND WORK.

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

(12) UTILITIES.

It shall be the responsibility of the CONTRACTOR to familiarize itself with the location of all existing sewer, water mains and service lines, gas mains and service lines, telephone cable, power, light, and telephone poles, guys, valve boxes, stop boxes and all utilities installations that might be affected in the performance of the work. The CONTRACTOR shall notify all utility companies at least 48 hours in advance excluding Saturdays, Sundays, holidays, and in accordance with N. D. Century Code Chapter 49-23 North Dakota One Call of any construction affecting said utilities, and shall work out with said utilities any conflicts or changes.

(13) CHANGE.

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

(14) CLEAN UP.

Extra materials, tools and temporary structures shall be removed by the CONTRACTOR and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the ENGINEER, and the CITY. The CONTRACTOR shall maintain for a period of three months after completion of the work the surface of unpaved trenches, adjacent curbs and gutter, sidewalks, driveways,

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Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 7 of 10

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shrubbery, fences, sod or other surfaces disturbed. The CONTRACTOR shall conduct its operations in such manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved areas shall be restored to as good as or better than prior to construction by the CONTRACTOR. The CONTRACTOR shall be required to replace paving or gravel surface removed or damaged in the construction work or repair any area disturbed as a result of construction work to the satisfaction of and subject to the approval of the CITY.

(15) LIQUIDATED DAMAGES

The CONTRACTOR shall pay to the OWNER the amount of \$500.00 per day for liquidated damages for time in excess of authorized or adjusted completion time.

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Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 8 of 10

West Hills Estates 3<sup>rd</sup> Addition  
 Water & Sewer Improvements  
 City Project No. 2014-05

SPEC #	Description	Units	Quantity	Unit Price	Total
801-4.2	8 Inch Sanitary Sewer Pipe	LF	584	24. <sup>00</sup>	14,016.00
801-4.50	8 x 4 Inch Wye Branch	Ea	13	60. <sup>00</sup>	780.00
801-4.60	Bedding Material	Ton	170	16. <sup>00</sup>	2,720.00
801-4.62	Rock Excavation	CY	50	20. <sup>00</sup>	1,000.00
801-4.64	Televiser Sewermain	LF	584	2. <sup>00</sup>	1,168.00
901-4.10	6 Inch Watermain	LF	24	20. <sup>00</sup>	480.00
901-4.11	8 Inch Watermain	LF	305	22. <sup>00</sup>	6,710.00
901-4.13	12 Inch Watermain	LF	412	40. <sup>00</sup>	16,480.00
901-4.51	6 Inch Gate Valve & Box	Ea	3	1,400. <sup>00</sup>	4,200.00
901-4.52	8 Inch Gate Valve & Box	Ea	2	1,800. <sup>00</sup>	3,600.00
901-4.54	12 Inch Gate Valve & Box	Ea	2	3,000. <sup>00</sup>	6,000.00
901-4.70	6 Inch Hydrant	Ea	3	3,500. <sup>00</sup>	10,500.00
1205-4.1	Concrete Manhole	Ea	3	3,400. <sup>00</sup>	10,200.00
1209-4.12	1" Water Service Pipe	LF	458	18. <sup>00</sup>	8,244.00
1209-4.1	4" Sewer Pipe	LF	485	18. <sup>00</sup>	8,730.00
1209-4.41	1 Inch Water Service Connection	Ea	13	180. <sup>00</sup>	2,340.00
1209-4.51	1 Inch Curb Stop & 1-1/4 Inch Curb Box	Ea	13	220. <sup>00</sup>	2,860.00
1209-4.6	4 Inch 45° Bend	Ea	13	10. <sup>00</sup>	130.00
SP # 1	Mobilization & Bonds	LS	1	25,000. <sup>00</sup>	25,000.00
TOTAL AMOUNT					\$ 125,158.00

Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 9 of 10

(15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS.

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

IN WITNESS WHEREOF, the parties have executed the following agreement.

CITY OF MANDAN

\_\_\_\_\_  
Justin Froseth  
Planning and Engineering Director

\_\_\_\_\_  
Arlyn Van Beek, President  
Board of City Commissioners

Attest:

\_\_\_\_\_  
Jim Neubauer  
City Administrator

DEVELOPER

\_\_\_\_\_  
Nathan Lamareux  
Firm Name

\_\_\_\_\_  
Nathan Lamareux  
Authorized Representative

\_\_\_\_\_  
Owner  
Owner, Title

\_\_\_\_\_  
9495 County Road 27B  
Street Address

\_\_\_\_\_  
Westhope ND 58793  
City, State, Zip

CONTRACTOR

\_\_\_\_\_  
Markwed Excavating, Inc.  
Firm Name

\_\_\_\_\_  
David Markwed  
Authorized Representative

\_\_\_\_\_  
President  
Owner, Title

\_\_\_\_\_  
3555 93<sup>rd</sup> Street SE  
Street Address

\_\_\_\_\_  
Bismarck, North Dakota 58504  
City, State, Zip

Board of City Commissioners

Agenda Documentation

Meeting Date: June 19, 2012

Subject: Consider resolution approving plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-05(West Hills Estates 3rd Addition).

Page 10 of 10

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**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND  
AUTHORIZING EXECUTION OF 3-WAY AGREEMENT FOR WATER AND  
SEWER IMPROVEMENT PROJECT NO. 2014-05  
(West Hills Estates 3rd Addition)**

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

1. That the plans and specifications for the Water and Sewer Project No. 2014-05 serving West Hills Estates 3rd Addition in the City of Mandan, as presented by Nathan Lamoureux, on behalf of themselves, are hereby approved, ratified and confirmed as the plans and specifications for said project, in accordance with which said improvement project will be constructed, subject to any further modifications of the plans and specifications by the Board as provided by law. The plans and specifications shall be filed in the Office of the City Administrator and City Engineer and open for public inspection. The named streets within the subdivision to receive the improvements are: Corvette Street NW and Crown point Road NW.

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

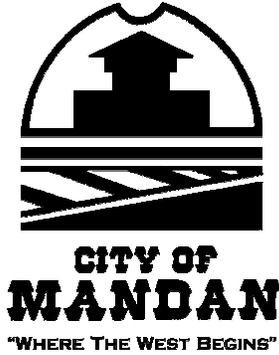
3. This resolution shall be in full force and effect from the date of its passage.

\_\_\_\_\_  
President, Board of City Commissioners

ATTEST:

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

Date of Passage:            May 6th, 2014



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 28, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Engineering & Planning Director  
**SUBJECT:** Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

---

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

**BACKGROUND/ALTERNATIVES:** The Heart Ridge 3rd Addition plat is located North of 19<sup>th</sup> Street SE and west of 8<sup>th</sup> Avenue SE. The proposed utilities only serve the developer of the benefiting land; therefore, this is being paid for under a 3-way agreement. A letter of credit has been secured for the project.

This area was originally included within the Heart Ridge 2<sup>nd</sup> Addition. It was revised because a mistake found with alignment. Heart Ridge 3<sup>rd</sup> Addition was created to correct in order for lots to better fit with the existing shape of the property.

**ATTACHMENTS:**

1. Project Vicinity Map
2. 3 way Agreement
3. Resolution Approving Plans and Specifications and Authorizing Execution of 3-way Agreement

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

**STAFF IMPACT:** Minimal

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

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

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 2 of 12

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SUGGESTED MOTION: I move to approve the resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

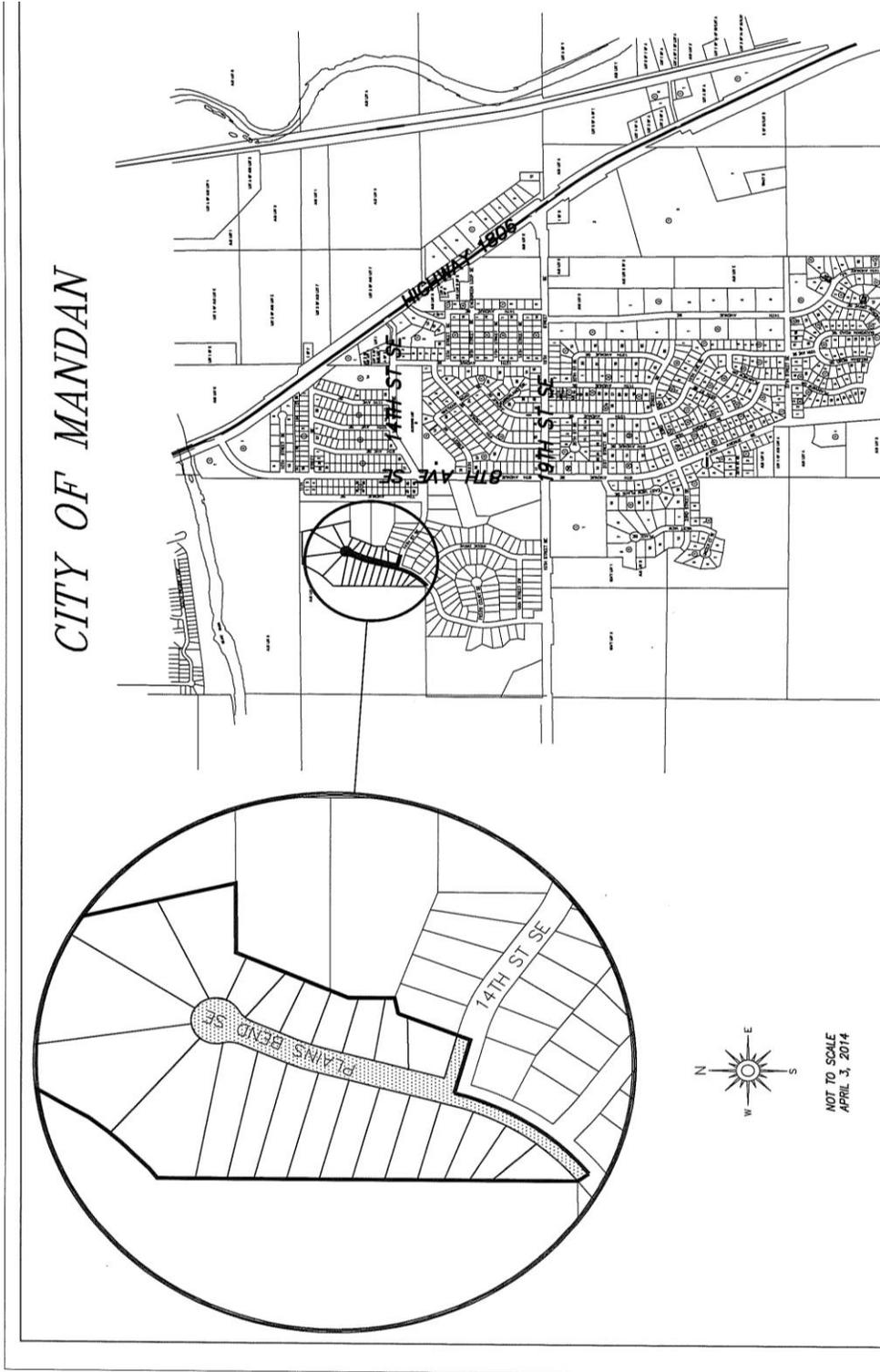
Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 3 of 12



Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 4 of 12

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**3-WAY AGREEMENT**

**Heart Ridge 3<sup>rd</sup> Addition**

**SANITARY SEWER & WATER IMPROVEMENT PROJECT #2014-21**

THIS AGREEMENT, made on this 6<sup>th</sup> day of May 2014, between the City of Mandan, a municipal corporation, hereinafter called the CITY, Swenson, Hagen & Co., hereinafter called the DEVELOPER, and Markwed Excavating, Inc., hereinafter called the CONTRACTOR. The ENGINEER mentioned in this contract shall be Jason Petryszyn.

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

Water Mains       Sanitary Sewer Mains       Storm Sewer Mains  
 Streets               Other:

for property to be developed and offered for sale by the DEVELOPER; and

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

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

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

(1) LICENSE TO CONSTRUCT.

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

- Plains Bend SE – From 14<sup>th</sup> Street SE to the end of the cul-de-sac.

which license shall continue so long as the DEVELOPER performs the agreements by it herein.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 5 of 12

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(2) SCOPE OF WORK.

The DEVELOPER will, through a CONTRACTOR licensed under the laws of North Dakota, do said work, including furnishing all materials, equipment and labor necessary to perform all of the work shown on the plans and specifications prepared by a licensed professional engineer, which are hereby referred to and made a part of this Agreement. Construction staking as required by the CITY shall be done by the ENGINEER at the expense of the DEVELOPER. The CONTRACTOR shall complete all stubouts to the property line on utilities to be constructed under this contract.

All work incidental to the project, such as grading, taps to the watermain, seeding, chlorine, clean up, and any other usual charges as determined by the ENGINEER shall be borne by the CONTRACTOR.

(3) TIME OF COMMENCEMENT AND COMPLETION

The anticipated date for allowing construction to start will be May 7, 2014. The CONTRACTOR shall have from May 7, 2014 to May 31, 2014 to complete the project to the satisfaction of the ENGINEER and the CITY. If the earthwork contractor completes their grading work sooner than \_\_\_N/A\_\_\_, the CONTRACTOR may be allowed an earlier start date.

(4) CITY AUTHORITY AND RESPONSIBILITY

The City Engineer, other City staff and agents for the city shall at all times have access to the project site during construction of the public improvements. The City Engineer shall be the final arbiter when questions arise concerning interpretation and compliance with the plans, specifications, City design requirements and City ordinances. Failure of the developer, design engineer or contractor to comply with the directives of the City Engineer shall be sufficient grounds to issue a stop work order or require installed work to be removed and reconstructed.

(5) DESIGN ENGINEER AUTHORITY AND RESPONSIBILITY

The ENGINEER hired by the DEVELOPER is responsible for providing day to day monitoring and direction of the work. Daily logs shall be maintained and made available to the City. The ENGINEER is responsible to provide the CONTRACTOR in a timely manner with all needed information regarding grades and locations of work. Should a dispute arise between the CONTRACTOR and the ENGINEER over interpretation of the plans, the City Engineer shall be consulted and the City Engineer shall render a decision. Any deviation from the location of facilities shown on the plans must be approved in writing by the City Engineer before commencing with construction of the deviation. All deviations from the approved plans shall be documented with as-built drawings prepared by the ENGINEER. Approval by the CITY of the as-built drawings is a condition of project approval and acceptance by the CITY.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 6 of 12

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(6) PAYMENT.

The DEVELOPER shall provide an irrevocable letter of credit or a certificate of deposit from a bona fide financial institution in the amount of the project cost including services provided by the CITY. The irrevocable letter of credit expiration date shall be a minimum of 60 days past the time of completion or any extensions of this agreement. The project cost is \$180,182.00. Final payment will be for actual quantities used. A copy of the accepted proposal is attached to the back of and made a part of this Agreement.

The DEVELOPER will be responsible to pay the CONTRACTOR for all of the Agreement work in accordance with the plans, specifications, and proposal prepared by the DEVELOPER'S representative and made a part of this Agreement. The ENGINEER shall measure the work completed and submit to the ENGINEER. The ENGINEER will submit approved progress payments to the DEVELOPER. The CITY shall have no obligations, liability or responsibility for any payment due to any party under this Agreement or otherwise arising from the work under this Agreement. In no event shall the CITY be responsible for any payments whatsoever, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.

(7) CONTENTS OF CONTRACTOR'S CONTRACT.

All contracts made by the CONTRACTOR with any person, firm, or corporation in connection with or in carrying out the contract work shall provide: "This contract is subject to all the terms and conditions of a contract dated May 6, 2014, between the CITY, the DEVELOPER and the CONTRACTOR."

(8) OWNERSHIP OF WORK LINES.

All contract work, except utility stubouts, furnished or placed in the public streets, alleys, or rights-of-way shall become the property of the City of Mandan. The placing and furnishing of all contract work by the DEVELOPER, its CONTRACTOR, its subcontractors, if any, and by an person, firm or corporation, as labor or material or otherwise, shall be under the provisions of this contract and with the express waiver of any right to claim against the CITY, or to make claims or lien against the contract work.

(9) WARRANTY.

The CONTRACTOR shall guarantee all work against faulty materials and workmanship for a period of one year from the date of final acceptance and the performance bond of the contract shall remain in full force and effect for that period.

(10) VERBAL AGREEMENTS.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 7 of 12

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No verbal agreements or conversation with any officer, agent, or employee of the CITY or ENGINEER before or after the execution of this contract shall affect or modify any of their terms or obligations contained in the documents comprising the contract.

(11) PROTECTION OF PUBLIC AND WORK.

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

(12) UTILITIES.

It shall be the responsibility of the CONTRACTOR to familiarize itself with the location of all existing sewer, water mains and service lines, gas mains and service lines, telephone cable, power, light, and telephone poles, guys, valve boxes, stop boxes and all utilities installations that might be affected in the performance of the work. The CONTRACTOR shall notify all utility companies at least 48 hours in advance excluding Saturdays, Sundays, holidays, and in accordance with N. D. Century Code Chapter 49-23 North Dakota One Call of any construction affecting said utilities, and shall work out with said utilities any conflicts or changes.

(13) CHANGE.

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

(14) CLEAN UP.

