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NOTICE OF ALBANY CITY COUNCIL MEETING

There will be a meeting of the City Council in and for the City of Albany, Stearns County, Minnesota at 6:30 o'clock in the evening on Wednesday, October 1, 2014, in the Council Room at 400 Railroad Avenue for the said City.

AGENDA

1. Convene meeting
2. Audit Bills
3. Act on regular Council meeting minutes held on September 17th
4. Open Forum/Public comment
5. Ervin Bueckers, Bueckers City Sanitation, Inc. - request amendment to 2013-23 Refuse Agreement to increase monthly residential collection rates.
6. Jeremy Mathiasen, City Engineer – Project updates
 - 2014 Church Avenue (5th to 8th St.) Improvements
 - 2013 Railroad Avenue (TH #238) Improvements
7. Joseph Mergen, Public Works Supervisor – present MnDOT 2014-15 Snow Removal Agreement
 - recommendation to discontinue water service to unpaid accounts pursuant to Ord. No. 30
8. Laurie Dingmann, Park Board and Community Education Liaison
9. John R. Harlander, Street Department and Albany Township Liaison
10. Tom Kasner, Fire Department, EDA Board, and Equipment
11. Ozzie Carbajal, Police Chief
12. John Greer, Police Department and Planning Commission Liaison
13. Daron Gersch, Utility Department and Golf Club – present Albany Golf Course Management Agreement
14. Tom Schneider, Clerk/Adm. – present MOM-D Business Agreement
 - set public hearing to certify to Stearns County Auditor unpaid lawn mowing fees as a special assessment
15. Announce next meeting date and adjourn

Tom Schneider
Clerk/Adm.



Bueckers Environmental
Services
39864 SO Hwy 71
Sauk Centre, MN 56378

PHONE (320) 352-2876
FAX (320) 351-2876
Toll-free (877) 352-2876
E-MAIL info@bcstrash.com

August 13, 2014

Re: garbage rate

To the City of Albany,

I, Ervin Bueckers, am proud to be the local hauler for the City of Albany. On behalf of Bueckers City Sanitation, I would like to thank you. There are a few things that have changed since I visited with you. Because of these things I have attached a raise sheet for the next three years. Our work comp has doubled in the last two years. Along with that many items have increased drastically like our truck insurance, health insurance, tipping (price to get rid of the trash), health insurance, cost of living wages, just to name some. We have also had a hard time getting rid of our recycling at the end market.

Things have gotten a little hard to maintain our operations at a high level that the City of Albany deserves. I ask that you look at the sheet and let me know what you think.

Sincerely,

A handwritten signature in black ink that reads "Ervin Bueckers". The signature is written in a cursive style.

Ervin Bueckers
Owner

**Bueckers City Sanitation
City Of Albany Proposed Rate Increase**

Albany		Residents 62 and Under	Rate of Increase	Residents 62-70
2014	38 Gallon	\$18.00		\$16.74
	60 Gallon	\$20.00		\$18.60
	90 Gallon	\$25.00		\$23.25
2015	8.35% 38 Gallon	\$19.50	(\$1.50)	8.35% \$18.14
	60 Gallon	\$21.67		\$20.15
	90 Gallon	\$27.09		\$25.19
2016	5.50% 38 Gallon	\$20.58	(\$1.07)	5.50% \$19.14
	60 Gallon	\$22.86		\$21.26
	90 Gallon	\$28.58		\$26.58
2017	5.50% 38 Gallon	\$21.71	(\$1.13)	5.50% \$20.19
	60 Gallon	\$24.12		\$22.43
	90 Gallon	\$30.15		\$28.04

**REFUSE REMOVAL AGREEMENT
CITY OF ALBANY**

THIS AGREEMENT made on this 23rd day of January, 2013, by and between the CITY OF ALBANY, a municipal corporation ("City") and BUECKERS ENVIRONMENTAL SERVICES, INC a Minnesota corporation ("Contractor") dba BUECKERS CITY SANITATION.

City and Contractor agree to as follows:

