AGENDA
OF THE CITY
COUNCIL WORK SESSION
CITY OF EAST GRAND FORKS
TUESDAY, SEPTEMBER 9, 2014 – 5:00 PM

CALL TO ORDER:

CALL OF ROLL:

DETERMINATION OF A QUORUM:

1. **Final Payment to the Army Corps of Engineers – Greg Boppre**
2. **Purchase of Property for Lift Station #5 – David Murphy**
3. **Lease with Northland Community College – David Murphy**
4. **Minnesota Functional Classification Revisions – Earl Haugen**
5. **Update to Land Use Plan – Nancy Ellis/Earl Haugen**
6. **Request to Hire a Code Enforcement Officer – Nancy Ellis**
7. **Discussion of Inspection Service Contract – David Murphy**
8. **Pump Replacement – Jason Stordahl**
9. **Snow Removal Agreement – Megan Nelson**
10. **Sale of the Riverwalk Center – David Murphy**

ADJOURN:

Upcoming Meetings

Regular Council Meeting – September 16, 2014 – 5:00 PM – Council Chambers
Work Session – September 23, 2014 – 5:00 PM – Training Room
Regular Council Meeting – October 7, 2014 – 5:00 PM – Council Chambers
Work Session – October 14, 2014 – 5:00 PM – Training Room

Request for Council Action

Date: 09/05/14

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: Greg Boppre

RE: Final Payment to Army Corps of Engineers

There will be an explanation about the final payment that needs to be made for the flood control project. Included is a letter from the project manager regarding the payment that is being requested. There are funds available for this payment which are separate from the general fund.

Programs and Project Management Division
Project Management Branch A

Honorable Lynn Stauss
Mayor of East Grand Forks
600 Demers Ave
East Grand Forks, Minnesota 56721

Dear Mayor Stauss:

The Corps of Engineers, St. Paul District, is conducting a final accounting of the Grand Forks/East Grand Forks Flood Control Project. This process includes the compilation of final Federal and non-Federal project costs. Your final billing is estimated to be a payment to the Federal Government of $76,288.29.

All project activities have been completed and the labor codes have been shut off. There is a possibility that the lawsuit between contractors could result in a credit to the project or additional labor costs being expended. You will be notified of the difference if this should occur.

The attached spreadsheet summarizes the total local share and your cash submitted to date. The current working estimate includes a detailed summary of all project costs.

Please review the enclosed summary for consistency with your records. If you concur with our figures, please indicate by signing below and returning a scan of this letter to me at bonnie.k.greenleaf@usace.army.mil, along with your check for $76,288.29. If you have any questions or identify any corrections, please contact me at 651-290-5476

Sincerely,

Bonnie K. Greenleaf
Project Manager

Enclosure

Concur with cost data, no additional credits claimed, all final documentation received:

_____

Signature Date

Request for Council Action

Date: September 9, 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: David Murphy, City Administrator

RE: Purchase of Property for Lift Station #5

Background

The Waste Water Collection System requires the construction of a lift station in the area directly to the north of the Parks and Recreation Garage. The lift station will replace the current lift station #5 which was built in 1958 and has outlived it's usefulness. The property that was identified as the most feasible location is currently owned by BNSF Rail Road.

BNSF has indicated that they do not have future plans for the use of the property and would be interested in selling the property to the City and requested that we obtain an appraisal. An appraisal has been completed by Joan L. Johnson of Appraisals and Real Estate Research, Inc.

The appraisal indicates an Estimated Market Value of the property of **$40,000.00**. Staff is requesting authorization from the Council to submit an offer to BNSF to acquire the property.

Greg Boppre and Jason Stordahl will be present at the meeting to discuss the need for the lift station.

Budget Impact

The Waste Water Fund currently has a balance of approximately 3 million and the acquisition costs will be taken from the Waste Water Fund. The funds may possibly be reimbursed as part of the bonding for the Waste Water Treatment Facility.

Letter of Transmittal

File No. 004490

Borrower/Client	NA						
Property Address	Corner of 10th St NE and 5th Ave NE						
City	East Grand Forks	County	Polk	State	MN	Zip Code	56721
Lender	City of East Grand Forks, represented by Mr. David						

July 16, 2014

Mr. David Murphy
City Administrator/Clerk-Treasurer
600 DeMers Avenue
East Grand Forks, Minnesota 56721

Dear Mr. Murphy:

An appraisal has been developed and reported in a summary report format. The report provides the essential data and reported findings which result in a conclusion of an opinion of the market value of the fee simple interest in the subject property. This property is identified as a vacated area of right of way located at the intersection of 10th Street NE and 5th Avenue NE in East Grand Forks, Minnesota .It is noted that this land is currently owned by Burlington Northern Santa Fe Railroad, represented by Mr. Roger Schwinghammer.

The purpose of the appraisal is to provide a supported opinion of market value to the Intended Users/clients or the City of East Grand Forks, and its representatives as well as Burlington Northern Santa Fe Railroad and their representative , Mr. Roger Schwinghammer, owner of the above identified property; as of the effective date of appraisal, or June 24, 2014. The intended use of the appraisal is to assist the clients with decisions relating to the purchase of this parcel of land. No additional intended users have been identified by the clients and the appraiser will not be responsible for consequences stemming from unauthorized use of this appraisal or by unauthorized users.

The site was inspected in current "as is" condition absent regard to former use as railroad right of way. An orderly analysis, of all the factors bearing upon value of this real estate, was completed; concluding with an opinion of market value.

Based on the appraisal investigation and supporting analysis, my opinion of market value of the fee simple interest in the subject property as of June 24, 2014, is concluded as follows:

Indicated Market Value of the Fee Simple Interest in the subject:
Forty Thousand Dollars
($40,000.00)

The appraisal is subject to all definitions, the appraiser's certification, general and specific assumptions and limiting conditions as contained in the written appraisal report. In addition, your attention is directed to the following specific conditions:

1. The appraisal was reported in accordance with the minimum requirements for a Summary Report as required by the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by The Appraisal Foundation and in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. The property interest to be appraised is that of the fee simple interest. The appraisal report presents summary discussions of the data, reasoning, and analyses used in the appraisal process to develop the appraiser's opinion of value. Additional supporting documentation concerning the data, reasoning and analyses is contained in the appraiser's file. The depth of discussion contained in the appraisal report is specific to the needs of the Client/Intended User, and for the intended Use(s), all as stated in the written report. The appraiser is not responsible for unauthorized use of the report.

2. This letter of transmittal is used in conjunction with the written appraisal report to convey the final estimate of market value. It does not, by itself, constitute the written appraisal report in its entirety and, accordingly, it must not be used or represented as such.

3. Information provided by the property owner and others is assumed to be true and correct and it is assumed that no misrepresentation of facts has been made. The legal description for this property was provided by the client or the City of East Grand Forks, through a legal survey completed by Widseth, Smith, Nolting Engineering and Survey Firm.

4. The market value estimate refers to the **fee simple ownership rights,** subject only to the four powers of government. It is important to note that a true fee simple interest seldom exists as nearly all properties are encumbered by some form of easement, reservation and/or private restriction.

5. The market value estimate is based on cash (U.S. Dollars) or its equivalency. The market value estimate does not include consideration of cost that may be incurred through marketing of the property such as broker's fees, holding costs, and/or the time value of money.

6. The appraisal was developed assuming that no adverse environmental conditions exist and that the site is "environmentally clean" relative to federal, state and local laws. (It is noted that the subject site is railroad right of way) This assumption is based on a cursory inspection of the site, which did not reveal any readily apparent environmental limitations. However, since (1) we are not experts in the detection of environmental hazards and liabilities and (2) a complete environmental assessment and site audit are beyond the scope of the appraisal process, the inspection should not be regarded as a complete thorough assessment of the site's environmental status. It is recommended that a complete environmental assessment and site audit be secured in the event that more detailed, accurate information is needed concerning the sites environmental status. This appraisal is subject to revision by and at the discretion of the appraiser in the event that pertinent environmental information is disclosed indicating that such a revision is warranted.

