



AGENDA
MANDAN CITY COMMISSION SEPTEMBER
3, 2019
ED "BOSH" FROELICH MEETING ROOM,
MANDAN CITY HALL
5:00 P.M.
www.cityofmandan.com

- A. ROLL CALL:
1. Roll call of all City Commissioners.
- B. APPROVAL OF AGENDA:
- C. MINUTES:
1. Consider approval of the minutes from the August 20, 2019 Board of City Commission regular meeting.
- D. PUBLIC HEARING:
- E. BIDS:
1. Request permission from Public Works to accept bids relating to contingent heavy equipment rates.
- F. CONSENT AGENDA:
1. Consider proclaiming Friday, November 1, 2019 Extra Mile Day in Mandan ND.
 2. Consider approval of Engage Addition minor plat.
 3. Consider approval of the Bismarck Mandan Rifle Pistol Association charity raffle permit for a one day event at the Baymont Inn & Suites on December 14, 2019.
- G. OLD BUSINESS:
- H. NEW BUSINESS:
1. Consider approving the selection of Stantec for assistance of procurement and implementation of brownfields grants.
 2. Consider appointment of Victoria Vayda to the Planning and Zoning Commission to fulfill an At-Large member term ending December 2022.
 3. Consider contract with Bartlett & West for Phase I Site Planning and Project Programming for the Morton Mandan Public Library and Downtown Parks project.
 4. Consider approval of Engineering Service Agreement contract with Moore Engineering for Mid-Town East Street Improvement District Project (SID 215).
 5. Consider Approval of Mandan Raw Water Intake project Ad for Bid and State Water Commission Grant Acceptance.

*Agenda
Mandan City Commission
September 3, 2019
Page 2 of 2*

I. RESOLUTIONS AND ORDINANCES:

1. Second and final consideration of Ordinance 1325 to amend and re-enact Sections 4 and 5 of Sec. 24-12-8 of the Mandan Code of Ordinances relating to violation for not carrying liability insurance.
2. Second and final consideration of Ordinance 1323 related to a zoning district amendment for proposed Meadow Ridge 4th Addition.
3. Second and final consideration of Ordinance 1324 related to a zoning district amendment for proposed Meadow Ridge 5th Addition.
4. Second and final consideration of Ordinance 1322 related to a zoning district amendment for proposed Engage Addition.
5. Second and final consideration of Ordinance 1321 related to Lots 4 & 5, Block 1 of Midway 14th Addition.
6. Second and final consideration of Ordinance 1320 related to crematoriums.
7. Consider approval of the resolution to transfer real property by nonexclusive listing agreement.

J. OTHER BUSINESS:

K. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:

1. September 17, 2019
2. October 1, 2019
3. October 15, 2019

L. ADJOURN

The Mandan City Commission met in regular session at 5:30 p.m. on August 20, 2019 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Mayor Helbling called the meeting to order.

A. ROLL CALL:

1. *Roll Call of All City Commissioners.* Present were Mayor Helbling, Commissioners Braun, Davis, Rohr and Larson. Department Heads present were, Finance Director Welch, Fire Chief Nardello, Building Official Ouradnik, Deputy Chief Flaten, Planning & Engineering Director Froseth, Principal Planner Van Dyke, Business Development and Communications Director Huber, Police Chief Ziegler, Assessor Teigen, City Administrator Neubauer, Director of Public Works Bitz and Attorney Brown. Absent: Assessor Markley, Human Resource Director Cullen.

Mayor Helbling extended a thank you to Chief Ziegler and the staff and officers from the Police Department for their work in sponsoring of the Police Department’s annual community picnic event. Many compliments and positive comments were received.

2. *Introduction of new MPD K9 dog and his handler, Officer Scott Warzecha.* Police Chief Ziegler invited Bob Kupper and Officer Scott Warzecha to be introduced along with Canine Kupper, the new K9 dog, who is 1 year 8 months old and is a great addition to the Mandan Police Department. He is trained for meth, cocaine, heroin and tracking bad guys. He is from the Czech-Republic. The Police Chief explained the selection process for the dog. He said that a second canine will be sought soon and trained next year.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the August 6, 2019 Board of City Commission regular meeting.* Commissioner Larson moved to approve the minutes as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes. Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

1. *First consideration of Ordinance 1320 related to crematoriums.* City Planner Van Dyke presented a request for approval of first consideration of Ordinance 1320 related to crematoriums. He said that an ordinance that was recently adopted would restrict crematoriums to within the Mandan Union Cemetery. The Board of City Commissioners directed staff to reevaluate the ordinance as it pertains to crematoriums. Through the process, funeral homes in the area provided comment, several public hearings were held and staff also researched land use standards from other communities. The original staff recommendation was provided in Exhibit 1 and the final Planning and Zoning Commission recommendation is in Exhibit 2. City Staff provided alternative recommendation based on many public hearings that have occurred on the issue since the original recommendation. The recommendation can be found in Exhibit 3. The alternative city staff recommended is to provide protections to existing home owners and developments that is not burdensome to a business owner. City staff recommended that

crematoriums be placed in an industrial zoning district with a 50' setback from the property line. In addition, a 350' setback applies to existing dwellings at the time of building permit issuance. Further, staff is recommending that these standards apply to the use and that no special use permit be required. These restrictions should address the issues that were discussed throughout the many hearings that took place in preceding months. P & Z unanimously approved of this recommendation and it has been reviewed and approved by Attorney Brown. The Engineering and Planning Department recommended approval of the first consideration of Ordinance 1320 as presented in Exhibit 3.

Mayor Helbling announced this is a public hearing regarding the First consideration of Ordinance 1320 related to crematoriums. He invited anyone to come forward to speak for or against this Ordinance. A second announcement was made to come forward to speak for or against this Ordinance. A final announcement was made to come forward to speak for or against this Ordinance. Hearing none, this portion of the public hearing was closed.

Commissioner Rohr moved to approve the first consideration of Ordinance 1320 as presented in Exhibit 3. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Preliminary/final plat and first consideration of Ordinance 1321 related to a zoning district amendment for proposed Midway Fourteenth Addition First Replat.* City Planner Van Dyke presented a request for approval of preliminary/final plat and first consideration of Ordinance 1321 related to a zoning district amendment for proposed Midway Fourteenth Addition First Replat. He stated that E-C ND Investments, LLC is seeking the removal of zoning restrictions to allow for a warehouse addition to their existing structure. Other properties in the same Midway 14th development underwent a zone change in 2013 to remove restrictions. This rezone request would bring the development under the same zoning provisions. The applicant is also seeking a preliminary and final plat to consolidate the three lots into one lot for the purposes of building expansion. This document including Ordinance 1321 have been reviewed and approved by Attorney Brown. The Engineering and Planning Department also recommended approval of the zoning amendment to CC-Commercial without restrictions as presented in Exhibit 2, the preliminary plat as presented in Exhibit 3 and the final plat as presented in Exhibit 4.

City Planner Van Dyke recommended approval of the zoning amendment to CC-Commercial without restrictions as presented in Exhibit 2, the preliminary plat as presented in Exhibit 3, and the final plat as presented in Exhibit 4.

Mayor Helbling announced this is a public hearing regarding the Preliminary/final plat and first consideration of Ordinance 1321 related to a zoning district amendment for proposed Midway Fourteenth Addition First Replat. He invited anyone to come forward to speak for or against this Ordinance.

Spence Koenig came forward and stated that he owns the property to the north of this property and he stated that he supports the request to put all three lots together.

Chris Houwman came forward and stated that he is the President of Malloy Electric and also the owner of E-C ND LLC. He provided a summary of the background of Malloy, a company that has been in the area since 1945. It is a family owned business that has six service centers in the upper mid-western states. They offer contract services and they employ engineers, mechanics, winders, and machinists. There are three market divisions and the primary business is described as “anything that feeds a motor”. They are trying to expand their business layout in Mandan. They opened in Mandan in 2016 with one person and as of today they employ 23. Most business comes from outside Mandan but the dollars stay in Mandan. Currently they can handle up to 4,000 horsepower with anticipation of increasing that to 20,000 horsepower and they want to double the plant and eventually double the plant again. The main concern is to get semi-trailers in and out safely and that can be accomplished with the plan being proposed. He said that Malloy is committed to the Mandan Community and noted that the company had their first intern this summer and they have now offered their first scholarship at Bismarck State College. The location of this building is on the east end of the strip, next to Action Motor Sports.

Mayor Helbling provided a second announcement was made to come forward to speak for or against this Ordinance.

Guy Halvorson, from Stockman’s Supply came forward and stated that his business is north of the Malloy building and he stated that they support the combining of the lots for zoning purposes.

A final announcement was made to come forward to speak for or against this Ordinance. Hearing none, this portion of the public hearing was closed.

Mayor Helbling announced that this action is only dealing with the change to Ordinance 1321.

Commissioner Davis moved to approve the zoning amendment to CC-Commercial without restrictions as presented in Exhibit 2, the preliminary plat as presented in Exhibit 3, and the final plat as presented in Exhibit 4. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Consider variance for Lot 3, Block 1, Midway 14th Addition to the required setback based on tower height.* City Planner Van Dyke requested approval for a variance for Lot 3, Block 1, Midway 14th Addition to the required setback based on tower height. He reported that Powder River Engineering Services, LLC representatives for Mr. Spence Koenig is applying for a variance to the setback requirement for communications towers. The setback requirement is 110% of the height of the structure to the property line. The proposed tower is 200 feet tall and would require the structure to be 220 feet from the property line. A site plan was provided in Exhibit 2. The applicants have provided a letter stamped by an engineer outlining the most likely scenario of failure in Exhibit 3.

City Planner Van Dyke reviewed the requirements under the Mandan Code of Ordinances in granting a variance: Variance may be granted under the following circumstances (See Sec. 105-1-12):

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

City Planner Van Dyke stated that there does not appear to be any special circumstances or conditions that apply to the land or buildings for which the variance is sought.

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

City Planner Van Dyke stated that the land does not have a commercial improvement on it at this time although it is sufficiently sized to accommodate many other commercial uses. A variance does not appear to be necessary to obtain a reasonable use of this land.

3. The grant of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

City Planner Van Dyke stated that without certainty that a structural failure would not result in the structure crossing a property line as the setback ordinance is in place to provide, a grant of a variance does not appear to be in harmony with the general purposes and intent of this chapter or to not be injurious to the neighborhood or otherwise detrimental to the public welfare.

This document has been reviewed and approved by the City Attorney and it was reviewed by the Planning and Zoning Commission who unanimously recommended denial of the setback as outlined in the documentation.

City Planner Van Dyke reported that the City Engineering and Planning Department has recommended denial of the setback of 220' to 22 feet for failure to meet the requirements of 105-1-12 surrounding variances to the zoning code for the reasons outlined in Exhibit 4. City Planner Van Dyke recommended denying the setback of 220' to 22 feet for failure to meet the requirements of 105-1-12 surrounding variances to the zoning code for the reasons outlined in Exhibit 4.

Mayor Helbling announced this is a public hearing to consider variance for Lot 3, Block 1, Midway 14th Addition to the required setback based on tower height. He invited anyone to come forward to speak for or against this variance request.

Brandon Peterson (AT&T) from Arizona, came forward and stated he is representing Powder River Engineering Services, LLC and that he supports the request for the variance request

brought by Spence Koenig. He said he was unable to attend the recent Planning and Zoning meeting when this was discussed due to the short notice. He said that the hardship case in this matter is due to the size and shape of the property as well as the location of the property, which is next to the interstate. The development for Mr. Koenig's business would be limited if the variance is denied. The variance would also deny Mr. Koenig rental income for the tower that would be placed on the property that would in turn help develop it. The tower would be built in fashion that it would never break or fall over, rather it is designed so that it would bend at the base and would not break.

Mayor Helbling provided a second announcement to come forward to speak for or against this variance.

Spence Koenig came forward and stated he owns Direct Ag Supply in Mandan and has been in Mandan since 2012, starting with 2-3 employees and that has increased to 11 or 12 employees. He explained that they have locations in Mandan with anticipated plans to grow the business further. A new addition to the company will be named Precision Planting and that will offer farming equipment, electronics and technology and that company will employ another 3-4 more people. He said that in order to make this business plan financially feasible, the rental income from the tower would enhance his business cash flow. He requested the City Commission approve the variance request as presented. He provided photos of a map of the cell phone towers located in Mandan versus those in Bismarck (far exceeding the number of towers in Mandan).

Brandon Peterson came back to the podium and stated that the reason for AT&T wants to come here is for the emergency response system that is going nationwide and AT&T won the contract for that system. He said if that contract was not acquired by AT&T, he would not be here today supporting this request.

Guy Halvorson came forward and stated that he is one of the owners in the building west of Mr. Koenig's property. He does not support this project due to the fact that his building is 147 feet away from the curb where that tower could possibly fall. He stated it could be a safety risk for his employees, customers and property.

Mayor Helbling provided a final announcement to come forward to speak for or against this variance request. Hearing none, this portion of the public hearing was closed.

City Planner Van Dyke said that this is part of the Memorial Highway overlay so there may be some aesthetic concerns as 200 feet is a substantially tall tower so in addition to safety concerns the staff has noted aesthetic concerns. Commissioner Rohr inquired if Powder River Engineering services wants to have a tower, is there a specific location where they want to put it? Are there other alternatives they can seek out as another location? Brandon Peterson replied that he was given limited information when told to go find a location (for the tower). He said he did not originally work this location however, he was in contact with Mr. Koenig and it is his goal to work out the best deal for the carrier and the business owner, in this case, Mr. Koenig.

Commissioner Larson commented that she is aware that several residential Bismarck owners have complained about towers near their property so in this similar situation there are neighbor

businesses that have voiced safety concerns and brought them forward and she said that the City Commission is obliged to listen to business owners as well as city residents.

Commissioner Larson moved to approve the denial of the setback of 220' to 22 feet for failure to meet the requirements of 105-1-12 surrounding variances to the zoning code for the reasons outlined in Exhibit 4. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

4. *First consideration of Ordinance 1322 related to a zoning district amendment for select lots in Scott's Acres (Proposed Engage Addition).* City Planner Van Dyke presented a request for the approval of the first consideration of Ordinance 1322 related to a zoning district amendment for select lots in Scott's Acres. This property is located at the site of Engage Church off Old Red Trail NW. He said that Engage Church is seeking to divide their property located to the southwest of the intersection of Old Red Trail NW and Highland Road NW and rezone one of the newly created lots to MA Industrial and the other to R7 Residential (See Exhibit 2). The existing zoning is MA Industrial and R7 Residential. The request is to reorient the zoning district boundaries to align with the proposed lots. The MA Industrial zoning is currently located along the rear of the property. The R7 Residential is located along the front of the property (See Exhibit 1). City Planner Van Dyke stated that storage units are located to the west of the proposed industrially zoned property and there is utility outdoor storage to the south. Industrial uses are more appropriate than a single family residence for the land between Engage Church and the rest of this industrial area. He said that City Staff recommends approval of the zoning amendment in Exhibit 3 for the reasons as outlined in Exhibit 4. He outlined the reasons for approval including:

- The property to the west and south are industrial zoned; the properties to the east/north are residentially zoned.
- The proposed industrial zoning district boundary abuts one of Mandan's large industrial parks.
- The church provides a harmonious transition from more intense industrial uses to lesser intense residential uses to the north and east.
- The existing zoning designations of MA Industrial and R7 Residential already exist on the property in a different configuration; this is a reconfiguration of what already exists on the property.

City Planner Van Dyke stated that this document including Ordinance 1322 have been reviewed and approved by Attorney Brown. The Engineering and Planning Department recommended approval of the first consideration of Ordinance 1322 per Exhibit 3 based on the reasons outlined in Exhibit 4. City Planner Van Dyke recommended approval of the first consideration of Ordinance 1322 based on Exhibit 3 including the outline in Exhibit 4.

Mayor Helbling announced this is a public hearing of the First consideration of Ordinance 1322 related to a zoning district amendment for select lots in Scott's Acres (Proposed Engage Addition). He invited anyone to come forward to speak for or against this variance request.

A second announcement was made to come forward to speak for or against this Ordinance. A final announcement was made to come forward to speak for or against this Ordinance. Hearing none, this portion of the public hearing was closed.

Commissioner Braun moved to approve the first consideration of Ordinance 1322 per Exhibit 3 based on the reasons outlined in Exhibit 4. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

5. *Consider approval of the first consideration of Ordinance 1323 related to a zoning district amendment and preliminary plat for Meadow Ridge 4th Addition.* City Planner Van Dyke presented a request for the approval of the first consideration of Ordinance 1323 related to a zoning district amendment and preliminary plat for proposed Meadow Ridge 4th Addition. He said the applicant is requesting approval for a rezone from MC-Industrial to RM-Residential and a preliminary plat to create four new lots. Each lot is planned to be further subdivided in the future once a specific placement for a twin-home has been determined. The lot line would then divide the shared wall so that each side of the structure could be owned independently. Exhibit 2 contains the preliminary plat for Meadow Ridge 4th Addition.

City Planner Van Dyke stated that the Planning and Zoning Commission recommended approval subject to a restriction only allowing single and two-family construction following concerns raised by adjacent residents. The applicant is amenable to this restriction. This document, including Ordinance 1323 has been reviewed and approved by the City Attorney. The Engineering and Planning Department recommended approval of the first consideration of Ordinance 1323 as reflected in Exhibit 1 and the preliminary plat as shown in Exhibit 2.

City Planner Van Dyke recommended approval of the first consideration of Ordinance 1323 as reflected in Exhibit 1 and the preliminary plat as shown in Exhibit 2.

Mayor Helbling announced this is a public hearing of the First consideration of Ordinance 1323 related to a zoning district amendment and preliminary plat for Meadow Ridge 4th Addition. He invited anyone to come forward to speak for or against this variance request.

Loretta Landeis, 2901 Highway 1806 North, Mandan came forward to speak. She stated she is concerned with this development and is against this request until their water problem is taken care of. She provided a photo of the original culvert since the road was built. It used to be a county road. She provided another photo of a culvert wherein storm water came down and washed the culvert out under Highway 1806, a state road. They (county) replaced it with three 36 inch culverts. She provided a photo of 28 inch culverts. When the county owned the culvert she said there was mud coming down and washed out culvert. The concern she has is there is water running across her private property with no easements, no right of ways and no infrastructure. This has damaged her drain field and caused damage to her private land. Many trees on her property have died because of this. She complained that their property has dropped in value but the taxes go up. She requested she would like to have any more building planned for this area to be held up until they (city/county) address the water problem. She requested the City Commission to vote “no” for any development in Meadow Ridge. She requested that the city

officials work together to fix the problem. She requested postponing this action until a solution is found for the water problem.

Dave Bjorndahl who lives on 7th Avenue Northwest, north of Meadow Ridge 4th Addition came forward to speak. He stated he is in favor of passing the Ordinance 1323 related to a zoning district amendment and preliminary plat for Meadow Ridge 4th Addition.

Deb Dressler, 2512 7th Avenue Northwest, Mandan, came forward and stated she has a problem with no public lighting in this area of town. She was concerned about putting in more buildings with multi-family dwellings because there is not enough public lighting. She believes it is a hazard with no lighting. There is some lighting at the end of 26th but no lighting on 27th. Mayor Helbling said that 27th is a state project and lighting is part of the project but that project has been pushed out for two years. Director Froseth explained that the 27th Street improvements, was in the DOT's TIP for 2021 but it has been bumped to 2022, after the 1806 project is reconstructed so they are not conflicting with each other. He said that regarding the lighting in the Meadow Ridge Addition, that will have to wait until the next phase of Meadow Ridge to put all the street lights in. The phases have been stretched out so those lights will have to wait. When put in, the street light project will be assessed to the property owners when they are put in.

Commissioner Rohr commented that he lived in that area previously and there were complaints about no street lights at that time. He inquired if the developer should be responsible for putting in street lighting? Director Froseth stated that the city requires street lights to go in with new construction. Mayor Helbling recollected that several years ago the city agreed that the developer could wait to put in street lights once there was 70% occupancy. Mayor Helbling requested Director Froseth to address the street light issue in this area at a later time.

Abe Ulmer with Toman Engineering came forward and stated he was the engineer on 1st and 3rd Meadow Ridge projects and he is also the engineer on the proposed 4th and 5th Meadow Ridge projects. Regarding the street lights, he confirmed that Bismarck still allows occupancy at 70% before they do a special assessment district. When the street lights just referred to were addressed previously, as a maintenance item, Dave Bechtel and Jeff Wright, former city directors, held off on putting street lights in this district. He explained the process used today for the installation process for street lights. He recalls the City asked they not put in the street lights at that time with the intention of putting them in sometime in a future phase of the Meadow Ridge projects, which will be done when looking at Meadow Ridge 5th. He also clarified that with regard to the zoning issue that the developer consented for Meadow Ridge 4th to be duplex or single family. He did ask that Meadow Ridge 5th be zoned as RM zoning with no constraints. Regarding the storm water, the city criteria will be followed. There have been concerns for quite a while on the water problems and that the county is involved. He said the engineers are willing to move forward with these projects and said that before doing so, everything is reviewed before building on that property.

Mayor Helbling commented that the four lots discussed are already draining into the watershed and will have little impact on the water shed. City Planner Van Dyke agreed it will be the same rate of flow.

Jo Wyeth came forward to comment on the lighting issue in this area. She stated she wants the Commission to understand the safety problem that exists. She lives on 6th Avenue Northwest and she believes that there is increased concerns if there will be additional multi-family units built. She requested that if this project moves forward that lighting must be part of the project.

Director Froseth clarified that the street lighting is not planned with the 27th Street project, rather it will happen with the next phase of Meadow Ridge 5th development.

City Planner Van Dyke cautioned adding street lights to Meadow Ridges 1 thru 3 and requested they not be tied to Meadow Ridge 4th and Meadow Ridge 5th. They all take access off 24th and that Meadow Ridge 1 thru 3 would be treated as a special district. Planner Van Dyke further clarified that Meadow Ridge 4th and 5th street lighting will be planned under the current projects and then Meadow Ridge 1 thru 3 will have separate assessment districts as separate projects.

Mayor Helbling inquired of Attorney Brown if Meadow Ridges 1 thru 3 qualifies as a health and safety concern? Attorney Brown stated that yes, they would be. Mayor Helbling recommended that they can be a separate special assessment district and that they should get done.

Jeff Dressler came forward and stated that he lives on 7th Avenue and he commented on the (lack of) street lighting in the area. He pointed out there are “64” mail boxes located down at the end of 8th Street. He said when it’s dark, you cannot see the boxes. It is a safety issue. He requested a temporary light be installed on the telephone pole that is right next to the mailboxes until the street lights are installed.

Mayor Helbling inquired of Director Froseth and Planner Van Dyke that in order to get street lights in this area, that a district would have to be created and 2020 would be the earliest this could be done? Director Froseth replied that yes that is the correct process. Mayor Helbling requested Administrator Neubauer to discuss with Public Works Director Bitz the possibility of installing a temporary light by the mailboxes.

A second announcement was made to come forward to speak for or against this Ordinance. A final announcement was made to come forward to speak for or against this Ordinance. Hearing none, this portion of the public hearing was closed.

Commissioner Rohr commented that regarding the Landeis’ request to solve the water problem, he clarified it is a broader development and that it would be difficult to determine a plan for their water problem without delaying the project.

Commissioner Larson commented that she appreciates the residents and the developer working together to make the adjustment for the single or two-unit only – it’s a good compromise on both sides. She requested further clarification with the street lights and potentially making the other Meadow Ridge 1, 2, 3, contingent on Meadow Ridge 4 or 5 and what kind of position that puts the City in. Mayor Helbling stated that Planner Van Dyke recommended that there should not be a contingency on Meadow Ridge 4 or 5. Planner Van Dyke concurred that is correct and stated that Meadow Ridge 1, 2, 3 project have nothing to do with Meadow Ridge 4 and 5 projects that will have street lights. He recommended that Meadow Ridge 1, 2, 3 project should be treated

independently as a special assessment district. He said that city staff will go back and address Meadow Ridge 1, 2, and 3 as a safety issue of which the City Commission already requested staff to look into it.

Attorney Brown clarified it has been determined that it is a safety issue and the City can create a special assessment district for Meadow Ridge 1, 2, 3 that cannot be protested out. That can be done between now and next summer and the street lights can be constructed in 2020.

Commissioner Larson moved to approve the first consideration of Ordinance 1323 as reflected in Exhibit 1 and the preliminary plat as shown in Exhibit 2. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: No; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

6. *Consider approval of the first consideration of Ordinance 1324 related to a zoning district amendment and preliminary plat for Meadow Ridge 5th Addition.* City Planner Van Dyke presented a request for the approval of the first consideration of Ordinance 1324 related to a zoning district amendment and preliminary plat for proposed Meadow Ridge 5th Addition. He said the applicant is requesting approval for a rezone from MC-Industrial to RM-Residential and a preliminary plat to create eight new lots. He said that as with Meadow Ridge 4th Addition each lot is planned to be further subdivided in the future. Exhibit 2 contains the preliminary plat for Meadow Ridge 5th Addition. City Planner Van Dyke stated that the Planning and Zoning Commission recommended approval of the zoning amendment and preliminary plat without restrictions. This document including Ordinance 1324 have been reviewed and approved by Attorney Brown. The Engineering and Planning Department recommended approval of the first consideration of Ordinance 1324 as reflected in Exhibit 1 and the preliminary plat as shown in Exhibit 2. City Planner Van Dyke recommended approval of the first consideration of Ordinance 1324 related to a zoning district amendment and preliminary plat for proposed Meadow Ridge 5th Addition.

Mayor Helbling announced this is a public hearing of the First consideration of Ordinance 1324 related to a zoning district amendment and preliminary plat for Meadow Ridge 5th Addition. He invited anyone to come forward to speak for or against this variance request.

Mayor Helbling commented that it is understood that the Landeis' are opposing this Ordinance and would want their information as presented before entered into the record for this ordinance.

Loretta Landeis approached the podium and again requested this project be held up due to all the water that goes through their property.

Abe Ulmer, Toman Engineering came forward and stated that on this property there are three existing storm ponds and the engineers have to put in detention ponds to slow down the water. For Meadow Ridge 5th he is working on a fourth pond to be connected to the other pond. However, everything will have to be approved through the City Engineer's Department. Part of the investigation should be on the county side to look at the culverts. Commissioner Davis commented that in trying to help out the Landeis family, when he visited the property there were

three culverts there and he questioned if that was enough and suggested that the city and county look at getting the water to flow through there quicker.

Mayor Helbling provided a second announcement to come forward to speak for or against this Ordinance. A final announcement was made to come forward to speak for or against this Ordinance. Hearing none, this portion of the public hearing was closed.

Commissioner Davis moved to approve the first consideration of Ordinance 1324 as shown in Exhibit 1 and the preliminary plat as shown in Exhibit 2. Commissioner Larson seconded the motion.

Mayor Helbling stated that he is aware there is one parcel the School District is looking at annexing however, before that happens the Landeis' water problem has to be resolved before any development plans go forward.

Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

E. BIDS:

1. *Consider the award of the bid for the demolition of the structure at 210 5th St NW to Boehm Construction and Spray Foam (Award by Resolution).* Building Official Ouradnik presented information regarding a contract for bids received for the demolition of the property located at 210 5th Street Northwest, Mandan ND. The demolition of the structure will include the demolition of the structure, removal of all debris, termination of all utility services, and placing compacted fill to make the site buildable for the future. He reported that only one bid was received on August 12, 2019 for this project in the amount of \$32,500 from Boehm Construction. He reported that a Purchase Agreement was received today from Jack and Marie Friedt. They are proposing their plans to purchase the lot and remove all the structures from the lot and construct a new house. The closing date for the purchase will be on or before September 15, 2019 with the demolition to be completed by October 31, 2019. The new home construction would then begin with the foundation being installed in the fall of 2019 and the construction of the new home being completed in spring of 2020. The bid came in late today and that is why there is a change on the agenda. Mr. Friedt is waiting for the decision on the bid (postponing) before he signs the Purchase Agreement.

Jack Friedt came forward and stated that he wrote up a Purchase Agreement and he will give a down payment after this Commission meeting. He said he plans to complete the purchase by September 15, 2019 and take full ownership of the property.

Attorney Brown stated this (Purchase Agreement) is a private matter. The bid from Boehm Construction can be held for up to 120 days. He recommended deferring awarding the bid until the October 1, 2019 City Commission meeting which will give the Friedt's time to complete the purchase. If Mr. Friedt does not go through with the purchase, the City can then award the demolition bid. Building Official Ouradnik agreed with the outlined proposal explained by Attorney Brown.