- 1) The term of this agreement shall be from April 1, 2013 to March 31, 2023.
- 2) **TERMINATION.** Upon default of the Contractor to any terms of this Agreement, the City terminate this Agreement with a sixty-day written notice to the Contractor.
- 3) **DESCRIPTION OF SERVICES.** The Contractor is the only authorized refuse hauler in t and shall pick up and remove refuse from all single and two family residential dwelling units, herein referred to collectively as "Patrons". For the purposes of this Agreement, each living unit in a townhome or twin home shall be considered a single-family dwelling. The Agreement specifically excludes any commercial, retail, office, service or industrial businesses along with multifamily properties that utilize dumpsters for refuse removal.
 - A. Contractor shall not be required to service any patrons who fail to provide reasonable access to their refuse containers. Contractor shall not be required to service any areas where the snow has not been removed, but shall provide an equal amount of service as soon as reasonable after the snow has been plowed.
 - B. Contractor shall use only approved enclosed trucks or trailers for refuse collection and removal. All wastes collected under the terms of this Agreement are to be managed and disposed of in accordance with the Stearns County Solid Waste Plan and State and Federal law as applicable.
 - C. Contractor shall collect and remove refuse on a consistent weekly schedule approved by the City and shall notify all patrons the day of the week and the approximate time of the day when the service will be provided. Patrons should have their refuse out for pickup by 7:00 am and on holidays by 6:00 am.
 - D. Contractor shall provide, at the option of the patron, 38-gallon, 60-gallon or 90 gallon containers along with recycling receptacles.
 - E. Contractor shall furnish dumpsters, without charge, to the City at all municipal buildings which includes the Albany Golf Course.
 - F. Contractor shall list a telephone number to receive complaints and to provide information to patrons.
 - G. Contractor shall select one day for a special Spring "clean up day" for patrons to bring items not considered to be refuse to a central location mutually agreed on by the City Administrator and the Contractor. The Contractor shall charge a reasonable fee for such items.
 - H. A patron who is absent from their premises for more than four consecutive weeks who provides notice to the Contractor, shall not be charged a fee for said period of absence.

- I. At no additional charge, the Contractor shall pick up leaves, grass, twigs and small branches. The Contractor shall provide for a weekly pick up the aforementioned items beginning April 1st through November 31st of each year of this Agreement. Grasses and leaves shall not be placed in refuse containers or any other containers or boxes for pick up, but rather must be in plastic bags. The Contractor will take the plastic bags unless specifically requested by the patron.
- J. The Contractor shall select a day for a one-time pick up of Christmas trees at no additional charge to the patrons.

4) CHARGES FOR SERVICES. (To take effect on April 1, 2013.) The Contractor shall have the sole risk and responsibility for the following collection of monthly charges from the patrons for weekly pick up.

2013-14

a.	38 gallon container	\$18.00 + \$1.76 = \$19.76
b.	60 gallon container ←	\$20.00 + \$1.95 = \$21.95 ←
c.	90 gallon container	\$25.00 + \$2.44 = \$27.44

d. Residents 62 years of age or older may receive a 7% discount on the above monthly rates. Residents must contact the Contractor with proof of age to get the discount. Seniors currently paying \$14.49 per month will be "grandfathered in" at that rate.

38 gallon container	\$16.88 + \$1.65 = \$18.53
60 gallon container	\$18.74 + \$1.83 = \$20.57
90 gallon container	\$23.39 + \$2.28 = \$25.67

e. All refuse over and above the closed lid capacity of the container, i.e.: 38 gallon, 60 gallon or 90 gallon may be charged to the Patron on their monthly bill with a minimum cost of \$2.50 per bag or \$15.00 per cubic yard plus tax. Bags cannot exceed 35 pounds or 30 gallons.

- A. The aforementioned fees are exclusive of any landfill abatement tax that the Federal, State or County governments may impose during the term of this Agreement. If said tax is imposed, the Contractor can adjust the fees charged to the patrons after providing documentation of any increase to Contractor by the Federal, State or County governments with approval by the City Council.
- B. State sales tax is exclusive of the aforementioned fees and will be collected from the patrons and timely paid to the State of Minnesota by the Contractor.
- C. It is agreed by the City and the Contractor that all fees outlined in this Agreement will not be increased during the term of this Agreement.

5) PICK UP DATES. Contractor must first obtain written consent from the City to permanently change the day of the week on which the refuse is to be collected and removed. Contractor shall inform the patrons by publishing a notice in the Stearns-Morrison Enterprise at least two weeks before such change becomes effective. When the pick up day or time is changed because of a holiday, the Contractor shall notify the patrons by publishing a notice of the change in the Stearns-Morrison Enterprise or the announcement(s) made public on KASM 1150 AM radio at least two weeks before such change becomes effective.