Additional assumptions and limiting conditions, definitions, and the appraisal certification apply to the appraisal and are contained in the written report. Unusual or specific assumptions and limiting conditions have been disclosed in the preceding discussion. **All** assumptions and limiting conditions, definitions and the appraisal certification are fundamental components of the analysis; proper understanding of them is necessary to establish the correct analytical context in which the appraisal has been developed and reported. This transmittal letter is followed by the certification of the appraisal and the **summary appraisal report** containing 96* pages.

Location Map

Borrower/Client	NA						
Property Address	Corner of 10th St NE and 5th Ave NE						
City	East Grand Forks	County	Polk	State	MN	Zip Code	56721
Lender	City of East Grand Forks, represented by Mr. David						

Request for Council Action

Date: September 9, 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: David Murphy, City Administrator

RE: Lease with Northland Community College

Background

Northland Community College has previously addressed the Council in work session to request permission to utilize the North East Quadrant of the City Municipal Parking lot for their Commercial Truck Driving Course. Council directed staff to work with Northland to prepare a Lease Agreement to bring back to Council for consideration.

I have met with representatives from Northland and feel that the agreement as prepared is ready for Council consideration. Please pay close attention to the highlighted portions of the agreement.

Representatives from Northland will be present to answer any questions the Council may have.

Budget Impact

The Lease Agreement as drafted does not have an amount to be paid to the City at this time. I will be looking to Council for direction on whether there should be payment to the City as there has been discussion regarding the development of a parking district in the future. Northland is aware of the potential for payment and stated that is one of the reasons why they are looking at a short initial lease agreement to judge the effectiveness and possible inclusion for participation in maintenance costs.

Minnesota
STATE COLLEGES
& UNIVERSITIES

NON-EXCLUSIVE USE AGREEMENT - MNSCU

THIS AGREEMENT is made by and between City of East Grand Forks, located at 600 Demers Avenue, East Grand Forks, MN 56721, hereinafter referred to as CITY, and the **STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF MINNESOTA STATE COLLEGES AND UNIVERSITIES ON BEHALF OF Northland Community and Technical College**, located at 2022 Central Avenue NE, East Grand Forks, MN 56721, hereinafter referred to as STATE,

WHEREAS, the Board of Trustees of Minnesota State Colleges and Universities is empowered by Minn. Stat. §136F.06, to lease non-state property for use by its colleges and universities, and

WHEREAS, the CITY is the owner of the parking lot, located at the northeast corner, west of 4th Avenue, East Grand Forks, Minnesota, and desires to lease space in the property to STATE, and

NOW THEREFORE, CITY and STATE, in consideration of the rents, covenants and considerations hereinafter specified, do hereby agree each with the other as follows:

1. PREMISES.

   CITY grants and STATE accepts the lease of the following described Premises located in the City of East Grand Forks, County of Polk, Minnesota; more particularly described as:

   Northeast corner, west of 4th Avenue, East Grand Forks, Minnesota:

   Which is attached and incorporated as **Exhibit A** as part of this USE Agreement (hereinafter defined as the "Premises").

2. USE.

STATE shall use and occupy the Premises for higher education purposes and for such activities related to STATE's operation as a Minnesota State Colleges and Universities system member institution leased location, or for any other lawful purpose for the commercial vehicle operation program.

STATE will ensure an instructor will always be either in a vehicle or onsite when students are in driving training. STATE will ensure students and instructor will monitor all training activities and suspend operations when a non-training vehicle or pedestrian enters the training location. STATE will ensure students will drive a commercial vehicle to the location with an instructor in the vehicle and will enter and exit the location utilizing the east (4th Avenue) entrance.

3. TERM.

Subject to Section 4(e), the term of this Agreement shall commence on September 22, 2014, (the "Commencement Date"), and end on January 9, 2015, unless otherwise sooner terminated as provided in this Lease. OMITTTED LANGUAGE

4. TERMINATION.

a. Consistent with Minnesota Statutes, Section 16B.24, Subdivision 6, this Agreement is subject to cancellation upon thirty (30) days written notice by STATE for any reason except lease of other non-state-owned land or premises for the same use.
b. The CITY reserves the right to cancel this agreement with reasonable notice not to exceed _____ days if it is determined at the sole discretion of the CITY that the property is needed for a public purpose or it is determined that the use by the STATE unreasonably interferes with the parking lots intended use.

5. OPERATING EXPENSES AND SERVICES.

a. Operating Expenses for a Gross Lease: CITY shall bear the cost of all typical costs and expenses paid to operate and maintain the parking lot. The STATE shall bear the cost for any damage caused to the parking lot; normal wear and tear is excepted.

b. Exterior Lighting: CITY shall provide adequate exterior lighting in the parking lot.

6. ACCESS TO PREMISES.

STATE shall allow access to the Premises by CITY or its authorized representatives at any reasonable time during the life of this Agreement for the purpose of operation, maintenance, inspection, display and repairs of the Premises.

STATE will contact CITY one week (seven calendar days) prior to use of the space to insure space availability for specific dates and times. Typical STATE hours of operation are Mondays through Thursdays from 9:00 a.m. until 3:00 p.m. and Fridays from 9:00 a.m. until noon.

7. ASSIGNMENT AND SUBLEASE.

STATE shall not assign, sublet, or otherwise transfer its interest in this Agreement.

8. ALTERATION TO PREMISES.

STATE shall make no alterations, additions, or changes in the Premises, without the advance written consent of CITY. CHANGED REMOVED LANGUAGE.

STATE will paint 3" orange dots on the parking lot to mark location of cones, barrels, or barricades to facilitate effective set up. During hours of operation, STATE will section off area of parking lot with cones/barricades prior to 9:00 a.m. to prevent vehicular traffic within leased area. STATE will remove cones/barricades by 3:00 p.m. at the conclusion of hours of operation within leased area.

9. MAINTENANCE AND REPAIRS.

a. Maintenance: CITY shall maintain in working condition and good repair, all appurtenances within the scope of this Agreement.

b. Snow Removal: CITY shall be responsible for removal of snow, ice and debris within the parking lot. Snow plowing, snow shoveling and ice removal must be completed by 8:00 a.m., unless snow or wind conditions make this impractical. If the snow and ice removal is not completed by 8:00 a.m., CITY will make every effort to complete the snow removal as soon as possible.

FOLLOW UP WITH PUBLIC WORKS THIS MAY NOT BE A PRIORITY ITEMS AND NOT IN PUBLIC INTEREST TO PRIORITIZE OVER OTHER STREET CLEANING

10. DESTRUCTION OF LEASED PREMISES

If the Premises is destroyed or damaged by fire, tornado, flood, civil disorder, or any cause whatsoever, so that the Premises become unstable, the STATE shall have the option of terminating this Agreement immediately or allowing CITY such amount of time as STATE deems reasonable to restore the damaged Premises to stable condition.

11. INSURANCE FOLLOW UP WITH OUR CARRIER

General Liability and Property Damage Requirements. It shall be the duty of CITY and STATE to maintain insurance or self-insurance on their own property, both real and personal. For purposes of this Agreement, CITY shall maintain applicable insurance coverage consistent with the coverages outlined on **Exhibit B,** attached hereto and made a part of this Agreement, at CITY's sole expense during the term of this Agreement.

