



AGENDA
MANDAN CITY COMMISSION
JUNE 2, 2020
ED "BOSH" FROEHLICH MEETING ROOM,
MANDAN CITY HALL
5:30 P.M.
www.cityofmandan.com

To adhere to public health recommendations to minimize public gatherings during this COVID-19 situation, the following options are being offered to accommodate public attendance and participation in City Commission meetings. City Hall will be open to the public for this meeting.

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City of Mandan is encouraging citizens to provide their comments for agenda items via email to info@cityofmandan.com

Please provide your comments before 3:30 p.m on the day of the meeting. Include the agenda item number your comment references. Comments will be forwarded to the Commissioners and appropriate departments.

A. **ROLL CALL:**

1. Roll call of all City Commissioners.

B. **APPROVAL OF AGENDA:**

C. **MINUTES:**

1. Consider approval of the minutes from the May 19, 2020 Board of City Commission regular meeting.

D. **PUBLIC HEARING:**

E. **BIDS:**

F. **CONSENT AGENDA:**

1. Consider approval of the lease and associated document for a John Deere 744L Wheel Loader.
2. Consider approval of annual liquor licenses for September 1, 2020 to June 30, 2021 contingent upon approval of Ordinance No. 1339.
3. Consider of annual site authorization for Cystic Fibrosis at Stage Stop from July 1, 2020 – June 30, 2021.
4. Consider approval of final plat for Schaff Estates.

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5. Consider approval of annual gaming site authorizations for Bismarck Cancer Center Foundation.
 - i. Prairie West Golf Course on Saturday, June 12, 2021
 - ii. Midway Lane on Saturday, November 28, 2020
6. Consider approval of an Agreement for Long-Term Temporary Highway Closure with NDDOT for Main Street events.

G. OLD BUSINESS:

H. NEW BUSINESS:

1. Consider Renaissance Zone Committee recommendations:
 - i. Rehab application for 107 4th Ave NW by Dragon Royal LLC
 - ii. Lease of 107 4th Ave NW by Rice Bowl LLC
2. Consider approval of the Purchase and Sale Agreement for Lots 9, 10, 11, and 12, Block 3 Heart View Addition.
3. Consider approval of the Purchase and Sale Agreement for Lot 8A, Roughriders Estates Pioneer Replat.
4. Consider the appointment of Bernie Parkhurst to Bismarck Mandan Mayors Committee for People with Disabilities.

I. RESOLUTIONS AND ORDINANCES:

1. Second consideration and final passage of Ordinance No. 1339 an Ordinance to Amend and Re-enact Section 4-2-14 of the Mandan Code of Ordinances Relating to Expiration of Alcoholic Beverage Licenses.
2. Consider resolution regarding a reduction to 2020-2021 annual liquor license fees.
3. Second consideration and final passage of Ordinance No. 1340 an Ordinance to Amend and Re-enact Section 119-1-9(a) of the Mandan Code of Ordinances relating to Residential Area Garbage Collection.
4. Consider the introduction and first consideration of Ordinance No. 1341 an Ordinance to Amend and Re-enact Sections 2-4-1(d), 2-4-2, 2-4-3, 2-4-4, 2-4-5 and 2-4-7(d) of the Mandan Code of Ordinances Relating to Statement of Policy, Definitions, Competitive Bidding Required, Exceptions, Conveyance of Property, and Bidding Procedure.

J. OTHER BUSINESS:

1. Consider large gathering guidance from the Smart Restart guidelines.

K. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:

1. June 19, 2020
2. July 7, 2020
3. July 21, 2020

L. ADJOURN

The Mandan City Commission met in regular session at 5:30 p.m. on May 19, 2020 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Mayor Helbling called the meeting to order. Due to the coronavirus situation, this meeting was held virtually, however the meeting room was open to the public.

A. ROLL CALL:

1. *Roll Call of All City Commissioners.* Present were Mayor Helbling and Commissioners Braun, Rohr and Larson. Department Heads present were, Finance Director Welch, Planning & Engineering Director Froseth, Business Development and Communications Director Huber, Principal Planner Van Dyke, City Administrator Neubauer, Director of Public Works Director Bitz and Attorney Brown. Absent: Commissioner Davis.

Mayor Helbling extended a thank you to the Mandan community for the efforts of the annual City cleanup day with 237 people that helped. He also extended a thank you to the sponsors for prizes, food and safety equipment. He also announced that this week is National Public Works Week. Commissioner Larson encouraged employees and citizens to thank the Mandan Public Works Department for everything they do for our city. Mayor Helbling also extended a thank you to Director Bitz and his staff.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the May 5 2020 Board of City Commission regular meeting minutes.* Commissioner Larson moved to approve the minutes as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

1. *Consider approval of preliminary plat and development agreement for Schaff Estates.* City Planner Van Dyke presented a request to consider approval of a preliminary plat and development agreement for Schaff Estates. The subject property is located about 1,800 ft. north of Roughriders Estates and is within the Mandan city limits. The applicant seeks to plat this lot of approximately 20 acres into two equal sized lots of 10 acres each (See Exhibit 1). He explained that the planned future land use is for commercial and medium density residential. In particular, 56th Ave NW is paved and runs along the east of Roughriders Estates before changing into 24th Ave which is a gravel road and is a planned collector roadway. The 37th St. to the north is the planned future bypass and future principal arterial. The two newly created lots would require a variance to the requirement that a paved road would be required in order to obtain a building permit for a residence. The Planning and Zoning Commission recommended approval subject to conditions contained within a development agreement amenable by both parties (See Exhibit 2) with conditions as follows:

(1) The Development is restricted to one buildable area on each lot as shown in the attached Ghost Plat illustrated by hashed lines on each respective lot in the Development.

- (2) Any improvements, whether permitted or otherwise, whether above or below ground such as a septic system and land designated for a secondary septic system, are to be contained within the buildable area boundaries.
- (3) At the request of the Mandan Building Official, a building permit application will denote the boundaries of the buildable area to ensure the location of any structure is contained within the buildable area.
- (4) Access to Lot 1 of the Development will be restricted to the existing approach located in the northeast corner.
- (5) Access to Lot 2 of the Development will be restricted to the depicted right-of-way immediately north of the buildable area.
- (6) Upon future development of the Property outside the buildable areas of the respective lot, the Developer will vacate the corresponding approach for the construction of a public road or access easement intended to provide access to future lots and utilize said public road or access easement in lieu of the existing private driveway or approach.
- (7) The Developer will not be required to improve the road 24th Ave. or 37th St. to a standard urban section including paving, curb, and gutter, for the purposes of obtaining a single-family residential building permit or related accessory structure(s) within the buildable area on each lot of the Property.
- (8) Future development on the property will align with the adopted land use and transportation plan of the City of Mandan at the time of application unless approved by the Board of City Commissioners.

Planner Van Dyke said this is a deviation from the master plan because it is a rural residential pertaining to pieces of property however the Planning and Zoning Commission recommended approval. The Development Agreement does mitigate some of the negative effects that would ultimately occur if the applicant were allowed to build in the middle of it. The redevelopment of the property will be less cumbersome in the future as development pushes upwards. New information that came out of the Metropolitan Planning Organization Advisory Committee meeting indicated that the north and west side beltway of north corridor access and with that, there is a 200 ft. right of way requiring that significant roadway. This is not a normal roadway and beltway but this would alleviate a lot of pressure off the existing principal arterial in the area and therefore requires additional platting. He inquired if the 120 ft was sufficient or if 200 ft was still required and the Technical Advisory Committee indicated that the 200 ft is what Bismarck is doing along the beltway on the east side of the river. The NDDOT District Engineer indicated that this would be the preferred way to proceed with the 200 ft because that's the type of road it will be. The Technical Advisory Committee advised to proceed with the 200 ft and staff has included that in the amended motion subject to the plat right of way dedication in the northern and western boundary.

Mayor Helbling inquired if Planner Van Dyke has discussed this increased footage with the developer. Planner Van Dyke replied that he discussed it with Toman Engineering who was going to reach out to his client with this new request but has not yet received any feedback.

Mayor Helbling announced this is a public hearing to consider approval of preliminary plat and development agreement for Schaff Estates. He invited anyone to come forward to comment for or against the request. A second announcement was made for anyone to come forward and a

third and final announcement was made to come forward. Hearing none, the public hearing was closed.

Commissioner Rohr moved to approve the preliminary plat in Exhibit 1 subject to the Development Agreement in Exhibit 2 and also subject to the 100 ft lot right of way in the north and west boundaries. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

E. BIDS:

F. CONSENT AGENDA

1. *Consider approval of monthly bills.*

MONTANA-DAKOTA UTILITIES	22,790.49
ALBRECHT/KENNETH	10.50
ARMSTRONG SANIT & ROLL O	42,610.62
BANK OF NORTH DAKOTA	179,047.44
BENZ/L JON	25.00
BIS-MAN CONVTVN & VISITOR	7,023.08
BISMARCK POLICE DEPARTME	2,201.62
BURLEIGH COUNTY SHERIFF	682.16
BURLEIGH-MORTON DETENTIO	3,333.00
DIRECTMED	20.89
FETZER ELECTRIC, LLC	15,835.69
HP INC.	17,365.28
HUB INTERNATIONAL OF ND	53.00
MANDAN PARK BOARD	130,601.57
MORTON COUNTY	3,795.00
ND HEALTH DEPT MICRO DIV	400.00
ND STATE RADIO COMMUNICA	780.00
ND STATE TAX COMMISSIONE	423.90
OLSON TRUST	30,000.00
REISENAUER\CAROLYN	25.00
TEKIPPE\TRAVIS	10.50
VANGUARD APPRAISALS, INC	150.00
CENTURYLINK	2,091.23
MONTANA-DAKOTA UTILITIES	30,163.52
ARMSTRONG SANIT & ROLL O	93,764.29
BALABAN LAW OFFICE	1,750.00
BRADY, MARTZ & ASSOCIATE	1,135.75
DAKOTA MEDIA ACCESS	11,730.00
DEARBORN LIFE INSURANCE	2,441.91
GLASS/THOMAS J.	1,750.00

GUARDIAN LOCK & SAFE	611.50
HDR ENGINEERING, INC	7,907.75
INFORMATION TECHNOLOGY D	997.05
KELSCH KELSCH RUFF & KRA	5,000.00
KINETIC LEASING, INC	86,924.00
MANDAN AIRPORT AUTHORITY	5,600.00
MANDAN PARK BOARD	1,000.00
MISSOURI VALLEY PETROLEU	7,506.00
MOORE ENGINEERING, INC	107,676.48
MORTON MANDAN PUBLIC LIB	10,650.00
ND DEPT OF ENVIRON QUALI	1,024.86
ND DEPT OF TRANSPORTATIO	73,325.90
PARKSON CORPORATION	22,092.93
ABUSED ADULT RESOURCE CE	21,146.22
ADVANCED ENGINEERING SVC	2,973.55
ADVANCED MECHANICAL INC	30,150.00
ARMSTRONG SANIT & ROLL O	195.00
BEAVER CREEK TREE SERVIC	425.00
BIS-MDN TRANSIT BOARD	736.34
BISMARCK MANDAN CHAMBER	28,750.00
BURLEIGH COUNTY SHERIFF	1,136.95
BURLEIGH-MORTON DETENTIO	1,056.00
CAPITAL CITY CONSTRUCTIO	208,708.00
CIP CONSTRUCTION TECH. I	23,929.00
COMPANION LIFE	10.00
CROWLEY FLECK PLLP	6,000.00
CUSTER DISTRICT HEALTH U	1,139.00
DAKOTA CHILDREN'S ADVOCA	3,585.56
ELECTRIC PUMP INC	1,089.62
FETZER ELECTRIC, LLC	6,395.85
HP INC.	6,275.16
HUB INTERNATIONAL OF ND	263.00
INFORMATION TECHNOLOGY D	1,946.35
JOHNSON CONTROLS FIRE PR	747.84
KRONOS SAASHR, INC	2,118.73
LAW ENFORCEMENT TRAINING	460.00
MANDAN AIRPORT AUTHORITY	1,471.66
MANDAN MUNICIPAL COURT	3,083.77
MISSOURI RIVER CONTRACTI	206,780.89
MORTON COUNTY AUDITOR	3,788.35
MORTON COUNTY RECORDER	263.00
MORTON MANDAN PUBLIC LIB	20,271.13

MY GOV, LLC	960.00
ONE CALL CONCEPT INC	409.95
SANFORD BISMARCK	8,404.00
TITAN DATA SERVICES	2,925.00
WESTERN EDGE ELECTRIC IN	656.00
WELLS FARGO COMMERCIAL C	184,692.00

2. *Consider approval of annual site authorizations for Fort Abraham Lincoln Foundation for July 1, 2020 to June 30, 2021: (i) Lonesome Dove (ii) Seven Seas (iii) Midway Lanes.*
3. *Consider payment of bills for Morton Mandan Public Library / Downtown Parks Project.*
4. *Consider recommendation from the Pension Committee related to fund changes within the plan.*
5. *Consider approval of a raffle for Mandan Police Explorer Post at the Mandan Municipal Golf Course on June 19, 2020.*
6. *Consider amendment to the ND DOT contract concerning additional funding for a video camera for the patrol vehicle.*
7. *Consider approval of Construction Engineering services for the Mid-Town East, SID #215, 215A and 215B project.*
8. *Consider approval of ad for bids for the Emergency Generators project.*
9. *Consider approval of agreement to cross BNSF lines required as part of the Raw Water Intake project.*
10. *Consider approval of Memorandum of Understanding between the Mandan Police Department and Custer District Health regarding security for Points of Dispensing.*

Commissioner Braun moved to approve the Consent Agenda items 1 through 10 as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

G. OLD BUSINESS:

H. NEW BUSINESS:

1. *Consider Growth Fund Committee recommendation on Storefront Improvement Application for 107 4th Ave NW. Business Development & Communications Director Huber presented a request to consider a Mandan Growth Fund (MGF) Committee recommendation for approval of a Storefront Improvement application for 107 4th Ave NW, the Rice Bowl, east of the new Runnings location. She reported that the MGF Committee met on May 12, 2020 and considered the approval of an application by Frankie Huang of Dragon Royal LLC for matching funds towards exterior improvements to the building at 107 4th Ave NW. The improvements are proposed for a two-story building, part of a set of adjacent buildings all listed under the same parcel on assessing records. Other buildings added on to the west end of this building are currently leased to Nutrition Wellness Center and Curvy Flamingo. Huang plans to relocate his restaurant, the Rice Bowl, to the main level of the two-story building. The applicant is seeking a \$30,000 match for the exterior renovation that has an estimated cost of \$73,228. The proposed exterior improvements amount to \$59,000 of the project and include fixing and painting the*

exterior walls, sealing windows on the south side of the building so it can serve as a firewall, and replacing storefront glass on the east side. The applicant also plans to replace two doors with fire rated exit doors, replace one door with ADA accessibility. The proposal also includes moving signage from the existing location at the library to the new location, utilizing existing sign faces and cabinetry as much as possible, plus moving the existing awning. The exterior building and site plans have received approval from the Mandan Architectural Review Commission contingent upon elimination of the projecting sign as proposed or modified to comply with sign code size requirements, plus meeting all engineering requirements for the proposed sidewalk ramp and meeting fire code. The project sign in the application is 47.75 inches plus bracketing. Sign code limits the projection to 36 inches. The applicant plans to eliminate this sign unless he can work with Bismarck Signs to come up a plan that is compatible with the sign code. Due to the circumstances, the timeline was not complete at this time. Additional improvements include a new roof and an interior remodel to accommodate the restaurant. The applicant intends to seek Renaissance Zone approval in the future for these improvements.

The source of funding would be the MGF unallocated balance for economic development projects as a whole, an amount of \$258,165 as of April 30, 2020. If this application is approved, the uncommitted balance would be reduced to \$228,165.

The MGF voted 8-0 (with one member absent) to recommend approval of the application for \$30,000 in matching funds for the Storefront Improvement project by Dragon Royal LLC for 107 4th Ave NW.

Commissioner Larson moved to approve providing \$30,000 in matching funds from the Mandan Growth Fund for the Storefront Improvement project by Dragon Royal LLC for 107 4th Ave NW. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Update on Morton Mandan Public Library & Downtown Parks Project & request to go out for bid.* City Administrator Neubauer presented a request to consider putting the Morton Mandan Public Library (MMPL) & Downtown Parks project (Project) out for bid. He reported that the donation from Energy Transfer of \$3M kick-started an expansion of the Library and improvements to the downtown parks. Bartlett & West along with Stantec have been working on finalizing the bid documents and are ready for the project to go out for bid.

Wendy Van Duyne came forward and provided the final site plan for the MMPL, Dykshoorn Park, Depot Plaza and Heritage Park project that were reviewed in February with some minor changes. The Steering Committee, along with the MMPL Board of Trustees met on May 13, 2020 to review the plans. The MMPL moved to approve the plans to go out for bid. She then moved into the plans for the sidewalk and entryway improvements and landscaping portions of the project. The Steering Committee will determine the final design of the children's play area on the west side of the park. There continues to be work in process on a sound system that will pipe in music for the various events and various seasons. She stated that these are the final plans for the bid document.

Joe Larrivee came forward and reviewed the final version of the plan stating there were not many conceptual changes rather he has been working on general construction and the electrical portions of the project. The major plan is pretty much intact. He reviewed the exterior building plan along with the covered porches and connected patio to the band shell and amphitheater to serve as a place for public gatherings. He then reviewed the interior plans including the tower with specialized lighting and a ceiling fan for ventilation purposes. He reviewed the Bookmobile garage work area and the library portion of the building including a meeting room with a patio connected to the park that has an elevated deck. In terms of construction, the bid process is expected to start on June 1, 2020 of which he said is expected to be fairly intense by contractors who are looking for large projects like this. The project is estimated to be an overall cost of \$3.25M with some alternates and some further cost control.

Joe Larivee said that the bid is generally out for 30 days and he would like to discuss the date with Administrator Neubauer in terms of getting the bids back in front of the Commission noting that 30 days is an overall timeframe preferred schedule.

Mayor Helbling stated that the project will utilize the \$3M received from the Energy Transfer and it will also use funds from the Hospitality Fund. Further, the City will look for donations, which might be tough in this environment stating that the city will cut back the project where possible.

Commissioner Larson reported that Bartlett and West is her employer and noted she does not believe there is a conflict of interest with this matter but brought it forward to be transparent.

Commissioner Braun extended a thank you to Wendy and Joe for their work on putting this plan together stating that the concept will revitalize Mandan and create a unique environment for the City for many years into the future.

Commissioner Rohr moved to approve moving forward with the plans as presented for bid for the Morton Mandan Public Library (MMPL) & Downtown Parks project. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Consider approval of the Decision Document for the Memorial Highway Reconstruction project as completed by the Engineering Department.* Planning and Engineering Froseth presented a request to bring forward major decision item of this project that the NDDOT wants the city's input with regard to moving into the final design phase of the project. This was discussed in March and the decisions made today will be promptly relayed to the DOT, however, they may or may not agree when making their final decision. Included within the Preliminary Engineering effort are two documents; (1) the Draft Documented Catex and (2) the Draft Decision Document. Both require input from the City in order to help with project decisions. The Project Overview for reconstruction of the highway include:

- Add sidewalks or trails
- Improve Traffic flow and intersection safety
- Improve drainage

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- Provide safe access to businesses
 - Address pavement at the end of useful life
 - Proposed Typical Section
 - Funding
 - Project Cost Share Federal 80.93%; State 9.07%; Local 10% plus additional City utility cost
 - Construction Phasing
 - Approval today progresses the project forward and will initiate final design of Phase I in the coming months. The City has 10% cost share of design and construction for all items related to the roadway and storm sewer or any other above ground feature of the project. The City has 100% of the costs of design and construction for all the water and sanitary sewer system elements.
 - Phase 1 – Storm Sewer Improvements off corridor, tentatively 2022
 - Phase 2 – Reconstruction of ½ corridor, tentatively 2023
 - Phase 3 – Reconstruction of ½ corridor, tentatively 2024

Director Froseth reported that the Draft Documented Catex includes an opportunity for the City to complete major decision items such as whether we agree with the project concepts, whether we agree to move forward and pursue final plans for the build alternative, should we pursue an asphalt or concrete surface for the roadway and trail. He stated that the Draft Decision Document is the other document that includes a request to complete. This document is centered on the decision of which storm water control concept to pursue. At the March 17, 2020 City Commission meeting the Commission was presented with three stormwater concepts, all including some detention pond in order to accomplish the desired flow rate releases into major water bodies. Any plan that includes a detention pond or ponds to control releases has been a tough pill to swallow from staff, and we heard that concern at the March City Commission meeting as well. Following that meeting, the design team reevaluated how we could responsibly control stormwater runoff without detention ponds. Though it requires more length of deeper and larger stormwater pipe the team has come up with a viable option that eliminates ponds with costs that are in the ballpark of the lowest cost storm water option.

Director Froseth reported that the option that best accomplishes the above goals is shown within the Draft Decision Document as option #5. It is estimated to cost about 7% more than option #2, however the ability to accomplish without a detention pond will make up for cost in the long-run. It eliminates a large detention pond from being part of our maintenance responsibilities in perpetuity as well as it does not take up significant acreage off of our busiest corridor that could otherwise be put to better use. There has been extensive conversation between City staff, HDR and the DOT about the stormwater concepts. Five total options have been laid out in the Stormwater Design Memo at the back of the Draft Decision Document. These are the five options that made the cut as distinct and feasible options. Many variations of these concepts and others that didn't have enough support to go forward as feasible were discussed as well.

Director Froseth said that HDR and AE2S are available to answer any questions on the project.

Commissioner Rohr inquired where funding will come from for this project. Director Froseth stated that the storm water portion of the project are eligible for funding from the federal and

state funding sources of the 80%, 10%, 10% cost share formula as long as those improvements are benefiting the corridor. That formula is attributed toward the roadway and the storm water major portions of the project, not the water main or sanitary sewer which would be the responsibility of the City. The power poles elimination will not be part of this project.

Mayor Helbling stated that when discussing this project with the NDDOT the City indicated that the project should move forward with the concrete surface option. Part of the deal with taking the federal and state funds to reconstruct this corridor is that the City will maintain after complete. The City believes that concrete will provide a distinct advantage over asphalt to accomplish a long-lasting corridor with relatively minimal maintenance. Also discussed were the Prairie Dog funds and funding going forward and can the City of Mandan afford this project at this time. The 90% - 10% split is good but the water and sewer underneath could be a considerable amount of money and without some of the Prairie Dog funds should the project be postponed? Should the City ask for it to be delayed for a couple years? Due to the recent economic events as a result of the COVID-19 pandemic, the City's ability to fund projects has been compromised.

Director Froseth clarified that the request tonight if approved, will move the project forward and will initiate final design of Phase I in the coming months. The City has been asked by the NDDOT to comment on the City's funding situation knowing that Mandan along with many other North Dakota cities are uncertain about that right now. This agenda item does not require a determination of where funds are coming from for the project rather this is providing the City's recommendation of major design elements and moving forward with the project with that commitment.

Commissioner Rohr commented that he concurs with Mayor Helbling regarding concrete surface option due to the high traffic count for that road. The City has 10% cost share of design and construction for all items related to the roadway and storm sewer or any other above ground feature of the project. The City has 100% of the costs of design and construction for all the water and sanitary sewer system elements. Commissioner Rohr voiced concern about putting the project off as it will cost more in years to come, but what can the City afford at this time?

Commissioner Larson stated it is nice to see the road work plan projection laid out for the next several years. Even though it is a 3-year project, it is well planned. Director Froseth commented on the cost, stating that there is a large range in cost right now that affects storm water options which brings the cost up.

Director Froseth stated that comments have been made within the attached documents to clearly convey those concerns brought forward to the DOT as they currently stand.

Director Froseth recommended Option #5 for Storm Water and the concrete pavement that is estimated at an additional \$5M of project costs over the asphalt pavement of the whole project costs so the City would be looking at about \$500,000 based on the local share of 10%. Noted in the Decision Document on the financial capabilities that will need to be addressed to finalize that or clarify that portion. It was recommended to return the Decision Document so they are confident knowing what the City wants for major design elements.

Commissioner Larson moved to approve the completion of the Draft Documented Catex and Draft Decision Document as recommended by the Engineering Department. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

I. RESOLUTIONS AND ORDINANCES:

1. *First consideration of Ordinance No. 1339 an Ordinance to Amend and Re-enact Section 4-2-14 of the Mandan Code of Ordinances Relating to Expiration of Alcoholic Beverage Licenses.* Administrator Neubauer stated at the last City Commission meeting there was discussion related to restaurant and liquor establishments being closed down and they have been running at 50% capacity during this time. Licenses issued under the provisions of this chapter would expire June 30. Ordinance No. 1339 was in response to that discussion and if approved, such licenses would expire August 31. If the first consideration of Ordinance No 1339 is approved tonight, we will bring it back for second consideration at the June 2, 2020 meeting along with a resolution adjusting the fees. The fees for Class D and D-1 would not be adjusted as those establishments have not been at reduced capacity.

Commissioner Braun moved to approve the First consideration of Ordinance No. 1339 an Ordinance to Amend and Re-enact Section 4-2-14 of the Mandan Code of Ordinances Relating to Expiration of Alcoholic Beverage Licenses. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *First consideration of Ordinance No. 1340 an Ordinance to Amend and Re-enact Section 119-1-9(a) of the Mandan Code of Ordinances relating to Residential Area Garbage Collection.* Public Works Director Bitz stated this amended Ordinance 1340 will state that residential area garbage shall be deposited for pickup in durable garbage metal or plastic receptacles equipped with close-fitting covers of a capacity of not less than 15 gallons or more than 35 gallons or in loose garbage bags secured in a cart or other receptacle. This will prevent the garbage from being strewn about by animals or the wind and that 96 gallon or 64 gallon totes are furnished by the residential trash collection contractor.

Commissioner Braun moved to approve First consideration of Ordinance No. 1340 an Ordinance to Amend and Re-enact Section 119-1-9(a) of the Mandan Code of Ordinances relating to Residential Area Garbage Collection. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Absent; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

J. OTHER BUSINESS:

1. Commissioner Larson reported that in the past, the Mandan Youth Commission has coordinated an annual food drive for non-perishable food items going to Aid Incorporated, however, due to COVID19 that did not happen this year. She announced that if any residents would like to still contribute to support Aid Incorporated with non-perishable items to bring those items to Aid Incorporated Food Pantry in front of the Thrift Store.

2. Mayor Helbling announced that Buggies-N-Blues has been rescheduled for August 14-15, 2020.

3. Mayor Helbling announced that area community events continue to be evaluated with decisions to be made in the near future.

K. ADJOURNMENT:

There being no other business to come before the Board, Commissioner Braun motioned to adjourn the meeting at 6:40 pm. Commissioner Rohr seconded the motion. The motion received unanimous approval of the members present.

James Neubauer
City Administrator

Tim Helbling, Mayor
Board of City Commissioners



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 22, 2020
SUBMITTING DEPARTMENT: Public Works - Landfill
DEPARTMENT DIRECTOR: Mitch Bitz
PRESENTER: Mitch Bitz, Director of Public Works
SUBJECT: Consider for approval of the loader lease option and adopt authorization resolution

STATEMENT/PURPOSE: The proposed 5-year lease is for the John Deere 744L Wheel Loader to be used at the Mandan Municipal Landfill

BACKGROUND/ALTERNATIVES: In February of 2020, the board authorized the budget amendment to allow for the purchase of a John Deere 744L wheel loader from RDO equipment to be used at the landfill. The attached documents allow for the city to enter into a formal financing agreement with Merchant Bank at an interest rate of 3.70%

Given the expected service life and the environment of this machine, we anticipate making the five lease payments and turning the machine back in, as it will likely have approximately 6,000hrs on it. This machine will have warranty on major components for the 6,000hrs.

ATTACHMENTS: Proposed lease – Purchase Agreement
RDO Uptime Promise
RDO Purchase Order

FISCAL IMPACT: **5 annual payments of \$44,585.70**

2020 - \$44,585.70
2021 - \$44,585.70
2022 - \$44,585.70
2023 - \$44,585.70
2024 - \$44,585.70
\$222,928.50
2025 - \$193,400 (or turn machine in)

STAFF IMPACT: N/A

Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: Consider for approval of the loader lease option and adopt authorization resolution

Page 2 of 2

LEGAL REVIEW: Attorney Brown's Office has reviewed the attached documents

RECOMMENDATION: To allow staff to execute the lease documents and approve the Lessee's Authorization Resolution

SUGGESTED MOTION: I move to allow city staff to execute the lease documents as well as to approve the Lessee's Authorization Resolution



7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

LEASE-PURCHASE AGREEMENT

Lessee: City of Mandan

Lease No.: 102650003

This Lease-Purchase Agreement dated the 19th day of May, 2020 (the "Lease"), by and between Merchants Bank Equipment Finance, a division of Merchants Bank, National Association, whose address is 7600 Parklawn Avenue, Suite 384, Minneapolis, MN 55435, as agent for one or more persons (the "Lessor") and City of Mandan, located in Morton County, as Lessee (the "Lessee"), whose address is 411 6 Ave. SW, Mandan, North Dakota 58554.