- 6) **INDEMNIFICATION.** Contractor agrees to indemnify, defend and hold the City and City's employees, elected officials, and agents harmless from all claims, losses, expenses, fees including attorney fees, costs and judgments that may be asserted against the City or its employees, elected officials, and agents that result from the acts or omissions of the Contractor, the Contractor's employees and the Contractor's agents.
- 7) **INJURIES/INSURANCE.** Contractor acknowledges that it must provide proof of appropriate insurance coverage. Contractor waives any rights to recovery from the City and it's agents for any injuries that the Contractor and/or Contractor's employees may sustain while performing services under this Agreement. Contractor shall have in place at all times during this Agreement, insurance as outlined in EXHIBIT A.
- 8) **LICENSING.** Contractor must maintain the appropriate Stearns County Solid Waste Hauler license along with any other State or Federal licenses applicable at all times during the term of the Agreement.
- 9) **ASSIGNMENT.** Contractor's obligations under this Agreement shall not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the City. A transfer of a controlling interest in the ownership of Contractor shall also be considered an assignment of this Agreement and shall be subject to the prior written consent of the City. The City may withhold consent to the assignment in the City's sole discretion. Consent to one assignment or transfer of this Agreement shall not relieve the obligation to obtain the City's consent to any subsequent assignment or transfers.
- 10) **RELATIONSHIP OF THE PARTIES.** It is understood by the parties that the Contractor is an independent contractor with respect to the City, and the City will not provide fringe benefits, including health insurance benefits, paid vacation or any other employee benefits, for the benefit of the Contractor.
- 11) **NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

<u>If to City:</u> City of Albany P O Box 370 Albany Minnesota 56307	<u>If to Contractor:</u> Bueckers Environmental Services, Inc. 30838 Co. Rd. 157 Melrose, Minnesota 56352
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- 12) **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
- 13) **AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.
- 14) **SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

- 15) WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 16) APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Minnesota.


FOR BUECKERS ENVIRONMENTAL SERVICES, INC.:



Ervin Bueckers

Print title: Owner.

1-23-13
(Date)



(Witness)

1-23-13
(Date)

FOR THE CITY OF ALBANY:



Daron Gersch, Mayor

1/23/13
(Date)



Tom Schneider, Clerk/Adm.

1-23-13
(Date)

ALBANY GOLF COURSE MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of October, 2014, by and between the City of Albany, a Minnesota public body corporate and politic (the "City") and the Albany Golf Club, Inc., a Minnesota non-profit corporation (the "Club").

RECITALS:

a. The City of Albany, Stearns County, Minnesota, a municipal corporation duly organized under the laws of the State of Minnesota, is the owner of certain real and personal property located at 500 Church Avenue in the City of Albany, known as the Albany Golf Club (collectively the "Property"), and

b. The Property has been operated as a public golf course, under management of the Albany Golf Club, Inc., a non-profit corporation, under authority granted by Minn. Stat. 471.16, et seq., and

c. The City of Albany and Albany Golf Club, Inc., desire to continue the cooperative and mutually beneficial operation of the Albany Golf Course.

NOW, THEREFORE IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL PROMISES CONTAINED HEREIN, THE UNDERSIGNED PARTIES, BY THEIR DULY AUTHORIZED REPRESENTATIVES, AGREE AS FOLLOWS:

- 1) Pursuant to Minn. Stat, Ch. 471, the City desires to delegate to the Club, in accordance with the terms as set forth below, the management and operation of the Albany Golf Club.
- 2) The term of this Agreement begins the _____ day of _____, 2014, and shall continue for a term of five years. This Agreement is terminable by either party at the end of three years without penalty and is terminable by the City at any time for any uncured default of the Club.
- 3) To the extent that any term or provision of this management agreement is deemed to jeopardize the tax exempt status of the financing of the construction of the Albany Golf Clubhouse, said provision is void and unenforceable so as to preserve said tax exempt status.

- 4) The City retains all right, title and interest in the real and personal property located at the Albany Golf Course, including cash, accounts receivable and tangible and intangible assets, including any replacements thereof, with the exception of driving range balls, baskets, motorized ball retrievers, and pro shop inventory.
- 5) The Club shall not pledge or otherwise encumber any of the real or personal property which is owned by the City and used in connection with operation of the Albany Golf Club, except with the knowledge and prior written consent of the Albany City Council.
- 6) It is intended that the Club be granted the right and discretion to operate the day-to-day activities of the Albany Golf Club, subject to the terms of this Agreement, and subject to the right of the City to access to all records and financial information relating to the Club's management and operation of the golf course. The Club agrees to operate the Albany Golf Club in such a manner as to make the Albany Golf Club serviceable and attractive to patrons and the public generally. The Club shall at all times provide sufficient labor, supervision, supplies and inventories and shall exercise such business practices as to ensure the property and efficient operation of the course.
- 7) It is also intended that the City allow the Club to use all revenues generated from operation of the Albany Golf Club, and any monies and other assets raised through its own efforts for the purpose of conducting the business of the Albany Golf Club, and making capital purchases and improvements at the sole discretion of the Club. It is also understood that the Club from time to time may make requests of the City to lend indebtedness to the Club to make capital purchases and capital improvements as needed to properly operate the Club in accordance with this agreement upon such terms as the parties may agree and in consideration of the fact that the Club is an asset to the City.
- 8) The Club is an independent contractor with respect to the operation of the Albany Golf Course and the Club agrees to indemnify and hold the City (including its councilmembers and employees) harmless from any and all claims arising from the operation, management and/or use of the Albany Golf Club. The Club shall not engage in any discriminatory practice with respect to the products, services or privileges offered to or enjoyed by the general public which are prohibited by Chapter 363 of the Minnesota Statutes or other applicable Federal, state or local law, regulation or ordinance.
- 9) It is understood and agreed that the Club shall procure employees and/or independent contractors as necessary in the management and operation of the golf course and that all such hiring and/or independent contracting shall be done solely and exclusively by the Club, and that said persons are neither employees nor contractors with the City. The Club shall be solely responsible for the recruitment, training, employment, review and compensation of adequate personnel to meet the staffing needs for the operation of the golf course. The Club shall accept full and exclusive liability for all applicable social security, unemployment, workers' compensation, or other employment taxes or contributions of insurance, and all employee benefits, and shall comply with all federal and state laws and regulations relating to the employment generally, minimum wages, social security, unemployment insurance, and workers' compensation.

