

**AGENDA
OF THE CITY COUNCIL
CITY OF EAST GRAND FORKS
TUESDAY, MARCH 18, 2014 – 5:00 PM**

CALL TO ORDER:

CALL OF ROLL:

DETERMINATION OF A QUORUM:

PLEDGE OF ALLEGIANCE:

OPEN FORUM:

“An opportunity for members of the public to address the City Council on items not on the current Agenda. Items requiring Council action maybe deferred to staff or Boards and Commissions for research and future Council Agendas if appropriate.”

APPROVAL OF MINUTES:

1. Consider approving the minutes of the “Regular Meeting” for the East Grand Forks, Minnesota City Council of March 4, 2014.
2. Consider approving the minutes of the “Work Session” for the East Grand Forks, Minnesota City Council of March 11, 2014.

SCHEDULED BID LETTINGS: NONE.

SCHEDULED PUBLIC HEARINGS: NONE.

CONSENT AGENDA:

Items under the “Consent Agenda” will be adopted with one motion; however, council members may request individual items to be pulled from the consent agenda for discussion and action if they choose.

3. Consider approving the application for an Exempt Gambling Permit for a raffle for the East Grand Forks Fire Department Relief Association organization to be held June 14, 2014 at the Fraternal Order of Eagles Club, 227 10th St NW, East Grand Forks, MN 56721 and waive the 30-day waiting period.
4. Consider adopting Resolution No. 14-03-27 entering into an agreement with the State of Minnesota to provide fixed route transportation services in East Grand Forks for 2014.

ACKNOWLEDGE RECEIPT OF REPORTS OF OFFICERS, BOARDS AND COMMISSIONS:

5. Special meeting minutes of the Economic Development/Housing Authority Commission for February 7, 2014.
6. Regular meeting minutes of the Economic Development/Housing Authority Commission for February 11, 2014.

COMMUNICATIONS:

7. Acknowledge the retirement of Michelle Manias effective May 30, 2014 and thank her for her years of dedicated service to the City of East Grand Forks.

OLD BUSINESS: NONE

NEW BUSINESS:

8. Consider approving a contract for a Building Envelope Forensic Expert for \$165 up to \$190 per hour for services provided.
 - a. The information regarding this item will be presented during the council meeting.
9. Consider approving the renewal of a six month contract with Indepth Inspections for building inspection services.
10. Consider approving Ordinance No. 12, 4th Series amending Title XI of the City Code by adding a new chapter to define and regulate Adult Uses and amending Chapter 152 of the City Code regarding location of Adult Uses. (1st Reading)
11. Consider adopting Resolution No. 14-03-28 ordering advertisement for bids for 2013 City Project No. 1 – Sidewalk Improvements (TE).
12. Consider adopting Resolution No. 14-03-29 approving the plans and specifications and ordering advertisement for bids for 2014 Assessment Job No. 1 – 17th Street Reconstruction.
13. Consider adopting Resolution No. 14-03-30 authorizing the City Engineers to begin the design phase of the Waste Water Project

CLAIMS:

14. Consider adopting Resolution No. 14-03-31 a Resolution authorizing the City of East Grand Forks to approve purchases from Hardware Hank the goods referenced in check numbers 18297 for a total of \$504.81 whereas Council Member Buckalew is personally interested financially in the contract.
15. Consider authorizing the City Administrator/Clerk-Treasurer to issue payment of recommended bills and payroll.

COUNCIL/STAFF REPORTS:

ADJOURN:

Upcoming Meetings:

- Work Session – March 25, 2013 – 5:00 PM – Training Room
- Regular Council Meeting – April 1, 2014 – 5:00 PM – Council Chambers
- Work Session – April 15, 2014 – 5:00 PM – Training Room
- Regular Council Meeting – April 22, 2014 – 5:00 PM – Council Chambers

**UNAPPROVED MINUTES
OF THE CITY COUNCIL
CITY OF EAST GRAND FORKS
TUESDAY, MARCH 4, 2014 – 5:00 PM**

ADMINISTER OATH OF OFFICE FOR ELECTED OFFICIAL

Mr. Galstad administered the oath to newly appointed council member Dale Helms.

CALL TO ORDER:

The Regular Meeting of the East Grand Forks City Council for March 4, 2014 was called to order by Council President Buckalew at 5:03 P.M.

CALL OF ROLL:

On a Call of Roll the following members of the East Grand Forks City Council were present: Council President Craig Buckalew, Council Members Clarence Vetter, Dale Helms, and Chad Grassel.

Dan Boyce, Water & Light Manager; Nancy Ellis, City Planner; Ron Galstad, City Attorney; Mike Hedlund, Police Chief; Charlotte Helgeson, Library Director; Gary Larson, Fire Chief; Megan Nelson, Executive Assistant; and Jim Richter, EDHA Director.

DETERMINATION OF A QUORUM:

The Council President Determined a Quorum was present

PLEDGE OF ALLEGIANCE:

OPEN FORUM:

“An opportunity for members of the public to address the City Council on items not on the current Agenda. Items requiring Council action maybe deferred to staff or Boards and Commissions for research and future Council Agendas if appropriate.”

APPROVAL OF MINUTES:

1. Consider approving the minutes of the “Regular Meeting” for the East Grand Forks, Minnesota City Council of February 18, 2014.
2. Consider approving the minutes of the “Work Session” for the East Grand Forks, Minnesota City Council of February 25, 2014.

A MOTION WAS MADE BY COUNCIL MEMBER GRASSEL, SECONDED BY COUNCIL MEMBER VETTER, TO APPROVE ITEMS ONE (1) THROUGH TWO (2).

Voting Aye: Buckalew, Grassel, Vetter, and Helms.

Voting Nay: None.

Absent: Tweten, Olstad, and Leigh.

SCHEDULED PUBLIC HEARINGS: NONE.

CONSENT AGENDA: NONE

Items under the "Consent Agenda" will be adopted with one motion; however, council members may request individual items to be pulled from the consent agenda for discussion and action if they choose.

ACKNOWLEDGE RECEIPT OF REPORTS OF OFFICERS, BOARDS AND COMMISSIONS:

3. Regular meeting minutes of the Water, Light, Power, and Building Commission for February 6, 2014.

COMMUNICATIONS: NONE

OLD BUSINESS: NONE

NEW BUSINESS:

4. Consider approving a temporary liquor license application for Sacred Heart Church & School for May 3, 2014 with contracted liquor services provided by Liberty Lanes.

A MOTION WAS MADE BY COUNCIL MEMBER VETTER, SECONDED BY COUNCIL MEMBER GRASSEL, TO APPROVE CONSIDER APPROVING A TEMPORARY LIQUOR LICENSE APPLICATION FOR SACRED HEART CHURCH & SCHOOL FOR MAY 3, 2014 WITH CONTRACTED LIQUOR SERVICES PROVIDED BY LIBERTY LANES.

Voting Aye: Buckalew, Grassel, Vetter, and Helms.

Voting Nay: None.

Absent: Tweten, Olstad, and Leigh.

5. Consider adopting Resolution No. 14-03-24 supporting legislation allowing cities to designate their city website to publish public notices.

A MOTION WAS MADE BY COUNCIL MEMBER VETTER, SECONDED BY COUNCIL MEMBER GRASSEL, TO ADOPT RESOLUTION NO. 14-03-24 SUPPORTING LEGISLATION ALLOWING CITIES TO DESIGNATE THEIR CITY WEBSITE TO PUBLISH PUBLIC NOTICES.

Voting Aye: Buckalew, Grassel, Vetter, and Helms.

Voting Nay: None.

Absent: Tweten, Olstad, and Leigh.

6. Consider adopting Resolution No. 14-03-25 deeming a mowing assessment as uncollectable debt.

A MOTION WAS MADE BY COUNCIL MEMBER GRASSEL, SECONDED BY COUNCIL MEMBER VETTER, TO ADOPT RESOLUTION NO. 14-03-25 DEEMING A MOWING

Council President Buckalew asked if this assessment could go against a future property owner and if the City has already paid for the mowing. Ms. Nelson stated the City had already paid for the mowing. Mr. Galstad said that this assessment cannot go against a future property owner. He went on to explain how the title companies complete a search on any pending assessments on properties and added how they are suppose to also check with the City which didn't happen in this case. He also stated that looking back at the minutes the City will be contacting the Auditor's office to see if mowing assessments could be added throughout the year. Ms. Nelson stated she had contacted the county today regarding this issue and was told they would keep a file but nothing would be added to a property until after all of the information was submitted at the end of November. She added how the county informs those asking for information about special assessments to contact the City.

Voting Aye: Buckalew, Grassel, Vetter, and Helms.

Voting Nay: None.

Absent: Tweten, Olstad, and Leigh.

CLAIMS:

7. Consider adopting Resolution No. 14-03-26 a Resolution authorizing the City of East Grand Forks to approve purchases from Hardware Hank the goods referenced in check numbers 18196 for a total of \$19.14 whereas Council Member Buckalew is personally interested financially in the contract.

A MOTION WAS MADE BY COUNCIL MEMBER GRASSEL, SECONDED BY COUNCIL MEMBER VETTER, TO ADOPT RESOLUTION NO. 14-03-26 A RESOLUTION AUTHORIZING THE CITY OF EAST GRAND FORKS TO APPROVE PURCHASES FROM HARDWARE HANK THE GOODS REFERENCED IN CHECK NUMBERS 18196 FOR A TOTAL OF \$19.14 WHEREAS COUNCIL MEMBER BUCKALEW IS PERSONALLY INTERESTED FINANCIALLY IN THE CONTRACT.

Council member Vetter asked Mr. Galstad if this could be passed since there would only be three votes. Mr. Galstad stated that since it was a majority it should pass. He added that the Water and Light Commission use a majority to pay bills which is the only action they can take.

Voting Aye: Grassel, Vetter, and Helms.

Voting Nay: None.

Abstain: Buckalew.

Absent: Tweten, Olstad, and Leigh.

8. Consider authorizing the City Administrator/Clerk-Treasurer to issue payment of recommended bills and payroll.

A MOTION WAS MADE BY COUNCIL MEMBER GRASSEL, SECONDED BY COUNCIL MEMBER VETTER, TO AUTHORIZE THE CITY ADMINISTRATOR/CLERK-TREASURER TO ISSUE PAYMENT OF RECOMMENDED BILLS AND PAYROLL.

Voting Aye: Buckalew, Grassel, Vetter and Helms.

Voting Nay: None.

Absent: Tweten, Olstad, and Leigh.

COUNCIL/STAFF REPORTS:

Council Member Vetter welcomed Mr. Helms to City Council.

Council member Helms thanked the other council members for allowing him to be there and is ready start working.

Council Member Buckalew said Go Greenwave. He also welcomed Mr. Helms to the council and said to ask questions if he has them and they will do their best to answer.

Council Member Grassel welcomed Mr. Helms to the council. He added that the boys hockey team made it to state and will be playing this week and that the boys and girls basketball teams are also playing.

Mr. Galstad thanked the council for their patience with him being out of the office and with the passing of his mother. He added an additional thank you to the street department for getting the snow cleared from the streets by the church.

Mr. Boyce informed the council he had handed out a press release before the council meeting regarding frozen water lines. He stated there had been three residents who had frozen water service but the press release was sent out for residents to monitor their service. He explained how a resident would check the water temperature to see if they would need to keep the water flowing. He added this information was sent out so residents are aware of the situation and to call the distribution center if they have questions or to report if they need to keep their water running. Mr. Richter asked if there will be a discount for those running water. Mr. Boyce stated he will have to check with the Water and Light Commission but in the past when this had happened they would use a winter average. He also mentioned that is the water rate is adjusted he might be asking the council what to do about adjusting the sewage rate.

ADJOURN:

A MOTION WAS MADE BY COUNCIL MEMBER VETTER, SECONDED BY COUNCIL MEMBER GRASSEL, TO ADJOURN THE MARCH 4, 2014 COUNCIL MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 5:17 P.M.

Voting Aye: Buckalew, Grassel, Vetter and Helms.

Voting Nay: None.

David Murphy, City Administrator/Clerk-Treasurer

**UNAPPROVED MINUTES
OF THE CITY
COUNCIL WORK SESSION
CITY OF EAST GRAND FORKS
TUESDAY, MARCH 11, 2014 - 5:00 P.M.**

CALL TO ORDER:

The Work Session of the East Grand Forks City Council for March 11, 2014 was called to order by Council Vice-President Greg Leigh at 5:00 P.M.

CALL OF ROLL:

On a Call of Roll the following members of the East Grand Forks City Council were present:, Mayor Lynn Stauss, Council Vice President Greg Leigh, Council Members Clarence Vetter, Dale Helms, Henry Tweten, Mark Olstad, and Chad Grassel.

Dave Aker, Parks & Recreation Superintendent; Karla Anderson, Finance Director; Greg Boppre, City Engineer; Nancy Ellis, City Planner; Ron Galstad, City Attorney; Mike Hedlund, Police Chief; Charlotte Helgeson, Library Director; Gary Larson, Fire Chief; David Murphy, City Administrator/Clerk-Treasurer; Megan Nelson, Executive Assistant; and Jim Richter, EDHA Director.

DETERMINATION OF A QUORUM:

The Council Vice-President Determined a Quorum was present

1. 2013 City Project No. 1 Sidewalk Improvements – Greg Boppre

Mr. Boppre informed the council that this job needed to be re-bid. He explained how Paras Contracting was denied the bid from MNDOT because they did not meet their DBE requirements. He then went over a timeline of advertising for bids, having the bid opening, and awarding the bid so the project can still move forward this year. Mr. Boppre also explained to Council member Helms how he likes to include a breakdown of the costs of the project and where the funding is coming from on the RCA the council receives. He said he would be asking at the next meeting for permission to move forward with this plan.

This item will be referred to a City Council Meeting for action.