WITNESETH:

WHEREAS, Lessee is authorized by State statutes to acquire (1) New 2020 John Deere 744L wheel loader by entering into a lease-purchase agreement; and

WHEREAS, pursuant to a resolution duly adopted by the Lessee on see attached, the Lessee has determined that it is necessary to further the maintenance purposes of the Lessee that it acquire (1) New 2020 John Deere 744L wheel loader described herein as Equipment; and

WHEREAS, Lessor is willing to acquire the Equipment and to lease and sell it to Lessee pursuant to this Lease;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.1 **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified.

Authorized Representative: Shall mean (a) with respect to the Lessee, the officer of the Lessee or any other Person or Persons at any time designated by resolution of Lessee's governing body or written certificate conferring authority upon such person to act on behalf of the Lessee with respect to this Lease; and (b) with respect to the Lessor, any authorized signatory of the Lessor authorized by their bylaws to act or to execute documents on behalf of the Lessor.

Certificate of Acceptance: The Certificate of Acceptance of Lessee the form of which is attached hereto as Exhibit C.

Code: The Internal Revenue Code of 1986, as amended and any regulations promulgated thereunder by the United States Department of the Treasury.

Commencement Date: The date upon which Lessee's obligations to make Lease- Purchase Payments accrues as evidenced by the issuance to Lessor of the Certificate of Acceptance attached hereto as Exhibit C.

Contractor: Each of the manufacturers or vendors from whom Lessee (or Lessor at Lessee's request) has ordered or will order or with whom Lessee (or Lessor at Lessee's request) has contracted or will contract for the manufacture, delivery and/or installation of the Equipment.

Cost or Costs: The costs of acquisition and installation of the Equipment and all other costs incidental and related thereto, including the costs of preparation, marketing and sale of this Lease.

Equipment: The (1) New 2020 John Deere 744L wheel loader described in the attached Exhibit A which is being leased and purchased by Lessee pursuant to this Lease.

Fiscal Year: Each twelve (12) month fiscal period of Lessee commencing on 1st of January and ending on the 31st of December.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of Lessor or Lessee.

Interest: The portion of any Lease-Purchase Payment designated as and comprising interest as shown in the attached Exhibit B.

Lease: This Lease-Purchase Agreement dated as of 05/19/2020, whereby the Lessor has leased the Equipment to Lessee, as the same may from time to time be amended or modified.

Lease-Purchase Payment: The payment due from Lessee to Lessor on each Payment Date, as shown on Exhibit B.

Net Proceeds: Any insurance proceeds, paid with respect to the Equipment, remaining after payment therefrom of all expenses incurred in the collection thereof.

Payment Date: The date upon which any Lease-Purchase Payment is due and payable as provided in Exhibit B.

Permitted Encumbrances: As of any particular time: (i) liens for taxes and assessments not then delinquent, or which Lessee may, pursuant to the provisions of Section 7.3 hereof, permit to remain unpaid, (ii) this Lease and amendments hereto, (iii) Lessor's interest in the Equipment, and (iv) any mechanic's, laborers, materialperson's supplier's or vendor's lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a Contractor or which Lessee may, pursuant to Article VIII hereof, permit to remain unpaid.

Person or Persons: An individual, partnership, corporation, trust or unincorporated organization.

Prepayment Price: With respect to the Equipment, as of any Payment Date, the amount so designated and set forth opposite such date in the attached Exhibit B.

Principal: The portion of any Lease-Purchase Payment designated as principal in the attached Exhibit B.

Request for Disbursement of Funds: The Request for Disbursement of Funds of Lessee, the form of which is attached hereto as Exhibit C-1.

Specifications: The bid specifications and/or purchase order pursuant to which Lessee has ordered the Equipment from a Contractor.

State: The State of **North Dakota**.

State and Federal Law or Laws: The Constitution and any law of the State and any charter, ordinance, rule or regulation or any agency or political subdivision of the State, and any law of the United States, and any rule or regulation of any federal agency.

Term, Term of this Lease or Lease Term: The period commencing on the execution of this Lease and ending on the date the last Lease-Purchase Payment is due and payable, as shown on Exhibit B.

Section 1.2 **Exhibits.** The following Exhibits are attached to and by reference made part of this Lease:

Exhibit A: A description of the Equipment including the serial number thereof which shall be inserted when available.

Exhibit B: A schedule to be completed by Lessor as provided in Section 4.1, indicating the date upon which the Term of this Lease shall end, the date and amount of each Lease-Purchase Payment coming due under the Lease Term and the amount of Principal and Interest comprising each Lease-Purchase Payment.

Exhibits C and C-1: A Certificate of Acceptance of Lessee with a Request for Disbursement of Funds attached indicating that the Equipment has been or will be delivered and installed in accordance with the Specifications, and has been accepted by Lessee, the date on which Lease-Payments shown in Exhibit B shall commence, and that certain other requirements have been met by Lessee.

Exhibit D: An opinion of counsel to Lessee as to the organization, nature and powers of Lessee, the validity, execution and delivery of this Lease and various related documents; the absence of litigation; and related matters.

Exhibit E: A form of resolution of the governing body of Lessee, relating to this Lease and, if applicable, certain federal tax matters.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 **Representations, Covenants and Warranties of Lessee.** Lessee represents, covenants and warrants as follows:

(a) Lessee is a political subdivision and municipal corporation, duly organized and existing under the Constitution and laws of the State.

(b) Lessee is authorized under the Constitution and laws of the State to enter into this Lease and the transactions contemplated hereby, and to perform all of its obligations hereunder.

(c) The officer of Lessee executing this Lease has been duly authorized to execute and deliver this Lease under the terms and provisions of a resolution of Lessee's governing body, or by other appropriate official action.

(d) In authorizing and executing this Lease, Lessee has complied with all open meeting laws, public bidding and other State and Federal laws applicable to this Lease and the acquisition of the Equipment by Lessee.

(e) Lessee will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder to any other Person, firm or corporation, except as provided under the terms of this Lease.

(f) Lessee will use the Equipment during the Lease Term only to perform its essential governmental functions.

(g) Lessee will take no action that would cause the interest portion of the Lease-Purchase Payments to become includable in gross income of the recipient for federal income tax purposes under the Internal Revenue Code of 1986 (the "Code") and Treasury Regulations promulgated thereunder (the "Regulations"), and Lessee will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest portion of the Lease-Purchase Payments does not become includable in gross income of the recipient for federal income tax purposes under the Code and Regulations.

(h) Upon execution of this Lease-Purchase Agreement, and upon each request for a disbursement of funds hereunder, Lessee will provide to Lessor a completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit C.

(i) Upon the execution of this Lease, Lessee will provide to Lessor an opinion of its legal counsel in the form attached hereto as Exhibit D.

(j) Lessee will submit to the Internal Revenue Service an information reporting statement at the time and in the form required by the Code.

(k) Lessee will cause a resolution substantially in the form attached hereto as Exhibit E to be adopted by its governing body.

(l) Lessee does not reasonably anticipate that it will issue tax-exempt obligations (not including "private activity bonds" as defined in Section 141 of the Code) in an aggregate amount in excess of \$10,000,000 during the calendar year in which the Term commences, and this Lease is designated as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code relating to deductibility of interest by financial institutions.

Section 2.2 **Representations, Covenants and Warranties of Lessor**. Lessor represents, covenants and warrants as follows:

(a) Lessor has the power to enter into this Lease, is possessed of full power to own and hold real and personal property, and to lease and sell the same.

(b) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or agreement or instrument to which Lessor is now a party or by which Lessor is bound; constitutes a default under any of the foregoing, or results in the creation or imposition any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Equipment, except Permitted Encumbrances.

ARTICLE III AGREEMENT TO LEASE

Section 3.1 **Lease**. Lessor hereby leases the Equipment to Lessee, and Lessee hereby leases the Equipment from Lessor, upon terms and conditions set forth in this Lease and subject to the option to purchase set forth in Section 4.3 hereof.

Section 3.2 **Possession and Enjoyment**. Lessor hereby covenants to provide Lessee during the Term with the quiet use and enjoyment of the Equipment, and Lessee intends to during the Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in the Lease. Lessor will, at the request of Lessee and at Lessee's cost, join any legal action in which Lessee asserts its right to such possession and enjoyment to the extent Lessor lawfully may do so. All warranties extended upon the Equipment by the Contractors shall inure to the benefit of the Lessee during the term of this Lease.

Section 3.3 **Lessor Access to Equipment**. Lessee agrees that Lessor shall have the right at all reasonable times to examine and inspect the Equipment. Lessee further agrees that Lessor shall have such rights of access to the Equipment as may be reasonably necessary to cause the proper maintenance of the Equipment in the event of failure by Lessee to perform its obligations hereunder.

Section 3.4 **Tax and Ownership and Lessee**. The Lessor warrants and represents that it shall not at any time during the term of the Lease claim depreciation, cost recovery deductions, or tax credit for federal income tax purposes with respect to the equipment, or portion thereof, and that it shall not take any position for federal income tax purposes that is inconsistent with the unequivocal title and ownership for any and all tax purposes of the Lessee.

ARTICLE IV TERM OF LEASE

Section 4.1 **Lease Term**. This Lease shall be in effect for a Term commencing upon the execution hereof and ending as provided in Section 4.2.

Section 4.2 **Termination of Lease Term**. The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) A default by Lessee and Lessor's election to terminate this Lease pursuant to Article XII without payment of all Lease-Purchase Payments; or
- (b) The payment by Lessee of all Lease-Purchase Payments and all other amounts authorized or required to be paid by Lessee hereunder; or
- (c) Nonappropriation of funds by Lessee pursuant to Section 12.7 hereof.

Section 4.3 **Option to Purchase**. Lessee has the option to purchase the Equipment by paying the applicable prepayment price in accordance with Section 10.1 hereof.

ARTICLE V LEASE-PURCHASE PAYMENTS

Section 5.1 **Lease-Purchase Payments**. Lessee agrees to pay Lease-Purchase Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Lease-Purchase Payments shall be paid to Lessor at its offices at the address specified in Section 1.1 of this Lease, or to such other Person or entity to which Lessor has assigned such Lease-Purchase Payments as specified in Article XI, at such place as such assignee may from time to time designate in lawful money of the United States of America to Lessor or, in the event of assignment of the right to receive Lease-Purchase Payments by Lessor, to its assignee. Interest shall accrue from the date of the Certificate of Acceptance.

Section 5.2 **Source of Payment**. All Lease-Purchase Payments required to be paid Lessor pursuant to this Lease shall be paid from moneys duly budgeted, appropriated, obligated and otherwise provided and made available therefor by Lessee.

Section 5.3 **Interest Component**. A portion of each Lease-Purchase Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest component of each Lease-Purchase Payment.

Section 5.4 **Lease-Purchase Payments to be Unconditional**. The obligation of Lessee to make Lease-Purchase Payments or any other payments required hereunder shall be absolute and unconditional in all events, except as expressly provided under this Lease. Notwithstanding any dispute between Lessee and Lessor or any other Person, Lessee shall make all Lease-Purchase Payments and other payments required hereunder when due and shall not withhold any Lease-Purchase Payment or other payment pending final resolution of such dispute nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such Lease-Purchase Payments or other payments required under this Lease. Lessee's obligation to make Lease-Purchase Payments or other payments shall not be abated through accident or unforeseen circumstances. Except as provided in Section 12.7 hereof, nothing herein shall be construed to release Lessor from the performance of its obligations hereunder, and if Lessor should fail to perform any such obligation, Lessee may institute such legal action against Lessor as Lessee may deem necessary to compel the performance of such obligation or to recover damage therefor.

Section 5.5 **Late Payments**. See Section 12.6.

ARTICLE VI INSURANCE AND NEGLIGENCE

Section 6.1 **Liability Insurance**. Upon receipt of possession of the Equipment, Lessee shall take measures as may be necessary to ensure that any liability for injuries to or death of any Person or damage to or loss of property arising out of or in any way relating to the condition or operation of the Equipment or any part thereof, is covered by a blanket or other general liability insurance policy maintained by Lessee. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 6.2 **Property Insurance**. Upon receipt of possession of the Equipment, Lessee shall have and assume the risk of loss with respect thereto. Lessee shall procure and maintain continuously in effect during

the Term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Equipment, or to the purchase of the Equipment, as provided in Section 6.6. Any Net Proceeds not needed for those purposes shall be paid to Lessee.

Section 6.3 **Worker's Compensation Insurance**. If required by State law, Lessee shall carry worker's compensation insurance covering all employees on, in, near or about the Equipment, and upon request, shall furnish to Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 6.4 **Requirements for all Insurance**. All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance policies or riders required by Section 6.3 shall name Lessee as insured party. Lessee shall deposit with Lessor policies (or riders) evidencing any such insurance procedure by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any policy (or rider), Lessee shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is not obtainable in which event Lessee shall notify Lessor of this fact.

Section 6.5 **Lessee's Negligence**. Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any Person or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or property of others, which is proximately caused by the negligent conduct of Lessee, its officers, employees and agents. Lessee hereby assumes responsibility for and agrees to reimburse Lessor for all liabilities, obligations, losses and damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fee) of whatsoever kind and nature, imposed on, incurred by or asserted against Lessor that in any way relate to or arise out of a claim, suit, or proceeding based in whole or in part upon the negligent conduct of Lessee, its officers, employees and agents, to the maximum extent permitted by law.

Section 6.6 **Damage to or Destruction of Equipment**. If after delivery of the Equipment to Lessee all or any part of the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practical after such event, replace the same at Lessee's sole cost and expense with equipment of equal or greater value to the Equipment immediately prior to the time of the loss occurrence, such replacement equipment to be subject to Lessor's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement, subject to the provisions of Section 12.7 hereof. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, exercise its remedies under Article XII hereof. The Net Proceeds of all insurance payable with respect to the Equipment shall be available to Lessee and shall be used to discharge Lessee's obligations under this Section.

Section 6.7 **Cooperation of Lessor**. The Lessor shall cooperate fully with the Lessee at the sole expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in this Section. To the extent it may lawfully do so, the Lessor will permit the Lessee to litigate in any proceeding resulting therefrom and the name of it and on behalf of the Lessor, provided that the Lessor has been indemnified from all costs and expenses therefor, including without limitation, reasonable counsel fees incurred by the Lessor in connection with any such litigation in its name. In no event will the Lessor voluntarily settle or consent to the settlement of any proceeding, arising out of any insurance claim with respect to the Equipment or any part thereof, without the written consent of the Lessee.

ARTICLE VII OTHER OBLIGATIONS OF LESSEE

Section 7.1 **Use; Permits**. Lessee shall exercise due care in the installation, use, operation and maintenance of the Equipment, and shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any State or Federal Law or for a purpose or in a manner contrary to that contemplated

by this Lease. Lessee shall obtain all permits and licenses necessary of the installation, operation, possession and use of the Equipment. Lessee shall comply with all State and Federal Laws applicable to the installation, operation, possession and use of the Equipment, and if compliance with any such State or Federal Law requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at its expense.

Section 7.2 **Maintenance of Equipment by Lessee**. Lessee shall, at its own expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Equipment in such condition. Lessor shall have no responsibility for any of these repairs or replacements.

Section 7.3 **Taxes, Other Governmental Charges and Utility Charges**. (a) Except as expressly limited by this Section, Lessee shall pay all taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against or with respect to the Equipment, the Lease-Purchase Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against Lessee or Lessor. Lessee shall also pay when due all gas, water, steam, electricity, heat, power, telephone, and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien of the Equipment, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of Lessee under this Section.

(b) Lessee may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss for forfeiture, in which event Lessee shall promptly pay such taxes, assessments, utility or other charges or provide Lessor with full security against any loss which may result from nonpayment, in the form satisfactory to Lessor.

Section 7.4 **Advances**. If Lessee shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances on demand, with interest at the rate of 18.0 % per annum or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

Section 7.5 **Disbursements**. (a) As payments are required for the Equipment under this Lease, the Lessee as the agent for the Lessor shall prepare and submit a Certificate of Acceptance of Lessee with a Request for Disbursement of Funds to the Lessor. (b) The Lessor shall permit the withdrawal of funds requested in the Request for Disbursement of Funds, and such funds shall be applied to the payment of the Cost of the Equipment.

ARTICLE VIII TITLE

Section 8.1 **Title**. During the Term of this Lease, legal title to the Equipment and any all repairs, replacements, substitutions and modifications to it shall be in Lessee's name subject to Lessor's interest. Upon termination of this Lease for any of the reasons specified in Section 4.2 (b), Lessor's interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security or other interest in the Equipment.

Section 8.2 **Security Interest**. Lessor shall have and retain a security interest under the Uniform Commercial Code, Certificate of Title or other applicable State or Federal Law in the Equipment, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof pursuant to Section 8.5, in order to secure Lessee's payment of all Lease-Purchase Payments due during the Term of this Lease and the

performance of all other obligations herein to be performed by Lessee. Lessee will join with Lessor in executing such financing statements or other documents and will perform such acts as Lessor may request to establish and maintain a valid security interest in the Equipment. If requested by Lessor, Lessee shall conspicuously mark the Equipment with appropriate lettering, labels or tags, and maintain such markings during the Term of this Lease, so as clearly to disclose Lessor's security interest in the Equipment.

Section 8.3 **Liens**. During the Term of this Lease, Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, other than the respective rights of Lessor and Lessee as herein provided and Permitted Encumbrances. Except as expressly provided in Section 7.3 and this Article, Lessee shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor for any expense incurred by Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 8.4 **Installation of Lessee's Equipment**. Lessee may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Equipment, which items shall be identified by tags or other symbols affixed thereto as property of Lessee. All such items so identified shall remain the sole property of Lessee, in which Lessor shall have no interest, and may be modified or removed by Lessee at any time provided that Lessee shall repair and restore any and all damage to the Equipment resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent Lessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Equipment.

Section 8.5 **Modification of Equipment**. Lessee shall at its own expense, have the right to make repairs to the Equipment, and to make repairs, replacements, substitutions and modifications to all or any part of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Equipment and be subject to the provisions of the Lease. Such work shall not in any way damage the Equipment or cause it to be used for purposes other than those authorized under the provisions of State or Federal Law or those contemplated by this Lease; and the Equipment, upon completion of any such work shall be of a value which is not less than the value of the Equipment immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Equipment for labor or materials furnished in connection with any repair, replacement, substitution or modification made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of Lessor in the Equipment will be materially endangered or the Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessee will cooperate fully with Lessee in any such contest.

Section 8.6 **Personal Property**. The Equipment is and shall at all times be and remain personal property notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanently rested upon real property or any building thereon or attached in any manner to what is permanent by means of cement, plaster, nails, bolts, screws or otherwise.

ARTICLE IX WARRANTIES

Section 9.1 **Selection of Equipment**. The Equipment and the Contractor have been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of the Equipment, its suitability for the use intended by Lessee, the acceptance by the Contractor or its sales representative of the order submitted, or

any delay or failure by the Contractor or its sales representative to manufacture, deliver or install the Equipment for use by Lessee. Lessee authorized Lessor to add the serial number of the Equipment to Exhibit A when available

Section 9.2 **Installation and Maintenance of Equipment**. Lessor shall have no obligation to install, erect, test, inspect, service or maintain the Equipment under any circumstances, but such actions shall be the obligation of Lessee or the Contractor.

Section 9.3 **Contractor's Warranties**. Lessor hereby assigns to Lessee for and during the Term of the Lease, all of its interest in all Contractor's warranties and guarantees, express or implied, issued on or applicable to the Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guarantees at Lessee's expense.

Section 9.4 **Patent Infringement**. Lessor hereby assigns to Lessee for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Equipment. Such assignment of patent indemnity protection by Lessor to Lessee shall constitute the entire liability of Lessor for any patent infringement by Equipment furnished pursuant to this Lease.

Section 9.5 **Disclaimer of Warranties**. THE EQUIPMENT IS DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY LESSEE OF THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT.

ARTICLE X PREPAYMENT

Section 10.1 **When Available**. Lessee shall have the option to prepay its obligations under this Lease on any Payment Date at an amount equal to the applicable Prepayment Price.

Section 10.2 **Release of Lessor's Interest**. Upon the prepayment of Lessee's obligations under this Lease in accordance with Section 10.1 hereof, Lessee shall have no further obligations under this Lease and this Lease shall terminate in accordance with Section 4.2(b). Thereupon the Lessor shall relinquish title to the Equipment in accordance with Section 8.1.

ARTICLE XI ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 11.1 **Assignment by Lessor**. Except as otherwise provided herein, Lessor shall not assign its obligations under this Lease, and no purported assignment thereof shall be effective. All of Lessor's rights, title and/or interest in and to this Lease, the Lease-Purchase Payments or other amounts due hereunder and the Equipment may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor at any time, without the consent of Lessee. No such assignment shall be effective as against Lessee unless and until the assignor shall have filed with Lessee a copy or written notice thereof identifying the assignee. Lessee shall pay all Lease-Purchase Payments due hereunder to or at the direction of Lessor or the assignee named in the most recent assignment or notice of assignment filed with Lessee. During the Lease Term, Lessee shall keep a complete and accurate record of all such assignments. In the event Lessor assigns participation in its right, title and/or interest in and to this Lease, the Lease-Purchase Payments and other amounts due hereunder and the Equipment, such participants shall be considered to be Lessor with respect to their participated shares thereof.

Section 11.2 **Assignment and Subleasing by Lessee**. Neither this Lease nor Lessee's interest in the Equipment may be assigned by Lessee without the written consent of Lessor. However, the Equipment may be subleased by Lessee, in whole or in part, without the consent of Lessor, subject, however, to each of the following conditions:

- (a) This Lease and the obligation of Lessee to make Lease-Purchase Payments hereunder, shall remain obligations of Lessee.

(b) The sublease shall assume the obligation of Lessee hereunder to the extent of the interest subleased.

(c) Lessee shall, within 30 days after the delivery thereof, furnish or cause to be furnished to Lessor a true and complete copy of such sublease.

(d) No sublease by Lessee shall cause the Equipment to be used for a purpose other than an essential governmental function authorized under the provisions of the Constitution and the laws of the State.

(e) No sublease shall cause the Interest component of the Lease-Purchase Payments due with respect to the Equipment to become includable in gross income of the recipient for federal income tax purposes.

Section 11.3 **Restriction on Mortgage or Sale of Equipment by Lessee.** Except as provided in Section 11.2, Lessee will not mortgage, sell, assign, transfer or convey the Equipment or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of Lessor.

ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

Section 12.1 **Events of Default Defined.** (a) The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Equipment, any one or more the following events:

(i) Except as permitted by Section 12.7 hereof, failure by Lessee to pay any Lease-Purchase Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three days after telephonic or electronic notice given by Lessor that the payment referred to in such notice has not been received, such telephonic or electronic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (i) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected.

(iii) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its governmental or proprietary function or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar acts which may hereafter be enacted.

(b) The provisions of this Section 12.1 and Section 12.2 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to carry out its obligation under this Lease with respect to the Equipment, other than its obligation to pay Lease-Purchase Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of god, strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections, riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee and not resulting from its negligence. Lessee agrees, however, to remedy with all reasonable dispatch the cause or causes preventing Lessee from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be

entirely within the discretion of Lessee and Lessee shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of Lessee unfavorable to Lessee.

Section 12.2 **Remedies of Default.** Whenever any event of default referred to in Section 12.1, clauses (i) to (iii) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) With or without terminating this Lease, re-enter and take possession of such Equipment and exclude Lessee from using it; provided, however, that if this Lease has not been terminated, Lessor shall return possession of such Equipment to Lessee when the event of default is cured; and provided further that Lessee shall continue to be responsible for the Lease-Purchase Payments due with respect to such Equipment during the Fiscal Year then in effect; or

(ii) With or without terminating this Lease, re-enter and take possession of such Equipment, and sell, lease or sublease such Equipment or any part of it, holding Lessee liable for the difference between (a) the sales price, rent and other amounts paid by the purchaser, lessee or sublessee pursuant to such sales agreement, lease or sublease and (b) the balance of the Lease-Purchase Payments and other amounts owed by Lessee with respect to such Lease; provided, however, that nothing contained herein shall impose an obligation upon Lessor so to sell, lease or sublease such Equipment and provided that any excess proceeds from such disposition shall be retained by Lessor; or

(iii) With or without terminating this Lease, declare all Lease-Purchase Payments during the Fiscal Year then in effect due or to become due with respect to such Lease in effect when the default occurs to be immediately due and payable by Lessee, whereupon such Lease-Purchase Payments shall be immediately due and payable; or

(iv) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease-Purchase Payments then due and thereafter to become due during the then current Fiscal Year of Lessee with respect to such Lease, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease.

Section 12.3 **Return of Equipment.** Upon termination of this Lease prior to the payment of all Lease-Purchase Payments, Lessee shall return the Equipment to Lessor in the condition, repair, appearance and working order required in Section 7.2, in the following manner as may be specified by Lessor: (a) by delivering the Equipment at Lessee's cost and expense to such place within the State as Lessor shall specify; or (b) by loading such portions of the Equipment as are considered movable at Lessee's cost and expense, on board such carrier as Lessor shall specify and shipping the same, freight prepaid, to the place specified by Lessor. If Lessee refuses to return the Equipment in the manner designated, Lessor may repossess the Equipment and charge to Lessee the costs of such repossession or pursue any remedy described in Section 12.2.

Section 12.4 **No Remedy Exclusive.** No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof by any such right and power. Each remedy may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 12.5 **Agreement to Pay Attorney's Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys and/or incur other expenses for the collection of monies or for the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fee of such attorneys and/or such other reasonable expenses so incurred by the nondefaulting party. In the event that legal proceedings relating to this Lease are commenced in any court or before any other tribunal of competent jurisdiction, the reasonable legal fees and other reasonable costs and expenses of the prevailing party shall be paid by the nonprevailing party on demand of the prevailing party.

Section 12.6 **Late Charges.** Whenever any event of default referred to in Section 12.1, clause (i) hereof shall have happened and be continuing with respect to the Equipment described on Exhibit A, Lessor shall have the right, at its option and without any further demand or notice, to require a late payment charge equal one and one-half percent (1.5%) per month of the delinquent Rental Payment, and Lessee shall be obligated to pay the same immediately upon receipt of Lessor's written invoice therefor; provided, however, that this Section 12.6 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

Section 12.7 **Non-Appropriation of Funds.** (a) Notwithstanding any provision in the Lease to the contrary, in the event that no funds or insufficient funds are appropriated by Lessee's governing body for the next fiscal year for Lease-Purchase Payments due under this Lease, this Lease shall terminate the end of such fiscal year on the last day of the fiscal year for which appropriations were received and Lessee shall return the Equipment to Lessor (at Lessee's expense, to a destination Lessor directs, in good working condition less normal wear and tear), and cancel this Lease by notice to such effect served not less than thirty (30) days prior to the end of the Lessee's fiscal year. Lessee shall notify Lessor of nonappropriation within thirty (30) days of its occurrence.

(b) Lessee and Lessor acknowledge and agree that the Lease-Purchase Payments hereunder shall constitute currently budgeting expenditures of Lessee from its capital expenditure fund or successor fund thereto. Lessee's obligations under this Lease shall be subject to Lessee's annual right to terminate this Lease, and shall not constitute a mandatory charge of requirement in any ensuing fiscal year beyond the then current fiscal year. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of Lessee within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate Lessee to make any payments beyond those budgeted and appropriated from its general fund for Lessee's then current fiscal year. Lessee shall be under no obligation whatsoever to exercise its option to purchase the Equipment. No provision of this Lease shall be construed to pledge or create a lien on any class or source of Lessee monies.

ARTICLE XIII ADMINISTRATIVE PROVISIONS

Section 13.1 **Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid to the addresses specified below; provided, that Lessor and Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificate, legal opinion or other communication will be sent.

Lessor: Merchants Bank Equipment Finance
7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

Lessee: City of Mandan
411 6 Ave. SW
Mandan, North Dakota 58554

Section 13.2 **Financial Information.** During the Term of this Lease, Lessee annually will provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue to pay Lease-Purchase Payments required under this Lease as may be requested by Lessor or its assignee.

Section 13.3 **Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.4 **Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.5 **Amendments, Changes and Modification.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed, and delivered by Lessor and Lessee.

Section 13.6 **Captions.** The captions or headings in this Lease are for convenience only and in no way defend, limit or describe the scope or intent of any provisions, articles, sections or clauses of this Lease.