- 10) The Club shall not discriminate against any employees or applicants for employment in violation of Chapter 363 of the Minnesota Statutes, or any other applicable federal, state or local law, regulation or ordinance. The Club shall be an equal opportunity employer and shall comply with all applicable provisions of federal and state law regarding equal employment.
- 11) The Club shall take measures to ensure that all employees conduct themselves courteously in their relations with the public.
- 12) The Club shall not employ illegal workers at the golf course or otherwise violate provisions of the Federal Immigration Reform and Control Act of 1986, or any amendments thereto or successor legislation thereof.
- 13) The Club shall defend and indemnify the City from and against any and all claims against the City arising out of the Club's hiring practices or employment of employees at the golf course.
- 14) Except as noted above, all personal property and fixtures, together with any replacements thereof, utilized in the operation of the golf course shall be and remain the property of the City. The Club shall maintain and repair such personal property and fixtures and shall maintain the golf course premises in clean, safe and attractive condition. Only capital purchases and capital improvements causing indebtedness to the Club shall be subject to the approval of the City, at its sole discretion.
- 15) As part of its management and operation of the Golf Course, the Club shall purchase and maintain, out of current revenues, suitable policies of insurance covering the physical assets of the course for their full insurable value as well as general public liability, liquor liability insurance, errors and omissions coverage for the directors and officers of the Club, automobile liability policy covering bodily injury, property damage liability for all owned, rented or hired vehicles used in connection with the operation of the course, workers' compensation coverage and employer's liability coverage, and shall name the City as an insured and/or loss payee under said policies, except the workers' compensation policy. The City may, from time to time, reasonably adjust the coverages and policies to be furnished by the Club hereunder, to comply with applicable laws and regulations of the State of Minnesota or in a manner consistent with the coverages and policies which are typically provided by similarly situated facilities.
- 16) From time to time as deemed necessary by the City, but in any event at least once per year, the Club shall submit a budget and accounting of income and expenses in connection with the golf course operation including a budget for such capital improvements as may be supported by the net revenues of the golf course operation. The City shall maintain all accounts relating to golf course operations and all income and expenses shall be received and disbursed through said accounts under full supervision and control of the City. As compensation for the management services rendered hereunder, the Club shall be entitled to reimburse itself from the golf course revenues for all expenses incurred hereunder in the management and staffing of the golf course.

- 17) Any failure by the Club to operate the golf course in accordance with the terms and obligations set forth in this Agreement shall constitute a Default. The City shall give the Club written notice specifying the particulars of such Default. If the Club fails or refuses to remedy the Default to the satisfaction of the City within thirty (30) days after such notice, the City may terminate this Agreement. If a Default by the Club creates a serious threat to public safety or the golf course facilities, the City shall have the right to terminate this agreement immediately and undertake to cure such Default. If the City exercises its right to cure such Default, the Club shall be required to reimburse the City for its reasonable costs and expenses incurred in connection with such cure.
- 18) This Agreement shall be interpreted in accordance with the laws of the State of Minnesota. If any one or more of the provisions of this Agreement, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be effected or impaired thereby.
- 19) Any modifications of this Agreement shall be in writing signed by the parties.

Approved by the City Council this _____ day of _____, 2014.

Daron Gersch, Mayor

Tom Schneider, Clerk/Adm.

Craig Baggenstoss, President, Albany Golf Club Board of Directors

Paul Wellenstein, Manager – Albany Golf Club

BUSINESS ASSISTANCE/DEVELOPMENT AGREEMENT

This Business Assistance/Development Agreement (the "Agreement") is entered into this ___ day of October, 2014 by and between the City of Albany (the "City") a Minnesota public body corporate and politic, and Mother of Mercy Development, LLC, a Minnesota limited liability company (the "Developer") and its successors and assigns.