2. 2015 City Project No. 1 Stabilization Ponds – Greg Boppre

Mr. Boppre told the council the meeting between the MPCA, the PFA, and council members and staff went well. He added how they are encouraging the City to move forward with this project. Mr. Boppre also told the council that he has been notified the facility plan submitted to the MPCA for review will be approved so with council permission he would like to start the designing phase of this project. Council member Tweten commented how much ground work has already been done for this project and how the council needs to stay diligent on this project. Council member Olstad added that it was nice to sit face to face with this group of people, to be able to know what they think of this project and how they helped brainstorm to find ways of funding. Mayor Stauss commented how a meeting is

better and makes more of an impact than sending a letter asking for help. More discussion followed about how the City might be able to receive some funding for phosphorus removal and how the project needs to move forward with interest rates still low.

This item will be referred to a City Council Meeting for action.

3. 2014 Assessment Job No. 1 17th St Reconstruction – Greg Boppre

Mr. Boppre stated he had the plans and specifications prepared for the 17th Street reconstruction project prepared along with an estimated budget and report of feasibility. He reminded the council this project is being paid for in part by federal funds the City receives every four years. He then explained the proposed timeline for this project. Council Vice-President Leigh asked where the money to cover the \$605,000 will be coming from. Mr. Boppre stated by assessing the affected properties. He added how the City can decide to only assess 30% or 40% of the project to the affected properties and explained how state aid maintenance funds could be used to help cover some of these costs. Discussion followed about what would have to happen to make this a state aid street, why the cost estimates include a 5% cost for administration, legal, and contingency, and how half of the properties on the frontage road will be charged end benefit for this project.

This item will be referred to a City Council Meeting for action.

4. In-Depth Inspections Contract – Nancy Ellis

Ms. Ellis began by informing the council the end of the contract with Indepth Inspection was coming up. She explained how she is very pleased with their work and how they have not missed an inspection. She added how they do receive half of the amount collected in permit fees which has grown with the larger projects being completed in the City. Council Vice-President Leigh asked if Ms. Ellis was seeking another 12 month contract with Indepth Inspections. Ms. Ellis told the council that at this time the Community Development office is still changing, how they might be taking on more rental inspections, and will have to start storm water inspections. She stated she would need time to complete a job description that would cover all of the duties.

Council member Tweten stated he disagreed 100% with renewing the contract and explained how the City needs to hire a new building official. Council member Vetter asked if the City did not continue with the contract, if Indepth Inspections would finish the jobs they have already collected on. Ms. Ellis said that is something she would request and commented how they completed the inspections on the Minnesota New Heights Building even though they did not get any portion of the permit fees for that project. Mr. Murphy told the council about his previous experience changing from a contracted service to the hiring of a building official. He explained how they pro-rated the final projects and paid accordingly. Council member Olstad said he understands Council member Tweten and added how there is not enough time to hire someone for this position because everything needs to be set up correctly.

Ms. Ellis informed the council of the changes coming in the office with the permit technician possibly retiring, how transit is changing and requiring more time, and how she wants to figure out the rolls of the people working in the office. Council member Helms said he was in favor of extending the contract. Discussion followed about how different each year can be since a few years ago there were very few house permits and no commercial permits so the amount that would be collected in fees would be minimal and if there is something in the contract the City would like changed they could try

and negotiate a change.

Ms. Ellis proposed a six month extension to the inspection contract; she would create a list of job duties, bring it back to the council, and the council can decide how they would like to move forward with building inspections. Council member Grassel stated how this would need to get done and be brought back to the council within a couple months. Ms. Ellis stated the contract would be up in September so she would try and bring back the information by May. Mr. Galstad told the council if they choose to move forward with hiring a building official he would request a document that would settle the issue about payment of the permits and who was completing the inspections on those permits.

This item will be referred to a City Council Meeting for action.

5. Organization of EDHA and City Involvement – David Murphy

Mr. Murphy told the council that when they were reviewing the building inspections he thought they could also handle all of the rental inspections which would include the inspections that the EDHA completes. He stated that he started looking into the EDHA and what the City's role is. He added how Mr. Galstad gave him some documentation about the formation of the EDA which he still had to review. Mr. Murphy asked the council for their input on what should be looked into. Council Vice-President Leigh commented how Economic Development and the Housing Authority were separate and then joined together. He added that he should work with Mr. Richter on this. Mr. Galstad stated he could also ask Mr. Wogaman about it since he was there when the EDA originally formed. Mr. Wogaman stated how they worked hard on getting businesses into East Grand Forks and how there were problems in the beginning but things are now worked out.

6. Adoption of New Adult Use Ordinance – Nancy Ellis/Ron Galstad

Mr. Galstad stated this change in the ordinance stems from an issue brought up by Fantasy's. He explained the proposed new ordinance includes new zoning to include I-1 and I-2 zones for businesses that are classified as sexually oriented businesses. He went over the maps and explained how there has to be a place where these businesses can be located which has to be a minimum of 250 feet away from receptors such as a school. He added they worked with experts in the Twin Cities on this issue. Council member Helms asked if Fantasy's was okay where they were located. Mr. Galstad stated they were always okay since they are not considered a sexually oriented business.

This item will be referred to a City Council Meeting for action.

7. Street Improvement Districts – David Murphy

Mr. Murphy stated how this item had been discussed at the last work session and both Council members Vetter and Helms were provided the information on what street improvement districts are. He reminded the council street improvement districts could be used for street maintenance, overlays, milling, etc and asked if the council wanted to take action on this issue. Council member Olstad stated how the council has been looking at this issue and it would have to be determined how to charge for this. He explained how he had listened to hearings that discussed issues how schools and non-profits would be affected. Council Vice-President Leigh also commented on how this would affect state aid roads. Discussion followed about how rental units could be charged, how this is a good idea but it has to be done fairly, how there are many constituents currently paying specials, and how this could turn into political based street repairs instead of needs based street repairs.

Council member Vetter stated that parking districts might work since the City has the ability to assess for services. Mr. Galstad informed the council that they would have to pick street improvement districts or to use special assessments because they are not able to use both. Ms. Ellis stated that the City has the ICON Pavement system so every year they can see what projects they could complete with the amount of money available they have so if the council decided to move forward with street improvement districts it should be based on needs of the community and not become political. More discussion followed about how the state government would still need to approve the legislation before cities can set up and start utilizing street improvement districts. Council member Grassel commented how it would be hard to tell residents they are paying for streets that are blocks away from where they live. Council Vice-President Leigh stated this could be another tool for the council to utilize to keep up the streets in the City. Council member Vetter stated it is a big issue.

8. Review of Assessment Policy – David Murphy

Mr. Murphy told the council he had looked over the current assessment policy the City uses and asked the council if he could review the policy and bring back an updated version. He explained some of the issues with the current policy which included not being able to specify between a new street and a reconstruction and how it does not specify how the assessments are assessed on the property. Council Vice-President Leigh told Mr. Murphy to take a look at the policy and bring back proposed changes to another work session. Mr. Boppre added that whatever the City would like to do they will implement on projects.

9. Civic Center Expansion – David Murphy

Mr. Murphy explained how there is a Title Nine issue with the locker room situation at the Civic Center. Council Vice-President Leigh added how the locker room situation at the Civic Center which the City has discussed for years now. Mr. Murphy continued by telling the council he had met at the Civic Center with Mr. Scanlan, Mr. Aker, and Mr. Hajicek and discussed possible options to add in a girls locker room. He stated he met with staff on January 29th and tried to find the most effective way to add a girls locker room at the Civic Center. Mr. Murphy then explained how he had asked for a drawing and estimates of an option he and staff had come up with and is asking for direction from council. Discussion followed about who should be hired to complete the design for any proposed changes to the Civic Center, how long the council has been discussing this issue, and how there have been numerous options for the council to consider. Council Vice-President Leigh stated how three options will be brought back to the next work session for discussion.

ADJOURN:

A MOTION WAS MADE BY COUNCIL MEMBER TWETEN, SECONDED BY COUNCIL MEMBER OLSTAD, TO ADJOURN THE MARCH 11, 2014 COUNCIL MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 6:12 P.M.

Voting Aye: Tweten, Olstad, Leigh, Grassel, Vetter, and Helms.

Voting Nay: None.

David Murphy, City Administrator/Clerk-Treasurer

MINNESOTA LAWFUL GAMBLING

1/13 Page 1 of 2

LG220 Application for Exempt Permit

<p>An exempt permit may be issued to a nonprofit organization that:</p> <ul style="list-style-type: none"> - conducts lawful gambling on five or fewer days, and - awards less than \$50,000 in prizes during a calendar year. <p>If total prize value for the year will be \$1,500 or less, contact the licensing specialist assigned to your county.</p>	<p>Application fee (non refundable)</p> <p>If application is postmarked or received 30 days or more before the event \$50; otherwise \$100.</p>
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ORGANIZATION INFORMATION

Organization name East Grand Forks Fire Dept. Relief Association	Previous gambling permit number X-06064
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Minnesota tax ID number, if any	Federal employer ID number (FEIN), if any 41-6023679
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Type of nonprofit organization. Check one.

Fraternal Religious Veterans Other nonprofit organization

Mailing address 415 4th St NW	City East Grand Forks	State MN	Zip code 56721	County Polk
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Name of chief executive officer [CEO] Paul Hansen	Daytime phone number 218-289-2743	E-mail address phansenegf@hotmail.com
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NONPROFIT STATUS**Attach a copy of ONE of the following for proof of nonprofit status.**

Nonprofit Articles of Incorporation OR a current Certificate of Good Standing.

Don't have a copy? This certificate must be obtained each year from:
Secretary of State, Business Services Div., 60 Empire Drive, Suite 100, St. Paul, MN 55103
Phone: 651-296-2803

IRS income tax exemption [501(c)] letter in your organization's name.

Don't have a copy? To obtain a copy of your federal income tax exempt letter, have an organization officer contact the IRS at 877-829-5500.

IRS - Affiliate of national, statewide, or international parent nonprofit organization [charter]

If your organization falls under a parent organization, attach copies of **both** of the following:

- a. IRS letter showing your parent organization is a nonprofit 501(c) organization with a group ruling, and
- b. the charter or letter from your parent organization recognizing your organization as a subordinate.

GAMBLING PREMISES INFORMATION

Name of premises where the gambling event will be conducted. For raffles, list the site where the drawing will take place.
Fraternal Order Of Eagles Club

Address [do not use PO box] 227 10th St NW	City or township East Grand Forks	Zip code 56721	County Polk
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Date[s] of activity. For raffles, indicate the date of the drawing.
June 14th, 2014

Check each type of gambling activity that your organization will conduct.

Bingo* Raffle Paddlewheels* Pull-tabs* Tipboards*

***Gambling equipment** for bingo paper, paddlewheels, pull-tabs, and tipboards must be obtained from a distributor licensed by the Minnesota Gambling Control Board. **EXCEPTION:** Bingo hard cards and bingo number selection devices may be borrowed from another organization authorized to conduct bingo.

To find a licensed distributor, go to www.gcb.state.mn.us and click on **Distributors** under the **WHO'S WHO? LIST OF LICENSEES**, or call 651-539-1900.

LOCAL UNIT OF GOVERNMENT ACKNOWLEDGMENT

**CITY APPROVAL
for a gambling premises
located within city limits**

- The application is acknowledged with no waiting period.
- The application is acknowledged with a 30 day waiting period, and allows the Board to issue a permit after 30 days [60 days for a 1st class city].
- The application is denied.

Print city name _____

Signature of city personnel _____

Title _____ Date _____

Local unit of government must sign

**COUNTY APPROVAL
for a gambling premises
located in a township**

- The application is acknowledged with no waiting period.
- The application is acknowledged with a 30 day waiting period, and allows the Board to issue a permit after 30 days.
- The application is denied.

Print county name _____

Signature of county personnel _____

Title _____ Date _____

TOWNSHIP. If required by the county.

On behalf of the township, I acknowledge that the organization is applying for exempted gambling activity within the township limits.

[A township has no statutory authority to approve or deny an application, per Minnesota Statutes 349.166.]

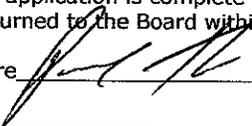
Print township name _____

Signature of township officer _____

Title _____ Date _____

CHIEF EXECUTIVE OFFICER'S SIGNATURE

The information provided in this application is complete and accurate to the best of my knowledge. I acknowledge that the financial report will be completed and returned to the Board within 30 days of the event date.

Chief executive officer's signature  Date 3-12-14

Print name Paul Hansen

REQUIREMENTS

Complete a separate application for:

- all gambling conducted on two or more consecutive days, or
 - all gambling conducted on one day.
- Only one application is required if one or more raffle drawings are conducted on the same day

Send application with:

- a copy of your proof of nonprofit status, and
- application fee (non refundable). Make check payable to "State of Minnesota."

To: Gambling Control Board
1711 West County Road B, Suite 300 South
Roseville, MN 55113

Financial report and recordkeeping required

A financial report form and instructions will be sent with your permit, or use the online fill-in form available at www.gcb.state.mn.us.

Within 30 days of the event date, complete and return the financial report form to the Gambling Control Board.

Questions?

Call the Licensing Section of the Gambling Control Board at 651-539-1900.

This form will be made available in alternative format (i.e. large print, Braille) upon request.

Data privacy notice: The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If your organization supplies the information requested, the Board will be able to process the application. Your organization's name and address will be public information when received by the Board.

All other information provided will be private data about your organization until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data about your organization are available to: Board members, Board staff whose work requires access to the information; Minnesota's Department of Public Safety; Attorney

General; Commissioners of Administration, Minnesota Management & Budget, and Revenue; Legislative Auditor, national and international gambling regulatory agencies; anyone pursuant to court order; other individuals and agencies specifically authorized by state or federal law to have access to the information; individuals and agencies for which law or legal order authorizes a new use or sharing of information after this notice was given; and anyone with your written consent.

Request for Council Action

Date: 3/14/14

To: East Grand Forks City Council Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Dale Helms, Henry Tweten, Mark Olstad, and Chad Grassel

Cc: File

From: Nancy Ellis

RE: Fixed Route Transportation Services for 2014

This resolution was passed last summer with the Mayor and Mr. Lindquist as the authorized signatures for the contract and any amendments. The State requested this resolution be passed again so the authorized signatures are the mayor and Mr. Murphy.