Section 13.7 **Further Assurances and Corrective Instruments.** Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Equipment hereby leased or intended so to be, for carrying out the expressed intention of this Lease.

Section 13.8 **Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.9 **Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.10 **Anti-Discrimination.** Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, sexual orientation or physical defect or disability with regard to but not limited to employment, upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination or selection for training.

Section 13.11 **Lessor and Lessee Representatives.** Whenever under the provisions of this Lease, the approval of the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given by an Authorized Representative of the Lessor, for the Lessor, and by an Authorized Representative of the Lessee, for the Lessee. Any party hereto shall be authorized to rely on such approval of request.

IN WITNESS WHEREOF, Lessor has caused this Lease to be executed in its corporate name by its duly authorized officers; and Lessee has caused this Lease to be executed in its name by duly authorized officers, as of the date first above written.

LESSOR:
MERCHANTS BANK EQUIPMENT FINANCE,
a division of Merchants Bank, National Association

LESSEE:
City of Mandan

Print or type full name

Print or type full name

By: _____
Signature

By: _____
Signature

Title: _____

Title: _____

**EXHIBIT A
DESCRIPTION OF EQUIPMENT**

(1) New 2020 John Deere 744L wheel loader
Serial Number: 1DW744LWKLF706226

**EXHIBIT B
PAYMENT SCHEDULE**

Commencement Date: 05/19/2020

	<u>Payment Date</u>	<u>Total Payment</u>	<u>Total Interest</u>	<u>Principal Amount</u>	<u>*Purchase Option Price</u>
Lease	05/19/2020				368,115.00
1	05/19/2020	44,585.70	0.00	44,585.70	323,529.30
2020 Totals		44,585.70	0.00	44,585.70	
2	05/19/2021	44,585.70	12,175.68	32,410.02	291,119.28
2021 Totals		44,585.70	12,175.68	32,410.02	
3	05/19/2022	44,585.70	10,955.96	33,629.74	257,489.54
2022 Totals		44,585.70	10,955.96	33,629.74	
4	05/19/2023	44,585.70	9,690.34	34,895.36	222,594.18
2023 Totals		44,585.70	9,690.34	34,895.36	
5	05/19/2024	44,585.70	8,377.09	36,208.61	186,385.57
2024 Totals		44,585.70	8,377.09	36,208.61	
6	05/19/2025	193,400.00	7,014.43	186,385.57	0.00
2025 Totals		193,400.00	7,014.43	186,385.57	

TOTAL: \$368,115.00
INTEREST RATE: 3.70%

*Amount due after payment of Lease-Purchase Payment due on the same day.
All amounts received by Lessor shall be applied first to late payment charges and expenses, then to accrued interest, and then to principal payments in inverse order, as determined by lessor, as permitted by law.

**EXHIBIT C
ACCEPTANCE CERTIFICATE**

The undersigned, being a duly appointed Lessee Representative, under the Lease Purchase Agreement dated as of 05/19/2020 (the ("Lease"), by and between Merchants Bank Equipment Finance ("Lessor"), and the City of Mandan, ("Lessee"), hereby certifies on behalf of Lessee with respect to the Equipment to be acquired under Lease Exhibit A, that the portion of the Equipment described on the attachment to this Acceptance Certificate has been delivered and installed pursuant to and in accordance with said Lease and has been accepted by Lessee.

Dated: _____

As Lessee: City of Mandan

Print or type full name

By: _____
Signature

Title: _____

**EXHIBIT C-1
REQUEST FOR DISBURSEMENT OF FUNDS**

TO: Merchants Bank Equipment Finance ("Lessor")
7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

FROM: City of Mandan ("Lessee")
411 6 Ave. SW
Mandan, North Dakota 58554

The Lessee hereby requests disbursement of funds pursuant to the Lease Purchase Agreement dated 05/19/2020 (the "Lease"), between the Lessor and Lessee, as follows:

1. Amount to be disbursed: \$368,115.00
2. The payee(s) are RDO Equipment Co.
3. Purchase of the payment: Payment for property as described in the Lease and Exhibit C.
4. Bills, receipts, invoices or other documents evidencing the amount requested are attached hereto.
5. The Lessee hereby certifies that the amounts requested to be disbursed were properly incurred in connection with the acquisition of the Equipment as described in the Lease and were not subject of any previous request for disbursement.
6. This request is the final disbursement request.

Dated: _____

LESSEE: City of Mandan

Print or type full name

By _____

Signature

Its _____

**EXHIBIT D
OPINION OF COUNSEL**

To: Merchants Bank Equipment Finance ("Lessor")
7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

Re: Lease Purchase Agreement by and between Merchants Bank Equipment Finance, a division of Merchants Bank, National Association ("Lessor") and the City of Mandan ("Lessee") dated as of 05/19/2020.

Ladies and Gentlemen:

I have acted as counsel to Lessee with respect to the Lease Purchase Agreement described above (the "Lease") and various related matters, and in this capacity I have reviewed a duplicate original of the Lease and various other documents. Based upon the examination of these and such other documents as we deem relevant, it is our opinion that:

1. The Lessee is authorized and has power under State law to purchase, rent or otherwise provide for personal property and has power under state law to enter into the Lease and to carry out the obligations thereunder and the transactions contemplated thereby.
2. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee, and the Lease is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent such enforceability is limited by State and Federal laws affecting remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.
3. The authorization, approval and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting laws, public bidding laws and all other applicable laws, rules and regulations of the State.
4. The execution of the Lease and the appropriation of moneys to pay the Lease-Purchase Payments coming due thereunder, does not result in the violation of any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.
5. There is no litigation, action, suit or proceeding threatened or pending before any court, administrative agency, arbitrator or governmental body, that challenges the organization or existence of Lessee; the authority of its officers; the proper authorization, approval and execution of the Lease and the other documents contemplated thereby; the appropriation of moneys to make Lease-Purchase Payments under the Lease for Lessee's current Fiscal Year; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.
6. The Lease is not a general obligation debt of Lessee.

Dated: _____

Very truly yours,



LESSEE'S AUTHORIZATION RESOLUTION

7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

Whereas, City of Mandan, (the "Governmental Entity"), a body politic and corporate duly organized and existing as a political subdivision, municipal corporation or similar public entity of the State of North Dakota (the "State"), is authorized by the laws of the State to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into contracts with respect thereto; and

Whereas, in order to acquire such equipment, the Governmental Entity proposes to enter into a lease-purchase transaction pursuant to that certain governmental Equipment Lease-Purchase Agreement (the "Lease") with Merchants Bank Equipment Finance, a division of Merchants Bank, National Association, the form of which has been presented to the governing body of the Governmental Entity at this meeting;

Section 1. Approval of Documents. The form, terms and provisions of the Lease and all other schedules and exhibits attached thereto are hereby approved in substantially the form presented at this meeting, with such insertions, omissions and changes as shall be approved by counsel of the Governmental Entity or other members of the governing body of the Governmental Entity executing the same, the execution of such documents being conclusive evidence of such approval; and the persons holding the titles listed below or any other officer of the Governmental Entity who shall have the power to execute contracts on its behalf are hereby authorized and directed to execute, acknowledge, countersign and deliver the Lease and all exhibits attached thereto, and the Secretary/Clerk of the Governmental Entity is hereby authorized to attest to the foregoing and affix the seal of the Governmental Entity to such documents.

Section 2. Other Actions Authorized. The officers and employees of the Governmental Entity shall take all action necessary as reasonably required by the parties to the Lease to carry out, give effect to and consummate the transactions contemplated thereby and to take all action necessary to conformity therewith, including, without limitation, the execution and delivery of any closing and other documents required to be delivered in connection with the Lease.

Section 3. No General Liability. Nothing contained in this Resolution, the Lease, or any other instrument shall be construed with respect to the Governmental Entity as incurring a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, nor shall the breach of any agreement contained in this Resolution, the Lease, or any other instrument or document executed in connection therewith impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Lease are special limited obligations of the Governmental Entity as provided in the Lease.

Section 4. Authorized Signatories. Following are the true names, correct titles and specimen signatures of the incumbent officers referred to in the foregoing resolution.

Table with 3 columns: Name (Print or Type), Title (Print or Type), Signature. Includes horizontal lines for signature entry.

Section 5. Effective Date. This Resolution shall be effective immediately upon its approval and adoption. This Resolution was adapted and approved on [redacted].

Signature: [redacted]
Secretary/Clerk

Name Printed: [redacted]

Date: [redacted]



7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435
Phone: (952) 837-4900
Fax: (866) 539-3751

DIRECT DEBIT

Customer: City of Mandan
Customer No. 4053
Contract No. 102650003

Lease

We are pleased to be able to offer you a new payment convenience – *Direct Debit*. Now you can have your monthly charge automatically withdrawn from your checking or savings account on its due date. And you don't have to change your present banking relationship to take advantage of this service.

Direct Debit will help you in many ways.

- ✍ It saves money for checks, envelopes & stamps
- ✍ It eliminates the possibility of lost, stolen or forged checks.
- ✍ The money is withdrawn on the date agreed – no earlier and no later
- ✍ It means you get your bill paid even if you're on vacation or too busy to do your bills

Here is how *Direct Debit* works:

On the date your bill is due, we will electronically withdraw the agreed upon amount from your account. The amount of the debit will appear on your bank statement with a description of who withdrew the money.

We believe you will like the added convenience of having your bill automatically withdrawn for you. *Direct Debit* is safe, convenient and easy. To take advantage of this service, complete the authorization section below and return it to the receivables department.

The authorization section of the form, which is provided below, gives the company and your financial institution authority to debit your bill from your account. Simply complete below in order to take advantage of *Direct Debit*.

All you need do is:

1. Mark the box before type of account to indicate whether your bill will be withdrawn from your checking or savings account.
2. Fill in your name, financial institution name and location, and date.
3. Attach a voided check for verification of all financial institution information. If you are unable to attach the voided check, please fill in your account number.

NOTE: Be sure to sign the form!

CUSTOMER'S AUTHORIZATION – Please fill out and return to Merchants Bank Equipment Finance. I authorize you and the financial institution listed below to initiate electronic debit entries, and if necessary, credit entries and adjustment for any debit entries in error to my:

Checking Account Savings Account

Beginning on the Lease Commencement Date and following the scheduled rental payments in Lease Schedule 102650003 payments will be drawn from the account listed below. Payment, applicable fees and taxes referenced in the invoice will be withdrawn on the due date. This authority will remain in effect until the maturity date or until cancelled in writing.

Financial Institution Name

Account Number at Financial Institution

Financial Institution City

Authorization Name (Please Print)

Transit Routing Number

Authorization Signature Date



7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

INSURANCE REQUIREMENTS FORM

DATE: 5/19/2020

TO: City of Mandan

FROM: Merchants Bank Equipment Finance, a division of Merchants Bank, National Association ("MBEF")

****Provide a copy of this to your insurance agent and/or carrier****

Per Section #6 of the Lease-Purchase Agreement dated 05/19/2020 you are required to provide and maintain insurance coverage as summarized below. If you have questions, please reference the Lease or call your MBEF representative. Satisfactory evidence of insurance must be provided to MBEF before the lease schedules can be completed.

Equipment Description: (1) New 2020 John Deere 744L wheel loader
Serial Number: 1DW744LWKLF706226

Insurance Agent Name:

Address:

Address:

Phone Number:

Fax Number:

Email:

INSURANCE REQUIREMENTS SUMMARY

Merchants Bank, 7600 Parklawn Avenue, Suite 384, Minneapolis, MN 55435, **and/or its assigns and/or its successors** must be named as:

/xx/ **LOSS PAYEE** for property damage coverage:

/xx/ Fire/Lightening, extended coverage and vandalism/malicious mischief for \$368,115.00 with a deductible to \$1,000 acceptable.

Forward the completed certification to:

Merchants Bank Equipment Finance
7600 Parklawn Avenue, Suite 384
Minneapolis, MN 55435

MBEF Representative: Christian Lizaola

Telephone: (952) 837-4904

Fax:

Account Number: 102650003



REMIT TO: Merchants Bank Equipment Finance
PO Box 228
Winona, MN 55987

City of Mandan
411 6 Ave. SW
Mandan, North Dakota 58554

Contract # 102650003

INVOICE

Invoice Date: 5/19/2020

Amount Due: \$44,585.70

Payment:	\$44,585.70
Document Fee	\$0
Sales Tax:	\$0
Total Amount Due:	\$44,585.70

First advance lease payment and applicable documentation fee must be made by check and accompany original signed documents. Please refer to lease document for payment due date.

If participating in ACH program, ACH will not apply to the first payment and documentation fee due.



RDO Promise™ - Uptime Guaranteed™ (Construction) Agreement

Customer Name: CITY OF MANDAN

Machines(s)	Serial Number(s)	Basic Factory Warranty Expirations(s)
2020 JOHN DEERE 744L	1DW744LWKLF706226	Date: _____ Hours: _____

RDO Equipment Co. Responsibilities:

The RDO Promise applies to any new John Deere (Non-forestry) or Hitachi (Non-mining) machines with less than 500 hours at time of purchase and within RDO Equipment Co.'s Area of Responsibility (AOR) and within the continental United States. On Rental Purchase Options, the RDO Promise™ begins at the time of initial rental delivery to the customer.

- Equipment walk around upon delivery of unit (Included)
- Basic Factory Warranty (Included)
- Free loaner for the first 12 months of ownership. Excludes production class equipment from loaner option. (Included)
- Free travel time on warranty items during Basic Warranty period (Included)
- Free After Sales Inspection (Includes JDLink™ Machine Performance Reports)
- Free inspection prior to unit coming out of warranty period (Included)
- Guaranteed Field Service Response Time (Included)
- Lease or Retail Finance plan to fit your customer (Optional and tailored)
- Secure Extended Warranty (Optional and tailored)
- GPS Monitoring (Optional and Tailored)
- Total repair and scheduled maintenance program (PMs) (Optional and tailored)

1. RDO Equipment Co. will provide an RDO Promise Uptime Guaranteed™ (Construction) agreement during the term of this agreement:

- a. **Repair Inclusions:** All items covered under the John Deere BASIC & SECURE Extended (Optional) Warranties are included. This will include travel within RDO Equipment Co.'s Area of Responsibility (AOR) and within the continental United States, during the Basic Warranty period.
- b. **Maintenance Inclusions (Optional):** It includes the cost of parts, labor, travel, tools, supplies, fluids, OilScan, waste removal, and any other associated costs of performing the 250hr., 500 hr., 1,000hr., and 2,000hr. maintenance and inspection intervals as outlined in the respective machine Operator's Manual and maintenance guide. Engine tune-ups and cooling system maintenance is also included. Maintenance inclusions apply if the customer purchases the Preventive Maintenance programs option.

State number of months and maximum hours of scheduled maintenance agreement:

Machine: 2020/JOHN DEERE/744L **Serial Number**1DW744LWKLF706226 **Months:**0 **Hours:**0

2. **Balance of Basic Factory Warranty.**

3. **Equipment walk around.** Salesperson, CSA, ASP, or a designated store employee will be responsible for a thorough explanation of the machine when unit is delivered.

4. **Free Loaner during the first 12 months of ownership.** – RDO Equipment Co. will make every effort possible to supply the customer with a replacement machine if it is determined that the RDO Promise™ machine cannot be returned to operating condition within 36 hours of:

- Technician's arrival at the machine.
- The arrival of the machine at an RDO Equipment Co. facility.
 - a. Machine must be non-functioning or in diminished capacity preventing it from performing it's intended functions.
 - b. RDO Equipment Co. will provide a like machine, if available. If a loaner machine is not available or the customer will not accept an available



- machine, RDO Equipment Co.'s loaner provision is waived.
- c. Customer is responsible for all transportation costs related to the free loaner.
 - d. Excludes the following production-class equipment from loaner option:
 - a. Excavators — 470x, 670x, 870x.
 - b. Crawlers — 950x, 1050x.
 - c. 4WD Loaders — 744x, 824x, 844x, 944x.
 - d. ADTs — 250x, 300x, 370x, 410x, 460x.
 - e. Use of the free loaner is limited to 8 hours per day, 40 hours per week, and 160 hours per month. All overtime usage will be charged to the customer at the RDO Equipment Co. hourly overtime rate.
 - f. The Customer must agree to the terms and conditions of the RDO Equipment Co. Rental Agreement, including, meeting minimum insurance requirements. Machine must be in RDO Equipment Co.'s AOR and within the Continental United States.
5. **Free Travel Time during the Basic Factory Warranty.** Machine must be in RDO Equipment Co.'s Area of Responsibility (AOR) and within the continental United States.
6. **Free After Sales Inspection.** RDO Equipment Co. will conduct a machine performance inspection, including JDLink™ Machine Performance Reports and machine inspection after purchase. Machine must be in RDO Equipment Co.'s Area of Responsibility (AOR) and within the continental United States. It is the customer's responsibility to schedule the inspection walk around.
7. **Free Inspection (Warranty purposes.)** A CSA, ASP, or service technician will inspect machine before any basic or extended warranty expires. It is the customer's responsibility to notify and schedule an inspection at any RDO Equipment Co. location before warranty expires and must be within the company's Area of Responsibility (AOR) and within the continental United States.
8. **Guaranteed Field Service Response Time not to exceed 4 hours.**
- a. Machine down must be non-functioning or in a diminished capacity preventing it from performing its intended functions.
 - b. The Customer must identify the machine as an "RDO Promise Uptime Guaranteed™ (Construction)" machine at the time of call and the 4 hour response guarantee will begin when the call is received by a RDO Equipment Co. Field Service Dispatcher & stop when the field technician has been dispatched to the jobsite.
 - c. The response guarantee is valid during normal store hours of operation, 8:00 a.m. – 5:00 p.m. Monday through Friday, excluding holidays.
 - d. Failure to respond within the guarantee period will result in a credit of \$100 per hour for each hour the response is late, up to a maximum of \$500. This credit will be applied to the customer's account and can be used to offset charges for any RDO Equipment Co. document on the customer's account.
 - e. Not valid under acts of nature and other obstacles beyond RDO Equipment Co.'s control that would delay response time, i.e. floods, hurricanes, fires, blizzards, etc.
 - f. The Guaranteed Field Service Response Time is only available during the first 12 months of ownership.
9. **Lease or Retail Finance.** (Optional and tailored to customer)
10. **Secure Extended Warranty.** (Optional and tailored to customer)
11. **GPS Monitoring.** (Optional and tailored to customer) The customer will have access to the tracking data upon request.
12. **Total Repair and Scheduled Maintenance.** (Optional and tailored to customer) Oil samples and machine inspections will be taken by RDO Equipment Co. per the Original Equipment Manufacturer (OEM) recommendations.
13. If a failure is believed to be imminent, RDO Equipment Co. may remove and repair/replace components. Component replacement and repair decisions will be made by RDO Equipment Co. using OilScan, Machine Inspection, Technical Analysis, and expected component life. Decisions regarding parts and component replacement with new, rebuilt, or remanufactured items will be at the discretion of RDO Equipment Co.
14. RDO Equipment Co. agrees to notify the Customer regarding pending repairs of component replacement.



Customer Responsibilities

1. OEM recommended maintenance and preventive maintenance schedules must be followed. These schedules may only be modified through mutual agreement between the Customer and RDO Equipment Co.
2. The Customer is responsible for all costs associated with the daily (10hr.), weekly (50hr.), and biweekly (100hr.) maintenance and inspections as outlined in the respective machine Operator's Manual and maintenance guide. Oil changes from summer to winter and/or winter to summer weight oils outside of scheduled maintenance intervals will be at the customer's expense.
3. Repairs and/or maintenance due to abuse, vandalism, neglect, accident, fire, acts of God, improper operation or operating conditions, substandard maintenance, or maintenance practices are not included in the RDO Promise Uptime Guaranteed™ (Construction) coverage. Repair, maintenance, and/or replacement of tires on Wheel Loaders, undercarriage wear items (including shoes, link assemblies, sprockets, rollers, idlers, and track guides) on Track Type equipment, ground engaging tools (including bucket wear and dozer face wear), paint, glass, and illumination devices are not included. Repair/replacement of attachments and couplers is not included. Repair/replacement of hydraulic hoses, lines, and fittings are not included.
4. The machine may not be altered or modified in any manner which affects the mechanical operations as described by the OEM without the approval of the OEM and RDO Equipment Co.
5. When advised by RDO Equipment Co., the customer is responsible to schedule the components covered in this agreement for routine overhaul (before failure) to minimize downtime and overhaul costs.
6. The customer agrees to provide RDO Equipment Co. and its representatives reasonable access to the above listed machine for the purpose of Machine Inspection, Technical Analysis, and repair and maintenance on a regular basis. RDO Equipment Co. will make every effort to perform these services during times convenient to the Customer.
7. The Customer agrees to use only genuine OEM parts for all maintenance and repairs performed by Customer personnel. It is further understood that OEM standards will be observed regarding oils and grease.
8. The Customer agrees to shut the machine down if, after inspection by an RDO Equipment Co. representative, it is determined that further operation of the machine will result in imminent mechanical damage to the components covered in this agreement.

General Terms and Conditions

1. All fluids must meet all manufacturer specification. It should be understood and agreed upon by the customer that if he chooses to use oils that are not recommended by the manufacturer that this agreement will be canceled. It should also be noted that it is the customer's responsibility to use quality fuel and that if a problem develops because of poor fuel this agreement as it pertains to that breakdown is voided.
2. Delays in furnishing service shall be excused if caused by acts of God, fires, weather conditions, labor controversies, or causes beyond the control of RDO Equipment Co.
3. If the machine covered in this agreement leaves RDO Equipment Co.'s Area of Responsibility, RDO Equipment Co. retains the right to terminate the guarantees contained in the RDO Promise Uptime Guaranteed™ (Construction) agreement.
4. This agreement commences upon delivery of the machine to the Customer.
5. THIS AGREEMENT IS NOT TRANSFERRABLE.



Customer (Signature)

RDO Equipment Co. (Signature)

Customer (Print Name)

RDO Equipment Co. (Print Name)

Date

Date



Retail Purchase Order

RDO Equipment Co.
 2000 Industrial Drive / PO Box 1098
 Bismarck ND, 58502
 Phone: (701) 223-5798 - Fax: (701) 223-2819

Bill To:
 CITY OF MANDAN
 205 2ND AVE NW
 MANDAN, ND, 585543100
 MORTON ()
 (701) 667-3240

Ship To:
 CITY OF MANDAN
 205 2ND AVE NW
 MANDAN, ND, 585543100
 (701) 667-3240

Purchase Order Date: 2/5/2020
Purchase Order #: 1276524
Purchaser Account #: 3240008
Customer Sales Tax Exempt #: None

Customer Purchaser Type: Governmental - City/Town/Village
Customer Market Use: Other - Landfill/Refuse
Location of First Working Use: MANDAN, ND, 585543100
Dealer Account Number: 170580
Sales Professional: Steve Meier
Phone: (701) 223-5798
Fax: (701) 223-2819
Email: SMeier@rdoequipment.com

Equipment Information

Quantity	Serial Number Stock Number	Hours (approx.)	Status / Year / Make / Model Additional Items	Cash Price
1	1DW744LWKLF706226 X932421	0	New 2020 JOHN DEERE 744L Outside Parts and Labor INSTALL BOTTOM GUARDS AND REAR GRILLE GUARD Freight in Davenport-Trussville-Bismarck Prep / Reconditioning PDI Other SOURCEWELL DISCOUNT 38% Warranty -John Deere Comprehensive-60 Months, 6000 Hours,Deductible: 200, Exp Date: 4/15/2025	\$511,520.00 \$3,585.00 \$10,499.68 \$1,800.00 (\$209,355.68) \$10,000.00
1	991078 X932422	0	Attachment - New 2020 JOHN DEERE WASTEKIT	\$29,087.00
1	991078 X932423	0	Attachment - New 2020 JOHN DEERE BOTTOMGUARD	\$6,869.00
1	991078 X932424	0	Attachment - New 2020 JOHN DEERE GRILLEGUARD	\$3,460.00
1	TBD TBD	0	New 2020 GR MANUFACTURING INSTALLS	\$0.00
1	TBD TBD	0	New 2020 GR MANUFACTURING INSTALLS	\$0.00
Equipment Subtotal:				\$367,465.00

Purchase Order Totals

Balance: \$367,465.00
Tax Rate 3: (NDEG 0%): \$0.00
Sales Tax Total: \$0.00
Sub Total: \$367,465.00
Cash with Order: \$0.00
Balance Due: \$367,465.00

Legal Information

For the Construction Product(s)

ACKNOWLEDGMENTS - Purchaser offers to sell, transfer, and convey the item(s) listed as "Trade In" to the Dealer at or prior to the time of delivery of the above Product(s), as a "trade-in" to be applied against the cash price. Purchaser represents that each "trade-in" item shall be free and clear of all security interests, liens, and encumbrances at the time of transfer to the Dealer except to the extent shown below. The price to be allowed for each "trade-in" item is listed on this document. The Purchaser promises to pay the balance due shown hereon in cash, or to execute a Time Sale Agreement (Retail Installment Contract), or a Loan Agreement for the purchase price of the Product(s) plus additional charges shown thereon, or to execute a Lease Agreement, on or before delivery of the Product(s) ordered herein. Despite delivery of the Product(s) to the Purchaser, title shall remain with the Seller until one of the foregoing is accomplished. Except as provided herein and as necessary to protect RDO Equipment from the claims of a bankruptcy trustee or a buyer in the ordinary course of business, the Purchaser and the Dealer agree that this Purchase Order is not a security agreement and that delivery of the Product(s) to the Purchaser pursuant to this Purchase Order will not constitute possession of the Product(s) by the Purchaser as a debtor, for the purposes of the purchase money security provisions in any statutes relating to personal property security or its equivalent. Purchaser understands that its rights in connection with this purchase are limited as set forth in this Purchase Order. I (we) hereby grant a security interest to RDO Equipment in the Product.

DISCLOSURE OF REGULATION APPLICABILITY - When operated in California, any off-road diesel vehicle may be subject to the California Air Resources Board In-Use Off-Road Diesel Vehicle Regulation. It therefore could be subject to retrofit or accelerated turnover requirements to reduce emissions of air pollutants. More information is available on the California Air Resources Board website at <http://www.arb.ca.gov/msprog/fordiesel/fordiesel.htm>.

IMPORTANT WARRANTY NOTICE - The Standard Warranty for new John Deere construction and forestry products is set forth in a separate document provided by the dealer. Please read the Standard Warranty carefully before signing. No express warranty is made unless specified in the Warranty Statement. PURCHASER'S RIGHTS AND REMEDIES PERTAINING TO THIS PURCHASE ARE LIMITED AS INDICATED IN THE STANDARD WARRANTY AND PURCHASE ORDER, WHERE PERMITTED BY LAW. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS IS MADE.

TERMS & CONDITIONS VERIFICATION STATEMENT Use of John Deere Data Services ("Services"), if applicable, and all rights and obligations of John Deere and the Purchaser (or "Customer" as identified in the applicable agreement) are governed by the terms and conditions outlined in the Warranty Statement and the applicable John Deere Construction & Forestry Company Subscriptions & Data Services Dealer Agreement and/or Customer Data Services agreements available at www.JohnDeere.com/Agreements. Purchaser agrees to be bound by these terms and conditions if Purchaser activates or otherwise uses any of the Data Services. If Purchaser does not agree to these terms and conditions, Purchaser must not activate or otherwise use the Data Services.

The undersigned purchaser(s) (the "Purchaser") hereby orders the product (the "Product") described above from the Dealer. The Dealer shall not be liable for failure to provide the Product or for any delay in delivery if such failure or delay is due to the Dealer's inability to obtain such Product from the manufacturer or supplier or other cause beyond the Dealer's control. The cash price shown above is subject to the Dealer receiving the Product from the manufacturer or supplier prior to any change in price by the manufacturer or supplier and is also subject to any new or increased taxes being imposed upon the sale of the Product after the date of this Purchase Order.

Upon signature of delivery acknowledgment, customer is accepting the equipment, including attachments, in "AS IS" condition, agreeing to notify RDO Equipment Co. within 24 hours of any damages or discrepancies found upon receipt of equipment.