Commissioner Larson moved to postpone the demolition of the structure at 210 5th Street Northwest, Mandan ND and subsequent resolution until the purchase of the property is decided. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

F. CONSENT AGENDA

1. *Consider approval of monthly bills.*
2. *Consider approval of a renewal Class E liquor license at the Harvest Catering & Events located at 308 W. Main. Street.*
3. *Consider approval of an extension of the closing date for the sale of 100 5th St. NW.*
4. *Consider amending 2019 Municipal Court budget.*
5. *Consider formal acceptance of the Bank of North Dakota Infrastructure Loan for the Southside Street Improvement project.*
6. *Consider approval of the Special Event Permit for the Mandan Golden Age Club Car Show.*
7. *Consider approval of the Mandan Parking Authority Board's recommendations for expansion of the 90 minute parking zones.*
8. *Consider approval of Change Order G-02 to the Mandan 30" Sunset Reservoir Transmission Line Improvements project.*

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

G. OLD BUSINESS:

1. *Consider a variance to our driveway width standards at 4200 Lakewood Drive SE.* Planning and Engineering Director Froseth stated this matter was discussed at the last City Commission meeting wherein the Planning and Engineering office received a variance request to allow two driveways at this residential property whose sum exceed the maximum allowable width of 36-feet. The following outlines the request as compared to code language for consideration.

August 16th update: In response to City Commission's concerns about their plans conflicting with neighborhood covenants, the Lakewood Homeowners Association (HOA) has been in communication with the Engineering Department. Director Froseth summarized a letter received from the HOA that basically says that Lakewood Homeowners Association appreciates the driveway sub-standards but in this case they have no opposition to the variance to allow the second driveway and exceed the maximum width standards. Other items related to this plan had comments based on the original draft of the addition, in particular, have some architectural elements, windows on the water side of the lot and items pertaining to the garage door and similar items of which the applicant does not have the plans completed yet but they verbally said they would do that and they had no issue with that. The HOA appears to be in favor of the variance request. Director Froseth stated that his office did not think the HOA's decision had any impact with the Engineering Department's decision.

Commissioner Davis commented that he felt it would be important to know what the HOA's position was, mostly for the neighborhood's sake and to make sure the City Commission was doing its due diligence on behalf of the neighborhood.

Scott Berger, a local contractor came forward and stated that he has been retained to help the homeowner's with this variance request. He stated that he spoke with Craig Smith, the Lakewood HOA representative and they approved of the variance request. He explained that most lots are 80-90 feet wide, and this particular lot is about 180 feet wide. Further, the south side of that lot is controlled by the Park District (North Dakota Parks and Rec) that cannot be developed so there is that side of the street to handle any snow issues.

Commissioner Larson stated she is not in favor of approving variances on a regular basis, however given the above explanations and given that there is an easement on the other side of the property and considering the extreme width of the property, she does not see any effect on snow removal or storm water adversely affecting anything in this situation, thus she stated that she is supportive of this variance request. She has discussed this matter with Director Bitz, who has concerns with snow removal; however, Director Bitz agreed that this particular property would not adversely affect the Public Works operations. Commissioner Davis concurred with Commissioner Larson's point of view. Commissioner Rohr stated that regarding Ordinance, the City Commission is the discretionary party at times and they need to consider the opinions of the homeowners and see how this plays out. He concurred with Commissioner Larson's position.

Commissioner Davis moved to approve the variance request of driveway width of 14' at 4200 Lakewood Drive Southeast. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

H. NEW BUSINESS

1. *Consider approval of James B Mellon, Midway Lanes INC., Exemption Application 3327 Memorial Hwy.* Lila Teigen with the City Assessing Department presented a request to consider an application for a three year exemption for construction of an addition to a structure pursuant to North Dakota Century Code 57-02.2. The request was brought by James B Mellon, Midway Lanes INC., who is applying for a three year exemption for the construction of an 8,000 foot square addition to the structure located at 3327 Memorial Highway. The 40' x 200' addition will be constructed on the east side of the building. The addition will consist of an amusement area, pizza shop and rental space for Northern Trophy. This parcel is also known as Lot 2A of Lot 2 Block 1 Midway 12th Addition, parcel #65-6100142. The following documents were reviewed: Application, 2015 City of Mandan Guidelines for Property Tax Exemption of Improvements to Commercial & Residential Buildings, plan and current picture of east side of building.

The value of the addition is estimated to be \$1,144,300. Based on that amount, with the 2018 mill levy of 265 mills, the estimated exemption is \$15,174 for all taxing entities and \$3,674 for the City of Mandan per year. Midway Lanes representatives were present to answer questions.

This request was reviewed by Assistant City Attorney Oster. It was recommended to approve the Application for Property Tax Exemption for Improvements to Commercial & Residential Buildings North Dakota Century Code 57-02.2 located at 3327 Memorial Hwy.

Commissioner Braun moved to approve the Application for Property Tax Exemption for Improvements to Commercial & Residential Buildings North Dakota Century Code 57-02.2 for the building addition to 3327 Memorial Hwy. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Consider a driveway variance for 1401 Action Drive Southeast.* Planning and Engineering Director Froseth stated that the Planning and Engineering office received a variance request to allow a fourth driveway at a commercial business located at 1401 Action Drive Southeast in Mandan. He said that when this first was presented there was a request to combine the driveway lots so that when the lots are combined there would be one lot, one business, and four driveways. For commercial lots, the city allows two driveways. He said that this technically is not combined yet, so on technicality before combination it could have four driveways because it would not be two per lot. The City would not allow driveways to cross property lines and the request is for 19 feet between driveway aprons and the Mandan City Code requires 24 feet to allow for at least one extra space for parking vehicles. Since they already have three driveways and knowing what a challenge it is for Public Works staff to remove snow in cul de sacs areas, the Public Works staff did not agree with the fourth driveway and an alternative was suggested to work this out, however the property owner still prefers having the fourth driveway.

Director Froseth stated that the following outlines the request along with the city code language for consideration. The sections of code that are of concern are sections 115-5-3 (c)(2) 115-5-4 (6) are *italicized* in the sections below:

Section (c) Application issuance. The City Engineer shall issue a permit if a determination is made that:

(1) The work will be done according to the standard specifications of the city for public work of like character;

(2) *The operation will not unreasonably interfere with vehicular and pedestrian traffic, the demand and necessity for parking spaces, and the means of ingress and egress to and from the property affected and adjacent properties; and*

(3) The health, welfare and safety of the public will not be unreasonably impaired.

Non-residential lots: Any lot not used for residential purposes may have a maximum of two driveways, each not to exceed 40 feet in width, *separated by a distance of not less than 24 feet measured at the curb line of each side of the lot that fronts upon a public street.*

The variance requirements for section 105-1-12 of Mandan City Code and the city staff comments under each are in italics:

(1) Variances.

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

(b) No adjustment in the strict application of any provisions of this chapter shall be granted by the Board of Adjustment unless it finds that:

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

The Engineering Department does not see special circumstances or conditions that apply to this land or building that would require an additional driveway to properly serve this property.

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

The Engineering Department does not believe that the denying the request to add another driveway would deprive the applicant of the reasonable use of this land or building. Three driveways would still be allowed.

3. The granting of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Engineering Department does not believe this request to be in harmony with the general purpose of the rules relating to allowable driveways. There is a concern about adequate room to put snow within this cul-de-sac. When lot three to the NE develops, it will be that much more of a challenge.

Director Froseth stated that in conclusion, the Planning and Engineering Department finds that this request does not strictly meet the criteria needed to grant. It would be appropriate for the applicant to speak of the hardship if not granted however as our department cannot fully and accurately express that component. All items were forwarded to the City Attorney for review.

Director Froseth recommended denying the variance request because the property does not include special circumstances or conditions peculiar to the property, denial does not result in "...unnecessary hardship that would deprive the owner of a reasonable use of the land or building...", and granting the variance is not in harmony with the general purpose and intent of the chapter. He said the main reason for the denial has to do basically with snow removal.

Mr. Houwman came forward and stated one of the reasons they are interested in locating in Mandan is because of how the community has so nicely worked with them in doing business. He said he may have to consider downsizing his business expansion if this is denied and that would prohibit their business to grow in the fashion he anticipated. He said they are fine working through meeting requirements even if they have to downsize. He provided additional areas that snow could be piled up if needed.

Commissioner Rohr commented that he understands that businesses need certain access to their property in order to run their business and that cul de sacs in a business area differ than those located in residential areas. Mayor Helbling agreed with Commissioner Rohr in that it is a totally different circumstance with residential versus commercial. If it was a business or residence where the public goes there constantly it is a different situation. He stated he believes this request is within reason. More than likely, this business will not be going anywhere in the next several years and it is Mandan's goal to encourage business relationships. Commissioner Davis inquired if this were approved, would there be any agreement that would have to be made that Malloy and Action Sports would be open to providing more snow removal, since that is one of the issues.

Mr. Houwman reported that his business is 24/7 and if there are plants that are shut down or other emergencies, the plant has to open up and make sure there is access to their facility. He said they understand they will maintain the public street for snow removal and they are good with that.

Commissioner Larson, spoke to the one undeveloped piece of property in that area. Malloy is not involved with that property at all. In reply to that question, Spence Koenig came forward and stated that he owns that piece of property and agrees with the request as presented by Malloy.

Commissioner Braun commented that the City Commission relies on the City Engineering staff to bring forth information so the Commission can make informed decisions. He said that everyone agrees that industry and commercial is something that the City pushes for and that the goal is to make it easier to promote and create that kind of business atmosphere. He agreed with Mayor Helbling, the basic issue is snow removal that has to be taken care of between the city and the business without having to enter into an agreement. That nullifies his issue at this time.

Commissioner Larson moved to approve the variance request. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Consider approval of negotiating with Moore Engineering for Engineering Services related to the Mid-Town East Street Improvement District (SID 215).* Planning and Engineering Director Froseth presented a request to confirm the Selection Committee's qualifications based selection of Moore Engineering for consulting engineering related to the Mid-Town East Street Improvement project and enter into contract negotiations with them. Director Froseth explained that the local street conditions in this area of town can be generally classified as unsatisfactory as determined by a street assessment effort completed in 2012. There are water main pipes pushed

beyond their useful life and storm sewer issues throughout the project area. This area is also challenging in the way of ADA compliance. Though it will not be feasible to address all ADA issues because of existing grade and construction limit constraints, improved accessibility will be accomplished with this project. A Request for Proposals (RFP) was advertised in June and July for engineering assistance. The City received seven proposals indicating interest in providing these services for the city. A Selection Committee was created that was comprised of Planning and Engineering and Public Works department staff. After the Selection Committee reviewed the seven proposals, three of the competing firms were interviewed. After the interviews and in evaluating all information the selection team scored the three firms. After the scores were tabulated, Moore Engineering came out on top with Houston Engineering scoring in second place and HDR in third place. Therefore, Director Froseth recommended moving forward with contract negotiations with Moore Engineering.

Director Froseth reported there is no direct cost at this time. Designing a project of this scope and size is expected to cost under, but in some cases near, 10% of the construction. The specific limits and scope of project have not been set yet. A preliminary estimated cost for this project is about \$6M-\$8M before going too far into project assessment. All documents have been forwarded to the City Attorney for review.

Director Froseth recommended approving the selection of Moore Engineering and to authorize engineering staff to negotiate for the Mid-Town East Street Improvement project (SID 215) engineering services contract. Moore Engineering was present to answer questions.

Commissioner Larson moved to confirm the selection of Moore Engineering, and authorize engineering staff to negotiate for the Mid-Town East Street Improvement project (SID 215) engineering services contract. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

4. *Consider selection of Architect firm for Morton Mandan Public Library and Downtown Parks Project.* City Administrator Neubauer presented a request to consider selection and permission to enter into negotiations for architectural services for Morton Mandan Public Library, Dykshoorn Park and Heritage Plaza Improvements. He said that a Request for Qualifications (RFQ) was issued on June 21, 2019 for architectural services for Morton Mandan Public Library, Dykshoorn Park and Heritage Plaza Improvements. Subsequently, three proposals were received from Bartlett & West, Al Fitter Architect PC in conjunction with Ciavarella Design Architects & Buffalo Design Architects and Image Group Architecture & Interiors.

The team that included Mayor Helbling, MMPL Board of Trustees President Linda Ehreth, City Administrator Jim Neubauer, Business Development & Communications Director Ellen Huber, Program Coordinator Kari Moore, Library Director Jackie Hawes, Del Wetsch, MPO and City Planner John Van Dyke reviewed the proposals and also participated in the interviews of each of the proposers. In person interviews were conducted on August 13-14, 2019. The recommendation from the team was a unanimous vote in favor to move forward on contract negotiations with Bartlett & West. Their work on the Dickinson Public Library renovation and

expansion along with work on several public gathering spaces hit upon many of the points our project entails.

Administrator Neubauer stated that the goal is to bring back a contract to the City Commission for their consideration at the September 3, 2019 meeting. Administrator Neubauer recommended approval for the selection and permission to enter into negotiations for architectural services for Morton Mandan Public Library, Dykshoorn and Heritage Plaza improvements as presented.

Commissioner Larson stated she has a conflict of interest with this and was not part of the City's side of this discussion outside of voting for the issuing of the RFP for this project. She has not been part of the Bartlett and West (her employer) discussion from their side. She feels she has a strong conflict with this matter and respectfully recused herself from voting on this item.

Commissioner Braun moved to approve the selection and permission to enter into negotiations for architectural services for Morton Mandan Public Library, Dykshoorn and Heritage Plaza improvements as presented. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Abstained; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

I. RESOLUTIONS AND ORDINANCES

1. *Second and final consideration of Ordinance 1317 to amend and re-enact Section 18-1-7 and Section 18-1-8 of the Mandan Code of Ordinances relating to the possession of marijuana and drug paraphernalia.* Police Chief Ziegler stated there have been no additional comments or revisions since the first reading of this Ordinance.

Commissioner Braun moved to approve the Second and final consideration of Ordinance 1317 to amend and re-enact Section 18-1-7 and Section 18-1-8 of the Mandan Code of Ordinances relating to the possession of marijuana and drug paraphernalia. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Second and final consideration of Ordinance 1318 to create Section 6-3-1 of Article 6 of the Mandan Code of Ordinances relating to animals on city owned property.* Administrator Neubauer stated there were some edits to the Ordinance since the first consideration was presented in that “publically owned property” was removed and changed to “city owned property” and deferred to the Park and Rec and School District verbiage so the city code language is the same wording. It also included that this is a violation that can be ticketed for a \$20 fine. This ordinance was brought forward due to people bringing their animals to the park and not cleaning up after them. Commissioner Braun inquired if this would pertain to city cemeteries. Administrator Neubauer replied that there is a resolution following this ordinance that will indicate which properties will have limited access. Dykshoorn Park and Heritage Plaza are those two areas however, the cemetery is not included in that resolution. He said that because of the new ordinance there will have to be proper signage posted. Commissioner Larson inquired if there are events where pets are invited, and what would happen in instances like that? Administrator Neubauer stated that common sense would rule the day and could be determined on a case by case.

Commissioner Rohr moved to approve the Second and final consideration of Ordinance 1318 to create Section 6-3-1 of Article 6 of the Mandan Code of Ordinances relating to animals on city owned property. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Consider Resolution to approve the Second and final consideration of Ordinance 1318 restricting dogs, cats, or domesticated animals on city property at Dykshoorn Park and Heritage Plaza.* Administrator Neubauer said that some questions have come up about service animals so verbiage will be included to allow service animals.

Commissioner Davis moved to approve the Second and final consideration of Ordinance 1318 permitting the restriction of dogs and cats or domesticated animals on certain City owned property. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

4. *Second and final consideration of Ordinance 1319 to amend and re-enact Section 24-7-17 and Section 24-7-18 of the Mandan Code of Ordinances relating to parking of certain vehicles and unattached trailers and restrictions on consecutive parking.* Deputy Chief Flaten stated there are no changes since the first consideration was presented. She provided some stats of complaints received over the last three months on campers, trailers and boats. Mayor Helbling stated he didn't like singling out certain groups, and stated he thought it should be anything (car, motorcycle, etc.) if it's parked too long it should be ticketed. Deputy Chief Flaten stated cars can be parked on residential street for 48 hours.

Commissioner Larson reported that a Mandan resident brought up a concern that the (20 feet) length is restrictive. That length could be made longer, and Commissioner Larson suggested 36 feet in length.

Commissioner Larson moved to approve the Second and final consideration of Ordinance 1319 to amend and re-enact Section 24-7-17 and Section 24-7-18 of the Mandan Code of Ordinances relating to parking of certain vehicles and unattached trailers and restrictions on consecutive parking with the amendment of the length from 20 feet on any residential street or alley within any residential district to 36 feet. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: No. The motion passed.

5. *First Consideration of Ordinance 1325 to amend and re-enact Sections 4 and 5 of Sec. 24-12-8 of the Mandan Code of Ordinances relating to violation for not carrying liability insurance.* Attorney Brown stated this was brought to his attention by Judge Kautzman stating that the insurance conforms to North Dakota state law. This will state that a violation of subsection one must include a fine of one hundred fifty dollars (\$150) which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within a three-year period must be fined three hundred dollars (\$300) which may not

be suspended. Upon conviction for a violation of subsection one or equivalent ordinance, the person who has been convicted shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of one (1) year and kept on file with the department.

Commissioner Braun moved to approve the First Consideration of Ordinance 1325 to amend and re-enact Sections 4 and 5 of Sec. 24-12-8 of the Mandan Code of Ordinances relating to violation for not carrying liability insurance. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

J. OTHER BUSINESS:

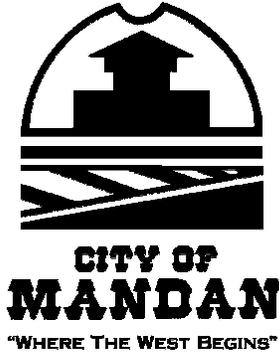
Commissioner Larson suggested that the City Commission send a recommendation to city staff to review the lighting situation and bring recommendations to a future meeting for the project referred to as Meadow Ridge 1, 2 and 3 Additions.

K. ADJOURNMENT:

Commissioner Braun motioned to adjourn the meeting at 7:58 p.m. Commissioner Larson seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

James Neubauer
City Administrator

Tim Helbling
President, Board of City Commissioners



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3rd, 2019
PREPARATION DATE: August 23rd, 2019
SUBMITTING DEPARTMENT: Public Works
DEPARTMENT DIRECTOR: Mitch Bitz
PRESENTER: Mitch Bitz, Public Works Director
SUBJECT: Contingent Heavy Equipment Rates

STATEMENT/PURPOSE: To accept bids relating to contingent heavy equipment rates

BACKGROUND/ALTERNATIVES: Public works advertised for bids August 9th and 16th, then accepted and opened bids on August 23rd, 2019 at 10:00 a.m. at Mandan Public Works Facility for contingent heavy equipment rates. The main purpose for the solicitation is to establish rates for the contractors who would be called upon to assist city crews in hauling snow from our streets within our normal winter street maintenance operations, however we also solicited bids on other pieces of heavy equipment so in the unlikely event city staff would not be able to perform services with our available resources we have options of hiring private contractors to augment our capabilities. An example where we may call upon these contractors would be in the event of an extraordinarily large snow event, if we should have multiple equipment failures during a snow event, or any disaster where we may need additional resources. We received two bids in total, all bids were from reputable companies that we have worked with previously. Both bidders met bid requirements, they were George Stroh Trucking and Bowers Excavating.

ATTACHMENTS: Bid summary sheet and bid tabulations

FISCAL IMPACT: Will vary depending on weather conditions and department needs, however in 2018-2019 winter season the City of Mandan expended approximately \$16K for snow hauling services by private contractors. The 2020 budget amount is established as \$15,450.

STAFF IMPACT: Minimal

LEGAL REVIEW: Attorney Browns office has reviewed attached bid documents

RECOMMENDATION: To accept the two low bids which meet the bidding requirements

SUGGESTED MOTION: I make a motion to accept the two low bids which meet the bidding requirements

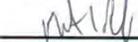
2019-2020 Contingent Heavy Equipment Bid Tabulation Summary Sheet
(Detail bid sheets attached below)

*George Stroh Trucking, Mandan requirements	Trucks \$100.00/Hr. Met all bid
*Bowers Excavating, Mandan requirements	Trucks \$110.00/Hr. Met all bid
*Bowers Excavating, Mandan requirements	Loader/Blower \$275.00/Hr. Met all bid

Board of City Commissioners
 Agenda Documentation
 Meeting Date: September 3, 2019
 Subject: Contingent Heavy Equipment Rates
 Page 4 of 5

2019-2020 CONTINGENT HEAVY EQUIPMENT RATES
 BID TAB

COMPANY/POINT OF CONTACT		BID AMOUNT	UNITS AVAILABLE	SUMMER RATE- Unit Price/HR	WINTER RATE- Unit Price/HR
BID #1	George Stroh Trucking INC	TANDEM TRUCK WITH MINIMUM OF 20 YARD BOX	3	\$ 100.00	\$ 100.00
Name-	George Stroh Trucking INC	2.5 YARD(min.) LOADER TO INCLUDE OPERATOR	1	\$ 100.00	\$ 100.00
	2570 Co Rd 82, Mandan, ND 58554	LOADER W/12' PLOW TO INCLUDE OPERATOR(12'minimum)			
Phone	701-391-9573	LOADER W/BLOWER ATTACHMENT CAPABLE OF LOADING TRUCKS(rated 2,000 tons/hr-min)			
Email	gstrohtrucking@hotmail.com	MOTOR GRADER W/12' BLADE TO INCLUDE OPERATOR(front wheel assist,12' blade min.)			
		SKID-STEER TO INCLUDE OPERATOR(Provide Description)			
Comments:		Description-			
Bid Contained ND State Contractors Lic.					
<input checked="" type="checkbox"/> YES OR <input type="checkbox"/> NO					
		SKID-STEER W/SNOW BLOWER TO INCLUDE OPERATOR(Provide Description)			
Liability Insurance Certificate Included in sealed bid envelope.		Description-			
ALL ITEMS IN SEALED BID SCANNED 8/23/19		SKID-STEER W/BROOM TO INCLUDE OPERATOR(Provide Description)			
		Description-			

Accepted by  DATE 8-23-19
 Witness  DATE 8-23-19

Board of City Commissioners
 Agenda Documentation
 Meeting Date: September 3, 2019
 Subject: Contingent Heavy Equipment Rates
 Page 5 of 5

2019-2020 CONTINGENT HEAVY EQUIPMENT RATES
 BID TAB

COMPANY/POINT OF CONTACT		BID AMOUNT	UNITS AVAILABLE	SUMMER RATE- Unit Price/HR	WINTER RATE- Unit Price/HR
BID #2	Bowers Excavating LLC	TANDEM TRUCK WITH MINIMUM OF 20 YARD BOX	3		\$ 110.00
Name-	Kasey Piccalo	2.5 YARD(min.) LOADER TO INCLUDE OPERATOR	4		\$ 125.00
	Po Box 145, Mandan, ND 58554	LOADER W/12' PLOW TO INCLUDE OPERATOR(12'minimum)	1		\$ 175.00
Phone	OFC-663-5619/Jeff CL/391-1380	LOADER W/BLOWER ATTACHMENT CAPABLE OF LOADING TRUCKS(rated 2,000 tons/hr-min)	1		\$ 275.00
Email	jffe83@hotmail.com	MOTOR GRADER W/12' BLADE TO INCLUDE OPERATOR(front wheel assist,12' blade min.)	1		\$ 150.00
		SKID-STEER TO INCLUDE OPERATOR(Provide Description)	3		\$ 90.00
Comments:		Description-			
Bid Contained ND State Contractors Lic.					
<input checked="" type="checkbox"/> YES OR <input type="checkbox"/> NO					
		SKID-STEER W/SNOW BLOWER TO INCLUDE OPERATOR(Provide Description)	1		\$ 110.00
		Description-			
All Items Scanned 8/23/19		SKID-STEER W/BROOM TO INCLUDE OPERATOR(Provide Description)	1		\$ 110.00
		Description-			

Accepted by  DATE 8-23-19
 Witness  DATE 8-23-19



"WHERE THE WEST BEGINS"

CITY OF MANDAN

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

CITY DEPARTMENTS

ADMINISTRATION	667-3215
ASSESSING	667-3232
BUILDING INSPECTION	667-3230
BUSINESS DEVELOPMENT	667-3485
CEMETERY	667-6044
ENGINEER/PLANNING & ZONING	667-3225
FINANCE	667-3213
FIRE	667-3288
HUMAN RESOURCES	667-3217
LANDFILL	667-0184
MUNICIPAL COURT	667-3270
POLICE	667-3455
PUBLIC WORKS	667-3240
WASTEWATER TREATMENT	667-3278
SPECIAL ASSESSMENTS	667-3271
UTILITY BILLING	667-3219
WATER TREATMENT	667-3275

PROCLAMATION

**Extra Mile Day
Friday, November 1, 2019**

WHEREAS, Mandan ND, is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively "go the extra mile" in personal effort, volunteerism, and service; and

WHEREAS, Mandan ND, is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, Mandan ND, is a community which chooses to shine a light on and celebrate individuals and organizations within its community who "go the extra mile" in order to make a difference and lift up fellow members of their community; and

WHEREAS, Mandan ND, acknowledges the mission of Extra Mile America to create 550 Extra Mile cities in America and is proud to support "Extra Mile Day" on November 1, 2019.

NOW THEREFORE, I, Mayor of Mandan North Dakota, do hereby proclaim November 1, 2019, to be Extra Mile Day. I urge each individual in the community to take time on this day to not only "go the extra mile" in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

Signed this 3rd day of September, the year 2019

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer, City Administrator



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 27, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Consider approval of Engage Addition minor plat

STATEMENT/PURPOSE: Consider approval of Engage Addition minor plat.

BACKGROUND/ALTERNATIVES: Engage Church is seeking to divide their property into two lots located to the southwest of the intersection of Old Red Trail NW and Highland Rd. NW. This is part of a rezone request (RO4 of today's agenda).

Exhibit 1 shows the lot configuration of the proposed minor plat.

ATTACHMENTS:

Exhibit 1 – Engage Addition Minor Plat

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: This document has been reviewed by Attorney Brown.

RECOMMENDATION: The Engineering and Planning Department recommend approval of the Engage Addition minor plat as shown in Exhibit 1.

SUGGESTED MOTION: I move to approve the Engage Addition minor plat as shown in Exhibit 1.

EXHIBIT 1

ENGAGE ADDITION TO THE CITY OF MANDAN

OWNER:
ENGAGE CHURCH
4259 OLD RED TRAIL
MANDAN, ND 58554

ENGINEER/SURVEYOR:
K.L.J.
4585 COLEMAN ST.
BISMARCK, ND 58503

A REPLAT OF LOTS 11-13, BLOCK 1, SCOTT'S ACRES FIRST ADDITION, AND LOT 1A OF LOT 1, BLOCK 2, SCOTT'S ACRES, LOCATED IN THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 139 NORTH, RANGE 81 WEST OF THE FIFTH PRINCIPAL MERIDIAN; CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA

DESCRIPTION

A REPLAT OF LOTS 11-13, BLOCK 1, SCOTT'S ACRES FIRST ADDITION, AND LOT 1A OF LOT 1, BLOCK 2, SCOTT'S ACRES, AS DESCRIBED IN DOCUMENT # 391112, RECORDED AT THE MORTON COUNTY RECORDER'S OFFICE, LOCATED IN THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 139 NORTH, RANGE 81 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF MANDAN, MORTON COUNTY, STATE OF NORTH DAKOTA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 11, BLOCK 1, SCOTT'S ACRES FIRST ADDITION TO THE CITY OF MANDAN, NORTH DAKOTA, WHICH IS THE POINT OF BEGINNING:

THENCE, S 43° 51' 47" W, ALONG THE EAST LINE OF SAID LOT 11, A DISTANCE OF 250.77 FEET, TO THE SOUTHEAST CORNER OF SAID LOT 11 AND THE SOUTHEAST CORNER OF LOT 1A OF LOT 1, BLOCK 2, SCOTT'S ACRES AS DESCRIBED IN DOCUMENT # 391112, RECORDED AT THE MORTON COUNTY RECORDER'S OFFICE; THENCE, N 88° 27' 21" W, ALONG THE SOUTH LINE OF SAID LOT 1A, A DISTANCE OF 347.04 FEET, TO THE SOUTHWEST CORNER OF SAID LOT 1A; THENCE, N 05° 02' 53" W, ALONG THE WEST LINE OF SAID LOT 1A, A DISTANCE OF 221.95 FEET TO THE NORTHWEST CORNER OF SAID LOT 1A AND THE SOUTHWEST CORNER OF LOT 13, BLOCK 1, SCOTT'S ACRES FIRST ADDITION; THENCE, N 21° 56' 27" E, ALONG THE WEST LINE OF SAID LOT 13, A DISTANCE OF 388.38 FEET, TO THE NORTHWEST CORNER OF SAID LOT 13; THENCE, S 63° 20' 39" E, ALONG THE NORTH LINE OF SAID LOT 13, A DISTANCE OF 378.13 FEET, TO THE NORTHEAST CORNER OF SAID LOT 13; THENCE, S 57° 27' 50" E, ALONG THE NORTH LINE OF SAID LOT 12, A DISTANCE OF 174.29 FEET, TO THE NORTHEAST CORNER OF SAID LOT 12; THENCE, S 50° 03' 24" E, ALONG THE NORTH LINE OF SAID LOT 11, A DISTANCE OF 175.17 FEET, TO THE NORTHEAST CORNER OF SAID LOT 11 WHICH IS THE POINT OF BEGINNING.