RESOLUTION NO. 14 – 03 – 27

Council Member _____, supported by Council Member _____, introduced the following resolution and moved its adoption:

BE IT HEREBY RESOLVED, By the City Council of the East Grand Forks, Minnesota, that the City of East Grand Forks enter into an agreement with the State of Minnesota, to provide fixed route transportation services in East Grand Forks, Minnesota for period between January 1, 2014 and December 31, 2014; and

BE IT FURTHER RESOLVED, That the City of East Grand Forks agrees to provide 20% of the total operating costs for the fixed route service and up to 20% of the total capital costs; and

BE IT FURTHER RESOLVED, that authorization to execute the aforementioned Contract and any amendments thereto is hereby given to the Mayor and the City Administrator.

Voting Aye:

Voting Nay:

Absent:

The President declared the resolution passed:

Passed: March 18, 2014

ATTEST:

City Administrator

President of Council

I hereby approve the foregoing resolution this 18th day of March, 2014.

Mayor

CERTIFICATION

I hereby certify that the foregoing resolution is a true and correct copy of the resolution presented to and adopted by the City of East Grand Forks, Minnesota, at a duly authorized meeting thereof held on the ____ day of _____, 2014, as shown by the minutes of said meeting in my possession.

Notary

MINUTES OF THE SPECIAL MEETING OF THE COMMISSIONERS OF THE EAST GRAND FORKS ECONOMIC DEVELOPMENT AND HOUSING AUTHORITY (EDHA)

A Special meeting of the Commissioners of the East Grand Forks Economic Development Housing Authority was held at 3:30 p.m. on February 7, 2014 at the Northland Community and Technical College, East Grand Forks, MN.

1. The special meeting was called to order by President George Wogaman.

Roll call reflected the following:

EDHA Commissioners present: George Wogaman, Nan Larson, Chad Grassel, Chip Shea, Justin Hecht and Mark Olstad

Absent: Kerry Knoff

Also Present: David Murphy, EGF City Administrator
James Richter, Executive Director
Dan Klug, NCTC Director Of Development
Anne Tempte, NCTC President
Sheila Bruhn, NCTC Administrative Assistant
Rex Hammerback, NCTC UAS Foundation

2. The purpose of the meeting was to discuss the proposal of the NCTC UAS Foundation to participate in the foundations inaugural funding effort for matching grant funds through the Bremer Foundation. The request to the EDA is for \$20,000 as part of the overall funding of \$175,000 to enable the UAS Foundation to engage in business development activities. The board reviewed the plan and visited about the overall objectives and how the Community could/would be involved and benefit from the collaboration. Upon final discussion a motion was made by Mark Olstad and seconded by Chad Grassel to accept the proposal and grant the funding. Motion carried.

3. Adjournment. Justin Hecht moved and Nan Larson seconded a motion to adjourn the Special meeting at 5:00 pm. motion carried.

Respectfully Submitted,

James S. Richter
Executive Director

JSR:ego

MINUTES OF THE REGULAR MEETING OF THE COMMISSIONERS OF THE EAST GRAND FORKS ECONOMIC DEVELOPMENT AND HOUSING AUTHORITY (EDHA)

A Regular meeting of the Commissioners of the East Grand Forks Economic Development Housing Authority was held at 4:00 p.m. on February 11, 2014 in the East Grand Forks Economic Development Housing Authority Board Room in City Hall, East Grand Forks, MN.

1. The regular meeting was called to order by President George Wogaman.

Roll call reflected the following:

EDHA Commissioners present: George Wogaman, Nan Larson, Chad Grassel, Chip Shea and Mark Olstad

Absent: Kerry Knoff and Justin Hecht

Also Present: David Murphy, EGF City Administrator
James Richter, Executive Director

2. Approval of minutes:

A. Mark Olstad moved and Nan Larson seconded a motion to approve the minutes of the February 11, 2014 regular meeting.

3. Bills and Communications:

A. Nan Larson moved and Justin Hecht seconded a motion approving the bills of February 4, 2014. Motion carried.

4. Public Comments: None

5. Old Business:

A. Presented the sub-fund reports for 2013 for review and questions from the EDHA Board. No action required.

6. New Business:

A. Justin Hecht moved and Mark Olstad seconded a motion to approve the loan request of David and Linda Peterson to assist in the purchase of Leisureland RV real property for the amount of \$135,000 at four percent(4%) interest for ten (10) years contingent on Bank and SBA loan approvals and pro forma cash flow reflecting new debt. Motion carried.

February 11, 2014

MINUTES OF THE REGULAR MEETING OF THE EAST GRAND FORKS ECONOMIC DEVELOPMENT AND HOUSING AUTHORITY (EDHA) (continued)

6. New Business: (cont).

B. There was further discussion regarding the NCTC UAS Foundation proposal and the positive impacts it could have in East Grand Forks. We will work together with them to establish areas for development and other opportunities.

7. Report of the Executive Director:

A. Information on:

- Galstad Chiropractic Building has lease space available and is for sale.
- Cherry Berry opening in the Holiday Station Store under owner Kory Knoff.
- Northdale Oil has lease space available.
- DocuShred has leased space in the DeMers Professional Building (Palmiscino Insurance Building.)
- Reimer Welding resubmitting loan fund application for the purchase of the property they currently lease.
- Visited with Dakota Commercial on Minnesota Heights space available. Little interest at this point.

8. Other Business: None

9. Adjournment: Mark Olstad moved and Nan Larson seconded a motion to adjourn. Motion carried. The next regular meeting is **March 11, 2014 at 4:00 p.m.** at the **East Grand Forks Economic Development Housing Authority Board Room, East Grand Forks City Hall**, East Grand Forks, MN.

Respectfully Submitted,

James S. Richter
Executive Director

JSR:ego

Request for Council Action

Date: 03/13/2014

To: East Grand Forks City Council Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Henry Tweten, Mark Olstad, Chad Grassel and Dale Helms.

Cc: File

From: Chief Michael Hedlund

RE: Retirement of Sgt. Michelle Manias

Background: Sgt. Michelle Manias is retiring from the East Grand Forks Police Department effective May 30, 2014 following almost 20 years of service. Michelle Manias began her career as a police officer with the East Grand Forks Police Department on July 16, 1994. She was promoted to the rank of sergeant on July 28, 2008 and was the first female to hold that rank within the EGFPD. Sgt. Manias has served in Patrol throughout her career but has also held a variety of other roles within our agency including being a DARE instructor and being a department instructor in various areas including medical related topics and domestic violence. Sgt. Manias has been recognized for outstanding work on a number of occasions throughout her career including multiple lifesaving awards.

Recommendation: Accept the retirement of Sgt. Michelle Manias effective May 30, 2014.

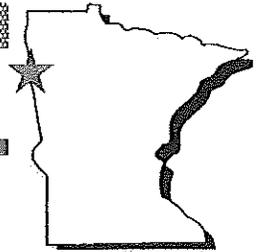
Enclosures: Retirement letter from Sgt. Manias.

EAST GRAND FORKS

POLICE DEPARTMENT

Michael Hedlund
Chief of Police

520 DeMers Avenue East Grand Forks, MN 56721
Phone (218) 773 - 1104 Fax (218) 773 - 1108



March 12, 2014

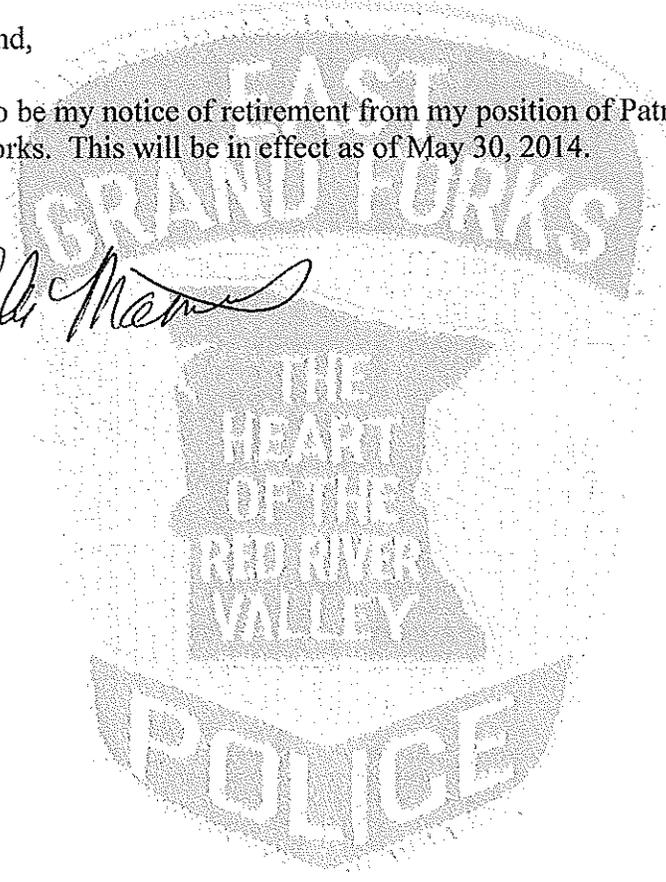
Chief Michael Hedlund,

Please consider this to be my notice of retirement from my position of Patrol Sergeant with the City of East Grand Forks. This will be in effect as of May 30, 2014.

Thank You,

A handwritten signature in cursive script that reads "Sgt. Michelle Manias".

Sgt. Michelle Manias



Request for Council Action

Date: March 11, 2014

To: East Grand Forks City Council Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Dale Helms, Henry Tweten, Mark Olstad, and Chad Grassel

Cc: File

From: Nancy Ellis, City Planner – Community Development

RE: In-Depth Inspections Contract

GENERAL INFORMATION:

East Grand Forks entered into a contract with In Depth Inspections to complete Building Code Enforcement/Building Inspections for the City of East Grand Forks for a 12 month period last March. The contract is set to expire at the end of this month. At this point in time, I still feel that the new Community Development Office is unable to conduct Building Inspections and Permitting work without entering into a year contract with In-Depth Inspections.

We did not see additional savings with hiring a contracted service (approximately \$95,000 in 2013 billing). However, a portion of their contract stated they would receive have the permit fees – which included an increase in commercial permit fees (almost \$50,000 in permit fees or revenue). With changes to the organization of the office, retirement of the permit technician in 2015 and other possible office changes; I would like to have another year to determine what office staff we need and what their duties will be.

RECOMMENDATION:

I have evaluated the past contract and staff is requesting an extension of the InDepth Inspection service contract for 6 months from the date of City Council approval.

Agreement for Building Inspections Services

This contract (the "Agreement") is made and entered into this _____ day of _____, 20____, between the City of East Grand Forks, Minnesota (the "City"), and Indepth Inspection, Inc, (the "Contractor"), (collectively, the "Parties").

1. Scope of Services. The Contractor agrees to perform the following services:

Building Code:

The consultant will be responsible for inspecting properties and enforcing the Minnesota State Building Code. The consultant, however, will not be responsible for enforcing the commercial Electrical Code as the City will continue to use State of Minnesota inspectors to perform such inspections.

Plumbing Code:

The consultant shall be responsible for providing enforcement and administration of the currently adopted Minnesota State Plumbing Code and performing plumbing plan review services.

Rental Housing Ordinance:

The consultant may be requested to assist with inspecting and enforcing the City's Rental Housing Ordinance, including but not limited to inspecting rental housing for license renewal, responding to complaint inspections and performing administrative tasks associated with the enforcement of the Rental Housing Ordinance.

Additional Duties:

Work regarding the above referenced codes and ordinances involves responsibility for plan review, scheduling, and inspection of residential and commercial buildings and other structures in regard to conformity with code requirements and technical standards, any administrative work in support of those duties assigned herein and enforcement. Work also involves determining building permit valuations for inspected construction projects and providing the City with Code revisions that are either desirable or required. Work also includes complaint investigations, hazardous building inspections and assistance with the prosecution of building code and hazardous building violations.

2. Compensation. The City agrees to pay the Contractor as follows:

Contractor shall bill the City monthly. City shall reimburse Contractor for building inspections and related services up to 50% of total permit fees, 100% of plan review fees, and \$75 per hour for other duties as required plus mileage reimbursement. The City shall not withhold monies for the payment of any federal or state income taxes, social security benefits, or other taxes.

3. Term. The term of the agreement shall be for a period of **six (6) months** commencing on or about **March 19, 2013 unless either party gives the other not less than sixty (60) days prior written notice** before the expiration of the then current term that it does not want the contract to

renew further. In addition, the City will be allowed to terminate if the consultant does not perform services in a satisfactory manner, loses its license to perform any of the services, becomes insolvent, or other similar reasons.

4. Independent Contractor Relationship. It is expressly understood that the Contractor is an “independent contractor” and not an employee of the City. The Contractor shall have control over the manner in which the services are performed under this Agreement. The Contractor shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the work contemplated by this Agreement. The Contractor shall not be entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, workers’ compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits.

5. Insurance Requirements. (Note: Liability insurance requirements may be modified or waived depending on the nature of the contract.)

- A. Liability. The Contractor agrees to maintain Professional Liability, Errors and Omissions Insurance in an amount of at least \$500,000 single limit coverage, covering all personnel employed by the Contractor in the capacity of acting as an Agent of the City. The Contractor agrees to maintain commercial general liability insurance in a minimum amount of \$1,000,000 per occurrence. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. The City shall be named as an additional insured.
- B. Automobile Liability. If the Contractor operates a motor vehicle in performing the services under this Agreement, the Contractor shall maintain automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000, combined single limit. The City shall be named as an additional insured.
- C. Workers’ Compensation. The Contractor agrees to comply with all applicable workers’ compensation laws in Minnesota.
- D. Certificate of Insurance. The Contractor shall, prior to commencing services, deliver to the City a Certificate of Insurance as evidence that the above coverages are in full force and effect.

6. Indemnification. The Contractor agrees to defend and indemnify the City, and its employees, officials, volunteers and agents from and against all claims, actions, damages, losses and expenses arising out of the Contractor’s performance or failure to perform its duties under this Agreement.