Signature Area

Purchase Order Accepted By:

(Customer's Signature)

(Date Accepted)

(Authorized Signature of Dealer)

(Date Accepted)

Delivery of Equipment Acknowledgement:

(Customer's Signature)

Date Accepted

Standard Warranty Acknowledgement:

(Delivered On)

(Warranty Begins)

Extended Warranty Oil Sampling Acknowledgement:

(Customer's Initials)

([deal owner's title]'s Initials)

Equipment Options

Qty	Serial Number	Year / Make / Model	Description
1	1DW744LWKLF706226	2020 JOHN DEERE 744L	7680DW 744L 4WD LOADER 0810 STANDARD GATHERING GROUP 0924 JD POWERTECH ENGINE 1045 STD WASTE HANDLER ZBAR BOOM 1120 5 SPD PSHIFT TRANSMISSION 1220 150 AMP ALTERNATOR 1310 FLAT BLACK CURVED STACK 1430 AIR INTAKE WITH PRECELANER 1520 AUTO REVERSING HYDRAULIC FAN 1610 FUEL FILTER & STD FUEL FILL 170C JDLINK ULT 5 YEAR SERVICE 1910 PREMIUM CAB 1940 7 INCH MONITOR 1975 HYDRAU XR HYDRAULIC FLUID 2010 STANDARD Z-BAR 2120 STEERING WHEEL ONLY 2240 PREMIUM SEAT 2360 JOYSTICK CONTROLS 2402 TWO FUNCTION HYDRAULICS 2605 ENGLISH DECALS AND MANUALS 2730 30 AMP CONVERTER 2870 NO PAYLOAD SCALE W/ COUNTER 3120 MANUAL AXLE DIFF LOCK 48A1 BRIDGESTONE 26.5R25 VSDT L5 5320 LESS TPMS SYSTEM 5575 NO FRONT FENDERS 5705 LESS AUTOLUBE 5840 NO FORK FRAME 5940 NO TINES 7120 HALOGEN WORK & DRIVE LIGHTS 8130 LESS COUNTERWEIGHT & HITCH 8240 REAR CAMERA ONLY 8298 NO BEACON OR BEACON BRACKET 8350 EXTERIOR MIRRORS-HEAT&POWER 8370 PREMIUM RADIO 8450 CAB WITH AIR A/C CHARGE 8567 FACTORY PIN-ON BUCKET READY 8881 BOLT ON CUTTING EDGE 8953 5.5 CUYD BUCKET W/O PLATES 9020 COLD WEATHER STARTING 9115 CAB FRESH AIR PRECLEANER 3056 AXLE,STD REAR & HYD FRONT
1	991078	2020 JOHN DEERE WASTEKIT	None
1	991078	2020 JOHN DEERE BOTTOMGUARD	None
1	991078	2020 JOHN DEERE GRILLEGUARD	None
1	TBD	2020 GR MANUFACTURING INSTALLS	None
1	TBD	2020 GR MANUFACTURING INSTALLS	None

STANDARD WARRANTY FOR NEW JOHN DEERE CONSTRUCTION, UTILITY, CCE AND FORESTRY PRODUCTS – US & Canada

- **Construction, Forestry & Compact Construction Equipment (CCE) Products***: 12 months Full Machine Standard Warranty
- *** Compact Construction Equipment Products** Delivered and settled on or after 01 June 2018: 24 months or 2000 hours (whichever comes first) Full Machine Standard Warranty
- **C&E Series Pull-Type Scrapers**: 6 months Full Machine Standard Warranty
- **DC & DE Series Pull-Type Scrapers**: 12 months Full Machine Standard Warranty
- **Scraper Tractors**: 24 Months or 2000 Hours (whichever occurs first) Full Machine Standard Warranty
- **Forestry Attachments**: 12 Months or 2000 Hours (whichever occurs first) Full Machine Standard Warranty
- **Frontier Equipment**: 6 months Full Machine Standard Warranty (90 days in rental applications)

The "Standard Warranty" is part of the warranty protection package available from John Deere Construction & Forestry Company (John Deere Limited in Canada) ("John Deere") to purchasers of new John Deere products ("product"):

STANDARD Warranty is John Deere's standard new product warranty, described in this document, provided at no additional charge to the purchaser.

EXTENDED Warranty is a separate repair contract made available by John Deere for purchasers who wish to complement their Standard Warranty coverage. Complete Extended Warranty details, including coverage options and limitations, are set forth in the Application for Extended Warranty, which is available from authorized John Deere dealers.

STRUCTURALL Warranty applies to certain structural components as listed below and as described in this document.

FACTORY-INSTALLED UNDERCARRIAGE Warranty applies to certain undercarriage components as listed below and as described in this document.

A. STANDARD WARRANTY - GENERAL PROVISIONS

John Deere will repair or replace, at its option, any parts (except those specified below) of a new John Deere product that, as delivered to the original retail purchaser(s), are defective in material or workmanship. Performance of this warranty will be free of charge for parts and labor/labour, except as otherwise stated below. Standard Warranty applies only to purchases from John Deere and authorized John Deere dealers and, except as otherwise provided in the next sentence and section L below, is extended only to the original retail purchaser of the product. Remaining Standard Warranty applicable to a used John Deere product is transferred to a subsequent purchaser of the product only if the subsequent purchaser requests a transfer from an authorized John Deere dealer before the product's Standard Warranty expires. Coverage begins on the date of delivery of the product to the original retail purchaser. For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. Warranty statements required by law covering engine emissions-related parts and components are found on a separate written warranty certificate provided to the purchaser at the time of the original retail purchase.

B. WHAT IS COVERED BY STANDARD WARRANTY -

All parts of a new John Deere product (except those noted in Sections D and E below) are covered during the Standard Warranty period set out above.

C. EXCLUSIVE REMEDY -

The repair or replacement of covered parts or components that are defective, as provided in Sections A, B, D.2 and D.3 herein, shall be the purchaser's exclusive remedy for any defect in the product. However, if after repeated attempts such repair or replacement fails to correct the performance problem caused by the defect, the purchaser's sole remedy shall be a refund of the amount paid for the product (in exchange for a return of the product), excluding any transportation charges, license fees, taxes and insurance premiums, and less a reasonable allowance for use of the product prior to its return. In no event will the dealer, John Deere or any company affiliated with John Deere be liable for any incidental or consequential damages, including but not limited to loss of profits, rental of substitute equipment or other commercial loss. Correction of defects in the manner provided above shall constitute fulfillment of all liabilities of the Dealer, John Deere, or any company affiliated with John Deere to the purchaser or any other

person, whether based upon contract, tort, strict liability, or otherwise. This limitation does not apply to claims for personal injury.

D. ITEMS COVERED SEPARATELY -

1. Standard Warranty does not apply to batteries, radios, tires, cameras, or to Cummins, MTU or Detroit Diesel Engines installed in John Deere products, which are covered by separate written warranties.
2. Factory-Installed Undercarriage Warranty covers all non-rubberized factory-installed undercarriage wear components for 3 years or 4,000 hours from the date of delivery to the original retail purchaser, whichever occurs first (unless terminated earlier under Section F, below). For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. In addition to the items listed in section E below, Factory-Installed Undercarriage Warranty does not cover: failures due to wear, machine application, maintenance practices, or improper machine configuration; removal and installation labor/labour; transportation or hauling costs; unapproved parts; non-wear items; and rubberized undercarriage components such as rubber tracks. Warranty claims will be pro-rated based upon wear of the failed component and whether track shoe width is approved by John Deere. Factory-Installed Undercarriage Warranty does not apply to Scraper Tractors.
3. StructurALL Warranty for new John Deere Products (except Compact Excavators & Loaders, Skid-Steer Loaders, Compact Track Loaders, Scraper Tractors, Pull-Type Scrapers, and Forestry Attachments, which are not eligible for StructurALL Warranty) begins at the date of delivery to the original retail purchaser and ends (unless terminated earlier under Section F, below) after three (3) years, or 10,000 hours (whichever occurs first). For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. **StructurALL Warranty applies only to the following structural components listed below as installed on the product at the time of original manufacture.** If a particular component is not listed below it is not covered by StructurALL Warranty.

Arm; Articulation Joint (incl. pins & bushings); Bin Frame; Boom; Carbody; C-Frame*; Circle Frame; Coupler (John Deere built ONLY); Dipperstick; Draft Frame; Engine Frame; Equipment Frame; Grapple Arch and Grapple Boom; Loader Arm; Loader Frame; Mainframe; Moldboard Lift Arm; NeverGrease™ Pin Joints [Includes steering pin and bushing joints (standard equipment), roller elements (roller bearings) in bucket to boom joints and sliding elements (bushing) for boom and linkage joints (optional equipment)]; Rollover Protection Structure (ROPS); Side Frame; Swing Frame; Track Frame; Undercarriage Frame; X-Frame; Z-bar loader linkage (including bell crank and bucket driver link); Specialty booms and arms marketed as "heavy duty" by John Deere.

Items Covered by StructurALL for Cut-to-Length Forestry Machines: Front frame (welded assembly); Rear frame (welded assembly); Crane king post with basement; Middle joint frame; Cabin swing frame; Main Boom

StructurALL Warranty does not apply to:

1. Any product used primarily in extreme duty or severe duty applications such as but not limited to: demolition and wrecking, chemical plant (including fertilizer plants), salt mines, steel mill, land fill and transfer stations, scrap handling, scarifying and other applications that are similarly destructive or similarly heavy duty except specialty booms and arms as stated in Section D.3 above.
2. C-Frames on H-Series & J-Series Crawlers equipped with root rakes or used in forestry applications unless equipped with an "extreme duty" reinforcement package.
3. Cut-to-Length Forestry Heads and Slash Bundler Units.
4. Crawlers equipped with optional side booms.
5. Cut-to-Length Forestry, Excavator, and Log Loader swing bearings.
6. Motor Graders equipped with front- or rear-mounted snow wings.

E. ITEMS NOT COVERED -

John Deere is NOT responsible for the following:

1. Freight
2. Adjustments to compensate for wear, for periodic maintenance or adjustments that result from normal wear and tear.
3. Damage caused by unapproved adjustments (electronic or mechanical) to machine or machine components outside of published specifications including but not limited to engine, hydraulic components and relief valves.
4. Program updates, calibrations, and pressure adjustments.
5. Diagnostic Time
6. Additional Labor/Labour Time - Above SPG/Labor/Labour Rate
7. Additional Cleaning - Above SPG/Labor/Labour Rate
8. Rental Fees
9. Depreciation or damage caused by normal wear or application, lack of reasonable and proper maintenance, failure to follow operating instructions, misuse, negligence, collision or other accidents.
10. Premiums charged for Overtime Labor/Labour
11. Transportation to and from the dealership.
12. Travel time, mileage or service calls by the dealer.
13. Non-John Deere components or modifications, Rotobec grapples, and attachments installed aftermarket.
14. Shop supplies and maintenance items such as, but not limited to: filters, fuels, oil, hydraulic fluid, lubricants, coolants, conditioners, shop towels, cleaners and degreasers. Note: Reimbursement for refills of oils/coolants lost due to a warrantable failure is covered when a system failure occurs outside the boundaries of a normal oil change (within 25% of specified change interval as provided in the Operator's Manual).
15. Torn, cut, or worn hoses.
16. Wear items, such as, but not limited to: body liner, belts, blades, bulbs, lubricated joints (including pins and bushings), dry brakes, brake linings, dry clutch linings, saw blades, chains, skidder grapple shocks, color marking nozzles, and articulation bumpers.
17. Items such as cutting-edge parts, delimiting knives, bucket teeth and rubber track are not warranted for depreciation or damage caused by normal wear, lack of proper maintenance, misuse, failure to follow operating instructions, the elements or accident.
18. Any defect in a non-covered component, or damage to or failure of a covered component caused by a defect in a non-covered component.
19. Secondary damage which occurs from continued operation of a product after recognition of the occurrence of a failure.
20. Parts supplied or modifications done by third party suppliers.
21. Topping off fluids when fluid levels fall in the range between low and full
22. Parts/Kits not ordered on machine and installed aftermarket. These parts will be covered by any applicable parts warranty.
23. Attachments installed aftermarket – i.e. Winch not installed at factory.
24. Custom options installed outside the factory – i.e. G.R. Manufacturing option packages.
25. Used Products (except as otherwise provided in section L below).

F. TERMINATION OF WARRANTY-

John Deere is relieved of its obligations under Standard Warranty, StructurALL Warranty, Factory-Installed Undercarriage Warranty and/or Extended Warranty if:

1. Service (other than normal maintenance and replacement of service items) is performed by someone other than an authorized John Deere dealer; or
2. The product is modified or altered in ways not approved by John Deere; or
3. Any unapproved or improperly sized attachment is installed on the product. Approval and attachment size shall be at John Deere's sole discretion. (Consult dealer prior to installing attachments or product modification).
4. The product is moved outside the US and/or Canada.

G. PARTS REPLACED UNDER WARRANTY -

Only new or remanufactured parts or components furnished or approved by John Deere, will be used if John Deere elects to repair the product. If any such part or component is defective in material or workmanship when installed in the product, John Deere will repair or replace, as it elects, such defective part or component, provided the defect is

reported to an authorized John Deere dealer within 90 days of installation or before expiration of the applicable Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty whichever is later.

H. TELEMATICS

NOTICE: Products may be equipped with telematics hardware and software ("Telematics") that transmit data to John Deere/ Dealer. Purchaser may deactivate Telematics at www.jdlink.com.

Notwithstanding Purchaser's right, title or interest in the Products, Purchaser agrees that John Deere and Dealer (their affiliates, successors and assigns), without further notice to Purchaser have the right to:

1. Access, use, collect and disclose any data generated by, collected by, or stored in, Products or any hardware or devices interfacing with Products ("Machine Data");
2. Access Machine Data directly through data reporting devices integrated within, or attached to, Products, including Telematics ("Data Reporting Systems"); and
3. Update the Data Reporting Systems software from time to time. Machine Data will only be used in accordance with John Deere's Machine Data Policy, located at www.JohnDeere.com/MachineDataPolicy.

I. OBTAINING WARRANTY SERVICE -

To obtain warranty service, the purchaser must request warranty service from a John Deere dealer authorized to sell the product to be serviced. When making such a request, the purchaser must present evidence of the product's delivery date, make the product available at the dealer's place of business, and inform the dealer in what way the purchaser believes the product to be defective. Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty repairs may be made in the field if the purchaser and servicing dealer so desire. However, John Deere will not be responsible for any charges (such as dealer travel time, mileage or extra labor/labour) that would not have been incurred had the product been repaired at the dealer's place of business.

J. NO IMPLIED WARRANTY, CONDITIONS OR OTHER REPRESENTATION -

Where permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises, express or implied, as to the quality, performance, or freedom from defect of its products, other than those set forth in this document and **NO IMPLIED WARRANTY OF MERCHANTABILITY, CONDITIONS OR FITNESS IS MADE.**

K. NO DEALER WARRANTY -

The selling dealer makes no warranty of its own on any item covered by this warranty, and makes no warranty on other items unless the dealer delivers to the purchaser a separate written warranty certificate specifically warranting the item. **The dealer has no authority to make any representation or promise on behalf of John Deere, or to modify the terms or limitations of this warranty in any way.**

L. USED JOHN DEERE PRODUCTS ONLY -

John Deere will transfer remaining Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty to the purchaser of a used John Deere construction and/or forestry product that has been used for less than the full warranty period provided at the product's original retail purchase. This transfer is not effective until change of ownership is registered by a John Deere dealer. **ALL THE TERMS, INCLUDING LIMITATIONS AND EXCLUSIONS, OF THE JOHN DEERE STANDARD WARRANTY, FACTORY-INSTALLED UNDERCARRIAGE WARRANTY, AND/OR STRUCTURALL WARRANTY ORIGINALLY PROVIDED FOR THE PRODUCT REMAIN IN EFFECT AND APPLICABLE.**



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 29, 2020
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Annual Liquor License Renewals

STATEMENT/PURPOSE: All liquor licenses must be approved by the Board of City Commissioners on an annual basis.

BACKGROUND/ALTERNATIVES: Applications and fees have been received by the following applicants.

CLASS “D” OFF SALE BEER & LIQUOR

1. Coborn’s Incorporated dba Captain Jack’s

CLASS “D1” OFF SALE BEER & WINE ONLY

1. Tri Energy Cooperative (Cenex)
2. Red Carpet Car Wash Inc.
3. Petro Serve USA Store 79
4. Petro Serve USA Store 78

The applicants were contacted and informed of the possibility of a later due date for their applications. These three applicants indicated they wished to simply move forward for their consideration.

Property taxes are current for these applicants.

ATTACHMENTS:

FISCAL IMPACT: The fees for these applicants have been received based upon the existing resolution. There is no reduction proposed in fees for these applications.

STAFF IMPACT: N/A

LEGAL REVIEW: N/A

RECOMMENDATION: I recommend to approve Coborn's, Tri Energy Liquor and Red Carpet Car Wash licenses for the period of September 1, 2020 – June 30, 2021. Contingent upon the establishment meeting all Fire Codes, Health & Safety Code and Building Inspection Codes.

SUGGESTED MOTION: I move to approve Coborn's, Tri Energy Liquor and Red Carpet Car Wash licenses for the period of September 1, 2020 – June 30, 2021. Contingent upon the establishment meeting all Fire Codes, Health & Safety Code and Building Inspection Codes.



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

G - _____ (____)____
 Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization Cystic Fibrosis Association of North Dakota

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location Stage Stop			
Street 601 6th Avenue SE	City Mandan	ZIP Code 58554	County Morton
Beginning Date(s) Authorized 7/1/2020	Ending Date(s) Authorized 6/30/2021	Number of twenty-one tables if zero, enter "0": 1	
Specific location where games of chance will be conducted <u>and</u> played at the site (required) Entire Bar area, excluding Restrooms.			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
---	---------------------------------

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input checked="" type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input checked="" type="checkbox"/> Twenty-One
<input type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input checked="" type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input checked="" type="checkbox"/> Pull Tab Jar	<input checked="" type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input checked="" type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input checked="" type="checkbox"/> Paddlewheel Table
<input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device		

APPROVALS

Attorney General	Date
Signature of City/County Official	Date
PRINT Name and official position of person signing on behalf of city/county above	

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-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. 08-2019)

License Number (Office Use Only)

Site Owner (Lessor) Stage Stop Liquors, Inc		Site Name Stage Stop		Site Phone Number 701-663-7768
Site Address 601 6th Avenue SE		City Mandan	State ND	Zip Code 58554
County Morton		Rental Period 7-1-2020 to 6-30-2021		Monthly Rent Amount
Organization (Lessee) Cystic Fibrosis Association of North Dakota				
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 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>1</u> X Rent per Table \$ <u>300</u>		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		\$ \$ 300
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: <input checked="" type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		\$ 325
<input checked="" type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices <u>10</u>				\$ 750
Total Monthly Rent				\$ 1375

5. If the only gaming activity to be conducted at this site is a raffle drawing, please check here.

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, pay a prize board cash prize, and award a prize board merchandise prize 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.
 The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.
 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>[Signature]</i>	Title Owner	Date 5/21/20
Signature of Lessee <i>[Signature]</i>	Title President	Date 5-21-20



Consent No. 4

Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 27, 2020
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Final Plat for Schaff Estates

STATEMENT/PURPOSE: Consider approval of a final plat for Schaff Estates.

BACKGROUND/ALTERNATIVES:

The subject property is located about 1,800 ft. north of roughriders within the Mandan ETA. The applicant seeks to plat the lot of approximately 20 acres into two equal sized lots (See Exhibit 1). No zoning change is requested and the use would be for rural residential.

At the May 19 City Commission public hearing, the Board approved the preliminary plat subject to the necessary dedication of right-of-way and the development agreement (See Exhibit 2).

The necessary dedication of right-of-way has been provided. At the time of writing, the development agreement had not yet been recorded and therefore the recorded instrument number is not included on the final plat for reference.

Having met the right-of-way dedication requirement and only needing to record the development agreement, staff is recommending approval subject to the recording instrument number for the development agreement being included on the final plat for reference.

Planning and Zoning Commission recommended unanimous approval at their May 27 public hearing.

ATTACHMENTS:

Exhibit 1 – Final Plat
Exhibit 2 – Development Agreement w/Ghost Plat

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

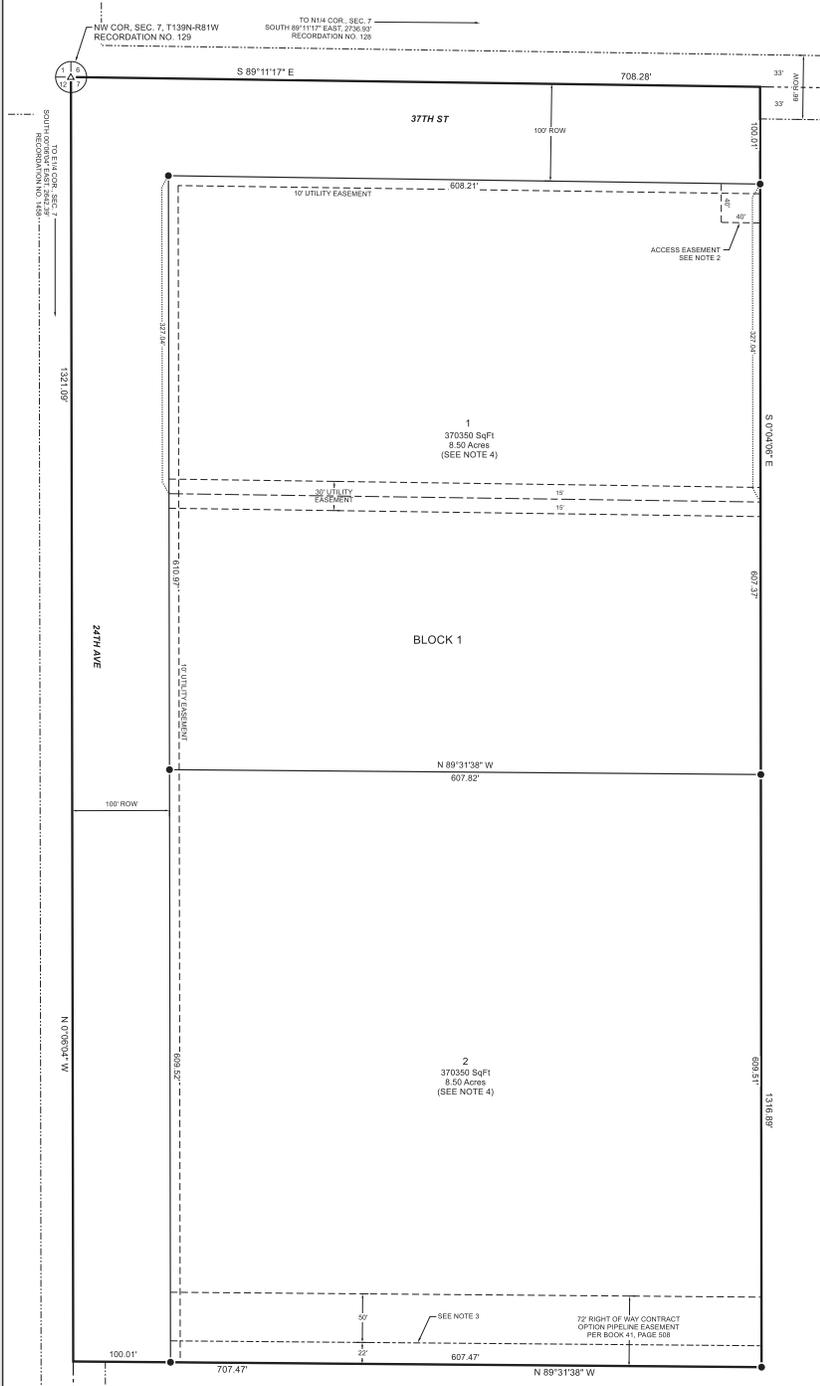
LEGAL REVIEW: Attorney Brown has reviewed the staff report related to the final plat as part of the agenda packet. The preliminary plat and development agreement was already reviewed and approved previously.

RECOMMENDATION: The Planning and Zoning Commission recommended unanimous approval of the final plat subject to the recording instrument number for the development agreement being included on the plat for reference.

SUGGESTED MOTION: I move to approve the final plat subject to the recording instrument number for the development agreement being included on the plat for reference.

SCHAFF ESTATES

TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA
 ALL OF THE W1/2 OF GOVERNMENT LOT 1, SECTION 7, T139N-R81W OF MORTON COUNTY, NORTH DAKOTA
 LYING WITHIN THE 1-MILE EXTRATERRITORIAL JURISDICTION OF THE CITY OF MANDAN



DESCRIPTION OF PROPERTY

ALL OF THE W1/2 OF GOVERNMENT LOT 1, SECTION 7, TOWNSHIP 139 NORTH, RANGE 81 WEST OF THE 5TH PRINCIPAL MERIDIAN, MORTON COUNTY, NORTH DAKOTA, SAID TRACT OF LAND CONTAINING 21.43 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATE

I, ANDRA L. MARQUARDT, NORTH DAKOTA REGISTERED LAND SURVEYOR NO. 4623, HEREBY CERTIFY THAT I HAVE CAUSED TO BE SURVEYED BY MY FORCE(S) UNDER MY SUPERVISION THE PROPERTY DESCRIBED HEREON AND I HAVE PREPARED THE ACCOMPANYING PLAT. FURTHER, THAT DISTANCES INDICATED HEREON ARE IN FEET AND HUNDREDTHS THEREOF, AND BEARINGS ARE INDICATED IN QUADRANTS AND DEGREES, MINUTES, AND SECONDS THEREOF; FURTHER, THAT SAID PLAT DOES TRULY SHOW THE SURVEY TO THE BEST OF MY KNOWLEDGE AND BELIEF.

ANDRA L. MARQUARDT, RLS 4623

STATE OF NORTH DAKOTA)
) SS
 COUNTY OF MORTON)

ON THIS _____ DAY OF _____, 2020, THERE APPEARED BEFORE ME ANDRA L. MARQUARDT, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE CERTIFICATE AND DID ACKNOWLEDGE TO ME THAT SHE EXECUTED THE SAME AS HER OWN FREE ACT AND DEED.

HARVEY SCHNEIDER
 NOTARY PUBLIC, NORTH DAKOTA

OWNER'S CERTIFICATE OF DEDICATION

WE, THE UNDERSIGNED, BEING THE SOLE OWNERS OF THE LAND PLATTED HEREON, DO HEREBY VOLUNTARILY CONSENT TO THE EXECUTION OF SAID PLAT, AND DO DEDICATE ALL THE STREETS, ALLEYS, PARKS, AND PUBLIC GROUNDS AS SHOWN HEREON, INCLUDING ALL SEWERS, CULVERTS, BRIDGES, WATERLINES, SIDEWALKS AND OTHER IMPROVEMENTS ON OR UNDER SUCH STREETS, ALLEYS OR OTHER PUBLIC GROUNDS, WHETHER SUCH IMPROVEMENTS ARE SHOWN HEREON OR NOT TO PUBLIC USE FOREVER. WE ALSO DEDICATE EASEMENTS TO RUN WITH THE LANDS FOR WATER, SEWER, GAS, ELECTRICITY, TELEPHONE, OR OTHER PUBLIC UTILITY LINES OF SERVICES UNDER, ON OR OVER THESE CERTAIN STRIPS OF LAND DESIGNATED AS 'UTILITY EASEMENTS'.

WE ALSO DEDICATE EASEMENTS LABELED AS "ACCESS EASEMENTS" TO RUN WITH THE LAND FOR USE BY ALL LAND OWNING PARTIES INDICATED IN NOTE 2, THEIR TENANTS, VISITORS AND LICENSEES, AND FOR THE USE OF ANY GOVERNMENTAL SUBDIVISION, ITS OFFICERS AND EMPLOYEES FOR EMERGENCY SERVICES AND ANY OTHER GOVERNMENTAL USE OR USES, PROVIDED THAT MAINTENANCE AND CLEARANCE OF THE EASEMENT IS THE RESPONSIBILITY OF THE LAND OWNING PARTIES AND THE CITY SHALL NOT BE RESPONSIBLE IN ANY WAY TO FURNISH ANY CITY SERVICES IF SUCH ACCESS EASEMENTS ARE NOT PROPERLY MAINTAINED OR ARE OBSTRUCTED BY THE OWNERS OF PROPERTY IN THE SUBDIVISION.

WE FURTHER GRANT ANY OTHER EASEMENTS OR SERVITUDES AS SHOWN AND THOSE THAT ARE RECORDED BUT NOT SHOWN.

JERRY L. SCHAFF, PRESIDENT
 JB LAND LLC

SUBSCRIBED AND SWORN BEFORE ME, A NOTARY PUBLIC, THIS _____ DAY OF _____, 2020.

 NOTARY PUBLIC
 COUNTY, _____
 MY COMMISSION EXPIRES: _____

PLANNING COMMISSION APPROVAL

THE SUBDIVISION SHOWN HEREON HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MANDAN ON THIS _____ DAY OF _____, 2020, IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF SAID CITY OF MANDAN, AND REGULATIONS ADOPTED BY THE PLANNING COMMISSION OF SAID CITY. IN WITNESS WHEREOF ARE SET THE HANDS OF THE CHAIRMAN AND THE SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF MANDAN, NORTH DAKOTA.