SAID TRACT CONTAINS 162,229 SQUARE FEET OR 3.724 ACRES, MORE OR LESS.

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. THE BOARD HAS ACCEPTED THE DEDICATION OF ALL STREETS, ALLEYS, AND PUBLIC WAYS SHOWN HEREON LYING WITHIN THE CORPORATE LIMITS OF THE CITY OF MANDAN. THE BOARD 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, NORTH DAKOTA. THE FOREGOING ACTION BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF MANDAN, NORTH DAKOTA, WAS TAKEN BY RESOLUTION THIS DAY OF _____, 20__.

JIM NEUBAUER - CITY ADMINISTRATOR

TIM HELBIG - PRESIDENT OF THE BOARD OF CITY COMMISSIONERS

APPROVAL OF THE CITY ENGINEERING DEPARTMENT

I, JUSTIN FROSTH, CITY ENGINEER, CITY OF MANDAN, NORTH DAKOTA, HEREBY APPROVE 'ENGAGE ADDITION', MANDAN, NORTH DAKOTA AS SHOWN ON THE ANNEXED PLAT.

JUSTIN FROSTH, CITY ENGINEER, CITY OF MANDAN

APPROVAL OF CITY PLANNING COMMISSION

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

BILL ROBINSON - CHAIRMAN

NANCY MOSER - SECRETARY

AUDITORS OFFICE, MORTON COUNTY, NORTH DAKOTA
DELINQUENT TAXES AND SPECIAL ASSESSMENTS OR INSTRUMENTS OF SPECIAL ASSESSMENTS, PAID AND TRANSFER ACCEPTED.

DAWN RHONE, COUNTY AUDITOR

BY _____ DEPUTY

APPROVED BY THE COUNTY AUDITORS OFFICE

DAWN RHONE, COUNTY AUDITOR

BY _____ DEPUTY

DATE: _____

SURVEYOR'S CERTIFICATE

I, BRETT ZELTINGER, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE ANNEXED PLAT IS A TRUE COPY OF THE NOTES OF A SURVEY PERFORMED UNDER MY SUPERVISION, AND THAT ALL INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BRETT ZELTINGER
REGISTERED PROFESSIONAL LAND SURVEYOR
N.D. REGISTRATION NO. LS-27331

STATE OF NORTH DAKOTA)
COUNTY OF BURLEIGH)

ON THIS _____ DAY OF _____, 20__, BEFORE ME PERSONALLY APPEARED BRETT ZELTINGER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE WITHIN CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

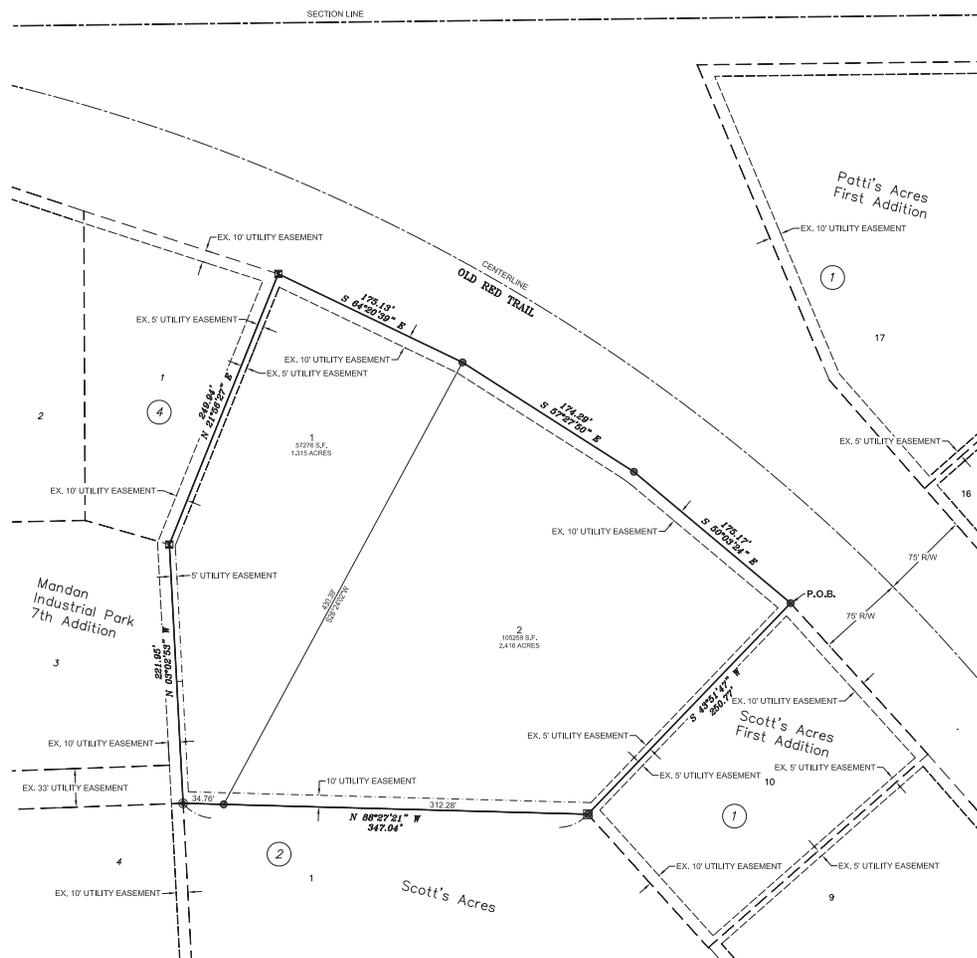
OWNERS CERTIFICATE AND DEDICATION

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, WATER LINES, 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 OR SERVICES UNDER, ON, OR OVER THESE CERTAIN STRIPS OF LAND AS DESIGNATED.

ENGAGE CHURCH
STATE OF NORTH DAKOTA)
COUNTY OF _____)

ON THIS _____ DAY OF _____, 20__, APPEARED BEFORE ME, _____ KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE CERTIFICATE AND DID ACKNOWLEDGE TO ME THAT HE EXECUTED THE SAME AS HIS OWN FREE ACT AND DEED.



PLAT LEGEND

- LS CAP #3463 FOUND
- LS CAP #5565 FOUND
- LS CAP ILLEGIBLE FOUND
- MONUMENT TO BE SET

- NON-ACCESS LINE
- EXISTING PROPERTY LINE
- EXISTING EASEMENT LINE
- PROPOSED EASEMENT LINE
- PROPOSED BOUNDARY LINE
- PROPOSED LOT LINE

- 1 PROPOSED BLOCK AND LOT NUMBER
- 1 EXISTING BLOCK AND LOT NUMBER

BASIS OF BEARING - NORTH DAKOTA STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH ZONE
UNITS - INTERNATIONAL FEET
DISTANCES SHOWN ARE GRID DISTANCES
USE A CONVERSION FACTOR OF 1.0001461884 TO CONVERT GRID DISTANCES TO GROUND DISTANCES

PLAT INFORMATION

NUMBER OF LOTS: 2
LOT ACREAGE - 3.731 ACRES
R.O.W. ACREAGE - 0.090 ACRES
TOTAL ACREAGE - 3.731 ACRES

ZONING INFORMATION

CURRENT ZONING: LOTS 11, 12, & 13 - R7, LOT 1A - MA
PROPOSED ZONING: LOT 1 - MA, LOT 2 R7

NOTES:

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS.



SCALE 1" = 50'
JUN X, 2019
FEET



OLD RED TRAIL COMMERCIAL 2ND ADDITION



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

Type: [X] Local Permit * [] Charity Local Permit

Permit Number
2019-36

Form with fields: Name of Organization (Bismarck Mandan Rifle Pistol Association), Date(s) Authorized (12/14/2019 to 12/14/2019), Contact Person (Tom Thompson), Business Phone Number ((701) 255-4601), Mailing Address (Po Box 682), City (Bismarck), State (ND), Zip Code (58501-0000), Site Name (Baymont Inn), Site Address (2611 Old Red Trail), City (Mandan), State (ND), ZIP Code (58554-0000), County (Morton County), Check the Game(s) Authorized (Raffle selected), Restriction, Requirement, Date (8/27/2019), Signature of City Auditor, Printed Name of City or County Auditor (Lori Flaten), Auditor Telephone Number ((701) 667-3455).

cut along this line

INFORMATION REQUIRED TO BE PREPRINTED ON A STANDARD RAFFLE TICKET:

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

2019-36a



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL

SFN 9338 (08/2016)

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

Name of Non-profit Organization <i>Bismarck Mandan Rifle Pistol Association</i>	Date(s) of Activity <i>12-14-19 to 12-14-19</i>	For a raffle, provide drawing date(s): <i>12-14-19</i>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Tom Thompson</i>	Title <i>Treas-ur-er</i>	Business Phone Number <i>701-255-4601</i>	
Business Address <i>4667 Sky Way</i>	City <i>Bismarck</i>	State <i>ND</i>	Zip Code <i>58501</i>
Mailing Address (if different) <i>P.O. BOX 682</i>	City <i>Bismarck</i>	State <i>ND</i>	Zip Code <i>58502</i>
Name of Site Where Game(s) will be Conducted <i>Baymont Inn (Seven Seas)</i>	Site Address <i>2611 Old Red Trail</i>		
City <i>mandan</i>	State <i>ND</i>	Zip Code <i>58554</i>	County <i>Morton</i>
Check the Game(s) to be Conducted: *Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.			
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>Raffles</i>	<i>Gun, GRILL, misc Items</i>	<i>\$6000⁰⁰</i>			
Total:					(Limit \$12,000 per year) <i>\$ 6000⁰⁰</i>

Intended uses of gaming proceeds: _____

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

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

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

Signature of Organization's Top Executive Official <i>[Signature]</i>	Date <i>8/19/19</i>	Title <i>Bm RPA Gaming Officer</i>	Business Phone Number <i>701-390-4919</i>
--	------------------------	---------------------------------------	--



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 28, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM,
SUBJECT: Consider approving the selection of Stantec for assistance of procurement and implementation of brownfields grants

STATEMENT/PURPOSE: Consider approving the selection of Stantec for assistance of procurement and implementation of brownfields grants.

BACKGROUND/ALTERNATIVES: Staff recently requested to issue a request for qualifications (RFQ) to assist the City with the procurement and implementation of brownfields grants.

The City received one RFQ from Stantec.

If the selection is approved, Stantec will assist with grant writing and administration of a brownfield assessment grant. This grant, if awarded, would provide up to \$300,000 in grant monies toward creating an inventory of properties, planning, environmental assessment, as well as community outreach (See Exhibit 1 for summary).

Stantec will work with the City on a pro-bono basis with grant writing in an effort to help the City's application be as competitive as possible. The City of Mandan is the only city they are working with in North Dakota during the 2020 application period.

If the City is successful in obtaining the grant, federal monies will be used to compensate Stantec for their assistance in administering the grant. The City would be notified in spring 2020 of whether or not it was chosen for the award. Funds would be dispersed and work would commence in fall 2020.

Staff will work with Stantec to create a contract and present these details at the September 17, 2019 City Commission hearing for approval.

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Consider approving the selection of Stantec for assistance of procurement and implementation of brownfields grants

Page 2 of 2

ATTACHMENTS:

Exhibit 1 – EPA Brownfield Assessment Grant Summary Handout

FISCAL IMPACT: N/a

STAFF IMPACT: Minimal

LEGAL REVIEW: This staff report has been sent to City legal staff as part of the agenda packet for review.

RECOMMENDATION: The Engineering and Planning Department recommend approval to select Stantec with assistance toward the procurement and implementation of brownfields grants.

SUGGESTED MOTION: I move to approve the selection of Stantec with assistance toward the procurement and implementation of brownfields grants.

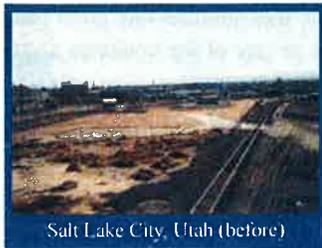
EXHIBIT 1



EPA Brownfields Assessment Grants: Interested in Applying for Funding?

Here's what you need to know to get started...

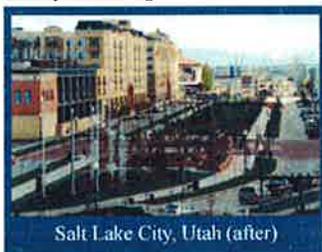
What is EPA's Brownfields Program?



Salt Lake City, Utah (before)

The U.S. Environmental Protection Agency's (EPA) Brownfields Program is designed to empower states, communities, and other stakeholders to work together in

a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. EPA provides technical and financial assistance for brownfields activities through an approach based on four main goals: protecting human health and the environment, sustaining reuse, promoting partnerships, and strengthening the marketplace. Brownfields grants serve as the foundation of the Brownfields Program and support revitalization efforts by funding environmental assessment, cleanup, and job training activities. Thousands of properties have been assessed and cleaned up through the Brownfields Program, clearing the way for their reuse.



Salt Lake City, Utah (after)

A brownfield is defined as: real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The 2002 Brownfields Law further defines the term to include a site that is: "contaminated by a controlled substance; contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance'; or mine-scarred land."

What are the Four Grant Types?

- ✓ **Assessment grants** provide funding for brownfields inventories, planning, environmental assessments, and community outreach.
- ✓ **Revolving Loan Fund grants** provide funding to capitalize a revolving loan fund that provides loans and subgrants to carry out cleanup activities at brownfields.

- ✓ **Cleanup grants** provide direct funding for cleanup activities at specific sites.
- ✓ **Job Training grants** provide environmental training for residents of brownfields communities.

What are Assessment Grants?

Assessment grants provide funding for a grant recipient to:

- ✓ **Inventory Sites:** Compile a listing
- ✓ **Characterize Sites:** Identify past uses
- ✓ **Assess Sites:** Determine existing contamination
- ✓ **Conduct Cleanup and Redevelopment Planning:** Scope and plan process
- ✓ **Conduct Community Involvement:** Inform and engage community

For a Community-Wide Grant:

- ✓ An applicant may apply for a community-wide assessment grant if a specific site has not been identified or if the assessment will address more than one site within the community.
- ✓ Applicants electing to apply for up to \$200,000 for a community-wide hazardous substance assessment grant are not eligible for a site-specific hazardous substance assessment grant in the same grant competition. Applicants applying for up to \$200,000 for a community-wide petroleum or petroleum product assessment grant will not be eligible for a site-specific petroleum assessment grant.

For a Site-Specific Grant:

- ✓ A site-specific assessment grant must be applied for if the assessment is limited to one, and only one, site. A site-specific assessment grant application must be made if a waiver of the funding limitation is requested.
- ✓ Applicants will not be allowed to substitute another site for a site-specific assessment grant where the subject site is determined to be ineligible.

For the complete discussion of Brownfields Program grant funding, refer to the EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup grants at: <http://www.epa.gov/brownfields/applicat.htm>

How Do I Apply for an Assessment Grant?

Applicants submit a proposal for each grant type that they are applying for (i.e., assessment, revolving loan fund, and/or cleanup). Each proposal must address the selection criteria outlined in the guidelines.

Money to identify list.

Important: This document is not designed as a substitute for the EPA Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants document located on the Brownfields Web site at: <http://www.epa.gov/brownfields/applicat.htm>

Grant proposals should be concise and well organized, and must provide the information requested in the guidelines. Applicants must demonstrate that they meet threshold criteria requirements and must respond to evaluation criteria. Factual information about your proposed project and community must be provided.

Proposals must include:

- ✓ Cover letter describing project
- ✓ Applicant information
- ✓ Applicable mandatory attachments (e.g., state letter)
- ✓ Responses to evaluation criteria

All applicants must refer to the Proposal Guidelines published by EPA.

Who is Eligible to Apply for an Assessment Grant?

Eligible entities include: state, local, and tribal governments, with the exception of certain Indian tribes in Alaska; general purpose units of local government, land clearance authorities, or other quasi-governmental entities; regional council or redevelopment agencies; or states or legislatures. Some properties are excluded from the definition of a brownfield unless EPA makes a site-specific funding determination that allows grant funds to be used at that site.

Applicants may apply for both community-wide and site-specific assessment grants; however, an applicant is limited to submitting only ONE hazardous substance assessment grant proposal and ONE petroleum assessment proposal.

Each eligible entity may submit no more than two assessment proposals.

How Much Assessment Grant Funding is Available?

- ✓ Up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum).
- ✓ Up to \$200,000 to address a site contaminated by petroleum.
- ✓ For site-specific proposals, applicants may seek a waiver of the \$200,000 limit and request up to \$350,000 for a site contaminated by hazardous substances, pollutants, or contaminants and up to \$350,000 to assess a site contaminated by petroleum. Such waivers must be based on the anticipated level of hazardous substances, pollutants, or contaminants including hazardous

substances comingled with petroleum) or petroleum at a single site. (Community-wide assessment grants are not eligible for assessment grant "waivers.")

- ✓ Total grant fund requests should not exceed a total of \$400,000 unless such a waiver is requested.
- ✓ Up to \$1 Million for assessment coalitions. A coalition is made up of 3 or more eligible applicants that submits one grant proposal under the name of one of the coalition members who will be the grant recipient.

How Long is the Assessment Period?

The performance period for an assessment grant is three years.

Where Do I Find the Proposal Guidelines?

Electronic copies of the Proposal Guidelines can be obtained from the EPA brownfields Web site at: <http://www.epa.gov/brownfields/applicat.htm>

Additional information on grant programs may be found at: www.grants.gov

Is Pre-Application Assistance Available?

If resources permit, EPA Regions may conduct open meetings with potential applicants. Check with your regional office for date and location information. Your regional Brownfields Program contacts can be found at: <http://www.epa.gov/brownfields/corcntct.htm>

EPA can respond to questions from applicants about threshold criteria, including site eligibility and ownership.

EPA staff can not meet with applicants to discuss draft proposals or provide assistance in responding to ranking criteria.

What is the Evaluation/Selection Process?

Brownfields grants are awarded on a competitive basis. Evaluation panels consisting of EPA staff and other federal agency representatives assess how well the proposals meet the threshold and ranking criteria outlined in the Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup grants. Final selections are made by EPA senior management after considering the ranking of proposals by the evaluation panels. Responses to threshold criteria are evaluated on a pass/fail basis. If the proposal does not meet the threshold criteria, the proposal will not be evaluated. In some circumstances, EPA may seek additional information.



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 27, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, Engineering and Planning Director
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Consider Appointment to the Planning and Zoning Commission

STATEMENT/PURPOSE: Consider appointment of Victoria Vayda to the Planning and Zoning Commission.

BACKGROUND/ALTERNATIVES: The Planning and Zoning Commission is comprised of seven at-large members. One seat is available for appointment due to a recent resignation.

The Engineering and Planning Department received a lone letter of interest from Victoria Vayda.

The Planning and Zoning Commission voted unanimously to appoint Victoria Vayda to the Planning and Zoning Commission to fulfill the term ending December 31, 2022.

ATTACHMENTS:

Letters of Interest from:

- Victoria Vayda

FISCAL IMPACT: None

STAFF IMPACT: None

LEGAL REVIEW: N/a

RECOMMENDATION: The Planning and Zoning Commission convened at its normal scheduled date and time on August 26, 2019 at 5:30pm and voted to recommend approval to appoint Victoria Vayda to the Planning and Zoning Commissioner for the remainder of an at-large term expiring December 31, 2022.

SUGGESTED MOTION: I move to appoint Victoria Vayda to the Planning and Zoning Commission for the remainder of an at-large term expiring December 31, 2022.

EXHIBIT 1

June 20, 2019

Mr. Jim Neubauer

City Administrator

City Hall

205 2nd Ave NW

Mandan, ND 58554

Dear. Mr. Neubauer:

I would like to be considered for appointment to the Mandan Planning and Zoning Commission. Experiences including, but not limited to, my current employment with Mandan Walmart Store #2033.

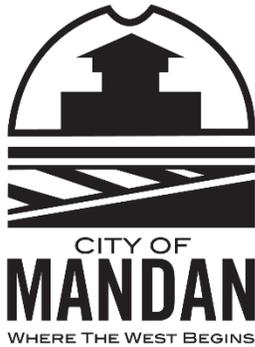
Familiarity with customers concerns regarding zoning, platting, annexations, transportation studies and variances. Previous experiences were working with Mr. Bob Decker on a Multi-family zoning and work group.

I am very interested in filing the role with fresh new ideas, always listening to both sides of disagreements, I am very knowledgeable and I do not table projects I always look for a resolution and I can also bring a lot of creativity to the commission.

As Mandan grows, it is very important that P&Z reflects on the interests of the city and utterly important re-connects with the business and building development industries. As a long-time city of mandan resident, I am a true believer of helping the City of Mandan and giving back to the Mandan community.

Respectfully yours,

Ms. Victoria L. Vayda



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 28, 2019
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Contract with Bartlett & West (B & W) for Phase I Site Planning and Project Programming for the Morton Mandan Public Library (MMPL) and Downtown Parks project.

STATEMENT/PURPOSE: To consider entering a contract with Bartlett & West for Phase I Site Planning and Project Programming for the MMPL and Downtown Parks project.

BACKGROUND/ALTERNATIVES: At its August 20th meeting the Board authorized staff to begin negotiations with Bartlett and West for this project after interviewing two other firms.

B & W supplied a Phase I plan for Site Planning and Project Programming. This Phase I would cost \$45,000. Phase II would involve the civil engineering and landscape architecture design for improvements outlined in Phase I.

Phase I and Phase II consist of:

1. Phase I
 - 1.1. Client Kick Off Meeting
 - 1.2. Steering Committee Meeting #1
 - 1.3. Site analysis, Assessment and Base map Assembly
 - 1.4. Stakeholder Meetings
 - 1.5. Concept Development
 - 1.6. Steering Committee Meeting #2
 - 1.7. Community Pop-Up Presentations
 - 1.8. Business Community Presentations
 - 1.9. Steering Committee Meeting #3
 - 1.10. Final Plan Refinement and Concept Renderings
 - 1.11. Phasing Identification and Opinion of Probable Cost Assembly
 - 1.12. Funding Research for Project Phasing
 - 1.13. Final Document Assembly

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Contract with Bartlett & West for Phase I Site Planning and Project Programming for the Morton Mandan Public Library and Downtown Parks project.

Page 2 of 31

- 1.14. Final Presentation to Steering Committee Meeting #4
- 1.15. Final Presentation to Mandan City Commission
- 2. Phase II
 - 2.1. Construction Document Reviews with City (30%, 50%, 75%, 100%)

ATTACHMENTS: MMPL and Parks Proposal, AIA Agreement

FISCAL IMPACT: \$45,000, from the Energy Transfer donation

STAFF IMPACT: meeting times for staff etc.

LEGAL REVIEW: Attorney Brown has reviewed and finds the contract terms acceptable.

RECOMMENDATION: I recommend we approve the Phase I AIA Agreement between Bartlett & West and City of Mandan for the Morton Mandan Public Library, Dykshoorn Park and Heritage Plaza improvements.

SUGGESTED MOTION: I move to approve the Phase I AIA Agreement between Bartlett & West and City of Mandan for the Morton Mandan Public Library, Dykshoorn Park and Heritage Plaza improvements.



Stantec Consulting Services Inc.
3255 Greensboro Drive Suite 203, Bismarck ND 58503-5413

23 August 2019

Attention: Joe Larrivee, AIA, Bartlett & West

Bartlett & West
3456 E. Century Ave.
Bismarck, ND 58503

Reference: Planning, Civil and Landscape Architecture Services for Mandan Library and Dykshoorn Park Improvements (DRAFT proposal)

Dear Mr. Larrivee,

Together with you and your team, we are excited to provide site planning, civil engineering and landscape architecture services to the City of Mandan. Improvements to the existing library facility and Dykshoorn Park will, undoubtedly, provide value to residents and support community activities for years to come. Based on previous conversations with you, we have assembled the following proposed scope of work to address the needs of this exciting project.

Phase 1: Site Planning and Project Programming

1.1 Client Kick-Off Meeting

Stantec will participate in one project kick-off meeting with Bartlett & West and the City of Mandan to review the scope of work, project schedule and key milestones for project delivery. Assembly of a Steering Committee will also be discussed at this meeting and appropriate participants will be identified.

1.2 Steering Committee Meeting #1

Together with Bartlett & West, Stantec will attend and assist in facilitation of a Steering Committee meeting (1 of 4) to review the project, discuss perspectives, priorities and concerns and to receive first-hand feedback on initial thoughts for the plan.

1.3 Site Analysis, Assessment and Basemap Assembly

Stantec will work with the City of Mandan to collect and assemble all pertinent site information for the Library site and Dykshoorn Park. Our team will assemble appropriate basemap and baseplan documents which will provide the foundation for all subsequent planning. We will review all applicable CAD files, project aerials and as-built documents to complete a thorough site analysis for the project.

1.4 Stakeholder Meetings

In collaboration with Bartlett & West, Stantec will facilitate and actively participate in one day of stakeholder meetings with community organizations and individuals who have an active interest in the project, as determined by the Steering Committee. The purpose of these meeting will be to collect thoughts, ideas and perspectives for design considerations that should be incorporated into the plan.

1.5 Concept Development

Following completion of stakeholder meetings, Stantec will assemble two schematic concepts for the development of the Library site and Dykshoorn Park. Working closely with the Bartlett & West team, Stantec will assemble site plan concepts to address vehicular and pedestrian circulation, outdoor amenities and programming. Appropriate plan graphics (plan view renderings, example programming images) will be assembled to convey the preliminary design direction.

1.6 Steering Committee Meeting #2

Together with Bartlett & West, we will attend Steering Committee meeting #2, during which we will review stakeholder feedback and present preliminary concepts to receive input and feedback from the group.

1.7 Community Pop-Up Presentations

Following Steering Committee Meeting #2, we will address appropriate revisions to the preliminary design concepts and will work closely with the City of Mandan to identify appropriate community events where Stantec may set up a display area to solicit input from the community. The purpose of these “pop-up” events will be to share project progress with the community and gauge support for the various design ideas and proposals considered by our team. We will attend up to three community events (for 2 hours each) and will provide display boards and interactive activities to engage the public.

1.8 Business Community Presentations

In addition to community pop-up presentations, Stantec will also work with the City of Mandan to identify appropriate local business organizations to which presentations of the preliminary concepts will be given. Recognizing that the business community can often be a strong sounding board from which to receive input, Stantec will work closely with the City and with Bartlett & West to assemble appropriate presentation materials to convey the preliminary plans for the project.

1.9 Steering Committee Meeting #3

Together with Bartlett & West, Stantec will attend and facilitate Steering Committee Meeting #3, where we will present feedback from community outreach activities and determine final direction for the development of the plan. The purpose of this meeting will be to establish final direction for the master plan and identify priorities for immediate and long-term phasing improvements.

1.10 Final Plan Refinement and Concept Renderings

Following Steering Committee meeting #3, Stantec will finalize the master plan for the Library site and Dykshoorn Park. We will assemble plan revisions in rendered plan view as well as photorealistic renderings to convey the final design intent of the concept.

1.11 Phasing Identification and Opinion of Probable Cost Assembly

Building from the phasing discussion addressed during Steering Committee meeting #3, our team will finalize phasing priorities and assemble opinions of probable cost for each phase, as it's defined in the plan. Probable costs will address site improvements only, and we will work in collaboration with Bartlett & West to coordinate any facility improvements (developed by their professionals) into the final phasing approach.

1.12 Funding Research for Project Phasing

Upon completion of the phasing and probable cost assembly, Stantec funding expert, Heidi Pepper, will research available grants, community partnerships and federal programs which may aid with near-term and long-term phasing priorities. The results of this research will be presented to the Steering Committee at the final presentation for this project and will also be included within the final documentation of the plan. If any funding opportunities may provide immediate availability for project implementation, Heidi will work with the City of Mandan to determine next steps for potential funding applications.

1.13 Final Document Assembly

Following the completion of the final plan refinement, rendering development, phasing plan, probable cost assembly and funding research, Stantec will lead efforts to compile the master plan for the Library Site and Dykshoorn Park into a comprehensive document which will accurately convey project information in a concise and easy-to read format. In addition to the information outlined above, the final document will include an overview of stakeholder feedback, community input and notes from all meetings, presentations and discussions.

1.14 Final Presentation to Steering Committee (meeting #4)

Once the final planning document has been assembled, Stantec will co-lead the final Steering Committee meeting to present the plan and address any final comments prior to final presentation to the Mandan City Commission.

1.15 Final Presentation to Mandan City Commission

We will work with Bartlett & West to assemble presentation materials and speaking points to present the final concepts and plan document for the Mandan Public Library site and Dykshoorn Park.