7. General Provisions.

- A. Entire Agreement. This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.
- B. Assignment. The Contractor may not assign this Agreement to any other person unless written consent is obtained from the City.

- C. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.
- D. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.
- E. Waivers. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
- F. Savings Clause. If any court finds any portion of this Agreement to be contrary to law or invalid, the remainder of the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties, have caused this Agreement to be approved on the date above.

City of East Grand Forks, Minnesota

By: _____
Its Mayor

And: _____
Its City Administrator

Contractor

Request for Council Action

Date: March 11, 2014

To: East Grand Forks City Council Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Dale Helms, Henry Tweten, Mark Olstad, and Chad Grassel

Cc: File

From: Nancy Ellis, City Planner ; Ron Galstad, City Attorney

RE: Adopt new Adult Use Ordinance

STAFF RECOMMENDATION

Staff recommends approval of a new ordinance on Adult Uses to be located as a permitted use within the I-1 and I-2 zoning Districts

GENERAL INFORMATION

APPLICANTS: City of East Grand Forks

REQUESTED ACTION: Applicant is requesting amending text in the Zoning Code

SITE ZONING/LAND USE: Limited Industrial (I-1) , General Industrial District (I-2) and Definitions

SURROUNDING ZONING/LAND USE: NA

As you recall, the definitions for our Adult Use Ordinance need to be amended to with stand legal scrutiny; and the City of East Grand Forks needed to repeal its Adult Use regulations within the I-2 District (Section 152.247) including the Adult Use definitions in the Definition Section (Section 152.006) and Section 150.13. We then adopted a moratorium ordinance for adult use/sexually oriented businesses until the City of East Grand Forks could adequately study and adopt a new ordinance pertaining to Adult Uses.

As staff, I felt the moratorium ordinance had all of the city's necessary requirements to allow for Adult Uses and should be adopted as a permanent ordinance. In the ordinance, it stated that the Adult Use must be located in the I-2 zoning district and more than 250 feet from a sensitive receptor (schools, parks, churches and residential areas). Therefore, we studied the areas that an adult use can be located to meet the 250 foot setback and we were limited on available property within the I-2 district for this Use. It was suggested by our legal counsel to include the I-1 zoning district so that we have more lots

March 5, 2014

Request for Council Action

that could be considered. I am attaching the new Ordinance and the maps that were reviewed for you to discuss.

CITY OF EAST GRAND FORKS

ORDINANCE NO. 12, 4th Series

**AN ORDINANCE AMENDING TITLE XI OF
THE CITY CODE BY ADDING A NEW CHAPTER
TO DEFINE AND REGULATE ADULT USES AND
AMENDING CHAPTER 152 OF THE CITY CODE REGARDING
LOCATION OF ADULT USES**

The City Council of the City of East Grand Forks hereby ordains:

Section 1. Title XI of the City Code for the City of East Grand Forks is amended by adding a new Chapter 118 as follows:

CHAPTER 118: ADULT ESTABLISHMENTS

§ 118.01 FINDINGS AND PURPOSE.

Studies conducted by the Minnesota Attorney General and the Texas City Attorneys' Association, as well as the cities of St. Paul, Alexandria, and Rochester, Minnesota; Indianapolis, Indiana; Phoenix, Arizona; Los Angeles, California; Seattle, Washington; St. Croix County, Wisconsin; Adams County and the City of Denver, Colorado, have examined the impact that adult establishments have on their respective communities. These studies concluded that adult establishments have an adverse impact on surrounding neighborhoods. Those impacts include increased crime rates, lower property values, increased transiency, neighborhood blight and potential health risks. The City Council of the City of East Grand Forks recognizes that the same or similar adverse impacts could occur in a smaller city. Therefore, the City Council makes the following findings regarding the need to regulate adult establishments:

- (A) The public health, safety, morals and general welfare will be promoted by the city adopting regulations governing adult establishments;
- (B) Adult establishments have adverse secondary impacts of the types set forth above, which are distinct from the impacts caused by other commercial uses;
- (C) Residential neighborhoods located within close proximity to adult theaters, bookstores and other adult uses experience increased crime rates (sex-related crimes in particular), lower property values, increased transiency and decreased stability of ownership;
- (D) The adverse impacts that adult uses have on surrounding areas diminish as the distance from the adult uses increases;
- (E) Studies of other cities have shown that among the crimes which tend to

increase either within or in the near vicinity of adult uses are rapes, prostitution, child molestation, indecent exposure and other lewd and lascivious behavior;

(F) Many members of the public perceive areas within which adult uses are located as less safe than other areas which do not have such uses;

(G) Studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult uses;

(H) It is not the intent to prohibit adult establishments from having a reasonable opportunity to locate in the city;

(I) Small cities experience many of the same adverse impacts of adult establishments present in larger communities; and

(J) The East Grand Forks City Council finds that adult uses will have adverse secondary effects upon certain pre-existing land uses within the City.

§ 118.02 DEFINITIONS.

For the purposes of this Chapter, the following terms shall have the meanings given below:

(A) *Adult Establishments.*

(1) Any business that devotes a substantial or significant portion of its inventory, stock in trade, or publicly displayed merchandise, or devotes a substantial or significant portion of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to, or derives a substantial or significant portion of its gross revenues from, items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, simulating, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas as described herein; or

(2) Any business that engages in any Adult Use as defined in paragraph (B) below.

(B) *Adult Use.* An adult use is any of the activities and businesses described below. Activities classified as obscene as defined by Minnesota Statutes 617.241 are not included.

(1) *Adult Use- Body Painting Studio:* An establishment or business that provides the service of applying paint or other substance, whether transparent or non-transparent, to the body of a patron when such body is wholly or partially nude in terms of Specified Anatomical Areas.

- (2) Adult Use- Bookstore or Videostore: A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion picture film if a substantial or significant portion of such items are distinguished and characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- (3) Adult Use- Cabaret. A building or portion of a building used for dancing or other live entertainment that is distinguished or characterized by an emphasis on the presentation, display, depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- (4) Adult Use- Companionship Establishment: A companionship establishment that provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- (5) Adult Use- Conversation/Rap Parlor: A conversation/rap parlor that provides the services of engaging in or listening to conversation, talk or discussion, if such service is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- (6) Adult Use- Health/Sport Club: A health/sport club that is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- (7) Adult Use- Hotel or Motel: Adult hotel or motel means a hotel or motel from which minors are specifically excluded and where material is presented that is distinguished and characterized by an emphasis on matter depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas.
- (8) Adult Use- Massage Parlor, Health Club: A massage parlor or health club that provides the services of massage, if such service is distinguished and characterized by an emphasis on Specific Sexual Activities or Specified Anatomical Areas.
- (9) Adult Use- Modeling Studio: An establishment that provides figure models to customers with the intent of providing sexual stimulation or sexual gratification to such customers and where the models engage in Specified Sexual Activities or display Specified Anatomical Areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by customers.
- (10) Adult Use- Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image producing devices are maintained and where the images so displayed

are distinguished and characterized by an emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas.

(11) Adult Use- Motion Picture Theatre: A building or portion of a building used for presenting material if such business as a prevailing practice presents material distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas for observation by patrons therein.

(12) Adult Use- Novelty Business: A business in which a substantial or significant portion of its sales are of devices that stimulate human genitals or devices that are designed for sexual stimulation.

(13) Adult Use- Sauna: A sauna that provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(14) Adult Use- Steam Room/Bathroom Facility: A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent if the service provided by the steam room/bathroom facility is distinguished and characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(C) *Specified Sexual Activities.*

Any of the following, whether performed directly or indirectly through clothing or other covering: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; (2) sex acts, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; and (4) excretory functions as part of or in connection with any of the other activities described in (1) through (3) of this paragraph.

(D) *Specified Anatomical Areas.*

The showing of the human male or female genitals, pubic area, or anus with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(E) *Substantial or significant portion.* Twenty-five percent (25%) or more.

§ 118.03 LOCATION.

Adult establishments may be located as permitted in Subchapters 152.231 and 152.246 of the City Code.

§ 118.04 ENFORCEMENT.

(A) Violation of any portion of this Chapter shall be a misdemeanor punishable by imprisonment for up to 90 days and a fine of \$1000 or both, plus the costs of prosecution. Each day that a violation occurs shall be considered a separate offense.

(B) The City may enforce any provision of this Chapter by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.

§ 118.05 STATE LAW.

Minnesota Statutes, section 617.242 shall not apply in the City.

§ 118.06 SEPARABILITY.

Every provision of this Chapter is declared separable from every other provision of this Chapter. If any provision of this Chapter is adjudged to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other provision of this Chapter.

Section 2. Subchapter 152.231 of the City Code for the City of East Grand Forks is amended as follows:

§ 152.231 PERMITTED USES.

In addition to other uses specifically identified elsewhere in this subchapter, the following are permitted uses in the I-1, Light Industrial District:

...

(W) “Adult Establishments”, subject to the requirements of Chapter 118 and the location requirements in subchapter 152.234.

Section 3. Chapter 152 of the City Code for the City of East Grand Forks is amended by adding the following new subchapter 152.234:

§ 152.234 LOCATION OF ADULT ESTABLISHMENTS.

(A) Adult establishments as defined in Chapter 118 of the City Code must be

located at least 250 feet from:

- (1) Property used or zoned for residential uses;
- (2) A daycare facility, school, library, park, playground, state or federal wildlife area or preserve, religious institution, or other public recreational facility;
- (3) Premises licensed under Chapter 117, Alcoholic Beverages; and,
- (4) Another adult use.

(B) Distances must be measured by following a straight line, without regard to intervening structures or objects, between the closest points on the boundary lines of the parcels where the two uses are located.

Section 4. Subchapter 152.246 of the City Code for the City of East Grand Forks is amended as follows:

§ 152.246 PERMITTED USES.

In addition to other uses specifically identified elsewhere in this subchapter, the following are permitted uses in the I-2, General Industrial District:

(A) All permitted uses allowed in the Light Industrial (I-1) district. Adult establishments are subject to the requirements of Chapter 118 and the location requirements in subchapter 152.234.

Section 5. EFFECTIVE DATE. This ordinance shall take effect the day after its adoption and publication.

Voting Aye:
Voting Nay:
Absent:

The President declared the Ordinance passed.

ATTEST: PASSED: _____, 2014

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing Ordinance this ___ day of _____, 2014.

Mayor



Request for Council Action

Date: March 3, 2014

To: East Grand Forks City Council, Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Henry Tweten, Chad Grassel, Mark Olstad and Dale Helms.

Cc: File

From: Greg Boppre, P.E.

RE: 2013 City Project No. 1 – Sidewalk Improvements (TE)

Background:

This project was bid last fall and recently(see attached) the State of Minnesota has denied Paras Contracting the bid due to DBE goals set forth for the project. Therefore, we will need to rebid this project and the following is the schedule:

- A) File with City Council March 18
- B) Receive bids April 8 at 10:00 am(bring to Work Session)
- C) Take to City Council for approval, contingent upon MnDOT approval.

The following is the budget from last fall:

PROPOSED BUDGET

	<u>2013 CP #1 Base Bid</u>
Construction	\$282,196.20
Plans / Specifications	\$33,863.54
Staking / Inspection	\$22,575.70
Contingencies	\$14,109.81
Administration / Legal	<u>\$8,465.88</u>
TOTAL PROJECT COST	\$361,211.13

PROPOSED FUNDING

	<u>2013 CP #1 Base Bid</u>
MnDOT - Federal Funds	\$160,290.40
MnDOT - State Funds	\$81,833.20
City	<u>\$119,087.53</u>
TOTAL PROJECT COST	\$361,211.13

Enclosures:

State of Minnesota panel decision

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

Administrative Reconsideration Hearing Request by
Paras Contracting, Inc.
Pursuant to 49 C.F.R. § 26
State Project Number 119-010-005, Trunk Highway 220

TRP/284/DBE/2014

ADMINISTRATIVE RECONSIDERATION PANEL DECISION

I. INTRODUCTION

This decision is issued pursuant to 49 C.F.R. § 26.53 after a reconsideration hearing held on February 4, 2014 at the request of Paras Contracting, Inc.¹ The Minnesota Department of Transportation (hereinafter "MnDOT") Office of Civil Rights (hereinafter "OCR") set a disadvantaged business enterprise (hereinafter "DBE") participation project goal of 4.2% for State Project Number 119-010-005, East Grand Forks multi-use path on West Trunk Highway 220. Paras was the apparent low bidder on the project and submitted documentation on September 23, 2013 to MnDOT OCR to demonstrate it made good faith efforts pursuant to Title 49, § 26 of the Code of Federal Regulations (hereinafter "49 C.F.R. § 26"), Appendix A to solicit DBEs.² On December 30, 2013 OCR informed Paras that it had failed to make good faith efforts to meet the Project's DBE goal and notified Paras of the opportunity for administrative reconsideration pursuant to 49 C.F.R. § 26.53(d).³ On January 8, 2014 Paras requested a reconsideration hearing.⁴

The MnDOT Office of Chief Counsel scheduled a reconsideration hearing with a panel (hereinafter "Panel") consisting of three (3) MnDOT employees who did not participate in the original determination that Paras failed to meet the goal or make adequate good faith efforts pursuant to 49 C.F.R. § 26, Appendix A. MnDOT scheduled a reconsideration hearing for February 4, 2014 and sent a Notice of Hearing via certified mail.⁵ The Notice of Hearing notified Paras the time and location of the informal hearing that officials involved in the Panel did not play any role in the original good faith efforts determination, that parties could submit written documentation and/or arguments to support their positions and that the parties may be represented by attorneys of their choice.⁶

Assistant Attorney General Natasha Karn represented MnDOT OCR and Paras Contracting, Inc.'s owner, Russ Kiser, and its secretary and treasurer, Heather Kiser, appeared on behalf of Paras Contracting. On February 4, 2014 Paras and OCR appeared and presented their arguments in support of their positions before the three-member Panel and a court reporter.