BILL ROBINSON - CHAIRMAN _____ NANCY MOSER - SECRETARY _____

APPROVAL OF BOARD OF CITY COMMISSIONERS

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF MANDAN, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND SHOWN HEREON, HAS ACCEPTED THE DEDICATION OF ALL STREETS, ALLEYS, AND PUBLIC WAYS SHOWN HEREON LYING WITHIN THE CORPORATE LIMITS OF THE CITY OF MANDAN, HAS ACCEPTED THE DEDICATION OF ALL PARKS AND PUBLIC GROUNDS SHOWN HEREON. FURTHERMORE, SAID BOARD OF CITY COMMISSIONERS HAS APPROVED THE STREETS, ALLEYS, AND OTHER PUBLIC WAYS AND GROUNDS SHOWN HEREON AS AN AMENDMENT TO THE MASTER STREET PLAN OF THE CITY OF MANDAN, THE FOREGOING ACTION BY THE BOARD OF CITY COMMISSIONERS OF MANDAN, NORTH DAKOTA, HAS TAKEN BY RESOLUTION THIS _____ DAY OF _____, 2020.

JIM NEUBAUER - CITY ADMINISTRATOR _____ TIM HELLING - PRESIDENT OF THE BOARD OF CITY COMMISSIONERS _____

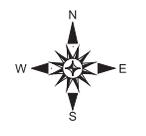
I, JUSTIN FROSETH, CITY ENGINEER FOR THE CITY OF MANDAN, NORTH DAKOTA HEREBY APPROVES 'SCHAFF ESTATES' OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA AS SHOWN ON THE ANNEXED PLAT.

JUSTIN FROSETH, PE

OWNER:
 JB LAND LLC
 1806 SCHAFF DR
 MANDAN, ND 58544

BASIS OF BEARING:
 NORTH BOUNDARY LINE NW1/4 SEC. 7
 NORTH 89° 21' 18" EAST

- NOTES:**
- BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS DOCUMENTS OF RECORD DUE TO DIFFERENT METHODS OF FIELD MEASUREMENT.
 - THE ACCESS EASEMENT SHOWN HEREON IS FOR JOINT USE, AND TO THE BENEFIT OF LOT 1, SCHAFF ESTATES AND THE E1/2 OF GOVERNMENT LOT 1 EQUALLY.
 - APPROXIMATE LOCATION OF A MARATHON UNDERGROUND PIPELINE (SEE PARTICULARS IN BOOK 41, PAGE 508) MARKED AND LOCATED ON 03/19/2020, AND PER ND ONE CALL TICKET NO. 20010934.
 - LOTS 1 AND 2 OF THIS PLAT IS SUBJECT TO A DEVELOPMENT AGREEMENT RECORDED AS DOCUMENT NO. _____
 - LOT AREA: 17.00 ACRES
 - ROW AREA: 4.43 ACRES
 - TOTAL AREA: 21.43 ACRES



LEGEND

- ▲ FOUND SECTION/QUARTER CORNER
- FOUND REBAR MONUMENT
- SET REBAR MONUMENT

AUDITOR'S OFFICE, MORTON CO., ND.
 DELINQUENT TAXES AND SPECIAL ASSESSMENTS OR INSTRUMENTS OF SPECIAL ASSESSMENTS, PAID AND TRANSFER ACCEPTED.

DAWN R. RHONE, COUNTY AUDITOR
 BY _____ DEPUTY

APPROVED BY COUNTY AUDITOR'S OFFICE
 DAWN R. RHONE, AUDITOR

BY _____ DEPUTY
 DATE: _____

EXHIBIT 2

Development Agreement

Schaff Estates

This Agreement is made and entered into on the 19th day of May, 2020, (hereinafter the “effective date”) by and between the City of Mandan (hereinafter referred to as the “City”) and JB Land, LLC (hereinafter referred to as the “Developer”). The address for the City of Mandan is 205 2nd Avenue NW, Mandan, North Dakota 58554. The address of Developer is 1806 Schaff Dr., Mandan, ND 58554. This agreement is a covenant running with the Property and binding upon any and all future owners of the Property.

WHEREAS, the Developer is the owner of property whose legal description is the W1/2 of Government Lot 1, Section 7, Township 139N, Range 81W of Morton County, North Dakota (hereinafter referred to as the “Property”); and

WHEREAS, the Developer wishes to develop the approximate twenty-one and one-half (21.5) acre Property into a development named Schaff Estates (hereinafter referred to as the “Development”); and

WHEREAS, said Development is currently planned to include two (2) single-family lots of approximately equal acreage; and

WHEREAS, the Development, without this agreement, could create disorder in future development, raising costs of public infrastructure and private development for the surrounding lands; and

WHEREAS, the agreement provides the Developer a means to achieve the desired outcome of the Development of two (2) single-family lots and preserve the remaining land for future development to its highest and best use; and

WHEREAS, said agreement utilizes for reference a document (hereinafter referred to as “Ghost Plat”) showing future right-of-way and additional lots as a proof of concept for future development to align with the present average lot size of the future land uses for the Property as presently denoted on the Mandan Future Land Use and Transportation Plan (originally adopted June 2015 and hereinafter referred to as the “Plan”); and

WHEREAS, nothing in this agreement prohibits the Developer from revising the layout of the lots of the Ghost Plat subject to the necessary jurisdictional approvals including Mandan Planning and Zoning Commission and the Mandan Board of City Commissioners; and

WHEREAS, nothing in this agreement prohibits the City from adopting alternative land uses through a new land use plan or amendment to the Plan affecting the Property as prescribed by State

law and the Mandan Code of Ordinances and requiring any future development to align with said plan.

NOW THEREFORE, it is agreed between the parties as follows:

1. The Development is restricted to one buildable area on each lot as shown in the attached Ghost Plat illustrated by hashed lines on each respective lot in the Development.
2. Any improvements, whether permitted or otherwise, whether above or below ground such as a septic system and land designated for a secondary septic system, are to be contained within the buildable area boundaries.
3. At the request of the Mandan Building Official, a building permit application will denote the boundaries of the buildable area to ensure the location of any structure is contained within the buildable area.
4. Access to Lot 1 of the Development will be restricted to the existing approach located in the northeast corner.
5. Access to Lot 2 of the Development will be restricted to the depicted right-of-way immediately north of the buildable area.
6. Upon future development of the Property outside the buildable areas of the respective lot, the Developer will vacate the corresponding approach for the construction of a public road or access easement intended to provide access to future lots and utilize said public road or access easement in lieu of the existing private driveway or approach.
7. The Developer will not be required to improve the road 24th Ave. or 37th St. to a standard urban section including paving, curb, and gutter, for the purposes of obtaining a single-family residential building permit or related accessory structure(s) within the buildable area on each lot of the Property.
8. Future development on the Property will align with the adopted land use and transportation plan of the City of Mandan at the time of application unless approved by the Board of City Commissioners.

Mayor Tim Helbling
City of Mandan

Attest:

Jim Neubauer
City Manager

Jerry L. Schaff, President
JB Land, LLC

Attest:



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

G - _____ (_____) _____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization

BISMARCK CANCER CENTER FOUNDATION

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location

PRAIRIE WEST GOLF COURSE

Street

2709 LONGSPUR TRAIL

City

MANDAN

ZIP Code

58554

County

MORTON

Beginning Date(s) Authorized

JULY 1 2020

Ending Date(s) Authorized

JUNE 30 2021

Number of twenty-one tables if zero, enter "0":

0

Specific location where games of chance will be conducted and played at the site (required)

#1 FAIRWAY

JUNE 2021

If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)

Hours of gaming (if restricted)

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

Bingo

Club Special

Sports Pools

ELECTRONIC Quick Shot Bingo

Tip Board

Twenty-One

Raffles

Seal Board

Poker

ELECTRONIC 50/50 Raffle

Punchboard

Calcuttas

Pull Tab Jar

Prize Board

Paddlewheels with Tickets

Pull Tab Dispensing Device

Prize Board Dispensing Device

Paddlewheel Table

ELECTRONIC Pull Tab Device

APPROVALS

Attorney General

Date

Signature of City/County Official

Date

PRINT Name and official position of person signing on behalf of city/county above

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-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. 08-2019)

License Number (Office Use Only)

Site Owner (Lessor) PRAIRIE WEST GOLF COURSE		Site Name PRAIRIE WEST GOLF		Site Phone Number 701-751-6771
Site Address 2709 LONGSPUR TRAIL		City MANDAN	State ND	Zip Code 58554
Organization (Lessee) Bismarck Cancer Center Foundation		Rental Period 7/1/2020 to 6/30/2021		County MORTON
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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes				
2. Is Twenty-One conducted at this site?		Number of Tables with wagers up to \$5 _____ <input checked="" type="checkbox"/> Rent per Table \$ _____		\$
		Number of Tables with wagers over \$5 _____ <input checked="" type="checkbox"/> Rent per Table \$ _____		\$
3. Is Paddlewheels conducted at this site?		Number of Tables _____ <input checked="" type="checkbox"/> Rent per Table \$ _____		\$
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$
Please check: <input type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device				
<input type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices _____				\$
Total Monthly Rent				\$ 0

5. If the only gaming activity to be conducted at this site is a raffle drawing, please check here.

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, pay a prize board cash prize, and award a prize board merchandise prize 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.

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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>Bradley W. Olson</i>	Title <i>Golf Operations Manager</i>	Date <i>5/10/20</i>
Signature of Lessee <i>Amy Gross</i>	Title <i>Executive Director</i>	Date <i>5-20-2020</i>



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

G - _____ (_____)_____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization **BISMARCK CANCER CENTER FOUNDATION**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location MIDWAY LANES -			
Street 3327 MEMORIAL HWY	City MANDAN	ZIP Code 58554	County MORTON
Beginning Date(s) Authorized JULY 1 2020	Ending Date(s) Authorized JUNE 30 2021	Number of twenty-one tables if zero, enter "0": 0	
Specific location where games of chance will be conducted and played at the site (required) ENTRYWAY AREA			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known NOVEMBER 2020			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
---	---------------------------------

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input checked="" type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input type="checkbox"/> ELECTRONIC Pull Tab Device		

APPROVALS

Attorney General	Date
Signature of City/County Official	Date
PRINT Name and official position of person signing on behalf of city/county above	

- INSTRUCTIONS:**
1. City/County-Retain a **copy** of the Site Authorization for your files.
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 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:

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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. 08-2019)

License Number (Office Use Only)

Site Owner (Lessor) Midway Lanes		Site Name Midway Lanes		Site Phone Number	
Site Address 3327 Memorial Hwy		City Mandan	State ND	Zip Code 58554	County Morton
Organization (Lessee) Bismarck Cancer Center Foundation			Rental Period July 1 20 to June 30, 20		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 type="checkbox"/> Yes
				<input type="checkbox"/> No	<input type="checkbox"/> Yes
				\$	
2. Is Twenty-One conducted at this site?		X Rent per Table \$ _____		<input type="checkbox"/> No	<input type="checkbox"/> Yes
Number of Tables with wagers up to \$5 _____				\$	
Number of Tables with wagers over \$5 _____		X Rent per Table \$ _____		\$	
3. Is Paddlewheels conducted at this site?		X Rent per Table \$ _____		<input type="checkbox"/> No	<input type="checkbox"/> Yes
Number of Tables _____				\$	
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site?				<input type="checkbox"/> No	<input type="checkbox"/> Yes
Please check: <input type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device				\$	
<input type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices _____				\$	
Total Monthly Rent					\$ 0

5. If the only gaming activity to be conducted at this site is a raffle drawing, please check here.

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, pay a prize board cash prize, and award a prize board merchandise prize 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.

The LESSOR agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name.

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. Mella</i>	Title <i>Prem. Sect</i>	Date <i>5-11-2020</i>
Signature of Lessee <i>Arny Gross</i>	Title <i>Executive Director</i>	Date <i>5-20-2020</i>



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 29, 2020
SUBMITTING DEPARTMENT: Planning and Engineering
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: Justin Froseth, Planning and Engineering Director
SUBJECT: NDDOT Highway Closure Agreement

STATEMENT/PURPOSE: To consider approving of the agreement necessary for the DOT to allow the city to close state highways for events.

BACKGROUND/ALTERNATIVES: Primarily, this agreement is to allow the MPO to conduct their events on state highways, most notably Main Street, with the DOT's blessing. Individual permits will still need to be submitted to the city for the events that explains the details of the events to include road closures plus all the other event details. So long as the city follows the terms of this agreement, the DOT is satisfied.

ATTACHMENTS:

- 1) Agreement for Long-Term Temporary Highway Closure

FISCAL IMPACT: Minimal

STAFF IMPACT: Coordination and variable levels of involvement for each events' details necessary in order to satisfy the terms of this agreement.

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

RECOMMENDATION: Approve of the execution of the agreement with the DOT.

SUGGESTED MOTION: I move to approve of the Long-Term Temporary Highway Closure Agreement with the DOT.

NDDOT Contract No. 61200528

**North Dakota Department of Transportation
AGREEMENT FOR LONG-TERM TEMPORARY HIGHWAY CLOSURE**

In consideration of the mutual covenants contained herein, it is hereby agreed by and between the North Dakota Department of Transportation (NDDOT), whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and the City of Mandan, whose address is 205 2nd Ave NW Mandan ND 58554, as follows:

1. NDDOT hereby grants consent to the City to close any state highway within the City's jurisdiction. Each highway closure shall be reopened immediately after the conclusion of each event.
2. The City shall, within 48 hours of the anticipated closure, verbally notify and obtain the approval of the District Engineer.
3. The attached Risk Management Appendix is hereby incorporated and made a part of this agreement.
4. The City will obey and enforce all federal, state, and local laws.
5. The City shall set up a proper, adequate and safe closure and detour. The City shall be solely responsible for planning, constructing, maintaining, policing, and tearing down the closure and detour. All signing required for the closure and detour must meet the requirements of the Manual on Uniform Traffic Control Devices. The City agrees to inspect those portions of the highway to be used for activities associated with the highway closure.
6. The City acknowledges that the NDDOT has no duty to and will not provide for the supervision of activities associated with the highway closure.
7. The City shall return the segment of highway to substantially the same condition it was in prior to the closure and detour.
8. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The City, by the signature below of its authorized representative, hereby acknowledges that the City has read this agreement, understands it, and agrees to be bound by its terms and conditions.
9. The terms of this agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the parties.
10. Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time this agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.
11. This agreement may be terminated by the mutual consent of both parties, or by either party upon 30 days' notice, in writing, and delivered by certified mail or in person. In addition, NDDOT reserves the right to terminate this agreement, with or without cause, upon written notice.



12. This contract shall be effective when signed by all parties and shall terminate on 12/31/2020.

EXECUTED the date last below signed.

APPROVED:

CITY ATTORNEY (TYPE OR PRINT)

SIGNATURE

DATE

City of _____

NAME (TYPE OR PRINT)

SIGNATURE

TITLE

DATE

ATTEST:

CITY AUDITOR (TYPE OR PRINT)

SIGNATURE

DATE

*Mayor or President City Commission

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION:**

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

DISTRICT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1074 (Div. 70)
L.D. Approved 8-27-15



Risk Management Appendix

Routine* Service Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: State – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, its agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. The Governments shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 11-19





Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 26, 2020
SUBMITTING DEPARTMENT: Business Development & Communications
DEPARTMENT DIRECTOR: Ellen Huber, Business Development & Communications Director
PRESENTER: Ellen Huber, Business Development & Communications Director
SUBJECT: Consider a Renaissance Zone rehab application for 107 4th Ave NW by Dragon Royal LLC

STATEMENT/PURPOSE: To consider a Renaissance Zone Committee recommendation for approval of a rehab application for 107 4th Ave NW by Dragon Royal LLC.

BACKGROUND/ALTERNATIVES: The Renaissance Zone Committee met May 26, 2020. Among agenda items was consideration of an application for rehabilitation of 107 4th Ave NW by Frankie Huang of Dragon Royal LLC. The improvements are proposed for a two-story building, part of a set of adjacent buildings all listed under the same parcel on assessing records. Other buildings added on to the west end of parcel are currently leased to Nutrition Wellness Center and Curvy Flamingo. The applicant has purchased the property and is planning a full exterior and main level interior renovation. The main level will be leased to the owner's Rice Bowl restaurant.

The total estimated cost of the project is \$511,136.69 to include a roof replacement; new HVAC, plumbing, electrical, a walk-in cooler; plus an interior remodel involving changes to the walls, ceiling and flooring to create a dining area and kitchen area. Exterior improvements include fixing and painting the exterior walls; replacing storefront glass on building's east side, sealing three windows on the south side of the building so it can serve as a firewall, and replacement of doors. The proposal also includes moving signage from the existing location at the library to the new location, utilizing existing sign faces and cabinetry as much as possible, plus moving the existing awning.

The applicant's plan has received approval from the Mandan Architectural Review Commission contingent upon elimination of a projecting sign as proposed or

modification to comply with sign code size requirements, plus meeting all engineering requirements for the proposed sidewalk ramp and meeting fire code.

The proposed investment exceeds the minimum investment requirement to receive a 100% five-year property tax exemption on the building as improved under the Renaissance Zone Program. This requirement is to invest at least 50% of the building's value into it in improvements. The building is currently valued at \$347,700, so the minimum investment is \$173,850.

During the May 19 City Commission meeting, the applicant was approved for \$30,000 in matching funds for the Storefront Improvement program. The project's proposed investment far exceeds the buildings value and meets the individual requirements for both programs without overlap.

The applicant plans to begin renovations upon receiving local and state approval and have the project completed by the end of October.

ATTACHMENTS: Key excerpts from the application. Full application available upon request.

FISCAL IMPACT: City Assessor Kimberly Markley estimates the value of the building upon completion to be \$596,900. Using the current levy of 265 mills, the annual property tax on the building is estimated at \$7,924 for a five-year total of \$39,618. The actual property tax exemption will be subject to prevailing market values and property tax rates in the five subject years. The estimated state income tax exemption is \$1,836 annually for a five-year total of \$9,180.

STAFF IMPACT: Minimal for application processing and finalization.

LEGAL REVIEW: Attorney Brown has reviewed the information. The plans include installation of an automatic door in compliance with a local ordinance. A certificate of good standing, dated March 12, 2020 has been received. The N.D. Commerce Department also requires a business incentive agreements for each application.

RECOMMENDATION: The Mandan Renaissance Zone Committee voted 7-0 to recommend approval of the rehab application for 107 4th Ave NW by Dragon Royal LLC as a Renaissance Zone project to include the five-year 100% property tax exemption on the building as improved and the 100% five-year state income tax exemption.

SUGGESTED MOTION: I move to approve the application for rehab of 107 4th Ave NW by Dragon Royal LLC as a Renaissance Zone project to include the five-year 100% property tax exemption on the building as improved and the 100% five-year state income tax exemption.

ATTACHMENTS:

107 4th Ave NW

East Side – Existing



East Side - Proposed



107 4th Ave NW

North side – existing



North Side – proposed



Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: RZ application for rehab of 107 4th Ave NW by Dragon Royal LLC

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107 4th Ave NW

South side – existing



South side – proposed



107 4th Avenue NW

View from southwest



View from northwest



BISMARCK SIGN CO.

CLIENT: Rice Bowl

QUOTE #: 2783

DATE: 2/13/2020

SALES REP: WW

DESIGNER: MK

PRODUCTION NOTES:

Fabricate & Install:
Flat Replacement Faces
Quantity: 1
Cut Size: 60" tall x 96" wide
Material: Polycarbonate
Background Color: White
Copy: RICE BOWL,
CHINESE RESTAURANT, 663-1960

- APPROVED
- APPROVED PENDING REVISIONS
- REVISED AND RESUBMIT



X _____ PLEASE SIGN, DATE AND RETURN Date: _____

NOTICE
ALL SIGNS MANUFACTURED FOR SAFE ELECTRICAL SERVICE UNLESS OTHERWISE NOTED



PROOFING IS 100% YOUR RESPONSIBILITY

As the client you are responsible for final approval to this preview and to clarify its adequacy. Make sure to look over color, size, spelling and placement. We cannot accept responsibility for any errors or omissions where print or design conforms to approved proof.

1926 Frontier Dr. | Bismarck, ND 58504
701.765.7777

BISMARCK SIGN CO.

CLIENT: Rice Bowl

QUOTE #: 2865

DATE: 2/24/20

SALES REP: WW

DESIGNER: MK

PRODUCTION NOTES:

Remove the existing awning and re-install at the new location above the right entrance door.

- APPROVED
- APPROVED PENDING REVISIONS
- REVISED AND RESUBMIT



Approximate Scale

X _____ PLEASE SIGN, DATE AND RETURN Date: _____

NOTICE
ALL SIGNS MANUFACTURED FOR SAFE ELECTRICAL SERVICE UNLESS OTHERWISE NOTED



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1926 Frontier Dr. | Bismarck, ND 58504
701.765.7777

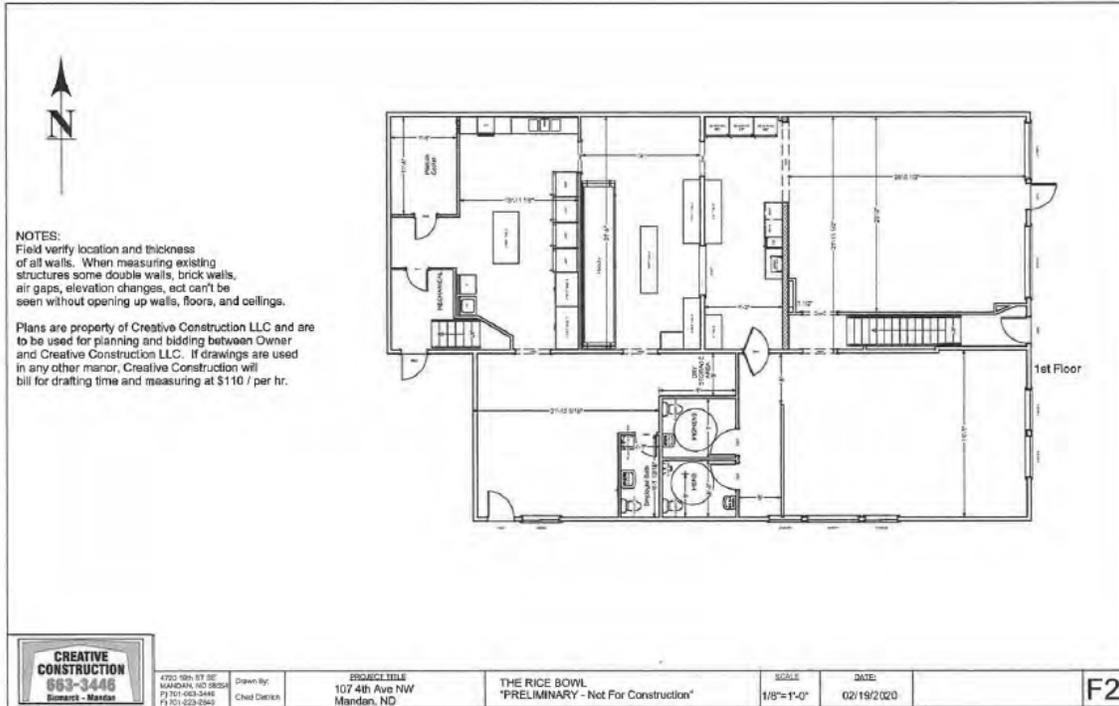
Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: RZ application for rehab of 107 4th Ave NW by Dragon Royal LLC

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4720 19th St SE, Mandan, ND 58554 chad@creativeconstructionllc.net
Fax: 701-223-2640

The Rice Bowl
Frankie Huang
107 4th Ave NW
Mandan, ND 58554

May 20, 2020

****REMODEL PROPOSAL****

Bid for remodeling the inside space at the address listed above as per the following. The only exterior work included in this bid is replacing concrete at the main entrance door to meet ADA.

Demolition: Reference the existing plan to the construction plan.

- Remove all walls in conflict with the construction plan.
- Open up walls that will remain to allow plumbing and electrical work.
- Remove all suspended ceilings.
- Remove all of the existing flooring.
- Remove flooring glue in areas to be tiled.
- Open the ceiling above the kitchen to install the reinforcement beams.

Drafting and Permitting:

- Finish scaled drawings and submit for the building permit.
- Permit fee included.

Concrete:

- Break out concrete for the plumber and pour in when complete.
- Contact City Engineering to get approval for a sidewalk ramp at the front entrance, remove concrete and pour with a City Approved concrete contractor.
- Remove concrete for the footing supports at the reinforcement beams.
- Float floors in the kitchen area to the new floor drains.

Framing and Insulation:

- Frame all walls as per the plan drawn by Creative Construction, LLC that is attached to this bid. 115' of walls.
- Backing for doors and bathrooms included.
- Frame full height around the exhaust hood duct.

Reinforce Roof Structure for Mechanical, and opening of doorways:

CW Structural Engineers to design wood beams and posts, with footings for the additional weight of the HVAC system and the kitchen hood that will add weight to the roof. They will also design the openings that will be cut in the common wall between the two sides of the building. The exact design has not been done yet and may effect the pricing included in this bid.

Sheetrock, Taping, and Painting:

- Sheetrock all framing included in this bid.
- Sheetrock 2 layers of 5/8" Fire-rated on the ceilings that have living space above.
- Sheetrock to be 2 layers on the South wall due to the need of a fire wall.
- Fire Tape all sheetrock that will have suspended ceilings.
- Tape, texture, prime, and paint all exposed sheetrock.
- Paint the existing walls that are to remain as is.
- Paint to be one color for the kitchen area and storage.
- Dining to have one wall color and one ceiling color.

Finish Work:

- Wood doors with wood trim to be installed in the bathrooms.
- The double swinger kitchen door to be stainless steel for cleaning purposes and reduced weight with a small window.
- All wood doors and trim to be finished by others not included in this bid.
- Lever locks to be installed on the doors with closure.
- 1 food pass through opening to be built between the kitchen and food receiving area.
- 2x4 suspended ceiling with cleanable kitchen grade tiles to be installed in the kitchen, food receiving, and dishwashing areas.
- 2x4 suspended ceiling with acoustical tiles to be installed in the bathrooms and storage.
- Tile Flooring to be installed in the Kitchen, Prep, Dining, and bathrooms.
Allocation: \$7.50 per sq ft

Plumbing: Allocation:

Scoping of the existing plumbing lines will need to be done and may effect the amount of work that needs to be done. The plumbing number has not been completed due to this and we used an Allocation of \$30,000 in this bid.

Electrical:

- * Copy of the bid is below for reference. We included \$3,000 for a fixture allocation in addition to this bid.

We will supply and install all materials, and labor

- Bid to include:
1. 400 amp meter single phase meter socket/service disconnect combo with three inch service mast to follow old service mast path in stucco. This area will have to made wider to make room for larger pipe and covered by general contractor.
 2. One 200 amp 42 space single phase loadcenter installed on south wall of storage room and one 150 amp single phase panel installed on east wall of server area of kitchen.
 3. Six GFCI outlets in kitchen above prep tables. This is required by electrical code.
 4. Six general outlets in kitchen area with one of them dedicated for washing machine.
 5. One 120 volt 20 amp GFCI protected circuit for dishwasher.
 6. Individual outlets for soda fountain, ice maker, and three beverage refridgerators.
 7. Six outlets on seperate circuits for refridgerators and freezers.
 8. Wiring for two five ton rooftop units, up to 60 amps 240 volts, one kitchen makeup air up to 30 amps 240 volts and one exhaust hood fan up to 30 amps 240 volts.
 9. Reconnection of existing hood lighting, gas valve and ansul system that will be installed by others in kitchen.
 10. Wiring of one walk in cooler condensor up to 20 amps 240 volts, 120 volt evaporator and two vaportight LED jar lights with switch by door.
 11. Wiring of one furnace and air conditioner. AC up to 30 amps 240 volts.
 12. Three bathroom lights, switches, GFCI protected outlets and exhaust fans. Exhaust fans to be supplied, installed and vented by HVAC.
 13. Twelve surface mount LED flat panel light fixtures in dining area and two in hallway by bathrooms, provisions for ten decorative fixtures in dining area, fixtures to be supplied by owner. Flat panel fixtures in dining area will be on dimmers.
 14. Sixteen flat panel light fixtures in kitchen, existing fixtures to be used in storage area. To include 3 way switching for storage area and kitchen area. Kitchen switching will light up west kitchen area and one light in each of the cooking area and server area. All others will be turned on with breaker in panel.
 15. Connection of four signs on east end of building as discussed. Signs to turn on and off with photoeye.

General Conditions

- 1) All applicable taxes are included in our submission.
- 2) The Electrical contractor shall not be held liable for errors or omissions in the designs of others, nor inadequacies of materials and equipment specified or supplied by others.
- 3) Equipment and materials supplied by the Electrical contractor are warranted only to the extent that the same are warranted by the manufacturer.
- 4) The Electrical contractor shall not be liable for indirect loss or damage.
- 5) Unless included in this proposal, all bonding and/or special insurance requirements are supplied at additional cost.
- 6) If a formal contract is required, its' conditions must not deviate from this proposal without our prior approval.
- 7) Anything (verbal or written) expressed or implied elsewhere, which is contrary to these conditions shall be null and void.