Phase 2: Civil Engineering and Landscape Architecture Design for Immediate Improvements

Once the master plan document has been finalized and accepted by the Mandan City Commission, our team will work collaboratively with Bartlett & West to provide Civil Engineering and Landscape Architecture services for immediate improvements to the Library Site and Dykshoorn Park, as identified within priority phases of the master plan. Upon completion of this plan, our team will have a final design direction from which to build are more defined scope of work and fee proposal. However, while it's challenging to provide an accurate fee for the effort associated with these activities, we are prepared to provide services to assemble the following bidding and construction documents for the project.

2.1 Construction Document Reviews with the City (30%, 50%, 75%, 100%)

Together with Bartlett & West, Stantec will attend construction document review meetings at appropriate milestones, as determined by Bartlett & West, throughout the duration of design. The purpose of these meetings will be to apprise the City of design development and to facilitate cross-coordination across all disciplines.

Based upon our current understanding of the project and potential site impacts, Stantec will

provide Civil Engineering services to assemble the following drawings, which will be included within the broader bid document set:

- **Existing Conditions (site survey to be provided by Bartlett & West)**
- **Demolition Plan**
- **Layout Plan**
- **Dimensioning Plan**
- **Grading Plan**
- **Stormwater Plan**
- **Utility Plan**
- **Details & Specifications**
- **Updates to Opinion of Probable Cost**

Working in concert with the broader project team and the Civil Engineering design, Stantec will also provide Landscape Architecture services to compile construction and bidding documents for immediate project priorities as defined within the master plan. Landscape Architects will also provide progress documents to review at important milestones throughout the duration of the project and will collaborate closely with the civil engineering and architectural team. Based on current project understanding, we anticipate providing the following scope of work:

- **Existing Conditions (site survey to be provided by Bartlett & West)**
- **Demolition Plan**
- **Planting Plan**
- **Details & Specifications**
- **Updates to Opinion of Probable Cost**

Our proposed fee to complete Phase 1 of this project (Site Planning and Phasing Priorities) is **\$45,000**. Upon completion of Phase 1 scope of work, our team will submit an updated scope and fee proposal to address delivery of Civil Engineering and Landscape Architecture bid documents for immediate project priorities.

This project is a unique opportunity for the City of Mandan to lay the groundwork for long-term development of the downtown space. Oftentimes, the simple act of planning—of laying out and illustrating the potential opportunities for a site, can inspire forward momentum. The completion of master planning for this project, while simple and straightforward, is intended to do just that.

Should you have any questions regarding this proposal, we'd be happy to visit with you further.

Regards,

Stantec Consulting Services Inc.



Wendy Van Duyne, PLA, LEED AP
Associate, Community Development
Phone: 701.333.8924

DRAFT AIA® Document B103™ – 2017

Standard Form of Agreement Between Owner and Architect for a Complex Project

AGREEMENT made as of the «Twenty Sixth» day of «August» in the year «Two Thousand Nineteen»

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

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

« City of Mandan»«»
«205 2nd Ave NW»
«Mandan, ND 58554»
«»

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

«Bartlett & West, Inc.»«, Professional Corporation»
«3456 East Century Avenue
Bismarck, ND 58503»
«Telephone Number: 701-258-1110»
«Fax Number: 701-258-1100»

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

«Morton Mandan Public Library, Dykshoorn Park & Heritage Plaza»
«Mandan, North Dakota»
«The project will consist of a new facility may include a new library entrance/atrium, meeting room, public restrooms, bookmobile/equipment storage, and associated mechanical/electrical rooms. Additional remodeling/retrofit items may include window replacement, masonry restoration, and other traffic pattern improvements within the existing buildings. »

The Owner and Architect agree as follows.

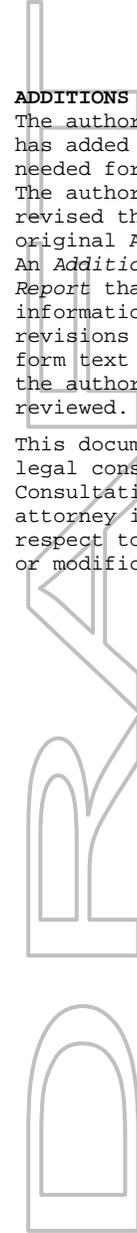
The scope of services includes, but is not limited to:
Phase I shall result in Schematic Design level documents as identified by this Agreement. The design team shall present the preliminary proposed solution and estimated project costs to the Owner for prior approval prior to proceeding to Phase II.

Phase II: Upon receiving design and budget approval, the design team shall complete Design Development and Construction Documents as identified by this Agreement. The design team shall present the documents and estimated project costs to the Owner for prior approval prior to proceeding to Phase III.

Phase III: Upon receiving document and budget approval, the design team shall proceed with Bidding and Construction Contract Administration.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

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

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«To be developed with Owners Steering Committee. »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

«To be distributed either by Owner and/or procured and developed as a reimbursable expense.»

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

\$3,000,000-\$5,000,000 including construction, design fees, reimbursable expenses and other associated costs to complete the project.»

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«Approve Contract Documents: December 17, 2019
Issue Contract Documents for Bidding: December 20, 2019
Bid Opening: January 29, 2020»

.2 Construction commencement date:

«To Be Determined»

.3 Substantial Completion date or dates:

«To Be Determined.»

.4 Other milestone dates:

«To Be Determined.»

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract.)

«Competitive Bid.»

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

«None»

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«Follow best practices and State Building/Energy Codes.»

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

«Mr. Jim Neubauer, City Administrator»
«City of Mandan»
«205 2nd Ave NW»
«Mandan, ND 58554»
«701-667-3215»
«jneubauer@cityofmandan.com»

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

«City of Mandan Building Inspections, Planning and Engineering Departments.»

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Cost Consultant:

«None.»« »
« »
« »
« »
« »

.2 Scheduling Consultant:

«None.»« »
« »
« »
« »
« »

.3 Geotechnical Engineer:

«To Be Determined»« »
« »
« »
« »
« »

.4 Civil Engineer:

«Stantec Consulting Services»
«3255 Greensboro Drive Suite 203Bismarck, ND 58503-5413»
«Telephone Number: 701-333-8924»

.5 Other, if any:

(List any other consultants and contractors retained by the Owner.)

«Surveying:

«Bartlett & West, Inc.»«, Professional Corporation»
«Kevin Martin, Survey Manager»
«3456 East Century Avenue
Bismarck, ND 58503»
«Telephone Number: 701-258-1110»

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

«Joe Larrivee»
«Senior Project Manager»
«Telephone Number: 701-221-8369»
«Fax Number: 701-258-1100»
«Mobile Number: 701-220-6928»
«Email Address: joe.larrivee@bartwest.com»

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«CWStructural Engineers»«», Professional Corporation»
«Chris Wentz»
«1000 E. Calgary Avenue, Suite #2
Bismarck, North Dakota 58503»
«Telephone Number: 701-221-3286»
«Email Address: chriswentz@cwstructural.net»

.2 Mechanical Engineer:

«Bartlett & West, Inc.»«», Professional Corporation»
«Mike Van Duynes»
«3456 East Century Avenue
Bismarck, ND 58503»
«Telephone Number: 701-258-1110»
«Email Address: mike.vanduyne@bartwest.com»

.3 Electrical Engineer:

«Apex Engineering Group.»«», Professional Corporation»
«John Klein»
«600 South Second Street – Suite 145
Bismarck, ND 58504»
«Telephone Number: 701-323-3950»
«Email Address: john.klein@apexenggroup.com»

§ 1.1.12.2 Consultants retained under Supplemental Services:

«Stantec Consulting Services»
3255 Greensboro Drive Suite 203
Bismarck, ND 58503-5413
Telephone Number: 701-333-8924

§ 1.1.13 Other Initial Information on which the Agreement is based:

«None.»

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change, and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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

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

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than «One Million» (\$«1,000,000») for each occurrence and «Two Million» (\$«2,000,000») in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «One Million» (\$«1,000,000») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than «One Million» (\$«1,000,000») each accident, «One Million» (\$«1,000,000») each employee, and «One Million» (\$«1,000,000») policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than «Five Million» (\$«5,000,000») per claim and «Ten Million» (\$«10,000,000») in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

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

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Scheduling Consultant and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

§ 3.2 Schematic Design Phase Services

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

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other

documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Cost Consultant's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4 and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3)

the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Construction Documents.

§ 3.4.5 Upon receipt of the Cost Consultant's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

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

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

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

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

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

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

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of

subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

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

§ 3.6.4 Submittals

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Owner/Architect
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Owner/Architect
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Cost estimating	Architect
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Architect
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Historic preservation	Not Provided
§ 4.1.1.26 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.27 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.28 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

«None.»

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

«None.»

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 «Two» («2») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 «Fifteen» («15») visits to the site by the Architect during construction
- .3 «Two» («2») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two» («2») inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within «Thirty» «30» months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

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

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

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

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

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

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

§ 5.13 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license

granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

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

§ 8.2 Mediation

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

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

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

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

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

«Any expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of services not performed by the Architect.»

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

«None.»

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose “confidential” or “business proprietary” information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum

(Insert amount)

«»

.2 Percentage Basis
(Insert percentage value)

«Nine» («9») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

«»

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Phase I Site Planning and Project Programming: Stipulated Lump Sum of \$45,000.

«Phase II Civil Engineering and Landscape Architecture: Included in Basic Services Fee Basis»

«Surveying: Per Bartlett & West Hourly Rate Chart»

«Soil Exploration: To Be Determined»

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

«Per Bartlett & West Hourly Rate Chart»

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus «Fifteen» percent («15»%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

«»

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

Schematic Design Phase	«Twenty»	percent («20»	%)
Design Development Phase	« Fifteen»	percent («15»	%)
Construction Documents Phase	«Forty»	percent («40»	%)
Procurement Phase	« Five»	percent («5»	%)
Construction Phase	«Twenty»	percent («20»	%)
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most

recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

«»

Employee or Category	Rate (\$0.00)
----------------------	---------------

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «Five» percent («5» %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

« »

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of «Zero» (\$ «0.00») shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «Sixty» («60») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

«Six» % «annual»

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

«None.»

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B103™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

«Not Provided.»

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[«Not Provided.»] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

«»

[«X»] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

«2019 Schedule of Hourly Charges»

4 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

« »« »

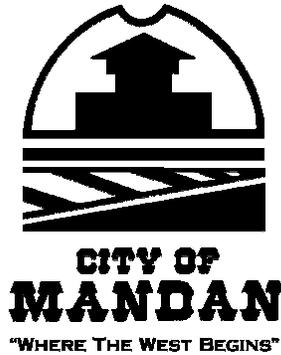
(Printed name and title)

ARCHITECT (Signature)

«Joe Larrivee, »«Senior Project Manager»

(Printed name, title, and license number, if required)





Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 29, 2019
SUBMITTING DEPARTMENT: Planning and Engineering
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: Justin Froseth, Planning and Engineering Director
SUBJECT: Engineering Service Agreement with Moore Engineering for Mid-Town East Street Improvement District Project, SID 215

STATEMENT/PURPOSE: To enter into agreement with Moore Engineering for the Design and other Engineering services through 30% design including full existing conditions assessment, public input meetings and a project concept report.

BACKGROUND/ALTERNATIVES: At the August 20th City Commission meeting, commission approved the selection committee's choice of Moore Engineering to go on to contract negotiations to provide engineering services for the Southside Street Improvement District project. Moore Engineering delivered their scope and fee for the design of the project the following week.

Under this agreement, we are committing to preliminary, or what is commonly referred to in the engineering industry as 30% design. It is intended to be far enough to answer the major questions about project scope and get a good grasp on project costs before presenting to the public and commission as a resolution of necessity thereby starting the protest period. If not protested out, we would start from the 30% design and come to agreement for final design.

The following is from a prior meeting: The local street conditions in this area of town can be generally classified as unsatisfactory as determined by a street assessment effort completed in 2012. Additionally, there are watermain pipes pushed beyond their useful life and storm sewer issues throughout the project area. This area is also challenging in the way of ADA compliant access. Though it will not be feasible to address all ADA issues because of existing grade and construction limit constraints, we believe we can greatly improve accessibility with this project.

Given the observed issues, the project scope will generally be to reconstruct and resurface streets and possibly alleys as well as replace the watermain and repair the sanitary and storm sewermain components as needed.

The roadways in mind are local so the funds for this project would primarily come special assessments. A special assessment district will be created and the typical special assessment

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Engineering Service Agreement with Moore Engineering for Mid-Town East Street Improvement District Project, SID 215

Page 2 of 14

process will take place along with this design effort. The special assessment process will be lead by city staff with help from the consultant.

A Request for Proposals (RFP) was advertised in June and July for engineering assistance. The city received seven proposals indicating interest in providing these services for the city. A selection committee was created and comprised of Planning and Engineering Department staff and Public Works Department staff. After the selection committee reviewed the seven proposals, three of the competing firms were brought in for interview. After the interview and in evaluating all information available, the selection team scored the three firms. After the scores were tabulated, Moore Engineering came out on top with Houston Engineering scoring in a relatively close second place. Therefore, we would like to move forward with contract negotiations with Moore Engineering. HDR was the third firm invited in for an interview and finished third in scoring after Moore and Houston. Note; Scoresheets available upon request.

ATTACHMENTS:

- 1) Agreement Letter and Outline of Tasks
- 2) Map of Intended Area of Street Improvements
- 3) Other Agreement Attachments Available Upon Request (total of 22 pages)

FISCAL IMPACT: As with all of our local street reconstruct projects, the cost is for the streets and storm sewer is expected to be primarily paid for through special assessments to benefiting properties. The water and sewer needs, primarily watermain in this case, is to be paid for by the utility fund. The engineering of the project is part of the total special assessment amount. The \$150,395 amount under this agreement is fair considering the size of the project and services outlined.

STAFF IMPACT: Minimal

LEGAL REVIEW: The City Attorney was provided the agreement to review and comment.

RECOMMENDATION: Approve the Engineering Service Agreement with Moore Engineering.

SUGGESTED MOTION: I move to approve the Engineering Services Agreement with Moore Engineering for the Mid-Town East Street Improvement District project.

Board of City Commissioners
Agenda Documentation
Meeting Date: September 3, 2019
Subject: Engineering Service Agreement with Moore Engineering for Mid-Town East
Street Improvement District Project, SID 215
Page 3 of 14



2911 North 14th Street
Suite 301
Bismarck, ND 58503

P: 701.751.8360
F: 701.751.2954



August 29, 2019

Justin Froseth, PE
Planning and Engineering Director
City of Mandan
205 2nd Ave NW
Mandan, ND 58554

RE: Letter Agreement
Mid-Town Street Improvement Project
Mandan, ND
MOORE Project No. 20834

Dear Mr. Froseth,

In accordance with the direction received by the Mandan City Commission ("Owner") on August 20, 2019, Moore Engineering, Inc. (MOORE) is pleased to submit our agreement to provide civil engineering services for your utility and street reconstruction project.

Project Understanding

BACKGROUND: The City of Mandan published a Request for Qualifications (RFQ) for engineering services for a street reconstruction project (Map – Attachment C). Moore provided a statement of qualifications and was selected. At the August 20, 2019 City Commission meeting, the Owner directed Moore to provide a proposal for preliminary and design engineering services due to the City at noon on August 29, 2019 for final approval at the September 3, 2019 City Commission meeting. It was requested that Moore put together a detailed list of tasks and estimated hours to complete the preliminary and 30% design engineering services for the project. Answers to Moore's specific questions during this process were provided by City Engineer, Justin Froseth.

GENERAL DESCRIPTION OF PROJECT: The project consists of asphalt street reconstruction which may include milling and overlaying and street reconstruction on streets and alleys throughout the project area identified in the attached map. It also includes ADA Ramp improvements, water main replacement and storm sewer improvements identified in the City's storm water master plan report provided by the City of Mandan.

PROJECT OBJECTIVES: MOORE will provide Owner with preliminary and 30% design engineering documents for the proposed street improvements, as described in the City's RFQ and shown in the attached map.

Page 2
City of Mandan
August 29, 2019

Scope of Work

To meet the project objectives above, MOORE proposes to provide the following services:

1. Studies and Reports

- After acceptance of the Agreement by Owner and upon written authorization from the Owner, Engineer shall:
 - Meet with Owner to define and clarify Owner's requirements for the Project and available data.
 - Coordinate Geotechnical Report for street cores and soil borings.
 - Request proposal from Geotechnical firm and present to Owner for approval.
 - Provide Geotechnical firm with map of proposed street core locations
 - Geotechnical services will be provided as a subconsultant to Moore
 - Perform preliminary visual surveys of existing conditions of streets for initial recommendations of proposed improvements
 - Identify and evaluate solutions available to Owner based on preliminary visual surveys. The type and number of alternatives are as described in the attached task-hours spreadsheet (Attachment D).
 - Prepare a Project Concept Report ("Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved and those alternate solutions available to Owner which Moore recommends. For each recommended solution Moore will provide the following, which will be separately itemized: opinion of probable construction cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Moore and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the Total Project Costs. Moore will provide three (3) bound copies of the draft report.
 - Hold Bi-Weekly (Assume 4) Engineering & Public Works Committee meetings to review alternatives for street improvements
 - Prepare PASER survey and exhibits to evaluate recommended treatments to pavement
 - Revise preliminary Report based on comments from Public Works Committee and City Commission
 - Hold two (2) Public Informational Meetings to present findings in preliminary Report
 - Prepare PowerPoint presentation, exhibits and handouts for public meetings.
 - Prepare final Report (up to 10 bound copies) based on city commission direction from public input.
- The Owner shall approve one (1) alternate solution for the Engineer to recommend to the Owner to proceed on Design.
- Special Assessment District Services
 - Prepare a map and legal description of the Improvement District for special assessments. Meet with Owner one (1) time to review Improvement District documents for approval at City Commission meeting.
 - Prepare preliminary special assessment footage or area exhibit for Report.
 - Utilize the City's GIS parcel map for preparation of special assessments based on front footage or area.
 - Coordinate with City to determine final parcels from tax roll.
 - Create preliminary front footage map based on parcels.
 - Prepare a preliminary special assessment list.

Page 3
City of Mandan
August 29, 2019

2. Preliminary Design Services

- MOORE shall:
 - Review Geotechnical report and incorporate recommendation into report.
 - Hold two (2) field reviews with a Public Works representative to determine proposed street improvements and curb repairs.
 - Provide field surveys and topographic and utility mapping for design purposes.
 - Based on alternatives chosen by owner, identify required right-of-way needs.
 - Existing utility mapping that Moore deems appropriate will be based upon information provided and flagged by utility owners. Moore will contact North Dakota One Call to have public utilities marked/flagged for surveying. The Owner will be responsible to locate their utilities within the project site. The limits of the field survey will be based on the area to be constructed per the Report.
 - Preliminary ADA Ramp Design
 - Preliminary street design.
 - Preliminary drainage design (mass grading) based on review of topographic survey.
 - Preliminary storm sewer design based on City of Mandan's storm sewer requirements (Example 2-year 24-hour storm event using the Rational Method.)

Basis of Proposal

The following items form the basis of this Proposal:

- No environmental permitting or hazard/site assessment is included in this proposal.
- Addressing unknown utility conflicts during design will be considered additional services.
- Hold bi-weekly meetings (estimated to be 2.5 hours each) with engineering department in order to provide updates and request decisions from the City.
- Geotechnical services will be contracted as a sub-consultant under Moore Engineering. The items included within the geotechnical engineer's scope of work are described in the attached proposal from Braun Intertec, dated 8/28/19.
- The Special Assessment Commission is responsible to determine the method of how to specially assess each property within the Improvement District. The Engineer only assists in the calculations based on the methods chosen by the Special Assessments Commission.
- The design for street improvements will have a level of effort to address drainage issues known and identified by the Owner, but it cannot be expected that all drainage issues will be entirely resolved.
- Proposed street sections used will be based on recommendations provided by the geotechnical engineer. Design will be based on the information obtained from the soil borings. Unknown soil conditions may be encountered during construction, thus a contingency fund will be established to address those areas if encountered.
- The following items are specifically excluded:
 - Detailed Boundary survey to determine existing property lines.
 - Utility Coordination meeting
 - Lighting Design
 - Cultural Resource Work
 - Wetland Delineation
 - Pavement Life Cycle Cost Analysis
- Final Design and Construction engineering services are not included. If requested, an amendment to this Agreement for Engineering Services will be provided to the Owner once a construction contract is awarded.

Schedule

MOORE will perform the Scope of Work listed above in accordance the following schedule:



mooreengineeringinc.com

Board of City Commissioners
Agenda Documentation
Meeting Date: September 3, 2019
Subject: Engineering Service Agreement with Moore Engineering for Mid-Town East
Street Improvement District Project, SID 215
Page 6 of 14

Page 4
City of Mandan
August 29, 2019

- Notice to Proceed – September 3, 2019
- Topographic Survey of project areas to be completed by September 30, 2019
- Complete draft assessment district map by September 30, 2019
- Preliminary Design completed by November 15, 2019
- Public input meeting(s) to be held in November, 2019

Fee

MOORE will perform the tasks specified in the Scope of Work above for the following:

- Studies & Reports – Estimated to be \$78,565
- Preliminary Design Services (30% Design) – Estimated to be \$71,830

Total fees for this agreement is estimated to be \$150,395.00

Attachment D includes a full listing of all identified tasks and budgeted hours for each task and is an integral part of this agreement. If a difference arises between the list above and the full list, the information in attachment D will govern.

MOORE will perform the tasks specified in the Scope of Work above on a Category Billing Rate basis using the actual hours worked times the appropriate Category Billing Rate plus the actual direct expenses incurred (times a multiplier of 1.15). Category Billing Rates and expense costs are valid through the end of the current year. On January 1 in each subsequent year, Category Billing Rates and reimbursable expenses may be adjusted to meet market conditions. If billed to Owner, invoices will be submitted monthly based on the hours of work completed for the Hourly tasks.

Standard Terms and Conditions

Our services will be provided in accordance with the ATTACHMENT 2 "Standard Terms and Conditions for Professional Services," which are integral to this proposal.

Closing

Should you find this Proposal acceptable, please have an authorized representative of the City of Mandan sign the Acceptance portion of this letter below and return one (1) fully executed copy of this Proposal to me. Receipt of a fully executed copy of this Proposal will serve as our Agreement and our Notice to Proceed.

We appreciate the opportunity to submit this Proposal to the City of Mandan and we look forward to working with you on this Project. Should you have any questions or need additional information, please contact me by phone at 701.751.8380 or by email at klabunde@mooreengineeringinc.com.

Sincerely,

Jerod Klabunde, PE
Senior Project Manager

Kyle J. Meyer, PE
North Dakota Regional Manager

Enclosures: As noted



mooreengineeringinc.com

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Engineering Service Agreement with Moore Engineering for Mid-Town East
Street Improvement District Project, SID 215

Page 7 of 14

Page 5
City of Mandan
August 29, 2019

Acceptance for the City of Mandan

I hereby authorize Moore Engineering, Inc. to proceed with the work described above.

Signature: _____
Name: Timothy Helbling
Title: Mayor
Date: _____
Address for Giving Notices: 205 2nd Ave NW
Mandan, ND 58554



Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Engineering Service Agreement with Moore Engineering for Mid-Town East Street Improvement District Project, SID 215

Page 8 of 14

MOORE ENGINEERING, INC.

2019 BILLING SCHEDULE

Effective January 1, 2019

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2019. After December 31, 2019, Hourly Billing Rates will be escalated annually and direct expenses may be adjusted to meet market conditions.

	Description	Billing Rate Per Hour
1	Principal	\$200.00
2	Senior Project Manager	\$200.00
3	Senior Professional Engineer	\$195.00
6	Project Manager	\$190.00
7	Professional Engineer II	\$185.00
8	Professional Engineer I	\$170.00
11	Project Engineer	\$155.00
12	Senior Construction Engineer/Specialist	\$160.00
13	Construction Engineer/Specialist II	\$150.00
14	Construction Engineer/Specialist I	\$140.00
15	Graduate Engineer	\$140.00
16	Senior Engineering Designer	\$155.00
17	Engineering Designer II	\$140.00
18	Engineering Designer I	\$135.00
21	Project Manager Assistant	\$135.00
22	Engineering Technician III	\$125.00
23	Engineering Technician II	\$115.00
24	Engineering Technician I	\$105.00
25	Drone Operator	\$160.00
26	CADD Technician III	\$130.00
27	CADD Technician II	\$125.00
28	CADD Technician I	\$120.00
31	GIS Manager	\$170.00
36	GIS Technician III	\$130.00
37	GIS Technician II	\$125.00
38	GIS Technician I	\$120.00
39	Senior Land Surveyor	\$175.00
40	Land Surveyor	\$160.00
41	Survey Manager	\$145.00
42	Survey Crew Chief II	\$140.00
43	Survey Crew Chief I	\$130.00
44	Survey Technician III	\$105.00
45	Survey Technician II	\$95.00
46	Survey Technician I	\$90.00
48	Administrative Assistant	\$90.00
58	Marketing Coordinator	\$100.00
59	Marketing Assistant	\$85.00

Travel Expenses	Project Mileage	\$0.65	per mile
Survey Supplies	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
	Motorized Offroad Vehicles	\$75.00	per day
Miscellaneous	Project Expenses	Cost * 1.15	
	Sub Consultants	Cost * 1.15	

STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

1. General

1.1 The following Standard Terms and Conditions, together with the attached Proposal, constitutes the Agreement between Moore Engineering, Inc. (hereinafter referred to as "ENGINEER") and the person or entity to whom the Proposal is addressed (hereinafter referred to as "OWNER") for the performance of professional and related services. If OWNER requests that ENGINEER begin work prior to OWNER's execution of this Agreement and ENGINEER performs work in accordance with this Agreement, then this Agreement shall constitute the agreement between OWNER and ENGINEER even if OWNER fails to return an executed counterpart of this Agreement to ENGINEER.

1.2 No provision of this Agreement, including without limitation these Standard Terms and Conditions, may be waived, altered, or modified in any manner, unless the same shall be set forth in writing and signed by a duly authorized agent of ENGINEER. OWNER may use its standard business forms (such as purchase orders) to administer any agreement between ENGINEER and OWNER, but use of such forms shall be for convenience purposes only, and any typed provision in conflict with the terms of these Standard Terms and Conditions or ENGINEER's Proposal and all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void.

1.3 OWNER acknowledges and agrees that ENGINEER's services are on behalf of and for the exclusive use of OWNER and shall consist solely of those services described in ENGINEER's scope of services and shall not be based upon scientific or technical tests or procedures beyond the scope described therein, or the time and budgetary constraints imposed by OWNER. OWNER further acknowledges and agrees that ENGINEER's services require decisions that are not always based upon pure science, but also include judgmental considerations.

2. Standards of Performance

2.1 The standard of care for all professional engineering and related services under this Agreement shall be the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with any services performed or furnished by the ENGINEER.

2.2 ENGINEER shall perform the professional engineering and related services under this Agreement as expeditiously as is consistent with such professional skill and care and the orderly progress of the project.

2.3 Subject to the standard of care set forth in Paragraph 2.1, ENGINEER and its Consultants may use or rely upon design elements in information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers and publishers of technical standards.

2.4 ENGINEER shall review laws, rules, regulations, ordinances, codes, and OWNER-mandated standards policies, procedures and instructions provided to the ENGINEER in writing and that are in effect as of the date of this Agreement applicable to the ENGINEER's performance services under this

Agreement subject to the standard of care set forth in Paragraph 2.1 and to the extent compliance is consistent with professional practice requirements. ENGINEER shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. Changes to any laws, rules, regulations, ordinances, codes, OWNER-mandated standards, policies procedures and instructions or requirements of governmental authorities after the effective date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, and/or compensation. If, during ENGINEER's review of applicable laws, rules, regulations, ordinances and codes, and OWNER-mandated standards, ENGINEER identifies any conflict between such laws, rules, regulations, ordinances and codes, and OWNER-mandated standards, ENGINEER shall notify OWNER of the nature and impact of such conflict. OWNER agrees to cooperate and work with ENGINEER in an effort to resolve any such conflict.

2.5 ENGINEER shall not be required to sign any document or certification, no matter by whom requested, that would result in ENGINEER having to certify, guarantee or warrant the existence of conditions whose existence ENGINEER cannot ascertain, or that extends ENGINEER's duties, responsibilities or liability beyond that contemplated by this Agreement. In the event that ENGINEER executes any such document or certificate, OWNER acknowledges that such execution by ENGINEER shall not operate as a waiver of this provision, but shall be considered a mistake of fact or law. OWNER agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to ENGINEER in any way contingent upon ENGINEER's signing any such certification.

3. Contingency

3.1 OWNER and ENGINEER acknowledge and agree that certain increased costs and changes may be required as a result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities or inconsistencies in the drawings, specifications and other documents furnished by ENGINEER or contained within other professional services performed or furnished by ENGINEER under this Agreement and, therefore, the final construction cost of the Project may exceed the OWNER's estimated construction cost. Accordingly, OWNER agrees to set aside a reserve in the amount of 3 percent of the estimated construction cost as a contingency to be used as required to pay for such increased costs and changes resulting from the imprecision, incompleteness, errors, omissions, ambiguities or inconsistencies in the drawings, specifications and other documents furnished by ENGINEER or contained within other professional services performed or furnished by ENGINEER. The contingency percentage listed above should be included as a portion of the OWNER's overall construction contingency established to address unforeseen events or circumstances that arise during construction.