Extra materials, tools and temporary structures shall be removed by the CONTRACTOR and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the ENGINEER, and the CITY. The CONTRACTOR shall maintain for a period of three months after completion of the work the surface of unpaved trenches, adjacent curbs and gutter, sidewalks, driveways, shrubbery, fences, sod or other surfaces disturbed. The CONTRACTOR shall conduct its

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 8 of 12

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operations in such manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved areas shall be restored to as good as or better than prior to construction by the CONTRACTOR. The CONTRACTOR shall be required to replace paving or gravel surface removed or damaged in the construction work or repair any area disturbed as a result of construction work to the satisfaction of and subject to the approval of the CITY.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 9 of 12

**WATER & SANITARY SEWER IMPROVEMENT PROJECT NO. 2014-21  
HEART RIDGE 2<sup>nd</sup> ADDITION MODIFICATIONS**

**APPROXIMATE REMOVAL ITEMS**

<u>SANITARY SEWER ITEMS</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Remove 8" Sanitary Sewer Pipe	571 LF	\$ 26. <sup>00</sup>	\$ 14,846.00 ←
Remove 4" Sewer Service Pipe	942 LF	\$ 18. <sup>00</sup>	\$ 16,956.00 ←
<b>SANITARY SEWER SUBTOTAL</b>			<b>\$ 31,802.00</b>
<u>WATERMAIN ITEMS</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Remove 8" PVC Watermain	440 LF	\$ 22. <sup>00</sup>	\$ 9,680.00 ←
Remove 1" Copper Water Serv. Pipe	613 LF	\$ 18. <sup>00</sup>	\$ 11,034.00 ←
Remove 1" Curb Stop & Box	13 EA	\$ 140. <sup>00</sup>	\$ 1,820.00
<b>WATERMAIN SUBTOTAL</b>			<b>\$ 22,534.00</b>
<u>MISCELLANEOUS ITEMS</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Seed & Mulch	1,800 SY	\$ 5. <sup>00</sup>	\$ 9,000.00
<b>MISCELLANEOUS SUBTOTAL</b>			<b>\$ 9,000.00</b>

**APPROXIMATE QUANTITIES**

<u>SANITARY SEWER ITEMS</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
8" Sanitary Sewer	528 LF	\$ 28. <sup>00</sup>	\$ 14,784.00
8" x 4" Wye Branch	17 EA	\$ 60. <sup>00</sup>	\$ 1,020.00
Bedding Material	205 TON	\$ 16. <sup>00</sup>	\$ 3,280.00
Rock Excavation	5 CY	\$ 0	\$ —
Telesive Sewer Main	528 LF	\$ 2. <sup>05</sup>	\$ 1,056.00
Reset Existing Manhole	2 EA	\$ 2,800. <sup>00</sup>	\$ 5,600.00
4" Sewer Service Pipe	952 LF	\$ 22. <sup>00</sup>	\$ 20,944.00
4" 45° Bend	14 EA	\$ 20. <sup>00</sup>	\$ 2,800.00
4" 22.5° Bend	1 EA	\$ 20. <sup>00</sup>	\$ 20.00
8" x 4" Inserta Tee	2 EA	\$ 1,400. <sup>00</sup>	\$ 2,800.00 ←
<b>SANITARY SEWER SUBTOTAL</b>			<b>\$ 49,784.00</b>
<u>WATERMAIN ITEMS</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
Bedding Material	200 TON	\$ 16. <sup>00</sup>	\$ 3,200.00
Rock Excavation	5 CY	\$ 0	\$ —
Ductile Iron Fittings	incidental		\$ —
8" PVC Watermain	446 LF	\$ 26. <sup>00</sup>	\$ 11,596.00
Reset 8" Gate Valve & Box	1 EA	\$ 1,500. <sup>00</sup>	\$ 1,500.00
Reset 6" Hydrant Assembly	1 EA	\$ 1,500. <sup>00</sup>	\$ 1,500.00
Reset 8" Hydrant	1 EA	\$ 1,000. <sup>00</sup>	\$ 1,000.00
1" Copper Water Serv. Pipe	813 LF	\$ 22. <sup>00</sup>	\$ 17,886.00
1" Water Service Connection	10 EA	\$ 170. <sup>00</sup>	\$ 1,700.00
1" Ball Valve Curb Stop & 1.5" Box	14 EA	\$ 170. <sup>00</sup>	\$ 2,380.00

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 10 of 12

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WATERMAIN SUBTOTAL \$ 40,762.00

**STORM SEWER ITEMS**

Reset 18" RCP  
Reset 18" Flared End Section  
18" RCP Long Radius Bends  
Seed & Mulch

<u>QUANTITY</u>		<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
212	LF	\$ <u>100.<sup>00</sup></u>	\$ <u>21,200.00</u> ←
1	EA	\$ <u>400.<sup>00</sup></u>	\$ <u>400.00</u>
4	EA	\$ <u>800.<sup>00</sup></u>	\$ <u>3200.00</u>
300	SY	\$ <u>5.<sup>00</sup></u>	\$ <u>1500.00</u>

STORM SEWER SUBTOTAL \$ 26,300.00

TOTAL COST \$ 180,182.00

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 11 of 12

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(15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS.

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

IN WITNESS WHEREOF, the parties have executed the following agreement.

CITY OF MANDAN

\_\_\_\_\_  
Justin Froseth  
Planning and Engineering Director

\_\_\_\_\_  
Arlyn Van Beck, President  
Board of City Commissioners

Attest:

\_\_\_\_\_  
Jim Neubauer  
City Administrator

DEVELOPER

Swenson, Hagen & Co.  
Firm Name

[Signature]  
Authorized Representative

Treasurer  
Owner, Title

909 Basin Avenue  
Street Address

Bismarck, ND 58502  
City, State, Zip

CONTRACTOR

Marked Excavating Inc  
Firm Name

[Signature] 04-25-14  
Authorized Representative

President  
Owner, Title

3555 93rd St SE  
Street Address

Bismarck, ND 58504  
City, State, Zip

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider resolution approving the plans and specifications and authorizing the execution of a 3-way agreement for water & sewer improvement Project 2014-21(Heart Ridge 3rd Addition).

Page 12 of 12

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**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND  
AUTHORIZING EXECUTION OF 3-WAY AGREEMENT FOR WATER AND  
SEWER IMPROVEMENT PROJECT NO. 2014-21  
(Heart Ridge 3rd Addition)**

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

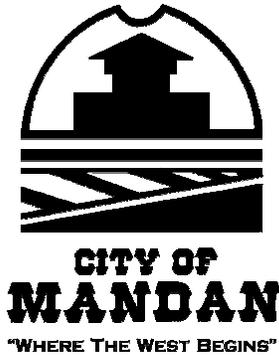
1. That the plans and specifications for the Water and Sewer Project No. 2014-21 serving Heart Ridge 3rd Addition in the City of Mandan, as presented by Lance Wachter, Wachter Development Inc., on behalf of themselves, are hereby approved, ratified and confirmed as the plans and specifications for said project, in accordance with which said improvement project will be constructed, subject to any further modifications of the plans and specifications by the Board as provided by law. The plans and specifications shall be filed in the Office of the City Administrator and City Engineer and open for public inspection. The named streets within the subdivision to receive the improvements are: Plains Bend SE and 14<sup>th</sup> Street SE.
2. That the President of the Board is hereby authorized to enter into a 3-way agreement between the City of Mandan; the developer, Lance Wachter, Wachter Development Inc., and the developer's contractor, contingent upon the City's receipt of an irrevocable escrow account covering construction costs.
3. This resolution shall be in full force and effect from the date of its passage.

\_\_\_\_\_  
President, Board of City Commissioners

ATTEST:

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

Date of Passage:            May 6th, 2014



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 28, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Planning & Engineering Director  
**SUBJECT:** Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

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**STATEMENT/PURPOSE:** To consider approving the approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

**BACKGROUND/ALTERNATIVES:** On March 4, 2014 the Mandan City Commission approved the creation of Street Improvement District No. 196 and approved the Engineer's Report and the Resolution of Necessity. On April 15<sup>th</sup> the Mandan City Commission approved the Resolution determining insufficiency of protest.

Since April 15<sup>th</sup>, our consultant engineers, Wenck Associates Inc., in collaboration with our office have been working on project design with the intention publish the advertisement for bid this Friday, May 9<sup>th</sup> and the following Friday, May 16<sup>th</sup>.

Going forward, the intended project schedule is as follows:

- Bid opening on May 27<sup>th</sup>.
- Approval to award bid at June 3<sup>rd</sup> City Commission meeting.
- Substantial completion of project, minus seal coat, by October 31<sup>st</sup>, 2014.
- Seal coat of asphalt paved streets by July 15<sup>th</sup> of 2015.

**ATTACHMENTS:**

1. District Map
2. Resolution approving plans and specifications
3. Resolution directing advertisement for bids

Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

Page 2 of 8

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FISCAL IMPACT: All project costs, including engineering and administration, to be included in property assessments.

STAFF IMPACT: Minimal

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

RECOMMENDATION: This office supports moving forward with the project.

SUGGESTED MOTION: I move to approve the resolution approving plans and specifications and approve the resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

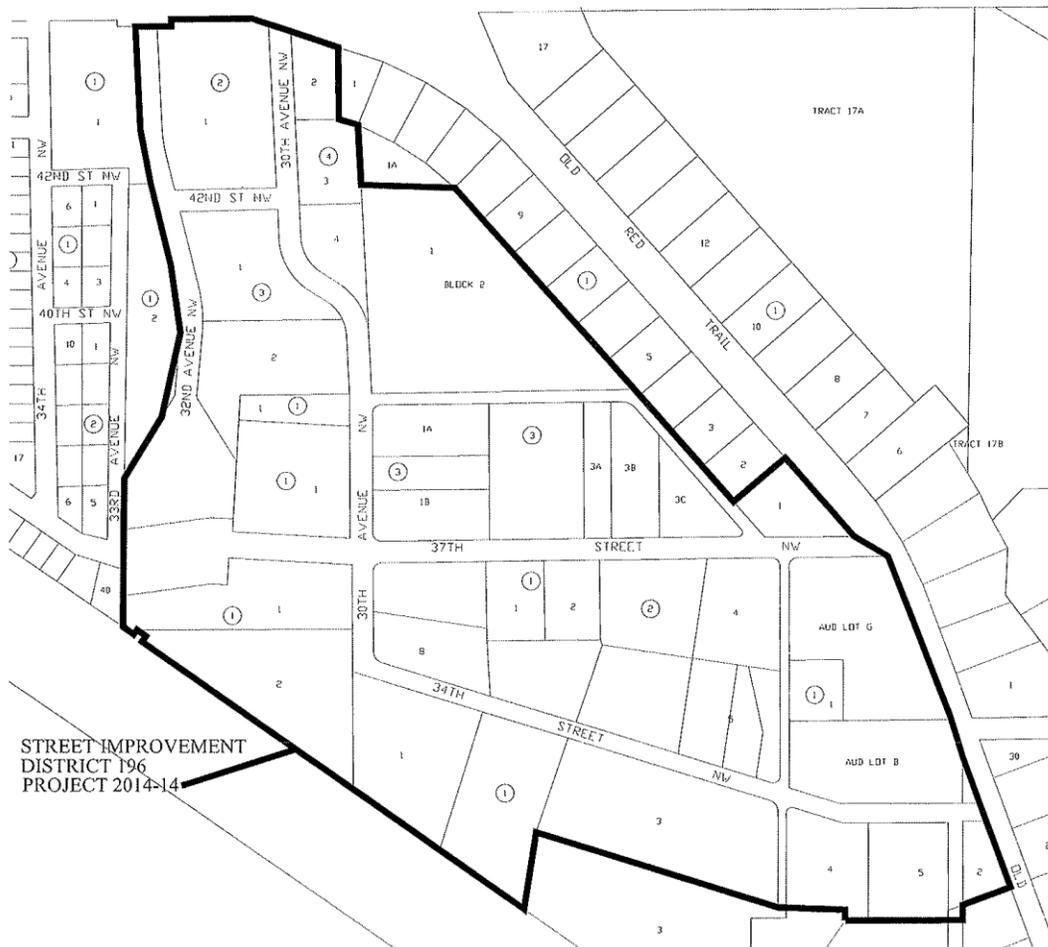
Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

Page 3 of 8



Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

Page 4 of 8

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**RESOLUTION APPROVING PLANS AND SPECIFICATIONS  
FOR STREET IMPROVEMENT DISTRICT NO. 196  
PROJECT # 2014-14**

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

Pursuant to the requirement of section 40-22-11 of the North Dakota Century Code, the Plans and Specifications for the improvement project in Street Improvement District No. 196 (Project # 2014-14) of said City be and the same are hereby approved, ratified and confirmed as the plans and specifications in accordance with which said improvement project will be constructed, except as modified by this Board in accordance with law, and the City Administrator shall file the same in his office, open for public inspection.

Dated this 6 day of May, 2014.

\_\_\_\_\_  
President, Board of City Commissioners

ATTEST:

\_\_\_\_\_  
City Administrator

Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

Page 5 of 8

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**RESOLUTION DIRECTING ADVERTISEMENT FOR BIDS  
FOR STREET IMPROVEMENT DISTRICT NO. 196**

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

1. The City Administrator, Deputy Auditor and City Engineer shall meet at the time and place specified in the notice authorized in paragraph 2 hereof, for the purpose of opening sealed bids for the work and material needed for the improvement project to be made in Street Improvement District No. 196 (Project # 2014-14) of the City of Mandan, as more fully described and referred to in the resolution creating said improvement district passed and approved by the Board on March 4th, 2014, and in the plans and specifications for said improvement now on file in the office of the City Engineer.

2. The City Administrator is authorized and directed to cause notice of advertisement for bids to be published once each week for two consecutive weeks in the Mandan News, the official newspaper, the first of such publications to be at least fourteen days before the date specified for receipt of bids, which notice shall be in the following form:

**“ADVERTISEMENT FOR BIDS FOR  
STREET IMPROVEMENT DISTRICT NO. 196  
MANDAN, NORTH DAKOTA**

Notice is hereby given, that the City of Mandan, North Dakota will receive sealed bids at the office of the City Administrator until Tuesday, May 27, 2014, at 4:00 p.m., CDT for the purpose of furnishing of materials, labor and skill needed for the concrete street reconstruction, spot repair of curb and gutter, asphalt resurfacing by mill and overlay, and related work in accordance with the plans and specifications for Street Improvement District No. 196 (Project # 2014-14), for the City of Mandan. The Work consists of all labor, skill, and materials required to properly construct the improvements.

Contractors and vendors desiring plans and specifications for personal use may secure digital copies from [www.questcdn.com](http://www.questcdn.com) for a fee of \$25.00. These documents may be downloaded by selecting this project from the “Bid Documents”

Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

Page 6 of 8

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tab and by entering Quest Project Number #3271592 on the "Search Projects" page. For assistance and the free membership registration, contact QuestCDN at (952)233-1632 or [info@questcdn.com](mailto:info@questcdn.com). Paper copies of the bid documents may be obtained from the City of Mandan Engineering office, 205 2<sup>nd</sup> Avenue Northwest, Mandan, North Dakota 58554 or from Wenck Associates, Inc., 301 1<sup>st</sup> Street NE, Suite 202, Mandan, North Dakota 58554 upon non-refundable payment of \$100.00 for each set. If Plans are mailed out an additional fee of \$15.00 will be added for postage and handling.

The bid proposals must be submitted to the City Administrator by 4:00 p.m., CDT, May 27, 2014 and shall be sealed and endorsed "Proposal for Street Improvement District No 196. Bids shall be delivered or mailed to: City Administrator, City of Mandan, 205 2<sup>nd</sup> Avenue NW, Mandan, ND 58554. Bids will be opened and read aloud in the City Commission Meeting Room at 4:00 p.m., CDT, on Tuesday, May 27, 2014. All bidders are invited to be present at the public opening of the Bids.

All Bidders must be licensed for the highest amount of their Bids, as provided by Section 43-07-05 of the North Dakota Century Code. The Bidder shall include a copy of his license or certificate of renewal thereof enclosed in the required bid bond envelope as required pursuant to Section 43-07-14 of the North Dakota Century Code, as amended.

Each bid shall be accompanied by a separate envelope containing a bidder's bond in the amount of five (5) percent of the highest amount of the bids as required by Section 48-01.2-05, North Dakota Century Code, as amended, and executed by the Bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after Notice of Award, shall execute and effect a contract in accordance with the terms of the bid, and a Contractor's Bond as required by law. No bid may be read or considered if it does not fully comply with the requirements of Section 48-01.2-05 of the North Dakota Century Code and any deficient bid must be resealed and returned to the bidder immediately.

Bids shall be made on the basis on cash payment for the work to be done. All work under this advertisement shall be started on a date to be specified in a written order from the Board of City Commissioners, or no later than ten (10) days after written notice to proceed has been received from the City.

Work shall be completed on or before the following dates with liquidated damages assessed as follows:

October 31<sup>st</sup>, 2014 for substantial completion date with seal coat by July 15th, 2015.

Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

Page 7 of 8

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Liquidated damages of \$500.00 per day will be assessed if any completion dates are exceeded.

Should the contractor fail to complete all of the work in a District according to the above date, or within such additional time as may have been granted by formal extensions of time approved by the City Engineer, there shall be deducted from any money due the contractor, the above mentioned sum for each calendar day the completion of the Work is delayed, for each District. Liquidated damages will continue to accumulate until the City Engineer determines winter weather prevents further construction. Liquidated damages will restart on the first day of construction in the Spring of 2015 and continue to accumulate until final project acceptance. The Contractor and his surety shall be liable for any excess. Such payments shall be deducted from the final payment and shall be charged as liquidated damages and not as a penalty.

The Board of City Commissioners will meet on Tuesday, June 3, 2014, at 5:30 PM, CDT, to review the Bids submitted, consider the engineer's recommendation, and to award the contract to the successful Bidder. The contract will be awarded on the basis of the low Bid submitted, on eligible areas, by a responsible and responsive Bidder deemed most favorable to the City's interest.

The City of Mandan reserves the right to reject any or all bids, to waive any informality or irregularity, to hold all bids for a period of thirty (30) days after the date fixed for the opening thereof, and to accept the Bid deemed most favorable to the best interest of the City of Mandan.

Dated this 6 day of May, 2014

City of Mandan, North Dakota  
BY: James Neubauer  
City Administrator"

3. Each and all of the terms and provisions of the foregoing notice are hereby adopted as the terms and conditions for the award of said contract.

4. The Board of City Commissioners shall meet on Tuesday, June 3, 2014 at 5:30 pm, local time, to review the bids submitted, consider the engineer's recommendation, and to award the contract to the successful bidder, subject to the Board finding that filed protests are insufficient to bar the work.

ATTEST:

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President, Board of City Commissioners

Board of City Commissioners

Agenda Documentation

Meeting Date: April 15, 2014

Subject Consider resolution approving plans and specifications and resolution directing advertisement for bids for Street Improvement District No. 196, Project No. 2014-14 (Mandan Industrial Park area).

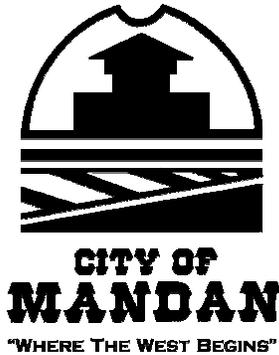
Page 8 of 8

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City Administrator

Passed: May 6, 2014



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 28, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Planning & Engineering Director  
**SUBJECT:** Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

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**STATEMENT/PURPOSE:** Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

**BACKGROUND/ALTERNATIVES:** This project was bid last fall but received no bids. The developer is requesting that the Mandan City Commission approve the amended engineer's report and direct advertisement for bid.

**ATTACHMENTS:**

1. District Map
2. Amended Engineer's Report
3. Resolution Approving Amended Engineer's Report
4. Resolution Directing Advertisement for Bids

**FISCAL IMPACT:** Based on the estimate of cost included with your documentation, the cost of the project would be \$55,361.20, engineering and administration will add \$19,376.42, bringing the total to \$74,737.62. These items would be entirely special assessed to the benefitting properties. There are 19 lots in this area that will receive approximately \$3,933.56 each.