Note: This proposal may be withdrawn by Lillis Electric Inc. at anytime and if not accepted willi in 30 days. Payment to be as follows: Progress billing

Finance charges of 1 1/2% per month, which is an annual percentage of 18%, will be applied to all over due account 30days past invoice date.

HVAC and Kitchen:

- Copy of the bid is below for reference. We included \$2,000 any additional roof flashing.

~HVAC Proposal~

Northern Plains

HEATING & AIR
2510 Vermont Ave * Bismarck, ND 58504
Office: 222-2155 Fax: 222-3422

April 27, 2020
Creative Construction

Re: Rice Bowl - Revised

My Proposal hereby to furnish material and labor – complete with local and state codes.
Pricing listed below.

Payment to be made as follows:
As Work Progresses

All Material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the below specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature: Keith Berg
This proposal may be withdrawn by us if not accepted within 60 days

Work to Include:

Dining Area

- 1 – Carrier 5 ton heat / cool packaged roof top unit
- 1 – Carrier 0-100% fresh air economizer
- 1 – Carrier factory heat guard
- 1 – 36" tall equipment curb
- 1 – Honeywell Vision Pro 8000 digital thermostat with 1 remote averaging sensor
- Complete spiral duct for supply
- Shoemaker round fully adjustable diffusers
- Start and test system

Kitchen Area

- 1 – Carrier 5 ton heat / cool packaged roof top unit
- 1 – Carrier 2 position fresh air damper
- 1 – Carrier factory hail guard
- 1 – 36" tall equipment curb
- 1 – Honeywell Vision Pro 8000 digital thermostat
- Complete ductwork and diffusers
- Supply duct insulated with 1½" duct wrap
- Start and test system

Storage / Prep / Restroom Area

- 1 – Bryant 96% efficient furnace
- 1 – Bryant 3 ton 13 seer air conditioning system
- 1 – Honeywell Vision Pro 8000 thermostat with 1 remote averaging sensor
- Complete ductwork and diffusers
- 2 – Panasonic bath fans with venting
- 2 – 1500 watt electric wall heaters for customer restrooms
- PVC venting for furnace

~HVAC Proposal~

Kitchen Ventilation System

- 2 – Larkin 10' long class A stainless steel exhaust hoods
- 2 – Larkin 3000 cfm grease fans
- 1 – Larkin 4800 cfm gas fired make up air unit
- 20" tall factory curbs
- Complete grease duct welded and insulated to code – 2 ducts – 16x16
- Complete fresh air ductwork insulated with 1½" duct wrap
- Stainless back splash behind hood
- Complete Ansul system by JT Fire Included
- Complete air balance by Balance Professionals of Bismarck included
- Start and test system

Miscellaneous Items

- Gasline to all HVAC and ventilation systems
- Gas line to cook line
- Roof curb for line set, bath venting, fresh air to furnace and gas line to roof HVAC items
- Material and labor for all above listed items

Refrigeration:

- Build insulated walls and a roof in the location of the plan for a walk in cooler.
- Cooler door and all required equipment included and installed by Red River Refrigeration.

Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: RZ application for rehab of 107 4th Ave NW by Dragon Royal LLC

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Roof Replacement:

Precision Services
P.O. Box 489
Bismarck, ND
58502
(701)221-9518

Estimate

Date	Estimate #
4/6/2020	1656

Name / Address
STEVEKILLEN

				Project
Item	Description	Qty	Rate	Total
Duro-last roof	ROOF 500 W MAIN ST MANDAN, ND Duro-last roof: Lay 3/8" fanfold over roof and stretch Duro-last membrane over entire roof	1,592	6.25	16,200.00
Duro-last prep	Duro-last roof prep: Clear all debris from roof including but not limited to rock and tree branches. Price per hour.	8	65.00	520.00
OTHER	TAPER INSULATION FOR DRAINAGE	1	978.00	978.00
Landfill charge	Landfill charge: Charge for hauling refuse to city dump. (dump fees)	1	400.00	400.00
OTHER	FREIGHT AND LIFT	1	1,200.00	1,200.00
OTHER	FLASH PARAPET WALLS	118	11.10	1,309.80
OTHER	DRAIN COVERS	2	120.00	240.00
OTHER	BOOTS	1	75.00	75.00
OTHER	MANIPULATE 1 AC UNITS	2	150.00	300.00
Total				\$21,222.80

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ITEMS ALSO INCLUDED:

- A) Class A contractors license and insured.
- B) Management of the work included in our bid.
- C) Occupancy drawing and redrawing of plan if needed to keep the occupancy below 99 so the restaurant won't need a fire sprinkler system.

TOTAL PACKAGE = \$437,909.00

(Four hundred thirty seven thousand, nine hundred, nine dollars, and no cents.)

Payment Terms: 15% downpayment, progress payments, and balance due upon completion.
If any item is not listed above, then it is not provided by Creative Construction, LLC.

Authorized Signature  PROPOSAL GOOD FOR 30 DAYS
Chad L. Dietrich – President

Acceptance Signature _____ Date _____

Print _____ Title _____

Proof of financing will be required prior to start the project and downpayment issued.



4720 19th St SE, Mandan, ND 58554 chad@creativeconstructionllc.net
Fax: 701-223-2640

The Rice Bowl
107 4th Ave NW
Mandan, ND 58554

May 4, 2020

**** PROPOSAL ****

Exterior Work as per the following:

Glass Storefront:

- *Remove the existing storefront glass windows and doors.
- *Installation of class 2 clear T14000 Thermal framing 2"x4.5" on the East side of the building. 2 - 57"x50", 1 - 108"x68", 1 - 82" x68"
- *2 - 3'x7' Narrow stile doors with 10" bottom rail.
- * North RH ousting door, 1.5" pair of butt hinges, push / pull, MS lock w/ thumbturn, Powerswing automatic closer, wireless tap plates, transmitter & reciever, Mortise cylinder, sweep, and threshold.
- *South LH ousting door, 1.5" pair of butt hinges, first choice panic, offset pull, rim cylinder, Hager 5700 closure, sweep, threshold.
- *1" clear tempered glass with Energy Advantage low-e, air infill.
- *Exterior caulking of Aluminum frame to be Sikasil WS-295 Aluminum color.

Electrical:

- *Wire the electric door closure.

Exterior Window Trim:

- *Scrape wood window trim.
- * Prime window frames as some are in bad shape.
- *2 coats of accent color paint.

Page 2

Exterior Walls:

- *Remove the flag mount on the wall with the wood base, caulk holes.
- *Remove 3 lower windows on the south wall, frame, insulate, sheetrock, foam, and EIFS shut.
- * Replace the door on the south wall with a fire-rated door, 2 coats of accent color paint.
- *Caulk joints in EIFS on the walls to be painted.
- *2 coats of paint to be applied to the EIFS on the walls shown on the photo.
- *2 coats of accent paint to be applied to the accent band on the building.
- *Scissor lift to complete the job.

ITEMS ALSO INCLUDED:

- A) Building Permit.
- B) High safety standards with safety equipment.
- C) Class A Contractor's license and insured.
- D) Equipment for scope of work above.
- E) Management of all work in this contract.
- F) Garbage container for work included in this bid.
- G) Clean the building area during and after construction.

TOTAL: \$59,074.00
(Fifty nine thousand, seventy four dollars and no cents.)

*Payment Terms: 10% down payment, progress payments, and balance due upon completion.
Past due invoices will be assessed a finance charge of 18% per year.*

Authorized Signature  PROPOSAL GOOD FOR 30 DAYS
Chad L. Dietrich – President

Acceptance Signature _____ Date _____

Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: RZ application for rehab of 107 4th Ave NW by Dragon Royal LLC

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 701.751.7777  www.bismarcksignco.com

SOLD TO:	JOB LOCATION:
RICE BOWL 107 4TH AVE NW MANDAN ND 58554	RICE BOWL 107 4TH AVE NW MANDAN ND 58554 REQUESTED BY: Frankie Haug

Bismarck Sign Company (HEREINAFTER CALLED THE "COMPANY") HEREBY PROPOSES TO FURNISH ALL THE MATERIALS AND PERFORM ALL THE LABOR NECESSARY FOR THE COMPLETION OF:

QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	QUOTE #2783 Provide and install qty (1) 5' x 8' face for the existing sign cabinet.	\$1,353.01	\$1,353.01
1	QUOTE #2784 Convert the existing 5' tall x 8' wide wall sign to LED illumination.	\$971.73	\$971.73
1	QUOTE #2787 Remove the existing sign from the existing location and move it to the new location a block away. Mount the sign on the east side of the building. Exact location is to be determined.	\$821.64	\$821.64
1	QUOTE #2802 Remove the existing flag mounted sign from the existing location and move it to the new location a block away. Mount the sign on the east side of the building. Exact location is to be determined.	\$1,429.09	\$1,429.09
1	QUOTE #2803 Provide and install qty (2) 6' x 4' pan faces for the existing sign cabinet.	\$2,533.39	\$2,533.39
1	QUOTE #2803A Convert existing 6' x 4' flag mounted sign to LED illumination.	\$793.56	\$793.56
1	QUOTE #2804A Provide and install qty (1) 4' x 8' face for the existing sign cabinet.	\$1,076.27	\$1,076.27
1	QUOTE #2804B Convert the existing florescent lighting in the 4' x 8' wall sign to LED illumination.	\$656.65	\$656.65
1	QUOTE #2865 Remove the existing awning and re-install at the new location above the right entrance door.	\$492.98	\$492.98
1	QUOTE #2865A Convert the existing awning illumination to LED illumination.	\$772.93	\$772.93

COMPANY INITIALS _____

CUSTOMER INITIALS _____

Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: RZ application for rehab of 107 4th Ave NW by Dragon Royal LLC

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📍 1926 Frontier Drive | Bismarck, ND 58504

📞 701.751.7777 🌐 www.bismarcksignco.com

PROPOSAL

Proposal #: 11332

Proposal Date: 05/01/20

Customer #: 2509

Page: 2 of 5

1.	QUOTE #3383 Recover the existing awning and eradicate graphics.	\$3,252.44	\$3,252.44
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ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED, AND THE ABOVE TO BE IN ACCORDANCE WITH THE DRAWINGS AND OR SPECIFICATIONS SUBMITTED FOR THE ABOVE WORK AND COMPLETED IN A WORKMANLIKE MANNER FOR THE SUM OF:

TOTAL PROPOSAL AMOUNT: \$14,153.69



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 26, 2020
SUBMITTING DEPARTMENT: Business Development & Communications
DEPARTMENT DIRECTOR: Ellen Huber
PRESENTER: Ellen Huber
SUBJECT: Consider a Renaissance Zone lease application for 107 4th Ave NW by Rice Bowl LLC

STATEMENT/PURPOSE: To consider a Renaissance Zone Committee recommendation for approval of a lease application for 107 4th Ave NW by Rice Bowl LLC.

BACKGROUND/ALTERNATIVES: The Renaissance Zone committee met May 26, 2020 to consider the above application. The Rice Bowl LLC has applied for lease of the main level of a two-story building at 107 4th Ave NW. The Rice Bowl plans to lease the approximate 2,700 sq. ft. space for relocation of the restaurant. The Rice Bowl has been in operation in Mandan for 27 years, currently leasing about 3,500 sq. ft. above the Morton Mandan Public Library.

Renaissance Zone project guidelines state, "Close scrutiny will be given to projects involving commercial tenants relocating within the Zone Area, which may not be eligible for tax incentives." Criteria for lease applications include expansion by existing businesses in the zone. While the application doesn't involve expansion in terms of square footage for the business, it does offer expanded employment and sales potential. The Rice Bowl has four full-time and nine part-time employees with plans to hire four or more employees over the next five years as restaurant sales grow as anticipated with improved visibility. Approximately 50% of Rice Bowl sales are through delivery and pickup.

Rice Bowl operators will now own the property instead of lease and the proposal retains a long-time restaurant in Mandan. With the upcoming library and park enhancement project, owner Frankie Huang became concerned about parking and ease of access to the restaurant for customers. The Renaissance Zone Committee's motion to recommend approval of the project included support of waiving any requirement for expansion in terms of square footage as a requirement for relocation to keep the restaurant in the city.

ATTACHMENTS: Application available upon request.

FISCAL IMPACT: The estimated state income tax exemption is \$1,800 a year for a five-year projection of \$9,000.

STAFF IMPACT: Minimal for application processing and finalization.

LEGAL REVIEW: Attorney Brown has reviewed the application. The applicant has provided a certificate of good standing from the N.D. Tax Department dated November 26, 2019. A business incentive agreement will be required.

RECOMMENDATION: The Renaissance Zone Committee voted 7-0 to recommend the approval of the application for lease of 107 4th Ave NW by Rice Bowl LLC as a Renaissance Zone project to include the 100% five-year state income tax exemption.

SUGGESTED MOTION: I move to approve the application for lease of 107 4th Ave NW by Rice Bowl LLC as a Renaissance Zone project to include the 100% five-year state income tax exemption.



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 26, 2020
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Sale of Lots 9 through 12, Block 3 Heart View Addition

STATEMENT/PURPOSE: Consider sale of Lots 9 through 12, Block 3 Heart View Addition.

BACKGROUND/ALTERNATIVES:

Mr. Zitterman has presented an offer of \$5,000 for the purchase of Lots 9 through 12, Block 3 Heart View Addition. Each Lot is listed for \$10,000 individually. While the offer is low, the additional expenses for an engineered foundation, which amounted to around \$25,000 for the home constructed to the south on the lots sold last year, should be taken into consideration.

A total specials balance of \$2,168.40 exists and will be absorbed by the purchaser following proration for the year.

The offer also specifies that closing costs would be shared between buyer and seller. Historically, the buyer has paid for all the closing costs for City property sold in the last year and a half.

Staff is recommending countering for \$11,800 and for the buyer to pay all closing costs.

This amount was determined using last year's sale of the lots to the south which had similar development obstacles. The lot size for the sale last year was 0.55 acres and the sale price was \$6,500. The four lots subject to this purchase and sale agreement total one acre and the proportional sale price by acreage equates to \$11,800. The buyer paying all closing costs aligns with previous City property sales in the past 18 months.

There was some confusion in the previous sale of property to the south regarding availability of water/sewer. Moving forward, Darren Schmidt, Oaktree Realtors will

include language that does not warrant that water/sewer is available. For each of the lots, it may or may not be stubbed into the property. In nearly all instances it will not. With that, addressing this issue in the counter is important.

ATTACHMENTS:

Exhibit 1 – Purchase Agreement

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Attorney Brown has reviewed the purchase agreement in Exhibit 1.

RECOMMENDATION: Engineering and Planning Department is recommending to counter the purchase and sale agreement with the purchase price of \$11,800, buyer to pay all closing costs, and that the City does not warrant water, sewer, and other utilities are available to the property. .

SUGGESTED MOTION: I move to approve a counter offer with a purchase price of \$11,800, buyer to pay all closing costs, and that the City does not warrant water, sewer, and other utilities are available to the property. .

EXHIBIT 1



PURCHASE AGREEMENT # JH43020

PAGE 1

This form is approved by the Bismarck Mandan Board of REALTORS® which disclaims any liability out of use or misuse of this form.

Date 4-30-20 MLS Listing # 401989, 401990, 401991, 401992 Page 1 of 6 Pages

GOVERNING LAW This agreement shall be governed by, construed and interpreted in accordance with the laws of, and under the jurisdiction of, the State of North Dakota and any actions shall be venued in the county in which the property is located.

References to "day" or "days" in this Purchase Agreement shall be construed as business days. Business days are defined as Monday through Friday, excluding Federal and State holidays.

Time is of the essence in this Purchase Agreement.

ENTIRE AGREEMENT: This Purchase Agreement, and any addenda or amendments signed by the parties, and any attached exhibits shall constitute the entire agreement between Seller(s) and Buyer(s) and supersedes any other written or oral agreements between Seller(s) and Buyer(s). This Purchase Agreement can be modified only in writing signed by Seller(s) and Buyer(s).

Buyer(s) Kyle Zittlerman has/have agreed to pay Five Thousand and no/100 Dollars (\$ 5,000⁰⁰)

for the Property at: Street Address 705, 707, 209, 211 14th ave. NW
City of Mandan County of Morton State of ND Zip 58554
Legally described as: Lots 9, 10, 11, and 12, Block 3, Heartnew Addition

The sum of One Thousand Dollars (\$ 1,000.00) from Buyer(s) by (Check one) Check Cash EFT/ACH as earnest money to be deposited upon acceptance of Purchase Agreement by all parties on Trademark Realty before the next business day after acceptance or in the trust account of _____.

(Check one): Listing Buyer Broker or to be returned to Buyer(s) if Purchase Agreement is not accepted by Seller(s). Buyer(s) agrees to pay in the following manner: Earnest money in the amount mentioned above, and additional earnest money of \$ 0 due on 0. Seller has the right to terminate this Agreement if earnest money is not received as agreed herein. Financing, if any, shall be as follows:

(Check one): CONVENTIONAL FHA VA ASSUMPTION CONTRACT FOR DEED OTHER: CASH

PRE-APPROVAL: Buyer(s) shall provide Seller(s) within N/A days, at 5 p.m., with written evidence acceptable to Seller(s) from a lender, showing pre-approval of a loan sufficient to allow Buyer(s) to purchase the property. If Buyer(s) fails to timely provide such written evidence, either party has the option to terminate this purchase agreement.

If financing fails after the contingency completion date, earnest money shall be released: to Buyer to Seller Other Agreement: _____; provided, that nothing herein shall limit the right of Seller to pursue all available remedies for breach of this purchase agreement.

Including the following Property, if any, owned by Seller(s) and used and located on said Property: garden bulbs, plants, shrubs, and trees; storm windows, storm doors, screens, and awnings; window shades, blinds, traverse, curtain and drapery rods; attached lighting fixtures and bulbs; plumbing fixtures, water heater, heating plants; built-in air conditioning equipment, electronic air filter, sump pump, attached television antenna, cable TV jacks and wiring, built-in humidifier and dehumidifier; attached basketball hoops;

Security System and related service contract shall be assumed by Buyer(s) (Check one) Yes No N/A
Propane tank and controls: (Check one): Owned Rented None;

BUILT INS: dishwashers, garbage disposals, trash compactors, ovens, cook top stoves, microwave ovens, hood fans, intercoms; ATTACHED: carpeting, mirrors, garage door openers and any controls, smoke detectors, fireplace screens, doors, and heat circulating inserts; and the following personal property (which is included at no additional value): N/A

The following personal property is excluded: N/A

Buyer(s) Initials: KZ Date: 4-30-20 Seller(s) Initials: _____ Date: _____ (Rev. 9/19)

PURCHASE AGREEMENT # JH43020



PAGE 2

Seller(s) agrees to remove all debris and all personal property not included herein from the Property by possession date. Includes all government payment, lease, or rental fees received between (date) _____ and (date) _____ unless specified as follows: _____

Homeowner association dues, rents, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between parties as of closing

Seller(s) to transfer security deposits and interest, if any, on leases to Buyer(s) at closing.

Heating fuel on hand at the time of possession shall be (Check one): _____ Included _____ Purchased by Buyer(s) N/A.

REAL ESTATE TAXES, based on the most current certified tax information available, shall be prorated between Seller(s) and Buyer(s) as of closing, 20____. Buyer(s) is advised to verify all tax information.

SPECIAL ASSESSMENTS shall be paid as follows: Annual Installments: Estimated annual installment due for the year of closing shall be paid by: (Check one): Buyer(s) and Seller(s) shall prorate as of the date of closing or _____ Seller(s) shall pay on date of closing. Buyer(s) is advised to verify all special assessments information.

Unpaid Balance: (Check one): Buyer(s) shall assume or _____ Seller(s) shall pay on the date of closing the balance of special assessments as of the date of closing. Following closing, Buyer(s) shall pay all real estate taxes and any unpaid special assessments payable therewith and thereafter, for which the payment is not otherwise provided. No representations have been made concerning the amount of subsequent real estate taxes or special assessments, including but not limited to assessments for completed special improvements, which have not been certified for collection.

CLOSING AND POSSESSION: Closing shall take place on or before May 29th 2020 June 30th 2020. Seller(s) shall deliver possession and keys for Property at time of closing or on closing. Settlement fee to be paid by (Check one): Buyer(s) _____ Seller(s) split 50/50 between Buyer and Seller. Settlement and commitment fees as defined by VA to be paid by the Seller on VA Financing. Buyer(s) agrees to allow the purchase price to be part of the Multiple Listing Service database and grants permission to use of the information by MLS participants and related government entities for comparable sales reports and statistics.

DEED/MARKETABLE TITLE: Upon performance by Buyer(s), Seller(s) shall deliver a Quit Claim deed (Warranty Deed unless otherwise specified), conveying marketable title, subject to: (A) Building and zoning laws, ordinances, state and federal regulations; (B) Restrictions relating to use or improvement of the Property; (C) Installments of special assessments or assessments for completed special improvements which have not been certified to the County Auditor for collection. (D) Prior reservation of any mineral rights; (E) Utility and drainage easements; (F) Rights of tenants as follows (unless specified, not subject to tenancies): _____

(G) Others (must be specified in writing): _____

MINERALS: In accordance with North Dakota Century Code 47-40-24, unless specifically excluded, Minerals and Royalties transfer with the surface estate; and, in accordance with North Dakota Century Code 47-40-25 the Gravel, Clay and Scoria transfer with the surface estate unless specifically reserved by name in deed, grant, or conveyance. Buyer(s) and Seller(s) are advised to seek independent legal counsel regarding any reservation of minerals and to address such reservations in a separate agreement or addendum.

TITLE AND EXAMINATION: Seller(s), at Seller(s)'s expense, shall furnish an updated abstract of title to the property certified to date, compiled pursuant to the NDLTA Abstracting Standards Manual (02/01/06) OR an ALTA Standard Coverage Owner's title policy, insuring the buyer's interest in the property in the amount of the sales price. If, after examination, Seller(s)'s title is not insurable or free of defects and cannot be made so by Closing, then at Buyer's option, this purchase agreement shall be terminated and the earnest money shall be refunded to Buyer(s). However, Buyer(s) may waive defects and elect to purchase. Seller to pay Abstracting Fees and Owner's Policy of Title Insurance as applicable. Buyers to pay Searching Fees, Attorney's Title Examination Fee, and Lender Policy of Title Insurance.

ENVIRONMENTAL CONCERNS: To the best of the Seller(s)'s knowledge, there are no hazardous substances or underground storage tanks unless otherwise noted in Purchase Agreement.

RISK OF LOSS: If there is any loss or damage to the Property between the date hereof and the date of closing for any reason, including fire, vandalism, flood, hail, wind, earthquake, or act of God, the risk of loss shall be on the Seller(s). If the Property is destroyed or substantially damaged before the closing date, this Purchase Agreement shall become null and void, at Buyer(s)'s option, and the earnest money shall be refunded to Buyer(s).

Buyer(s) Initials: KZ Date: 4-30-20 Seller(s) Initials: _____ Date: _____ (Rev. 9/19)

PURCHASE AGREEMENT #

JH43020



PAGE 3

INSPECTIONS AND REPAIRS: Seller(s) shall make the Property available for all inspections and tests upon reasonable notice by Buyer(s). Seller(s) shall at Seller(s)'s expense have all utilities on, including any propane, at the time of inspections. Any agreed upon repairs or other actions to correct items shall be completed by Seller(s) prior to Closing unless both parties agree in writing that funds for such repairs shall be escrowed.

SQUARE FOOTAGE AND/OR ACREAGE: Buyer(s) is aware that any reference to the square footage and/or acreage of the Property, both the real Property (land) and improvements thereon, is approximate. If square footage and/or acreage is a material matter to the Buyer(s), it must be verified by the Buyer(s).

SELLER(S) WARRANTIES:

Seller(s) warrants that building(s) is/are, or will be, constructed entirely within the boundary lines of the Property. Seller(s) warrants that there is a right of access to the Property from a public right of way. Seller(s) warrants that prior to closing, payment in full will have been made for: 1.) All condo and/or home association fees; and 2.) all labor, materials, machinery, fixtures, or tools, furnished within the 90 days promptly preceding the closing, used in connection with construction, alteration, or repair of any structure on, or improvement to, the Property. Seller(s) warrants that Seller(s) has not received any notice from any governmental authority as to violation of law, ordinance, or regulation for a condition that remains uncorrected, or any other notice from any governmental authority regarding the subject Property. Seller(s) warrants that, if Property is subject to restrictive covenants, Seller(s) has not received any notice from any person or authority as to a breach of the covenants which remains uncorrected. Any notices received by Seller(s) will be provided to Buyer(s) promptly. Seller(s) warrants that all appliances, heating, air conditioning, wiring and plumbing systems used and located on the Property will be in working order on the date of closing, except as noted in the Property disclosure statement. Seller(s) warrants that the Property is directly connected to: City Sewer: [X] yes ___ no Well: ___ yes [X] no Water system is: [X] City ___ Rural. If rural, will membership be transferred? ___ yes ___ no [X] N/A

FINAL WALK THROUGH: The Seller(s) grants Buyer(s) and any representative of Buyer(s) reasonable access to conduct a final walk through of the Property for the purpose of determining that repairs have been completed and that the Property is in substantially the same condition as on the date of acceptance of the contract. Seller(s) understands that the final walk through requires that the utilities be on, including propane, if applicable, and the Seller(s) is responsible for providing same at his expense. If Buyer(s) does not conduct such walk through, Buyer(s) specifically releases Broker(s) of any liability.

BUYER(S) RESPONSIBILITY REGARDING INSPECTIONS AND INVESTIGATIONS: Buyer(s) is advised by Broker to obtain inspections and investigations of the Property. Buyer(s) acknowledges that Buyer(s) should make inquiries and consult government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the use of the Property and the surrounding areas under applicable building, zoning, fire, health, and safety codes, and for evaluation of potential hazards. Buyer(s) shall keep the Property free and clear of liens, shall indemnify and hold Seller(s) harmless from all liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. The inspection period is the Buyer(s)'s sole opportunity to discover any existing defects prior to Closing. Buyer(s) waives any claim for an item warranted by the Seller(s) if Buyer(s) becomes aware of such claim during the Inspection Period and does not notify the Seller(s) in writing of such. Buyer(s) specifically releases, holds harmless, and indemnifies Broker(s) from any liability for any defects in the Property. If Buyer(s) requests repairs, Buyer(s) shall provide Seller(s) and Broker(s) upon receipt, at no cost, copies of all reports concerning the Property obtained by Buyer(s).

HOME PROTECTION PLAN: The Buyer(s) and/or Seller(s), at their option, may purchase a Home Protection Plan. This is an option and each plan may vary. Please contact Broker if you are interested. If no action is taken, it will be assumed that you waive this option. Buyer(s) has been made aware of the availability of home warranty plans. Buyer(s) (Check one): ___ Elects [X] Declines to have a home warranty plan. If elects, plan to be paid by (Check one): ___ Buyer(s) or ___ Seller(s) at a cost not to exceed \$ _____. Plan to be ordered by (Check one): ___ Listing Broker ___ Selling Broker. Broker and/or agent ordering the plan may receive a processing fee for services related to the purchase of a home protection plan.

MEGAN'S LAW DISCLOSURE: If Buyer(s) desires to obtain information regarding persons required to register as sexual offenders under North Dakota Law, Buyer(s) must contact the ND Attorney General's office, or access the Attorney General's web site at http://www.sexoffender.nd.gov/.

LEAD-BASED PAINT DISCLOSURE: Was Property built prior to 1978? ___ yes [X] no If yes, this purchase agreement is contingent on Buyer(s)'s review and acceptance of the Seller(s)'s "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards" (see Contingencies section).

Buyer(s) Initials: [Signature] Date: 4-30-20 Seller(s) Initials: _____ Date: _____ (Rev. 9/19)



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DEFAULT: If Seller(s)'s title is marketable or insurable and Buyer(s), contrary to this agreement, fails, neglects or refuses to complete the Purchase within ten (10) days after title is proven marketable or insurable, or by the closing date, whichever is later, then, at Seller(s)'s option either the earnest money shall be forfeited to Seller(s) as liquidated damages, since the parties agree the calculation of damages to Seller(s) would be difficult to ascertain with certainty and since parties further agree that the amount of liquidated damages is a reasonable attempt to estimate damages which will be suffered by the Seller(s), and this Agreement thereupon shall be of no further binding effect; or Seller(s) may demand and pursue any and all other remedies including but not limited to actual damages or specific performance of this agreement. If Seller(s), contrary to this Agreement, fails, neglects or refuses to perform as agreed, Buyer(s) may demand and pursue any and all remedies including, but not limited to, specific performance of this Agreement. A claim of either party for specific performance, or the Seller(s)'s claim to the earnest money as liquidated damages, shall be waived, unless legal proceedings are commenced within three (3) months after scheduled date of closing; further, unless the Seller, delivers copies of documents evidencing the Seller's commencement of legal proceedings to claim the earnest money to the Broker who has possession of the earnest money within said three-month time period, then the Broker, who has possession of the earnest money, shall be authorized to return the earnest money to the Buyer, free of any claim by the Seller. Retention of earnest money in any Broker's trust account pending resolution of the default shall not constitute an election of remedies by either party or prejudice their rights to pursue any and all other remedies including, but not limited to, specific performance.