CITY and STATE shall provide each other with evidence of insurance, upon request. Notwithstanding anything apparently to the contrary in this Agreement, CITY and STATE hereby release one another and their respective partners, officers, employees and property manager from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for loss or damage covered by said insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

12. LIABILITY

CITY and STATE agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. STATE's and the CITY'S liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Sections 3.736 and 466.01 and other applicable law.

13. NOTICES

All notices, requests, and other communications between CITY and STATE that are required or that CITY or STATE elect to deliver shall be deemed sufficiently given or rendered if in writing and delivered to either party personally, by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, (return receipt required) addressed as follows:

CITY: City of East Grand Forks
600 Demers Avenue
East Grand Forks, MN 56721
ATTN: David Murphy, City Administrator

STATE: Northland Community and Technical College
2022 Central Avenue NE
East Grand Forks, MN 56721
ATTN: Brian Huschle, Dean of Academic Affairs, EGF

With a copy to: Minnesota State Colleges and Universities
ATTN: Real Estate Services
30 E. 7th Street, Suite 350
St. Paul, MN 55101

14. HUMAN RIGHTS

When applicable, CITY certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, Section 363A.36, or that it has not had more than 40 full-time employees at any time during the previous 12 months and claims exemption from Minnesota Statutes, Section 363A.36.

15. ENVIRONMENTAL

CITY warrants that, to the best of CITY's knowledge there do not, and there will not on the Commencement Date, exist any Hazardous Substance, including mold in, on or about the Premises. CITY has delivered to STATE complete copies of all reports relating to the environmental condition of the Premises and underlying land in its possession of control, including but not limited to those assessing the presence or absence of Hazardous Substances and violations of or compliance with Environmental Law. "Hazardous Substance" means any pollutant, contaminant, toxic or hazardous waste, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substance the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or ownership of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) as these laws have been amended or supplemented (such laws are collectively referred to as "Environmental Law"). CITY will defend and indemnify STATE from any claims, liabilities, penalties, costs, fines, damages, or expenses, including all attorney's fees, which STATE incurs arising out of the presence of any Hazardous Substances placed, stored, or generated on or about the Premises, except to the extent any such liability arises from the STATE's own actions.

16. CITY REPRESENTATIONS.

CITY represents and warrants that it is the owner in fee simple of the Building and underlying real property. CITY represents that entering into this AGREEMENT will not cause CITY to violate any other agreement to which CITY is a party.

17. ENTIRE AGREEMENT

The Agreement documents, which constitute the entire Agreement between the parties except for agreed upon written amendments issued after execution of this Agreement, are enumerated as follows:

- Agreement
- **EXHIBIT A**, Premises
- **EXHIBIT B**, Performance Specifications and Standards
- **Any Subsequent amendments, addendum properly executed by the parties.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

APPROVED:

CITY certifies that the appropriate person(s) have executed the contract on behalf of CITY as required by applicable articles, by-laws, resolutions, or ordinances.

CITY*:* City of East Grand Forks
By: _____
Mr. David Murphy

Title: City Administrator_____

Date: _____

STATE: STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF MINNESOTA STATE COLLEGES AND UNIVERSITIES ON BEHALF OF Northland Community and Technical College

By: _____
Dr. Anne Temte

Title: President_____

Date: _____

EXHIBIT A: LEASED PREMISES

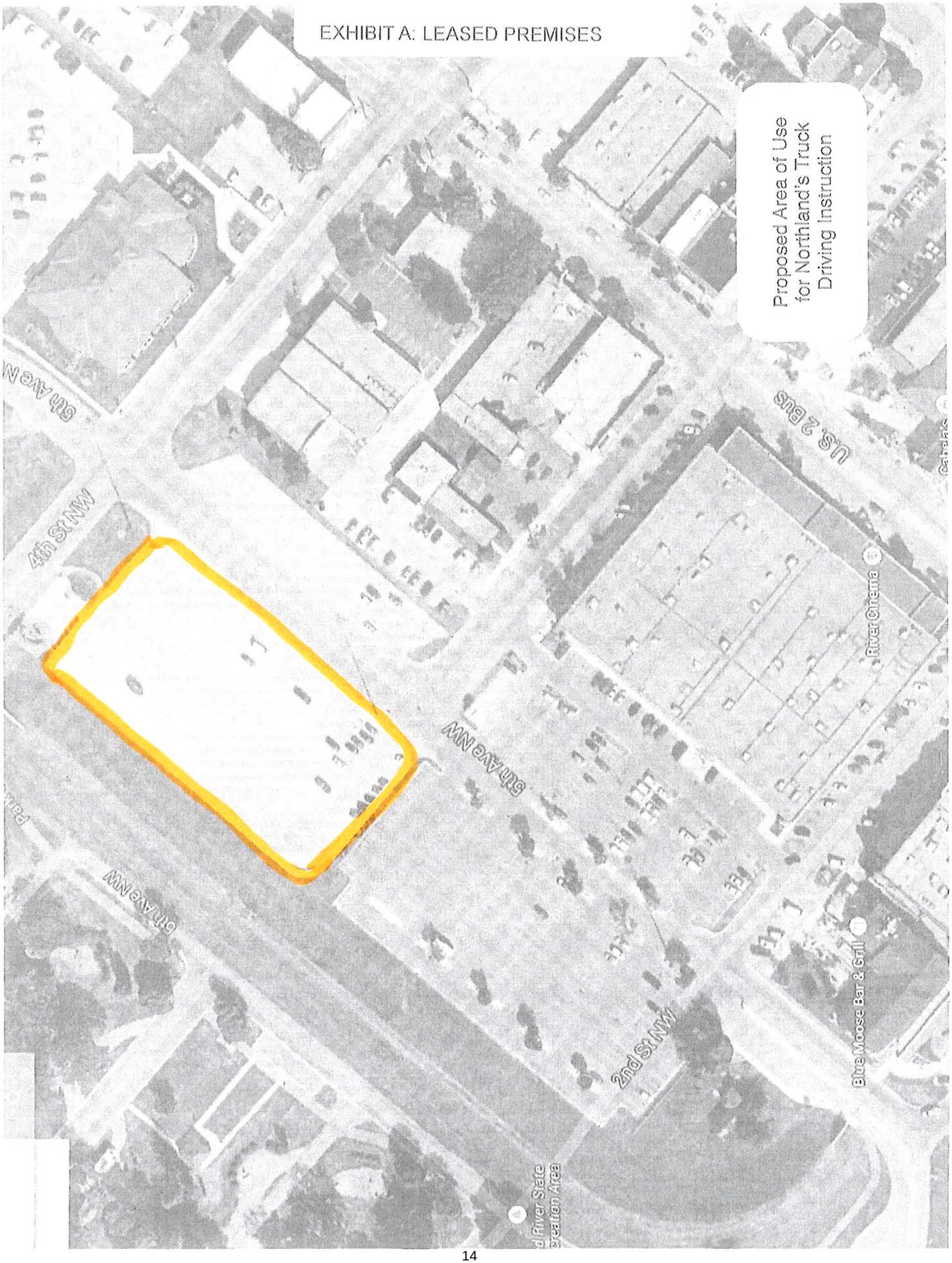


EXHIBIT B – GENERAL INSURANCE REQUIREMENTS

POLICY REQUIREMENTS

1. Workers' Compensation Insurance
   - A. Statutory Compensation Coverage
   - B. Coverage B – Employers Liability with limits of not less than:
     - $100,000 Bodily Injury by Disease per Employee
     - $500,000 Bodily Injury by Disease Aggregate
     - $100,000 Bodily Injury by Accident
2. General Liability Insurance
   - A. Minimum Limits of Liability:
     - $2,000,000 – Per Occurrence
     - $2,000,000 – Annual Aggregate
     - $2,000,000 – Annual Aggregate applying to Products/Completed Operations
   - B. Coverages:
     - X Premises and Operations Bodily Injury and Property Damage
     - X Personal & Advertising Injury
     - X Blanket Contractual
     - X Products and Completed Operations
     - X Other; if applicable, please list_____
     - X State of Minnesota or Minnesota State Colleges and Universities named as Additional Insured

Additional Insurance Conditions

OMITTED LANGUAGE State insurance should be primary as we are doing this for NCTC's convenience

- CITY agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless STATE's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota
- CITY is responsible for payment of Agreement related insurance premiums and deductibles.
- If CITY is self-insured, a Certification of Self-Insurance must be attached.
- CITY's policy(ies) shall include legal defense fees in addition to the liability policy limits.
- CITY shall obtain insurance policy(ies) from insurance company(ies) having an "AM Best" rating of A- (minus), Financial Size Category of VII or better, and authorized to do business in the State of Minnesota.
- An Umbrella or Excess Liability insurance policy may be used to supplement the CITY's policy limits to satisfy the full policy limits required by the Agreement.