3.2 Any responsibility of ENGINEER for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that OWNER would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents or in the Opinion of Probable

Construction Cost and without any other error or omission of ENGINEER related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, ENGINEER is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term ENGINEER includes Engineer's officers, directors, members, partners, agents, employees, and Consultants.

3.3 OWNER further agrees not to sue or make any claim by way of direct or third-party action against ENGINEER for the increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

4. Owner's Responsibilities

4.1 OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to unreasonably delay or interfere with the services of ENGINEER.

4.2 OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement. Nothing in this paragraph shall be construed to require ENGINEER to affirmatively determine the accuracy of information that is prepared for OWNER by other licensed professionals (including, but not limited to, land surveyors, geotechnical engineers, accountants, insurance and surety professionals, and attorneys) who are not engaged directly by ENGINEER.

4.3 OWNER shall provide for ENGINEER's right to enter the property owned by OWNER and/or others in order for ENGINEER to fulfill its services.

4.4 OWNER shall promptly report to ENGINEER any deficiencies or suspected deficiencies in ENGINEER's work or services of which OWNER becomes aware so that ENGINEER may take measures to minimize the consequences of such deficiencies. Upon notice to ENGINEER and by mutual agreement between the parties, ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is attributable to deficiencies in OWNER-furnished information.

5. Environmental Conditions.

5.1 OWNER shall provide (or cause the Site owner to provide) ENGINEER with the identity and location of all subsurface facilities and obstructions on the Site. OWNER agrees to waive any claims against ENGINEER and to indemnify, defend and hold ENGINEER harmless from any claims, demands or causes of action for damages to subsurface facilities or obstructions that are not accurately identified or located by OWNER or others. OWNER assumes responsibility for air, subsurface and/or ground pollution and environmental impairment from toxic substances or hazardous materials existing at the Site and shall indemnify and defend ENGINEER from any claims, demands and causes of action of third parties related thereto, except where such claims, demands and causes of action are caused by the sole negligence or willful misconduct of ENGINEER; it being the intention of the OWNER to assume

any liability alleged to have resulted from ENGINEER's joint or concurrent negligence.

6. Ownership and Use of Documents

6.1 All original reports, plans, specifications, field data and other documents, whether in written or electronic format, prepared by ENGINEER or ENGINEER's consultants are instruments of professional service (hereinafter collectively referred to as "Documents") and ENGINEER shall retain the ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

6.2 Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed and/or sealed by ENGINEER or ENGINEER's consultants. Files in electronic media format of text, data, graphics or of other types that are furnished by ENGINEER or ENGINEER's consultants to OWNER are only for the convenience of OWNER. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

6.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, OWNER agrees that it will perform acceptance tests or procedures within 60 days after receipt of such data, after which OWNER shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by ENGINEER at no cost to OWNER. However, ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

6.4 When transmitting documents in electronic media or digital format, ENGINEER makes no representations as to long term compatibility, usability or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those used by ENGINEER for this Project.

6.5 OWNER may make and retain copies of Documents for information and reference in connection with use of the Documents on the Project by OWNER. ENGINEER grant OWNER a limited license to use the Document on the Project subject to receipt by ENGINEER of full payment due and owing for all services relating to preparation of the Documents. Such limited license shall not create any rights in third parties. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at the user's sole risk. OWNER shall, to the fullest extent permitted by law, indemnify, defend, and hold ENGINEER, its officers, directors, employees, partners, agents and Consultants, harmless from and against any and all claims, suits, judgments, liabilities, damages, costs, and expenses (including, but not limited to, reasonable attorneys' fees and defense costs) arising or allegedly arising from out of any unauthorized reuse or modification of said Documents by OWNER or any person or entity for whom OWNER is legally liable without the written authorization of ENGINEER.

6.6 In the event OWNER subsequently reproduces or otherwise uses ENGINEER's Documents or creates a derivative work based upon the Documents, OWNER shall, where

Board of City Commissioners
Agenda Documentation
Meeting Date: September 3, 2019
Subject: Engineering Service Agreement with Moore Engineering for Mid-Town East
Street Improvement District Project, SID 215
Page 11 of 14

permitted or required by law, remove or completely obliterate the original professional seals, trademarks, logos, and other indications on said Documents of the identity of ENGINEER, its employees and consultants.

6.7 Under no circumstances shall delivery of the electronic files for use by OWNER be deemed a sale by ENGINEER, and ENGINEER makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. In no event shall ENGINEER be liable for any loss of profit or any consequential damages as a result of OWNER's use or reuse of the electronic files.

7. Confidentiality

7.1 "Confidential Information" means all technical, economic, financial, pricing, marketing or other information that has not been published and/or is not otherwise available to members of the public and includes, without limitation, trade secrets, proprietary information, customer lists, scientific, technical and business studies, analyses, processes, methods, procedures, policies and information.

7.2 In the event that either party discloses Confidential Information to the other party in connection with this contract (excluding ENGINEER's Work Product that is delivered to OWNER or others hereunder), the party receiving such Confidential Information agrees to hold as confidential and to not disclose to others the Confidential Information for a period of ten (10) years from the date of disclosure. These restrictions shall not apply to information that (i) the parties had in their possession prior to disclosure; (ii) becomes public knowledge through no fault of the receiving party; (iii) the receiving party lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; (iv) is independently developed by the receiving party; or (v) is required to be disclosed by law or court order.

7.3 OWNER agrees that ENGINEER may use and publish OWNER's name and a general description of the Services provided to OWNER in describing ENGINEER's experience and qualifications to other clients and potential clients.

8. Work Product

8.1 "Work Product" consists of all reports, notes, laboratory test data and other information prepared by ENGINEER for delivery to OWNER. OWNER shall have the right to make and retain copies and use all Work Product; provided, however, such use shall be limited to the particular Site and project for which the Work Product is provided.

8.2 OWNER may release the Work Product to third parties at its sole risk and discretion; provided, however, ENGINEER shall not be liable for any claims or damages resulting from or connected with such release or any third party's use of the Work Product, and OWNER shall indemnify, defend and hold ENGINEER harmless from any and all such claims or damages.

9. Billing and Payment

9.1 Invoices shall be submitted monthly by ENGINEER, are due upon presentation, and shall be considered past due if not paid within 30 days of the invoice date. If payment is not received by ENGINEER within 45 days of the invoice date, OWNER shall pay as interest an additional charge of one percent (1.0%) or the maximum allowable by law, whichever is lower, of the past due amount per month. Payment thereafter

shall first be applied to accrued interest and then to the unpaid principal.

9.2 If OWNER objects to any portion of an invoice, OWNER shall so notify ENGINEER in writing within 10 days of receipt of the invoice. OWNER shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by OWNER on all disputed invoiced amounts resolved in ENGINEER's favor and unpaid for more than 45 days after date of submission.

9.3 In the event legal action is necessary to enforce the payment provisions of this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred. If both parties receive judgment in any dollar amount, the court will determine the prevailing party, taking into consideration the merits of the claims asserted by each party, the amount of the judgment received by each party, and the relative equities between the parties.

9.4 If OWNER fails to make payments when due or otherwise is in breach of this Agreement, ENGINEER may suspend performance of services upon seven (7) days' notice to OWNER. ENGINEER shall have no liability whatsoever to OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by OWNER.

9.5 Real Estate Improvements: If the services provided under this Agreement result in or could lead to improvement to real estate, ENGINEER reserves the right to file a construction lien against the property/real estate on which these services are being provided for OWNER's failure to make payment for services.

9.6 If and to the extent the time initially established by this Agreement for completion of ENGINEER's services is exceeded or extended through no fault of ENGINEER, compensation for any services rendered during the additional period of time shall be computed in accordance with the additional services provision of this Agreement, or, in the absence thereof, on the basis of ENGINEER's then-current standard hourly billing rates, plus reimbursable expenses at a multiplier of 1.15 times the actual expense incurred by ENGINEER, its employees and consultants, in the interest of the Project.

9.7 Payments Upon Termination.

9.7.1 In the event of any termination under the terms of this Agreement, ENGINEER will be entitled to invoice OWNER for all services performed or furnished and all expenses incurred through the effective date of termination.

9.7.2 In the event of termination by ENGINEER for cause, in addition to invoicing for those items identified in paragraph 9.7.1, above, ENGINEER shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's consultants, and other related close-out costs.

10. Insurance

10.1 During the term of this Agreement, ENGINEER shall maintain not less than the following insurance coverages:

- 10.1.1 Workers' Compensation Insurance – statutory amount
- 10.1.2 Employer's Liability Insurance - \$100,000 each accident, \$500,000 disease policy limit, \$100,000 disease each employee
- 10.1.3 Commercial General Liability Insurance - \$1,000,000 per occurrence / \$1,000,000 aggregate
- 10.1.4 Automobile Liability Insurance - \$1,000,000 combined single limit
- 10.1.5 Professional Liability Insurance - \$1,000,000 per claim / \$1,000,000 aggregate

10.2 At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage or increased limits that are more protective than those maintained by ENGINEER.

11. Allocation of Risks; Limitation of Remedies

11.1 It is intended by the parties to this Agreement that ENGINEER's services in connection with the Project shall not subject ENGINEER's individual employees, officers, or directors to any personal legal exposure for the risks associated with this Project. Therefore, OWNER agrees that as OWNER's sole and exclusive remedy, any claim, demand or suit arising out of ENGINEER's services in connection with the Project shall be directed and/or asserted only against ENGINEER and not against any of ENGINEER's individual employees, officers, or directors.

11.2 In recognition of the relative risks and benefits of the Project to both OWNER and ENGINEER, OWNER agrees, to the fullest extent permitted by law and notwithstanding any other provision in this Agreement, that any liability created by or arising out of this Agreement on the part of ENGINEER to OWNER and any person or entity claiming by, through or under OWNER, for any and all claims, liabilities, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes (including without limitation any attorneys' fees under this Agreement), shall be limited to the lesser of \$100,000 or the total amount of compensation received by ENGINEER hereunder.

11.3 Allocations of risks and limitations of remedies in this Agreement are business understandings between the parties and shall apply to all the different theories of recovery, including, without limitation, breach of contract or warranty (expressed or implied), tort (including, without limitation, negligence), strict or statutory liability, or any other cause of action. These limitations of remedies will not apply to any losses or damages that have been found by a trier of fact to have been caused by ENGINEER's gross negligence or willful or wanton misconduct. The parties agree that the Owner will not seek damages in excess of the contractually agreed limitations through suits with other parties who may join ENGINEER as a third-party defendant.

11.4 Notwithstanding any other provision in this Agreement, neither ENGINEER nor OWNER shall be liable to the other party for any special, incidental, indirect or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or performance of this Agreement.

12. Certificate of Merit

12.1 OWNER shall make no claim for professional negligence, either directly or in a third-party claim, against ENGINEER unless OWNER has first provided ENGINEER with a written certification executed by an independent design professional currently practicing in the same discipline as ENGINEER and licensed in the state in which the Project is located. This certification shall: (i) contain the name and license number of the certifier; (ii) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances in the same location; and (iii) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to ENGINEER not less than 30 days prior to the presentation of any claim or the institution of any mediation, arbitration, or judicial proceeding.

13. Integration, Severability and Survival

13.1 This Agreement comprises the final and complete agreement between OWNER and ENGINEER. It supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement shall not be binding unless made in writing and signed by both OWNER and ENGINEER. Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect, if the essential provisions of this Agreement for each party remain valid, binding, and enforceable.

13.2 All provisions of this Agreement related to assignment, indemnification, limitation of remedies, and limitations on actions, or otherwise allocating responsibility or liability between the parties, shall survive the completion of the services hereunder and the termination of this Agreement and shall remain enforceable between the parties.

14. Assignment

14.1 Neither party to this Agreement may assign, sublet, or transfer any rights or obligations under or interest (including, without limitation, moneys that are due or may become due) in this Agreement, or any claims, causes of action or rights against the other party arising from or under this Agreement; or any proceeds from claims arising from or under this Agreement as security, collateral or the source of payment for any notes or liabilities to the Contractor or any other third party; or any control of any claims or causes of action arising from or under this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This section shall not, however, apply to any subrogation rights of any insurer of either party. The provisions of this paragraph shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the parties.

14.2 Notwithstanding the provisions of Section 14.1, above, or any other provision of this Agreement, ENGINEER may assign or otherwise transfer its rights and obligations under this Agreement to any parent, subsidiary, or affiliated company of ENGINEER or to any purchaser of the business of ENGINEER that agrees to assume the obligations of ENGINEER under this Agreement.

15. Suspension of Services

15.1 If the Project is suspended for more than 30 days in the aggregate, ENGINEER shall be compensated for services performed and charges incurred prior to suspension and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the Project schedule based on the delay caused by the suspension. If the Project is suspended for more than 90 days in the aggregate, ENGINEER may, at its option, terminate this Agreement upon giving notice in writing to OWNER. If OWNER fails to make payments when due or otherwise is in breach of this Agreement, ENGINEER may suspend performance of services upon seven days' prior written notice to OWNER. ENGINEER shall have no liability whatsoever to OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by OWNER.

16. Force Majeure

16.1 Neither party shall be liable for any delay in, or failure of, its performance of any of its obligations under this Agreement if such delay or failure is caused by events beyond the reasonable control of the affected party, including, but not limited to, any acts of God, governmental embargoes, restrictions, quarantines, strikes, riots, wars or other military action, civil disorder, acts of terrorism, fires, floods, vandalism, sabotage or the acts of third parties (a "Force Majeure Event").

16.2 Upon completion of the Force Majeure Event the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement.

16.3 A Force Majeure Event does not relieve a party from liability for an obligation that arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner that matured prior to the occurrence of that event.

17. Ownership of Waste

17.1 "Pre-Existing Waste" is any hazardous or non-hazardous wastes, substances or materials existing on the Site prior to the date that the Services are initiated.

17.2 OWNER shall be responsible for the proper handling, storage, transportation and/or disposal of the Pre-Existing Waste in accordance with all applicable federal, state and local laws and regulations. OWNER shall provide appropriate disposal identification numbers, select the disposal site(s) and sign all required manifests, disposal contracts and other documentation necessary to allow ENGINEER to complete the Services in a timely manner. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of Pre-Existing Waste which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

17.3 OWNER agrees to look solely to the disposal facility and/or transportation concern for any damages arising from improper transportation or disposal of the Pre-Existing Waste.

18. Termination

18.1 This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

19. Third Party Beneficiaries

19.1 All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and not for the benefit of any other party. No other party shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER.

20. Dispute Resolution

20.1 ENGINEER and OWNER will attempt in good faith to resolve through negotiation any dispute, claim, counterclaim, or controversy arising out of or relating to this Agreement (hereafter collectively referred to as "Dispute"). If the Dispute is not resolved by these negotiations, the parties agree to submit any such unresolved Dispute to mediation. Either party may commence mediation by providing the other party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The parties will cooperate with one another in selecting a mediator, and in scheduling the mediation proceedings. The parties will share equally in the costs of the mediator. Neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this paragraph may be enforced by any Court of competent jurisdiction.

21. Limitations on Actions

21.1 Causes of action by either party against the other party, however denominated, shall be barred two years from the day ENGINEER's services are completed or ENGINEER otherwise ceases providing the services called for in this Agreement, whichever first occurs.

22. Controlling Law

22.1 This Agreement is to be governed by the laws and regulations of the state in which the project is located, without regard to any choice of law principles that may otherwise have permitted the application of the laws of any other jurisdiction.

23. Interpretation

23.1 The parties expressly agree that this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

24. Notices

24.1 Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address as listed in the Agreement and given personally, by registered or certified mail post prepaid or by a commercial courier service. All notices shall be effective upon the date of receipt.

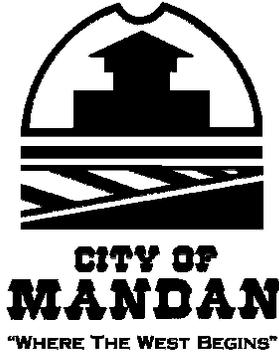
End of Standard Terms and Conditions for Professional Services



Legend
— Proposed Streets
— Proposed Alleys

MANDAN STREET RECONSTRUCTION
 BOSTON COUNTY, NORTH DAKOTA





Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 29, 2019
SUBMITTING DEPARTMENT: Planning and Engineering
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: Justin Froseth, Planning and Engineering Director
Laith Hintz, PE, AE2S Project Manager
SUBJECT: Raw Water Intake Ad for Bids and Grant
Acceptance

STATEMENT/PURPOSE: To update commission on the Raw Water Intake project as well as request approval of ad for bids and State Water Commission grant acceptance.

BACKGROUND/ALTERNATIVES: In coordination with City staff as well as refinery staff in the form of regular meetings over the last half of year, AE2S has completed the final design of the intake project. That is, the project that will include the intake structure, the electrical and mechanical equipment, including the pumps, and improvements to the Water Treatment site and the Refinery's site needed to receive the water. Not included with this initial project is the transmission pipe from the new intake site to the Water Treatment Facility. Those plans are being finalized and will come before commission as a future item.

AE2S staff is here to present some basic information on the project. Following the presentation, there are two items of business to attend to; 1) approval of the ad for bid and 2) accept the State Water Commission grant.

ATTACHMENTS:

- 1) Advertisement for Bids
- 2) State Water Commission grant award letter and agreement.

FISCAL IMPACT: The State Water Commission has committed about \$12.6M towards this project if we accept the grant presented today. That leaves about \$8.8M to pay for locally given the current estimate based on design. The City has a memorandum of understanding with the refinery to split that local costs 50/50. The estimated \$4.4M has been accounted for in our Finance Department's previously presented 2020 budget through increases in utility bill rates.

STAFF IMPACT: Minimal

LEGAL REVIEW: All items have been forwarded to our Attorney for review.

RECOMMENDATION: Approve the Ad for Bid and the acceptance of the State Water Commission grant.

SUGGESTED MOTION:

- 1) I move to approve the ad for bid for the Raw Water Intake project.
- 2) I move to accept the State Water Commission grant funds to share the cost of the project with the State Water Commission.

SECTION 00 11 13
ADVERTISEMENT FOR BIDS

**MANDAN RAW WATER INTAKE – PHASE I
PUMPING STATION, CONTROL VAULTS, AND INTAKE STRUCTURE IMPROVEMENTS
CITY OF MANDAN, NORTH DAKOTA**

NOTICE IS HEREBY GIVEN, that the City of Mandan, North Dakota, will receive sealed Bids for the construction of the Mandan Raw Water Intake Phase I – Pumping Station, Control Vaults, and Intake Structure Improvements and will be received at Office of the City Administrator, 205 2nd Ave NW, Mandan, North Dakota 58554 until 4:00pm local time on October 22, 2019, at which time the Bids received will be publicly opened and read aloud at 4:15 PM in the City Commission Chambers.

Bids being mailed or delivered prior to October 22, 2019 can be directed to:

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

Separate Bids will be received for Contract No. 1 – General Construction; Contract No. 2 – Mechanical Construction; Contract No. 3 – Electrical Construction; and Contract 4 – Combined General, Mechanical, and Electrical Construction. Bids shall be on a lump sum basis for all Contracts. The Work comprised of Contract Nos 1, 2, 3, and 4 are generally described as follows:

Contract No. 1 – GENERAL CONSTRUCTION (LUMP SUM): Work generally consists of mobilization, bonding, insurance for all Project work shown on the civil, process, architectural, structural drawings and as contained in the specifications, constructing a new intake structure, pump station, three control vaults, presedimentation basin improvements, and repurposing of the existing intake structure. Includes providing four (4) intake barrel screens and crib structure, furnishing and installing intake line, dewatering system, shoring system, installing piles, furnishing and installing five (5) canned vertical turbine pumps, precast wall and roof system, constructing below grade concrete vaults, furnishing and installing equipment for one (1) rehabilitated presedimentation basin, new chemical feed systems, yard piping, process piping, gates, valves, site grading, excavation, filling and backfilling, erosion and sediment control, landscaping, access roads, aggregate roadway, sidewalks, driveways, temporary piping modifications, stormwater piping modifications, coatings, equipment pads, fencing, piping and equipment demolition, and all related appurtenances.

Contract No. 2 – MECHANICAL CONSTRUCTION (LUMP SUM): Work generally consists of mobilization, bonding, and insurance for all Project work shown on the mechanical drawings and contained in the Divisions 22, 23 and specifications, including new ventilation equipment, ducts, louvers, makeup air units, fans, plumbing, fixtures, heaters, air-conditioning, gauges, thermostats, pipe, fittings, valves, controls, drains, supports, anchors, vents, and all related appurtenances.

Contract No. 3 – ELECTRICAL CONSTRUCTION (LUMP SUM): Work generally consists of mobilization, bonding, and insurance for all Project work shown on the electrical drawings and contained in the Division 26 specifications, including electrical labor, service-entrance equipment, secondary termination/CT cabinet, grounding, trenching, excavation, cables, conductors, wiring, disconnect switches, lighting, lighting control systems, conduits, raceways, fittings, boxes, devices, motor starters, panelboards, distribution transformers, motor control centers, variable frequency drives, power monitoring modules, control panels, programmable logic controllers, fiber and fiber junction boxes, instrumentation and control devices, level sensors, pressure transmitters, float switches, door position switches, thermostats, and all related electrical, instrumentation and control appurtenances as indicated.

Board of City Commissioners
Agenda Documentation
Meeting Date: September 3, 2019
Subject: Raw Water Intake Ad for Bids and Grant Acceptance
Page 4 of 11

Contract No. 4 – COMBINED CONSTRUCTION (LUMP SUM): Mobilization, bonding, and insurance for all general construction, mechanical construction, and electrical construction as described in Contracts No. 1 through 3.

The Issuing Office for the Bidding Documents is: Advanced Engineering and Environmental Services, Inc., 1815 Schafer Street, Ste 301, Bismarck, ND 58501. Contact person for all bidding document interpretations and clarifications is Laith Hintz, 701-221-0530, laith.hintz@ae2s.com. Prospective Bidders may examine the Bidding Documents at the Issuing Office on Mondays through Fridays between the hours of 8:30 AM and 4:30 PM, and may obtain copies of the Bidding Documents from the Issuing Office as described below. Bidding Documents also may be examined at the following locations: Builders Exchanges in Grand Forks, Bismarck, Minot, and Fargo, ND; Rapid City and Sioux Falls, SD; and in Minneapolis, MN.

Complete digital project Bidding Documents are available at www.AE2S.com or www.questcdn.com. You may download the digital plan documents for Fifty Dollars (\$50.00) by inputting Quest project #6449169 on the website's Project Search page. Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership registration, downloading, and working with this digital project information. The Bidding Documents are available in digital PDF form on CD by request from the Issuing Office for a **NON-REFUNDABLE** charge of Seventy-Five Dollars and No Cents (\$75.00) and available in the form of printed plans and specifications for a **NON-REFUNDABLE** charge of Three Hundred Dollars and No Cents (\$300.00) for each set requested.

A pre-bid conference is tentatively scheduled for October 2, 2019 at 10:00 AM local time at the Mandan Water Treatment Facility located at 1994 38th St, Mandan, ND 58554. A memorandum to all Plan Holders will be sent formally establishing the final date and time. Attendance at the pre-bid conference is highly encouraged but is not mandatory.

Each bid must be accompanied by a separate envelope containing the contractor's license and bid security. The bid security must be in a sum equal to five percent (5%) of the full amount of the bid and must be in the form of a bidder's bond. A bidder's bond must be executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, shall execute a contract in accordance with the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond is not required under this section. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond must be forfeited to the governing body and the project awarded to the next lowest responsible bidder.

All Bidders must be licensed for the highest amount of their Bids, as provided by Section 43-07-12 of the North Dakota Century Code.

Bids that do not fully comply with requirements of NDCC 48-01.2-05 are considered deficient and will be resealed and returned to the bidder immediately.

The City of Mandan reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received.

All Bids will be made on the basis of cash payment for such work and materials. All Bidders are invited to be present at the public opening of the Bids. The City of Mandan reserves the right to hold the three (3) low Bids for a period of sixty (60) days after the date of the Bid opening to complete financial arrangements.

Bidders on this work will be required to comply with Title 40 CFR Part 33 – Participation by Disadvantaged Business Enterprises in the United States Environmental Protection Agency Programs. The requirements for bidders and contractors under this regulation concern utilization of Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), and Small Business Enterprises (SBE) and are explained in the specifications. The goal for MBE is 2% of the total dollar value of the project. The goal for WBE is 3% of the total dollar value of the project.

Board of City Commissioners
Agenda Documentation
Meeting Date: September 3, 2019
Subject: Raw Water Intake Ad for Bids and Grant Acceptance
Page 5 of 11

Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended. The requirements for bidders and contractors under this order are explained in the specifications.

Dated this 3rd day of September 2019
Publish: 09/20/19, 09/27/19, 10/04/19, and 10/11/19

By: /s/ Jim Neubauer, City Administrator
Mandan, North Dakota



August 21, 2019

Tim Helbling, Mayor
City of Mandan
205 2nd Ave NW
Mandan, ND 58554

RE: New Raw Water Intake Project

Dear Mayor Helbling:

The enclosed Agreement for Cost-Share Reimbursement City of Mandan New Water Intake Project is to provide cost-share, not to exceed \$10,977,000, to reimburse 60 percent of actual eligible engineering and construction costs incurred in the New Raw Water Intake Project. Please sign, date, and make a copy of the agreement for your records before returning the original to this office. This agreement is void if not signed and returned by the Authority within 60 days of the Chief Engineer-Secretary's signature of August 21, 2019. The signed agreement is necessary to proceed with reimbursements based on claim vouchers documenting the actual eligible costs.

Prior to issuing reimbursements, provide a copy of the certificate of insurance with your project indicated on the certificate and all endorsements to State Water Commission.

If you have any questions, please call me at 328-4952.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey Mattern".

Jeffrey Mattern, P.E.
Engineer Manager

JNM:/2050-MAN

SWC Project No. 2050-MAN
Project Manager: J.Mattem
August 2019

**Agreement for Cost-Share Reimbursement
City of Mandan New Raw Water Intake Project**

1. PARTIES. This agreement is between the State of North Dakota (State), by and through the State Water Commission (Commission), and City of Mandan (Sponsor).

2. COMMISSION'S RESPONSIBILITY AND INTENT. Commission will provide Sponsor with cost-share, not to exceed \$10,977,000, as approved by Commission on June 19, 2019, to reimburse 60 percent of the actual eligible engineering and construction costs incurred in Sponsor's New Raw Water Intake Project (Project), contingent on availability of funds and conditions of this agreement. Commission's intent in providing this funding to Sponsor is merely to help Sponsor financially afford Project. Sponsor retains sole and absolute discretion in the manner and means of carrying out Project, except to the extent specified in this agreement.

3. SPONSOR'S RESPONSIBILITIES. Sponsor must:

- a. Complete Project.
- b. Provide continued maintenance for Project.
- c. Ensure all applicable permits (federal, state, and local) are obtained.
- d. Acquire all title to land and easements for Project.
- e. Comply with all North Dakota laws governing the requirements for competitive bids, advertising, and awarding of contracts for construction of Project.
- f. Provide written certification to Commission that Project does not duplicate the service area or affect another water service provider's users.
- g. Provide a water service agreement if Project is located within extraterritorial jurisdiction.
- h. Maintain a Project file containing relevant documents and correspondence generated during the course of Project. State is not responsible for maintaining a Project file.
- i. Prior to signature, inform Commission and any other relevant party regarding Project of any errors, misinterpretations, changes, modifications, miscalculations, incorrect Project descriptions, or any other information stated herein that is inaccurate.
- j. Provide assurance to Commission of sustainable operation, maintenance, and replacement plan of Project facilities.
- k. Provide a progress report to Commission at least every four years if the term of Project exceeds four years. If a progress report is not timely received, or if after a review of a progress report Commission determines Project has not made sufficient progress, Commission may terminate the agreement for Project funding.

4. PROJECT DESCRIPTION AND LOCATION. Project is for Sponsor's construction of a new raw water intake that increases the capacity for both residential services and Marathon Refinery and to help Sponsor meet water demands due to growth and provide for future growth. The location of the new intake is one mile south of the existing water treatment plant site on the Missouri River, which is approximately 2.5 miles north of Interstate 94 Grant March bridge.

5. ELIGIBLE COSTS. Commission has sole discretion to determine eligible costs and availability of Commission funds. Additional information is outlined in Commission's cost-share policy.

6. PAYMENT. Commission will make partial payments upon receipt and approval of Sponsor's written request. Sponsor must provide Commission verification of actual costs and a Project status report with each payment request. A Commission representative may inspect Project to determine whether the work satisfies Commission's cost share requirements before Commission makes payment(s) to Sponsor. Request for final payment must include documents or record drawings features constructed.

