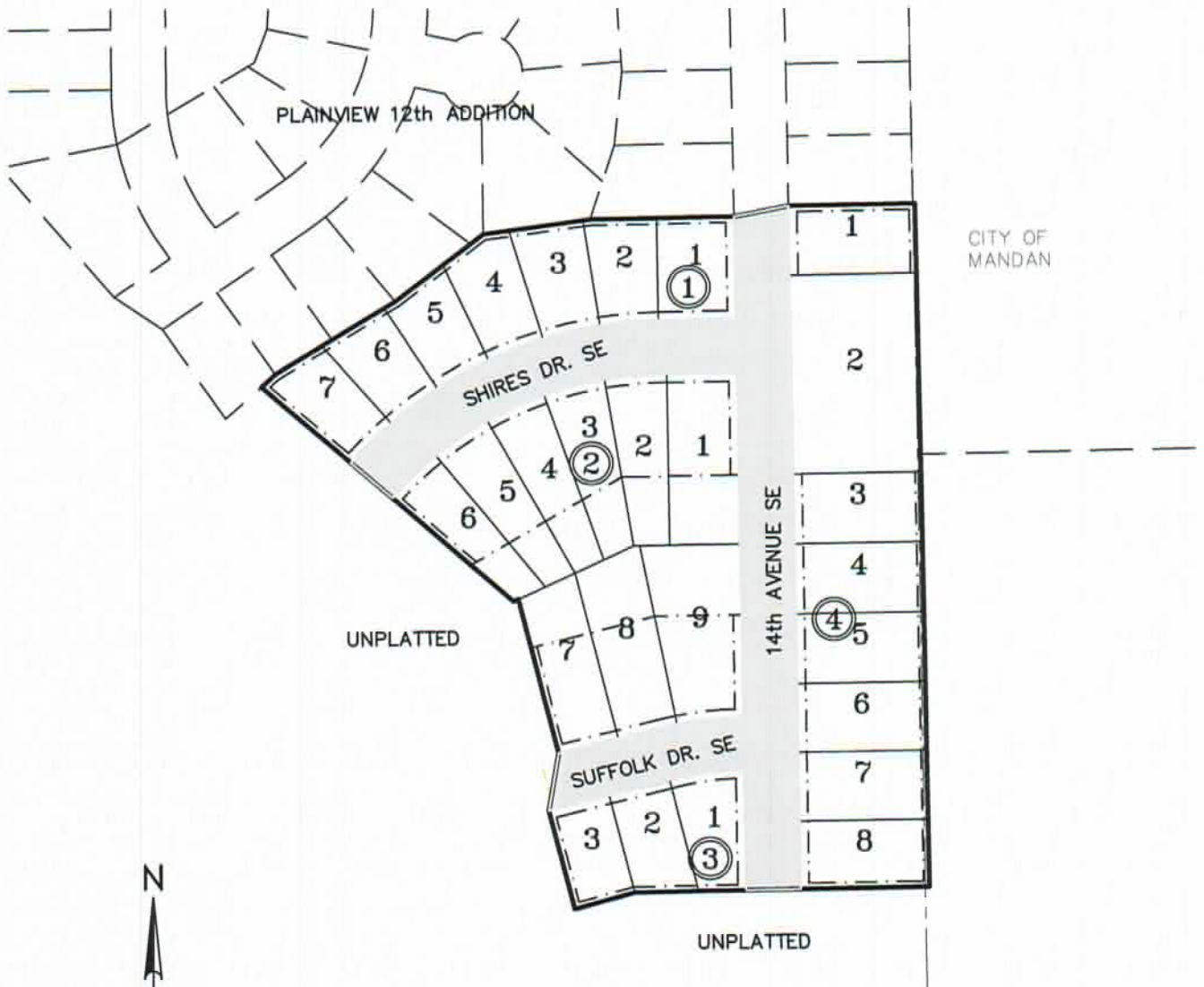


# AREA 'B'

## PLAINVIEW 13TH ADDITION CITY OF MANDAN

### STREET, STORM SEWER & LIGHTING IMPROVEMENT EXHIBIT

BENEFITTING PROPERTIES:  
BLOCKS 1-4 OF MEADOWS 5TH ADDITION



200 0 200 400  
scale 1"=200' feet

Kadmas  
Lee &  
Jackson  
Engineers Surveyors  
Planners

**3 – WAY AGREEMENT**

THIS AGREEMENT, Made on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, between the City of Mandan, a municipal corporation, hereinafter called the City and Mitzel Builders, Inc. hereinafter called the Developer, and \_\_\_\_\_ hereinafter called the Contractor. The Engineer mentioned in this contract shall be Kadrmas, Lee & Jackson, Inc.

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

- X   Water Mains
- X   Sanitary Sewer Mains
- X   Storm Sewer
- Streets
- X   Others: Water and Sewer Services

For property to be developed and offered for sale by the Developer, and

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

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

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

1) **LICENSE TO CONSTRUCT**

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

**Plainview Heights 13<sup>th</sup> Addition**

- 14<sup>th</sup> Avenue SE
- Shires Drive SE
- Suffolk Drive SE

Which license shall continue so long as the Developer performs the agreements assumed by it herein.