**STAFF IMPACT:** Minimal

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

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

Page 2 of 9

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RECOMMENDATION: This office supports moving forward with the project.

SUGGESTED MOTION: I move to approve the resolution approving amended engineer's report and approve the resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

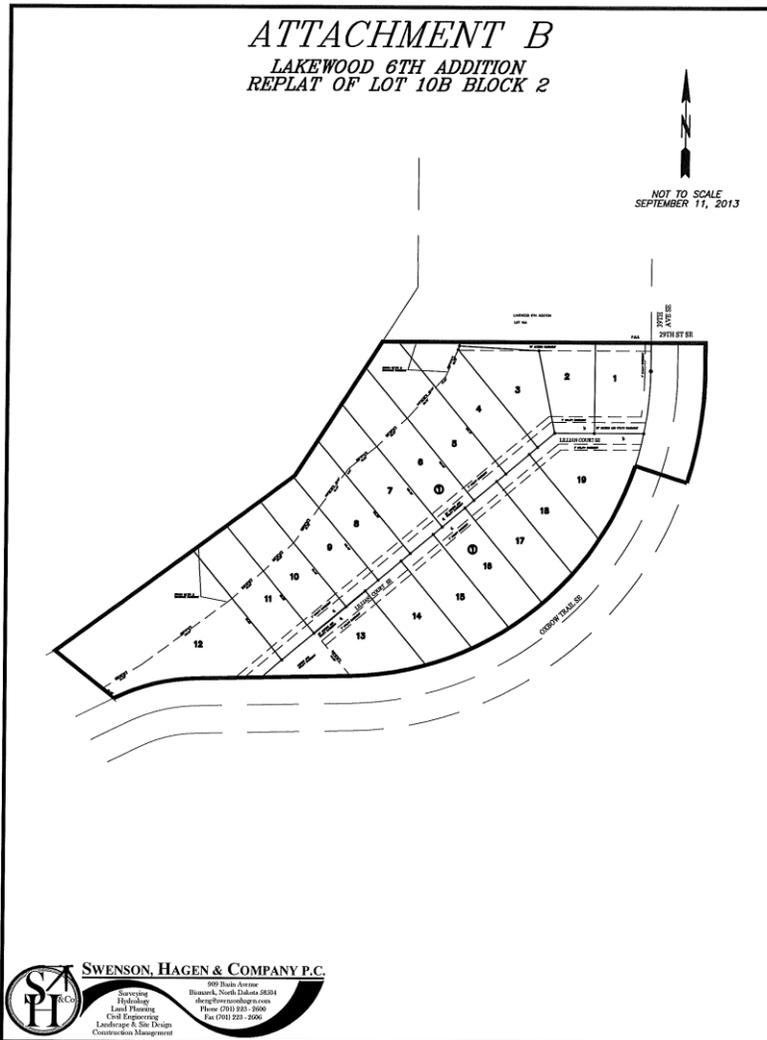
Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

Page 3 of 9



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Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

Page 4 of 9

**Engineer's Estimate**  
**LAKEWOOD 6 ADDITION LOT 10B BLOCK 2 REPLAT**  
**STREET IMPROVEMENT DISTRICT 189, PROJECT 2013-30**  
**April 9, 2014**

<u>ITEM</u>	<u>QUANT/UNIT</u>	<u>UNIT/TOTAL PRICE</u>
<b>GRADING ITEMS</b>		
Grading	1 LS	\$ 3,000.00 \$ 3,000.00
Watering	5 MGAL	\$ 15.00 \$ 75.00
Subgrade Preparation (1.0' Deep)	919 SY	\$ 2.20 \$ 2,021.80
4" Topsoiling	520 SY	\$ 3.50 \$ 1,820.00
Seeding (Class IV)	520 SY	\$ 1.30 \$ 676.00
Mulching (Straw)	520 SY	\$ 1.30 \$ 676.00
	<b>TOTAL</b>	<b>\$ 8,268.80</b>
<b>ASPHALT ITEMS</b>		
3" AC Base Course (Class B)	136 TON	\$ 110.00 \$ 14,960.00
2" AC Surface Course (Class B)	91 TON	\$ 110.00 \$ 10,010.00
Bituminous Tack Coat	82 GAL	\$ 2.20 \$ 180.40
Aggregate Seal Coat	812 SY	\$ 2.30 \$ 1,867.60
Blotter Sand	1 TON	\$ 13.20 \$ 13.20
Adjust Manhole Casting in Asph Pvmt	1 EA	\$ 375.00 \$ 375.00
	<b>TOTAL</b>	<b>\$ 27,406.20</b>
<b>CONCRETE ITEMS</b>		
Standard Curb & Gutter	386 LF	\$ 15.50 \$ 5,983.00
	<b>TOTAL</b>	<b>\$ 5,983.00</b>
<b>MISCELLANEOUS ITEMS</b>		
Adjust Valve Box in Unpaved Area	2 EA	\$ 175.00 \$ 350.00
Adjust Cleanout in Unpaved Area	1 EA	\$ 175.00 \$ 175.00
Traffic Control	1 LS	\$ 1,000.00 \$ 1,000.00
Signage	1 LS	\$ 1,200.00 \$ 1,200.00
	<b>TOTAL</b>	<b>\$ 2,725.00</b>
<b>REMOVAL ITEMS</b>		
Asphalt Removal	194 SF	\$ 2.50 \$ 485.00
Curb & Gutter Removal	5 LF	\$ 5.00 \$ 25.00
	<b>TOTAL</b>	<b>\$ 510.00</b>
<b>ELECTRICAL ITEMS</b>		
Type A Street Light Unit	1 EA	\$ 4,225.00 \$ 4,225.00
Three #2 Conductors	191 LF	\$ 5.20 \$ 993.20
Trenching	140 LF	\$ 1.75 \$ 245.00
Directional Boring	42 LF	\$ 65.00 \$ 2,730.00
Junction Box	1 EA	\$ 975.00 \$ 975.00
New Circuit Connection	1 LS	\$ 1,300.00 \$ 1,300.00
	<b>Total</b>	<b>\$ 10,468.20</b>
	<b>BID TOTAL</b>	<b>\$ 55,361.20</b>

**RESOLUTION APPROVING AMENDED ENGINEER'S REPORT  
FOR STREET IMPROVEMENT DISTRICT NO. 189**

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

1. That the report of the City Engineer with respect to the general nature, purpose, and feasibility of the proposed improvement and the estimate of the probable cost of the work to be done in Street Improvement District No. 189 (Project # 2013-30), as required by section 40-22-10 of the North Dakota Century Code, and hereto filed in the office of the City Administrator, is hereby accepted and approved and the proposed improvement project within said District is hereby determined and declared to be feasible.

2. The probable costs of the of the improvement project are estimated to be as follows:

a. Construction costs:	\$55,361.20
b. Other costs including necessary and reasonable change orders; engineering, fiscal agents' and attorneys' fees; cost of publication of legal notices; printing of warrant bonds; and all expenses incurred in the making of the improvement and levy of assessments therefor:	\$19,376.42
c. Total estimated costs of the improvement:	\$74,737.62

3. This resolution shall be in full force and effect from and after its passage.

Dated this 6<sup>th</sup> day of May, 2014.

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President, Board of City Commissioners

ATTEST:

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City Administrator

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

Page 6 of 9

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**RESOLUTION DIRECTING ADVERTISEMENT FOR BIDS  
FOR STREET IMPROVEMENT DISTRICT NO. 189**

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

1. The City Administrator, Deputy Auditor and City Engineer shall meet at the time and place specified in the notice authorized in paragraph 2 hereof, for the purpose of opening sealed bids for the work and material needed for the improvement project to be made in Street Improvement District No. 189 (Project # 2013-30) of the City of Mandan, as more fully described and referred to in the resolution creating said improvement district passed and approved by the Board on September 17, 2013, and in the plans and specifications for said improvement now on file in the office of the City Engineer.

2. The City Administrator is authorized and directed to cause notice of advertisement for bids to be published once each week for two consecutive weeks in the Mandan News, the official newspaper, the first of such publications to be at least fourteen days before the date specified for receipt of bids, which notice shall be in the following form:

**“ADVERTISEMENT FOR BIDS FOR  
STREET IMPROVEMENT DISTRICT NO. 189  
MANDAN, NORTH DAKOTA**

Notice is hereby given, that the City of Mandan, North Dakota will receive sealed bids at the office of the City Administrator until May 27, 2014, at 4:30 p.m., local time for the purpose of furnishing of materials, labor and skill needed for the new construction of storm sewer mains, asphalt streets, concrete curb and gutter and street lights and related work in accordance with the plans and specifications for Street Improvement District No. 189 (Project # 2013-30), for the City of Mandan. The Work consists of all labor, skill, and materials required to properly construct the improvement.

Plans and Specifications are on file in the office of the City Administrator and the City Engineer. Plans may be obtained at this office of the City Engineer, 205 2<sup>nd</sup> Avenue Northwest, Mandan, North Dakota 58554, upon a non-refundable deposit of

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

Page 7 of 9

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\$25.00. If Plans are mailed out and additional fee of \$15.00 will be added for postage and handling.

The bid proposals must be submitted to the City Administrator by 4:30 p.m., CDT, May 27, 2014 and shall be sealed and endorsed "Proposal for Street Improvement District No 189. Bids shall be delivered or mailed to: City Administrator, City of Mandan, 205 2<sup>nd</sup> Avenue NW, Mandan, ND 58554. Bids will be opened and read aloud in the City Commission Meeting Room at 4:30 p.m., CDT, on May 27, 2014. All bidders are invited to be present at the public opening of the Bids.

All Bidders must be licensed for the highest amount of their Bids, as provided by Section 43-07-05 of the North Dakota Century Code. The Bidder shall include a copy of his license or certificate of renewal thereof enclosed in the required bid bond envelope as required pursuant to Section 43-07-12 of the North Dakota Century Code, as amended.

Each bid shall be accompanied by a separate envelope containing a bidder's bond in the amount of five (5) percent of the highest amount of the bids as required by Section 48-01.2-05, North Dakota Century Code, as amended, and executed by the Bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after Notice of Award, shall execute and effect a contract in accordance with the terms of the bid, and a Contractor's Bond as required by law. No bid may be read or considered if it does not fully comply with the requirements of Section 48-01.2-05 of the North Dakota Century Code and any deficient bid must be resealed and returned to the bidder immediately.

Bids shall be made on the basis on cash payment for the work to be done. All work under this advertisement shall be started on a date to be specified in a written order from the Board of City Commissioners, or no later than ten (10) days after written notice to proceed has been received from the City.

Work shall be completed on or before the following dates with liquidated damages assessed as follows:

Completion date for the curb and gutter, electrical trenching, directional boring, and base lift of asphalt shall be no later than October 31, 2014. Electrical poles and related items, surface course and chip seal shall be completed no later than June 30, 2015. Any damage relative to base course asphalt before contract completion shall be removed and replaced at no additional costs to this project.

Liquidated damages of \$100.00 per day will be assessed if any completion dates are exceeded.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

Page 8 of 9

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Should the contractor fail to complete all of the work in a District according to the above date, or within such additional time as may have been granted by formal extensions of time approved by the City Engineer, there shall be deducted from any money due the contractor, the above mentioned sum for each calendar day the completion of the Work is delayed, for each District. Liquidated damages will continue to accumulate until the City Engineer determines winter weather prevents further construction. Liquidated damages will restart on the first day of construction in the Spring of 2015 and continue to accumulate until final project acceptance. The Contractor and his surety shall be liable for any excess. Such payments shall be deducted from the final payment and shall be charged as liquidated damages and not as a penalty.

The Board of City Commissioners will meet on Tuesday, June 3, 2014, at 5:30 PM, CDT, to determine the sufficiency of protests, to review the Bids submitted, consider the engineer's recommendation, and to award the contract to the successful Bidder, if protests have been deemed insufficient. The contract will be awarded on the basis of the low Bid submitted, on eligible areas, by a responsible and responsive Bidder deemed most favorable to the City's interest.

The City of Mandan reserves the right reject any or all bids, to waive any informality or irregularity, to hold all bids for a period of thirty (30) days after the date fixed for the opening thereof, and to accept the Bid deemed most favorable to the best interest of the City of Mandan.

Dated this 6 day of May 7, 2014

City of Mandan, North Dakota  
BY: James Neubauer  
City Administrator"

3. Each and all of the terms and provisions of the foregoing notice are hereby adopted as the terms and conditions for the award of said contract.

4. The Board of City Commissioners shall meet on Tuesday, June 3, 2014 at 5:30 pm, local time, to review the bids submitted, consider the engineer's recommendation, and to award the contract to the successful bidder, subject to the Board finding that filed protests are insufficient to bar the work.

ATTEST:

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President, Board of City Commissioners

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6<sup>th</sup>, 2014

Subject: Consider resolution approving amended engineer's report and resolution directing advertisement for bids for Street Improvement District No. 189, Project No. 2013-30 (Lakewood 6th Addition Lot 10B Block 2 Replat).

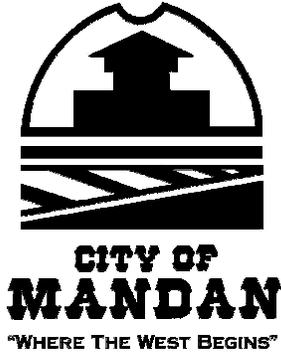
Page 9 of 9

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City Administrator

Passed: May 6, 2014



New Business No. 9  
ADDED 5/6/14

## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 5, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Justin Froseth, Planning & Engineering Director  
**SUBJECT:** Consider approving amended 3-way agreement addendum for water & sewer improvement Project 2013-21 (Macedonia Hills 1<sup>st</sup> Addition).

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**STATEMENT/PURPOSE:** To authorize Cimarron Construction Inc. to complete the installation of water and sewer for the development of Macedonia Hills 1<sup>st</sup> Addition.

**BACKGROUND/ALTERNATIVES:** The Macedonia Hills 1<sup>st</sup> Addition plat is located south of 19<sup>th</sup> Street SW and west of Fort Lincoln Elementary School. The proposed utilities only serve the developer of the benefiting land; therefore, this is being paid for under a 3-way agreement. A letter of credit has been secured for the project.

The 3-way agreement is in need of amending because the original contractor for the project was unable to complete. A new contractor, Cimarron Construction, Inc. is in place to finish this work under "Addendum No. 1" to the agreement which requires them to meet all conditions of the original 3-way agreement.

**ATTACHMENTS:** 1. 3-way agreement addendum

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

**STAFF IMPACT:** Minimal

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

**RECOMMENDATION:** All the information has been reviewed by our office and meets our requirements, therefore this office supports the authorization to move forward with this project.

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider approving amended 3-way agreement for water & sewer improvement Project 2013-21 (Macedonia Hills 1<sup>st</sup> Addition).

Page 2 of 2

SUGGESTED MOTION: I move to approve the amended 3-way agreement for water & sewer improvement Project 2013-21 (Macedonia Hills 1st Addition).

## ADDENDUM No. 1

### TO AGREEMENT

(Sanitary Sewer and Water Improvement Project No. 2013-02)

This Addendum is in reference with the Agreement dated on 15<sup>th</sup> - Oct. - 2013, between **City of Mandan** - a municipal corporation, **Risto Mackovski** – Developer and **Manitou Construction** – Contractor.

**Cimarron Construction** shall continue and finalize all of the outstanding work of the Water Main phase of the above mentioned project, in stead and place of Manitou Construction. This amendment refers to article (7) of Agreement dated October 15, 2013. The original contract proposal amount of 386,605 dollars is amended to 188,063 dollars.

All conditions and terms from the 3-Way Agreement dated: 15<sup>th</sup> – Oct. – 2013 shall apply.

CITY OF MANDAN

\_\_\_\_\_

Arlyn Van Beek, President

Board of City Commissioners

Attest:

\_\_\_\_\_

Jin Neubauer, City Administrator

DEVELOPER

Risto Mackovski

Name: Risto Mackovski

Address: 7745 Maggie Belle ct.

Las Vegas, NV 89123

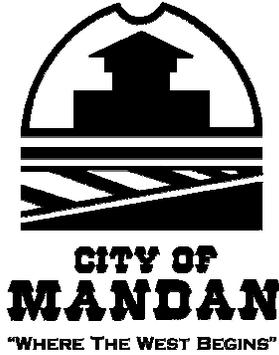
CONTRACTOR

Mark Selcher VP  
Mark Selcher

Name: Cimarron Construction

Address: 547 S. 7<sup>th</sup> St. #274

Bismarck ND 58504



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** April 29, 2014  
**SUBMITTING DEPARTMENT:** Engineering & Planning  
**DEPARTMENT DIRECTOR:** Justin Froseth  
**PRESENTER:** Robert Decker, Principal Planner  
**SUBJECT:** Consider for approval Ordinance 1183 to amend Chapters 1 and 2 of Title 21 related to planning and zoning

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**STATEMENT/PURPOSE:** In preparation for the codification of city ordinances by Municode, update portions of Title 21.

**BACKGROUND/ALTERNATIVES:** The last major update of the code occurred in 1994. Practices and procedures change over time. Language usage also changes. This is the first phase in updating Title 21. Chapters 1 and 2 deal with the Planning and Zoning Commission and definitions. Proposed revisions to other chapters will be presented in subsequent months. Proposed changes are listed below.

1. Phrasing, typos, punctuation, etc. were corrected.
2. Headings were added to paragraphs to make it easier to find topics.
3. References to various groups were made consistent. The Planning and Zoning Commission is referred to as the Commission. The Board of City Commissioners is referred to as the Board.
4. Membership on the Planning and Zoning Commission was modified to reflect North Dakota Century Code wording. Commission members also recommended that the current procedure of appointing a member from the park district and the school district be formalized.
5. The options for appointing a secretary for the Commission were expanded to recognize current practice by allowing the Commission to formally appoint a staff member to perform these duties. Alternately, a Commission member or contract employee could be appointed.
6. Some flexibility in scheduling Commission meetings was added as well as incorporating posting meeting notices on the web and sending electronic meeting packages.
7. The term "master plan" as used in the North Dakota Century Code has been labeled "Comprehensive Plan" for clarity since the term "master plan" is used for several other types of plans. A sentence was added to recognize the

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Consider for approval amendments to Chapters 1 & 2 of Title 21 related to Planning and Zoning

Page 2 of 2

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- interrelationship between the Comprehensive Plan and plans prepared by other entities such as the Park District and the School District.
8. The reference to gifts was modified since Commission members were uncomfortable with the current wording.
  9. Phrasing was added to provide for proper identification and permission to enter when a Commission member or staff person enters private property on official business.
  10. Definitions were reorganized. Duplications were removed. Requirements, criteria, restrictions, etc. were moved to the appropriate section. Definitions were added as appropriate. Definitions now appear in 4 places, the master list, floodplain requirements, the diesel fuel cleanup procedures and adult activities.