7. INDEMNIFICATION. Sponsor must require all subcontractors, other than state employed subcontractors, before commencement of an agreement between Sponsor and the subcontractor, to defend, indemnify, and hold harmless State, from and against claims based on the vicarious liability of State or its agents, but not against claims based on State's negligence or intentional misconduct. The legal defense provided by subcontractor to State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary. Subcontractor also agrees to reimburse State for all costs, expenses, and attorneys' fees incurred if State prevails in an action against subcontractor in establishing and litigating the indemnification coverage required herein. This obligation continues after the termination of this agreement.

8. INSURANCE. State and Sponsor each must secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool, or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$250,000 per person and \$500,000 per occurrence.

In addition, Sponsor must require all subcontractors, other than state employed subcontractors, before commencement of an agreement between Sponsor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies authorized to do business in North Dakota, the following insurance coverages:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- b. Automobile liability, including Owned (if any), Hired, and Non-owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- c. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this contract.

- d. If subcontractor is domiciled outside State, employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- e. Any deductible or other similar obligation under the policies is the sole responsibility of the subcontractor. The amount of any deductible is subject to approval by State.
- f. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by State. The policies must be in form and terms approved by State.
- g. State will be defended, indemnified, 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 duty to defend, indemnify, and hold harmless State under this agreement is not limited by the insurance required in this agreement.
- h. State must be endorsed on the commercial general liability policy, including any excess policies, as additional insured. State must have all the benefits, rights, and coverages of an additional insured under these policies that are not limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of Sponsor.
- i. The insurance required in this agreement, through a policy or endorsement, must include:
 - (1) A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against State;
 - (2) A provision that subcontractor's insurance coverage is primary (i.e., pay first) as respects any insurance, self-insurance, or self-retention maintained by State and that any insurance, self-insurance, or self-retention maintained by State must be in excess of the subcontractor's insurance and must not contribute with it;
 - (3) Cross liability/severability of interest for all policies and endorsements;
 - (4) The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary;
 - (5) The insolvency or bankruptcy of the insured subcontractor must 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.
- j. The subcontractor must furnish a certificate of insurance to Commission before commencement of this agreement. All endorsements must be provided as soon as practicable.

- k. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- l. The subcontractor must provide at least 30 days' notice of any cancellation or material change to the policies or endorsements. During the term of this agreement, subcontractor must provide renewal certificates 10 days before coverage expiration.

9. BREACH. Violation of any provision of this agreement by Sponsor constitutes breach of this agreement. A breach obligates Sponsor to reimburse Commission for all funds paid to Sponsor and relieves Commission of all obligations under this agreement.

10. AGREEMENT BECOMES VOID. This agreement is void if not signed and returned by Sponsor within 60 days of Commission's signature.

11. TERMINATION.

- a. Commission may terminate this agreement effective upon delivery of written notice to Sponsor, or a later date as may be stated in the notice, under any of the following conditions:
 - (1) If Commission determines an emergency exists.
 - (2) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to provide the funds necessary to comply with this agreement. The parties may modify this agreement to accommodate a reduction in funds.
 - (3) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
 - (4) If any license, permit, or certificate required by law, rule, or this agreement is denied, revoked, suspended, or not renewed.
 - (5) If Commission determines that continuing the agreement is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.
- b. Any termination of this agreement is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- c. The rights and remedies of any party provided in this agreement are not exclusive.

12. APPLICABLE LAW AND VENUE. This agreement is governed by and construed under the laws of State. Any action to enforce this agreement must be adjudicated exclusively in the District Court of Burleigh County, North Dakota.

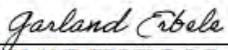
13. SEVERABILITY. If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement did not contain that term.

14. SPOILIATION – PRESERVATION OF EVIDENCE. Sponsor agrees to promptly notify Commission of all potential claims that arise or result from this agreement. Sponsor must also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Commission the opportunity to review and inspect the evidence, including the scene of an accident.

15. MERGER AND MODIFICATION. This agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this agreement. This agreement may not be modified, supplemented, or amended in any manner except by written agreement signed by both parties.

**NORTH DAKOTA STATE WATER
COMMISSION**

By:



GARLAND ERBELE, P.E.
Chief Engineer-Secretary

Date: August 21, 2019

CITY OF MANDAN

By:

TIM HELBLING
Mayor

Date: _____

ORDINANCE NO. 1325

An Ordinance to Amend and Re-enact
 Sections 4 and 5 of Sec. 24-12-8 of the Mandan Code of Ordinances
 Relating to Violation for Not Carrying Liability Insurance

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

4. Violation of subsection 1 ~~is an infraction and the sentence imposed~~ must include a fine of ~~at least~~ one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within a three-year period must be fined ~~at least~~ three hundred dollars which may not be suspended. For a second or subsequent conviction for a violation of subsection 1 or equivalent ordinance, the court shall order the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation to be impounded until that person provides proof of insurance and a twenty dollar fee to the court. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office of the police officer that made the arrest and notify the department of the order. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.
5. Upon conviction for a violation of subsection 1 or equivalent ordinance, the person who has been convicted shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of ~~three~~ one years and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.

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

Attest:

 James Neubauer, City Administrator

First Consideration: August 20, 2019

Second Consideration and Final Passage: September 3, 2019

Publication: September 27, 2019



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 27, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Second and final consideration of Ordinance 1323 related to a zoning district amendment for proposed Meadow Ridge 4th Addition

STATEMENT/PURPOSE: Consider approval of the second and final consideration of Ordinance 1323 related to a zoning district amendment for proposed Meadow Ridge 4th Addition.

BACKGROUND/ALTERNATIVES: The applicant is requesting approval for a rezone from MC-Industrial to RM-Residential for proposed Meadow Ridge 4th Addition.

This is the second and final consideration of Ordinance 1323. The first consideration of the ordinance and preliminary plat received unanimous approval by City Commissioners at the August 3 public hearing.

ATTACHMENTS:

Exhibit 1 – DRAFT Ordinance 1323
Exhibit 2 – Preliminary plat for Meadow Ridge 4th Addition (for reference)

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Ordinance 1323 has been reviewed and approved by the City Attorney.

RECOMMENDATION: The Engineering and Planning Department recommend approval of the second and final consideration of Ordinance 1323 as reflected in Exhibit 1.

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Second and final consideration of Ordinance 1323 related to a zoning district amendment for proposed Meadow Ridge 4th Addition

Page 2 of 2

SUGGESTED MOTION: I move to approve the second and final consideration of Ordinance 1323 as reflected in Exhibit 1.

ORDINANCE NO. 1323

AN ORDINANCE TO AMEND AND REENACT SECTION 105-2-2 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

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

SECTION 1. AMENDMENT. Section 105-2-2 of the Mandan Code of Ordinances is amended to read as follows:

The following described properties located in part of Lot 44, Block 1, Pioneer Park 1st Additiion, and Part of the NW ¼, Section 22, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota shall be excluded from the MC Industrial District and R3.2 Residential District and shall be included in the RM Residential District **WITH RESTRICTIONS** to single and two-family residential construction:

Meadow Ridge 4th Addition (proposed)

SECTION 2. RE-ENACTMENT. Section 105-2-2 of the Mandan Code of Ordinances is hereby re-enacted as amended. The city principal planner is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

SECTION 3. EFFECT. This ordinance shall go into effect upon the recordation of a final plat of Meadow Ridge 4th Addition as described in Section 1.

Tim Helbling, President
Board of City Commissioners

Attest:

Jim Neubauer
City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:
Recording Date:

July 22, 2019
August 20, 2019
September 3, 2019



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 27, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Second and final consideration of Ordinance 1324 related to a zoning district amendment for proposed Meadow Ridge 5th Addition

STATEMENT/PURPOSE: Consider approval of the second and final consideration of Ordinance 1324 related to a zoning district amendment for proposed Meadow Ridge 5th Addition.

BACKGROUND/ALTERNATIVES: The applicant is requesting approval for a rezone from MC-Industrial to RM-Residential for proposed Meadow Ridge 5th Addition.

This is the second and final consideration of Ordinance 1324. The first consideration of the ordinance and preliminary plat received unanimous approval by City Commissioners at the August 3 public hearing.

ATTACHMENTS:

Exhibit 1 – DRAFT Ordinance 1324
Exhibit 2 – Preliminary plat for Meadow Ridge 5th Addition (for reference)

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Ordinance 1324 has been reviewed and approved by the City Attorney.

RECOMMENDATION: The Engineering and Planning Department recommend approval of the second and final consideration of Ordinance 1324 as reflected in Exhibit 1.

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Second and final consideration of Ordinance 1324 related to a zoning district amendment for proposed Meadow Ridge 5th Addition

Page 2 of 2

SUGGESTED MOTION: I move to approve the second and final consideration of Ordinance 1324 as reflected in Exhibit 1.

EXHIBIT 1

ORDINANCE NO. 1324

AN ORDINANCE TO AMEND AND REENACT SECTION 105-2-2 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

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

SECTION 1. AMENDMENT. Section 105-2-2 of the Mandan Code of Ordinances is amended to read as follows:

The following described properties located in part of the NW ¼, Section 22, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota shall be excluded from the MC Industrial District and R3.2 Residential District and shall be included in the RM Residential District:

Meadow Ridge 5th Addition (proposed)

SECTION 2. RE-ENACTMENT. Section 105-2-2 of the Mandan Code of Ordinances is hereby re-enacted as amended. The city principal planner is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

SECTION 3. EFFECT. This ordinance shall go into effect upon the recordation of a final plat of Meadow Ridge 5th Addition as described in Section 1.

Tim Helbling, President
Board of City Commissioners

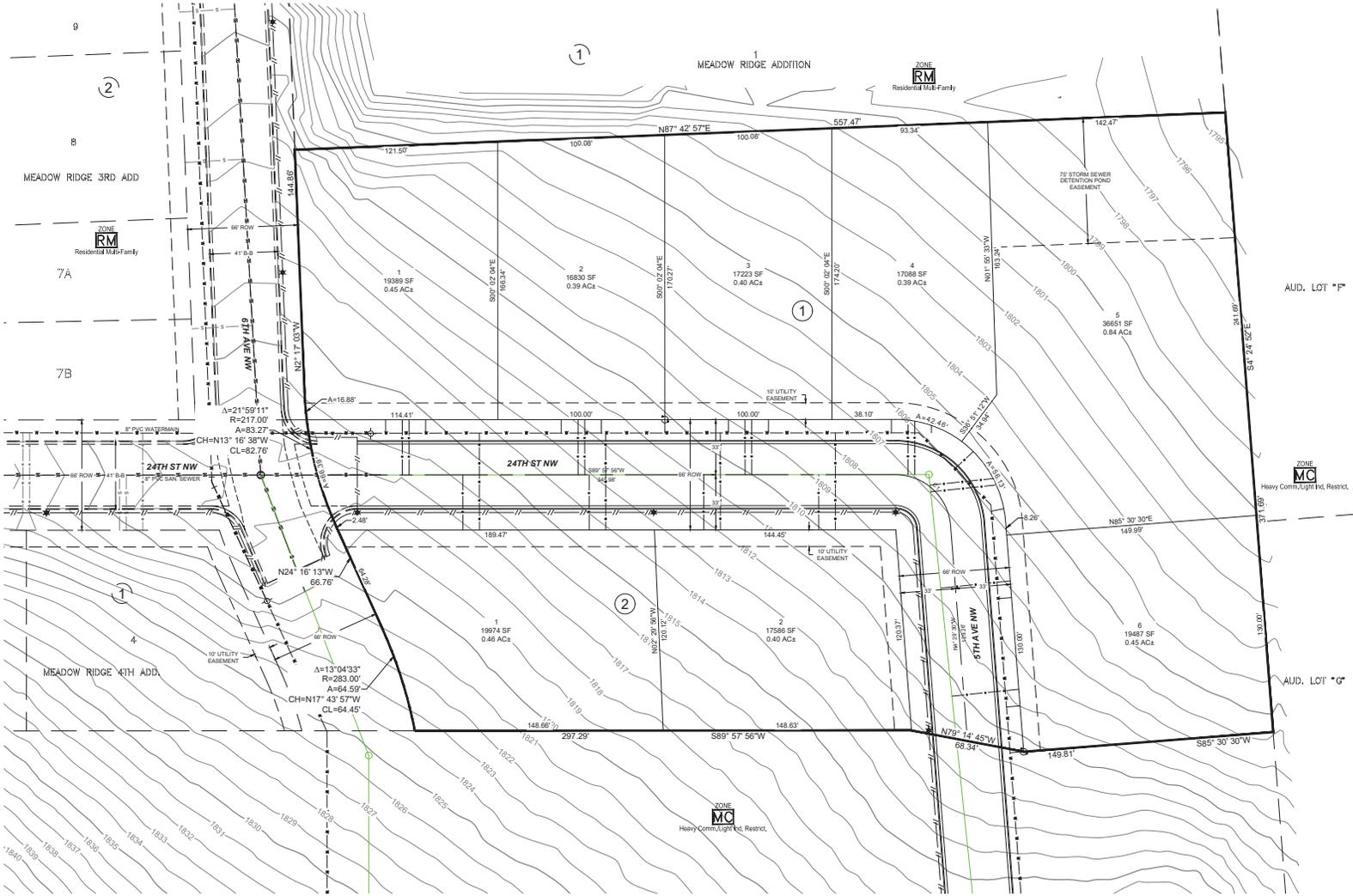
Attest:

Jim Neubauer
City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:
Recording Date:

July 22, 2019
August 20, 2019
September 3, 2019

PRELIMINARY PLAT
MEADOW RIDGE 5TH ADDITION
 TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA
 PART OF THE NW1/4, SECTION 22, T139N-R81W OF THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA



JUNE, 2019
 Scale 1" = 30' ±
 VERT DATUM: NAVD83
 HORIZ DATUM: 1983 ST. PLANE, ND SOUTH (3302)

LEGEND

- ⊙ EXISTING MANHOLE
- ⊕ EXISTING TELEPHONE PEDESTAL
- ⊛ EXISTING STREET LIGHT
- ⊠ EXISTING ELECTRICAL BOX
- ⊙ EXISTING TREE
- ⊕ EXISTING FIRE HYDRANT
- ⊕ EXISTING GATE VALVE
- ⊕ EXISTING SIGN
- s — s — EXISTING SANITARY SEWERMAIN
- w — w — EXISTING WATERMAIN
- ||—||— EXISTING CURB & GUTTER
- ss — ss — EXISTING STORM SEWER
- c — c — EXISTING GAS LINE
- t — t — EXISTING TELEPHONE CABLE
- cv — cv — EXISTING CABLE TV
- ||—||— EXISTING WATER SERVICE
- ||—||— EXISTING SANITARY SERVICE
- ⊠ EXISTING ASPHALT
- ⊛ PROPOSED STREET LIGHT
- ||—||— PROPOSED UNDERGROUND ELECTRIC
- ||—||— PROPOSED WATERMAIN
- s — s — PROPOSED SEWERMAIN
- ||—||— PROPOSED WATER SERVICE
- ||—||— PROPOSED SANITARY SERVICE

CENTERLINE STREET CURVE TABLE				
CURVE #	DELTA	RADIUS	LENGTH	CHORD BEARING
C1	85°26'02"	33.10'	49.35'	N47°12'31"W
				44.90'

OWNERS:
 WY RANCH, A LIMITED PARTNERSHIP
 PO BOX 639
 BISMARCK, ND 58502

BASIS OF BEARING:
 BASIS OF BEARING: NORTH BOUNDARY LINE
 NORTH 87° 42' 57" EAST.

NOTES:
 1. BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS DOCUMENTS OF RECORD DUE TO DIFFERENT METHODS OF FIELD MEASUREMENT.
 2. TOTAL LOT ACREAGE: 3.77
 TOTAL STREET ACREAGE: 0.79
 TOTAL ACREAGE: 4.56

TOMAN ENGINEERING
 501 1st Street NW, Mandan, ND 58554
 Phone: 701-663-6483 * Fax: 701-663-0923

PRELIMINARY PLAT. FIELD MEASUREMENTS BY T. J. BIRCH, 10/27/2019. 11:10 AM. P. 1.



Board of City Commissioners

Agenda Documentation

MEETING DATE:	September 3, 2019
PREPARATION DATE:	August 27, 2019
SUBMITTING DEPARTMENT:	Engineering and Planning
DEPARTMENT DIRECTOR:	Justin Froseth, PE
PRESENTER:	John Van Dyke, AICP, CFM
SUBJECT:	Second and final consideration of Ordinance 1322 related to a zoning district amendment for select lots in Scott's Acres (Proposed Engage Addition)

STATEMENT/PURPOSE: Consider approval of the second and final consideration of Ordinance 1322 related to a zoning district amendment for select lots in Scott's Acres. This property is the site of Engage Church off Old Red Trail NW.

BACKGROUND/ALTERNATIVES: Engage Church is seeking to divide their property located to the southwest of the intersection of Old Red Trail NW and Highland Rd. NW and rezone one of the newly created lots to MA Industrial and the other to R7 Residential (See Exhibit 2).

The existing zoning is MA Industrial and R7 Residential. The request is to reorient the zoning district boundaries to align with the proposed lots just noted. The MA Industrial zoning is currently located along the rear of the property. The R7 Residential is located along the front of the property (See Exhibit 1).

Storage Units are located to the west of the proposed industrially zoned property; Utility outdoor storage is to the south. Industrial uses are more appropriate than a single family residence for the land between Engage Church and the rest of this industrial area.

Staff recommends approval of the zoning amendment in Exhibit 3 for the reasons as outlined in Exhibit 4.

These reasons are:

- The property to the west and south are industrial zoned; the properties to the east/north are residentially zoned
- The proposed industrial zoning district boundary abuts one of Mandan's large industrial parks

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Second and final consideration of Ordinance 1322 related to a zoning district amendment for select lots in Scott's Acres (Proposed Engage Addition)

Page 2 of 2

- The church provides a harmonious transition from more intense industrial uses to lesser intense residential uses to the north and east
- The existing zoning designations of MA Industrial and R7 Residential already exist on the property in a different configuration; this is a reconfiguration of what already exists on the property

ATTACHMENTS:

Exhibit 1 – Current Configuration of Zoning District Boundaries

Exhibit 2 – Proposed Orientation of Zoning District Boundaries

Exhibit 3 – DRAFT Zoning Amendment – Ordinance 1322

Exhibit 4 – Rationale for Approval of Zoning Ordinance Amendment Request

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Ordinance 1322 has been reviewed and approved by Attorney Brown.

RECOMMENDATION: The Engineering and Planning Department recommend approval of the second and final consideration of Ordinance 1322 per Exhibit 3 based on the reasons outlined in Exhibit 4.

SUGGESTED MOTION: I move to approve the second and final consideration of Ordinance 1322 per Exhibit 3 based on the reasons outlined in Exhibit 4.

EXHIBIT 1

CURRENT ZONING CONFIGURATION

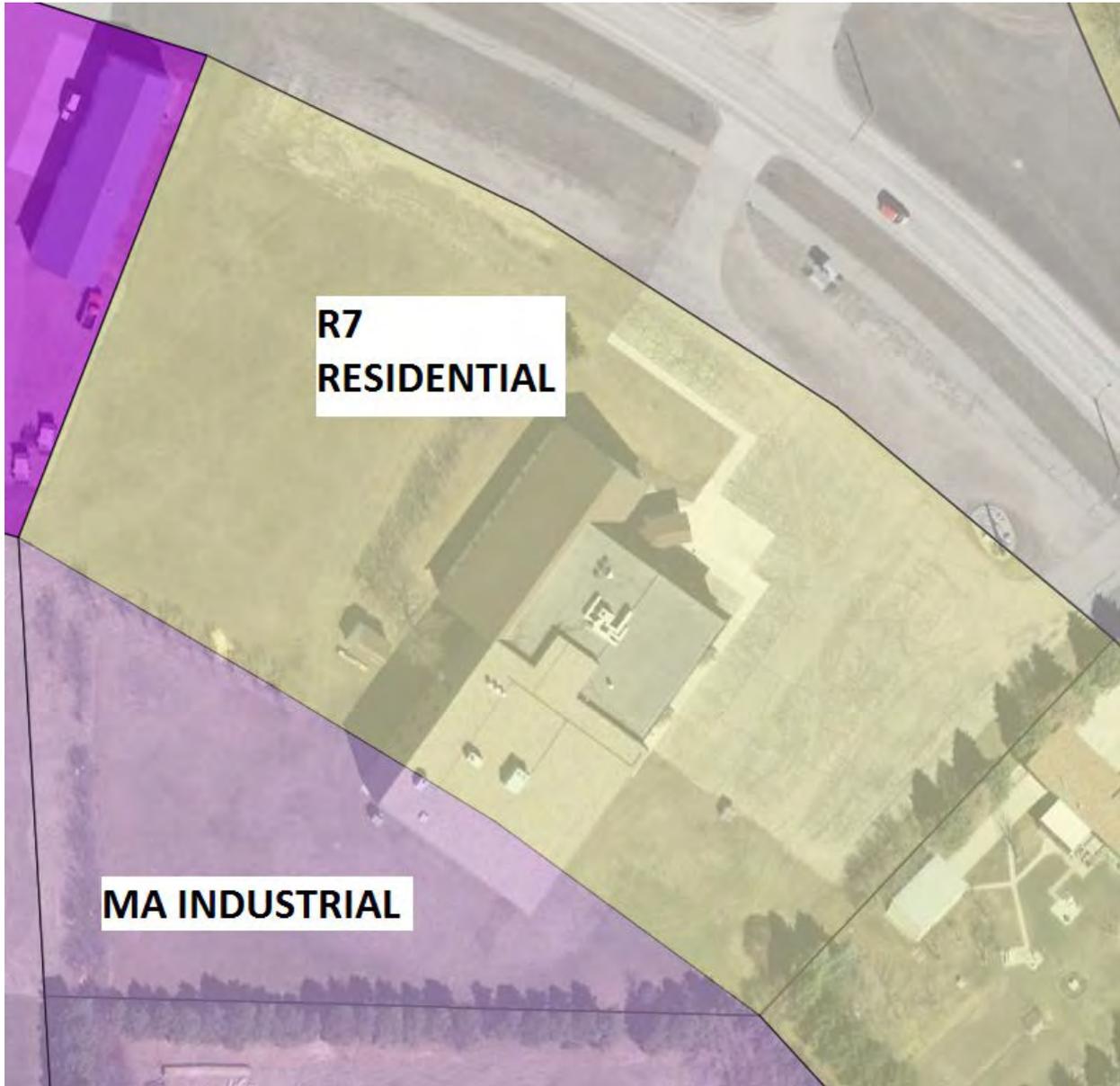
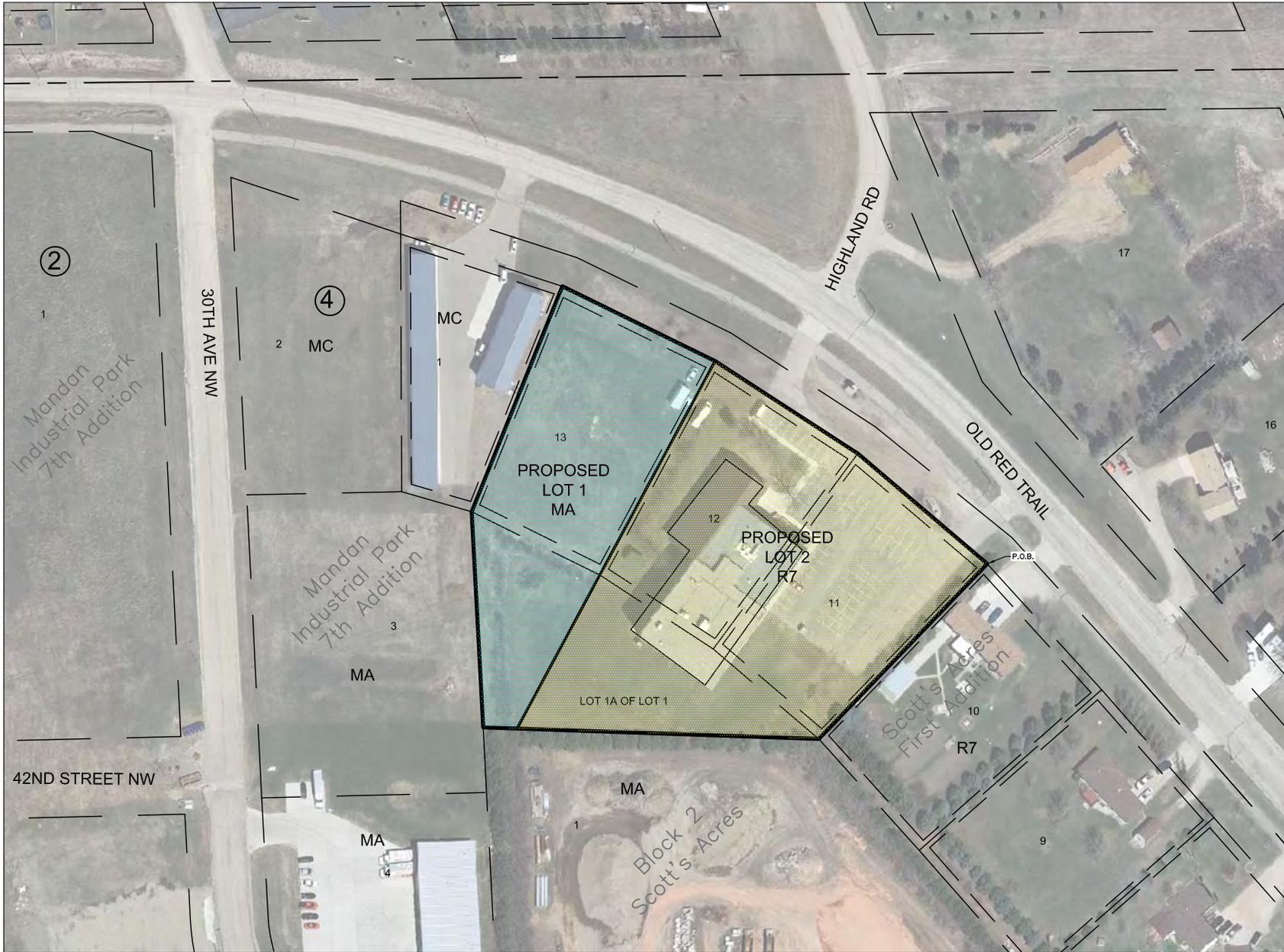


EXHIBIT 2



DRAFTED
ADW
REVIEWED

PROJECT NUMBER
PROJECT#
ISSUE DATE
6/21/19

ENGAGE ADDITION
ENGAGE CHURCH
MANDAN, NORTH DAKOTA
REZONE EXHIBIT

EXHIBIT 3

ORDINANCE NO. 1322

AN ORDINANCE TO AMEND AND REENACT SECTION 105-2-2 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

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

SECTION 1. AMENDMENT. Section 105-2-2 of the Mandan Code of Ordinances is amended to read as follows:

The following described properties located Section 17, Township 139N, Range 81W, City of Mandan, Morton County, North Dakota shall be excluded from the MA Industrial District and R7 Residential District:

Lots 11-13, Block 1, Scott's Acres First Addition (R7 Residential District)
Lot 1A of Lot 1, Block 2, Scott's Acres (MA Industrial District)

This same property shall be included in the MA Industrial District and R7 Residential District in a reconfigured manner per the proposed plat of Engage Addition as follows:

Lot 1 – MA Industrial District
Lot 2 – R7 Residential District

SECTION 2. RE-ENACTMENT. Section 105-2-2 of the Mandan Code of Ordinances is hereby re-enacted as amended. The city principal planner is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

Tim Helbling, President
Board of City Commissioners

Attest:

Jim Neubauer
City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:
Recording Date:

July 22, 2019
August 20, 2019
September 3, 2019

EXHIBIT 4

- The property to the west and south are industrial zoned; the properties to the east/north are residentially zoned
- The proposed industrial zoning district boundary abuts one of Mandan's large industrial parks
- The church provides a harmonious transition from more intense industrial uses to lesser intense residential uses to the north and east
- The existing zoning designations of MA Industrial and R7 Residential already exist on the property in a different configuration; this is a reconfiguration of what already exists on the property



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 27, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Second and final consideration of Ordinance 1321 related to a zoning district amendment for Lots 4 & 5, Block 1 Midway Fourteenth Addition

STATEMENT/PURPOSE: Consider approval of the second and final consideration of Ordinance 1321 related to a zoning district amendment for Lots 4 & 5, Block 1 Midway Fourteenth Addition (proposed Midway Fourteenth Addition First Replat).

BACKGROUND/ALTERNATIVES: E-C ND Investments, LLC is seeking the removal of zoning restrictions to allow for a warehousing addition to their existing structure. Other properties in the same Midway 14th development underwent a zone change in 2013 to remove restrictions. This rezone request would bring the entire development under the same zoning provisions.

The first consideration, as well as the preliminary and final plat to combine three lots into one, was approved unanimously on August 20.