The Panel's decision herein is based on the record made available by both parties including arguments at the DBE reconsideration hearing and evidence submitted in support of the parties' respective arguments. For the reasons outlined below, the Panel hereby affirms OCR's original decision, despite OCR's failure to timely inform Paras of its failure to make good faith efforts pursuant to the federal DBE regulations

¹ Letter from Paras Contracting to MnDOT (Jan. 9, 2014).

² OCR Additional Submission 1 (Sept. 23, 2013); 49 C.F.R. Pt. 26 (2011).

³ Letter from OCR to Paras Contracting (Dec. 30, 2013).

⁴ Letter from Paras Contracting to MnDOT (Jan. 8, 2014).

⁵ Letter from MnDOT Office of Chief Counsel to Paras Contracting (Jan. 13, 2014).

⁶ *Id.*

and notwithstanding internal MnDOT miscommunication regarding project approval. Regardless of internal miscommunication and error, Paras failed to submit sufficient evidence demonstrating that Paras adequately solicited DBEs to participate in the contract.

II. FACTUAL BACKGROUND

A. Goal of the Federal DBE Program

The federal Department of Transportation issued regulations found in 49 C.F.R. § 26 in response to Congressional legislation intended to remedy decades of race discrimination in government highway contracting.⁷ The regulations detail the requirements of federal-aid highway fund recipients to ensure nondiscrimination in the award and administration of highway and transit financial assistance programs.⁸ The program objectives seek to create a level playing field wherein disadvantaged business enterprises⁹ may equitably compete for Department of Transportation contracts; ensures the program is narrowly tailored; defines DBE eligibility standards; removes barriers to DBE participation; promotes and develops DBEs; and provides flexibility in establishing and providing opportunities for DBEs.¹⁰ To promote these objectives, the federal Department of Transportation sets minimum DBE participation contract goals wherein bidders are encouraged, but not required, to meet.¹¹ If a bidder fails to meet the goal, it must, however, demonstrate that it made adequate good faith efforts to meet the goal.¹² The federal DBE program has been upheld by the Supreme Court because it is narrowly tailored to meet a compelling governmental interest in prohibiting racial discrimination in the distribution of federal funding.¹³ Additionally, federal courts have upheld the MnDOT DBE program.¹⁴

B. Paras Contracting's Bid Submission

The project before the reconsideration Panel is State Project 119-010-005, involving a multi-use path on the West side of Trunk Highway 220 in East Grand Forks, Minnesota (hereinafter "Project"). The Project is a state aid project involving federal funding and thus is subject to federal DBE regulations.¹⁵ MnDOT set a DBE participation goal at 4.2% of the bid amount.¹⁶

Paras Contracting, Inc. (hereinafter "Paras") is a Fargo-based paving contractor which focuses on curb, gutter, street paving and sidewalk work.¹⁷ Paras is owned by Russ Kiser, and assisted by its secretary and

⁷ See *Sherbrooke Turf, Inc. v. Minn. Dept't of Transp.*, 345 F.3d 964, 970 (8th Cir. 2003); *C.S. McCrossan Const., Inc. v. Minn. Dept't of Transp.*, 946 F.Supp.2d 851, 853 (D. Minn. 2013).

⁸ 49 C.F.R. Pt. 26.1 (2011); 49 C.F.R. Pt. 26.3.

⁹ A DBE is a for-profit small business at least 51% owned by socially and economically disadvantaged persons, with management and daily business operations controlled by at least one disadvantaged individual. 49 C.F.R. Pt. 26.5 (2011).

¹⁰ *Id.*

¹¹ 49 C.F.R. Pt. 26.45(a)(1) (2011).

¹² *Id.* Pt. 26.5.

¹³ *Adarand v. Peña*, 515 U.S. 200 (1995).

¹⁴ *Sherbrooke Turf, Inc. v. Minnesota Dept. of Transp.*, 345 F.3d 964, 973-74 (8th Cir. 2003); *C.S. McCrossan Const., Inc. v. Minnesota Dept. of Transp.*, 946 F.Supp.2d 851, 864 (D. Minn. 2013)

¹⁵ Transcript of Paras Contracting DBE Reconsideration Hearing 13, Feb. 4, 2014.

¹⁶ Letter from OCR to Paras Contracting, at 1 (Dec. 30, 2013).

¹⁷ T. 6:16; 24-25.

treasurer, Heather Kiser.¹⁸

The project was originally bid on July 9, 2013 but due to funding restrictions and the bid amounts, the project was rebid and a bid letting date was set for September 19, 2013.¹⁹ Paras ordered the project plans on September 18, 2013.²⁰ Paras did not solicit any firms, including DBEs for the project.²¹ Paras instead put its name on the plan holder's list and accepted the quotes of subcontractors who sent quotes to Paras.²² Paras received bids from two (2) different certified DBEs for ADA panels and electrical traffic signals.²³ In its bid submittal, Paras used the quote from the DBE for the ADA panel scope of work.²⁴ Paras received a quote from a DBE electrical contractor which was \$18,700 more than the lowest electrical subcontract bid.²⁵ Paras chose to use the lower subcontract electrical bid, which was a non-DBE.²⁶ Paras also received a quote from a veteran-owned business it believed to be a DBE²⁷ but was not certified as a DBE through the Minnesota Unified Certification Program as required by the Regulations and MnDOT DBE Special Provisions.²⁸

On the bid opening Paras was determined to be the apparent low bidder (hereinafter "ALB") with its bid in the amount of \$282,196.20.²⁹ Paras was instructed by Wiseth Smith Nolting (hereinafter "WSN"), an engineering firm involved in the Project on behalf of the city, that contract provisions required Paras to submit DBE documentation to MnDOT within the next five (5) business days.³⁰ Paras submitted the good faith efforts forms to OCR on September 23, 2013. Although Paras had submitted a DBE commitment of 0% as part of its bid documents, the forms submitted to MnDOT showed DBE participation of 1.6%.³¹ Paras submitted the OCR good faith efforts paperwork within the 5-day deadline.³²

C. MnDOT Procedural Issues

On October 10, 2013 MnDOT's District 2 State Aid Engineer gave permission to WSN to send a contract award letter to Paras.³³ The MnDOT Central Office of State Aid inquired with WSN whether the contract was cleared by OCR and WSN confirmed the documents were submitted to OCR but Paras had not heard anything from MnDOT.³⁴ While MnDOT may wish to explore procedural improvements in this area, the fact remains that the District State Aid Engineer had no authority to approve contract award prior to OCR "clearance," therefore the purported "award" letter is immaterial to the dispute before the Panel.³⁵

On October 11, 2013 OCR asked for an additional copy of the good faith efforts submittal and Paras re-

¹⁸ *Id.* at 6:17-19.

¹⁹ Paras Contracting First Submission, D-2, Jan. 29, 2014.

²⁰ T. 28:8.

²¹ *Id.* at 28:12; 31:17.

²² *Id.*

²³ T. 9:1-25.

²⁴ T. 9:1-19.

²⁵ T. 9:22-24.

²⁶ *Id.*

²⁷ T. 9:17.

²⁸ 49 C.F.R. Pt. 26.81 (2011); OCR DBE Special Provisions, at 3 (May 2011).

²⁹ T. 3:11-13; Paras Contracting First Submission, D-2.

³⁰ Paras Contracting First Submission, D-9, D-15-16.

³¹ T. XX, XX; Paras Contracting First Submission, D-20.

³² T. 10:14-15.

³³ Paras Contracting First Submission, D-27, D-203.

³⁴ *Id.* D-28, D-204.

³⁵ T. 46:15-21.

submitted the good faith efforts documents.³⁶ OCR had misplaced the files and requested Paras to submit additional copies.³⁷

OCR found that Paras' bid included \$4,378.44 of work to be subcontracted with a DBE, or 1.6% of the bid, which fell 2.6% short of the project DBE goal.³⁸ OCR also determined that Paras failed to demonstrate adequate good faith efforts to meet the DBE contract goal because Part D of the good faith efforts forms, Solicitation of Subcontractors, Suppliers and Service Providers, was left blank in the Paras submittal.³⁹ Specifically, OCR noted that while Paras submitted good faith efforts documentation stating it accepted a quote from Decorative Concrete Designs, a women-owned business enterprise, Paras failed to include that information on Part D of the good faith efforts documentation.⁴⁰

On December 30, 2013 OCR sent a letter to Paras informing the contractor its bid was non-responsible because: (1) Paras failed to meet the 4.2% DBE participation goal; and (2) Paras failed to document adequate good faith efforts to achieve the contract DBE goal.⁴¹ In the OCR letter, it outlined Paras' right to a reconsideration hearing pursuant to 49 C.F.R. § 26.53.⁴²

D. Request for DBE Reconsideration Hearing

On January 9, 2014 MnDOT received Paras' request for an administrative reconsideration of OCR's decision.⁴³ On January 13, 2014 the MnDOT Office of Chief Counsel sent a Notice of Hearing to Paras confirming the administrative reconsideration for February 5, 2014.⁴⁴ The Notice of Hearing notified Paras the time and location of the informal hearing that officials involved in the Panel did not play any role in the original good faith efforts determination, that parties could submit written documentation and/or arguments to support their positions and that the parties may be represented by attorneys of their choice.⁴⁵ In Paras' letter dated January 6, 2014 to OCR it included ten (10) documents - subcontractor quotations - that were not included in the September 23, 2013 good faith efforts submittal to OCR.⁴⁶

E. Administrative Reconsideration Hearing

An administrative reconsideration was held on February 4, 2014 at the MnDOT Central Office in St. Paul, Minnesota.⁴⁷ The Panelists presiding over the hearing were MnDOT employees not involved in the original OCR determination.⁴⁸ The Panel officials were Mr. Tom O'Keefe, Director of Program Delivery for MnDOT's Metro District, Ms. Nancy Daubenberger, State Bridge Engineer, and Mr. Jim Cownie, an attorney who is Director of Contract Management for MnDOT. The Panelists admitted into evidence two submittals from OCR: an outline entitled "Administrative Reconsideration Panel Hearing" and an

³⁶ *Id.* D-31, D-207; T 14:11-12.

³⁷ T. 14:4.

³⁸ Letter from OCR to Paras Contracting, at 1 (Dec. 30, 2013).

³⁹ *Id.*; OCR Good Faith Efforts Submission, at 19.

⁴⁰ Letter from OCR to Paras Contracting, at 1 (Dec. 30, 2013).

⁴¹ *Id.*

⁴² *Id.*, at 2.

⁴³ Letter from Paras Contracting to OCR (Jan. 9, 2014).

⁴⁴ Letter from MnDOT Office of Chief Counsel to Paras Contracting (Jan. 13, 2014).

⁴⁵ *Id.*

⁴⁶ Transcript, at 33:19-25; 34:1-3.

⁴⁷ *Id.*, at 1.

⁴⁸ *Id.*

additional submission "Guidelines for Certificate of Good-Faith Efforts Consolidated Form."⁴⁹ Three pieces of evidence were admitted on behalf of Paras: (1) a timeline and e-mail communications from WSN submitted January 29, 2014; (2) a second submission from Paras dated January 31, 2014; and (3) a January 6, 2014 letter to MnDOT requesting a DBE administrative reconsideration.⁵⁰

Both Paras and OCR were afforded an opportunity to present their arguments. Paras argued that it did not solicit DBEs.⁵¹ Further, Paras argued that it would not have work for its own employees or be in business if it was required to select portions of the work to be performed by DBEs or break out the contract.⁵² Additionally, Paras stated that it would have taken on the additional cost of the higher electrical DBE bid but it may not have been awarded the bid in that situation.⁵³ Finally, Paras argued that it submitted the required good faith efforts documentation but did not hear from OCR until its December 30, 2013 rejection letter.⁵⁴ Paras argued that it left the OCR good faith efforts form blank because other than the single DBE subcontractor, it did not plan on using other DBEs.⁵⁵

OCR asserted that Paras failed to meet the DBE goal and Paras' good faith efforts documentation was "devoid of any information about contact with DBEs" because the documentation was left blank.⁵⁶ OCR noted that even if the Panel were to admit Paras' January 6, 2014 submission which included copies of the quotes from DBEs, OCR would still lack sufficient documentation evidencing good faith efforts.⁵⁷ OCR noted, however, that the Panel should not review the January 6, 2014 information because it is important to treat all bidders the same.⁵⁸ Finally, OCR argued that the record reflected no information to illustrate Paras solicited DBEs, broke out scopes of work, or negotiated with DBEs to increase participation.⁵⁹

III. STANDARD OF REVIEW

MnDOT determinations regarding non-responsible bids are quasi-judicial administrative actions.⁶⁰ An "agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated."⁶¹ Courts review the DBE reconsideration hearing record for "questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it."⁶² But

⁴⁹ OCR Additional Submission 1; Administrative Reconsideration Panel Hearing, Requesting Party Paras Contracting, Incorporated, T. 4:22-5:3; 20:5-9

⁵⁰ Paras Submission 1 (Jan. 29, 2014); Paras Submission 2 (Jan. 31, 2014); Letter to MnDOT from Paras (Jan. 6, 2014); T 5:4-18.

⁵¹ T. 28:12; 31:17.

⁵² T. 29:10-14.

⁵³ T. 29:5-9.

⁵⁴ T. 10:23-25.

⁵⁵ T. 29:16-21.

⁵⁶ T. 18: 1-2; 17:14-16.

⁵⁷ T. 22:24-23:6.

⁵⁸ T. 22:21-23.

⁵⁹ 24:4-12.

⁶⁰ *In re Administrative Reconsideration Hearing Request ex rel. Cent. Specialties, Inc.*, No. A12-0024, 2012 WL 3641295 (Minn. App. Aug. 27, 2012).

⁶¹ *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted).

⁶² *In re Administrative Reconsideration Hearing Request ex rel. Cent. Specialties, Inc.*, No. A12-0024, 2012 WL 3641295 (Minn. App. Aug. 27, 2012) (citing *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444-45 (Minn.App.1996) (quoting *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992)).

