

FORGIVABLE LOAN and PROMISSORY NOTE

This Loan Agreement and Promissory Note (the “Agreement”), effective this ____ day of _____, 2020, is entered into between the following parties:

Lender: City of Mandan (“Lender”)
 205 Second Avenue NW
 Mandan, ND 58554

Borrower: _____ (“Borrower”)
 Address
 Mandan, ND 58554
 Contact Person/Title: _____
 Telephone: _____
 FEIN: _____

WHEREAS, the City of Mandan is committed to keeping its community vibrant, in part by sustaining and growing the commercial base and business community; and

WHEREAS, to help strengthen small, locally-owned businesses challenged by reduced revenues due to COVID-19, funding from the Mandan Growth Fund (MGF) is being made available to proprietors seeking to implement strategies and take actions to become more innovative and resilient in the face of crisis.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1. **Loan Amount and Terms:** Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of _____ (the “Loan Amount”). Upon action by the Mandan City Commission and signature on this Agreement, approved applicants will receive 75% of funding. The remaining 25% will be provided after submitting receipts demonstrating correct use of funds and applicant matching dollars within 90 days of application approval to the City of Mandan Business Development Office. If the Loan Amount is being used for outdoor seating, the deadline is extended from 90 days to July 1, 2021. Completion of a W-9 form is also required. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. This loan is not transferable.
2. **Forgiveness of Debt:** The Borrower promises to remain open and transacting business in Mandan, North Dakota, for twelve months after approval of funding by the Mandan City Commission. After the twelve-month period has expired, and assuming the Borrower has remained open and transacting business in Mandan, North Dakota, the Loan Amount, plus any accrued interest, will be forgiven. In the event the Borrower ceases to operate during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with paragraph 7 below.
3. **Collateral:** None is required under this Agreement.
4. **Mortgage/Security Agreement:** Not applicable.
5. **Use of Funds:** The monies from this loan shall be used by the Borrower only as approved by the Mandan Growth Fund and as described by the Borrower in the “Mandan Strong” Business Mini Match Application for Innovation, Adaptability, & Diversification.
6. **Financial Management:** Borrower shall keep accounting records in conformance with generally accepted accounting principles, and make such records and all related reports, files, documents and other papers pertaining to the funds provided under this Agreement available for audits, examinations and monitoring if requested by Lender; such records will be retained for a period of three (3) years after termination of the loan period or repayment of the debt in full. The accounting system used by the Borrower shall clearly establish records of budgets and expenditures for the activities funded with the Loan Amount.

7. **Default:** This Agreement shall be considered in default:
 - A. Upon any default or failure to properly perform under any clause in this Agreement.
 - (i) If the Borrower ceases to operate in Mandan, North Dakota, during the twelve months after approval of funding by the Mandan City Commission, the entire outstanding principal amount is immediately due and payable.
 - (ii) If upon audit, any loan funds are shown to have been used for other than the intended purposes, such funds shall be immediately repaid with interest at a six percent (6%) compounded annual rate (or if lower, the maximum rate allowed by North Dakota law) to Lender by Borrower.
 - (iii) If upon review by the City, the Borrower has received funds from the North Dakota Economic Resiliency Grant or other public grant or loan funds, and the funds were used for any project of substantially similar scope, such funds shall be immediately repaid to Lender by Borrower. This provision does not apply if the costs of the project are large enough that there is no overlap between the funding sources and match.
 - B. At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.
8. **Indemnification:** The Borrower shall indemnify, defend, and hold harmless the Lender and its respective officials and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Borrower or any party in a relationship with the Borrower which is a result of this Agreement. The liability of the Borrower under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments, and damages resulting from acts occurring prior to the termination of this Agreement.
9. **Amendments:** Changes to this Agreement will not be effective or binding unless in writing and signed by both parties to the Agreement.
10. **Compliance with the Law:** The Borrower agrees to operate in Mandan, North Dakota, in full compliance with applicable federal, state, and local laws without limitation.
11. **Authorization to Contract:** Before or at the time of execution of the Agreement, the Borrower must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of North Dakota, and authorized to borrow money; and evidence shall be provided that the person executing the Agreement and any supporting documents is authorized to act on behalf of the Borrower in such a transaction.
12. **Termination of Agreement:** Lender may terminate the loan, in whole or in part, if the Borrower has failed to comply with the conditions of the Agreement. The Borrower will receive written notice and the reasons for termination.
13. **Divisibility:** The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.
14. **Assignment:** The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender.
15. **Binding Effect:** The provisions of this Agreement shall both bind and benefit the Borrower's successors, assigns, guarantors, endorsers, and any other person or entity now or hereafter liable hereon.
16. **North Dakota Law:** This agreement shall be construed in accordance with the laws of the State of North Dakota.

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

CITY OF MANDAN, NORTH DAKOTA

Timothy Helbling, President
Mandan City Commission

BORROWER:

By: