

- f. Third Quarter Financial Status Report for Major Operating Funds.
- g. Fire Department budget adjustments in the amount of \$9,958.52 for M-F Haz Mat training.
- h. Contract with the North Dakota Department of Health for the WIC Program (CFDA #10.557).
- i. Recommendation to acquire and demolish property at 712 4th Avenue North for \$50,000.
- j. Application filed by Tricia Fossum for a three-year tax exemption for improvements made to a building at 1329 Broadway North, #301.
- k. Applications for Games of Chance:
 - (1) March of Dimes for a raffle on 12/5/12.
 - (2) Bennett Elementary PTA for bingo on 11/2/12.
 - (3) United Way of Cass-Clay for a raffle on 10/16/12.
 - (4) Sandra Thibert Benefit Fund for a raffle on 11/10/12; Public Spirited Resolution.
- l. Amended Reciprocal Release and Relinquishment of Easements established by Plat along 25th Street South and abutting portions of Legacy I Second Addition and Legacy I Third Addition.
- m. Purchase of Video Storage System, Mobile Data Computers, in-car video system and mounting hardware and accept proposal from CODE4 for installation of equipment in squad cars.
- n. Proposal from Braun Intertech Corporation, in the amount of \$25,594.75, for geotechnical work associated with the Water Treatment Plant expansion project.
- o. Purchase Agreement – Permanent Easement with Mark and Denise Sornsin (Project No. 6002-2).
- p. Purchase Agreement – Permanent Easements with Myles and Victoria Bosch (Project No. 5946-02).
- q. Professional Services Contract Amendment No. 1, in the amount of \$23,796.00 for Project No. 6153.
- r. Extension of unpaid leave for Darell Hotten through 1/13/13.
- s. Receive and file Ordinance Amending Section 20-0305.J.1 of Article 20-03 of Chapter 20 of the Fargo Municipal Code (Land Development Code) Relating to Specific Historic Overlay (H-O) Districts.

- t. Resolution Authorizing the City Attorney's Office to deposit the appraisal amount for the 70th Avenue South land acquisition (Improvement District No. 6111) (moved to the end of the Regular Agenda).
- u. Bid award for Paving Markings to Northstar Safety in the amount of \$121,651.00 for Project No. 6168.
- v. Contract time extension for Project No. 6042-01 to 10/31/12.
- w. Payment of \$1,933.50 to Braun Intertec for services to evaluate a site at 2888 Samuel Drive.
- x. Proposal from Xcel Energy to relocate approximately 320 lineal feet of gas main at a cost of \$7,838.02 (Project No. 6043-02).
- y. Agreement with HT Klatzky & Associates for transit advertising on buses from November 1st thru December 31, 2012.
- z. Bid award to PKG Contracting, Inc. in the amount of \$42,800.00 for replacement of lime conveyance piping at the WTP with funding to come from the 2012 Water Infrastructure Sales Tax Budget.
- aa. RFP for Landfill Consulting Engineering Services Agreement.
- bb. Deferral Agreement with Stanley and Patricia Ryland for Project Nos. 5969, 5966, 5904 and any additional districts.
- cc. Deferral Agreement with Ryland Development Corporation for Project Nos. 5969, 5966, 5904 and any additional districts.
- dd. Change Order No. 1 for an increase of \$6,900.52 for Project No. 6148.
- ee. Final Balancing Change Orders for the following Projects:
 - (1) No. 1 for an increase of \$16,243.92 for Project No. 5747-28.
 - (2) No. 1 for an increase of \$223,974.02 for Project No. 5928.
- ff. Bills in the amount of \$8,296,197.34.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

City of Fargo Concurs with the City of West Fargo Bid Award for Improvement District No. 6163:

Commissioner Wimmer moved the City of Fargo concur with the City of West Fargo bid award for Improvement District No. 6163 to Dakota Underground Company in the amount of \$5,467,357.10.

Second by Williams. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Payment to the Property Owners at 3362 35th Avenue South for Damage to their Sprinkler System During Placement of a Shared Use Path Approved (Improvement District No. 5905-03):

Commissioner Williams moved payment of \$4,051.32 to the property owners at 3362 35th Avenue South for damage to their sprinkler system associated with the placement of a shared use path be approved (Improvement District No. 5905-03).