Grand Forks - East Grand Forks
Metropolitan Planning Organization

Request for Council Action

DATE: 3 September, 2014

TO: EGF Mayor and City Council

FROM: E. Haugen, MPO Executive Director

RE: Matter of Minnesota Functional Classification Revisions.

Background:

FHWA updated its guide on functional classification in Fall of 2013. Together with this major update, the 2010 Census changed the urbanized area geography which typically created need to make changes to roadway functional classification. Lastly, MAP-21 automatically converted all existing principal arterials to the National Highway System. This NHS designation may be significant due to the fact that the majority of funding in MAP-21 is focused towards the NHS routes.

MnDOT developed a statewide process to update functional classification with these affects in mind. As part of the statewide process, MnDOT took the first step in reviewing current functional classification and compared that to what the new FHWA guides recommended. Additionally, MnDOT incorporated the urbanized area boundaries. Further, because of MAP-21 affects, MnDOT reviewed closer the principal arterials, particularly those that are not part of the State Highway System. Another FHWA guide was to split the Urban Collector network into two parts – major v. minor – just like the rural system.

MnDOT has submitted their proposed changes to us for review. Our review's first step was to compare what MnDOT distributed as the current functional classification to what our documents indicated as the current functional classification. There were some differences. We have notified MnDOT of these differences and they have been corrected.

Second, we compared the proposed MnDOT drafted new functional classification to our current map. Our current map had already accounted for the new urbanized area geography so this should not cause any changes. This comparison for the new classification guidelines and MAP-21 affect reveals the major differences. MPO staff will work with the City and MnDOT District #2 to determine whether we are in agreement or whether we wish to propose changes to MnDOT's draft. MPO staff is still developing some data sets necessary to use the FHWA guidance and present our findings to local units of government.

RECOMMENDATION: Information only at this time. Action will be requested later this month.

SUPPORT MATERIALS: Presentation Slides

Functional Classification Characteristics

Overview

Roadway functional classification is divided into three board categories:

- Arterials
- Collectors
- Local Roads

The table below reviews some of the key characteristics of each category and how the characteristics vary between urban and rural areas.

Characteristics of Arterials

Urban

- Serve major activity centers, highest traffic volume corridors and longest trip demands
- Carry high proportion of total urban travel on minimum of mileage
- Interconnect and provide continuity for major rural corridors to accommodate trips entering and leaving urban area and movements through the urban area
- Serve demand for intra-area travel between the central business district and outlying residential areas

Rural

- Serve corridor movements having trip length and travel density characteristics indicative of substantial statewide or interstate travel
- Connect all or nearly all urbanized areas and a large majority of urban clusters with populations of 25,000 or more
- Provide an integrated network of continuous routes without stub connections (dead ends)

Characteristics of Minor Arterials

Urban

- Interconnect and augment the higher-level Arterials
- Serve trips of moderate length at a somewhat lower level of travel mobility than Principal Arterials
- Distribute traffic to smaller geographic areas than those served by higher-level Arterials
- Provide more land access than Principal Arterials without penetrating identifiable neighborhoods
- Provide urban connections for Rural Collectors

Rural

- Link cities and larger towns and other major destinations such as resorts capable of attracting travel over long distances) and form an integrated network providing interstate and inter-county service
- Be spaced at intervals, consistent with population density, so that all developed areas within the State are within a reasonable distance of an Arterial roadway
- Provide service to corridors with trip lengths and travel density greater than those served by Rural Collectors and Local Roads and with relatively high travel speeds and minimum interference to through movement

Characteristics of Major Collectors

Urban

- Serve both land access and traffic circulation in higher density residential and commercial/industrial areas
- Penetrate residential neighborhoods, often for significant distances
- Distribute and channel trips between Local Roads and Arterials, usually over a distance of greater than three-quarters of a mile
- Operating characteristics include higher speeds and more signalized intersections

Rural

- Provide service to any county seat not on an Arterial route, to the larger towns not directly served by the higher systems and to other traffic generators of equivalent intro-county importance such as consolidated schools, shipping points, county parks and important mining and agricultural areas
- Link these places with nearby larger towns and cities or with Arterial routes
- Serve the most important intra-county travel corridors

Characteristics of Minor Collectors

Urban

- Serve both land access and traffic circulation in lower density residential and commercial/industrial areas
- Penetrate residential neighborhoods, often only for a short distance
- Distribute and channel trips between Local Roads and Arterials, usually over a distance of less than three-quarters of a mile
- Operating characteristics include lower speeds and fewer signalized intersections

Rural

- Be spaced at intervals, consistent with population density, to collect traffic from Local Roads and bring all developed areas within reasonable distance of a Collector
- Provide service to smaller communities not served by a higher class facility
- Link locally important traffic generators with their rural hinterlands

Characteristics of Local Roads

Urban

- Provide direct access to adjacent land
- Provide access to higher systems
- Carry no through traffic movement
- Constitute the mileage not classified as part of the Arterial or Collector systems

Rural

- Serve primarily to provide access to adjacent land
- Provide service to travel over short distances as compared to higher classification categories
- Constitute the mileage not classified as part of the Arterial or Collector systems

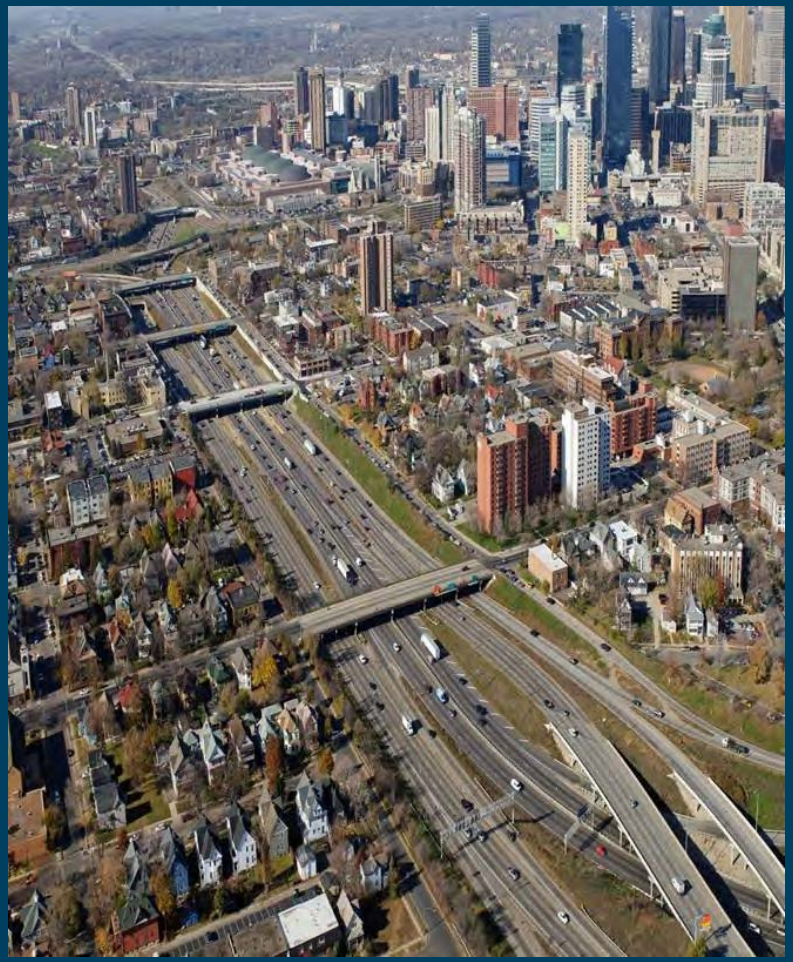
Information taken from *Highway Functional Classification Concepts, Criteria and Procedures*, 2013 Edition.