The Planning and Zoning Commission voted unanimously at their April 28, 2014 meeting to recommend approval of these ordinance changes.

ATTACHMENTS:

1. New wording version of ordinance
2. Ordinance version showing edits for adoption.

FISCAL IMPACT: minimal

STAFF IMPACT: minimal

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

RECOMMENDATION: The Engineering and Planning Office recommends approval.

PROPOSED MOTION: Based on the recommendation of the Planning and Zoning Commission, move to approve the first consideration of Ordinance 1183.

# Proposed Changes to Chapters 1 & 2 of Title 21

## Table of Contents

<b>CHAPTER 21-01</b>	<b>PLANNING AND ZONING COMMISSION</b>	<b>2</b>
SECTION 21-01-01	CREATION	2
SECTION 21-01-02	MEMBERSHIP	2
SECTION 21-01-03	TERMS OF OFFICE – UNEXCUSED ABSENCES CAUSE FOR REMOVAL	2
1.	<i>Members Newly Appointed</i>	2
2.	<i>Present Members</i>	2
3.	<i>Ex-Officio Members</i>	2
4.	<i>Unexcused Absences</i>	2
SECTION 21-01-04	VACANCIES	2
SECTION 21-01-05	OFFICERS, DUTIES, VACANCIES	3
1.	<i>Officers</i>	3
2.	<i>Duties</i>	3
3.	<i>Vacancy</i>	3
4.	<i>Election of officers</i>	3
SECTION 21-01-06	MEETINGS	3
1.	<i>Time and location</i>	3
2.	<i>Special meetings</i>	3
3.	<i>Quorum</i>	3
4.	<i>Conduct of meetings</i>	3
5.	<i>Agenda</i>	4
6.	<i>Records</i>	4
7.	<i>Notice</i>	4
8.	<i>Notification list</i>	4
SECTION 21-01-07	COMPENSATION AND REIMBURSEMENT	4
SECTION 21-01-08	POWERS AND DUTIES	4
1.	<i>Zoning district boundaries and regulations</i>	4
2.	<i>Hearing and reports</i>	4
3.	<i>Extraterritorial authority</i>	4
4.	<i>Comprehensive plan</i>	4
5.	<i>Surveys and studies</i>	4
6.	<i>Review and either approve or disapprove</i>	5
7.	<i>Specific improvements</i>	5
8.	<i>Consult and advise</i>	5
9.	<i>Publish and distribute</i>	5
10.	<i>Gifts</i>	5
11.	<i>Examinations and surveys</i>	5
12.	<i>Other powers</i>	5
<b>CHAPTER 21-02</b>	<b>GENERAL PROVISIONS AND DEFINITIONS</b>	<b>5</b>
SECTION 21-02-01	LEGISLATIVE INTENT	5
SECTION 21-02-02	APPLICATION	6
SECTION 21-02-03	CONSTRUCTION AND DEFINITIONS	6

# Proposed Changes to Chapters 1 & 2 of Title 21

## Chapter 21-01

## PLANNING AND ZONING COMMISSION

**Section 21-01-01 Creation.** Pursuant to the provisions of NDCC §§ 40-47-06 and 40-48-03, there was created a body known as the Planning and Zoning Commission, which has been and is actively serving the community. It is intended that this body will continue as the Planning and Zoning Commission, hereinafter referred to as the Commission, with the duties and functions recited in this chapter, pursuant to the powers authorized by state law.

**Section 21-01-02 Membership.** The Commission shall be composed of up to ten members appointed by the mayor and approved by the Board. The Mayor shall appoint one member recommended by the Mandan Park District and one member recommended by the Mandan Public School District. The mayor shall be an ex-officio voting member of the Commission. Two members residing outside the corporate limits of Mandan within the extraterritorial area of the city's zoning authority will be appointed by the Morton County Board of Commissioners, if available and willing to serve. The city engineer and city attorney are ex-officio members of the Commission. Each member will execute the oath of office requisite to such appointment. The mayor shall endeavor to select individuals that represent other boards, interest groups, professional associations and civic organizations, as well as unaffiliated city residents willing to serve, when recommending appointments.

**Section 21-01-03 Terms of Office - Unexcused Absences Cause for Removal.** All Commission members' terms of office shall be for a period of five years, except in the following cases:

**1. Members Newly Appointed.** Of members newly appointed at the time of the creation or expansion of the Commission, the first member appointed by the city will hold office for one year, the second member for two years, the third member for three years, the fourth member for four years, and the fifth member and all others thereafter will serve for five years. If members are appointed by the county, the first member appointed will hold office for three years and the second member appointed will hold office for one year, and thereafter members appointed by the county will serve for five years.

**2. Present Members.** Present members of the Commission shall hold office for the balance of their five-year term.

**3. Ex-Officio Members.** Terms of the ex-officio members will correspond to their respective tenures of office.

**4. Unexcused Absences.** Any member of the Commission who has three unexcused absences within a twelve month period shall be deemed to have resigned and the vacancy shall be filled as provided in Section 21-01-04. Unexcused absences shall be any absence not related to illness, out of town trips, or business related scheduling conflicts.

**Section 21-01-04 Vacancies.** Vacancies in the terms of members residing within the city limits will be filled by appointment of the mayor with approval of the Board, and the member appointed to fill a vacancy will serve the balance of the unexpired term. Vacancies in the terms

## Proposed Changes to Chapters 1 & 2 of Title 21

of the extraterritorial members will be filled by the county for the balance of the unexpired term.

### Section 21-01-05 Officers, Duties, Vacancies.

1. **Officers.** The officers of the Commission will be a president, vice-president, and secretary who will be elected for one-year terms by the members of the Commission.
2. **Duties.** The duties of the officers of the Commission will be as follows:
  - a. **President.** The president will preside over and conduct the meeting, prepare agendas, appoint acting officers in the absence of officers and assure that all actions of the Commission are properly taken. The president may call special meetings, appoint committees from among Commission members and will verify in writing on the plat the approval by the Commission of subdivision plats.
  - b. **Vice-President.** The vice-president, in the absence or in case of conflict of interest of the president, will exercise all powers and duties of the president.
  - c. **Secretary.** The secretary will take the minutes, maintain correspondence, notify the public of all meetings and hearings as required by law, keep all records of the Commission and sign materials relating to the comprehensive plan attesting to action taken by the Commission. The secretary may verify in writing on the plat approval by the Commission of any subdivision plat. The secretary may be a commission member, a city employee or a contract employee of the Commission.
3. **Vacancy.** If any office becomes permanently vacant, the Commission will appoint a person to fill the unexpired term at the next meeting.
4. **Election of officers.** At the first meeting in August, the Commission will elect its officers for the coming year.

### Section 21-01-06 Meetings.

1. **Time and location.** All Commission meetings will be held at the Ed "Bosh" Froehlich Meeting Room in city hall unless another venue is chosen for a specific meeting in advance by the Commission. The Commission will meet on the fourth Monday of each month at 5:15 p.m., unless a different time is approved in advance by the Commission for a specific meeting. If a scheduled meeting falls on a designated city holiday, the date and time for the monthly meeting will be determined by the Commission.
2. **Special meetings.** The president of the Commission may call special meetings at times and locations specified in a written notice transmitted to each Commission member no later than three days prior to the special meeting date.
3. **Quorum.** A quorum will consist of seven members. No action will be taken in the absence of a quorum.
4. **Conduct of meetings.** All meetings will be conducted in accordance with Robert's Rules of Order. However, if any rule is inconsistent with the provisions of this Title or the NDCC, this Title or the NDCC shall prevail over Robert's Rules of Order.

## Proposed Changes to Chapters 1 & 2 of Title 21

**5. *Agenda.*** Items will be considered in the order they appear on the agenda, which for regular meetings will be delivered electronically to members and applicants no later than five days prior to the meeting and three days prior to special meetings. Printed versions of the agenda package will be provided on request. The president of the Commission may adjust the order of the published agenda for good cause at any point during the meeting.

**6. *Records.*** Records of the Commission's resolutions, transactions, findings and determinations will be kept by the Commission as part of its public record.

**7. *Notice.*** A notice of each Commission meeting and accompanying agenda shall be posted on the official bulletin board in City Hall and the full agenda package posted on the City web site at least 3 days before a regular meeting or at least 24 hours before a special meeting.

**8. *Notification list.*** Anyone wishing to receive an electronic version of the meeting notice, the agenda and/or the agenda package may make a request to the Engineering and Planning Department to be included on the notification list.

**Section 21-01-07 Compensation and Reimbursement.** Commission members will serve without compensation. When prior authorization is given by the Commission and approved by the Board, members may be reimbursed for meals and traveling expenses incident to attendance at meetings, conferences or hearings in accordance with the rates of reimbursement as provided by law.

### **Section 21-01-08 Powers and Duties.**

**1. *Zoning district boundaries and regulations.*** The Commission shall recommend to the Board the boundaries of the various zoning districts and appropriate regulations to be enforced therein.

**2. *Hearing and reports.*** The Commission shall make a preliminary report on all proposed zoning changes and hold public hearings thereon before submitting its final report to the Board. The Board shall not hold its public hearing or take action until it has received the final report of the Commission.

**3. *Extraterritorial authority.*** The Commission shall have extended territorial authority to all unincorporated areas located within two miles of the corporate limits of the city, in every direction as authorized by state law, and shall enforce such regulations in the extraterritorial area in the manner authorized by state law or any agreement made between the City and Morton County.

**4. *Comprehensive plan.*** The Commission shall have the power to make and adopt a comprehensive plan for the physical development of the city and of any land outside its boundaries which, in the Commission's judgment, bears a relation to the planning of the city. The Commission may amend, extend or add to the comprehensive plan.

**5. *Surveys and studies.*** In the preparation of the comprehensive plan, the Commission shall make careful and extensive surveys and studies of the present conditions and future growth of the city with due regard to its relation to neighboring territory. The Commission shall consider studies and plans prepared by the Metropolitan Planning Organization, Mandan Park District, Mandan Public School District, Morton County, Morton

# Proposed Changes to Chapters 1 & 2 of Title 21

County Housing Authority or other groups involved in growth and economic development of the region when preparing the comprehensive plan.

**6. *Review and either approve or disapprove.*** The Commission shall review and approve or disapprove the location, character and extent of any proposed street, square, park, or other public way, ground or open space, or public building or structure.

**7. *Specific improvements.*** The Commission shall, from time to time, recommend to the appropriate public officials programs for specific improvements and for the financing thereof.

**8. *Consult and advise.*** The Commission shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens relative to the carrying out of the comprehensive plan.

**9. *Publish and distribute.*** In order to promote public interest in and understanding of the comprehensive plan, the Commission may publish and distribute copies of the plan or of any part thereof or of any report, and may employ such other means of publicity and education as it may determine.

**10. *Gifts.*** The Commission members may not accept and use gifts or donations for the exercise of the Commission's functions. Any gifts or donations received shall be forwarded to the City Administrator for proper disposition as prescribed by City Code or state law.

**11. *Examinations and surveys.*** In the performance of their functions, the Commission members, officers and employees may enter upon any land and make examinations and surveys thereof and place and maintain necessary monuments or marks thereon without causing damage to the property. Every person performing these tasks shall carry proper identification and a letter of introduction stating the purpose of the visit. A person performing such duties shall not enter a building or structure unless granted permission in writing by the owner or occupant of the building or structure.

**12. *Other powers.*** The Commission may exercise such other powers as may be necessary to enable it to fulfill its functions and carry out the provisions of state law and city ordinance.

## Chapter 21-02

## GENERAL PROVISIONS AND DEFINITIONS

**Section 21-02-01 *Legislative Intent.*** It is the intent of the Board to promote the health, safety and general welfare by guiding the development of the city by means of a comprehensive land use plan which is in part carried out by the provisions of this Title. It is the intent of this Title to provide regulations, standards and guides for the city's development in accordance with a comprehensive plan which will:

1. Lessen congestion in the streets;
2. Secure safety from fire, panic and other dangers;
3. Promote the health and general welfare;
4. Prevent the overcrowding of land;
5. Provide for adequate light and air;
6. Avoid undue concentration of population; and
7. Facilitate adequate provision for transportation, water, sewerage, schools, parks and other requirements.

# Proposed Changes to Chapters 1 & 2 of Title 21

**Section 21-02-02 Application.** The zoning ordinances and subdivision regulations of the city shall apply to all territory within the corporate boundary limits of the city and all territory within the extraterritorial jurisdiction boundaries as set and determined by ordinance of the city.

**Section 21-02-03 Construction and Definitions.**

For the purposes of this Title certain words and terms used herein are defined as follows:

"Accessory building" means a subordinate structure which is customarily incidental to that of a principal building on the same lot.

"Accessory use" means a subordinate use which is customarily incidental to that of a principal use on the same lot.

"Alley" means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of a property.

"Animal hospital" means a facility for the care and well-being of animals under the direct supervision of a licensed veterinarian; including, but not limited to, grooming, confinement or kenneling for medical purposes, and full medical services.

"Animal clinic" means a facility for the care and well-being of household pets, under the direct supervision of a licensed veterinarian; including, but not limited to, grooming, confinement or kenneling for medical purposes and full medical services meeting the following requirements:

- a. Incinerating or cremating of animals or animal parts upon the premises is prohibited;
- b. Includes an on-site, porous, well-drained exercise area for pets to use that is no smaller in size and dimension than 15 feet by 25 feet which is to be kept neat and clean at all times;
- c. Animal carcasses and/or animal tissues are to be frozen, sealed in waterproof containers, and either kept in a frozen state until commercial waste pickup day or removed directly from the facility to the City's waste landfill site or a licensed crematorium; and
- d. The term "household pet" as used herein is specifically defined to include only the following taxonomically identified animals:
  - (1) Mammalian Genus species;
    - (a) *Canis familiaris*, the domestic dog, and
    - (b) *Felis catus*, the domestic cat;
  - (2) Mammalian Families;
    - (a) *Leporidae*, rabbits,
    - (b) *Cricetidae*, hamsters,
    - (c) *Gerbillidae*, gerbils, and
    - (d) *Muridae*, mice and rats;
  - (3) Avian Orders;
    - (a) *Psittaciformes*, parrots, parakeets, lorries, budgerigars and cockatiels,

## Proposed Changes to Chapters 1 & 2 of Title 21

- (b) *Passeriformes*, canaries and finches, and
- (c) *Columbiformes*, pigeons and doves;
- (4) Reptilian Groups
  - (a) Squamata, lizards and snakes; and
  - (b) Testudine, turtles.

"Arterial street" means a road intended to move large volumes of through traffic and provide access to collector and neighborhood streets.

"Auditor's lot" means any tract of land platted or replatted in accordance with the provisions of NDCC § 57-02-39 or as may be otherwise authorized by law.

"Auditor's plat". See "Auditor's lot".

"Auto repair" means any activity that requires removal, replacement, repair or installation of parts and tires.

"Auto service" means any activity that provides direct service to motor vehicles including adding fuel, replacement of fluids and filters, vehicle washing or detailing but not repair or replacement of parts or tires.

"Auto wrecking". See "Junkyard".

"Basement" means that portion of a building below the first floor joists, the floor of which is more than one-half clear ceiling height below the adjacent ground.

"Bed and breakfast facility" means an owner occupied single-family dwelling providing not more than four temporary lodging units with a current license issued pursuant to the provisions of Chapter 23-09.1 of the North Dakota Century Code and providing one off-street vehicle parking space for each such unit and two off-street parking spaces for the owner/operator with only one sign not exceeding four square feet in size.

"Billboard". See "Outdoor advertising sign".

"Block" means the property abutting one side of the street and lying between the two nearest intersecting streets, or between the nearest such street and a railroad right-of-way, unsubdivided acreage, river or live stream; or between any of the foregoing and any other barrier to the continuity of development.

"Building" means a structure having a roof supported by walls or columns for the shelter, support or enclosure of persons, animals or chattels.

"Building, accessory". See "Accessory building".

"Building height" means the vertical distance measured between the level of the highest point at the roof beams of flat roofs or roofs inclining not more than one inch to the foot or to the mean height level of the top of the main plate or highest ridge for other roofs and the highest of the following:

- a. The street curb level;
- b. The established or mean street grade in case the curb has not been constructed; or
- c. The average finished ground level adjoining the building if it sets back from the street line.

"Building inspector" means the building official or an authorized representative.

"Building line" means a line established, in general, parallel to the front street line between which line and the front street line no part of a building shall project, except as otherwise provided by ordinance.

## Proposed Changes to Chapters 1 & 2 of Title 21

"Building, principal". See "Principal building".

"Capital improvements program" means a proposed schedule of future projects for the purchase, construction or replacement of the physical assets of the community requiring the expenditure of public funds over and above recurring annual operating expenses.

"Central sewer system" means a private or public liquid waste collection, conveyance and treatment facility serving a community or a portion of a community.

"Central water system" means a private or public facility for the collection, treatment, storage and distribution of potable water serving a community or a portion of a community.

"Child Care Center" means a private group care facility housing more than twelve children.

"Collector street" means a road intended to move traffic from local streets to arterials and provide circulation within a development.

"Commercial district" means any CA, CB or CC district.

"Commercial Recreation Group" means uses in which the principal activity is the furnishing of recreation for a profit.

"Commission" means the Planning and Zoning Commission.

"Comprehensive plan" means the official master plan established by ordinance adopted by the Board of City Commissioners as required by the North Dakota Century Code that is a long-range guide for the economic, physical and social development of the city and which identifies the location and width of streets, ways, plazas, open spaces, public easements, parks, playgrounds and public rights in land that is established to conserve and promote the public health, safety and general welfare of the city.

"Community services" means uses of a public, nonprofit or charitable nature generally providing a local service to people of the community.

"Convenience store" means a facility that provides quick purchase retail and food items and may offer vehicle fueling or alcohol sales with the appropriate city and regulatory agency approvals.

"Corner lot" means a lot at the junction of and abutting on two or more intersecting streets when the interior angle of intersection does not exceed one hundred and thirty-five degrees and including any lot adjoining a curved street at a point where the street boundary described an arc subtended by an angle of one hundred and thirty-five degrees or less.

"Correctional facility" means any city or county jail or detention center, regional corrections center, juvenile detention center, pre-release center, transition center, half-way house or other publicly or privately established correctional facility, for the detention, confinement, or rehabilitation of persons in accordance with law.