RECITALS

A. Pursuant to Minnesota Statutes 469.174 through 469.179, the City has formed a Tax Increment Financing District No. 1-14 (the "TIF District"), and has adopted a tax increment financing plan (the "TIF Plan") for the TIF District which provides for the use of tax increment financing in connection with development within the TIF District.

B. The TIF District has been designated as a Redevelopment District with the following objectives:

1. Discouraging commerce, industry, or manufacturing from moving their operations to another state or municipality;
2. Increasing employment within the City and the state;
3. Preserving and enhancing the tax base of the City and the state.

C. The City has determined that the development of Developer's project, as more fully described herein, is consistent with the objectives, criteria and requirements of the TIF Plan.

D. The City has determined to provide TIF Assistance in the form of pay-as-you-go payments which shall consist of 90% of the actual increment generated by the Project over a period of 12 years, or the actual amount of eligible expenses incurred by the Project, not to exceed \$308,000, plus interest at 4%, whichever is less (the "Business Assistance").

E. The Developer is/shall be the owner of real property legally described in the Exhibit A attached hereto (the "Development Property").

F. The Business Assistance is for the purpose of developing a 25,503 square foot building with assisted living and memory care assisted living units on the middle and upper floor and leased child daycare space, storage shelter, fitness/family room on the main floor on the Property (the "Project").

G. The Developer has represented the need for the Business Assistance to finance the Project. Furthermore, the Developer states that without the Business Assistance, the project could not move forward.

H. The City recognizes that the Project meets the purposes of the TIF District and the following locally adopted Business Assistance criteria as well as the public purposes of redevelopment:

1. Increased Tax Base and employment opportunities
2. The use of business assistance is necessary to retain and/or attract competitive and financially sound and healthy commercial and industrial companies which provide significant employment potential and opportunity to broaden the tax base.
3. The project will be generally consistent with the City's Comprehensive Plan.
4. The use of the business assistance will encourage quality construction and promote the highest and best use of land.
5. The project will promote completion of major public improvement projects within the community.
6. The project will not significantly and adversely increase the impacts on existing service needs in the City.
7. The project will not proceed in its present design and time table without the business assistance.
8. The project proposed is generally compatible with the City's overall development plans and objectives and with those of the area for which the project is to be located.

I. Developer is a non-profit entity with less than 100 employees, which exempts it from business subsidy requirements.

In consideration of the above premises, and the covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings:

Substantial Completion means that the building has been constructed, and the exterior façade and site work have been completed.

Tax Increments means the tax increments derived from the Development Property;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly results in delays.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation and political subdivision organized under the provisions of the Constitution and laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is a Redevelopment District within the meaning of the TIF Act and was created, adopted and approved and amended in accordance with the terms of the TIF Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the TIF Plan;

Section 2.2. Representations and Warranties of the Developer and Owner. The Developer and Owner make the following representations and warranties:

(1) The Developer is a registered Minnesota non-profit limited liability company in good standing with the Office of the Minnesota Secretary of State, has the power to enter into this Agreement and to perform its obligations hereunder, and is not in violation of any provision of its Articles, Bylaws or other operating documents or the laws of the State. Developer's sole member is Mother of Mercy Campus of Care (MOM), a non-profit 501(c)(3) tax-exempt entity. The purpose of Developer is charitable, and Developer will have less than 100 employees.

(2) The Developer will cause the Project to be constructed, operated and maintained in accordance with the terms of this Agreement and all local, state and federal laws and regulations. Construction of the Project shall commence within 12

months of the Developer obtaining USDA financing approval, but no later than December 31, 2015, and will be completed within 12 months of commencement, but no later than December 31, 2016.

(3) The Project will be constructed at a cost of approximately \$3,345,100.

(4) The Developer has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Development Property may or will be in violation of any environmental law or regulation.

(5) The financing commitments which the Developer has obtained to finance construction of the Project, together with the financing approved by the City pursuant to this Agreement, along with Developer's required capital contribution of \$345,100 will be sufficient to enable the Developer to successfully complete the Project as contemplated in this Agreement.

(6) The Developer and the Owner would not have undertaken the Project without the financing provided by the City pursuant to this Agreement.

ARTICLE III

CONSTRUCTION OF PROJECT

Section 3.1. Construction of Project. The Developer agrees that it will cause the Project to be constructed in conformance with the Construction Plans approved by the City. The Developer agrees that the scope and scale of the Project to be constructed shall not be significantly less than the scope and scale of the Project as detailed and outlined in the Construction Plans.