For More Information

Visit: www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/

Functional Classification Overview

- Roadways serve two primary functions:
  - Access to property
  - Travel mobility
- All roadways perform these two functions to varying degrees
- Determining a roadway's <u>primary</u> purpose helps determine how to classify the roadway



Functional Classification Overview

- 7 functional classification categories:
  - Principal Arterial – Interstate
  - Principal Arterial – Other Freeway/Expressway
  - Principal Arterial – Other
  - Minor Arterial
  - Major Collector
  - Minor Collector
  - Local Road
- 2 area classifications:
  - Urban
  - Rural

MnDOT Review: Process Overview

- Reflects adjusted urban area boundaries
- Meets the 2013 Federal Highway Administration functional classification guidelines:
  - Minnesota is considered a rural state
  - Percentages are maintained from the statewide perspective – not the region perspective
- Is DRAFT

MnDOT Review: Principal Arterials

Classification	Current System		Draft System	
	Rural	Urban	Rural	Urban
PA–Interstate	596 miles	320 miles	596 miles	320 miles
PA–Other Freeway/ Expressways	4 miles	162 miles	62 miles	190 miles
PA–Other	3,500 miles	789 miles	3,410 miles	598 miles

- Net change in draft system from current system:
  - PA system: Decrease of 196 miles (3.6% decrease)

MnDOT Review: Principal Arterials

- Net change in draft system from current system:
  - PA–Interstate: No change
  - PA–Other Freeway/Expressway: Increase of 85 miles (51.2% increase)
    - Rural system: Increase of 58 miles (1438.5% increase)
    - Urban system: Increase of 27 miles (16.8% increase)
  - PA–Other: Decrease of 281 miles (6.6% decrease)
    - Rural system: Decrease of 90 miles (2.6% decrease)
    - Urban system: Decrease of 191 miles (24.2% decrease)

System Characteristics: Draft Urban System Data

Functional Classification	Mileage Range	Draft System
Principal Arterial – Interstate	1–3%	1%
Principal Arterial – Other Freeways & Expressways	0–2%	1%
Principal Arterial – Other Principal Arterial	4–9%	3%
Minor Arterial	7–14%	11%
Major Collector	3–16%	11%
Minor Collector	3–16%	3%
Local	62–74%	70%

Note: FHWA mileage ranges derived from 2011 HPMS data.

Next Step: MPO/RDC Review

- Work with local partners to review the draft functional classification system
- Timeline: April 2014–September 2014

MPO/RDC Review: Process

- Focus on the roadway – not the jurisdiction
  - Functional classification should change:
    - Where the function of a roadway changes
    - At a logical termini (e.g., intersection)
- Focus on the non-trunk highway roads

MPO/RDC Review: Process

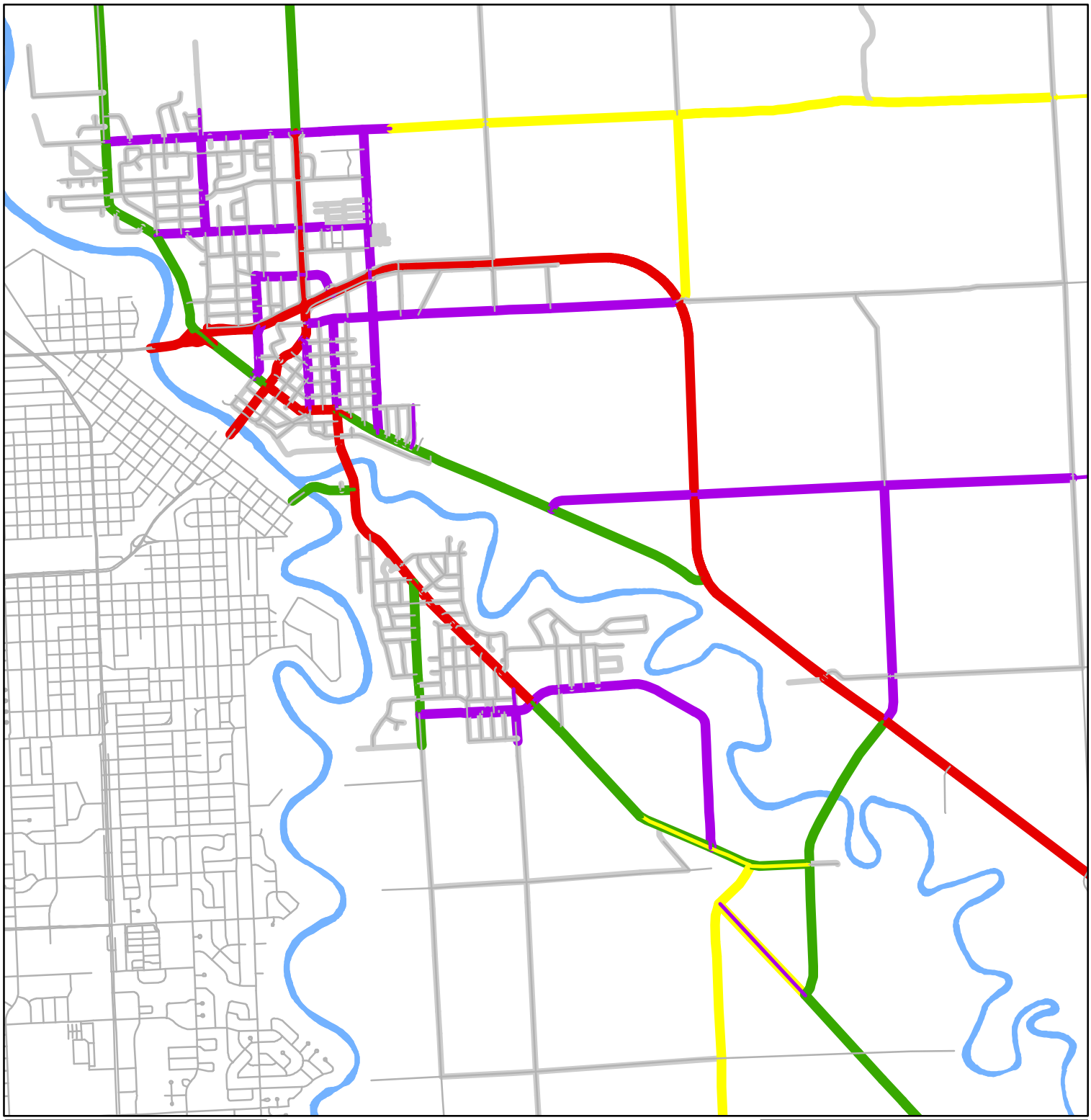
- Collectors cont.
  - State Aid
    - The State Aid system is not intended to be a mirror image of the federal aid Collector system. These are two separate systems
    - Collector classification is recommended, but not required, for State Aid consideration
    - The State Aid system needs local routes and arterials to provide connectivity and function as a secondary highway system
    - The State Aid system recognizes that some highways will function as Collectors in a county or region, but not meet the FHWA definition of a Collector