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Change Order No. 1 for Improvement District No. 5923 Approved:

Commissioner Williams moved approval of Change Order No. 1 for an increase of \$11,110.00 for Improvement District No. 5923.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Final Balancing Change Order No. 1 for Improvement District No. 5965 Approved:

Commissioner Williams moved approval of Final Balancing Change Order No. 1 for an increase of \$22,856.80 for Improvement District No. 5965.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Change Order No. 1 and Time Extension for Improvement District No. 6101-01 Approved:

Commissioner Williams moved approval of Change Order No. 1 for an increase of \$4,914.76 and time extension to November 13, 2012 for Improvement District No. 6101-01.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Change Order No. 1 and Contract Time Extension for Improvement District No. 6101-02 Approved:

Commissioner Williams moved approval of Change Order No. 1 for an increase of \$21,761.10 and contract time extension of 10-days beyond the delivery date of the traffic signals for Improvement District No. 6101-02.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 Approved:

Commissioner Williams moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 in the City of Fargo, North Dakota.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract Bond for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 Approved:

Commissioner Williams moved approval of the following described Contract Bond as to sufficiency:

United Fire and Casualty Company, in the amount of \$364,668.00, for Sanitary Sewer, Water Main, Storm Sewer and Incidentals Improvement District No. 6036 in the City of Fargo, North Dakota.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 Approved:

Commissioner Williams moved approval of the Contract between the City of Fargo and Dakota Underground Company, Inc. for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 in the City of Fargo, North Dakota.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.

The motion was declared carried.

Contract Bond for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 Approved:

Commissioner Williams moved approval of the following described Contract Bond as to sufficiency:

United Fire and Casualty Company, Inc., in the amount of \$977,430.00, for Sanitary Sewer, Water Main, Asphalt Pavement and Incidentals Improvement District No. 6158 in the City of Fargo, North Dakota.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Absent and not voting: Commissioner Mahoney.
The motion was declared carried.

(Commissioner Mahoney present)

Second Reading of an Ordinance Amending Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference:

The Board received a communication from Assistant City Attorney Jason Loos stating changes have been made to the Ordinance since the first reading; therefore, final passage cannot take place for another two weeks.

Chief of Police Keith Ternes stated in addition to the revisions that have already been presented, there have been a couple of minor changes that needed to be made to reasonably insure that some of the more large scale popular events that might have been otherwise captured under some of the proposed restrictions could adequately be addressed. One of the changes that is included in this proposal is that even though people will have to come to the Police Department for a permit any time they want to have amplified sound associated with an outdoor event, one of the restrictions will be that no permits shall be issued for any property located within a residential zoning district, he said; however, for the purpose of this particular section of the ordinance the Downtown Mixed Use Zoning District is not considered residential. So by way of this language, an event like the street fair or other events that might occur downtown that utilize outdoor sound amplifying equipment would be exempt and would not need a permit, he said. He stated they also recognized that there may be other community wide events where it may also be reasonable to include an exception, for example the marathon and outdoor church services that use outdoor amplified sound equipment. So, he explained, with the assistance of the Assistant City Attorney, language was borrowed from the Land Development Code so that there would be no immediate impact on these types of events and they could be held as they have in the past.

Commissioner Wimmer moved that the proposed Ordinance Amending Article 11-02 of Chapter 11 of the Fargo Municipal Code Relating to Noise Control and Radio Interference, which was placed on its first reading September 4, 2012 be now placed on its second reading.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Williams, Sobolik and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

There was unanimous consent to waive reading of the Ordinance in its entirety and no one was present to request that the Ordinance be read.

Resolution Adopted Approving a Street Vacation Plat of Part of 3rd Avenue South (the South 10 feet of 3rd Avenue South abutting 301 7th Street South and 300 8th Street South):

Commissioner Sobolik offered the following Resolution and moved its adoption:

BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF FARGO:

WHEREAS, A Plat has been filed in the office of the City Auditor entitled "Street Vacation Plat of Part of 3rd Avenue South in the City of Fargo, Cass County, North Dakota" containing 3,000 square feet or .07 acres of land more or less, located on the South 10 feet of 3rd Avenue South, abutting 301 7th Street South and 300 8th Street South; and

WHEREAS, A Hearing was held September 4, 2012 by the Fargo Planning Commission, and notice of such Hearing had been published, as required by law, and said Plat had been approved by the Fargo Planning Commission and by the City Engineer; and

WHEREAS, The City Auditor's Office published a Notice of Hearing on said Plat in the official newspaper for the City of Fargo on September 14, 17, and 24, and October 1 and 8, 2012 that a Hearing would be held in the City Commission Room, City Hall, Fargo, North Dakota at 5:15 p.m., October 15, 2012, at which time said Plat would be considered and all interested persons would be heard.