"County" means Morton County.

"Cul-de-sac" means a local street with only one outlet and having a turnaround at the other end designed to accommodate the safe and convenient reversal of traffic movement.

"Dead-end street" means a road or portion thereof with only one vehicular traffic outlet.

"Dwelling" means a building or portion thereof arranged or designed to provide living facilities for one or more families.

"Dwelling, group". See "Group dwelling".

"Dwelling, multi-family". See "Multi-family dwelling".

## Proposed Changes to Chapters 1 & 2 of Title 21

"Dwelling, single-family". See "Single -family dwelling".

"Dwelling, two-family". See "Two-family dwelling".

"Dwelling unit" means a building or portion thereof providing complete housekeeping facilities for one family.

"Easement" means a legally defined portion of private property within which the owner has granted the use by another for a specified purpose.

"Education Group" means uses in which the principal activity is the education of children or adults by a public or private agency and includes all normal accessory buildings and uses associated with the primary use.

"Family" means one or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit.

"Filling station" means a building or lot having pumps and storage tanks where fuels, oils or accessories for motor vehicles are dispensed, sold or offered for sale at retail only; repair service is incidental; and no storage or parking space is offered for rent.

"Final plat" means a drawing with appropriate verbiage showing the division of land into lots, blocks, rights-of-way and easements that is approved by the Board and then recorded with the Morton County Recorder.

"Floor area" means the gross square footage of habitable space of all buildings on a lot calculated from the exterior face of all outer walls or the centerline of a common wall between buildings with the following not included in the calculation of habitable space:

- a. Attic space providing structural head room of less than seven feet, six inches;
- b. Mechanical equipment rooms;
- c. Unheated storage rooms in a basement or garage;
- d. Uncovered steps;
- e. Terraces, breezeways and open porches; and
- f. Automobile parking space in a basement or private garage.

"Floor Area Ratio (FAR)" means the floor area of a building or buildings on a lot divided by the area of that lot.

"Gross residential density" means the number of families residing on, or dwelling units developed on, an acre of land, inclusive of land in streets, alleys, parks, playgrounds, schoolyards, other public lands, waterways, drainage areas, and open spaces.

"Group dwelling" means a boarding house, convent, monastery, fraternity, sorority, rooming house or group home licensed by the Department of Human Services, but not a correctional facility, in which several unrelated individuals or families permanently reside and within which there are only common cooking facilities for the use of all residents.

"Health Group" means uses in which the principal activity is related to the care and medical treatment of human beings.

"Hotel" means a building in which lodging, with or without meals, is provided and offered to the public for compensation, and which is open to transient guests.

"Industrial district" means any MA, MB, MC or MD district.

"Industrial Group A" means uses involving manufacturing or the storage and sale of heavy building materials or equipment where there is no unusual fire, explosion or safety

## Proposed Changes to Chapters 1 & 2 of Title 21

hazard and where there is no production of noise at any boundary of the district in which the use is located in excess of the ambient noise level at that point.

"Industrial Group B" means uses involving manufacturing, storage and/or sale of products and material in which the operations create a greater degree of hazard or more annoyance than the operations of uses in Industrial Group A.

"Interior lot" means a lot other than a corner lot.

"Junkyard" means an area encompassing more than two hundred square feet on any lot, whether inside or outside of a building, or any portion of that half of any lot that adjoins a street where the use includes any of the following: (1) the storage, keeping or abandonment of junk including scrap metals, rags, paper or other scrap materials, used lumber, salvaged house wrecking and structural steel materials and equipment; or (2) the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

"Kennel" means a commercial facility for the indoor boarding of household pets as defined in animal clinic that includes an on-site, porous, well-drained exercise area for pets to use that is no smaller in size and dimension than 15 feet by 25 feet which is kept neat and clean at all times.

"Local street" means a road intended to provide access to other streets from individual properties and to provide right-of-way beneath it for public utilities.

"Lot" means a tract, plot or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for development.

"Lot, auditor's". See "Auditor's lot".

"Lot, corner". See "Corner lot".

"Lot depth" means the minimum horizontal distance between the front and rear lot lines.

"Lot, interior". See "Interior lot".

"Lot line, rear". See "Rear lot line".

"Lot width" means the average width of a lot measured at right angles to its depth along the front and rear lot lines.

"Major street" means a roadway used primarily for fast or heavy traffic, including expressways, freeways and boulevards.

"Major subdivision" means any subdivision or re-subdivision of land not classified as a minor subdivision.

"Manufactured home" means a factory built structure which is to be used as a place for human habitation and which bears a factory attached and undisturbed label certifying that it was built in compliance with the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), as amended, promulgated by the United States Department of Housing and Urban Development.

"Manufactured home lot" means a parcel of land for the placement of a single manufactured home.

"Manufactured home park" means a plot or parcel of land, under single ownership, which has been improved for purposes of locating manufactured homes as dwellings.

## Proposed Changes to Chapters 1 & 2 of Title 21

"Manufactured home site" means a parcel of land within a manufactured home park designed and improved for the accommodation of not more than one manufactured home as a single-family residence.

"Manufactured home stand" means that part of a manufactured home site which has been reserved and improved for the placement of a manufactured home, appurtenant structures or additions to a manufactured home.

"Manufactured home subdivision" means a parcel of land, subdivided into lots, in which the majority of the lots may be individually owned and utilized as a site for placement of a single-family manufactured home and its facilities.

"MARC" means the Mandan Architectural Review Commission.

"Master plan". See "Comprehensive Plan".

"Master street plan" means a document setting forth goals, policies and standards for orderly street development adopted by the Commission and Board.

"Master subdivision plan" means a document indicating the general street layout, land use density, existing public improvements, proposed public and private improvements including parks, open space, drainage areas, streets, utilities and other such data that is submitted to the Commission prior to or simultaneously with a preliminary plat.

"Mayor" means the president of the board as defined in the NDCC.

"Minor street" means a right-of-way intended primarily to provide pedestrian and vehicular access to the abutting properties.

"Minor subdivision" means the division of a parcel of land or the adjustment of property lines or easements within a parcel of land containing no more than five acres that meets certain restrictions.

"Mobile home" means a transportable, factory built structure, designed to be used as a residential dwelling and built prior to enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280).

"Modular home" means a dwelling meeting all building code requirements for a site built structure that is constructed offsite in sections, assembled onsite and affixed to the property with a solid perimeter foundation.

"Multi-family dwelling" means a building or portion thereof containing three or more dwelling units.

"Net residential density" means the number of families residing on, or dwelling units developed on, an acre of land, exclusive of land in streets, alleys, parks, playgrounds, schoolyards, other public lands, waterways, drainage areas, and open spaces.

"Nonaccess reservation" means a line on a final plat prohibiting direct vehicular access from the platted area to an adjoining major street or public right-of-way.

"Nonconforming use" means an activity conducted in a building or structure, or on a tract of land, which does not conform to the use regulations of this Title for the district in which it is located.

"Nondependent unit" means a manufactured home, travel trailer or self-propelled motor home with bath or shower and toilet facilities.

"Office Group" means uses in which the principal activity is the conduct of a commercial, governmental, financial, professional or management function for service to the general public.

## Proposed Changes to Chapters 1 & 2 of Title 21

"Owner" means a person or other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided under this Title.

"Passenger terminal" means a building or other structure designed for the gathering of individuals waiting for the arrival of a bus passenger train or airplane.

"Pet grooming" means a facility for the indoor grooming and maintenance, with no overnight boarding, of the pets listed in the definition of animal clinic.

"Plat, auditor's". See "Auditor's lot".

"Plat, final". See "Final plat".

"Plat, preliminary". See "Preliminary plat".

"Portable building" means any structure that is either mounted on wheels or transportable on a flatbed trailer that is designed and constructed to provide for living or sleeping quarters for one or more persons or for the conduct of a business, profession, trade, or occupation.

"Preliminary plat" means the concept drawing or drawings indicating the proposed manner or layout of the subdivision.

"President of the board" means the mayor as used in this code.

"Principal building" means a structure in which is conducted the principal activity of the lot on which it is situated.

"Private garage" means an accessory building or part of a principal building used for the storage of motor vehicles and miscellaneous tools or equipment as an accessory use.

"Public garage" means a building or premises which is operated for commercial purposes and used for the storage, care or repair of currently licensed or vintage motor vehicles.

"Public improvement" means any drainage structure, water line, sewer line, roadway, parkway, sidewalk, pedestrian-way, tree, berm, boulevard, lawn, public off-street parking area, lot improvement, or other facility for which the city may ultimately assume the responsibility.

"Public Recreation Group" means uses in which the facilities are built and maintained by a governmental agency for use by the public but where the daily operation of the facility may be contracted by the governmental agency to a private company or individual.

"Public thoroughfare" means any public right-of-way or easement which affords access to abutting property and includes highways, avenues, boulevards, parkways, streets, roads, lanes, walks, alleys, viaducts, subways, tunnels and bridges.

"Rear lot line" means the lot line generally opposite to the front lot line.

"Rear yard" means an open area extending across the full width of the lot and lying between the rear lot line and the rear building setback line.

"Record lot" means any land designated as a separate and distinct parcel on a legally recorded subdivision plat or in a legally recorded deed filed in the office of the Morton County Recorder.

"Refrigerated cold storage locker" means a facility for the warehousing of perishable food.

"Registered land surveyor" means a land surveyor properly licensed and registered in the State of North Dakota.

## Proposed Changes to Chapters 1 & 2 of Title 21

"Residential district" means any R10, R7, R3.2, R2, RM, RP or RMH district.

"Resubdivision" means a change in the sealed and signed drawing of an approved and recorded subdivision plat.

"Retail Group A" means uses that rely in part on the proximity of other similar uses to help attract customers and in which the principal activity is the retail sale of merchandise and associated services conducted primarily within an enclosed building.

"Retail Group B" means uses that, as differentiated from Retail Group A, do not rely in part on the proximity of other similar uses to help attract customers and in which the principal activity is the retail sale of merchandise and associated services conducted primarily within an enclosed building.

"Road" means a pathway for vehicles to travel from place to place and includes street, highway, avenue, boulevard, parkway, lane, alley, viaduct, subway, tunnel, bridge, public easement and right-of-way.

"Road right-of-way width" means the distance between property lines measured at right angles to the centerline of the street.

"Rooming house" means a dwelling in which more than two rooms are let for hire or more than four persons are given lodging for compensation.

"Safety services" means uses that provide public safety and emergency response services including fire stations, police stations and emergency medical and ambulance stations.

"Sale or lease" means any immediate or future transfer of ownership or possessory interest in land, whether by metes and bounds, deed, contract, plat, map, lease, devise, intestate succession, or other written instrument.

"Self-propelled motor home" means a vehicle, including the terms "recreational vehicle" or "tour bus", licensed by a state as a motor vehicle containing living facilities designed for temporary dwelling.

"Service Group A" means uses in which the principal activity is providing a service with accompanying sale of parts or supplies that rely in part on the proximity of other similar uses to attract customers and whose operations are carried on in such a manner as to produce no offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located.

"Service Group B" means uses in which the principal activity is providing a service with accompanying sale of parts or supplies that does not rely in part on the proximity of other similar uses to attract customers and whose operations are carried on in such a manner as to produce some offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located and the use is one which, if placed on a lot adjacent to a lot in a residential district, would have the potential to create an unusual safety hazard for the lot or other lots in said residential district or would otherwise unduly depreciate the value of any lot in said residential district.

"Side yard" means an open space extending from the front setback line to the rear setback line between the side lot line and the side yard setback line.

"Sign" means any device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or governmental agency, or of any civic, charitable, religious, patriotic or fraternal or similar organization.

## Proposed Changes to Chapters 1 & 2 of Title 21

"Single-family dwelling" means a freestanding building containing only one dwelling unit.

"Sketch plan" means a rough design of a proposed development used when meeting with staff prior to the formal submission of a preliminary plat.

"Storage building and warehouse" means a facility for the storage of cars, boats, household items, furniture, and other non-perishable items in a warehouse style building.

"Storage unit" means a locker or garage style space that is rented for the storage of personal possessions that is typically contained in a structure or structures on one lot having multiple units of varying size that may or may not be climate controlled.

"Story" means that portion of a building, excluding a basement, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

"Street" means a public thoroughfare which affords principal means of access to abutting property and includes highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, rights-of-way and other public ways or thoroughfares.

"Street naming plan" means the criteria for naming streets within the city developed and administered by the county's E911.

"Street, arterial". See "Arterial street".

"Street, collector". See "Collector street".

"Street, dead end". See "Dead-end street".

"Street grading plan" means a scale accurate drawing or set of drawings depicting street grade elevations at various points within the private and public rights-of-way according to standards established by the city engineer's office.

"Street, local". See "Local street".

"Street, major". See "Major street".

"Street, minor". See "Minor street".

"Street right-of-way width" means the distance between property lines measured at right angles to the centerline of the street.

"Structural alteration" means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders or any structural change in the roof.

"Structure" means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, including but not limited to buildings, advertising signs, billboards, and poster panels but not including fences or boundary or retaining walls.

"Subdivider" means any person or group of persons, including anyone acting as an authorized agent for a landowner, who directly or indirectly causes land to be subdivided.

"Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas or open spaces

## Proposed Changes to Chapters 1 & 2 of Title 21

"Subdivision grading plan" means a scale accurate drawing or set of drawings depicting elevations at various points throughout the subdivision as required by standards established by the city engineer.

"Subdivision, major". See "Major subdivision".

"Subdivision, minor". See "Minor subdivision".

"Telecommunication facility" means any installation composed of wires, cables, pieces of equipment, pieces of machinery, structures and/or supporting elements necessary to produce non-ionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message.

"Tourist home" means a dwelling in which sleeping accommodations in less than ten rooms are provided or offered for transient guests for compensation.

"Travel trailer" means a wheeled portable structure not more than eight feet in body width designed to be towed by a vehicle and used as a temporary dwelling.

"Travel trailer park" means a plat or parcel of land, under single ownership, which has been improved for the purposes of locating travel trailers.

"Travel trailer site" means a parcel of land within a travel trailer park designed and improved for the accommodation of not more than one travel trailer.

"Treatment facility" means any use established under NDCC Chapter 10-19.1 or 1033 which (a) is licensed under the NDCC Chapters 23-16, 23-17 or 23-17.1 that provides public or private emergency evaluation or treatment, outpatient care and inpatient care to persons suffering from a mental disorder or chemical dependency operated by the department of human services or under contract with said department, (b) is licensed by the department of human services under NDCC Chapter 25-03.2, or (c) provides care, custody, treatment, day activity, work activity, extended employment services and other treatment or services to developmentally disabled persons or persons suffering from any mental or physical disability.

"Two-family dwelling" means a freestanding building containing two dwelling units.

"Use" means:

- a. Any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained or occupied;
- b. Any occupation, business, activity or operation carried on (or intended to be carried on) in a building, other structure or on land; or
- c. A name of a building, other structure or tract of land which indicates the purpose for which it is arranged, designed, intended, maintained or occupied.

"Use group" means two or more activities similar in physical characteristics, traffic generation, location, utility services or municipal service requirements.

"Uses permitted" means activities permitted by this Title's regulations.

"Utility Service Group" means uses necessary for the safe or efficient operation of a telecommunications, gas, water, electric, refuse, storm sewer or sanitary sewage system for the benefit of the public.

"Vehicle or equipment repair" means any activity that requires removal, replacement, repair or installation of parts and tires.

"Yard" means an open space on a lot with a building or group of buildings, which open space lies between the buildings or group of buildings and the nearest lot line and is

## Proposed Changes to Chapters 1 & 2 of Title 21

unoccupied and unobstructed from the ground upward, except as may be specifically provided in this Title.

“Yard, front”. See "Front yard".

“Yard, rear”. See "Rear yard".

“Yard, side”. See "Side yard".

"Wholesale Group" means uses in which the principal activity is the sale of merchandise to individuals and corporations for resale to the public that functions in a manner where the merchandise is stored wholly within a completely enclosed building that may be fully climate controlled or have no climate control, no unusual fire or safety hazard is caused by the storage of the merchandise, no live animals are sold and no junk, wrecked automobiles, secondhand equipment, or other salvaged material or dead animals are stored or sold on the premises.

ORDINANCE NO. 1183

An Ordinance to Amend and Re-enact Chapters 1 and 2 of Title 21 of the Mandan Code of Ordinances Related to Planning and Zoning

Style Definition: Heading 1

Style Definition: Heading 3: Font: Italic, Indent: First line: 0.5", Space Before: 0 pt, Line spacing: single

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS AS FOLLOWS:

Title 21 of the Mandan Code of ordinances is hereby amended and re-enacted to read as follows:

Standard text is existing that will remain. ~~Strike through~~ is deleted text. Underline is added text.

**Table of Contents**

CHAPTER 21-01 PLANNING AND ZONING COMMISSION ..... 2
SECTION 21-01-01 CREATION ..... 2
SECTION 21-01-02 MEMBERSHIP ..... 2
SECTION 21-01-03 TERMS OF OFFICE – UNEXCUSED ABSENCES CAUSE FOR REMOVAL ..... 2
1. Members Newly Appointed ..... 3
2. Present Members ..... 3
3. Ex-Officio Members ..... 3
4. Unexcused Absences ..... 3
SECTION 21-01-04 VACANCIES ..... 3
SECTION 21-01-05 OFFICERS, DUTIES, VACANCIES ..... 3
1. Officers ..... 3
2. Duties ..... 3
3. Vacancy ..... 4
4. Election of officers ..... 4
SECTION 21-01-06 MEETINGS ..... 4
1. Time and location ..... 4
2. Special meetings ..... 4
3. Quorum ..... 4
4. Conduct of meetings ..... 4
5. Agenda ..... 4
6. Records ..... 4
7. Notice ..... 4
8. Notification list ..... 4
SECTION 21-01-07 COMPENSATION AND REIMBURSEMENT ..... 4
SECTION 21-01-08 POWERS AND DUTIES ..... 5
1. Zoning district boundaries and regulations ..... 5
2. Hearing and reports ..... 5
3. Extraterritorial authority ..... 5
4. Comprehensive plan ..... 5
5. Surveys and studies ..... 5

6. Review and either approve or disapprove.....	5
7. Specific improvements .....	5
8. Consult and advise .....	5
9. Publish and distribute.....	5
10. Gifts.....	5
11. Examinations and surveys.....	6
12. Other powers .....	6
<b>CHAPTER 21-02 GENERAL PROVISIONS AND DEFINITIONS .....</b>	<b>6</b>
SECTION 21-02-01 LEGISLATIVE INTENT.....	6
SECTION 21-02-02 APPLICATION.....	6
SECTION 21-02-03 CONSTRUCTION AND DEFINITIONS.....	6

## Chapter 21-01 PLANNING AND ZONING COMMISSION

### Section 21-01-01 Creation.

Pursuant to the provisions of NDCC §§ 40-47-06 and 40-48-03, there was created a body known as the planning and zoning Commission of the city, which has been and is actively serving the community. It is intended that this body will continue as the planning and zoning Commission, hereinafter referred to as the Commission, with the duties and functions recited in this chapter, pursuant to the powers authorized by state law.