"[i]f the agency's decision represents its will, rather than its judgment, the decision is arbitrary and capricious."⁶³ "If there is room for two opinions on a matter, the [agency's] decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached."⁶⁴ An "agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated."⁶⁵

IV. ANALYSIS

For the reasons outlined below, the Panel affirms OCR's determination that Paras did not make adequate good faith efforts to meet the project DBE goal.

A. Evidentiary Determinations

The first issue before the Panel is whether to admit evidence contained in Paras' January 6, 2014 letter requesting a reconsideration hearing. Specifically, the Panel is faced with determining whether it may consider evidence of good faith efforts made prior to the bid submission due date but not presented to the OCR by the five (5) day deadline after the bid opening.

The administrative reconsideration regulations are silent on this specific issue, merely stating:

As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.⁶⁶

The regulations permit recipients such as MnDOT to require documentation of good faith efforts either: (1) at the time of bid opening as a matter of responsiveness; or (2) after the bid opening at any time before a recipient commits to the performance of the contract by the bidder as a matter of responsibility.⁶⁷ Bidders must submit written documentation of its good faith efforts to meet the contract goal. Recipients are required to ensure all information is complete, accurate and adequately documents the bidder's good faith efforts prior to committing to the contract. Recipients are required to consider the above factors when assessing whether a contractor has made good faith efforts to achieve the contract goal.⁶⁸

OCR issued new Special Provisions to the MnDOT contract specifications in August of 2010 (hereinafter "Special Provisions") outlining the requirements for bidders looking to obtain MnDOT contracts.⁶⁹ These Special Provisions set clear expectations and timelines regarding DBE goals and good faith efforts.⁷⁰ The Special Provisions specify that all information relating to good faith efforts must be submitted by the fifth business day after the bid letting date, unless the MnDOT OCR director grants a written extension for

⁶³ *Pope Cnty. Mothers v. Minn. Pollution Control Agency*, 594 N.W.2d 233, 236 (Minn.App.1999).

⁶⁴ *In re Review of 2005 Annual Automatic Adjustment of Charges for All Electric & Gas Utils.*, 768 N.W.2d 112, 120 (Minn.2009).

⁶⁵ *In re Administrative Reconsideration Hearing Request ex rel. Cent. Specialties, Inc.*, 2012 WL 3641295 (Minn. App.), 3 (Minn. App. 2012) (citing *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001)).

⁶⁶ 49 C.F.R. Pt. 26.53(d)(1) (2011).

⁶⁷ 49 C.F.R. Pt. 26.53(b)(3).

⁶⁸ 49 C.F.R. Pt. 26, App. A § II; see also *C.S. McCrossan Const., Inc. v. Minnesota Dept. of Transp.*, 946 F.Supp.2d 851, 854 (D. Minn. 2013).

⁶⁹ OCR DBE Special Provisions (August 2010).

⁷⁰ *Id.* at 1.

good cause.⁷¹ The Special Provisions warn that

FAILURE TO SUBMIT ALL REQUIRED INFORMATION WITHIN THE ALLOWED FIVE BUSINESS DAY PERIOD WILL RESULT IN REJECTION OF YOUR BID ON THE BASIS THAT YOU ARE NOT A RESPONSIBLE BIDDER. PARTIAL SUBMISSIONS WILL NOT BE CONSIDERED.⁷²

These Special Provisions were revised in May 2011 to include an updated Certificate of Good Faith Efforts Consolidated Form.⁷³ OCR sent out a letter to contractors notifying them of the updated provisions, providing information on the evaluation period of the Special Provisions and discussed upcoming trainings.⁷⁴

As part of its request for consideration (dated January 6, 2014) and in additional submissions to the Panel (dated January 29 and 31, 2014), Paras included additional subcontractor and supplier quotes which appear to have been received by Paras prior to the submission due date, but which were omitted from the good faith efforts documentation that Paras submitted to the OCR. The panel notes that it is a bidder's obligation to document its good faith efforts; Appendix A to the DBE Regulations state, "...even if it doesn't meet the goal, the bidder can document adequate good faith efforts."⁷⁵ Bidders should do a thorough job of documenting good faith efforts on the forms required by OCR, rather than waiting for the reconsideration process. In this case, however, the Panel believes that rejecting the January 6, January 29, and January 31, 2014 evidence submitted by Paras would elevate procedure over substance.

The Panel believes it would be disregarding the federal DBE regulations if it were to ignore *bona fide* good faith efforts conducted prior to the bid submission but which were not submitted by the five (5) day deadline through inadvertence or neglect. The Panel questioned OCR as to why it opposed admitting this evidence and OCR stated its concern for treating all prospective bidders equally.⁷⁶ While the Panel notes the extreme importance of preserving the equity in the bidding process, it believes that admitting this evidence would not substantially prejudice other prospective bidders by considering documents created prior to the submission deadline which have a direct bearing on the apparent low bidder's good faith efforts, but which were not submitted to OCR within the five (5) day deadline. Unlike post-submission efforts, the mere documentation of pre-submission efforts does not harm other bidders in the contracting process because all bidders are required to make all necessary and reasonable steps to achieve a DBE goal. Admitting Paras' additional submission does not overlook this requirement; it simply allows the Panel to make its determination with an accurate and complete understanding of the facts surrounding the bidder's efforts in achieving the DBE goal.

Because there is no federal regulation requiring a recipient to reject information regarding pre-bid good faith efforts and because accepting the Paras submission would not prejudice or harm other bidders the Panel hereby admits the evidence submitted by the apparent low bidder Paras after the five (5) day good faith efforts deadline to the extent that such evidence is relevant to Paras' good faith efforts within the allowable time period. The Panel notes that this rule shall be limited in application and applied on a case-by-case basis in order to weigh the goal of the federal regulations with the equity in the contracting process. Bidders should submit all required documents and related supporting documents to the OCR by

⁷¹ *Id.* at 4.

⁷² *Id.*

⁷³ OCR DBE Special Provisions (May 2011).

⁷⁴ Letter from OCR to Contractors (May 9, 2011).

⁷⁵ 49 C.F.R. Pt. 26, App. A (emphasis added).

⁷⁶ T. 22:4-9.

the submission deadline and not wait until an administrative hearing is conducted to submit thorough documentation of good faith efforts.

B. Failure to Meet DBE Contract Goal

In order to prohibit recipients from establishing quota programs, the federal regulations focus on goals for recipients to set on transportation contracts.⁷⁷ Bidders bidding for these contracts may either: (1) meet the DBE participation goal percentage; or (2) submit documentation evidencing the prime contractor made good faith efforts to meet the contract DBE goal.⁷⁸ A "good faith effort" is described as taking all "necessary and reasonable steps to achieve a DBE goal."⁷⁹ Recipients are required to use fair and reasonable judgment to determine whether bidders made a good faith effort.⁸⁰ The Department of Transportation advises that there is no one-size-fits-all approach and that recipients must make intrinsic fact-specific judgments.⁸¹ Furthermore, the regulations insist that mere *pro forma* efforts do not constitute good faith efforts, rather recipients are required to assess the quality, quantity and intensity of the efforts the bidder has made to determine if they were "actively and aggressively trying to obtain DBE participation."⁸² Thus the regulations specifically prohibit ignoring *bona fide* good faith efforts.⁸³

If a contractor fails to meet the DBE participation goal set by a recipient, it must submit documentation evidencing the contractor made sufficient good faith efforts to meet the contract DBE goal.⁸⁴ It is undisputed that Paras failed to meet the 4.2% goal established by OCR for S.P. 119-010-005. There is some dispute regarding the actual achieved goal. Paras asserted in its good faith efforts submittal on September 23, 2013 that its DBE participation was 0%, however in OCR's rejection letter it calculated DBE participation at 1.6%.⁸⁵ Paras argued that it entered 0% DBE participation in the OCR good faith efforts form because other than the single DBE subcontractor, it did not plan on using other DBEs.⁸⁶ Regardless whether Paras' DBE goal achieved was 0% or 1.6%, both numbers remain far below the goal OCR set for the project thus requiring the Panel to analyze whether Paras made good faith efforts to meet the DBE contract goal.

C. Good Faith Efforts

Appendix A of the federal regulations outlines the eight (8) factor analysis to determine whether or not a contractor, in fact, made good faith efforts to meet the contract goal.⁸⁷ The factors are not exhaustive, exclusive, or mandatory.⁸⁸ For the purposes of clarity the Panel will analyze each of the factors separately.

⁷⁷ 49 C.F.R. Pt. 26.43(a).

⁷⁸ 49 C.F.R. Pt. 26.53(a).

⁷⁹ 49 C.F.R. Pt. 26, App. A § I (2011).

⁸⁰ 49 C.F.R. Pt. 26, App. A § II.

⁸¹ U.S. Department of Transportation, *What Are the Good Faith Efforts Procedures Recipients Following Situations Where There are Contract Goals*, June 25, 2013.

⁸² U.S. Department of Transportation, *What Are the Good Faith Efforts Procedures Recipients Following Situations Where There are Contract Goals*, June 25, 2013.

⁸³ 49 C.F.R. Pt. 26, App. A § III (2011).

⁸⁴ 49 C.F.R. Pt. 26.53(a).

⁸⁵ Transcript of Paras Contracting DBE Reconsideration Hearing 28:18, 12:16, Feb. 4, 2014; Letter from OCR to Paras Contracting, at 1 (Dec. 30, 2013).

⁸⁶ T. 29:16-21.

⁸⁷ 49 C.F.R. Pt. 26, App. A.

⁸⁸ *Id.*, § IV.

1. Soliciting Through All Reasonable and Available Means

First, a bidder should solicit the interest of all certified DBEs through all reasonable and available means.⁸⁹ This includes taking the appropriate steps to follow-up on initial bid solicitations.⁹⁰ Paras admitted on the record that it did not solicit DBEs or any non-DBEs to bid on the project.⁹¹ Therefore the Panel finds that, by its own admission, Paras failed to meaningfully solicit DBEs actively and aggressively as the regulations require.⁹²

Even if it had alleged that it solicited DBEs through telephone, e-mail or facsimile communications, the bidder must solicit interested DBEs within sufficient time to allow the DBEs to respond to the solicitation.⁹³ Paras stated that it ordered the project plans on September 18, 2013 and submitted its bid the following day on September 19, 2013.⁹⁴ The Panel does not believe that twenty-four (24) hours is sufficient time for DBEs to review project plans and specifications, and prepare adequate or accurate bids. Even though it decided only at the last minute, and apparently upon urging from the local contracting agency, to submit a bid, there were still proactive steps that Paras could have taken. For example, there was no evidence that Paras consulted the Minnesota Unified Certification Program (MnUCP) DBE directory, or reached out to any DBEs by telephone, email or facsimile, actions which could still have been taken even in the limited timeframe. Relying on subcontractors and suppliers to contact Paras after seeing Paras' name on a plan holder's list is not the type of "active and aggressive" efforts required by the regulations. Therefore the Panel finds that Paras did not adequately solicit DBEs pursuant to the federal regulations.⁹⁵

The local contracting agency perhaps should have allotted more time for the rebid of this project after rejecting the initial bids. That decision on the part of the local contracting agency, however, does not change the analysis under the federal DBE regulations.

2. Breaking Out Contract Work

Second, a bidder should break out portions of the contract work (otherwise known as de-bundling) to be performed by DBEs to increase the likelihood the goal will be achieved, even if a prime contractor might prefer to self-perform.⁹⁶ Paras stated at the hearing that it would not have work for its own employees or be in business if it was required to select portions of the work to be performed by DBEs or break out the contract.⁹⁷ The regulations state that, where appropriate, firms may break contract items into economically feasible units to facilitate DBE participation, even if the contractor might otherwise prefer to self-perform.⁹⁸

At the reconsideration, Paras noted that it is a concrete contractor and that if it were required to subcontract out the work to pour concrete, they would go out of business. There is nothing in the record to indicate that Paras even considered subcontracting some of the work it preferred to self-perform, so the

⁸⁹ *Id.*, § IV(A).

⁹⁰ *Id.*

⁹¹ *Id.* at 28:12; 31:17.

⁹² 49 C.F.R. Pt. 26, App. A § II.

⁹³ 49 C.F.R. Pt. 26, App. A § IV(A).

⁹⁴ T. 28:8-9.

⁹⁵ 49 C.F.R. Pt. 26, App. A § II (2011).

⁹⁶ 49 C.F.R. Pt. 26, App. A § IV(B).

⁹⁷ T. 29:10-14.

⁹⁸ 49 C.F.R. Pt. 26, App. A § IV(C).

Panel does not need to reach the issue of whether such de-bundling was infeasible. The bid did, however, include subcontracts for work such as electrical and testing which Paras does not self-perform, some of which work went to a DBE.⁹⁹

Therefore based on the record before the Panel, it holds that Paras gave no real consideration to self-performing less of the contract, but did break out a very minor amount of work Paras is not able to self-perform for a DBE opportunity.

3. Providing DBEs Plan and Specification Information in a Timely Manner

Third, a bidder should provide DBEs with adequate information regarding contract plans and specifications in a timely manner.¹⁰⁰ At the administrative reconsideration Paras stated that it spoke with the project engineer on approximately September 15, 2013, which was four (4) days prior to bid opening, and admitted it did not know if it would have time to bid the project.¹⁰¹ Paras admitted to informing the project engineer it "got such a late start in all of [its] subcontract work with the other contractors, it's been behind."¹⁰² Finally, Paras stated that it purchased the plan one day prior to the bid opening.¹⁰³

This is a very limited time frame requiring an extremely quick turnaround for interested bidders to submit their bids. Furthermore, Paras stated that it did not solicit any quotes from any firms.¹⁰⁴ Because Paras was limited to a twenty-four (24) hour window with which to solicit quotes and because Paras admits to not soliciting firms the Panel finds that there was no way for Paras to provide DBEs with plans or specifications in a timely manner. It would have taken significant proactive efforts, such as telephone contacts, on Paras' part to meet this requirement and there is simply no record of any proactive effort to make a good faith effort to meet the DBE goal.