NOW, THEREFORE, BE IT RESOLVED, That the findings and recommendations of staff and the Planning Commission be accepted and the Plat entitled "Street Vacation Plat of Part of 3rd Avenue South in the City of Fargo, Cass County, North Dakota" be and the same is hereby in all things affirmed and approved on the basis that it complies with the Standards of Article 20-06, and all other applicable requirements of the Land Development Code, and that the Mayor of the City of Fargo and the appropriate City Officials are hereby directed to endorse their approval on the Plat and then direct Petitioner to file same for record in the office of the Register of Deeds of Cass County, North Dakota.

Second by Wimmer. On the vote being taken on the question of the adoption of the Resolution Commissioners Sobolik, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Renaissance Zone Project for Rhombus Guys Holdings, Ltd. Approved:

A Hearing had been set for this day and hour to receive comments on a Renaissance Zone Project for Rhombus Guys Holdings, Ltd. for a business leasing property as part of a zone project at 606 Main Avenue.

No written protest or objection to the Project has been received or filed in the City Auditor's Office.

The Board determined that no person is present to protest or offer objection to the Project.

The Board received a communication from Senior Planner Robert Stein stating the Renaissance Zone Law states "a business that purchases or leases property as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone". He said the Fargo Renaissance Zone Development Plan further states "Tenant must be leasing space in a building that has been approved as a zone project to be eligible for consideration." He stated the Renaissance Zone Authority felt that lease projects such as the application from Rhombus Guys Holdings, Ltd. would generally be straightforward and could be advanced to the City Commission following staff review and would generally not require direct Authority action. He said staff review found the applicant has met the aforementioned requirements. He said

the project addresses the business retention and expansion goals stated in the Renaissance Zone Development Plan.

Commissioner Sobolik moved the Renaissance Zone application filed by Rhombus Guys Holdings, Ltd. for a project located at 606 Main Avenue be approved and the income tax exemptions be granted as recommended by the Renaissance Zone Authority.

Second by Mahoney. On call of the roll Commissioners Sobolik, Mahoney, Williams, Wimmer and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Special Assessment Lists for Various Improvement Districts Approved:

A Hearing had been set for this day and hour on the special assessment lists for the construction of the following Improvement Districts in the City of Fargo, North Dakota, on which special assessment lists Hearings had been held by the Special Assessment Commission after which they had been confirmed and filed with the Board of City Commissioners:

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5202.

Sanitary Sewer, Water Main and Incidentals No. 5732.

Drain #27 Improvements, Flood Protection and Incidentals No. 5903.

P.C. Concrete Paving and Incidentals No. 5908.

Concrete Curb and Gutter, Asphalt Paving, Sidewalks, Street Lights and Incidentals No. 5932.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 5963.

Water Main Replacement, Storm Sewer, Street Rehabilitation and Incidentals No. 5971.

Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Incidentals No. 6001.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 6049.

Park District Assessment No. 7139.

Water Main Replacement, Street Reconstruction and Incidentals No. 5806.

Shared Use Path, Bridge Construction, P.C. Concrete Paving and Incidentals No. 5905.

Drain #53 Improvements, Flood Protection and Incidentals No. 5904.

Sanitary Sewer, Water Main, Storm Sewer and Incidentals No. 5966-02.

P.C. Concrete Paving, Concrete Curb and Gutter, Asphalt Paving and Incidentals No. 5969.

No appeals have been filed in writing against any item appearing on such special assessment lists and no person is present at this Hearing to appeal or offer any objection thereto.

Commissioner Wimmer moved that the special assessment lists for the construction of the above listed Improvement Districts be and the same are hereby approved and confirmed and ordered filed in the office of the City Auditor, that the City Auditor's Office be instructed to proceed to collect the assessments in the

manner provided by law and that the interest rate be set at 1% per annum over the net rate on bonds financing said projects.