MPO/RDC Review: Oversight Cmt

- Subset of advisory committee
- Address disagreements that may occur and consensus cannot be reached
- Serve as final decision on how a roadway will be classified

What's Next

- October 2014–December 2014
  - MnDOT finalize the draft functional classification system
  - MnDOT will notify to begin RDC/MPO approval process
  - MnDOT submit to Federal Highway Administration for approval
- January 2015 – June 2015
  - FHWA review and approval
- July 2015 – December 2015
  - MnDOT update roadway database



EGF FC

- Principal Arterial
- Minor Arterial
- Collector
- Rural Collector
- Local

Current Functional Class

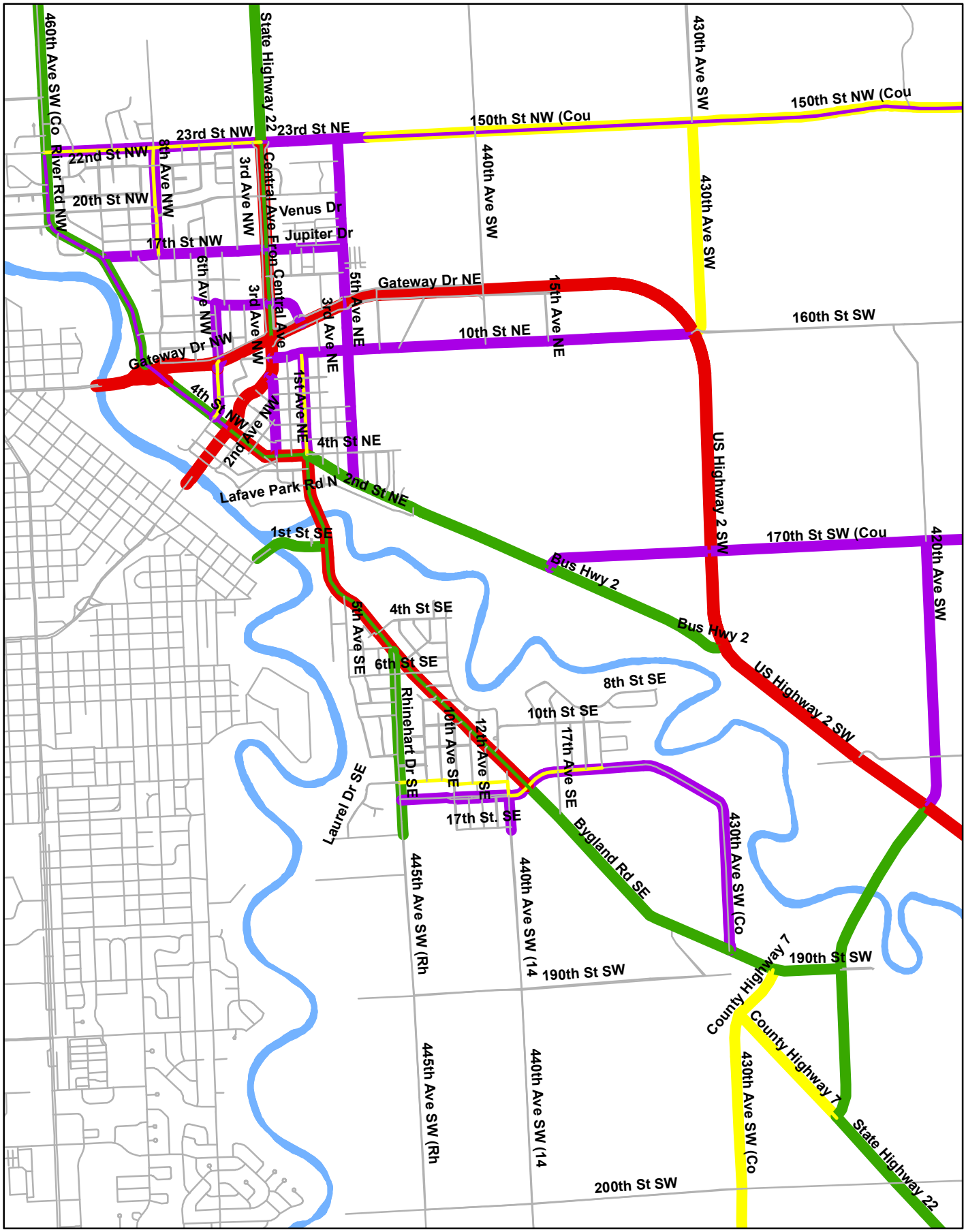
N
W E
S

M.P.O. M.P.O. M.P.O.
Grand Forks - East Grand Forks
Metropolitan Planning Organization

MNDOT FC

- Principal Arterial - Othe
- Minor Arterial
- Major Collector
- Minor Collector
- Local

MNDOT Proposed FC vs. Current FC



Principle Arterial
Collector/Major Collector
Local
Minor Arterial
Rural Collector/Minor Collector

N
W E
S

Grand Forks - East Grand Forks Metropolitan Planning Organization

Request for Council Action

Date: September 9, 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, and Chad Grassel

Cc: File

From: Nancy Ellis, City Planner ; Earl Haugen, MPO

RE: Update to the EGF Land Use Plan

RECOMMENDATION:

Staff recommends approval to request the MPO's assistance in updating the EGF Land Use plan with the use of in-house staff and consultants.

BACKGROUND: The Grand Forks – East Grand Forks MPO is soliciting work activities that its local units of government would like the MPO to accomplish over the next two years. Also, the MPO has been required to provide a timeline showing its' federal and state partners how the required five year update to the Long Range Transportation Plan will be accomplished by the deadline of December 2019.

Historically, the MPO has assisted each City develop and update its respective Land Use Plans. The most recent example was the current East Grand Forks 2040 Land Use Plan. With these updated land use plans, the MPO believes its travel demand forecasting can represent better the desired growth of each community. Therefore, its transportation plans can work together with the land use plans to maximize the betterment to our citizens.

FINDINGS AND ANALYSIS

- The current MPO Transportation Plan has an update deadline of December 2045.
- The City of East Grand Forks City Land Use Plan should be updated to ensure the MPO Transportation Plan reflects our desired growth patterns.
- The MPO has provided support to assist in the updating of the Land Use Plan in the past by utilizing current and temporary staff and has indicated a willingness to do so again.
- The City has utilized MPO assistance in the past and should consider favorably using the MPO

resources again to update the Land Use Plan.

- The City should request "outside expert" assistance in addition to using "in house" staff to complete the update.