CONTINGENCIES: All applicable contingencies must be initialed by Buyers and Sellers. This purchase agreement is subject to the satisfaction of those contingencies which are initialed below by both parties.

Buyer(s) and Seller(s) agree that, by 5 p.m. on (date) NA (contingency completion date), all contingencies agreed to in items 1 through 15 below shall be addressed to completion. If Seller is obligated to provide documents to Buyer, the contingency completion date shall be extended so that Buyer has a minimum of 48 hours following receipt of all such documents within which to deliver notice of termination.

Under the following contingencies, the Buyer, or the Seller, or in certain instances either party, has the option to terminate the purchase agreement; said option to be exercised by giving written notice by the contingency completion date. If such written notice is given by the contingency completion date the Buyer(s) shall receive a full refund of the earnest money. If written notice is not given by the contingency completion date by a party which had the option to terminate the purchase agreement, then the option to terminate the purchase agreement under the applicable contingencies are deemed to be waived. (See "Default" section.)

BUYERS AND SELLERS MUST INITIAL ALL APPLICABLE CONTINGENCIES.		BUYER(S) INITIALS	SELLER(S) INITIALS
1. PROPERTY CONDITION STATEMENT: Seller(s) to provide Buyer(s) with a Property Condition Statement. Buyer to review Property Condition Statement. If Buyer does not approve the Property Condition Statement, Buyer has the option to terminate this purchase agreement.			
2. INSPECTIONS: Buyer to complete inspections. If Buyer does not approve the results of the inspections, Buyer has the option to terminate this purchase agreement. Inspections and tests to be conducted at Buyer's Expense : (check all that apply): <input type="checkbox"/> Physical Property Inspection <input type="checkbox"/> Radon <input type="checkbox"/> Mold <input type="checkbox"/> Lead-Based Paint <input type="checkbox"/> Septic System <input type="checkbox"/> Asbestos <input type="checkbox"/> Well <input type="checkbox"/> Other:			
3. LEAD-BASED PAINT: Seller(s) to provide Lead-Based Paint Disclosure (for properties built prior to 1978 only). If Buyer does not approve Lead-Based Paint Disclosure, Buyer has the option to terminate this purchase agreement.			
4. CLAIMS LOSS HISTORY: Seller(s) to provide an insurance claims loss history report to Buyer(s). (Note: there are several kinds of such reports, one example is a CLUE report). If Buyer does not approve claims loss history report, Buyer has the option to terminate this purchase agreement.			
5. INSURANCE ADJUSTER'S REPORT: Seller(s) to provide copies of any insurance adjuster's reports for the previous _____ years. If Buyer does not approve insurance adjuster's reports, Buyer has the option to terminate this purchase agreement.			
6. FLOOD PLAIN: Buyer(s) to obtain flood plain verification. If Buyer does not approve the results of the flood plain verification, Buyer has the option to terminate this purchase agreement.			
7. CONDO DOCUMENTS: Seller(s) to provide current copies of condo by-laws and amendments, regulations, most recent financial statement, and minutes of the last two meetings. If Buyer does not approve these condo documents, Buyer has the option to terminate this purchase agreement.			
8. LEASES: Seller(s) to provide copies of current leases to Buyer. If Buyer does not approve the leases, Buyer has the option to terminate this purchase agreement.			
9. REGISTERED SEX OFFENDERS: Buyer(s) investigation of the possible presence of registered sex offenders in the vicinity of the property. If Buyer does not approve the findings regarding registered sex offenders, Buyer has the option to terminate this purchase agreement.			

Buyer(s) Initials: KZ Date: 4-30-20 Seller(s) Initials: _____ Date: _____ (Rev 9/19)



	BUYER(S) INITIALS	SELLER(S) INITIALS
10. RESTRICTIONS AND COVENANTS: Buyer(s) to obtain and review any government and/or private use restrictions and restrictive covenants. If Buyer does not approve the use restrictions or covenants, Buyer has the option to terminate this purchase agreement.		
11. MANUFACTURED HOME PARK: Buyer(s) to give notice to Seller(s) that approval has been obtained from manufactured home park for Buyer(s) to reside in the manufactured home in its existing location. If Buyer fails to timely provide notice of such approval, either party has the option to terminate this purchase agreement.		
12. WATER QUALITY TESTS: Buyer(s) obtain water quality tests, at Buyer(s) expense. If Buyer does not approve the results of the water quality tests, Buyer has the option to terminate this purchase agreement.		
13. SURVEY: Buyer(s) to obtain a survey of the property, conducted at (check one): <input type="checkbox"/> Buyer's expense or <input type="checkbox"/> Seller's expense. If Buyer does not approve the results of the survey, Buyer has the option to terminate this purchase agreement.		
14. PLANS AND PERMITS: Buyer(s) to obtain all necessary plans and permits for one or more of the following purposes: building plans and specifications, proposed subdivision development plans, rezoning or use permits, approval of building plans and/or specification in accordance with any recorded subdivision covenants, and approval of the architectural control committee. If Buyer does not obtain said plans and permits, Buyer has the option to terminate this purchase agreement.		
15. SOIL TESTS: Buyer(s) to obtain soil tests and percolation tests at <input type="checkbox"/> Buyer's expense or <input type="checkbox"/> Seller's expense. If Buyer does not approve the test results, Buyer has the option to terminate this purchase agreement.		

OTHER CONTINGENCIES:

A. **APPRAISAL CONTINGENCY:** Buyer's obligation to purchase is contingent on the property appraising at or above the agreed upon purchase price. If this contingency fails, Buyer(s) has the option to terminate this purchase agreement.

B. **24/48/72 HOUR CONTINGENCY ADDENDUM:** (check one) does does not apply (see attached addendum made a part of this contract, if applicable).

C. **CLOSING OF BUYER'S PROPERTY:** (This provision to be used if Buyer's property is under contract at the time of offer): (check one) does does not apply Buyer's obligation to purchase is contingent on closing of Buyer's property at (address) _____ Buyer(s) to provide written evidence within _____ days showing that Buyer(s) property has an accepted purchase agreement with qualified buyer and will close on or before closing of this Purchase Agreement. If Buyer(s) fails to provide such written evidence, the Seller(s), within _____ days following the deadline set forth in the previous sentence, may elect to terminate this Agreement, with earnest money to be returned to Buyer(s).

PLEASE NOTE: Buyer(s) may incur additional charges for improving the property including, but not limited to hook-up and/or access charges, costs for sewer access, stubbing access, water access, park dedication, road access, utility connection, phone lines, connecting fees, curb cuts, and tree planting.

SPECIAL CONDITIONS:

The Buyer's purchasing this property shall be contingent on the ability of the Buyer to obtain a Title Insurance Policy at the closing. The cost of the Title Insurance Policy shall be at the Buyer's expense.

RELEASE OF BROKER(S): Seller(s) and Buyer(s) hereby expressly release, hold harmless and indemnify all Broker(s) in this transaction from any and all liability and responsibility, including but not limited to, the property condition, square footage, acreage, lot lines or boundaries, value, rent rolls, environmental problems, mold, water, sanitation systems, roof, wind damage, hail damage, wood infestation and wood infestation report, compliance with building codes or other governmental regulations, or any other material matters relating to the Property.

AGENCY DISCLOSURE: Joe Hillerson (Agent Broker)
 Brokerage Trademark Realty
 Stipulates that she/he is representing the (Check one): Seller(s) Buyer(s) Neither Party Both Parties in this transaction. The listing agent or broker stipulates that she/he is representing the Seller(s) in this transaction.

APPOINTED AGENCY: Applies to in-house transactions only. Appointed agency (Check one): Does Does Not apply. If Broker has adopted appointed agency policy, dual agency may not apply. However, an appointed agent who singularly represents both Seller(s) and Buyer(s) in the same transaction is considered to be a disclosed dual agent owing fiduciary duties to both parties and must get permission from parties to act.

Buyer(s) Initials: BJ Date: 4-30-20 Seller(s) Initials: _____ Date: _____ (Rev 9/19)

JH43020



DUAL AGENCY REPRESENTATION: Dual agency representation (Check one): Does Does Not apply in this transaction. If dual agency does not apply, skip this entire section. If dual agency does apply, all parties must sign at the end of this section. Broker represents both the Seller(s) and the Buyer(s) of the Property involved in this transaction, which creates dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party.

Broker cannot act as a dual agent in this transaction without consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:

(1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;

(2) Broker and its salespersons will not represent the interest of either party to the detriment of the other;

(3) within the limits of dual agency, Broker and the salespersons will work diligently to facilitate the mechanics of the sale; and with the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in the transactions.

_____ Buyer(s) Signature	_____ Date	_____ Seller(s) Signature	_____ Date
_____ Buyer(s) Signature	_____ Date	_____ Seller(s) Signature	_____ Date

This is an offer to purchase the Property. Unless acceptance is signed by Seller(s) and a signed copy delivered and received by Buyer(s)'s Agent or Broker, or Buyer (if not represented) by (date) _____ at (time) _____ (Check one): _____ am _____ pm CT, or unless this offer to purchase has been previously withdrawn by Buyer(s), this offer shall be deemed withdrawn and the Buyer(s)'s earnest money shall be returned.

<u>[Signature]</u> Buyer's Signature	<u>4-30-20</u> Date	_____ Buyer's Signature	_____ Date
<u>4521 Sundancer Loop SE #6</u> Address	_____ Address	_____ City, State, Zip	_____ City, State, Zip
<u>Mandan, ND 58554</u> City, State, Zip	_____ City, State, Zip	_____ City, State, Zip	_____ City, State, Zip

ACCEPTANCE

A Counter Offer(s) (Check one): Is Is not attached and is incorporated herein by reference. Seller(s) and Buyer(s) must sign both the Contract and the Counter Offer(s). If there is a conflict between this Contract and the Counter Offer(s), the provisions of the Counter Offer shall be controlling.

The Listing Broker, or, if applicable, Seller's Appointed Agent is representing (Check one): the Seller(s) exclusively; or both the Buyer(s) and Seller(s).

Listing Broker's name, or, if applicable, Seller's Appointed Agent's name: _____

Brokerage: _____ Telephone: _____

The undersigned acknowledge receipt of a copy hereof and grant permission to Selling Broker to deliver a copy to Buyer(s) Agent or, if the Buyer is not represented by an agent, to the Buyer.

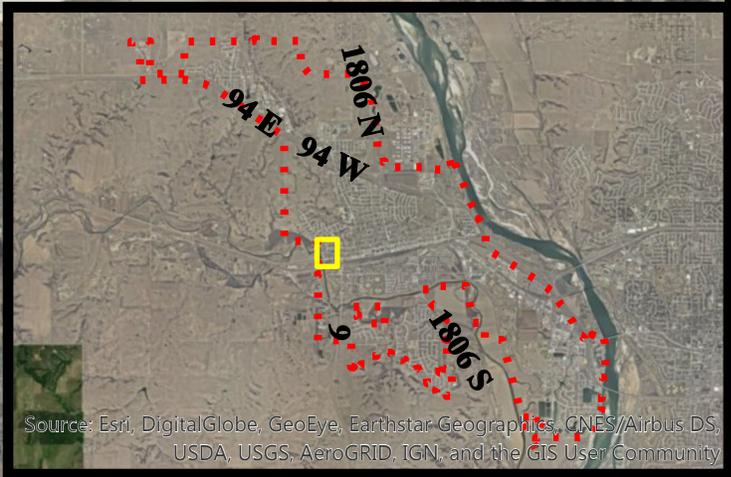
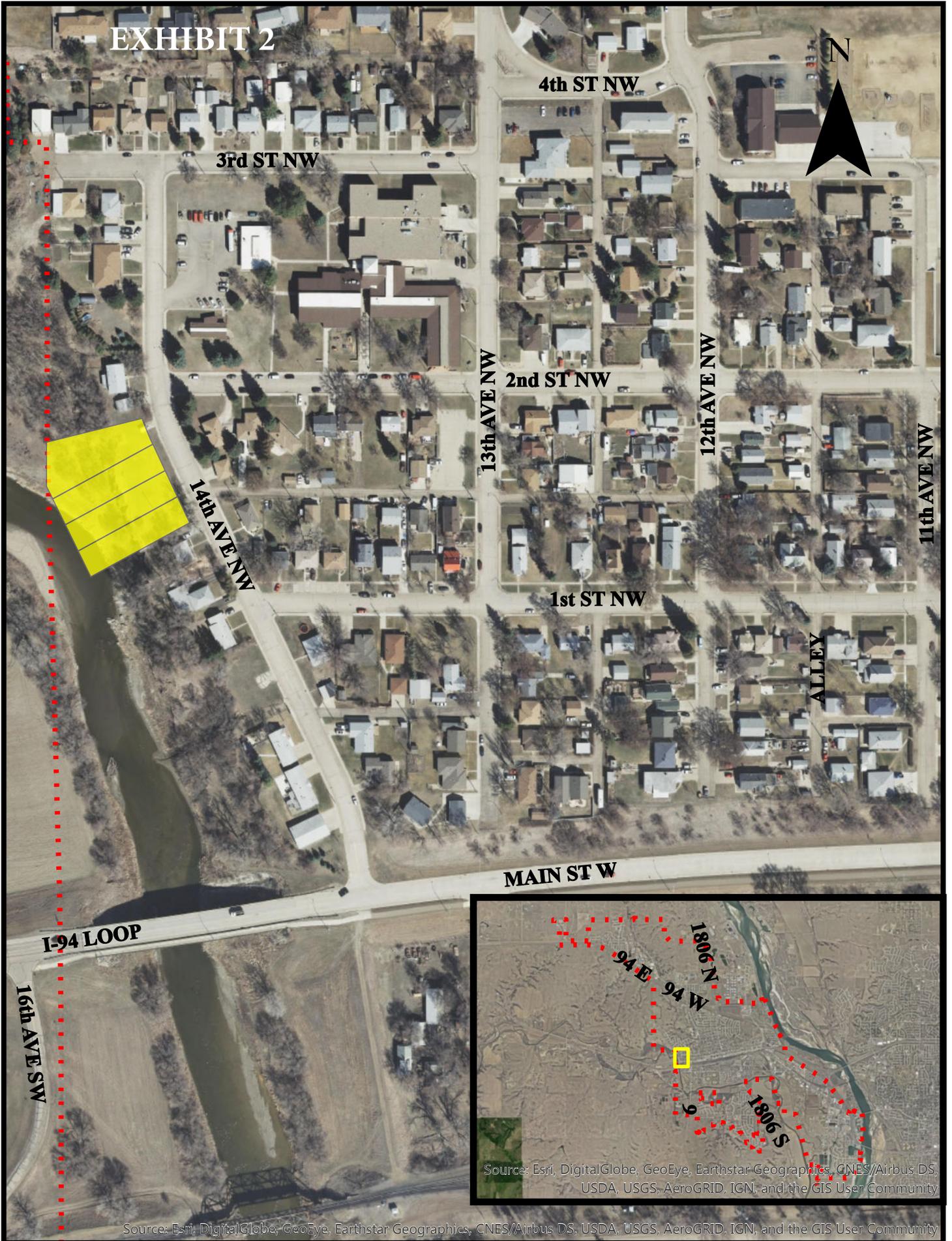
The undersigned agree to sell the Property on the terms and conditions herein stated.

_____ Seller's Signature	_____ Date	_____ Seller's Signature	_____ Date
_____ Seller's Name Printed	_____ Seller's Name Printed	_____ Seller's Address	_____ Seller's Address
_____ Seller's Address	_____ City, State, Zip	_____ City, State, Zip	_____ City, State, Zip

Marital status (REQUIRED by Title companies): _____

THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S). IF YOU DESIRE LEGAL, TAX, OR STRUCTURAL ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

EXHIBIT 2



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 28, 2020
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Sale of Lot 8A, Roughriders Estates Pioneer Replat

STATEMENT/PURPOSE: Consider approval of the Purchase and Sale Agreement for Lot 8A, Roughriders Estates Pioneer Replat.

BACKGROUND/ALTERNATIVES:

Mr. Tomeka has presented a full-price offer of \$500 for the purchase of Lot 8A, Roughriders Estates Pioneer Replat. This is one of the rear yards that was separated from the adjoining property for failure to pay taxes. Mr. Tomeka does not own an abutting property and has been apprised of the lack of access to the property.

The property does not have a specials balance.

Given the lack of interest from adjacent property owners and time it has been listed on the market, staff is recommending approval to relinquish the property back into private ownership.

ATTACHMENTS:

Exhibit 1 – Purchase Agreement

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Attorney Brown has received the purchase agreement in Exhibit 1 and staff is awaiting a response at the time of writing this staff report.

Board of City Commissioners

Agenda Documentation

Meeting Date: June 2, 2020

Subject: Sale of Lot 8A, Roughriders Estates Pioneer Replat

Page 2 of 2

RECOMMENDATION: Engineering and Planning Department is recommending acceptance of the offer as shown in Exhibit 1.

SUGGESTED MOTION: I move to approve the offer as presented in Exhibit 1.

EXHIBIT 1

LAND ONLY PURCHASE AGREEMENT # 404318DS



PAGE 1

This form is approved by the Bismarck Mandan Board of REALTORS® which disclaims any liability out of use or misuse of this form.

Date 05/27/2020 MLS Listing # 404318 Page 1 of 6 Pages

GOVERNING LAW This agreement shall be governed by, construed and interpreted in accordance with the laws of, and under the jurisdiction of, the State of North Dakota and any actions shall be venued in the county in which the property is located.

References to "day" or "days" in this Purchase Agreement shall be construed as business days. Business days are defined as Monday through Friday, excluding Federal and State holidays.

Time is of the essence in this Purchase Agreement.

ENTIRE AGREEMENT: This Purchase Agreement, and any addenda or amendments signed by the parties, and any attached exhibits shall constitute the entire agreement between Seller(s) and Buyer(s) and supersedes any other written or oral agreements between Seller(s) and Buyer(s). This Purchase Agreement can be modified only in writing signed by Seller(s) and Buyer(s).

Buyer(s) Tomeka Cody has/have agreed to pay **Five Hundred** Dollars (\$ 500.00)

for the Property at: Street Address 8A Wagonwheel Ct NW

City of Mandan County of Morton State of ND Zip 58554

Legally described as: Lot 8A, Block 1, Roughrider Pioneer Replat

The sum of Two Hundred Dollars (\$ 200.00) from Buyer(s) by (Check one):

Check Cash EFT/ACH as earnest money to be deposited upon acceptance of Purchase Agreement by all parties, on or before the next business day after acceptance or _____, in the trust account of

Oaktree Realtors, (Check one): Listing Buyer Broker or to be returned to Buyer(s)

if Purchase Agreement is not accepted by Seller(s). Buyer(s) agrees to pay in the following manner: Earnest money in the amount mentioned above, and additional earnest money of \$ _____ due on _____. Seller has the right to terminate

this Agreement if earnest money is not received as agreed herein. Financing, if any, shall be as follows: cash purchase

PRE-APPROVAL: Buyer(s) shall provide Seller(s) within ---- days, at 5 p.m., with written evidence acceptable to Seller(s) from a lender, showing pre-approval of a loan sufficient to allow Buyer(s) to purchase the property. If Buyer(s) fails to timely provide such written evidence, either party has the option to terminate this purchase agreement.

If financing fails after the contingency completion date, earnest money shall be released: to Buyer to Seller Other Agreement: _____; provided, that nothing herein shall limit the right of Seller to pursue all available remedies for breach of this purchase agreement.

This sale includes the following property, if any, owned by Seller and used and located on said property: garden bulbs, plants, shrubs, and trees; and the following personal property: land only

The following personal property is excluded: land only

Seller(s) agrees to remove all debris and all personal property not included herein from the Property by possession date. Includes all government payment, lease, or rental fees received between (date) _____ and (date) _____ unless specified as follows: closing.

Homeowner association dues, rents, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between parties as of closing.

Buyer(s) Initials: TC Date: 05/27/2020 09:28 PM CDT Seller(s) Initials: _____ Date: _____ (Rev. 9/19)



119 **INSPECTIONS:** Seller(s) shall make the Property available for all inspections and tests upon reasonable notice by Buyer(s).

120
121 **SQUARE FOOTAGE AND/OR ACREAGE:** Buyer(s) is aware that any reference to the square footage and/or acreage of the
122 Property, both the real Property (land) and improvements thereon, is approximate. If square footage and/or acreage is a material
123 matter to the Buyer(s), it must be verified by the Buyer(s).

124
125 **SELLER(S) WARRANTIES:**
126 Seller(s) warrants that building(s), if any, is/are, or will be, constructed entirely within the boundary lines of the Property.
127 Seller(s) warrants that there is a right of access to the Property from a public right of way.
128 Seller(s) warrants that prior to closing, payment in full will have been made for: 1.) All condo and/or home association fees; and
129 2.) all labor, materials, machinery, fixtures, or tools, furnished within the 90 days immediately preceding the closing, used in
130 connection with construction, alteration, or repair of any structure on, or improvement to, the Property.

131 Seller(s) warrants that Seller(s) has not received any notice from any governmental authority as to violation of law, ordinance, or
132 regulation for a condition that remains uncorrected, or any other notice from any governmental authority regarding the subject
133 Property.

134 Seller(s) warrants that, if Property is subject to restrictive covenants, Seller(s) has not received any notice from any person or
135 authority as to a breach of the covenants which remains uncorrected. Any notices received by Seller(s) will be provided to
136 Buyer(s) promptly.

137 Seller(s) warrants that the Property is directly connected to: City Sewer: yes no Well: yes no
138 Water system is: City Rural. If rural, will membership be transferred? yes no N/A

139
140 **FINAL WALK THROUGH:** The Seller(s) grants Buyer(s) and any representative of Buyer(s) reasonable access to conduct a final
141 walk through of the Property for the purpose of determining that the Property is in substantially the same condition as on the date
142 of acceptance of the contract. If Buyer(s) does not conduct such walk through, Buyer(s) specifically releases Broker(s) of any
143 liability.

144
145 **BUYER(S) RESPONSIBILITY REGARDING INSPECTIONS AND INVESTIGATIONS:** Buyer(s) is advised by Broker to obtain
146 inspections and investigations of the Property. Buyer(s) acknowledges that Buyer(s) should make inquiries and consult
147 government agencies, lenders, insurance agents, architects, and other appropriate persons and entities concerning the use of the
148 Property and the surrounding areas under applicable building, zoning, fire, health, and safety codes, and for evaluation of
149 potential hazards. Buyer(s) shall keep the Property free and clear of liens, shall indemnify and hold Seller(s) harmless from all
150 liability, claims, demands, damages, and costs, and shall repair all damages arising from the inspections. The inspection period is
151 the Buyer(s)'s sole opportunity to discover any existing defects prior to Closing. Buyer(s) waives any claim for an item warranted
152 by the Seller(s) if Buyer(s) becomes aware of such claim during the Inspection Period and does not notify the Seller(s) in writing
153 of such. Buyer(s) specifically releases, holds harmless, and indemnifies Broker(s) from any liability for any defects in the
154 Property. If Buyer(s) requests repairs, Buyer(s) shall provide Seller(s) and Broker(s) upon receipt, at no cost, copies of all reports
155 concerning the Property obtained by Buyer(s).

156
157 **MEGAN'S LAW DISCLOSURE: If Buyer(s) desires to obtain information regarding persons required to register as sexual**
158 **offenders under North Dakota Law, Buyer(s) must contact the ND Attorney General's office, or access the Attorney**
159 **General's web site at <http://www.sexoffender.nd.gov/>.**

160
161 **DEFAULT:** If Seller(s)'s title is marketable or insurable and Buyer(s), contrary to this agreement, fails, neglects or refuses to
162 complete the Purchase within ten (10) days after title is proven marketable or insurable, or by the closing date, whichever is later,
163 then, at Seller(s)'s option either the earnest money shall be forfeited to Seller(s) as liquidated damages, since the parties agree the
164 calculation of damages to Seller(s) would be difficult to ascertain with certainty and since parties further agree that the amount of
165 liquidated damages is a reasonable attempt to estimate damages which will be suffered by the Seller(s), and this Agreement
166 thereupon shall be of no further binding effect; or Seller(s) may demand and pursue any and all other remedies including but not
167 limited to actual damages or specific performance of this agreement. If Seller(s), contrary to this Agreement, fails, neglects or
168 refuses to perform as agreed, Buyer(s) may demand and pursue any and all remedies including, but not limited to, specific
169 performance of this Agreement. A claim of either party for specific performance, or the Seller(s)'s claim to the earnest money as
170 liquidated damages, shall be waived, unless legal proceedings are commenced within three (3) months after scheduled date of
171 closing; further, unless the Seller, delivers copies of documents evidencing the Seller's commencement of legal proceedings to
172 claim the earnest money to the Broker who has possession of the earnest money within said three-month time period, then the
173 Broker, who has possession of the earnest money, shall be authorized to return the earnest money to the Buyer, free of any claim
174 by the Seller. Retention of earnest money in any Broker's trust account pending resolution of the default shall not constitute an
175 election of remedies by either party or prejudice their rights to pursue any and all other remedies including, but not limited to,
176 specific performance.

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179 Buyer(s) Initials: TC Date: 03/27/2020 09:28 PM CDT Seller(s) Initials: _____ Date: _____ (Rev. 9/19)



180 **CONTINGENCIES:** All applicable contingencies must be initialed by Buyers and Sellers. This purchase agreement is subject to
 181 the satisfaction of those contingencies which are initialed below by both parties.

182
 183 **Buyer(s) and Seller(s) agree that, by 5 p.m. on (date) n/a (contingency completion date), all**
 184 **contingencies agreed to in items 1 through 10 below shall be addressed to completion. If Seller is obligated to provide**
 185 **documents to Buyer, the contingency completion date shall be extended so that Buyer has a minimum of 48 hours following**
 186 **receipt of all such documents within to deliver notice of termination.**

187
 188 Under the following contingencies, the Buyer, or the Seller, or in certain instances either party, has the option to terminate the purchase
 189 agreement; said option to be exercised by giving written notice by the contingency completion date. If such written notice is
 190 given by the contingency completion date the Buyer(s) shall receive a full refund of the earnest money. If written notice is not
 191 given by the contingency completion date by a party which had the option to terminate the purchase agreement, then the option to
 192 terminate the purchase agreement under the applicable contingencies are deemed to be waived. (See "Default" section.)

BUYERS AND SELLERS MUST INITIAL ALL APPLICABLE CONTINGENCIES.	BUYER(S) INITIALS	SELLER(S) INITIALS
1. PROPERTY CONDITION STATEMENT: Seller(s) to provide Buyer(s) with a Property Condition Statement. Buyer to review Property Condition Statement. If Buyer does not approve the Property Condition Statement, Buyer has the option to terminate this purchase agreement.		
2. INSPECTIONS: Buyer to complete inspections of Buyer(s) choice. If Buyer does not approve the results of the inspections, Buyer has the option to terminate this purchase agreement. Inspections and tests to be conducted at Buyer's Expense : (check all that apply): Septic System <input type="checkbox"/> Well <input type="checkbox"/> Other <input type="checkbox"/>		
3. FLOOD PLAIN: Buyer(s) to obtain flood plain verification. If Buyer does not approve the results of the flood plain verification, Buyer has the option to terminate this purchase agreement.		
4. LEASES: Seller(s) to provide copies of current leases to Buyer. If Buyer does not approve the leases, Buyer has the option to terminate this purchase agreement.		
5. REGISTERED SEX OFFENDERS: Buyer(s) investigation of the possible presence of registered sex offenders in the vicinity of the property. If Buyer does not approve the findings regarding registered sex offenders, Buyer has the option to terminate this purchase agreement.		
6. RESTRICTIONS AND COVENANTS: Buyer(s) to obtain and review any government and/or private use restrictions and restrictive covenants. If Buyer does not approve the use restrictions or covenants, Buyer has the option to terminate this purchase agreement.		
7. WATER QUALITY TESTS: Buyer(s) obtain water quality tests, at Buyer(s) expense. If Buyer does not approve the results of the water quality tests, Buyer has the option to terminate this purchase agreement.		
8. SURVEY: Buyer(s) to obtain a survey of the property, conducted at (check one): <input type="checkbox"/> Buyer's expense or <input type="checkbox"/> Seller's expense. If Buyer does not approve the results of the survey, Buyer has the option to terminate this purchase agreement.		
9. PLANS AND PERMITS: Buyer(s) to obtain all necessary plans and permits for one or more of the following purposes: building plans and specifications, proposed subdivision development plans, rezoning or use permits, approval of building plans and/or specification in accordance with any recorded subdivision covenants, and approval of the architectural control committee. If Buyer does not obtain said plans and permits, Buyer has the option to terminate this purchase agreement.		
10. SOIL TESTS: Buyer(s) to obtain soil tests and percolation tests at <input type="checkbox"/> Buyer's expense or <input type="checkbox"/> Seller's expense. If Buyer does not approve the test results, Buyer has the option to terminate this purchase agreement.		