Section 3.2. Change in Construction Plans. If the Developer desires to make any material change in the Construction Plans after the execution of this Agreement, the Developer shall submit the proposed change to the City for its approval. So long as the proposed change is deemed appropriate by the City and does not constitute a material modification to the shape, size or use of the Project or to the site plan therefore, the City shall approve the proposed changes.

Section 3.3. Commencement and Completion of Construction. The Developer shall commence construction of the Project within 12 months of obtaining USDA financing approval, but no later than December 31, 2015. Subject to Unavoidable Delays, the Developer shall have substantially completed the Project within 12 months of commencement and no later than December 31, 2016. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays.

The Developer agrees that it shall permit designated representatives of the City to enter upon the Development Property during the construction of the Project to inspect such construction.

Section 3.4. City's TIF Contribution and Business Assistance Pursuant to a "pay-as-you-go" Promissory Note, in substantially the same form as the Promissory Note attached hereto as Exhibit B, the City agrees to pay to the Developer 90% of the actual increment generated by the Project for a period of twelve years to be used for land acquisition value and site improvements (the "Eligible Expenses"). The TIF contribution shall not exceed the actual amounts of the Eligible Expenses which are estimated in Exhibit C attached hereto. The Developer shall provide satisfactory evidence of the actual Eligible Expenses incurred upon completion of the project. The City will execute and issue the Promissory Note upon Substantial Completion of the project and receipt of evidence of Eligible Expenses.

ARTICLE IV

PROPERTY TAXES

Section 4.1. Real Property Taxes. The Developer shall pay all real property taxes payable with respect to all and any parts of the Development Property acquired and owned by it that shall accrue subsequent to the date of its acquisition of title to the Development Property or any part thereof and until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement or title to the property is vested in another person.

ARTICLE V

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER; INDEMNIFICATION

Section 5.1. Status of Developer. As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that the Developer will maintain its existence as a limited liability company in good standing and will not wind up or otherwise dispose of all or substantially all of its assets, including the Property, without the prior written approval of the City and provided that the transferee can demonstrate a continuing need for assistance to the satisfaction of the City. The City shall be entitled to require, as conditions to any such approval that any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer, and shall have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all of the conditions and restrictions contained herein. In the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Developer from any of its obligations hereunder.

Section 5.2. Transfer or Assignment of Business Assistance. The Business Assistance provided pursuant to this Agreement may not be transferred or assigned to any other entity by the Developer without the prior written approval of the City and provided that the transferee can demonstrate a continuing need for assistance to the satisfaction of the City.

Section 5.3. Release and Indemnification Covenants. The Developer hereby releases the City and agrees to indemnify, defend and hold the City harmless against any claim, proceeding, demand, loss or damage, including, but not limited to claims for damage to property or any injury to or death of any person occurring at or resulting from the Project. The provisions of this Section 5.3 shall survive termination of this Agreement.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.1. Events of Default. Any one of the following shall be "Events of Default" under this Agreement:

- (1) Failure by the Developer to timely pay any obligation, including but not limited to real estate taxes, due under this Agreement
- (2) Failure by the Developer to cause the construction of the Project to be commenced and completed or failure to cause the Project to be reconstructed when required pursuant to this Agreement.
- (3) Transfer of any interest in the Property in violation of this Agreement.
- (4) Failure by the Developer to substantially observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.
- (6) The holder of any Mortgage on the Development Property, or any improvement thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under applicable Mortgage documents.
- (7) The Developer shall:
 - (a) file a petition in voluntary bankruptcy or for reorganization pursuant to the United States Bankruptcy Code or any similar law, state or federal; or
 - (b) file any answer admitting insolvency or inability to pay its debts; or

- (c) be adjudicated a bankrupt or declared insolvent in any Bankruptcy Proceeding; or
- (d) have a trustee or receiver appointed to take possession of its property, or major part thereof, in any involuntary proceeding for the purpose of reorganization, arrangement, liquidation if such trustee or receiver shall not be discharged or if jurisdiction shall not be relinquished, vacated or stayed, on appeal or otherwise, within sixty (60) days; or
- (e) make an assignment for benefit of its creditors; or
- (f) admit in writing its inability to pay its debts generally as they become due.

Section 6.2. Remedies on Default. Whenever any Event of Default occurs and is continuing, the City may take any one or more of the following actions:

(1) Suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) Cancel this Agreement without any additional notice if Developer fails to correct any Event of Default within 60 days of receipt of written notice to do so from the City. Such cancelation shall terminate any payments to the Developer regardless of whether the increments have already been collected by the City.

(3) Take any action, including legal or administrative action, which may appear necessary or desirable to collect any payments made to Developer under this Agreement or the Note, or to enforce performance or observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 6.3. No Remedy Exclusive. No remedy conferred upon the City hereunder is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission by the City to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein; and every power and remedy given by this Agreement to the City may be exercised from time to time as often as may be deemed expedient by the City.