SUPPORT MATERIALS:

- slides

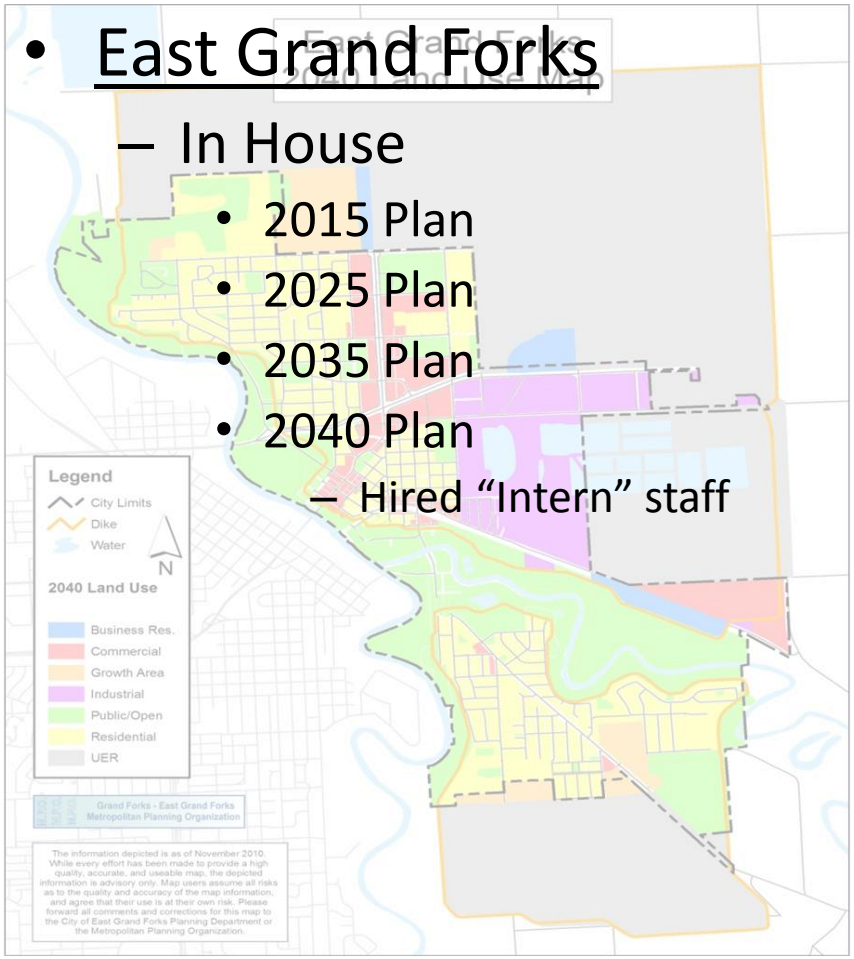
Timeline to 2045LRTP Update

Year Begin	Activity	Year Completion	Consultant
April 1, 2014	Update EJ	Dec. 31, 2014	NO
April 1, 2014	Integrate SHSP	Dec. 31, 2014	NO
Jan. 1, 2014	ITS Reg. Arch.	Dec. 31, 2014	ATAC
Jan. 1, 2015	MAP-21 Perform. Meas.	Dec. 31, 2015	NO
Jan. 1, 2015	GF 2045 LU	June 30, 2016	YES
Jan. 1, 2015	EGF 2045 LU	June 30, 2016	YES
Jan. 1, 2015	NDDOT Counts	Dec. 31, 2015	NO
Jan. 1, 2016	Bike/Ped Update	Dec. 31, 2016	NO
Jan. 1, 2016	TDP Update	Dec. 31, 2016	?
Jan. 1, 2017	NDDOT Counts	Dec. 31, 2017	NO
Jan. 1, 2017	2045 LRTP Update	Jan. 31, 2019	YES

Historical MPO Support

- <u>Grand Forks</u>
  - In house
    - 2015 Plan
    - 2025 Plan (draft only)
      - Hired "SNA" staff
    - 2040 Plan
      - Hired "Intern" staff
  - Consultant
    - 2035
      - SRF
        - » $95,000

- <u>East Grand Forks</u>
  - In House
    - 2015 Plan
    - 2025 Plan
    - 2035 Plan
    - 2040 Plan
      - Hired "Intern" staff



Flood of 1997 caused skipping 2020; Feds pushed out horizon to skip 2030

2045 Land Use Plans

- <u>East Grand Forks</u>
  - Combo
    - Consult focus on
      - Review and update demographics (housing, economy) (CHAPTER 3)
      - Reduce the number of goals and policies by combining into clearer, more concise goals and policies (CHAPTER 4)
      - Provide implementation strategies for not only the goals and policies, but the plans listed in the LUP (CHAPTER 5)
      - Provide future land use needs methodology and analysis (CHAPTER 5)
    - In House focus on
      - Review and update Chapters 1, 2 and maps and population information in Chapter 3
      - Provide information for public facilities, parks and city information
      - Implement City's Strategic Goals into LUP

MPO Financial Resources 2015

Year Begin	Activity	Consultant	Consultant Cost
Jan. 1, 2015	MAP-21 Perform. Meas.	NO	$0
Jan. 1, 2015	GF 2045 LU	YES	$450,000 avail
Jan. 1, 2015	EGF 2045 LU	YES	
Jan. 1, 2015	NDDOT Counts	NO	$0

Both Cities have indicated desire for MPO continued support in Updating the Land Use Plans. This table shows that the MPO estimates to have $450,000 available in 2015 to contribute to land use plans and other studies.

Request for Council Action

Date: September 9, 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: Hiring of a Code Enforcement Officer (Building Inspector)

GENERAL INFORMATION:

I am asking City council for approval to hire a full-time Code Enforcement Officer (Building Inspector) for the Community Development Office. At a past meeting, the renewal of our contracted service for inspections was not approved and vetoed by the Mayor. It was stated that a full time building inspector (Code Enforcement Officer) would be beneficial to the Department.

A new job description was completed to add some nuisance/zoning enforcement, and a pay grade of Grade 16 was recommended by Springsted. This is similar to the Pay Grade of the past building inspector Tom Spoor. This position description has been approved by the Civil Service Commission.

RECOMMENDATION:

I recommend starting the hiring process to fill the position of full time Code Enforcement Officer. This new position has been placed in the 2015 Community Development budget.

Request for Council Action

Date: 9-4-2014

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

Cc: File

From: Jason Stordahl, Public Works Director

RE: Pump Replacement

Background: There are four pumps in lift station number one (master lift station). Per our annual pump replacement schedule, two of the four pumps have been replaced in recent years. The two remaining pumps were to be replaced in years 2015 and 2016. However it was discovered during our annual service inspection that the two remaining pumps had water in the oil and were in need of major repairs. After discussing this with Mr. Murphy he instructed me to order two new pumps for lift station number one.

We ordered two new pumps from MN Pump Works for $58,806. The money for the pump purchase will come out of our waste water fund.

Request for Council Action

Date: 09/04/14

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: Megan Nelson

RE: Pinehurst Court Snow Removal Agreement

Residents living in the Pinehurst Court area have requested the private drive that gives them access to their garages be dedicated a public right-of-way. The last two years they have entered into an agreement with the City for snow removal purposes until this dedication has been completed.

At this time the process has not been completed and I am asking the council if I need to prepare another snow removal agreement with the residents of Pinehurst Court so it is in place before it starts snowing this year.

Request for Council Action

Date: September 9, 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: David Murphy, City Administrator

RE: River Walk Center Sale

The lease and purchase agreement documents are included in your packet and Mr. Galstad will be prepared to give a full report on the Council's options with the sale at the Work Session.

T:\David\September 9 River Walk Center Sale.docx

INDEMNIFICATION AND GUARANTEE AGREEMENT

THIS INDEMNIFICATION AND GUARANTEE AGREEMENT ("Agreement"), dated as of August 2, 2007, is entered into by and among the **EAST GRAND FORKS ECONOMIC DEVELOPMENT HOUSING AUTHORITY** a municipal corporation ("EDHA"), and **ULTIMA BANK MINNESOTA**, a Minnesota Corporation, ("Ultima") and **ROBERT MOORE AND JAN MOORE AND RIVER CINEMA, INC.**, ("Borrowers").

RECITALS:

A. In consideration of the guarantees and representations made by EDHA as memorialized in this agreement, Ultima has made or may make loans and/or has extended or may extend credit to the Borrowers for the purpose of improving the property described below (hereinafter the "Property"), for which the Borrowers shall be jointly and severally liable under the terms of this agreement and under any agreements related hereto. The maximum amount of principal advanced by Ultima to Borrowers anticipated by this agreement will be $1,350,000.

See attached Exhibit "A"

B. The parties acknowledge and agree that as a condition to making any loans or extending any credit to Borrowers, Ultima requires a security interest in any and all of the Borrowers' accounts, inventory, equipment, investment property, general intangibles and other personal property.