### Section 21-01-02 Membership.

The Commission shall be composed of up to a maximum of thirteen members, each of whom will execute the oath of office requisite to such appointment. ten Nine members will be appointed by the president of the board mayor of city commissioners and approved by the Board. The Mayor shall appoint one member recommended by the Mandan Park District and one member recommended by the Mandan Public School District. The president of the board mayor of city commissioners, and the city engineer will be shall be an ex-officio voting members of the Commission. Two members residing outside the corporate limits of Mandan but within the extraterritorial area of the city's zoning authority will be appointed by the Morton County Board of Commissioners, if available and willing to serve, if such persons are available and will serve. The city engineer and city attorney are ex-officio members of the Commission. Each member will execute the oath of office requisite to such appointment. The mayor shall endeavor to select individuals that represent other boards, interest groups, professional associations and civic organizations, as well as unaffiliated city residents willing to serve, when recommending appointments

### Section 21-01-03 Terms of Office – Unexcused Absences Cause for Removal.

All Commission members' terms of office shall be for a period of five years, except in the following cases:

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**1. *Members Newly Appointed.*** Of members newly appointed at the time of the creation or expansion of the ~~planning and zoning~~ eCommission, the first member appointed by the city will hold office for one year, the second member for two years, the third member for three years, the fourth member for four years, and the fifth member and all others thereafter will serve for five years. If members are appointed by the county, the first member appointed will hold office for three years and the second member appointed will hold office for one year, and thereafter members appointed by the county will serve for five years.

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**2. *Present Members.*** Present members of the eCommission shall hold office for the balance of their five-year term.

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**3. *Ex-Officio Members.*** Terms of the ex-officio members will correspond to their respective tenures of office.

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**4. *Unexcused Absences.*** Any member of the eCommission who has three unexcused absences within a twelve month period shall be deemed to have resigned and the vacancy shall be filled as provided in Section 21-01-04. Unexcused absences shall be any absence not related to illness, out of town trips, or business related scheduling conflicts.

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#### **Section 21-01-04 Vacancies.**

Vacancies in the terms of members residing within the city limits will be filled by appointment of the ~~president of the board~~ mayor or city commissioners with approval of the Board, and the member appointed to fill a vacancy will serve the balance of the unexpired term. Vacancies in the terms of the extraterritorial members will be filled by ~~appointment of the board of the~~ county commissioners for the balance of the unexpired term.

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#### **Section 21-01-05 --Officers, --Duties, --Vacancies.**

**1. *Officers.*** The officers of the eCommission will be a president, vice-president, and secretary who will be elected for one-year terms by the members of the eCommission.

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**2. *Duties.*** The duties of the officers of the eCommission will be as follows:

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- a. **President.** The president will preside over and conduct the meeting, prepare agendas, appoint acting officers in the absence of officers and assure that all actions of the eCommission are properly taken. The president may call special meetings, appoint committees from among eCommission members and will verify in writing on the plat the approval by the eCommission of subdivision plats.
- b. **Vice-President.** The vice-president, in the absence or in case of conflict of interest of the president, will exercise all powers and duties of the president.
- c. **Secretary.** The secretary will take the minutes, maintain correspondence, notify the public of all meetings and hearings as required by law, keep all records of the eCommission and sign materials relating to the ~~master~~ comprehensive plan attesting to action taken by the eCommission. The secretary may verify in writing on the plat approval by the eCommission of any subdivision plat. The secretary may be a commission member, a city employee or a contract employee of the Commission.

**3. Vacancy.** If any office becomes permanently vacant, the Commission will appoint from among its membership a person to fill the unexpired term at the next meeting.

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**4. Election of officers.** At the first meeting in August, the Commission will elect its officers for the coming year.

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### Section 21-01-06 Meetings.

**1. Time and location.** All regular monthly and annual Commission meetings will be held at the Mandan commission room Ed "Bosh" Froehlich Meeting Room in city hall unless another venue is chosen for a specific meeting in advance by the Commission. The Commission will meet on the fourth Monday of each month, at 5:15 p.m., unless a different time is approved in advance by the Commission for a specific meeting. If a meeting scheduled meeting falls on a designated city holiday, then, the date and time for the monthly meeting will be determined by the Commission.

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**2. Special meetings.** On the first meeting of August the commission will elect its officers for the coming year and conduct other business as is necessary.

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2.—The president of the Commission may call special meetings at times and locations specified in a written notice transmitted to each Commission member no later than three days prior to the special meeting date.

**3. Quorum.** A quorum will consist of seven members. No action will be taken in the absence of a quorum.

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**4. Conduct of meetings.** All meetings will be conducted in accordance with Robert's Rules of Order.— However, if any rule is inconsistent with the provisions of this Title or the NDCC, this Title or the NDCC shall prevail over Robert's Rules of Order.

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**5. Agenda.** Items will be considered in the order they appear on the agenda, which for regular meetings will be delivered electronically to members and applicants no later than five days prior to the meeting and three days prior to special meetings. Printed versions of the agenda package will be provided on request. The president of the Commission may adjust the order of the published agenda for good cause at any point during the meeting.

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**6. Records.** Records of the Commission's resolutions, transactions, findings and determinations will be kept by the Commission as part of its public record.

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**7. Notice.** A notice of each Commission meeting and accompanying agenda shall be posted on the official bulletin board in City Hall and the full agenda package posted on the City web site at least 3 days before a regular meeting or at least 24 hours before a special meeting.

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**8. Notification list.** Anyone wishing to receive an electronic version of the meeting notice, the agenda and/or the agenda package may make a request to the Engineering and Planning Department to be included on the notification list.

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### Section 21-01-07 Compensation and Reimbursement.

Planning and zoning Commission members will serve without compensation. When prior authorization is given by the Commission and is recorded in the minutes approved by the Board, members may be reimbursed for meals and traveling expenses incident to attendance at meetings, conferences or hearings in accordance with the rates of reimbursement as provided by law.

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**Section 21-01-08 Powers and Duties.**

**1. Zoning district boundaries and regulations.** The ~~planning and zoning~~ eCommission, hereinafter the commission, shall recommend to the ~~Board of city commissioners,~~ the boundaries of the various zoning districts and appropriate regulations to be enforced therein.

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**2. Hearing and reports.** The eCommission shall make a preliminary report on all proposed zoning changes and hold public hearings thereon before submitting its final report to the ~~Board.~~ The ~~Board~~ shall not hold its public hearing or take action until it has received the final report of the eCommission.

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**3. Extraterritorial authority.** The eCommission shall have extended territorial authority to all unincorporated ~~territory areas~~ located within two miles ~~a~~ of the corporate limits of the city, in every direction as authorized by state law, and shall enforce such regulations in the extraterritorial area ~~to the same extent as if such property were situated within the city's corporate limits~~ in the manner authorized by state law or any agreement made between the City and Morton County.

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**4. Comprehensive plan.** The eCommission shall have the power to make and adopt a ~~master comprehensive~~ plan for the physical development of the city and of any land outside its boundaries which, in the eCommission's judgment, bears a relation to the planning of the city. The eCommission may amend, extend or add to the ~~master comprehensive~~ plan.

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**5. Surveys and studies.** In the preparation of the ~~master comprehensive~~ plan, the eCommission shall make careful and ~~comprehensive extensive~~ surveys and studies of the present conditions and future growth of the city with due regard to its relation to neighboring territory. The Commission shall consider studies and plans prepared by the Metropolitan Planning Organization, Mandan Park District, Mandan Public School District, Morton County, Morton County Housing Authority or other groups involved in growth and economic development of the region when preparing the comprehensive plan.

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**6. Review and either approve or disapprove.** The eCommission shall review, and approve or disapprove the location, character and extent of any proposed street, square, park, or other public way, ground or open space, or public building or structure.

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**7. Specific improvements.** The eCommission shall, from time to time, recommend to the appropriate public officials programs for specific improvements and for the financing thereof.

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**8. Consult and advise.** The eCommission shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens relative to the carrying out of the ~~master comprehensive~~ plan.

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**9. Publish and distribute.** In order to promote public interest in and understanding of the ~~master comprehensive~~ plan, the eCommission may publish and distribute copies of the plan or of any part thereof or of any report, and may employ such other means of publicity and education as it may determine.

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**10. Gifts.** The eCommission members may not accept and use gifts or donations for the exercise of the Commission's its functions. Any gifts or donations received shall be forwarded to the City Administrator for proper disposition as prescribed by City Code or state law.

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**11. Examinations and surveys.** In the performance of their functions, the Commission members, officers and employees may enter upon any land and make examinations and surveys thereof and place and maintain necessary monuments or marks thereon without causing damage to the property. Every person performing these tasks shall carry proper identification and a letter of introduction stating the purpose of the visit. A person performing such duties shall not enter a building or structure unless granted permission in writing by the owner or occupant of the building or structure.

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**12. Other powers.** The Commission may exercise such other powers as may be necessary to enable it to fulfill its functions and carry out the provisions of state law and city ordinance.

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## Chapter 21-02 GENERAL PROVISIONS AND DEFINITIONS

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### Section 21-02-01 Legislative Intent.

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It is the intent of the Board to promote the health, safety and general welfare by guiding the development of the city by means of a comprehensive land use plan which is in part carried out by the provisions of this Title. It is the intent of this Title to provide regulations, standards and guides for the city's development in accordance with a comprehensive plan which will:

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1. Lessen congestion in the streets;
2. Secure safety from fire, panic and other dangers;
3. Promote the health and general welfare;
4. Prevent the overcrowding of land;
5. Provide for adequate light and air;
6. Avoid undue concentration of population; and
7. Facilitate adequate provision for transportation, water, sewerage, schools, parks and other requirements.

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### Section 21-02-02 Application.

The zoning ordinances and subdivision regulations of the city shall apply to all territory within the corporate boundary limits of the city and all territory within the extraterritorial jurisdiction boundaries as set and determined by ordinance of the city.

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### Section 21-02-03 Construction and Definitions.

All words used in the present tense include the future tense. All words in the plural number include the singular number, all words used in the singular number include the plural number, unless the natural construction of the wording indicates otherwise. The word "building" includes the word "structure." The word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be used." Unless otherwise specified, all distances shall be measured horizontally. The word "city" means the city of Mandan, North Dakota; the term "board" means the board of city commissioners of said city; the "board of adjustment" means the board of adjustment of said city; the term "commission" means the planning and zoning commission of said city; the term "board of county

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commissioners" means the Morton County board of commissioners. All officials referred to herein refer to the appointed officials of said city or their authorized representatives

For the purposes of this ~~title~~ certain words and terms used herein are defined as follows:

"Accessory building" means a subordinate structure which is customarily incidental to that of a principal building on the same lot.

"Accessory use" means a subordinate use which is customarily incidental to that of a principal use on the same lot.

"Adult bookstore" means a bookstore having a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein:

a. ~~—"Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.~~

b. ~~—"Specified anatomical areas" means less than completely and opaquely covered human genitals and pubic regions, buttocks or female breasts below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.~~

c. ~~—"Specified sexual activities" means human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touchings of human genitals and pubic regions, buttocks or female breasts.~~

"Adult establishments" means either an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater, or a massage business as defined in this section:

a. ~~—"Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping by hand or mechanical device.~~

b. ~~—"Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors.~~

"Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

"Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

"Agricultural district" means "A" district.

"Alley" means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of those ~~a~~ property~~ies~~ whose principal frontage is on some other street.

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"Animal Hospital" means a facility for the care and well-being of animals under the direct supervision of a licensed veterinarian; ~~included~~including, but not limited to, grooming, confinement or kenneling for medical purposes, ~~commercial kenneling~~, and full medical services.

"Animal Clinic" means a facility for the care and well-being of ~~household pets~~animals, under the direct supervision of a licensed veterinarian; including, but not limited to, grooming, confinement ~~or kenneling~~ for medical purposes; and full medical services ~~for household pets as defined herein~~;meeting the following requirements:

- aA. Incinerating or cremating of animals or animal parts upon the premises is prohibited;
- bB. ~~An~~Includes an on-site, porous, well-drained exercise area for pets to use, ~~that is~~ no smaller in size and dimension than 15 feet by 25 feet which is to be kept neat and clean at all times; ~~and~~
- cC. ~~The~~Animal carcasses and/or animal tissues are to be frozen, sealed in a waterproof containers, and either kept in a frozen state until commercial waste pickup day; or ~~prior to the end of the following business 'day when they are to be removed~~ directly from the facility to the City's waste landfill ~~site~~ or a licensed crematorium; ~~and~~
- d-. The term "household pet" as used herein is specifically defined to include only the following taxonomically identified animals; ~~namely~~:

- (1) Mammalian Genus species;
  - (a1) ~~Canis familiaris~~, the domestic dog, and
  - (b2) ~~Fells catus~~, the domestic cat;
- (2) Mammalian Families;
  - (a3) ~~Leporidae~~, rabbits,
  - (b4) ~~Cricetidae~~, hamsters,
  - (c5) ~~Gerbillidae~~, gerbils, and
  - (d6) ~~Muridae~~, mice and rats;
- (3) Avian Orders;
  - (a7) ~~Psittaciformes~~, parrots, parakeets, lories, budgerigars, and cockatiels,
  - (b8) ~~Passeriformes~~, canaries and finches, and
  - (c9) ~~Columbiformes~~, pigeons and doves;
- (4) Reptilian Groups
  - (a) Squamata, lizards and snakes; and
  - (b) Testudine, turtles ~~(to be defined)~~;

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"Arterial street" means a road intended to move large volumes of through traffic and provide access to collector and neighborhood streets.

"Auditor's lot" means any tract of land platted or replatted in accordance with the provisions of NDCC § 57-02-39 or as may be otherwise authorized by law.

"Auditor's Plat". See Plat, "Auditor's Auditor's lot".

"Auto repair" means any activity that requires removal, replacement, repair or installation of parts and tires.

~~"Auto Service, Limited" means uses any activity that provides direct service to motor vehicles where the driver generally waits in the car or nearby while the service is performed. Examples include full-service and self-service gas stations; free-standing carwash facilities; and quick lubrication services. This category does not include convenience store/gas stations including adding fuel, replacement of fluids and filters, vehicle washing or detailing but not repair or replacement of parts or tires.~~

~~"Auto Wrecking". See "Junkyard".~~

"Basement" means that portion of a building below the first-floor joists, the floor of which is more than one-half clear ceiling height below the adjacent ground.

"Bed and breakfast facility" means an owner occupied single-family dwelling providing not more than four temporary lodging units with a current license issued pursuant to the provisions of Chapter 23-09.1 of the North Dakota Century Code and providing one off-street vehicle parking space for each such unit and two off-street parking spaces for the owner/operator with only one sign not exceeding four square feet in size.

~~"Billboard". See Sign, "Outdoor Advertising sign".~~

"Block" means the property abutting one side of the street and lying between the two nearest intersecting streets, or between the nearest such street and a railroad right-of-way, unsubdivided acreage, river or live stream; or between any of the foregoing and any other barrier to the continuity of development.

~~"Building" means a structure having a roof supported by walls or columns for the shelter, support or enclosure of persons, animals or chattels. When, in a building all of which is used for nonresidential purposes, any portion of the building is completely separated from all other portions by a masonry division wall from the ground up to the roof, and has no door or other opening directly communicating between the two portions of the buildings, such portions so separated shall be deemed separate buildings.~~

~~"Building, Accessory". See "Accessory building" means a subordinate building the use of which is customarily incidental to that of a principal building on the same lot.~~

"Building height" means the vertical distance measured between the level of the highest point at the roof beams of flat roofs or roofs inclining not more than one inch to the foot or to the mean height level of the top of the main plate or highest ridge for other roofs and the highest of the following:

- a. The street curb level;
- b. The established or mean street grade in case the curb has not been constructed; or
- c. The average finished ground level adjoining the building if it sets back from the street line.

~~"Building inspector" means the building inspector of the city of Mandan building official or his authorized representative.~~

"Building line" means a line established, in general, parallel to the front street line between which line and the front street line no part of a building shall project, except as otherwise provided by ordinance.

~~"Building, Principal". See "Principal building". "Principal building" means a building in which is conducted the principal use of the lot on which it is situated.~~

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"Capital improvements program" means a proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government's operating expenses, for the purchase, construction or replacement of the physical assets for of the community requiring the expenditure of public funds over and above recurring annual operating expenses are included.

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"Central sewer system" means a private or public liquid waste collection, conveyance and treatment facility sewer system to serve a community or a fringe area portion of a community which includes collection and treatment facilities approved by the city and State Health Department.

"Central water system" means a private or public facility for the collection, treatment, storage and distribution of potable water system to serve water serving a community or a portion of a community fringe area which includes water treatment, storage and distribution facilities approved by the city and State Health Department.

"Child Care Center" means a private group care facility housing more than twelve children.

"Collector street" means a road intended to move traffic from local streets to arterials and provide circulation within a development.

"Commercial district" means any CA, CB or CC district.

"Commercial Recreation Group" means uses in which the principal activity is the furnishing of recreation for a profit.

"Commercial Kennel" means a facility for the indoor boarding of animals of household pets as defined in Animal Clinic which would be allowed to have outdoor exercise runs. This type of facility must have an on-site, porous, well-drained, exercise area for pets to use, no smaller in size and dimension than 15 feet by 25 feet which is to be kept neat and clean at all times. "Commission" means the Planning and Zoning Commission.

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"Comprehensive plan" means the official master plan established by ordinance adopted by the Board of City Commissioners as required by the North Dakota Century Code that is a long-range guide for the economic, physical and social development of a local government's jurisdiction the city and which identifies local goals, objectives and opportunities and embodies the policies of the local government set forth in planning documents and ordinances adopted by the board the location and width of streets, ways, plazas, open spaces, public easements, parks, playgrounds and public rights in land that is established to conserve and promote the public health, safety and general welfare of the city.

These plans and ordinances are identified by a resolution adopted by the board on November 21, 1978, and any amendments thereafter enacted.