Second by Sobolik. On call of the roll Commissioners Wimmer, Sobolik, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Preliminary Approval of \$222,600.00 of PILOT Assistance to Wisent Development Group For A Proposed Project at 1017 and 1021 16th Street North: Appropriate Staff Directed to Draft a Developer's Agreement:

The Board received a communication from Planning Director Jim Gilmour stating Wisent Development Group has requested \$222,600.00 of PILOT assistance for a proposed project at 1017 and 1021 16th Street North. He said two single family houses are now located on the property and the proposed project would be redevelopment of the site and the construction of two six unit apartment buildings. He said Fargo PILOT policy calls for the Board to review the request to determine if staff should proceed to work with the developer on the project and forward the PILOT application to the City's financial advisors for review.

Commissioner Sobolik moved preliminary approval of \$222,600.00 for a proposed project at 1017 and 1021 16th Street North and that appropriate staff be directed to draft a developer's agreement.

Second by Wimmer. On call of the roll Commissioners Sobolik, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Parking for the Family HealthCare Center in the Civic Center Lot Approved:

The Board received a communication from Planning Director Jim Gilmour stating the Family HealthCare Center (FHC) is moving to a new location on the corner of NP Avenue and 3rd Street North and parking has been secured for patients; however, parking is needed for 80 full and part-time staff. The FHC will be renting 25 parking spots in the 3rd Street Lot at \$50.00 a month, he said, which will bring that lot close to capacity. He said arrangements have been made for part-time staff to park in the Civic Lot, and FHC will be billed at the regular, short-term parking rate. FHC is requesting a reduction in the parking rate for 55 parking spots in the Civic Parking Lot at a rate of \$15.00 a month, rather than the regular rate of \$50.00, in order to keep the parking costs of FHC closer to the existing costs, he said. Mr. Gilmour stated transit staff is working with FHC to determine if more employees and patients would be willing to use the bus system since the new location is only two blocks from the Downtown Ground Transportation Center which would reduce some of the parking needs. He said the Parking Commission has reviewed this request and recommended that if the reduced parking rate is approved, the City's general fund would transfer to the parking fund, the difference between the regular rate and the reduced rate. The recommendation will be forwarded to the Finance Committee for consideration, he said.

Commissioner Williams said the new Family Healthcare Center is going to be a huge addition to the community. He said the Parking Commission had quite a bit of discussion regarding the Civic Center Lot, which has about 400 spaces which are

mostly being used. He said the \$15.00 does not cover the entire cost; however, they do understand the circumstances, so the recommendation from the Parking Commission was to approve the \$15.00 rate for up to 55 parking spots with the remaining \$23,100.00 to be paid from a source other than the parking funds so that the lot can continue to be maintained.

In response to a question from Commissioner Wimmer regarding where the money will come from, Finance Director Kent Costin said he has been looking at the Parking Authority's existing debt and there may be some flexibility with a couple of their bond issues. Mr. Costin said he has been looking into refinancing those bond issues and even though the Parking Commission is not interested in taking the money out of the Parking Authority funds, refinancing may provide the ability to lower their debt service costs which would free up funds to break even.

Commissioner Williams moved the reduced rate of \$15.00 a month for up to 55 parking spaces in the Civic Center Lot for the Family HealthCare Center be approved with the understanding that the remaining \$23,100.00 not come from the Fargo Parking Fund.

Second by Wimmer. On call of the roll Commissioners Williams, Wimmer, Sobolik and Walaker voted aye.

Commissioner Mahoney abstained from voting.

The motion was declared carried.

Application for a Live Entertainment License for Lucky's 13 Pub Approved:

The Board received a communication from City Auditor Steve Sprague stating an application has been received from Lucky's 13 Pub for a live entertainment license. He said Lucky's 13 Pub holds a class "FA" alcoholic beverage license and is qualified to hold a live entertainment license as well. The application has been approved by Chief of Police Keith Ternes and himself, he said, and the application is being submitted to the Board for approval pursuant to Fargo Municipal Code 25-1510-D.

Mr. Sprague said it came to the City's attention that Lucky's 13 Pub was having live entertainment and did not have a live entertainment license. He said several meetings have occurred to come up with a workable solution; however, they have been unable to get to a solution as of yet. He said Assistant City Attorney Gary Stewart indicated there would be no reason for the City to hold off granting the license as there is nothing within the ordinances that would allow the City to say that Lucky's 13 Pub cannot have the license. He said generally speaking, staff does not feel that live entertainment belongs in a restaurant.

Chief of Police Keith Ternes said there really is no legitimate reason for the City to deny this application. He said in his review of the application it appears they want to have live entertainment on a pretty consistent basis, on both Friday and Saturday nights, which under today's ordinance is an issue that the City is not in the best situation to deny. In fairness to Lucky 13's Pub, he said, he does not want them to be under the impression that the application is open ended, because the ordinance is subject to change.