ATTACHMENTS:

Exhibit 1 – Application
Exhibit 2 – DRAFT Ordinance 1321
Exhibit 3 – Preliminary Plat (for reference)
Exhibit 4 – Final Plat (for reference)

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Ordinance 1321 has been reviewed and approved by Attorney Brown.

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Second and final consideration of Ordinance 1321 related to a zoning district amendment for Lots 4 & 5, Block 1 Midway Fourteenth Addition

Page 2 of 2

RECOMMENDATION: The Engineering and Planning Department recommend approval of the zoning amendment to CC-Commercial without restrictions as presented in Exhibit 2.

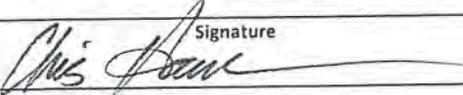
SUGGESTED MOTION: I move to recommend approval of the zoning amendment to CC-Commercial without restrictions as presented in Exhibit 2.

EXHIBIT 1

CITY OF MANDAN			
Development Review Application			
x	Minor Plat (\$300)	Zone Change (\$600) <input type="checkbox"/>	
	Preliminary Plat up to 20 acres (\$350)	Planned Unit Development (\$700)	
	Preliminary Plat more than 20 acres (\$400)	Zone Change with Minor Plat (\$400)	
	Final Plat up to 20 lots (\$350)	Vacation (\$500)	
	Final Plat 21 to 40 lots (\$475)	Variance (\$400)	
	Final Plat more than 40 lots (\$700)	Special Use Permit (\$450)	
	Annexation (\$450)	x Stormwater submittal (\$300)	
	Annexation with Minor Plat (\$200)	Stormwater 2 nd & subsequent resubmittal (\$50)	
Summary of Request Combining lots 4-6 of Midway 14th Addition into 1 lot. All lots have the same owner.			

Engineer/Surveyor				Property Owner or Applicant			
Name Tom Weigel (HBSE, Inc.)				Name Chris Houwman (E-C ND Investments, LLC)			
Address 3320 Hamilton ST. Unit 3				Address 809 W Russel St.			
City Bismarck	State ND	Zip 58503		City Sioux Falls	State SD	Zip 57104	
email tweigel@hollybecksurveying.com				email chouwman@malloyelectric.com			
Phone 701-223-3546		Fax -		Phone 605-336-3693		Fax -	
If the applicant is not the current owner, the current owner must submit a notarized statement authorizing the applicant to proceed with the request.							

Location			Type			Existing Zone	Proposed Zone	Project Name			
x	City	ETA		New	x	Addition	CC	CC	Malloy Electric Phase 2 Expansion		
Property Address						Legal Description					
1401 Action Drive SE						Lots 4-6, Block 1 of Midway 14th Addition					
Current Use						Commercial / Industrial					
Proposed Use						Same					
Section 31			Township 139			Range 80					
Parcel Size	Building Footprint	Stories	Building SF	Required Parking	Provided Parking						
4 Acres	18,450	1	18,450	-	-						

Print Name Chris Houwman	Signature 	Date 6/20/19
-----------------------------	---	-----------------

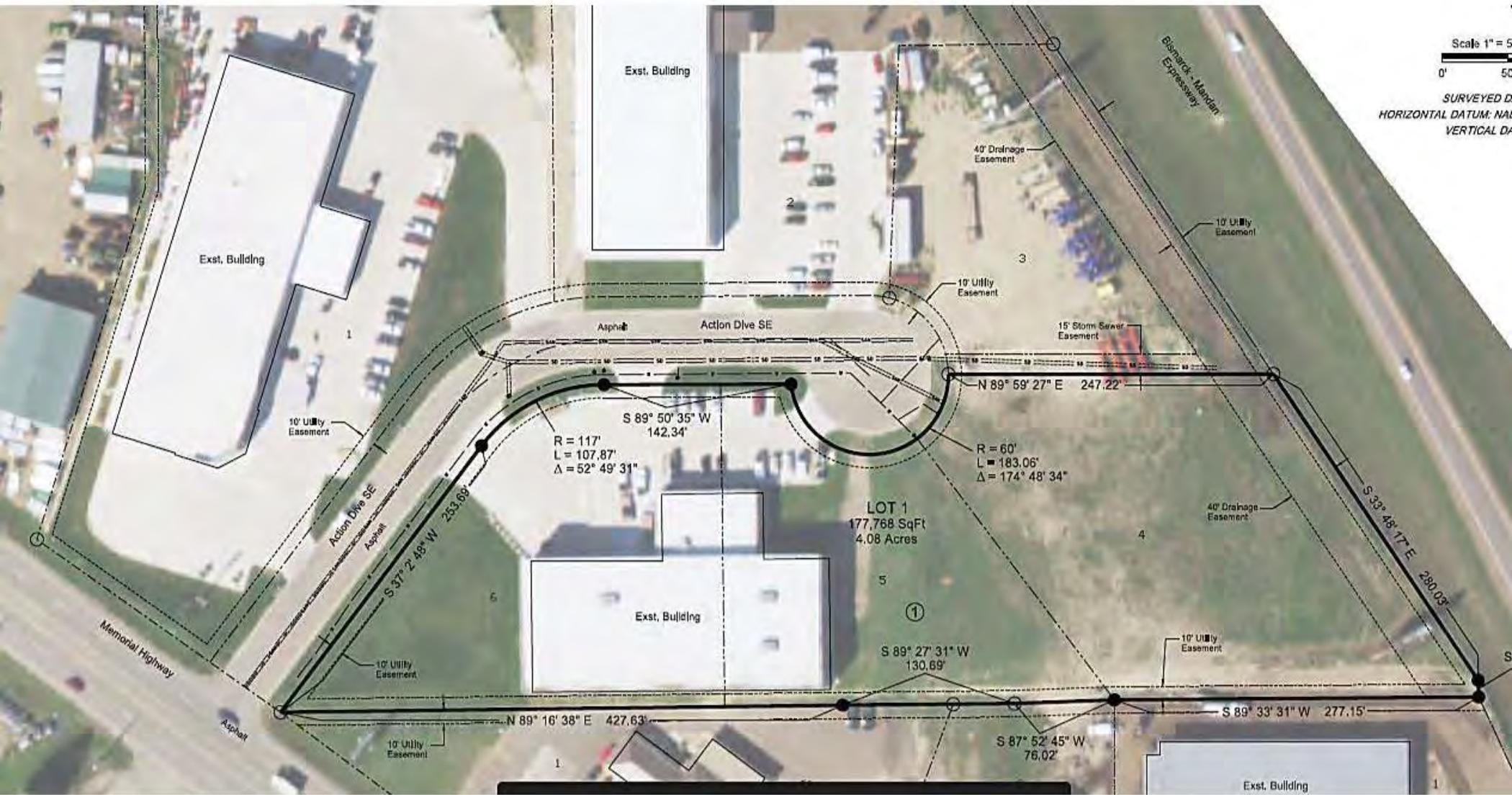
Office Use Only					
Date Received:	Initials:	Fees Paid:	\$	Date	
Notice in paper		Mailed to neighbors		P&Z meeting	
Approved	Approved with conditions:				
Denied					

Updated 1/1/2019

N:\PLANNING & ZONING\Development Application - January 2019.docx

VICINITY MAP





Scale 1" = 50'
 0' 50'
 SURVEYED DATA
 HORIZONTAL DATUM: NAD 83
 VERTICAL DATUM: NAVD 83

EXHIBIT 2

ORDINANCE NO. 1321

AN ORDINANCE TO AMEND AND REENACT SECTION 105-2-2 OF THE MANDAN CODE OF ORDINANCES RELATING TO DISTRICT BOUNDARIES AND ZONING MAP.

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

SECTION 1. AMENDMENT. Section 105-2-2 of the Mandan Code of Ordinances is amended to read as follows:

The following described properties shall be excluded from the CC Commercial District with restrictions on Railroad Trackage, Auto Laundry (Car Wash), Auto Repair Garages (as a primary use), Commercial Parking Lot/Garage, Off-premise Advertising Sign, Steam Bath, Tire/Battery Repair, Storage Building/Warehouse or any of the Wholesale Group and be **included in the CC Commercial District (no restrictions)**:

Lots 4 and 5, Block 1 of Midway Fourteenth Addition, Section 31, Township 139 North, Range 80 West, City of Mandan, Morton County, North Dakota

SECTION 2. RE-ENACTMENT. Section 105-2-2 of the Mandan Code of Ordinances is hereby re-enacted as amended. The city principal planner is authorized and directed to make the necessary changes upon the official zoning map of the city in accordance with this section.

Tim Helbling, President
Board of City Commissioners

Attest:

Jim Neubauer
City Administrator

Planning and Zoning Commission:
First Consideration:
Second Consideration and Final Passage:
Recording Date:

July 22, 2019

August 20, 2019

September 3, 2019

EXHIBIT 3

MIDWAY FOURTEENTH ADDITION FIRST REPLAT

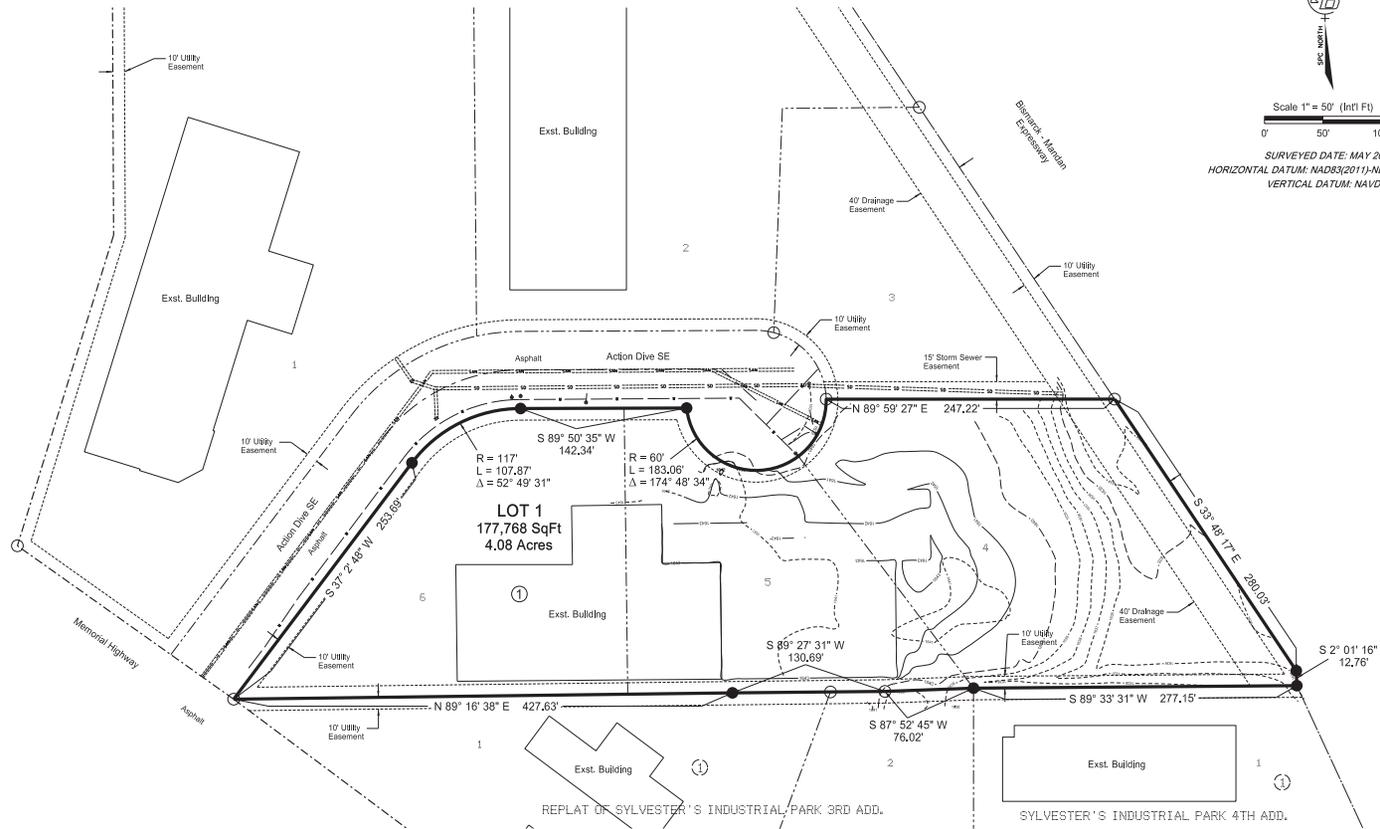
BEING A REPLAT OF LOTS 4, 5, AND 6, BLOCK 1 OF MIDWAY FOURTEENTH ADDITION
SECTION 31, TOWNSHIP 139 NORTH, RANGE 80 WEST
CITY OF MANDAN, MORTON COUNTY
NORTH DAKOTA

VICINITY MAP



Scale 1" = 50' (Int'l Ft)
0' 50' 100'

SURVEYED DATE: MAY 2019
HORIZONTAL DATUM: NAD83(2011)-ND S
VERTICAL DATUM: NAVD 88



CURRENT DESCRIPTION OF PROPERTY

ALL OF LOTS 4, 5, AND 6, BLOCK 1 OF MIDWAY 14TH ADDITION TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA, SAID TRACT OF LAND CONTAINING 4.08 ACRES, MORE OR LESS.

ZONING

CURRENT ZONING: Lot 6 - CC (Heavy Commercial Unrestricted)
Lots 4 & 5 - CC (Heavy Commercial with restrictions)
ZONING CHANGE: Lots 4, 5, 6 - CC (Heavy Commercial Unrestricted)

FLOOD INFORMATION

COMMUNITY NO: City of Mandan, 380072
MAP NUMBER: 380520192
ZONE: X (0.2 PCT ANNUAL CHANCE FLOOD HAZARD)

LEGEND

- EXISTING LOT LINE
- PROPOSED LOT LINE
- EXISTING WATER MAIN
- EXISTING SANITARY SEWER
- EXISTING STORM SEWER
- EXISTING CONTOURS (1 FOOT)
- PROPOSED CONTOURS (1 FOOT)
- FOUND MONUMENT
- SET #5 REBAR w/ALUM CAP

PRELIMINARY PLAT



MIDWAY FOURTEENTH ADDITION FIRST REPLAT

BEING A REPLAT OF LOTS 4, 5, AND 6, BLOCK 1 OF MIDWAY FOURTEENTH ADDITION
SECTION 31, TOWNSHIP 139 NORTH, RANGE 80 WEST
CITY OF MANDAN, MORTON COUNTY
NORTH DAKOTA

VICINITY MAP



Scale 1" = 50' (Int'l Ft)

0 50 100'

SURVEYED DATE: MAY 2019
HORIZONTAL DATUM: NAD83(2011)-ND S
VERTICAL DATUM: NAVD 88



CURRENT DESCRIPTION OF PROPERTY

ALL OF LOTS 4, 5, AND 6, BLOCK 1 OF MIDWAY 14TH ADDITION TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA, SAID TRACT OF LAND CONTAINING 4.08 ACRES, MORE OR LESS.

ZONING

CURRENT ZONING: Lot 6: CC (Heavy Commercial Unrestricted)
Lots 4 & 5: CC (Heavy Commercial with restrictions)
ZONING CHANGE: Lots 4, 5, 6: CC (Heavy Commercial Unrestricted)

FLOOD INFORMATION

COMMUNITY NO: City of Mandan, 380072
MAP NUMBER: 3005020502
ZONE: X (0.2 PCT ANNUAL CHANCE FLOOD HAZARD)

LEGEND

- EXISTING LOT LINE
- PROPOSED LOT LINE
- EXISTING WATER MAIN
- EXISTING SANITARY SEWER
- EXISTING STORM SEWER
- EXISTING CONTOURS (1 FOOT)
- PROPOSED CONTOURS (1 FOOT)
- FOUND MONUMENT
- SET #5 REBAR w/ALUM CAP

*** BACKGROUND IMAGE IS FOR APPROXIMATE REFERENCE ONLY ***

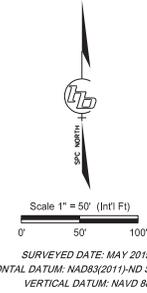
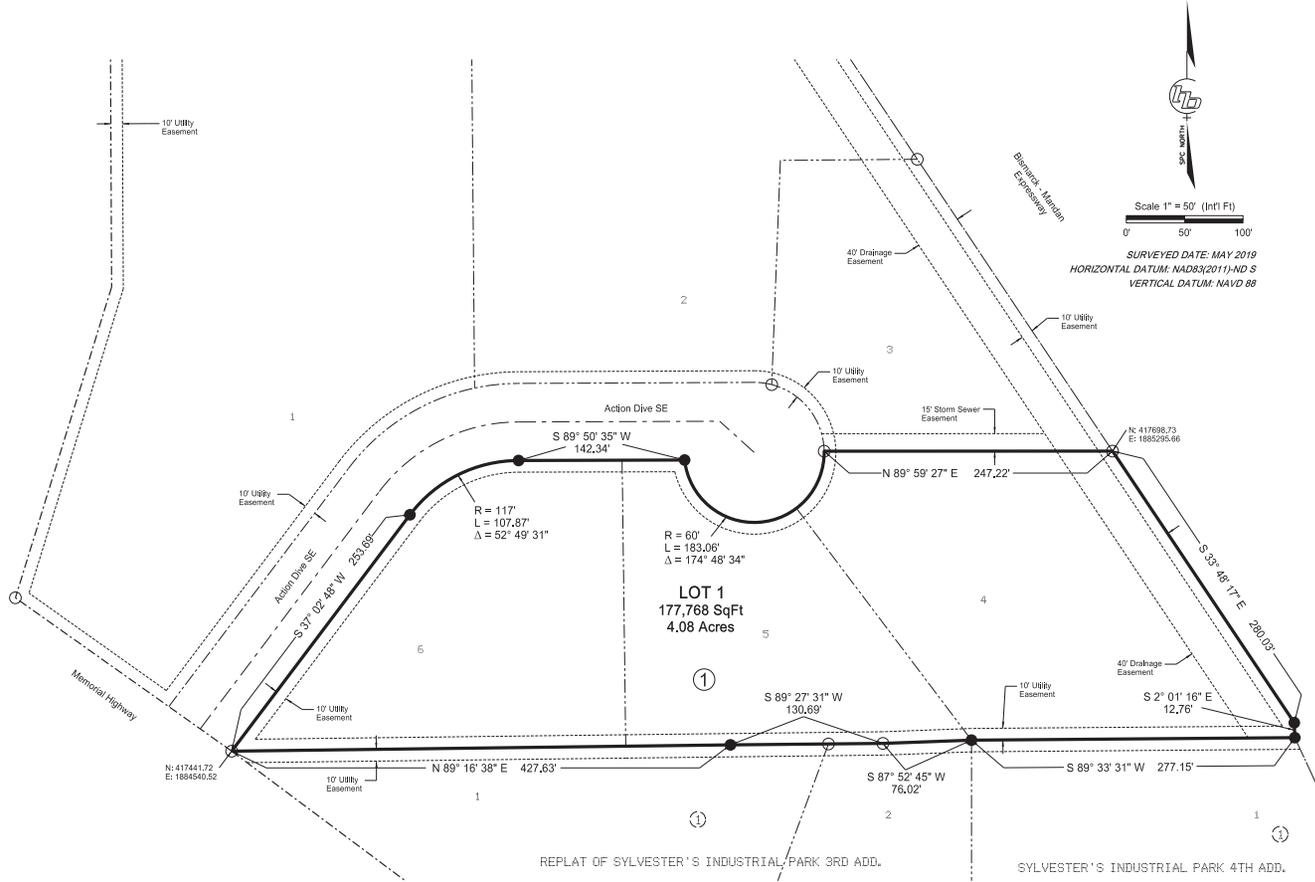
PRELIMINARY PLAT



EXHIBIT 4

MIDWAY FOURTEENTH ADDITION FIRST REPLAT

BEING A REPLAT OF LOTS 4, 5, AND 6, BLOCK 1 OF MIDWAY FOURTEENTH ADDITION
SECTION 31, TOWNSHIP 139 NORTH, RANGE 80 WEST
CITY OF MANDAN, MORTON COUNTY
NORTH DAKOTA



DESCRIPTION OF PROPERTY
ALL OF LOTS 4, 5, AND 6, BLOCK 1 OF MIDWAY 14TH ADDITION TO THE CITY OF MANDAN, MORTON COUNTY, NORTH DAKOTA, SAID TRACT OF LAND CONTAINING 4.08 ACRES, MORE OR LESS.

OWNER'S CERTIFICATE & 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".

Chris Houman
E-C ND Investments, LLC
809 W. Russell St.
Sioux Falls, SD 57104

STATE OF NORTH DAKOTA)
COUNTY OF _____) SS

ON THIS _____ DAY OF _____, 2019, PERSONALLY APPEARED BEFORE ME, CHRIS HOUMAN, KNOWN TO BE THE PERSON WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

SURVEYOR'S CERTIFICATE
I, THOMAS D. WEIGEL, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE ACCOMPANYING PLAT WAS SURVEYED UNDER MY SUPERVISION AND THAT ALL INFORMATION SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



THOMAS D. WEIGEL LS-10871
HOLLYBECK SURVEYING & ENGINEERING, INC.
3320 HAMILTON ST UNIT 3
BISMARCK, ND 58501

PLANNING & ZONING COMMISSION APPROVAL
THE SUBDIVISION OF LAND SHOWN HEREON HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF MANDAN, NORTH DAKOTA ON THIS _____ DAY OF _____, 2019, 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
KIM FETIG - 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 AND HAS ACCEPTED THE DEDICATION OF ALL PARKS AND PUBLIC GROUNDS SHOWN HEREON. THE FOREGOING ACTION BY THE BOARD OF CITY COMMISSIONERS OF MANDAN, NORTH DAKOTA, HAS BEEN TAKEN BY RESOLUTION THIS _____ DAY OF _____, 2019.

JIM NEUBAUER - CITY ADMINISTRATOR
MAYOR TIM HELBLING - PRESIDENT

APPROVAL OF CITY ENGINEER
I, JUSTIN FROSETH, CITY ENGINEER FOR THE CITY OF MANDAN, NORTH DAKOTA HEREBY APPROVE "MIDWAY FOURTEENTH ADDITION FIRST REPLAT" MANDAN, NORTH DAKOTA AS SHOWN ON THE ANNEXED PLAT.

JUSTIN FROSETH - CITY ENGINEER

FINAL PLAT DATE ISSUED: 7/16/2019

LEGEND
○ FOUND MONUMENT
● SET #5 REBAR w/ALUM CAP

FLOOD INFORMATION
COMMUNITY NO: City of Mandan, 38002
MAP NUMBER: 3809028150
ZONE: X (0.2 PCT ANNUAL CHANCE FLOOD HAZARD)





Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 27, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Second and Final Consideration of Ordinance 1320
Related to Crematoriums

STATEMENT/PURPOSE: Consider approval of second and final consideration of Ordinance 1320 related to crematoriums.

BACKGROUND/ALTERNATIVES: An ordinance was recently adopted that would restrict crematoriums to within the Mandan Union Cemetery. The Board of City Commissioners directed staff to reevaluate the ordinance as it pertains to crematoriums following a request by David Wise.

Through the process, funeral homes in the area provided comment, several public hearings were held, and staff reviewed research and land use standards from other communities. The original staff recommendation is provided in Exhibit 1 and the final Planning and Zoning Commission recommendation can be found in Exhibit 2 for reference.

Staff is providing an alternative recommendation at this time based on many public hearings that have occurred on the issue since the original recommendation. This recommendation can be found in Exhibit 3.

The alternative staff recommendation is constructed to provide protections to existing home owners and developments while at the same time not being unnecessarily burdensome on the business owner. Staff is recommending that crematoriums be placed in an industrial zoning district with a 50' setback from the property line. In addition, a 350' setback applies to existing dwellings at the time of building permit issuance. Further, staff is recommending that these standards apply to the use and that no special use permit be required. These restrictions should address the issues that arose in discussion throughout the many hearings that took place in preceding months.

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Second and Final Consideration of Ordinance 1320 related to Crematoriums

Page 2 of 2

Both Planning and Zoning Commission and the Board of City Commissioners (first consideration) voted unanimously to approve the ordinance as presented in Exhibit 3.

ATTACHMENTS:

Exhibit 1 – Ordinance - Original Staff Recommendation

Exhibit 2 – Ordinance - Planning and Zoning Recommendation

Exhibit 3 – Ordinance - Alternative Staff Recommendation

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: Ordinance 1320 has been reviewed and approved by Attorney Brown.

RECOMMENDATION: Engineering and Planning recommend approval of the second and final consideration of Ordinance 1320 as presented in Exhibit 3.

SUGGESTED MOTION: I move to approve the second and final consideration of Ordinance 1320 as presented in Exhibit 3.

EXHIBIT 1 - Draft Ordinance - Staff Recommendation

ORDINANCE NO. 1299

An Ordinance to Amend and Re-enact Sec. 101-1-3 and 105-1-5 (e) of the Mandan Municipal Code related crematoriums

WHEREAS, Changes are necessary to remove conflict within the land-use code related to cremation-related activities

WHEREAS, Clarification is required to ensure health and safety and mitigate potential negative impacts to nearby resident property values

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

Section 1. Sec. 101-1-3 is added and reads:

Insert in Sec. 101-1-3 after the definition for Correctional facility the following:

Crematorium means the establishment for final disposition of deceased remains, either human or pet, by thermal, mechanical, or other dissolution process that reduces remains to bone fragments and is subject to the following requirements:

- a. shall not be the primary use, i.e. it must be accessory or ancillary to a related and legally existing mortuary, funeral home, columbarium, or cemetery use.

Section 2. Sec. 101-1-3, definition for Funeral home or mortuary, is amended to read:

Funeral home or mortuary means a facility for the care and custody for the pre-disposition of deceased human remains, including the sale of services and merchandise for burial, cremation, and other related items, including offices, viewing rooms, chapels, and reception halls for serving the deceased and their families. ~~facility for the pre-burial preparation of human cadavers, including facilities for cremation, and including other areas for offices, purchase of burial items and services, viewing rooms and areas for the conduct of memorial services.~~

Section 3. Sec. 105-1-5 (e) is amended to read:

Cemetery, Mausoleum, Columbarium, and Crematorium. A cemetery, mausoleum, columbarium or crematorium may be permitted in an industrial or A district as a special use, provided that:

- (1) No graves shall be located less than 100 feet distant from any property line;
- (2) There shall be a strip at least 75 feet in width adjacent to all boundaries of the cemetery landscaped and maintained as a green area;

(3) In any cemetery in which there will be permitted monuments and grave markers rising above the surface of the ground, the green area shall include a dense evergreen hedge at least six feet in height; and

(4) No ~~public~~ mausoleum, columbarium, ~~crematory~~ or cemetery chapel shall be erected within 200 feet of any boundary of the lot or parcel on which it is located.

(5) No crematorium shall be erected within 300 feet of a property line.

Section 4. Sec. 101-1-3 and 105-1-5 (e) is amended and re-enacted.

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer,
City Administrator

First Consideration:

December 4, 2018

Second Consideration and Final Passage:

December 18, 2018

EXHIBIT 2 - Draft Ordinance - Planning and Zoning Commission Recommendation

ORDINANCE NO. 1299

An Ordinance to Amend and Re-enact Sec. 101-1-3 and 105-1-5 (e) of the Mandan Municipal Code related crematoriums

WHEREAS, Changes are necessary to remove conflict within the land-use code related to cremation-related activities

WHEREAS, Clarification is required to ensure health and safety and mitigate potential negative impacts to nearby resident property values

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

Section 1. Sec. 101-1-3 is added and reads:

Insert in Sec. 101-1-3 after the definition for Correctional facility the following:

Crematorium means the establishment for final disposition of deceased remains, either human or pet, by thermal, mechanical, or other dissolution process that reduces remains to bone fragments and is subject to the following requirements:

- a. shall not be the primary use, i.e. it must be accessory or ancillary to a related and legally existing mortuary, funeral home, columbarium, or cemetery use.

Crematorium equipment means the primary piece of capital performing the task of reducing remains to bone fragments.

Section 2. Sec. 101-1-3, definition for Funeral home or mortuary, is amended to read:

Funeral home or mortuary means a facility for the care and custody for the pre-disposition of deceased human remains, including the sale of services and merchandise for burial, cremation, and other related items, including offices, viewing rooms, chapels, and reception halls for serving the deceased and their families. facility for the pre-burial preparation of human cadavers, including facilities for cremation, and including other areas for offices, purchase of burial items and services, viewing rooms and areas for the conduct of memorial services.