"Community Services" means uses of a public, nonprofit or charitable nature generally providing a local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. The use may also provide special counseling, education or training of a public, nonprofit or charitable nature. Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, social service facilities, temporary shelters, and vocational training for persons with physical or mental disabilities.

"Convenience store" means a facility that provides quick purchase retail and food items and may offer vehicle fueling or alcohol sales with the appropriate city and regulatory agency approvals.

"Corner lot" means a lot at the junction of and abutting on two or more intersecting streets when the interior angle of intersection does not exceed one hundred and thirty-five degrees and including any lot adjoining a curved street at a point where the street boundary described an arc subtended by an angle of one hundred and thirty-five degrees or less.

"Correctional facility" means any city or county jail or detention center, regional corrections center, juvenile detention center, pre-release center, transition center, half-way house or other publicly or privately established correctional facility, for the detention, confinement, or rehabilitation of persons in accordance with law.

"County" means Morton County.

"Cul-de-sac" means a local street with only one outlet and having a circular turn-around at the other end designed to accommodate and appropriate terminal for the safe and convenient reversal of traffic movement.

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"Dead-end street" means a road or portion thereof with only one vehicular traffic outlet.

"Density" means the number of families residing on, or dwelling units developed on, an acre of land. All densities are stated in families per net acre, that is, per acre of land devoted to residential use, exclusive of land in streets, alleys, parks, playgrounds, schoolyards, or other public lands and open spaces.

"Detention Facilities" means facilities for the judicially required detention or incarceration of people. Inmates and detainees are under 24 hour supervision by sworn officers, except when on approved leave. Examples include prisons, jails, probation centers and juvenile detention homes.

"Drive-through Facilities" means are any portion of a building from which business is transacted, or capable of being transacted, directly with customers located in a motor vehicle. Such a facility is usually an accessory to a principal use and may also be referred to as a drive in or drive up. Examples include drive-through windows at financial institutions and restaurants.

"Dwelling" means a building or portion thereof arranged or designed to provide living facilities for one or more families. The term "dwelling" includes a house trailer, but does not include a motel, hotel or tourist home.

"Dwelling, group". See "Group dwelling" means, in general, a building in which several unrelated individuals or families permanently reside but in which individual cooking facilities are not provided for the individual persons or families. Specifically, "group dwelling" includes rooming house, fraternity house, sorority house and private club in which one or more members have a permanent residence.

"Group dwelling" does not include a hotel, motel, tourist home, trailer camp, correctional facility, or any use included in the Health Medical Group.

"Dwelling, Multi-family". See "Multi-family dwelling" means a building or portion thereof containing three or more dwelling units.

"Dwelling, Single-Family". See "Dwelling-Single-Family dwelling" means a building containing only one dwelling unit designed to be located on a permanent foundation and, if site built, constructed in accordance with the provisions of the applicable city ordinances governing

construction; or, if manufactured off site, constructed in accordance with either the city ordinances governing construction or the HUD manufactured home construction and safety standards (24 CFR 3280) and provides support of the perimeter wall by a permanent and continuous foundation. Each single family dwelling hereafter constructed shall have a minimum overall depth of twenty four (24) feet, a minimum main floor living space square footage of one thousand (1,000) square feet, and a minimum ceiling height of seven (7) feet, six (6) inches.

"Dwelling, Two-Family". See "Two-family dwelling" means a building containing only two dwelling units.

"Dwelling unit" means a building or portion thereof providing complete housekeeping facilities for one family.

"Easement" means a legally defined portion of private property within which the owner has granted the authorization by a property owner for the use by another, and for a specified purpose, of any designated part of the property.

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"Education Group" means uses in which the principal activity is the education of children or adults by a public or private agency and includes all normal accessory buildings and uses associated with the primary use.

"Entertainment Event, Major" means events that are characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature. Examples include stadiums, sports arenas, auditoriums, exhibition halls, convention centers and fairgrounds. This category does not include outdoor recreation and entertainment uses, such as golf driving ranges and racetracks.

"Family" means one or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit.

"Filling station" means a building or lot having pumps and storage tanks where fuels, oils or accessories for motor vehicles are dispensed, sold or offered for sale at retail only; repair service is incidental; and no storage or parking space is offered for rent.

"Final plat" means a drawing with appropriate verbiage showing the division of land into lots, blocks, rights-of-way and easements that is approved by the Board and then recorded with the Morton County Recorder.

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"Floor area" means the gross square footage of habitable space of all buildings on a lot calculated from the exterior face of all outer walls or the centerline of a common wall between buildings with the following not included in the calculation of habitable space:

- a. Attic space providing structural head room of less than seven feet, six inches;
- b. Mechanical equipment rooms;
- c. Unheated storage rooms in a basement or garage;
- d. Uncovered steps;
- e. Terraces, breezeways and open porches; and
- f. Automobile parking space in a basement or private garage.

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"Floor Area Ratio (FAR)" means the floor area of a building or buildings on a zoning lot, divided by the area of that zoning lot.

A floor area of a building or buildings is the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls or from the center line of walls separating two buildings. Floor areas includes the area of

basements when used for residential, commercial or industrial purposes, but need not include a basement or portion of a basement used for storage or the housing of a mechanical or central heating equipment, or the basement apartment of a custodian in a multifamily dwelling, except that portion of said custodian's dwelling unit which is in excess of fifty percent of the total basement floor area. In calculating floor area, the following need not be included:

- a. Attic space providing structural head room of less than seven feet, six inches;
- b. Uncovered steps;
- c. Terraces, breezeways and open porches;
- d. Automobile parking space in a basement or private garage, but not to exceed six hundred square feet for a single family dwelling, eight hundred square feet for a two family dwelling and two hundred square feet per car space required by the provisions of this title for any other use;
- e. Accessory off street loading berths, but not to exceed twice the space required by the provisions of this title.

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Garage, Private. "Private garage" means an accessory building or part of a principal building used only for the storage of motor vehicles as an accessory use, when the storage space, together with the principal building and the space of any other accessory buildings, does not exceed the floor area ratio coverage permitted within such zoning district.

Garage, Public. "Public garage" means a building or premises which is operated for commercial purposes and used for the storage, care or repair of motor vehicles; but a public garage shall not be used for the storage of dismantled or wrecked motor vehicles, parts thereof, or junk.

"Gross residential density" means the number of families residing on, or dwelling units developed on, an acre of land, inclusive of land in streets, alleys, parks, playgrounds, schoolyards, other public lands, waterways, drainage areas, and open spaces.

"Group dwelling" means a boarding house, convent, monastery, fraternity, sorority, rooming house or group home licensed by the Department of Human Services, but not a correctional facility, in which several unrelated individuals or families permanently reside and within which there are only common cooking facilities for the use of all residents.

"Health Group" means uses in which the principal activity is related to the care and medical treatment of human beings.

"Height of building" means the vertical distance measured from the highest of the following three levels:

- a. The street curb level;
- b. The established or mean street grade in case the curb has not been constructed; or
- c. The averaged finished ground level adjoining the building if it sets back from the street line to the level of the highest point at the roof beams or flat roofs, or roofs inclining not more than one inch to the foot and to the mean height level of the top of the main plate and highest ridge for other roofs.

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"Hotel" means a building in which lodging, with or without meals, is provided and offered to the public for compensation, and which is open to transient guests. Hotels include motels and automobile courts, but not group dwellings as defined in this section.

"Improvements" means street grading and surfacing, with or without curbs and gutter, sidewalks, crosswalks, water mains, sanitary and storm sewers, street lighting, culverts, bridges, streets and trees.

"Industrial district" means any MA, MB, MC or MD district.

"Industrial Group A" means uses involving manufacturing or the storage and sale of heavy building materials or equipment where there is no unusual fire, explosion or safety hazard and where there is no production of noise at any boundary of the district in which the use is located in excess of the ambient noise level at that point.

"Industrial Group B" means uses involving manufacturing, storage and/or sale of products and material in which the operations create a greater degree of hazard or more annoyance than the operations of uses in Industrial Group A.

"Interior lot" means a lot other than a corner lot.

"Junkyard" means an area encompassing the use of more than two hundred square feet of the area of any lot, whether inside or outside of a building, or the use of any portion of that half of any lot that adjoins any street where the use includes any of the following: (1) the storage, keeping or abandonment of junk including scrap metals, rags, paper or other scrap materials, used lumber, salvaged house wrecking and structural steel materials and equipment; or (2) the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

"Kennel" means a commercial facility for the indoor boarding of household pets as defined in animal clinic that includes an on-site, porous, well-drained exercise area for pets to use that is no smaller in size and dimension than 15 feet by 25 feet which is kept neat and clean at all times.

"Local street" means a road intended to provide access to other streets from individual properties and to provide right-of-way beneath it for public utilities.

"Lot" means a tract, plot or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for development. When used alone, unless the context clearly indicates otherwise, lot means a "zoning lot" as defined in this section.

"Lot, Auditor's". See "Auditor's lot" means any tract of land platted or replatted in accordance with the provisions of NDCC § 57-02-39 or as may be otherwise authorized by law.

"Lot, Corner". See "Corner lot" means a zoning lot at the junction of and abutting on two or more intersecting streets when the interior angle of intersection does not exceed one hundred and thirty five degrees. Any zoning lot adjoining a curved street at a point where the street boundary described an arc subtended by an angle of one hundred and thirty five degrees or less, shall be considered a "corner lot."

"Lot depth" means the minimum horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

"Lot, Interior". See "Interior lot" means a zoning lot other than a corner lot.

"Lot line, Rear". See "Rear lot line" means the lot line generally opposite or parallel to the front street line. If a rear lot line is less than ten feet long, or the lot comes to a point at the rear, said rear lot line is assumed to be a line at least ten feet long, lying wholly within the lot, parallel to the front street line or, if the front street line is curved, parallel to the chord of the arc of said front street line.

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Lot, Record. "Record lot" means any land designated as a separate and distinct parcel on a legally recorded subdivision plat or in a legally recorded deed filed in the records of Morton County, North Dakota.

"Lot width" means the mean average width of a lot measured at right angles to its depth along the front and rear lot lines.

Lot, Zoning. "Zoning lot" means a tract of land occupied or to be occupied by the principal building and its accessory buildings together with such open spaces and yards as are required under the provisions of this title, having not less than the minimum area required by this title for a zoning lot in the district in which such land is situated, and having its principal frontage on a street or a permanent, exclusive, nonobstructed easement of access or right of way to a street, not less than twenty feet wide. A zoning lot need not necessarily coincide with a record lot as defined in this section.

"Major street" means a roadway used primarily for fast or heavy traffic, including expressways, freeways and boulevards.

"Major subdivision" means any subdivision or re-subdivision of land not classified as a minor subdivision.

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"Manufactured Home" means a factory built structure which is to be used as a place for human habitation and, which bears a factory attached and undisturbed label certifying that it was built in compliance with the Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), as amended, promulgated by the United States Department of Housing and Urban Development.

"Manufactured home lot" means a parcel of land for the placement of a single manufactured home.

"Manufactured home park" means a plot or parcel of land, under single ownership, which has been improved for purposes of locating manufactured homes as dwellings.

"Manufactured home site" means a parcel of land within a manufactured home park designed and improved for the accommodation of not more than one manufactured home as a single-family residence.

"Manufactured home stand" means that part of a manufactured home site which has been reserved and improved for the placement of a manufactured home, appurtenant structures or additions to a manufactured home.

"Manufactured home subdivision" means a parcel of land, subdivided into lots, in which the majority of the lots may be individually owned and utilized as a site for placement of a single-family manufactured home and its facilities.

"MARC" means the Mandan Architectural Review Commission.

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"Master Pplan". See "Comprehensive Plan".

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or "master land use plan" means the comprehensive plan, or any portion thereof, made and adopted by the planning commission in accordance with the laws of the state and ordinances of the city indicating the general or specific locations recommended for streets, parks, public buildings, zoning districts and all other public improvements.

"Master street plan" means a document setting forth goals, policies and standards for orderly street development adopted by the Commission and Board.

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"Master subdivision plan" means a document area plan indicating the general street layout, land use density, existing public improvements, proposals to develop public and

private improvements including parks, open space, drainage areas, streets, and utilities and other such data as required by this title that is submitted to the planning and zoning Commission prior to or simultaneously with a preliminary plat.

"Mayor" means the president of the board as defined in the NDCC.

"Minor street" means a right-of-way intended primarily to provide pedestrian and vehicular access to the abutting properties.

"Minor subdivision" means the division of a parcel of land or the adjustment of property lines or easements within a parcel of land containing no more than five acres that meets certain restrictions.

"Mobile Home" means ~~A~~ a transportable, factory built structure, designed to be used as a residential dwelling and built prior to enactment of the Federal Manufactured Home Construction and Safety Standards Act of 1974 (24 CFR 3280), and not bearing a label certifying that it was built in compliance with said Act. ~~A mobile or portable structure constructed to be towed on its own chassis, connected to utilities and used for year round living. It can consist of one or more units that can be telescoped when towed, or two or more units separately towable but designed to be joined into one integral unit.~~

"Modular home" means a dwelling meeting all building code requirements for a site built structure that is constructed offsite in sections, assembled onsite and affixed to the property with a solid perimeter foundation.

"Multi-family dwelling" means a building or portion thereof containing three or more dwelling units.

"Net residential density" means the number of families residing on, or dwelling units developed on, an acre of land, exclusive of land in streets, alleys, parks, playgrounds, schoolyards, other public lands, waterways, drainage areas, and open spaces.

"Nonaccess reservation" means a line on a final plat prohibiting ~~controlling direct~~ vehicular access from the platted area to an adjoining major streets or public rights-of-way designated on a final plat.

"Nonconforming use" means an activity conducted in the use of a building or other structure, or ~~of~~ on a tract of land, which does not conform to the use regulations of this Title for the district in which it is located, either at the effective date of the zoning ordinance or as a result of subsequent amendments which may be incorporated into this title.

"Nondependent unit" means a manufactured home, travel trailer or self-propelled motor home with bath or shower and toilet facilities.

"Office Group" means uses in which the principal activity is the conduct of a commercial, governmental, financial, professional or management function for service to the general public. "Outdoor advertising sign" means a sign, including a billboard, which directs attention to a business, commodity, service, entertainment or other activity conducted, sold or offered elsewhere than on the premises upon which the sign is located.

"Owner" means a person or other legal entity having legal title to or sufficient proprietary interest in the land sought to be subdivided under this Title's regulations.

"Passenger Terminals" means a building or other structure designed for the gathering of individuals waiting for the arrival of ~~includes passenger terminals for regional bus service and regional passenger train/rail service or airplane.~~

"Pet Grooming Restricted" means a facility for the indoor grooming and maintenance, with no overnight boarding, of the animals/pets listed in the definition of animal clinic; restricted to the indoor treatment (with no overnight boarding) of household pets as defined in Animal Clinic which must meet the requirements of a home occupation. This type of facility must have an on-sight, porous, well drained, exercise area for pets to use, no smaller in size and dimension than 15 feet by 25 feet which is to be kept neat and clean at all times.

"Pet Grooming Commercial" means a facility for the grooming and maintenance of animals; restricted to the indoor treatment (with no overnight boarding) of household pets as defined in Animal Clinic. This type of facility must have an on-sight, porous, well drained, exercise area for pets to use, no smaller in size and dimension than 15 feet by 25 feet which is to be kept neat and clean at all times.

"Plat, Auditor's" See Lot, "Auditor's lot".

"Plat, Final" See "Final plat" "Final plat" means the map or plat or record of a subdivision and any accompanying material, as described in this title's regulations.

"Plat, Preliminary" See "Preliminary plat" means the preliminary drawing or drawings, described in this title's regulations, indicating the proposed manner or layout of the subdivision to be submitted to the planning commission for approval.

"Portable building" means any structure that is either mounted on wheels or transportable on a flatbed trailer that is designed and constructed to provide for living or sleeping quarters for one or more persons or for the conduct of a business, profession, trade, or occupation.

"Preliminary plat" means the concept drawing or drawings indicating the proposed manner or layout of the subdivision.

"President of the board" means the mayor as used in this code.

"Principal building" means a structure in which is conducted the principal activity of the lot on which it is situated.

"Private garage" means an accessory building or part of a principal building used for the storage of motor vehicles and miscellaneous tools or equipment as an accessory use.

"Public garage" means a building or premises which is operated for commercial purposes and used for the storage, care or repair of currently licensed or vintage motor vehicles.

"Public improvement" means any drainage structure, water line, sewer line, roadway, parkway, sidewalk, pedestrian-way, tree, berm, boulevard, lawn, public off-street parking area, lot improvement, or other facility for which the city may ultimately assume the responsibility.

"Public Recreation Group" means uses in which the facilities are built and maintained by a governmental agency for use by the public but where the daily operation of the facility may be contracted by the governmental agency to a private company or individual.

"Public thoroughfare" means any public right-of-way or easement which affords access to abutting property and includes highways, avenues, boulevards, parkways, streets, roads, lanes, walks, alleys, viaducts, subways, tunnels and bridges.

"Rear lot line" means the lot line generally opposite to the front lot line.

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"Rear yard" means an open area extending across the full width of the lot and lying between the rear lot line and the rear building setback line.

"Record lot" means any land designated as a separate and distinct parcel on a legally recorded subdivision plat or in a legally recorded deed filed in the office of the Morton County Recorder.

"Refrigerated Cold Storage Locker" means a facility for the refrigerated storage warehousing of perishable food.

"Registered land surveyor" means a land surveyor properly licensed and registered in the State of North Dakota.

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"Residential district" means any R10, R7, R3.2, R2, RM, RHP or RMH district.

"Resubdivision" means a change in the sealed and signed drawing of an approved and recorded subdivision plat.

"Retail Group A" means uses that relays in part on the proximity of other similar uses to help attract customers and in which the principal activity is the retail sale of merchandise and associated services conducted primarily within an enclosed building.

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"Retail Group B" means uses that, as differentiated from Retail Group A, do not rely in part on the proximity of other similar uses to help attract customers and in which the principal activity is the retail sale of merchandise and associated services conducted primarily within an enclosed building.

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"Road" means a pathway for vehicles to travel from place to place and includes street, highway, avenue, boulevard, parkway, lane, alley, viaduct, subway, tunnel, bridge, public easement and right-of-way.

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"Road right-of-way width" means the distance between property lines measured at right angles to the centerline of the street.

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"Rooming house" means a dwelling in which more than two rooms are let for hire, or more than four persons are given lodging for compensation.

"Safety Services" means uses that provide public safety and emergency response services including. They often need to be located in or near the area where the service is provided. Employees are generally present on-site. Examples include fire stations, police stations and emergency medical and ambulance stations.