Commissioner Wimmer moved the application be approved.

Second by Sobolik. On call of the roll Commissioners Wimmer, Sobolik, Mahoney, Williams and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Final Balancing Change Order No. 2 for Project No. 5747-24 and Final Balancing Change Order No. for Project No. 5747-25 Approved:

The Board received a communication from City Engineer April Walker providing detailed information pertaining to two Final Balancing Change Orders relating to projects initiated prior to the 2011 Spring Flood event. She said under the contracts, the Contractor agreed to perform asbestos abatement work, demolish or otherwise remove the structures from the lots and restore the sites. She said the first Project No. 5747-24 started with five homes on the contract and the second Project No. 5747-25 started with four homes. Industrial Builders was the Contractor selected by low bid for both jobs, she said. Subsequent to the project being awarded, she stated, additional homes were purchased by the City and the contractor was asked to amend their contract for an additional nine homes, eight being added to Project No. 5747-24 and one added to Project No. 5747-25. She explained all this occurred leading up to the spring flood which crested on April 9, 2011 at 38.75 feet. During the declared emergency, and consistent with the emergency procurement policy, staff determined the contractor who had physical control of the site and was in the process of removing the homes, had the ability to efficiently install levees across the lots, she said. The work was negotiated by staff and completed, she said, and post flood the contractor was also asked to restore the sites. She stated the work was all necessary to return the demolition sites back into a sustainable condition and the completion of this work has resulted in a final balancing change order for each project. She said for Project No. 5747-24, the additional cost associated with the restoration of eight sites and quantity variations for the other five sites is \$425,982.10, and for Project No. 5747-25, the additional cost associated with the restoration of one site and quantity variations for the other four sites is \$126,664.57. All the work was necessary, she said; however, given the magnitude of the final balancing change orders an explanation to the Board was necessary.

In response to a question from Commissioner Mahoney regarding how the City can make sure this does not happen again, City Engineer April Walker stated she is going over the policies with staff to ensure that this will not happen on future projects going forward.

Commissioner Wimmer moved Final Balancing Change Order No. 2 for an increase of \$425,982.10 for Project No. 5747-24 and Final Balancing Change Order No. 2 for an increase of \$126,664.57 for Project No. 5747-25 be approved.

Second by Mahoney. On call of the roll Commissioners Wimmer, Mahoney, Williams, Sobolik and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Appointments to the Historic Preservation Commission Approved:

The Board received a communication from Mayor Walaker recommending that Michael Burns and Christine Kloubec be reappointed to the Historic Preservation Commission for three-year terms ending October 31, 2015.

Commissioner Sobolik moved Michael Burns and Christine Kloubec be reappointed to the Historic Preservation Commission for three-year terms ending October 31, 2015.

Second by Wimmer. On call of the roll Commissioners Sobolik, Wimmer, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Downtown Business Improvement District No. 9112:

The Board received a communication from City Attorney Erik Johnson stating on September 4, 2012 the City Commission approved the Downtown Business District Report of Costs and approved a Resolution of Necessity for the District. The Downtown Community Partnership has submitted a supplement to the detailed plans and specifications, he said, which were generated as a result of a motion made by the Commission on September 4, 2012 that contemplated the incorporation of a City assessment of \$22,539.00 in addition to the non-city assessments of \$193,542.00. He said with this action from the Commission, it directed the establishment of a Memorandum of Understanding (MOU) detailing the City's participation in the Downtown BID to a maximum City contribution of \$45,200.84. Mr. Johnson said according to state law, the plans and specifications must be approved by resolution by the Board of City Commissioners.

Director of the Downtown Community Partnership Mike Hahn stated the Downtown Business Improvement District (BID) is something that is being used world-wide. He said there are currently over 1,200 BID's in the US which are used as a vehicle to help maintain, clean and assure that downtown areas are as safe as possible. Mr. Hahn added the bids are not perpetual and this process will have to be done again in five years.

Norm Robinson, 308 NP Avenue, representing the Downtown Neighborhood Association, said his group has been part of this process and he wanted to make it clear that they are residents and not business owners. He said Downtown is their neighborhood and they are very excited about the process and the fact that there were so many great ideas. From a resident's standpoint, he said, he is wholeheartedly in support of this project and will work hard to get the rest of the residents to step up to the plate. He said this is not just about Broadway; this is about the whole downtown area.