4. Negotiating in Good Faith; Additional Costs

Fourth, a bidder should negotiate in good faith with DBEs and include evidence of negotiations to facilitate DBE participation or evidence why additional agreements could not be reached for DBEs to perform work.¹⁰⁵ The Regulations further require bidders to use good business judgment in negotiating with DBEs to consider a firm's price and capabilities.¹⁰⁶ Negotiations must not include bid shopping (releasing information of a subcontractor's bid in order to decrease the bid price) or bid chopping (informing subcontractors they must decrease the price in order to be awarded the subcontract).¹⁰⁷ Contractors "can enter into negotiations with a DBE [subcontractor] in good faith without divulging the solicited bids or the prices."¹⁰⁸

Some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE goal however if a price difference is excessive or unreasonable prime contractors are not required to accept the higher DBE quote.¹⁰⁹ Minnesota Courts note that meeting a quantitative

⁹⁹ T. 29:10-12; 9:1-25.

¹⁰⁰ *Id.*

¹⁰¹ T. 8:24-9:9.

¹⁰² *Id.*

¹⁰³ T. 28:8.

¹⁰⁴ T. 28:12.

¹⁰⁵ 49 C.F.R. Pt. 26, App. A § IV(D)(1).

¹⁰⁶ 49 C.F.R. Pt. 26, App. A § IV(D)(2).

¹⁰⁷ See *C.S. McCrossan Const., Inc. v. Minn. Dep't of Transp.*, 946 F.Supp.2d 851, 864 (D. Minn. 2013).

¹⁰⁸ *Id.*

¹⁰⁹ 49 C.F.R. Pt. 26, App. A § IV(D)(2).

formula is not required and it is appropriate to adopt a multi-factor approach to consider "the total size of the project, the scope of work, a comparison of DBE price versus the non-DBE price and whether the higher DBE price, taken by itself was a reasonable quote."¹¹⁰

The total amount of Paras' bid was \$282,196.20.¹¹¹ The scopes of work on the project that Paras received quotes for included: ADA panels, electrical traffic signals, testing, excavation, crosswalk markings, and concrete which Paras self-performs.¹¹² Paras received quotes from two¹¹³ DBEs for two different scopes of work, one of which Paras included in its bid and the second it rejected.¹¹⁴ The first DBE quote was for ADA panels in the amount of \$4,378.44 and the competing quote for ADA panels from a non-DBE was in the amount of \$5,600.00.¹¹⁵ Paras used the lower DBE quote in its bid.¹¹⁶

The second DBE quote Paras received was for \$40,300.00 for electrical traffic signals.¹¹⁷ The non-DBE electrical traffic signal quote was for \$21,600.¹¹⁸ Paras rejected the quote from the DBE for electrical work because it was \$18,700.00 more than the lowest electrical subcontract bid.¹¹⁹ The Panel inquired as to why Paras felt a difference of approximately \$20,000 made the DBE quote unreasonably higher and asked how Paras analyzed whether to accept the higher DBE quote.¹²⁰ Paras stated that their work is based on production.¹²¹ Paras stated that the electrical quotes contained the same specifications of material, but for twice the price.¹²² Paras did not provide any evidence of any effort to negotiate with the rejected DBE.

The Panel finds that due to the limited size of the project, the scopes of work, and the fact that the DBE electrical traffic signal quote was \$18,700 higher than the non-DBE quote, it was not unreasonable for Paras to reject the DBE quote. The panel finds that due to the limited size of the project and the excessive price difference between the DBE and non-DBE quotes, Paras was not required to accept the higher DBE quote therefore this factor does not weigh against a finding of good faith efforts. However, as noted above, the panel found no evidence of any attempt to negotiate the quote price with the rejected DBE.

5. Not Rejecting DBEs Without Sound Reason

Fifth, a bidder should not reject DBEs for being unqualified without sound reason.¹²³ The Regulations clarify that a contractor's standing within its industry and membership in specific groups, political or social affiliations are not legitimate grounds for rejecting a bid or failing to solicit bids.¹²⁴ There is no evidence or information on the record regarding this factor therefore the Panel finds it non-dispositive.

¹¹⁰ *Administrative Reconsideration Hearing Request by Central Specialties, Inc.*, No. TRP/286/DBE/2011 at *11 (Minn. App. Aug. 27, 2012) (citing 49 C.F.R. Pt. 26, App. A § II).

¹¹¹ Letter from OCR to Paras Contracting (Dec. 30, 2013).

¹¹² OCR Additional Submission 1 at 3-4 (Sept. 23, 2013); T. 6:24-25.

¹¹³ Paras attested it received an alleged third DBE quote from a veteran-owned business, Red River, but the Panel notes this firm is not a MnUCP certified DBE. *See infra*, at 3.

¹¹⁴ T. 9:10-24.

¹¹⁵ Letter from Paras Contracting to MnDOT at 4 (Jan. 8, 2014).

¹¹⁶ T. 9:11-13.

¹¹⁷ Letter from Paras Contracting to MnDOT at 3 (Jan. 8, 2014).

¹¹⁸ OCR Additional Submission 1 at 4 (Sept. 23, 2013).

¹¹⁹ T. 9:22-24.

¹²⁰ T. 40:14-20.

¹²¹ *Id.* 23.

¹²² T. 41:13-17.

¹²³ *Id.*, § IV(E).

¹²⁴ *Id.*

6. Assisting DBEs in Bonding, Credit

Sixth, a bidder should make efforts to assist DBEs in obtaining bonding, credit and/or insurance.¹²⁵ There is no evidence or information on the record regarding this factor and due to the limited window with which Paras obtained project plans and submitted a bid, the Panel finds that this factor is non-dispositive in its analysis.

7. Assisting DBEs in Obtaining Equipment, Supplies

Seventh, a bidder should assist DBEs in obtaining equipment, supplies and/or materials.¹²⁶ As in the fifth and sixth factors, there is no evidence or information on the record regarding this factor and due to the limited window with which Paras obtained project plans and submitted a bid, it would have been extremely difficult for Paras to assist DBEs in obtaining equipment and supplies prior to the bid submission deadline.

8. Effectively Using Community Organizations

Eighth, a bidder should effectively use the services of minority and women community organizations, contractors' groups, business assistance offices and other organizations.¹²⁷ As in the above fifth-seventh factors, there is no information in the record evidencing Paras' willingness to work with community organizations. The Panel encourages Paras to look into women and minority community organizations, contractors' groups, public assistance offices and other organizations to assist Paras in soliciting, working and reaching out to DBEs. Paras may also consider recruiting DBEs to work with them in future projects since it asserted that it earns its profit through production thus evidencing a continuing, regular need of subcontracting firms.

D. Other Considerations

Additionally, recipients may take into account the performance of other bidders in meeting the contract goal to evidence whether, with additional reasonable efforts, a successful bidder could have met the goal.¹²⁸ According to OCR, another bidder was able to meet and exceed the goal for this project.¹²⁹ The question arises, therefore, whether Paras could have met the goal with additional reasonable efforts.¹³⁰ Paras did not assert, nor does the record reflect, any additional actions it took to reach out to DBEs in any of the eight (8) above factors or through any other means. Therefore the Panel finds that this factor weighs against a finding of good faith efforts.

¹²⁵ *Id.*, § IV(F).

¹²⁶ *Id.*, § IV(G).

¹²⁷ *Id.*, § IV(H).

¹²⁸ 49 C.F.R. Pt. 26, App. A §V.

¹²⁹ T. 26:24-25.

¹³⁰ 49 C.F.R. Pt. 26, App. A § V.

V. CONCLUSION

Based on the record made available by both parties and the above-mentioned analysis, the Panel concludes that Paras Contracting failed to evidence adequate good faith efforts to solicit DBEs because it failed to solicit any firms, failed to undertake significant effort to de-bundle work, and failed to negotiate with DBEs. The Panel concludes that OCR made a fair and reasonable determination that Paras failed to demonstrate adequate good faith efforts as required by 49 C.F.R., Part 26 and the MnDOT Panel affirms OCR's determination that Paras' bid was non-responsible.

Feb 11, 2014
Date: February 10, 2014

Jim Cowrie
Jim Cowrie, For the Administrative
Reconsideration Panel of February 4, 2014

RESOLUTION NO. 14 – 03 - 28

**RESOLUTION ORDERING ADVERTISEMENT FOR BIDS FOR 2013 CITY PROJECT
NO. ONE – SIDEWALK IMPROVEMENTS (TE)**

Council Member _____, supported by Council Member _____, introduced the following resolution and moved its adoption:

WHEREAS, the City Council had directed the City Engineer to prepare plans and specifications for the improvement of 2013 City Project No. 1 – Sidewalk Improvements (TE) which were already approved;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST GRAND FORKS, MINNESOTA:

The City Administrator shall prepare and cause to be inserted in the official paper and in the *Construction Bulletin* an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published for 21 days, shall specify the work to be considered by the Council at 5:00 p.m. on April 15, 2014 in the Council Chambers of the East Grand Forks City Hall. Any bidder whose responsibility is questioned during consideration of the bid will be given an opportunity to address the council on the issue of responsibility. No bids will be considered unless sealed and filed with the City Administrator and accompanied by a cash deposit, cashier’s check, bid bond or certified check payable to the City of East Grand Forks for five percent of the amount of such bid.

Voting Aye:

Voting Nay:

The President declared the resolution passed.

Passed: March 18, 2014

Attest:

City Administrator

President of Council

I hereby approve the foregoing resolution this 18th of March, 2014.

Mayor

Request for Council Action

Date: March 6, 2014

To: East Grand Forks City Council, Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Henry Tweten, Chad Grassel, Mark Olstad and Dale Helms.

Cc: File

From: Greg Boppre, P.E.

RE: 2014 Assessment Job No. 1 – 17TH Street NE Reconstruction

Background:

I would like to file plans and specifications for the above referenced project, get authorization to advertise and set the bid date(April 8th). The project is our 2014 Sub-Target project for the four year rotation with Federal funds

The following is the estimated budget:

PROPOSED FUNDING

Construction	\$1,033,437.00	Federal	\$737,840.00
Plans/Spec's	\$124,012.44	Local	<u>\$605,628.10</u>
Stake/Inspection	\$82,674.96	TOTAL	\$1,343,468.10
Contingencies	\$51,671.85		
Admin/Legal	<u>\$51,671.85</u>		
TOTAL	\$1,343,468.10		

The local portion will come from special assessing, therefore we will have to prepare a report of feasibility, which will identify the cost and the benefitted properties.

Recommendation:

Approve the filing of the plans and specifications

Enclosures:

cost estimate

ENGINEER'S ESTIMATE OF COST

City of East Grand Forks

S.P. 119-080-011

Widseth Smith Nolting
 1600 Central Avenue NE
 East Grand Forks, MN 56721
 Phone: 218-773-1185
 Fax: 218-773-3348
 WSN Project No. 0706G0018
 Date: December 16, 2013



STATEMENT OF ESTIMATED QUANTITIES				ENGINEER'S ESTIMATE	
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
2021.501	Mobilization	LUMP SUM	1	\$10,000.00	\$10,000.00
2104.501	Remove Sewer Pipe (Storm)	LIN. FT.	1409	\$25.00	\$35,225.00
2104.501	Remove Curb and Gutter	LIN. FT.	3574	\$4.00	\$14,296.00
2104.503	Remove Sidewalk	SQ. FT.	1015	\$3.00	\$3,045.00
2104.505	Remove Pavement	SQ. YD.	8438	\$7.50	\$63,285.00
2104.505	Remove Concrete Driveway Pavement	SQ. YD.	507	\$6.50	\$3,295.50
2104.509	Remove Casting	EACH	1	\$500.00	\$500.00
2104.509	Remove Sign	EACH	1	\$30.00	\$30.00
2104.509	Remove Drainage Structure	EACH	16	\$500.00	\$8,000.00
2104.511	Sawing Concrete Pavement (Full Depth)	LIN. FT.	378	\$9.00	\$3,402.00
2104.513	Sawing Bit Pavement (Full Depth)	LIN. FT.	148	\$5.50	\$814.00
2104.523	Salvage Sign	EACH	5	\$30.00	\$150.00
2104.523	Salvage Sign Support	EACH	4	\$30.00	\$120.00
2104.523	Salvage Casting	EACH	2	\$50.00	\$100.00
2104.602	Salvage Sign Special	EACH	2	\$50.00	\$100.00
2105.501	Common Excavation (P)	CU. YD.	3366	\$6.00	\$20,196.00
2105.604	Geogrid	SQ. YD.	9073	\$2.50	\$22,682.50
2112.604	Subgrade Preparation	SQ. YD.	9073	\$3.00	\$27,219.00
2211.607	Aggregate Base(10")	CU. YD.	2510	\$25.00	\$62,750.00
2301.504	Concrete Pavement 8.0"	SQ. YD.	7603	\$50.00	\$380,150.00
2360.503	Type SP 12.5 Wear CRS Mix (2,B) 4.0" Thick	SQ. YD.	129	\$90.00	\$11,610.00
2401.608	Reinforcement Bars (Epoxy Coated)	POUND	3600	\$3.50	\$12,600.00
2502.541	4" Perforated Drain Tile	LIN. FT.	3440	\$4.00	\$13,760.00
2503.511	12" RC Pipe Sewer	LIN. FT.	449	\$45.00	\$20,205.00
2503.511	15" RC Pipe Sewer	LIN. FT.	135	\$50.00	\$6,750.00
2503.511	18" RC Pipe Sewer	LIN. FT.	511	\$60.00	\$30,660.00
2503.511	24" RC Pipe Sewer	LIN. FT.	39	\$80.00	\$3,120.00
2504.602	Adjust Gate Valve & Box	EACH	4	\$250.00	\$1,000.00
2506.502	Const Drainage Structure Design A	EACH	16	\$1,200.00	\$19,200.00
2506.502	Const Drainage Structure Design C	EACH	1	\$3,500.00	\$3,500.00
2506.502	Const Drainage Structure Design G	EACH	5	\$5,500.00	\$27,500.00
2506.516	Casting Assembly, Type A	EACH	16	\$1,500.00	\$24,000.00
2506.516	Casting Assembly, Type B	EACH	4	\$3,000.00	\$12,000.00
2506.516	Casting Assembly Type C	EACH	2	\$1,000.00	\$2,000.00
2521.501	4" Concrete Sidewalk	SQ. FT.	10425	\$5.00	\$52,125.00
2531.501	Concrete Curb and Gutter, Design B624	LIN. FT.	3599	\$18.00	\$64,782.00
2531.618	Truncated Domes	SQ. FT.	33	\$50.00	\$1,650.00
2531.507	6" Concrete Driveway Pavement	SQ. YD.	478	\$50.00	\$23,900.00
2563.601	Traffic Control	LUMP SUM	1	\$15,000.00	\$15,000.00
2564.536	Install Sign Panel	EACH	5	\$200.00	\$1,000.00
2654.537	Install Sign Panel Special	EACH	2	\$200.00	\$400.00
2564.602	Furnish Sign Post	EACH	2	\$300.00	\$600.00
2564.602	furnish Sign Panel (Stop Sign)	EACH	2	\$300.00	\$600.00
2573.530	Storm Drain inlet Protection	EACH	16	\$300.00	\$4,800.00
2574.525	Common Topsoil Borrow (LV)	CU. YD.	260	\$12.00	\$3,120.00
2575.501	Seeding	ACRE	1.23	\$10,000.00	\$12,300.00
2582.502	24" Stop Line White-Epoxy	LIN. FT.	36	\$5.00	\$180.00
2582.502	4" Broken Line Yellow - Epoxy	LIN. FT.	430	\$5.50	\$2,365.00
2582.503	Crosswalk Marking-Epoxy	SQ. FT.	210	\$35.00	\$7,350.00
TOTAL=					\$1,033,437.00