"Sale or lease" means any immediate or future transfer of ownership, or any possessory interest in land, including contract of sale, lease, devise, intestate succession, or transfer of an interest in a subdivision or part thereof, whether by metes and bounds, deed, contract, plat, map, lease, devise, intestate succession, or other written instrument.

"Self-propelled motor home" means a vehicle, including the terms "recreational vehicle" or "tour bus", licensed by a state as a motor vehicle containing living facilities designed for temporary dwelling.

"Service Group A" means uses in which the principal activity is providing a service with accompanying sale of parts or supplies that relays in part on the proximity of other similar uses to attract customers and whose operations are carried on in such a manner as to produce no offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located.

"Service Group B" means uses in which the principal activity is providing a service with accompanying sale of parts or supplies that does not rely in part on the proximity of other

similar uses to attract customers and whose operations are carried on in such a manner as to produce some offensive noise, dust, odor, glare, heat or vibration perceptible or measurable from outside the building in which the use is located and the use is one which, if placed on a lot adjacent to a lot in a residential district, would have the potential to create an unusual safety hazard for the lot or other lots in said residential district or would otherwise unduly depreciate the value of any lot in said residential district.

"Side yard" means an open space extending from the front setback line to the rear setback line between the side lot line and the side yard setback line.

"Sign" means any device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or governmental agency, or of any civic, charitable, religious, patriotic or fraternal or similar organization.

~~Sign, Outdoor Advertising. "Outdoor advertising sign" means a sign, including a billboard, which directs attention to a business, commodity, service, entertainment or other activity conducted, sold or offered elsewhere than on the premises upon which the sign is located.~~

"Single-family dwelling" means a freestanding building containing only one dwelling unit.

"Sketch plan" means a rough design sketch of a proposed development used when meeting with staff prepared prior to the formal submission of the preliminary plat to enable the subdivider to save time and expense in reaching general agreement with the planning commission as to the form of the plat and the objectives of this title's regulations.

"Storage Building and Warehouse" means a facility for the storage of cars, boats, household items, furniture, and other non-perishable items in a warehouse style building.

"Storage unit" means a locker or garage style space that is rented for the storage of personal possessions that is typically contained in a structure or structures on one lot having multiple units of varying size that may or may not be climate controlled.

"Story" means that portion of a building, excluding a basement, included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

~~A basement shall be counted as a story if its ceiling is more than five feet above the level from which the height of the building is measured, or if it is used for commercial or industrial purposes, or for a dwelling unit if used by other than a janitor or watchman.~~

Story, Half. "Half story" means a story with at least two opposite exterior sides meeting a sloping roof not more than two feet above the floor of such story.

"Street" or "road" means a public thoroughfare which affords principal means of access to abutting property and includes highways, avenues, boulevards, parkways, streets, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, rights-of-way and other public ways or thoroughfares.

~~"Street and subdivision naming plan" means a plan identifying methodology, definitions and the criteria for naming subdivision and streets within the city adopted by both the planning commission and the board developed and administered by the county's E911.~~

~~"Street, Aarterial". See "Arterial street" means a road intended to move through traffic to and from such major attractors as central business districts, regional shopping centers, colleges and universities, military installations, major industrial areas, and similar traffic generators within the city; and as a route for traffic between communities or large areas.~~

~~"Street, Ccollector". See "Collector street" or "secondary street" means a road intended to move traffic from local streets to secondary arterials. Collector streets are usually the principal entrance streets to residential development and the streets for circulation within the development.~~

~~"Street, Ddead Eend". See "Dead-end street" means a road or portion thereof with only one vehicular traffic outlet.~~

~~"Street gradinge plan" means a plan-scale accurate drawing or set of depicting drawings depicting street grade elevations at various points within the private and public rights-of-way according to standards established by the city engineer's office.~~

~~"Street, Llocal". See "Local street" means a road intended to provide access to other streets from individual properties and to provide right-of-way beneath it for public utilities.~~

~~"Street, Mmajor". See "Major street" means a street or highway used primarily for fast or heavy traffic, including expressways, freeways and boulevards.~~

~~"Street, Mminor". See "Minor street" means a street intended primarily to provide pedestrian and vehicular access to the abutting properties.~~

~~"Street right-of-way width" means the distance between property lines measured at right angles to the centerline of the street.~~

~~"Structural alteration" means any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders or any structural change in the roof.~~

~~"Structure" means anything constructed or erected, which requires location on the ground or is attached to something having a location on the ground, including but not limited to buildings, advertising signs, billboards, and poster panels; but not including customary fences or boundary or retaining walls.~~

~~"Subdivider" means any person or group of persons, including anyone acting as an authorized agent for a landowner, who directly or indirectly causes land to be subdivided.~~

~~"Subdivision" means the division of a tract or parcel of land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights-of-way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas or open spaces. The division of land into parcels larger than one hundred fifty acres, not involving any new streets or easements for access or public utilities shall be exempted from this title's subdivision regulations. Auditor plats (lots), government lots, outlots, or other such lots are not considered subdivisions for the purpose of building development.~~

~~"Subdivision gradinge plan" means a plan-scale accurate drawing or set of drawings depicting lot grade elevations at various points throughout the subdivision as required by standards established by the city engineer.~~

~~"Subdivision, Mmajor". See "Major subdivision" means subdivisions or resubdivisions not classified as minor subdivisions.~~

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"Subdivision, Mminor". See "Minor subdivision" means either a subdivision containing not more than five acres which abuts existing platted streets, creates no new additional public street rights of way, and creates no new public easements; or a resubdivision which abuts existing platted developed streets and utilities, creates no new public street rights of way, and creates no new public easements. In order to qualify as a minor subdivision the proposed subdivision or resubdivision may not adversely affect the remainder of the parcels or adjoining property, nor be in conflict with any provision or portion of the comprehensive plan, zoning ordinances or subdivision regulations.

"Telecommunication Facilities" means facilities which include ~~any~~ devices installation composed of; wires, cables, pieces of equipment, pieces of machinery, structures and/or supporting elements necessary to produce non-ionizing electromagnetic radiation within the range of frequencies from 100 KHz to 300 GHz and operating as a discrete unit to produce a signal or message. Facilities may be self-supporting, guyed, or mounted on poles, light posts, power poles, buildings or other structures. This category shall also include interconnection translators, connections from over the air to cable, fiber optic, or other landline transmission system. Examples include broadcast towers, attached telecommunication facilities, telecommunication support towers, point-to-point microwave towers, and amateur radio facilities that are owned and operated by a federally licensed amateur radio station operator.

"Temporary improvement" means a construction project that has been conditionally accepted by the city and while the performance bond is in force.

"Tourist home" means a dwelling in which sleeping accommodations in less than ten rooms are provided or offered for transient guests for compensation. ~~Any dwelling in which such accommodations for transient guests are offered in ten or more rooms shall be deemed to be a "hotel" as defined herein. The use of a dwelling as a tourist home shall not be considered an accessory use nor a customary home occupation.~~

"Trailer" means any vehicle or structure, including but not limited to an automobile trailer and trailer coach, mounted on wheels for use on highways and streets; propelled or drawn by its own or other motor power; and designed and constructed to provide for living or sleeping quarters for one or more persons or for the conduct a business, profession, trade, or occupation, or for use as a selling or advertising device. If wheels of a trailer are removed, except for repairs, it is deemed to be a building, subject to all regulations therefor.

"Trailer camp" means a tract of land together with open spaces required by ordinance, used, designed, maintained or held out to accommodate two or more trailers, including all buildings, structures, tents, vehicles, accessories, appurtenances used or intended as equipment for such trailer camp, whether or not a charge is made for the use of the camp or its facilities. A trailer camp does not include automobile or trailer sales lots on which unoccupied trailers are parked for inspection and sale.

"Travel trailer" means a wheeled portable structure not more than eight feet in body width designed to be towed by a vehicle and used as a temporary dwelling.

"Travel trailer park" means a plat or parcel of land, under single ownership, which has been improved for the purposes of locating travel trailers.

"Travel trailer site" means a parcel of land within a travel trailer park designed and improved for the accommodation of not more than one travel trailer.

"Treatment facility" means any use established under NDCC Chapter 10-19.1 or 1033 which (a) is licensed under the NDCC Chapters 23-16, 23-17 or 23-17.1 that provides public or private emergency evaluation or treatment, outpatient care and inpatient care to persons suffering from a mental disorder or chemical dependency operated by the department of human services or under contract with said department, (b) is licensed by the department of human services under NDCC Chapter 25-03.2, or (c) provides care, custody, treatment, day activity, work activity, extended employment services and other treatment or services to developmentally disabled persons or persons suffering from any mental or physical disability.

"Two-family dwelling" means a freestanding building containing two dwelling units.

"Use" means:

- a. Any purpose for which buildings, other structures or land may be arranged, designed, intended, maintained or occupied; ~~and~~
- b. Any occupation, business, activity or operation carried on (or intended to be carried on) in a building, other structure or on land; or
- c. A name of a building, other structure or tract of land which indicates the purpose for which it is arranged, designed, intended, maintained or occupied.

~~"Treatment facility" means any facility established under NDCC Chapter 10-19.1 or 1033 and (a) licensed under the NDCC Chapters 23-16, 23-17, or 23-17.1, and including any public or private evaluation or treatment facility operated by the department of human services or under contract with said department that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency, (b) any residential treatment facility licensed by the department of human services under NDCC Chapter 25-03.2, or (c) any facility which provides care, custody, treatment, day activity, work activity, extended employment services and other treatment or services to developmentally disabled persons or persons suffering from any mental or physical disability.~~

~~"Use group" means two or more uses-activities similar in physical characteristics, traffic generation, location, utility services or municipal service requirements, ~~or generally compatible with other uses in the use group. Members of the several use groups as established are specifically listed in this title.~~~~

~~"Uses permitted" means uses-activities permitted by this ~~title's-Title's~~ regulations. ~~The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.~~~~

"Utility Service Group" means uses necessary for the safe or efficient operation of a telecommunications, gas, water, electric, refuse, storm sewer or sanitary sewage system for the benefit of the public.

"Vehicle or equipment repair" means any activity that requires removal, replacement, repair or installation of parts and tires.

~~"Yard" means an open space of uniform width or depth on the same zoning lot with a building or group of buildings, which open space lies between the buildings or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except as may be specifically provided in this ~~title.~~~~

~~In measuring a yard, the line of a building shall be deemed to mean a line parallel to the nearest lot line drawn through the point of a building or group of buildings nearest to such lot~~

line, exclusive of such features specified as not to be considered in measuring yard dimensions or as being permitted to extend into a yard, and said measurements shall be taken at right angles from the line of the buildings to the nearest lot line.

"Yard, Ffront". See "Front yard" means a yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

"Yard, Rrear". See "Rear yard" means a yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

"Yard, Sside". See "Side yard" means a yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard, or, in the absence of either of said yards, to the front or rear lot line, respectively.

"Wholesale Group" means uses in which the principal activity is the sale of merchandise to individuals and corporations for resale to the public that functions in a manner where the merchandise is stored wholly within a completely enclosed building that may be fully climate controlled or have no climate control, no unusual fire or safety hazard is caused by the storage of the merchandise, no live animals are sold and no junk, wrecked automobiles, secondhand equipment, or other salvaged material or dead animals are stored or sold on the premises.

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\_\_\_\_\_  
President, Board of City Commissioners

Attest:

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City Administrator

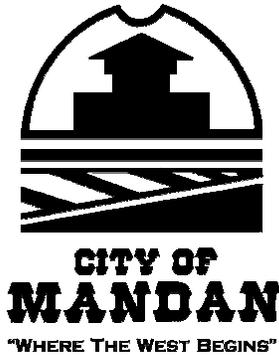
Publication Dates: \_\_\_\_\_

First Consideration: \_\_\_\_\_

Second Consideration and Final Passage: \_\_\_\_\_

Publication Date: \_\_\_\_\_

Recording Date: \_\_\_\_\_



## Board of City Commissioners

### Agenda Documentation

**MEETING DATE:** May 6, 2014  
**PREPARATION DATE:** May 1, 2014  
**SUBMITTING DEPARTMENT:** Police  
**DEPARTMENT DIRECTOR:** Dennis Bullinger  
**PRESENTER:** Dennis Bullinger  
**SUBJECT:** Amendment to Chapter 13-15 of the Mandan Code of City Ordinances regulating door-to-door sales.

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STATEMENT/PURPOSE:

Consider change in Mandan City Ordinance Chapter 13-15 regulating door-to-door sales and solicitation.

BACKGROUND/ALTERNATIVES:

The current ordinance assigns the responsibility for processing transient merchant permits to City Administration. The new ordinance would re-assign those responsibilities to the Mandan Police Department. The new ordinance would also require additional information from applicants to enhance background checks, establish the use of photo identification permits issued by the police department and give the Chief of Police the authority to immediately suspend a permit if sales people are engaging in fraudulent sales practices. The amendments will also align our ordinance with the City of Bismarck's.

ATTACHMENTS:

A copy of the revised ordinance.

FISCAL IMPACT:

None

STAFF IMPACT:

New responsibility for the police department.

LEGAL REVIEW:

Reviewed by Malcolm Brown, City Attorney

RECOMMENDATION:

To approve the change in ordinance Chapter 13-15

Board of City Commissioners

Agenda Documentation

Meeting Date: May 6, 2014

Subject: Amendment to Chapter 13-15 of the Mandan Code of City Ordinances  
regulating door-to-door sales.

Page 2 of 5

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SUGGESTED MOTION:

Move to approve the ordinance to amend and re-enact Chapter 13-15 of the Mandan Code of City Ordinances.

**ORDINANCE NO. 1184**

An Ordinance to Amend and Re-enact  
the included sections of Chapter 13-15 of the  
Mandan Code of Ordinances  
Relating to Door-to-Door Sales and Solicitation

Be it Ordained by the Board of City Commissioners as follows:

Chapter 13-15 of the Mandan Code of Ordinances is hereby amended and re-enacted to read as follows:

**Section 13-15-02. Door-to-Door Sales Regulated - Penalty.**

The practice of going door-to-door at private residences without being requested or invited to do so for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services is allowed only as permitted by this chapter. Any person violating the provisions of this chapter is guilty of an offense, ~~punishable by a fine of one thousand (\$1,000), thirty days in jail or both.~~

**Section 13-15-03. Door to Door Sales; Permit Required – Application.**

Any person or organization desiring to engage in door-to-door sales in residential areas for the purpose of selling or soliciting orders to sell goods, wares, merchandise, magazines, periodicals or personal services, may do so provided they comply with the provisions of this chapter and obtain a permit to do so by filing an application with the ~~Office of City Administration~~ Mandan Police Department. The application must be on a form provided by the ~~City police department~~ and contain the following:

1. Applicant's name, present home address, present business address, current telephone number and e-mail address.
5. If the applicant is a business and the application is for multiple sales persons, a complete listing of the name, date of birth, social security number, local address and telephone number of each sales person that will conduct sales in the City must be provided.

An applicant for a door to door sales permit must be a person of good character, integrity, honesty whose prior activities, criminal record, including arrest record or pending criminal cases, reputation, habits, and associations do not pose a threat to the public interest of this state or to safety or security of the citizens in their homes. A permit may not be issued to a person whose prior conduct indicates a threat to the safety of other persons. ~~The City may conduct a back round check~~ Mandan Police Department will conduct a background check on any applicant applying for a door-to-door sales permit.

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Page 4 of 5

---

A permit may not be issued to an applicant unless the applicant has obtained a transient merchant license from the Attorney General, pursuant to NDCC Chapter 51-04, if required, or the applicant has obtained a statement from the Attorney General that a transient merchant license is not required.

~~City Administration~~ The Chief of Police shall issue or deny door-to-door sales permit within a reasonable time of receipt of the application. Written notice of a denial must be mailed to the applicant at the address listed as current on the application. The notice shall contain a statement of the facts upon which the denial is based.

#### **Section 13-15-04 Issuance of Permit and Terms Thereof.**

1. Upon approval of the application, the ~~City Administrator~~ Chief of Police shall issue a permit to the applicant.

2. ~~The permit must have a number on it which shall also be placed on the applicant's application file. The permit or permits must also contain the name of the applicant and the name of the sales person. Each sales person shall wear a permit in a visible manner during all sales activities. The permit is to be in the form of a photo identification badge and must be worn at all times by the applicant when selling. Permits will be issued to each employee or agent of the applicant that will engage in sales.~~

3. ~~The permit shall be issued for a period of one year. The permit fee shall be \$200 plus an additional \$25 for each additional sales person to be included on the permit. The permit must have a number on it which shall also be placed on the applicant's application file. The permit or permits must also contain the name of the applicant and/or the name of the sales person. Each sales person shall wear a permit in a visible manner during all sales activities.~~

4. The permit shall be issued for a period of one year. The permit fee shall be \$200 plus an additional \$25 \$40 for each additional sales person to be included on the permit.

#### **Section 13-15-05 Revocation of Permits. (Suspension or Revocation of Permits)**

1. ~~Permits issued under the provisions of this chapter may be revoked by the Board of City Commissioners Title 5-51 after notice and hearing, for any of the following causes:~~  
Permits issued under the provisions of this chapter may be revoked by the Board of City Commissioners after notice and hearing, for any of the following causes:

- a. Fraud, misrepresentation or false statement contained in the application for a permit.
- b. Fraud, misrepresentation or false statement made in the course of carrying on business.
- c. Any violation of this chapter.
- d. Conviction of any crime involving theft or dishonesty.

Board of City Commissioners

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Page 5 of 5

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e. Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

f. In the event the Chief of Police acquires information that a permittee is engaging in fraudulent sales practices, he may issue an order immediately suspending said permit pending notice and hearing as provided above.

2. Notice of the hearing for revocation must be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice must be mailed, ~~registered~~ certified mail, to the address of the licensee as contained in the application, at least five days prior to the date of the hearing.

**Section 13-15-08 Locations Where Solicitation Prohibited.**

~~Notwithstanding the sales or solicitations allowed under this chapter, no person may solicit or sell at any private residence, business or establishment if there is placed on the premises in an observable location, a sign at least 10 square inches in size Title 5 52 bearing the words "No Trespassing",~~ Notwithstanding the sales or solicitations allowed under this chapter, no person may solicit or sell at any private residence, business or establishment, if there is placed on the premises in an observable location, a sign at least 10 square inches in size bearing the words "No Trespassing", "No Soliciting", or similar notice.

By: \_\_\_\_\_  
President, Board of City  
Commissioners

Attest:

\_\_\_\_\_  
City Administrator

First Consideration: May 6, 2014  
Second Consideration  
and Final Passage: May 20, 2014  
Publication: June 13, 2014