2) SCOPE OF WORK

The Developer will through a contractor licensed under the laws of North Dakota, to do said work, furnish all materials, and all equipment and labor, necessary to perform all of the work shown on the plans and specifications prepared by a licensed professional engineer, which are hereby referred to and made apart of this Agreement. Construction staking shall be done by Kadrmas, Lee & Jackson, Inc., and testing by the Contractor as required by the engineer at the expense of the Developer. The Developer shall complete all stubouts to the property line on utilities to be constructed under this contract.

All work incidental to the project, such as grading, taps to the water main, and any other usual charges as determined by the Engineer shall be borne by the Developer.

3) TIME OF COMPLETION

The work to be performed under this Agreement shall be commenced within 10 days of the date of the execution of this Agreement, and shall be completed within \_\_\_ calendar days of the date of the execution of this Agreement, but no later than August 25, 2012.

4) SUPERVISION AND INSPECTION OF WORK

The City and the City Engineering Department shall at all times have access to the work, in its preparation and progress. The licensed professional engineer and his authorized representatives will give all grades or locations for all work and no work depending upon such grades or locations shall be commenced until the same have been established. Upon all questions concerning the interpretation and compliance with the plans and specifications and the performance and execution of the work called for by them, the decisions of the City Engineer shall be final and binding upon the Developer and its contractors, servants, employees or agents.

5) ENGINEER'S DECISIONS

The Project Engineer shall have general supervision and direction of the work. He has authority to stop the work when such stoppage may in his opinion be necessary to insure proper execution of the contract. He shall also have the authority to reject all work and materials which do not conform to the plans and specifications, and to decide all questions which arise in the execution of the work. All such decisions of the Project Engineer shall be final.

6) PAYMENT

The Developer shall provide an irrevocable letter of credit or a certificate of deposit in an escrow account from a bona fide bank in the amount of the project cost including engineering, testing and inspection. The project cost is \_\_\_\_\_ Final payment will be for actual quantities used. The money in such account shall be used only for the payment of the project costs. The Developer will be responsible to pay the Contractor for all the contract work in accord with the plans and specifications prepared by the City made a part of this contract. The Developer shall, where over size mains are required, be responsible to construct and pay for the same unless it is practical and possible to separate the proposed construction work requiring extra size, and separately bid the same through public bidding.

7) CONTENTS OF DEVELOPER'S CONTRACT

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

8) OWNERSHIP OF WORK-LINES

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

9) WARRANTY

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

10) VERBAL AGREEMENTS

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

11) PROTECTION OF PUBLIC AND WORK

The Developer shall provide and maintain all necessary watchmen, barricades, lights, and warning signs and take all necessary precautions for protection of the public, and shall further maintain at all times adequate protection of the work from damage. The Developer shall also take out and furnish general liability insurance to protect itself and the City with an insurer licensed to do business in North Dakota, in the sum of \$1,000,000 for one accident, against and from all suits, actions, or claims of any character, name and description brought for an account of any injuries or damages received or sustained by any person or persons or property on account of any negligent act or fault of the Developer, its contractor, or officers, agents or employees in execution of the contract or on account of its failure to provide necessary barricades, warning lights, or signs, and as will protect the City from any contingent liability under this contract. In no case shall the liability insurance be less than specified in Section 100-33 of the City of Mandan Construction Specifications for Municipal improvements.

12) UTILITIES

It shall be the responsibility of the Developer and Contractor to familiarize itself with the location of all existing sewer, water mains and service lines, gas mains and service lines, telephone cable, power, light, telephone poles, guys, valve boxes, stop boxes, and all utilities installations that might be affected in the performance of the work. The developer shall notify all utility companies 48 hours in advance of any construction affecting said utilities, and shall work out with said utilities any conflicts or changes.

13) CHANGES

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

14) CLEAN UP

Extra materials, tools, and temporary structures shall be removed by the Developer and all dirt, rubbish, and excess earth from excavations shall be disposed of and the construction area left clean to the satisfaction of the City Engineer. The Developer shall maintain for a period of three months after completion of the work the surface of unpaved trenches, adjacent curbs and gutters, sidewalks, driveways, shrubbery, fences, sod and other surfaces disturbed. The Developer shall conduct its operations in such a manner as to cause minimum inconvenience to adjoining property owners and the public.

Street surfacing in unpaved area shall be restored to as good as or better than prior to construction by the Developer. The Developer will be required to replace paving or gravel surface removed or damaged in the construction work or repair any area disturbed as a result of construction work.

15) ASSURANCE OF PERFORMANCE AND PAYMENT OF BILLS

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

IN WITNESS WHEREOF, The Parties have executed the within and foregoing contract.

CITY OF MANDAN

\_\_\_\_\_  
Dave Bechtel  
City Engineering Project Manager

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

Attest:

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

DEVELOPER

\_\_\_\_\_  
*Mitzel Builders, Inc.*  
Firm Name

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

\_\_\_\_\_  
Owner

\_\_\_\_\_  
*2401 46<sup>th</sup> Ave. SE, #101*

\_\_\_\_\_  
*Mandan, ND 58554*

Address

CONTRACTOR

\_\_\_\_\_  
Firm Name

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

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

\_\_\_\_\_  
Address