RESOLUTION NO. 14 – 03 - 29

**RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDERING
ADVERTISEMENT FOR BIDS FOR 2014 ASSESSMENT JOB NO. 1 – 17TH STREET NE
RECONSTRUCTION**

Council Member _____, supported by Council Member _____, introduced the following resolution and moved its adoption:

WHEREAS, the City Council has directed the City Engineer to prepare plans and specifications for the improvement of 2014 Assessment Job No. 1 – 17th Street NE Reconstruction;

WHEREAS, the City Engineer has presented such plans and specifications to the Council for approval;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST GRAND FORKS, MINNESOTA:

1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.
2. The City Administrator shall prepare and cause to be inserted in the official paper and in the *Construction Bulletin* an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published for 21 days, shall specify the work to be considered by the Council at 5:00 p.m. on April 15, 2014 in the Council Chambers of the East Grand Forks City Hall. Any bidder whose responsibility is questioned during consideration of the bid will be given an opportunity to address the council on the issue of responsibility. No bids will be considered unless sealed and filed with the City Administrator and accompanied by a cash deposit, cashier's check, bid bond or certified check payable to the City of East Grand Forks for five percent of the amount of such bid.

Voting Aye:

Voting Nay:

The President declared the resolution passed.

Passed: March 18, 2014

Attest:

City Administrator

President of Council

I hereby approve the foregoing resolution this 18th of March, 2014.

Mayor

Request for Council Action

Date: March 6, 2015

To: East Grand Forks City Council, Mayor Lynn Stauss, President Craig Buckalew, Council Vice President Greg Leigh, Council Members: Clarence Vetter, Henry Tweten, Chad Grassel, Mark Olstad and Dale Helms.

Cc: File

From: Greg Boppre, P.E.

RE: 2015 City Project No. 1 – Stabilization Ponds

Background:

I would like to get permission to start the design phase of the stabilization pond project. We had a very successful meeting with MPCA and PFA on Tuesday, March 4.

Recommendation:

Permission to start design of the stabilization ponds

Enclosures:

N/A

RESOLUTION NO. 14 – 03 - 30

Council Member _____, supported by Council Member _____, introduced the following resolution and moved its adoption:

WHEREAS, The City of East Grand Forks has updated the facility plan for an upgrade to the stabilization ponds;

WHEREAS, the City had previously set up a timeline to move forward with this project which included having plans and specifications for the chosen project to start on or before September 2014;

WHEREAS, after a meeting with the Minnesota Pollution Control Agency the City has been encouraged to start the process;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST GRAND FORKS, MINNESOTA gives permission to the City Engineers to start the designing phase of the stabilization ponds project which will not exceed \$700,000 as agreed upon by both parties and ratified by the adoption of the amendment to the engineering contract by Resolution No. 13-12-115.

Voting Aye:

Voting Nay:

The President declared the resolution passed.

Passed: March 18, 2014

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 18th day of March, 2014.

Mayor

RESOLUTION NO. 14 – 03 – 31

Council Member _____, supported by Council Member _____, introduced the following resolution and moved its adoption:

RESOLUTION RATIFYING CONTRACTS

WHEREAS, the City of East Grand Forks purchased from Hardware Hank the goods referenced in check number 18297 for a total of \$504.81.

WHEREAS, Craig Buckalew, was personally interested financially in the contract, but the purchases were made because the price was as low as or lower than other local vendors.

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF EAST GRAND FORKS:

1. The above mentioned purchase by the City and the claim of the vendor based thereon are confirmed and the Mayor and Clerk are directed to issue an order-check in payment of such claim on the filing of the affidavit of official interest required under Minnesota Statutes, Section 471.89.
2. It is hereby determined that the total price of \$504.81 paid for such goods is as low as, or lower than, the price at which they could have been obtained elsewhere at the time the purchase was made.
3. This resolution is passed to comply with the provisions of Minnesota Statutes, Section 471.87-89.
4. Resolution passed by unanimous vote of the council on March 18, 2014.

Voting Aye:
Voting Nay:
Abstain:

The President declared the resolution passed.

Passed: March 18, 2014

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 18th of February, 2014.

Mayor

AFFIDAVIT OF OFFICIAL INTEREST CLAIM

STATE OF MINNESOTA)
COUNTY OF POLK) ss
CITY OF EAST GRAND FORKS)

I, Craig Buckalew, being duly sworn states the following:

1. I am 3rd Ward Council Member of the City of East Grand Forks.
2. The City of East Grand Forks check number 18297 for a total of \$504.81.
3. This resolution is passed to comply with the provisions of Minnesota Statutes, Section 471.87-89.
4. Resolution passed by unanimous vote of the council on March 18, 2014.

Affiant states further that to the best of his knowledge and belief (a) the contract price was as low as or lower than the price at which the services could be obtained from other sources.

Affiant further states that the affidavit constitutes a claim against the city for the contract price, that the claim is just and correct, and that no part thereof has been paid.

Dated: _____

(Signature of Official)

Accounts Payable

Check Register Totals Only



City of East Grand Forks

P. O. Box 373
 East Grand Forks, MN 56721
 (218) 773-2483

User: lkatka
 Printed: 3/12/2014 - 11:30 AM

Check	Date	Vendor No	Vendor Name	Amount	Voucher
18262	03/18/2014	ADV001	Advanced Business Methods Inc	263.20	0
18263	03/18/2014	AME002	American Tire Service	32.00	0
18264	03/18/2014	AME005	Ameripride Linen & Apparel Services	441.95	0
18265	03/18/2014	ANY001	Anytime Plumbing	217.60	0
18266	03/18/2014	AQU001	Aqua Water Solutions	65.45	0
18267	03/18/2014	AUT001	Auto Glass & Aftermarket Inc	452.62	0
18268	03/18/2014	BRI004	Brians Flooring	6,680.00	0
18269	03/18/2014	BRI003	Brite-Way Window Cleaning	65.00	0
18270	03/18/2014	BRU006	Mike Brundin	114.00	0
18271	03/18/2014	BRU005	Dave Bruner	75.00	0
18272	03/18/2014	C&R001	C&R Laundry & Cleaners	240.48	0
18273	03/18/2014	CAB001	Cabela's Retail	96.16	0
18274	03/18/2014	CAN001	Canon Financial Services	136.23	0
18275	03/18/2014	CEN006	Century Link	43.47	0
18276	03/18/2014	CER001	Certified Laboratories	310.00	0
18277	03/18/2014	COA001	Coalition of Greater MN Cities	286.00	0
18278	03/18/2014	COL002	Cole Papers Inc	11.95	0
18279	03/18/2014	CON004	Paul Consing	25.00	0
18280	03/18/2014	CRE001	Creative Product Source Inc	262.62	0
18281	03/18/2014	CTM001	CTM Services Inc.	389.16	0
18282	03/18/2014	DIG002	Digital-Ally Inc	40.00	0
18283	03/18/2014	EAG001	Eagle Electric	135.94	0
18284	03/18/2014	EGF006	EGF City Petty Cash Ckng	23.10	0
18285	03/18/2014	EXP003	Explorer Post #38	150.00	0
18286	03/18/2014	EXP002	Exponent	30.00	0
18287	03/18/2014	FAS001	Fastenal Company	24.78	0
18288	03/18/2014	FER001	Ferrellgas	291.38	0
18289	03/18/2014	FOR009	Forx Builders Association	395.00	0
18290	03/18/2014	FOR004	Forx Radiator	816.99	0
18291	03/18/2014	G&K001	G&K Services	210.92	0
18292	03/18/2014	GAF002	Gaffaney's	478.84	0
18293	03/18/2014	GAL003	Galstad Jensen & McCann PA	9,023.75	0
18294	03/18/2014	GEO001	George's Quick Printing	55.00	0
18295	03/18/2014	GFC001	GF City Utility Billing	12,727.25	0
18296	03/18/2014	GRA004	Grand Cities Towing	200.00	0
18297	03/18/2014	HAR001	Hardware Hank	504.81	0
18298	03/18/2014	HAW001	Hawkins Chemical	228.00	0
18299	03/18/2014	HEA001	Heartland Paper	60.12	0
18300	03/18/2014	HIL003	Hildi F Inc	1,650.00	0
18301	03/18/2014	HUG001	Hugo's	23.67	0
18302	03/18/2014	HUR003	Denise Hurd-Poster	25.00	0
18303	03/18/2014	IND006	Indepth Inspections LLC	47,547.50	0
18304	03/18/2014	INT008	Intoximeters Inc	102.84	0
18305	03/18/2014	JOH007	Tom Johnson	50.00	0
18306	03/18/2014	KEL001	Kellermeyer Building Service	855.00	0
18307	03/18/2014	KEN002	Kennedy & Graven, Chartered	577.50	0
18308	03/18/2014	LAK001	Laker Chemical	4,170.00	0
18309	03/18/2014	LAM001	Tim Lamey	25.00	0
18310	03/18/2014	LEA002	League of MN Cities	1,724.00	0
18311	03/18/2014	LIB001	Liberty Business Systems	20.44	0

Check	Date	Vendor No	Vendor Name	Amount	Voucher
18312	03/18/2014	LIT001	Lithia Payment Processing	276.59	0
18313	03/18/2014	LOW001	Lowes	113.94	0
18314	03/18/2014	MAR004	Marco	425.56	0
18315	03/18/2014	MEN001	Menards	27.95	0
18316	03/18/2014	MPO001	Metropolitan Planning Organization	2,750.00	0
18317	03/18/2014	MID003	Midcontinent Communications	1,224.75	0
18318	03/18/2014	MID016	Midwest Pest Control Inc	125.00	0
18319	03/18/2014	MNF001	MN Fire Service Certification Board	75.00	0
18320	03/18/2014	MNM002	MN Municipal Utilities Assoc	434.00	0
18321	03/18/2014	MNP003	MN Pollution Control Agency	5,900.00	0
18322	03/18/2014	MOT001	Motion Industries Inc	19.30	0
18323	03/18/2014	NAT005	National Association of Town Watch	35.00	0
18324	03/18/2014	NEW001	Newman Signs	1,960.00	0
18325	03/18/2014	ORE001	O'Reilly Auto Parts	74.37	0
18326	03/18/2014	ORC002	Roger Orchard	1,145.30	0
18327	03/18/2014	ORI002	Oriental Trading Company Inc	196.98	0
18328	03/18/2014	OSI001	OSI Environmental Inc.	100.00	0
18329	03/18/2014	PET001	Peterson Veterinarian Clinic P.C.	272.00	0
18330	03/18/2014	POL009	Polk County DAC	17.66	0
18331	03/18/2014	PRA001	Praxair Distribution	95.50	0
18332	03/18/2014	PRE001	Premium Waters Inc	28.00	0
18333	03/18/2014	QUI001	Quill Corp	288.34	0
18334	03/18/2014	R&R001	R&R Specialties of Wisconsin Inc	82.95	0
18335	03/18/2014	RDJ001	RDJ Specialties Inc	162.61	0
18336	03/18/2014	RDO001	RDO Powerplan OIB	945.17	0
18337	03/18/2014	RDO003	RDO Truck Centers	3.65	0
18338	03/18/2014	REL002	Reliance Telephone System	64.00	0
18339	03/18/2014	KIR002	Kirk Riemann	155.00	0
18340	03/18/2014	RYD001	Rydell Chevrolet	13.63	0
18341	03/18/2014	SUN002	Sun Dot Communications	89.99	0
18342	03/18/2014	THU002	Thur-O-Clean	2,606.00	0
18343	03/18/2014	TRU001	True Temp	3,524.54	0
18344	03/18/2014	USB001	US Bank	900.00	0
18345	03/18/2014	USB004	US Bank Equipment Finance	129.75	0
18346	03/18/2014	VER001	Verizon Wireless	647.08	0
18347	03/18/2014	VIL001	Vilandre Heating & A/C	219.11	0
18348	03/18/2014	WAS001	Waste Mgmt	31,661.91	0
18349	03/18/2014	WAT001	Water & Light Department	5,402.44	0
18350	03/18/2014	WAV002	Kent Wavra	53.00	0
18351	03/18/2014	WEX001	Wex Bank	41.78	0
18352	03/18/2014	WPR001	WP & RS Mars Co.	171.30	0
18353	03/18/2014	XCE001	Xcel Energy	5,727.59	0
18354	03/18/2014	XER001	Xerox Corporation	20.39	0
				160,581.85	
Check Total:					