Section 3. Sec. 105-1-5 (e) is amended to read:

Cemetery, Mausoleum, Columbarium, and Crematorium. A cemetery, mausoleum, columbarium or crematorium may be permitted in an industrial or A district as a special use, provided that:

- (1) No graves shall be located less than 100 feet distant from any property line;

- (2) There shall be a strip at least 75 feet in width adjacent to all boundaries of the cemetery landscaped and maintained as a green area;
- (3) In any cemetery in which there will be permitted monuments and grave markers rising above the surface of the ground, the green area shall include a dense evergreen hedge at least six feet in height; and
- (4) No ~~public~~ mausoleum, columbarium, ~~crematory~~ or cemetery chapel shall be erected within 200 feet of any boundary of the lot or parcel on which it is located.
- (5) No crematorium equipment shall be placed within 100 feet of a property line excepting along adjacent right-of-way.

Section 4. Sec. 101-1-3 and 105-1-5 (e) is amended and re-enacted.

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer,
City Administrator

Planning and Zoning:
First Consideration:
Second Consideration and Final Passage:

January 28, 2019
February 19, 2019
March 5, 2019

EXHIBIT 3

ORDINANCE NO. 1320

An Ordinance to Amend and Re-enact Portions of Sec. 101-1-3, 105-3-14 (2), 105-3-15 (2), and Remove Sec. 105-1-5 (k) of the Mandan Municipal Code related crematoriums

WHEREAS, Changes are necessary to remove conflict within the land-use code related to cremation-related activities

WHEREAS, Clarification is required to ensure health and safety and mitigate potential negative impacts to nearby resident property values

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

Section 1. Sec. 105-1-5 (k) is removed.

~~Crematorium. A crematorium may be permitted as a special use with the following minimum restrictions:~~

- ~~(1) No crematorium equipment shall be placed within 100 feet of a property line excepting along adjacent right of way; and~~
- ~~(2) Crematoriums shall be located within the Mandan Union Cemetery.~~

Section 2. Sec. 101-1-3 and is amended and re-enacted.

Crematorium means the establishment for final disposition of deceased remains, either human or pet, by thermal, mechanical, or other dissolution process that reduces remains to bone fragments.

The following standards shall apply:

- (1) Crematorium equipment shall be located a minimum of fifty (50) feet from a property line.
- (2) Crematorium equipment shall be located a minimum of three-hundred-fifty (350) feet from an existing dwelling.

Section 3. Sec. 105-3-14 (2) q. related to permitted uses in the MA Industrial District is added.

q. Crematorium

Section 4. Sec. 105-3-15 (2) v. related to permitted uses in the MB Industrial District is added.

v. Crematorium

Timothy A. Helbling, President
Board of City Commissioners

Attest:

James Neubauer,
City Administrator

Planning and Zoning:

First Consideration:

Second Consideration and Final Passage:

July 22, 2019

August 20, 2019

September 3, 2019



Board of City Commissioners

Agenda Documentation

MEETING DATE: September 3, 2019
PREPARATION DATE: August 28, 2019
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM,
SUBJECT: Consider Approval of the Resolution to Transfer Real Property by Nonexclusive Listing Agreement

STATEMENT/PURPOSE: Consider approval of the resolution to transfer real property by non-exclusive listing agreement.

BACKGROUND/ALTERNATIVES: Property is acquired over time by the City of Mandan if taxes go unpaid by property owners.

In the past, the respective property has gone to bid and the highest bidder would acquire the property. However, the number of pieces of property that the city has accumulated lends this process to be unmanageable given existing staff responsibilities.

The sooner property is placed back into the hands of private ownership the sooner property tax revenue may be collected.

The resolution presented in Exhibit 1 includes 13 properties that have been evaluated by Assessing, Engineering, and Public Works Departments and deemed non-essential to the city.

Exhibit 2 provides a map of these locations for reference.

Exhibit 3 provides the listing agreement to allow Oaktree Realtors the ability to list these properties on the Multiple Listing Service (MLS) and begin marketing the properties for sale.

ATTACHMENTS:

Exhibit 1 – Resolution to Transfer Real Property by Nonexclusive Listing Agreement

Exhibit 2 – Map of property to be listed for sale through resolution

Exhibit 3 – Listing agreement with Oaktree Realtors

Board of City Commissioners

Agenda Documentation

Meeting Date: September 3, 2019

Subject: Consider Approval of the Resolution to Transfer Real Property by Nonexclusive Listing Agreement

Page 2 of 2

FISCAL IMPACT: Positive – Future property tax collections will provide revenue on properties currently not producing any tax revenue.

STAFF IMPACT: Moderate – Each offer will require approval by City Commission. Staff time will include summarizing the offer and presenting to City Commission.

LEGAL REVIEW: The resolution and contract have been reviewed and approved by Attorney Brown.

RECOMMENDATION: The Engineering and Planning Department, Public Works, and Assessing Departments recommend approval of this resolution. .

SUGGESTED MOTION: I move to approve the resolution as presented in Exhibit 1 and enter into the contract as presented in Exhibit 3.

EXHIBIT 1

RESOLUTION TO TRANSFER REAL PROPERTY BY NONEXCLUSIVE LISTING AGREEMENT

Board of City Commissioners
City of Mandan, North Dakota

WHEREAS, The City has acquired numerous parcels throughout the years; and

WHEREAS, Certain property has been identified to have no public value; and

WHEREAS, The time for staff to establish a separate bid and answer inquiries related to each property is unmanageable given existing staff responsibilities; and

WHEREAS, Section 2-4-8 of the Code of Ordinances of the City of Mandan, North Dakota provides the option to list property for sale through a real estate broker; and

WHEREAS, Utilizing a real estate broker will more efficiently place property back into private ownership to begin collecting property tax revenue

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Mandan, Morton County, North Dakota, that, beginning September 3, 2019 and effective through September 3, 2020, the following shall apply:

1. The commission rate is 6% of the gross selling price of the respective property. The commission may be split 50/50 with another real estate broker. The minimum commission will be \$250 to be split 50/50 by the listing and selling agent.
2. The City of Mandan reserves the right to reject any and all offers determined to be insufficient.
3. The property listed in the attached table titled, " RESOLUTION TO TRANSFER REAL PROPERTY BY NONEXCLUSIVE LISTING AGREEMENT" and dated September 3, 2019 shall be listed for sale through the real estate broker, Oaktree Realtors:

President, Board of City Commissioners

ATTEST:

City Administrator

RESOLUTION TO TRANSFER REAL PROPERTY BY NONEXCLUSIVE LISTING AGREEMENT (Page 1 of 2)

Page 4

Suggested List Price	PARCEL ID	STREET ADDRESS	LOT	BLOCK	SUDIVISION	Square Feet	Assessed Value
\$ 10,000.00	650218000	4609 Old Red Trl NW	24	2	CROWN POINT SUBDIVISION REPLAT	34,886.00	\$ 2,400.00
\$ 5,000.00	652971000		E 40' OF S 110' & 40' ADJ VAC ST	1	MEADS ADDITION	8,800.00	\$ 3,500.00
\$ 1,000.00	653286000	604 1st Ave NE	5	73	FIRST NORTHERN PACIFIC ADDITION	2,856.00	\$ 1,000.00
\$ 1,000.00	654434500		35A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	4,275.00	\$ 1,000.00
\$ 1,500.00	654425500		26A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	4,354.00	\$ 1,500.00
\$ 1,500.00	654429500		30A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	6,067.00	\$ 1,500.00
\$ 500.00	654406500		8A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	1,746.00	\$ 500.00
\$ 2,500.00	654423500		24A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	8,454.00	\$ 2,500.00
\$ 2,000.00	654403500		5A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	6,622.00	\$ 2,000.00
\$ 1,000.00	654435500		36A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	3,319.00	\$ 1,000.00
\$ 500.00	654402500		4A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	1,381.00	\$ 500.00
\$ 500.00	654410000		N 5' LOT 12	1	ROUGH RIDER ESTATES-PIONEER ADDITION	625.00	\$ 500.00
\$ 1,000.00	654399500		1A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	4,426.00	\$ -
\$							\$

September 3, 2019

RESOLUTION TO TRANSFER REAL PROPERTY BY NONEXCLUSIVE LISTING AGREEMENT (Page 2 of 2)

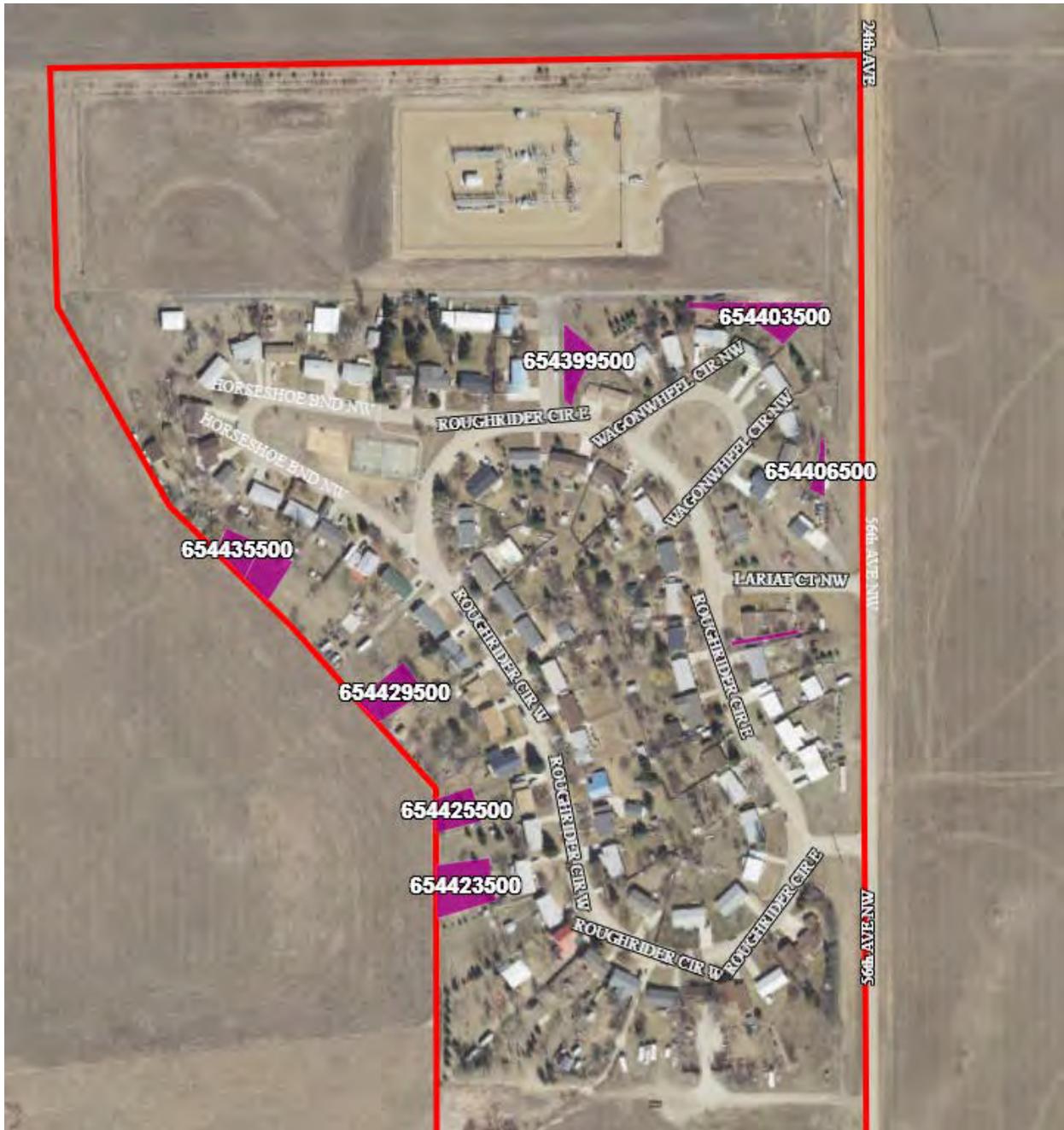
MLS #	2018 Taxes	2018 Speical Installment	2018 Special Balance
	\$ -	\$ 188.55	\$ 847.13
	\$ -	\$ 238.28	\$ 713.00
	\$ -	\$ 339.20	\$ 1,059.95
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ 163.28	\$ 433.17
	\$ -	\$ -	\$ -

September 3, 2019

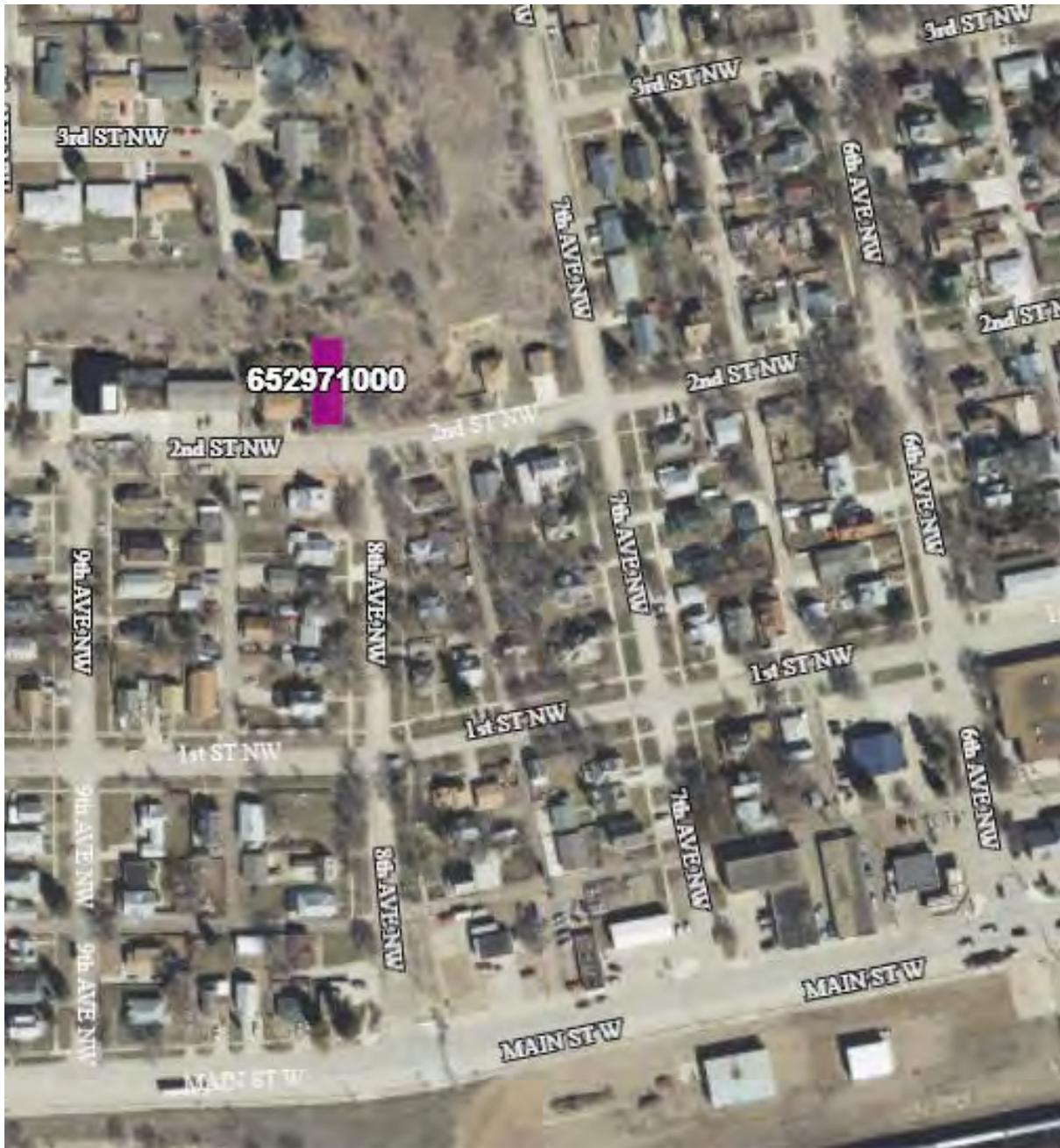
EXHIBIT 2 - Map of Property to be Listed for sale through Resolution



South of West Hills Estates 1st on Old Red Trail NW (1 Property)



Roughriders Sub (10 Properties)



Meads Addition – 2 Blocks west, 1 Block north of Runnings (1 Property)



Hillside north of 5th St. NE, 1 block east of Collins Ave. (1 Property)



West of the Middle School in Big Sky Estates 3rd. Property is approx.. .04 acres. (1 Property)



EXHIBIT 3 - Listing Agreement w/Oaktree Realtors

EXCLUSIVE RIGHT TO SELL LISTING CONTRACT

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

MLS # see attached Date 09/03/2019 Page 1 of 4
(To be indicated after submission to MLS)

THIS CONTRACT INVOLVES PROPERTY LOCATED AT:

City of Mandan Lots _____ City Mandan State N

Legally described as: see attached

"I" means Seller: _____ City of Mandan

"You" means Real Estate Broker: _____ Oaktree Realtors

LISTING - As Seller, I give you the exclusive right to sell the above legally described property for the price of \$varies, to be paid in cash at closing, or any other price and terms acceptable to me. I have the full and legal right to sell the property and will sign all closing documents (including a Warranty Deed or Contract for Warranty Deed) necessary to transfer to Buyer full and unquestioned ownership of the property.

This contract starts September 3rd, 2019 and ends at 11:59 p.m. on September 3, 2020.
In exchange, Broker agrees to list the property for sale.

Active status and showings to begin on (date) 09/03/2019. If this property is not available for showings on the contract start date, it will be placed in the "Off Market" status in the MLS until it is available for showings. A listing that is placed "Off Market" in the MLS will have no activity (showings or contracts presented) during the period of time that the listing is Off Market.

This shall serve as my written notice granting you or any authorized closing agent permission to obtain: 1.) mortgage information (i.e. mortgage balance, interest rate, payoff and/or assumption figures, etc.) regarding any existing financing on this property, and 2.) utility information. A copy of this document shall be as valid as the original.

Personal property included: land only

Personal property excluded: land only

SPECIAL CONDITIONS:

XXXXX

Is there a functioning audio/visual surveillance system on the property? (check one) Yes No If yes, Seller(s) agree to post notice of such at the entrance where potential buyers may enter the property.

Is there a security system installed on the property? (check one) Yes No Terms: xxxxxx

Is there a well on the property? (check one) Yes No

Is there a septic system on the property? (check one) Yes No

As Seller, I have been informed that if there is a septic system on the property, it might be required to meet certain city, county, or state certification standards. I hold you harmless of any responsibility for said system.

I have a contract for fuel tank rental, water softener rental, or rural water membership: (check one) Yes No

Terms: xxxxxx

Do you have an abstract? (check one) Yes No

Do you have title insurance? (check one) Yes No Policy #xxxxxxx

Do you currently have flood insurance? (check one) Yes No

Sign permitted on property? (check one) Yes No Lock Box? (check one) Yes No

Home Protection Plan: Seller (check one) will will not provide a home protection plan.

Seller(s) Initial: Seller Date _____ **Seller** _____ Date _____ (Rev. 2/18)

64 **EXCLUSIVE RIGHT TO SELL LISTING CONTRACT - PAGE 2 OF 3**

65
66 **SELLER'S DUTIES** -As Seller I will:

- 67 (a) cooperate with you in selling the property and I authorize you, your agents, and/or agents with customers
- 68 or clients to enter my premises for the purposes of showing/previewing the property at reasonable times;
- 69 (b) promptly tell you about all inquiries received about the property;
- 70 (c) provide and pay for any inspections and reports if required by any governing authority;
- 71 (d) provide homeowners association documents, if required;
- 72 (e) give the Buyer an updated abstract of title, or title insurance to the property, or mobile home registration;
- 73 (f) warrant all appliances, heating, air conditioning, wiring, and plumbing on said premises will be in
- 74 working order at date of closing, except:

75 **XXXXXXXXXXXXXXXXXXXX**

- 76 (g) remain responsible for security, maintenance, utilities, and insurance while I own the property, and for
- 77 safekeeping, securing, and/or concealing any valuable personal property during property showings or
- 78 open houses.

79
80 As Seller, I know you intend to rely on the accuracy of the information I furnish, including information about the
81 condition of the property. I agree to hold you harmless and defend you from any costs, expenses, or damages,
82 including attorney's fees, incurred by you as a result of my withholding information from you or as a result of giving
83 you any information which is incorrect.

84
85 **MULTIPLE LISTING SERVICE** - I understand you are a member of a Multiple Listing Service (MLS) and will give
86 information to MLS concerning the property. I will grant you access to the property and I authorize you to market the
87 property including submission of data to a Multiple Listing Service (MLS). You may place information on the Internet
88 concerning the property, including but not limited to the address, photographs and/or virtual tours. I will notify you of
89 relevant information important to the sale of the property. If you sell the property, you may provide information
90 concerning the property, including but not limited to address, price and terms of sale to the MLS, member REALTORS®
91 (including appraisers who may use the information to prepare comparable sale reports), and relevant government entities.

92
93 **NOTICE AND NONDISCRIMINATION** - As of this date I have not received notice from any municipality, government
94 agency, or homeowners association about the property that I have not told you about, and I agree to promptly tell you of
95 any notice of that type that I would receive. I understand that I may not refuse to sell to, or discriminate in the terms,
96 conditions, or privileges of sale against, or indicate or publicize that sale is unwelcome, objectionable, not acceptable, or not
97 solicited from, any person due to that person's race, color, religion, sex, national origin, age, physical or mental disability,
98 family status, status with respect to marriage, or status with respect to public assistance. I understand further that local
99 ordinances may include other protected classes of persons.

100
101 **YOUR COMMISSION - THE COMMISSION RATE FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL**
102 **PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL REAL ESTATE BROKER AND ITS CLIENT.**

103 As Seller, I hereby authorize you to market my property and allow you to share your commission with other Real Estate
104 Brokers, including Brokers representing only the Buyer. As Seller, I will pay Listing Broker a total commission of
105 6.000 % of the gross selling price. Commission may be split as follows: BMBOR MLS Buyer Broker 3.000 %
106 Other Broker 3.000 %, or other terms: **minimum \$250 commission split 50/50 by listing and buyer agent**
107 upon the happening of any of the following events:

- 108 (a) at the closing of the sale, if I sell or agree to sell the property before this contract ends, even if another
- 109 Broker or I sell the property without your assistance;
- 110 (b) if you present a Buyer who is willing and able to buy the property either 1.) at the price set forth in this contract
- 111 and on the other specific terms, if any, herein, or 2.) at a price and on terms to which I agree in a signed purchase
- 112 agreement, but if I then refuse to sell:
- 113 (c) if within 30 days after the end of this contract I sell or agree to sell the property to anyone who:
- 114 1. during this contract made inquiry of me about the property, or;
- 115 2. during this contract made an affirmative showing of interest in the property or was physically shown
- 116 the property.

117 After the expiration of this contract, and if there are no signed and/or pending purchase agreements or offers, I understand I
118 do not have to pay your commission if I sign another valid listing contract under which I am obligated to pay a commission
119 to another licensed Real Estate Broker.

120
121 Seller(s) Initial: _____ Date _____ Seller _____ Date _____ (Rev. 2/18)

EXCLUSIVE RIGHT TO SELL LISTING CONTRACT - PAGE 3 OF 3

DUAL AGENCY REPRESENTATION - (To be completed only if the Broker has NOT adopted an Appointed Agency Policy) As a result of this listing contract, the Broker will now represent you in the sale of this property. If a Buyer represented by the Broker wishes to buy your property, a Dual Agency will be created. This means the Broker will represent both you and the Buyer(s) and will owe the same duties to the Buyer(s) that Broker owes to you. It will prohibit Broker from advocating exclusively on your behalf. Dual Agency will limit the level of representation the Broker can provide. If a Dual Agency should arise, confidential information about price, terms, and motivation will still be kept confidential unless you instruct the Broker in writing to disclose specific information about you. All other information will be shared. The Broker cannot act as a Dual Agent unless both you and the Buyer(s) agree to it. By agreeing to a possible Dual Agency, and if Dual Agency should apply in your transaction, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want the Broker to represent you, you may give up the opportunity to sell your property to Buyers represented by the Broker.

SELLER'S INSTRUCTIONS TO THE BROKER - Having read and understood this information about Dual Agency, Seller(s) now instructs the Broker as follows:

Seller(s) will agree to Dual Agency representation and (check one) will consider will not consider offers made by Buyer represented by the Broker.

Seller: _____ Date _____ Seller: _____ Date _____
City of Mandan

APPOINTED AGENCY - (To be completed only if Broker has adopted an Appointed Agency Policy) The Broker will appoint to you, in writing, a licensee who will be acting as your Appointed Agent to the exclusion of all other affiliated licensees of the Broker. By agreeing to Appointed Agency, you, the Broker, the agents of the Broker and the Appointed Agent named below are considered to possess only actual knowledge and information. By an act of North Dakota Law, the definitions regarding Appointed Agency make it clear that there is no imputed knowledge or information between you, the Broker, the Broker's agents or the named Appointed Agent.

Notice: Any appointed agent who personally represents both you and the Buyer in a purchase of property is a Dual Agent. This means the Appointed Agent will represent both you and the Buyer(s), and will owe the same duties to the Buyer(s) that the Appointed Agent owes to you. It will prohibit the Appointed Agent from advocating exclusively on your behalf. Dual Agency will limit the level of representation the Appointed Agent can provide. If a Dual Agency should arise, confidential information about price, terms, and motivation will still be kept confidential unless you instruct the Appointed Agent in writing to disclose specific information about you. All other information will be shared. The Appointed Agent cannot act as a Dual Agent unless both you and the Buyer(s) agree to it. By agreeing to a possible Dual Agency, and if Dual Agency should apply in your transaction, you will be giving up the right to exclusive representation. However, if you should decide not to agree to a possible Dual Agency, and you want the Appointed Agent to represent you, you may give up the opportunity to sell your property to Buyers represented by the Appointed Agent.

Darren Schmidt / Jason Schmidt ("Appointed Agent"), an affiliated licensee

of the Broker, is appointed to act solely as an agent for you unless s/he personally represents the Buyer. Your designated Appointed Agent is obligated not to reveal any confidential information obtained from you to other licensees, except to the Broker in charge of the oversight of your transaction. It is understood that the Broker may appoint another agent for you during the term of this agreement if: 1). The Appointed Agent is not able to fulfill the terms of your listing agreement, and/or 2.) You and the Broker mutually agree to the appointment of another agent. An appointment of another agent as a new or additional agent does not relieve the first Appointed Agent of any of the duties owed to you as previously described in this agreement.

SELLER'S INSTRUCTION TO BROKER - Having read and understood this information, Seller(s) make(s) the following decision:

Seller(s) accepts the Broker's appointment of the above named agent as the Seller's Appointed Agent and (check one) accepts does not accept Dual Agency if it arises.

Seller: _____ Date _____ Seller: _____ Date _____
City of Mandan

I hereby certify that I have received a copy of this contract and agree to its terms.

Acceptance Date _____
Oaktree Realtors
Brokerage _____
Darren Schmidt / Jason Schmidt
By Licensee _____
(701)223-7422 **(701)226-5942**
Licensee Office Phone Cell Phone

Owner _____ Date _____
Owner _____ Date _____
Owner Address _____ Phone _____
City/State/Zip _____

This is a legally binding contract. If you desire legal or tax advice, consult an appropriate professional.

©BISMARCK MANDAN BOARD OF REALTORS® MEMBER USE ONLY

(Rev. 2/18)

Suggested List Price	PARCEL ID	STREET ADDRESS	LOT	BLOCK	SUDIVISION	Square Feet	Assessed Value
\$ 10,000.00	650218000	4609 Old Red Trl NW	24	2	CROWN POINT SUBDIVISION REPLAT	34,886.00	\$ 2,400.00
\$ 5,000.00	652971000		E 40' OF S 110' & 40' ADJ VAC ST	1	MEADS ADDITION	8,800.00	\$ 3,500.00
\$ 1,000.00	653286000	604 1st Ave NE	5	73	FIRST NORTHERN PACIFIC ADDITION	2,856.00	\$ 1,000.00
\$ 1,000.00	654434500		35A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	4,275.00	\$ 1,000.00
\$ 1,500.00	654425500		26A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	4,354.00	\$ 1,500.00
\$ 1,500.00	654429500		30A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	6,067.00	\$ 1,500.00
\$ 500.00	654406500		8A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	1,746.00	\$ 500.00
\$ 2,500.00	654423500		24A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	8,454.00	\$ 2,500.00
\$ 2,000.00	654403500		5A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	6,622.00	\$ 2,000.00
\$ 1,000.00	654435500		36A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	3,319.00	\$ 1,000.00
\$ 500.00	654402500		4A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	1,381.00	\$ 500.00
\$ 500.00	654410000		N 5' LOT 12	1	ROUGH RIDER ESTATES-PIONEER ADDITION	625.00	\$ 500.00
\$ 1,000.00	654399500		1A	1	ROUGH RIDER ESTATES-PIONEER ADDITION	4,426.00	\$ -
\$							\$

MLS #	2018 Taxes	2018 Speical Installment	2018 Special Balance
	\$ -	\$ 188.55	\$ 847.13
	\$ -	\$ 238.28	\$ 713.00
	\$ -	\$ 339.20	\$ 1,059.95
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
	\$ -	\$ 163.28	\$ 433.17
	\$ -	\$ -	\$ -