Section 6.4. Attorney's Fees and Expenses. In the event that this Agreement is placed in the hands of an attorney for collection or if suit is brought to enforce the Agreement, or in the event the City may be made party to any litigation because of the existence of the Agreement, the Developer agrees to pay the City's costs and reasonable attorneys' fees, both before and after judgment and whether or not suit be

filed. Said costs and attorneys' fees shall include, without limitation, costs and attorneys' fees incurred in any appeal and in any proceedings under any present or future federal bankruptcy act or state receivership act.

ARTICLE VII

ADDITIONAL PROVISIONS

Section 7.1. Modifications. This Agreement may not be amended, modified or changed nor shall any claim of waiver of any provision hereof be effective except only by instrument in writing and signed by the party against whom enforcement thereof is sought

Section 7.2. Notices. All notices to be given pursuant to this Agreement shall be sufficient if given by personal service, by guaranteed overnight delivery service, or certified first class mail, to the addresses of the parties described below or to such other address as party may request in writing from time to time. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the date after delivery to the guaranteed overnight delivery service, or two (2) days after any notices are deposited, postage prepaid, in the U.S. mail, certified mail.

Developer's Address: Mother of Mercy Development, LLC
P.O. Box 676
230 Church Ave
Albany, MN 56307
ATTN: Dean McDevitt

City: City of Albany
P.O. Box 370
400 Railroad Avenue
Albany, MN 56307-0370
ATTN: Tom Schneider

Section 7.3. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 7.4. City's TIF Costs. The Developer agrees to reimburse the City for its consulting costs for this TIF request and all costs associated with preparing and recording this Agreement within 30 days of receipt of an invoice from the City.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be duly executed, effective as of the date above written.

Mother of Mercy Development, LLC

By _____
Dean McDevitt, Chief Manager

CITY OF ALBANY

By _____
Daron Gersch, Its Mayor

By _____
Tom Schneider, Its Clerk/Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF STEARNS)

This instrument was acknowledged before me on the ____ day of _____, 2014 by Dean McDevitt, the Chief Manager of Mother of Mercy Development LLC, a Minnesota limited liability company, who executed the foregoing instrument on behalf of said company.

NOTARIAL STAMP OR SEAL (OR
OTHER TITLE OR RANK)

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF STEARNS)

This instrument was acknowledged before me on the ____ day of October, 2014, by Daron Gersch and Tom Schneider, the Mayor and City Clerk/Administrator respectively of the City of Albany, a public body, politic and corporate under the laws of the State of Minnesota, and who signed this instrument on behalf of said corporation.

NOTARIAL STAMP OR SEAL (OR
OTHER TITLE OR RANK)

SIGNATURE OF NOTARY PUBLIC OR OTHER
OFFICIAL

Tax Statements for the real property described in this instrument should continue to be sent to previous owner.

THIS INSTRUMENT WAS DRAFTED BY:

Susan M. Kadlec - 0290385

Jovanovich, Kadlec & Athmann, PLLP

1010 W. St. Germain Suite 420

St. Cloud, Minnesota 56301

Telephone: (320) 230-0203

EXHIBIT A

DEVELOPMENT PROPERTY
PIN #40.25048.

That part of the following described tract that lies easterly of Line B described below:

That part of Lots 5 and 6, AUDITOR'S SUBDIVISION NUMBER 3, according to the plat thereof on file and of record in the office of the Stearns County Recorder, Stearns County, Minnesota, described as follows: Commencing at the northwest corner of Section 22, Township 125, Range 31, thence South 89 degrees 38 minutes 00 seconds East, assumed bearing, along the north line of said Section 22 a distance of 1666.53 feet; thence South 05 degrees 37 minutes 30 seconds East 261.09 feet; thence South 19 degrees 09 minutes 30 seconds East 77.17 feet; thence South 83 degrees 11 minutes 11 seconds East 66 feet to the point of beginning of the parcel to be described; thence South 36 degrees 19 minutes 40 seconds West 74.79 feet; thence South 19 degrees 09 minutes 30 seconds East 44.55 feet; thence South 55 degrees 24 minutes 40 seconds East 146.48 feet; thence North 07 degrees 40 minutes East 168.37 feet to the point of intersection with a line which bears South 80 degrees 40 minutes 17 seconds East from the point of beginning; thence North 80 degrees 40 minutes 17 seconds West along said line 114.88 feet to the point of beginning and there terminating.

Line B

Commencing at the point of beginning of the above described tract; thence South 80 degrees 40 minutes 17 seconds East, along the north line of the above described tract 30.07 feet to the actual point of beginning of said Line B; thence South 09 degrees 27 minutes 30 seconds West 125.86 feet to the southerly line of the above described tract and said Line B terminating thereat.