193 **OTHER CONTINGENCIES:**

194
 195 **A. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase is contingent on the property appraising at or above the agreed upon purchase price.
 196 If this contingency fails, Buyer(s) has the option to terminate this purchase agreement.

197
 198 **B. 24/48/72 HOUR CONTINGENCY ADDENDUM: (check one)** **does** **does not apply** (see **attached addendum** made a part of this
 199 contract, if applicable).

200
 201 **C. CLOSING OF BUYER'S PROPERTY:** (This provision to be used if Buyer's property is under contract at the time of offer): **(check one)** **does**
 202 **does not apply** Buyer's obligation to purchase is contingent on closing of Buyer's property at (address)
 203 _____ Buyer(s) to provide written evidence within _____ days
 204 showing that Buyer(s) property has an accepted purchase agreement with qualified buyer and will close on or before closing of this Purchase
 205 Agreement. If Buyer(s) fails to provide such written evidence, the Seller(s), within _____ days following the deadline set forth in the previous
 206 sentence, may elect to terminate this Agreement, with earnest money to be returned to the Buyer(s).

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 208 Buyer(s) Initials: TC Date: 09/27/2020 09:28 PM CDT Seller(s) Initials: _____ Date: _____ (Rev. 9/19)



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PLEASE NOTE: Buyer(s) may incur additional charges for improving the property including, but not limited to hook-up and/or access charges, costs for sewer access, stubbing access, water access, park dedication, road access, utility connection, phone lines, connecting fees, curb cuts, and tree planting.

SPECIAL CONDITIONS:
Buyer to be responsible for any abstract or title insurance owner's policy updating expenses at buyer's expense.

RELEASE OF BROKER(S): Seller(s) and Buyer(s) hereby expressly release, hold harmless and indemnify all Broker(s) in this transaction from any and all liability and responsibility, including but not limited to, the property condition, square footage, acreage, lot lines or boundaries, value, rent rolls, environmental problems, mold, water, sanitation systems, wind damage, hail damage, wood infestation and wood infestation report, compliance with building codes or other governmental regulations, or any other material matters relating to the Property.

AGENCY DISCLOSURE: Darren Schmidt (Agent Broker)
Brokerage Oaktree Realtors
Stipulates that she/he is representing the (Check one): Seller(s) Buyer(s) Neither Party Both Parties in this transaction. The listing agent or broker stipulates that she/he is representing the Seller(s) in this transaction.

APPOINTED AGENCY: Applies to in-house transactions only. Appointed agency (Check one): Does Does Not apply. If Broker has adopted appointed agency policy, dual agency may not apply. However, an appointed agent who singularly represents both Seller(s) and Buyer(s) in the same transaction is considered to be a disclosed dual agent owing fiduciary duties to both parties and must get permission from parties to act.

~~**DUAL AGENCY REPRESENTATION:** Dual agency representation (Check one): Does Does Not apply in this transaction. If dual agency does not apply, skip this entire section. If dual agency does apply, all parties must sign at the end of this section. Broker represents both the Seller(s) and the Buyer(s) of the Property involved in this transaction, which creates dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party.
Broker cannot act as a dual agent in this transaction without consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:
(1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;
(2) Broker and its salespersons will not represent the interest of either party to the detriment of the other;
(3) within the limits of dual agency, Broker and the salespersons will work diligently to facilitate the mechanics of the sale; and
with the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in the transactions.~~

Buyer(s) Signature	Date	Seller(s) Signature	Date
Tomoka Cody			
Buyer(s) Signature	Date	Seller(s) Signature	Date

Buyer(s) Initials: TC Date: 06/27/2020 09:28 PM CDT Seller(s) Initials: _____ Date: _____ (Rev. 9/19)



267 This is an offer to purchase the Property. Unless acceptance is signed by Seller(s) and a signed copy delivered and received by
268 Buyer(s)'s Agent or Broker, or Buyer (if not represented) by (date) _____ at (time) _____ (Check
269 one): am pm CT, or unless this offer to purchase has been previously withdrawn by Buyer(s), this offer shall be deemed
270 withdrawn and the Buyer(s)'s earnest money shall be returned.

271	<u>Tomeka Cody</u> 		05/27/2020 09:28 PM CDT	_____	_____
272	Buyer's Signature	Date	Buyer's Signature	Date	
273	Tomeka Cody				
274	_____		_____		
275	Address		Address		
276	_____		_____		
277	City, State, Zip		City, State, Zip		
278	_____		_____		
279					
280					

ACCEPTANCE

281 A Counter Offer(s) (Check one): Is Is not attached and is incorporated herein by reference. Seller(s) and Buyer(s) must
282 sign both the Contract and the Counter Offer(s). If there is a conflict between this Contract and the Counter Offer(s), the provisions
283 of the Counter Offer shall be controlling.

284
285
286 The Listing Broker, or, if applicable, Seller's Appointed Agent is representing (check one): the Seller(s) exclusively; or
287 both the Buyer(s) and Seller(s).

288
289 Listing Broker's name, or, if applicable, Seller's Appointed Agent's name: _____

290
291
292 Brokerage: _____ Telephone: _____

293 The undersigned acknowledge receipt of a copy hereof and grant permission to Selling Broker to deliver a copy to Buyer(s)
294 Agent or, if the Buyer is not represented by an agent, to the Buyer.

295 The undersigned agree to sell the Property on the terms and conditions herein stated.

296	_____	_____	_____	_____
297	Seller's Signature	Date	Seller's Signature	Date
298	_____		_____	
299	Seller's Name Printed		Seller's Name Printed	
300	_____		_____	
301	Seller's Address		Seller's Address	
302	_____		_____	
303	City, State, Zip		City, State, Zip	
304	_____		_____	
305				

306
307 Marital status (**REQUIRED** by Title companies): _____

308
309 **THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYER(S) AND SELLER(S). IF YOU DESIRE LEGAL, TAX, OR**
310 **STRUCTURAL ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.**

311 ©BISMARCK MANDAN BOARD OF REALTORS® MEMBER USE ONLY (REV. 09/19)



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 29, 2020
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Appointment to Bismarck Mandan Mayors
Committee for People with Disabilities

STATEMENT/PURPOSE: To consider appointment members to the Bismarck Mandan Mayors Committee for People with Disabilities

BACKGROUND/ALTERNATIVES: The Bismarck-Mandan Mayors' Committee for People with Disabilities works to educate the public and initiate projects. The goal of their work is to establish a receptive climate for the involvement of people with disabilities in all aspects of life within the communities of Bismarck-Mandan. This committee meets three times a year and receives funds based upon 50% of the handicap parking ticket collections.

The major portion of the disbursements from this committee goes to provide scholarships. Committee members will solicit applications from students with disabilities who are pursuing a secondary education. The number of monetary awards provided depends upon on available funds.

*Mayor Tim Helbling
c/o City Hall
205 Second Ave NW
Mandan, ND 58554*

Dear Mayor Helbling,

As the Mayor of Mandan, please appoint Bernie Parkhurst to the Bismarck-Mandan Mayors' Committee for People with Disabilities. Use members' email address padres84nlbst@yahoo.com to send letter to. Am I able to receive a copy of their letter to dberreth@bepc.com in the event they don't receive their letter?

Thank you for your prompt attention.

Yours sincerely,

*DesaRae Berreth
President of Bismarck-Mandan Mayors' Committee for People with Disabilities*

*3819 Bay Shore Bend SE
Mandan, ND 58554
701.557.5744
dberreth@bepc.com*

Some additional background on Mr. Parkhurst is as follows:

I have been an employment specialist at Pride since Oct 2009. I have worked with well over a hundred clients with disabilities during that time. I have helped a large number of them find employment in the community, and have supported them in those jobs. I have established a working relationship with dozens of employers throughout the Bismarck and Mandan area. I believe that that I am a passionate advocate for the disabled community. My wife and I moved to Mandan in 2002 to be near our newborn granddaughter. My first seven years in the area I was a service consultant for Aetna.

Vocational Rehabilitation contracts with agencies like Pride, HIT and Community Options to help our clients with more significant disabilities find and train into jobs in the community. Bernie is a job coach for Pride, or Employment Specialist. It is his job to assist clients in finding a job and becoming trained into the job. To do that he may need to:

- Assist the client in locating openings, applying for openings, and when necessary, interview for a position.
- Once a client has acquired a job, Bernie would make sure the client has what they need to start the job. Do they have the proper tools, attire, transportation, etc.
- Once they start work Bernie would coordinate with the employer, so he can train the client on how to do their job properly. Clients he works with may not only need to know how to do the job, but also how to handle situations like dealing with dissatisfied customers, dealing with difficult co-workers, etc. How to solve problems, who to go to for assistance, etc. If necessary, how to get along and play nice in the sandbox.
- He 'teaches the client to fish,' so to speak. Hopefully when Bernie is done, the client is able to do their job independently without any extra support. Just the regular supervision provided for any other employee.

ATTACHMENTS:

FISCAL IMPACT: n/a

STAFF IMPACT: n/a

LEGAL REVIEW: n/a

RECOMMENDATION: I recommend appointing Bernie Parkhurst to the Bismarck Mandan Mayors Committee for People with Disabilities to a three year term beginning June 3, 2020.

SUGGESTED MOTION: I move to appoint Bernie Parkhurst to the Bismarck Mandan Mayors Committee for People with Disabilities to a three year term beginning June 3, 2020.

ORDINANCE NO. 1339

An Ordinance to Amend and Re-enact
Section 4-2-14 of the Mandan Code of Ordinances
Relating to Expiration of Alcoholic Beverage Licenses

Be it Ordained by the Board of City Commissioners as follows:

Sec. 4-2-14. Expiration.

Licenses issued under the provisions of this chapter shall end on June 30, except for the year 2020 when licenses shall end on August 31, following the date of this issuance unless revoked or suspended as described in this chapter. Any license issued hereunder shall be used by the operations of a facility within six months of its issuance. Failure to use said license within said period of time shall be cause for revocation. In the event of revocation, there shall be no refund of any issuance fee or license fee.

By: _____
Tim Helbling, President,
Board of City Commissioners

Attest:

James Neubauer, City Administrator

First Consideration: May 19, 2020
Second Consideration and Final Passage: June 2, 2020

**RESOLUTION ESTABLISHING BEER, LIQUOR OR ALCOHOLIC BEVERAGE
LICENSE FEES**

BE IT RESOLVED by the Board of City Commissioners of the City of Mandan, North Dakota, pursuant to Section 4-2 of the Mandan Code of Ordinances, that the license fees for any person engaged in the sale of beer, liquor or alcoholic beverages shall be as follows:

LICENSE FEE SCHEDULE

		<u>Annual Renewal</u>	
<u>License</u>			<u>Fee</u>
Class A	General Retail On & Off-Sale Beer & Liquor	\$3,900	<u>\$3,250</u>
Class B	Club On & Off-Sale Beer & Liquor	\$3,540	<u>\$2,950</u>
Special B	Publicly Owned or Operated Facilities On-Sale Beer	\$360	<u>\$300</u>
Special B	Publicly Owned Facilities On-Sale Beer & Liquor	\$360	<u>\$300</u>
Class BWO	Retail On-Sale Beer & Wine	\$1,150	<u>\$958</u>
Class C	Motel & Hotel-On & Off-Sale Beer & Liquor	\$3,660	<u>\$3,050</u>
Class D	Exclusive Off-Sale Beer & Liquor		\$3,900
Class D-1	Exclusive Off-Sale Beer & Wine		\$780
Class DY	Distilled Spirits		\$780
Class E	Restaurant On-Sale Beer & Liquor	\$2,500	<u>\$2,083</u>
Class F	Restaurant On-Sale Beer & Wine	\$1,150	<u>\$958</u>
Class G	Commercial Passenger Vessels		\$1,440
Class MP	Member Producer	\$780	<u>\$650</u>
Class WB	Wine or Brewery	\$780	<u>\$650</u>
	Late Fee		\$50

		<u>Issuance</u>	
<u>License</u>			<u>Fee</u>
Class A	General Retail On & Off-Sale Beer & Liquor		\$60,000
Class BWO	Retail On-Sale Beer & Wine		\$3,000
Class D	Exclusive Off-Sale Beer & Liquor		\$80,000
Class D-1	Exclusive Off-Sale Beer & Wine		\$40,000

BE IT FURTHER RESOLVED that the fees are for the license year ending June 30, 2021.

Dated this 2nd day of June, 2020.

President, Board of City Commissioners

Attest:

City Administrator

ORDINANCE NO. 1340

An Ordinance to Amend and Re-enact
Section 119-1-9(a) of the Mandan Code of Ordinances
Relating to Residential Area Garbage Collection

Be it Ordained by the Board of City Commissioners as follows:

Sec. 119-1-9. Regulations governing residential area garbage collection.

- (a) Residential area garbage shall be deposited for pickup in 96 gallon or 64 gallon totes as furnished by the residential trash collection contractor. Each property owner or occupant shall furnish and store one or more garbage receptacles for disposal of garbage in a secure and unobtrusive location on the property. No earlier than 6:00 p.m. the night before pickup, the receptable or receptables shall be moved to a location within 15 feet of the alley abutting the premises, or, in case no alley abuts upon the premises, or in case the alley is not open, or is otherwise inaccessible, within 15 feet of the curb in front of the dwelling.

By: _____
Tim Helbling, President,
Board of City Commissioners

Attest:

James Neubauer, City Administrator

First Consideration: May 19, 2020
Second Consideration and Final Passage: June 2, 2020



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: May 29, 2020
SUBMITTING DEPARTMENT: Public Works/Finance
DEPARTMENT DIRECTOR: Mitch Bitz (Public Works)/Greg Welch (Finance)
PRESENTER: Mitch Bitz, Public Works Director/
Greg Welch, Finance Director
SUBJECT: Ordinance No. 1341

STATEMENT/PURPOSE

Consider the introduction and first consideration of Ordinance No. 1341 an Ordinance to Amend and Re-enact Sections 2-4-1(d), 2-4-2, 2-4-3, 2-4-4, 2-4-5 and 2-4-7(d) of the Mandan Code of Ordinances Relating to Statement of Policy, Definitions, Competitive Bidding Required, Exceptions, Conveyance of Property, and Bidding Procedure.

BACKGROUND/ALTERNATIVES

Public Works

In order to allow the most efficient means to procure equipment, supplies, or services, it is recommended that the competitive bidding requirement be raised from \$25,000 to \$75,000. Public Works by its nature is consistently purchasing products, materials, and services. Often times, these purchases cannot easily be made locally due to the current limitation. As an example, when we purchase vehicles given their current value, we are limited to either purchasing whatever vehicle is available on North Dakota State Bid, which is very likely not from a local dealer in the Mandan or at the very least Bismarck area. Alternatively, the other option is to formally bid out the vehicles, which again would not guarantee that a local supplier would be able to provide the vehicle. With the raised limits, we could likely make the purchase locally and keep the fleet uniformed. This is simply one example of where the increased limits would be beneficial. Formal bidding is very time consuming and has a fiscal impact because public notices must be published. Raising these limits accounts for the increased cost of goods and services over the past 14 years, from our understanding, the limits have not been raised since 2006. All this in turn allows for procurement that is more efficient and conducive to business. This action will not only benefit Public Works, it will serve to benefit all the departments throughout the city.

Finance Department

The proposed revisions are also intended to update the City's procurement policies in order to conform to other recommended standards and procedures, to new laws and regulations in the North Dakota Century Code, and to comply with the U.S. Office of Management and Budget's (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The Uniform Guidance provides for five methods of procurement that must be used when making purchases with federal funds. The type of purchase method and procedures required depends on the cost (and type, in some cases) of the item(s) or services being purchased.

- Micro-purchases
- Small purchase procedures
- Sealed bids
- Competitive proposals
- Noncompetitive (sole source) proposals

ATTACHMENTS

- Ordinance No. 1341
- Procedure requirements for the purchase of supplies and contractual services.

FISCAL IMPACT

None

STAFF IMPACT

Department managers and supervisors will be provided with the City's updated procurement policies in addition to the revised procedure requirements for the purchase of supplies and contractual services.

LEGAL REVIEW

Reviewed by Malcolm Brown, City Attorney

RECOMMENDATION

To approve the introduction and first consideration of Ordinance No. 1341 an Ordinance to Amend and Re-enact Sections 2-4-1(d), 2-4-2, 2-4-3, 2-4-4, 2-4-5 and 2-4-7(d) of the Mandan Code of Ordinances Relating to Statement of Policy, Definitions, Competitive Bidding Required, Exceptions, Conveyance of Property, and Bidding Procedure.

SUGGESTED MOTION

Move to approve the introduction and first consideration of Ordinance No. 1341 an Ordinance to Amend and Re-enact Sections 2-4-1(d), 2-4-2, 2-4-3, 2-4-4, 2-4-5 and 2-4-7(d) of the Mandan Code of Ordinances Relating to Statement of Policy, Definitions, Competitive Bidding Required, Exceptions, Conveyance of Property, and Bidding Procedure.

ORDINANCE NO. 1341

An Ordinance to Amend and Re-enact
Sections 2-4-1(d), 2-4-2, 2-4-3, 2-4-4, 2-4-5 and 2-4-7(d)
of the Mandan Code of Ordinances
Relating to Statement of Policy, Definitions, Competitive Bidding Required,
Exceptions, Conveyance of Property, and Bidding Procedure

Be it Ordained by the Board of City Commissioners as follows:

Sec. 2-4-1. Statement of policy.

(d) All suppliers, contractors and service providers doing business with the city must certify that they are in compliance with all federal, state and local laws, regulations and orders including but not limited to those regarding non-discrimination, wages and hours, worker's compensation and immigration. Failure of compliance may result in the cancellation of any city contract and exclusion from consideration for future contracts.

Sec. 2-4-2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property. The term does not include the routine operation or maintenance of existing facilities, structures, buildings, or real property or demolition projects costing less than two hundred thousand dollars. (N.D.C.C. §48.01.2-01(4)).

Contractual services means services provided by entities other than the city, other governmental bodies or public utilities.

~~Emergency means a situation in which unforeseen circumstances require immediate action or action which cannot or should not be delayed for use of a competitive bid process.~~

Emergency situation means sudden generally unexpected occurrence that requires immediate action to protect public health, safety, or property and which ends when the immediate threat to public health, safety, or property ceases and services are restored. The term does not include a lack of planning on the part of the city council, architect, engineer, landscape architect, or contractor. (N.D.C.C. §48-01.2-01(13))

Noncompetitive type or kind means supplies or services which are, by their nature, unique and not subject to competition, including professional services, management services, contracts with the manufacturer or seller or service agent for repair of equipment; services or supplies of a specialized nature that are available only from one supplier or a limited number of suppliers who are not in competition with each other; supplies or services for which the local market is not competitive; or supplies or services for which purchase in the open market is called for, in order to obtain the best quality at the lowest price.

Public Improvement means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. (N.D.C.C. §48-01.2-01(21))

Sec. 2-4-3. Competitive bidding required.

(a) All purchases of and contracts for supplies and contractual services, and all sales of ~~personal~~ property that have become obsolete or unusable must, except as otherwise provided in this article, be based on competitive bids.

(b) All supplies and contractual services, except as otherwise provided in this article, when the estimated cost exceeds ~~\$25,000.00~~ \$75,000.00 must be purchased at public sale from the lowest and best bid meeting or exceeding specifications pursuant to N.D.C.C. §44-08-01.1 and subject to N.D.C.C. §44-08-01.

(c) All sales or dispositions of obsolete or unusable ~~personal~~ property, when the estimated value exceeds \$5,000.00, may be sold only at public sale pursuant to section 2-4-5.

(d) Purchases of supplies and contractual services, when the estimated cost is ~~\$5,000.00~~ \$10,000.00 or less, may be made in the open market without competitive bidding, unless otherwise required by law. Purchases of supplies and contractual services, when the estimated cost is more than ~~\$5,000.00~~ \$10,000.00 but less than ~~\$25,000.00~~ \$75,000.00, may be made in the open market without competitive bids, provided that documentation is submitted showing that prices or informal quotes were solicited from a minimum of three suppliers or, if fewer than three suppliers are available, from all available suppliers, unless otherwise required by law.

~~(e) Sales of personal property of an estimated value of \$2,500.00-\$10,000.00 or less may be made in the open market without competitive bids unless otherwise required by law.~~

~~(f)~~ Any supplies, materials, equipment or contractual services previously competitively bid by the state or one of its agencies, for which the state or agency has made provision for participation by political subdivisions, may be purchased through the state or agency's bid letting upon approval by the board.

(f) When the estimated costs for the construction of a public improvement is in excess of two hundred thousand dollars, competitive bidding is required. (N.D.C.C. §§48-01.2-04, 48-01.2-02.1)

(g) If the estimated cost for construction of a public improvement is in excess of two hundred thousand dollars, plans, drawings and specifications for the improvement shall be procured from an architect or engineer. Plans, drawings, and specifications of an architect or engineer must be stamped and sealed by the date of the initial bid advertisement. (N.D.C.C. §§48-01.2-02, 48-01.2-02.1)

Sec. 2-4-4. Exceptions.

(a) Notwithstanding section 2-4-5, purchases of supplies or services of a noncompetitive type or kind, or purchases from other governmental bodies, or purchases made when, in the opinion of the board or its executive officer, an emergency requires immediate purchase of supplies or contractual services, may be made in the open market without competitive bidding.

(b) Whenever a purchase or contract for services, with an estimated cost ~~in excess of \$10,000.00~~ that would require competitive bids under section 2-4-3 is made without competitive bids, a written report or a copy of the memo to the board requesting an exception must be filed with the bill or contract stating the reason why competitive bids were not called for and listing all suppliers contacted and quotes or estimates obtained. Procurement by competitive proposals shall apply the following requirements:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The city must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;

(5) The city may use competitive proposal procedures for qualifications-based procurement of architectural./engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchaser other types of services though A/E firms are a potential source to perform the proposed effort.

(c) When the city governing body declares an emergency situation exists, the governing body may contract for the construction of a public improvement without seeking bids. (N.D.C.C. §48-01.2-04)

Sec. 2-4-5. Conveyance, sale or disposal of real or personal property.

(a) Personal property valued at less than ~~\$1,000.00~~ \$2,500.00 that has been determined obsolete and is no longer used by the city may be sold at private sale, provided that the department's portfolio commissioner has given prior approval to the sale. The department ~~head~~ manager of the department selling the obsolete property shall make a record of the sale containing a description of the obsolete property, the reason it is no longer used, the date of sale, the purchase price, and the party to whom the property was sold. Purchases of obsolete property owned by the city may not be made by city employees or their agents except at public sale. Such sales must be reported to the board.

(b) Real or personal property valued at \$2,500.00 or more ~~than \$1,000.00~~ belonging to the city may be conveyed, sold or disposed of only as approved by a majority vote of all members of the board. Instruments affecting such conveyance, sale, lease or disposal are valid only when duly executed by the president of the board and attested by the city administrator. The board, by duly adopted resolution, shall determine whether real or personal property with an estimated value of less than \$5,000.00 shall be sold at public or at private sale. Real or personal property estimated by the board to be of a value of \$5,000.00 or more may be sold only at public sale or as provided under section 2-4-8. When a public sale is required or authorized, a notice containing a description of the property to be sold and designating the place, date and time of the sale must be published in the official newspaper once each week for two consecutive weeks, with the last publication being at least ten days in advance of the date set for the sale. The notice shall specify whether the bids are to be received at auction or as sealed bids as determined by the board. The property advertised must be sold to the highest bidder but not for a sum less than the minimum sales price if fixed prior to the sale, if the bid is deemed sufficient by a majority of the members of the board, unless all bids are rejected.

Sec. 2-4-7. Bidding procedure.

(d) If the estimated cost for the construction of a public improvement is in excess of two hundred thousand dollars, the governing body shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids. The advertisement must be published in the official newspaper of the political subdivision in which the public improvement is or will be located, in a daily newspaper having a general circulation in the area where the project is located, and in a trade publication, electronic plan service, builders exchange, or other industry-recognized method of general circulation among the contractors, building manufacturers, and dealers in this state, except the advertisement for a public improvement financed by special assessments need be published only once each week for two weeks in the official newspaper with the first publication being at least fourteen days before the bid opening. (N.D.C.C. §§48-01.2-01, 48-01.2-02.1 and 48-01.2-04)

By: _____
Tim Helbling, President,
Board of City Commissioners

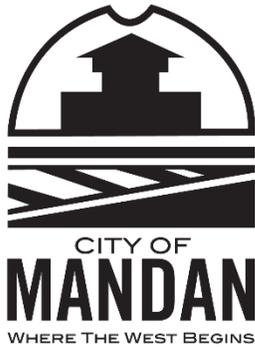
Attest:

James Neubauer, City Administrator

First Consideration: _____
Second Consideration and Final Passage: _____

**Purchasing Thresholds
Supplies and Contractural Services
Effective June 20, 2020**

Level	Approval Requirements	Competition Requirements	Documentation Requirements
Level 1 "Micro" Purchase \$10,000 or less	Department Supervisor or Manager	No informal quotes/bids or proposals required if the price is considered to be reasonable. Federal funds - distribute purchases equitably among qualified vendors.	No support required if the price is considered to be reasonable. Federal funds - support on file with Department Supervisor or Manager to justify purchases to only one qualified vendor.
Level 2 Small Purchase More than \$10,000 but less than \$25,000	Department Supervisor or Manager	Solicit informal quotes/bids or proposals from at least three qualified vendors.	Support on file with Department Manager and attached to vendor statement/invoice.
Level 3 Small Purchase More than \$25,000 but less than \$75,000	Department Manager	Solicit informal quotes/bids or proposals from at least three qualified vendors.	Support on file with Department Manager and attached to vendor statement/invoice.
Level 4 Formal Purchase \$75,000 and over	Department Manager and City Commission	Must be purchased using formal bidding procedures (advertising and sealed bids) or request for proposal (RFP).	Support on file with Department Manager and City Commission agenda documentation attached to vendor statement/invoice.



Board of City Commissioners

Agenda Documentation

MEETING DATE: June 2, 2020
PREPARATION DATE: June 2, 2020
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Large Gathering Guidelines

STATEMENT/PURPOSE: To consider large indoor and outdoor gatherings an

BACKGROUND/ALTERNATIVES: The guidelines below, in part, represent North Dakota moving to the Green/Low Risk category.

- *Gatherings in facilities can be up to 75% certificate of occupancy for that room but no more than 500 persons. Foodservice should follow the Restaurant/Bar/Food Truck Smart Restart Protocols.*
- *Larger indoor and outdoor gatherings are permitted if approved by community leaders and the local health authority.*

Community leaders may require event planners to submit a logistics and emergency operations plan to their local health authority no later than 30 days prior to the event.

As the guidelines indicate, “Community leaders *may* require...” We are looking for guidance from the City Commission as to if you want to require a plan or not.

In communications with Custer District Health, Mandan Police and Fire Departments, it is our recommendation:

- 1) Yes, event planners should submit a logistics and emergency operations plan to their local health authority.
- 2) Rather than 30 days, we recommend 14 days
- 3) We currently have a Special Events Application that would be used as a guideline with the addition of some plan of how they would address the large gathering guidance from the Smart Restart guidelines
- 4) Plan for use of public right of way would need commission approval just like special events application
- 5) Private gatherings would not be subject to approval but would make sense if organizers address the large gathering guidance from the Smart Restart guide.

Should the Commission determine that no plan is to be submitted, we would certainly encourage event organizers to become familiar with the Smart Restart guidelines and how they would implement the guidelines.

ATTACHMENTS: n/a

FISCAL IMPACT: n/a

STAFF IMPACT: There will be time necessary to review plans, if the Commission determines it necessary.

LEGAL REVIEW: n/a

RECOMMENDATION: I would recommend the City Commission require event planners to submit a logistics and emergency operations plan to their local health authority no later than 14 days prior to the event.

SUGGESTED MOTION: I move the City Commission require event planners to submit a logistics and emergency operations plan to their local health authority no later than 14 days prior to the event.