Pan-O-Gold Bakery General Manager Bert Olson said they were told in the beginning that there was an "opt out" option on this. He said the company does not consider themselves a part of downtown and feels there is no benefit to the company in being a part of district. He said a letter was sent to Steve Sprague on the company's behalf asking to be opted out.

Duane Litton representing Duffy's said he has spent the last five months under street and light construction by the City of Fargo and he does not see any real room for improvement left from what has already been done by the City. He said he would like to opt out of this as he does not feel there is any more that can be done for his business.

Mr. Johnson said there are six motions being presented this evening, with the first having to do with the plans and specifications, most of which have to do with the statutory process and a little having to do with what the Commission directed staff to

do. The Commission received and filed plans and specifications about a month ago, that look similar to what Mr. Hahn presented to the Commission, he said, which in fact is a supplement to that and has been slightly modified and brought up to date. He said these are the specifications for about \$213,000.00 annually for improvement expenditures and he feels it is important to take note that he has had conversations with the DCP and there are some things that still need to be worked out with the City. He said he thinks that is fine due to the fact that those costs will take the form of a contract that the city will enter into with whoever is going to administer the project and more details would be put into place with that contract.

Commissioner Wimmer moved to approve the following:

Receive and file the supplement to the plans and specifications for the Downtown Business Improvement District No. 9112 and to approve the Resolution Accepting the Downtown Business Improvement District Plans and Specifications (Attachment "B").

Declare the protests representing 7.33 percent of the legal protest area for the Downtown Business Improvement District No. 9112 as insufficient to invalidate the District.

The Memorandum of Understanding (MOU) with the Downtown Community Partnership for the Downtown Business Improvement District as submitted.

To receive, file and adopt the enclosed "BID Formation Process and Generation of Assessment" memorandum explaining the process of development of the project and the methodology for the spread of benefit for Business Improvement District No. 9112.

The Special Assessment List for Downtown Business Improvement District No. 9112 as confirmed by the Special Assessment Commission on review.

Direct staff to develop a request for proposals process to identify the appropriate firm or firms with whom the City will contract for the implementation of the Downtown BID project (No. 9112)

Second by Williams. On call of the roll Commissioners Wimmer, Williams, Sobolik, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the motion was declared carried.

Resolution Adopted Authorizing the City Attorney's Office to Deposit the Appraisal Amount for the 70th Avenue South Land Acquisition (Improvement District No. 6111): Communication from Attorney Jonathan Garaas Received and Filed:

The Board received a communication from Assistant City Attorney Gary Stewart stating pursuant to a Joint Powers Agreement between Cass County, Stanley Township and the City of Fargo, it has been found necessary to file a quick-take eminent domain proceeding on 70th Avenue South so as to connect that improvement project to South University Drive, thus providing an alternative access to

property in that area. He said this would require the City to adopt a Resolution authorizing the City Attorney's Office to file a quick-take eminent domain proceeding, which involves the deposit of the appraised value with the Clerk of Court before action is commenced and the property can be taken over by the City. A quick-take proceeding is authorized in such an instance as the property is being acquired for right-of-way, namely for the 70th Avenue South extension.

Jonathan Garaas, Attorney representing Eric and Connie Johnson, stated he is trying to stop the City of Fargo from doing something that is foolish and does not comply with state law. He said the Joint Powers Agreement that the City entered into does not authorize a quick-take inside the City of Fargo, it only allows for it outside of the City and the City is attempting to take property that is both inside and outside the City of Fargo, and owned by Eric and Connie Johnson.

Commissioner Wimmer moved the Resolution Authorizing the City Attorney's Office to Deposit the Appraisal Amount for the 70th Avenue South Land Acquisition (Improvement District No. 6111) be adopted and the communication from Attorney Jonathan Garaas be received and filed (Attachment "C").

Second by Sobolik. On the vote being taken on the question of the adoption of the Resolution Commissioners Wimmer, Sobolik, Williams, Mahoney and Walaker voted aye.

No Commissioner being absent and none voting nay, the Resolution was adopted.

Commissioner Sobolik moved that the Board adjourn to 5:00 o'clock p.m., Monday, October 29, 2012.

Second by Mahoney. All the Commissioners voted aye and the motion was declared carried.

The time at adjournment was 6:23 o'clock p.m.