EXHIBIT B

FORM OF TAX INCREMENT NOTE

Projected Principal: \$308,000.00

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF STEARNS
CITY OF ALBANY

TAX INCREMENT REVENUE NOTE
(Mother of Mercy Development, LLC Assisted Living Project)

The City of Albany, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to Mother of Mercy Development, LLC, a Minnesota limited liability company (the "Developer"), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$308,00.00 as provided in that certain Business Assistance/Development Agreement, dated as of _____, _____, 2014, as the same may be amended from time to time (the "Development Agreement"), by and between the City and Mother of Mercy Development, LLC. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple, non-compounded rate of four percent (4%) per annum.

The amounts due under this Note shall be payable on August 1, 2018, and on each February 1 and August 1 thereafter up to and including February 1, 2031, or, if the first should not be a business Day the next succeeding business Day (the "Payment Dates"). The first and last Payment Dates may be adjusted depending upon the completion of the Project (as defined in the Development Agreement) and the commencement of collection of Tax Increments. On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to 90% of the Tax Increments (hereinafter defined) received by the City from the Development Property (as defined in the Development Agreement) during the six month period preceding such Payment Date.

The Payment Amounts due hereon shall be payable solely from the tax increments (the "Tax Increments") from the Development Property located in the City's Tax Increment Financing District No. 1-14 (the "Tax Increment District") which are paid

to the City and which the City is entitled to retain, pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1799, as the same may be amended or supplemented from time to time (the "Tax Increment Act"), in each calendar year. This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement, or on the date that all principal and interest payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, express or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable, without interest accruing thereon in the meantime, if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Business Assistance/Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City of Albany, Minnesota, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of or interest on this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City in accordance with the provisions of the Development Agreement of even date herewith, which consent may be withheld for any reason. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time,

and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation thereon.

IN WITNESS WHEREOF, City of Albany, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Clerk/Administrator and has caused this Note to be issued on and dated _____, 2014.

Tom Schneider, City Clerk/Administrator

Daron Gersch, Mayor

EXHIBIT C

ELIGIBLE EXPENSES

Land and Building Acquisition Value
Demolition
Excavation and Site Preparation
Parking, Roadways, Sidewalks and Other Paving
Site Utilities
Soft Costs Directly Related to These Costs

NOTICE OF PUBLIC HEARING
ON PROPOSED ASSESSMENT FOR
UNPAID CITY CHARGES

NOTICE IS HEREBY GIVEN that the Albany City Council will hold a public hearing on Wednesday, October 15, 2014 at 6:30 o'clock in the evening or as soon as thereafter in the Council Room at 400 Railroad Avenue, Albany, MN to consider and possibly adopt the proposed assessments set forth below for unpaid City charges incurred under City Code Section 77. Adoption by the City Council of the proposed assessment may occur at the hearing.

The proposed assessment is as follows:

<u>Property:</u> 441 7 th Street	<u>Amount:</u> \$250.00
--	----------------------------

Written or oral objections will be considered at the hearing, but the Council may consider any objections to the amount of the proposed individual assessments at an adjourned meeting upon such further notice to the affected property owners as it deems advisable.

Such assessment is proposed to be payable in one (1) installment. You may pay the entire assessment on such property to the City of Albany on or before November 15, 2014. You may at any time thereafter pay to the Stearns County Auditor-Treasurer the entire amount of the assessment.

An owner may appeal an assessment to District Court pursuant to Minnesota Statutes Sections 429.081 by serving notice of the appeal upon the Mayor or City Administrator of the City within 30 days after the adoption of the assessment and filing such notice with the District Court within ten days after service upon the Mayor or City Administrator.

No such appeal as to the amount of an assessment as to a specific parcel of land may be made unless the owner has either filed a signed written objection to the assessment with the City Administrator prior to hearing or has presented the written objection to the presiding officer at the hearing.

Tom Schneider, City Administrator

Published in the Albany Enterprise this 1st day of October, 2014.

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ON PROPOSED ASSESSMENT FOR
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The proposed assessment is as follows:

<u>Property:</u> 1230 Stonebrooke Dr.	<u>Amount:</u> \$250.00
--	----------------------------

Written or oral objections will be considered at the hearing, but the Council may consider any objections to the amount of the proposed individual assessments at an adjourned meeting upon such further notice to the affected property owners as it deems advisable.

Such assessment is proposed to be payable in one (1) installment. You may pay the entire assessment on such property to the City of Albany on or before November 15, 2014. You may at any time thereafter pay to the Stearns County Auditor-Treasurer the entire amount of the assessment.

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Tom Schneider, City Administrator

Published in the Albany Enterprise this 1st day of October, 2014.