C. EDHA represents that the City of East Grand Forks holds marketable title to the Property free and clear of all encumbrances except as expressly referenced in this agreement.

D. EDA has made an Agreement and Mortgage with the City of East Grand Forks dated April 16, 1998, and on file with the Polk County Recorder's Office as document number 558872 and recorded on April 17, 1998 which is currently in first lien position on the property and which Agreement and Mortgage prevents transfer and requires preservation of the lien position thereof. EDHA represents that no term or condition of this agreement creates a default under its loan agreement with EDA which would prejudice or otherwise impair Ultima's rights under this agreement or its ability to fully secure and obtain repayment of the loans made or credit extended to Borrowers.

E. EDHA and Ultima agree to the relative priority of the respective security interests in various collateral of the Borrowers and certain rights, priorities and interests, and EDHA will indemnify Ultima against loss for non-payment in the event of Borrowers' default.

F. EDHA acknowledges and agrees that the benefits of this agreement rebounds to EDHA and constitute sufficient consideration for this agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, receipt of which is hereby acknowledged by each party, it is agreed as follows:

1. Security Interest Priorities.

Notwithstanding the date, manner or order of perfection of the security interests granted to Ultima or EDHA respectively, and notwithstanding any provision of the Uniform Commercial Code or any other applicable law or decision or any provisions of any prior agreement, the following as between EDHA and Ultima, shall be the relative priority of their respective security interests in the leased, to-be-owned, and any after-acquired property of the Borrower:

(a) Ultima shall have a first (1st) and prior security interest in the following (the "Ultima Collateral")"

All of the Borrowers' equipment, such as term is defined in the UCC, whether now or hereafter owned, including all present and future machinery, vehicles, furniture, fixtures, manufacturing equipment, shop equipment, office and record keeping equipment, parts, tools, supplies, and including specifically (but not limited to) the goods described in any equipment schedule or list herewith or hereafter furnished to Ultima by the Borrower; and products and proceeds of the foregoing, including insurance proceeds.

Ultima shall also be entitled to an Assignment of all of Borrowers' rights in or to the Property, including (but not limited to) any lease, or other interest the Borrower may have.

(b) Until such time as Ultima shall have a first and prior security interest in the real estate, EDHA agrees to indemnify and hold Ultima harmless from any and all losses related to loans made or credit extended to Borrowers by Ultima pursuant to this agreement. As used herein, term losses means the deficiency in the repayment of Borrowers' indebtedness to Ultima after recovery by Ultima from Borrowers' collateral, and encompasses unpaid principal, unpaid interest, costs of collection (including attorney's fees) incurred by Ultima and all other charges allowed under the note(s), and security agreement and any other documents executed by Borrowers in connection with loans made or credit extended pursuant to this

Agreement. Notwithstanding the foregoing, it is understood and agreed by all parties that PRIOR TO BRINGING AN ACTION AGAINST THE BORROWERS TO ENFORCE ITS SECURITY INTEREST, ULTIMA WILL NOTIFY THE EDHA AND GIVE THE EDHA THE OPTION TO HAVE ULTIMA FORECLOSE ON ITS SECURITY INTEREST AGAINST THE COLLATERAL OR ASSIGN ITS INTEREST TO THE EDHA. IF IT IS DECIDED THAT ULTIMA WILL FIRST FORECLOSE ON ITS SECURITY INTEREST, after recovering from the other collateral, THE EDHA shall indemnify and hold Ultima harmless within sixty (60) days of Ultima's notification to EDHA in writing of the amount for which Ultima is to be indemnified, said amount to bear interest from the date of notification though the date of payment, which interest rate shall be equal to the rate applicable to Borrowers' note(s). Upon payment in full, Ultima will release or assign its interest, at the direction of the EDHA. Further, EDHA agrees to make no claims for contribution by others or to raise any defense to payment of the sum due which cannot reasonably be pursued by Ultima. Any claims or defenses which the EDHA may have shall be reserved for any action the EDHA shall desire to take against Borrowers after payment in full has been received by Ultima and all claims and security documents have been assigned to the EDHA by Ultima. EDHA agrees to join with Ultima in any documentation or legal action required to pursue the intent of this Agreement.

2. Receipt of Payments.

If the EDHA receives any payment on account of the Borrowers' Collateral or monies constituting identifiable proceeds or products of the Borrowers' collateral, such entity will hold the amount so received in trust for Ultima and will forthwith turn over such payment to Ultima in the form received (except for the endorsement of such entity where necessary) for application to Borrowers' obligations to Ultima (whether due or not) in such order of application as Ultima may deem appropriate. If the EDHA fails to make any endorsement required under this Agreement, Ultima, or any of its officers or employees or agents on behalf of the EDHA, is hereby irrevocably appointed (which appointment is coupled with an interest) as the attorney-in-fact for such entity (with the right but not the duty) to make such endorsement in such entity's name.

3. Waiver and Consent.

EDA shall have no obligation to Ultima with respect to the Borrowers' Collateral or obligations hereunder, except if the EDA receives any payment on account of the Borrowers' collateral, EDHA will attempt to retrieve said

amount or will reimburse said amount to Ultima and will forthwith turn over such payment to Ultima in the form received (except for the endorsement of the Borrowers where necessary). Ultima may exercise collection rights, may take possession of, sell or dispose of, and otherwise deal with, the Borrowers' collateral, may prosecute, settle and receive proceeds on any insurance claims relating to the Borrowers' Collateral, and may exercise and enforce any right or remedy available to Ultima with respect to the Borrowers' Collateral, whether available before or after the occurrence of any default, in such manner as Ultima may deem appropriate or necessary in its sole discretion, all without notice to or consent by anyone except as specifically required by law.

Ultima may apply the proceeds of the Borrowers' Collateral in any order of application, and may remit or release such proceeds or any other sums or amounts without being obligated to assure that any such proceeds or sums are applied to the satisfaction of the EDHA or the Borrowers as to their security interest in any Borrowers' Collateral, except as otherwise expressly provided in this Agreement or other loan documentation binding Ultima and the Borrowers and as may be required by law under the Uniform Commercial Code, as in effect from time to time in the State of Minnesota. Except as set forth above, the EDHA hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or agreement.

4. Notice of Default.

Any notification to EDHA required by this agreement shall be made in writing addressed to the East Grand Forks City Attorney Ron Galstad at 1312 Central Avenue NE, East Grand Forks, Minnesota, 56721, or to such other address requested in writing.

5. Inducement to Contract.

EDHA's promises and covenants to indemnify Ultima, to guarantee payment of various sums to Ultima and to establish and preserve Ultima's position as a first secured creditor of Borrowers in connection with the loans made and credit extended to Borrowers are expressly acknowledged by the EDHA to induce Ultima to provide financing of the Borrowers leasehold improvements. **EDHA understands that Ultima's financing is conditioned upon the nonavoidability of their security interest and EDHA's guarantee of payment to indemnify Ultima until Ultima is able to establish a mortgage as a perfected first lien against the property. When Ultima is able to record a mortgage against the real property and that interest is in first priority position, then the EDHA's promises and covenants to indemnify Ultima and to guarantee payment for loans made and credit extended to Borrowers shall automatically terminate.** Until such time that Ultima establishes a perfected first priority position by

recording a mortgage the EDHA agrees that if Ultima's security interest is, as a result of a final order not subject to appeal issued by a court of competent jurisdiction, avoided or found to be unperfected for any reason, then EDHA will guaranty payment for such amounts as cannot be collected from the Borrower's collateral pledged as a part of this transaction and referenced herein without further legal action to be required by Ultima. The terms of this agreement are contractual and not a mere recital. EDHA enters into this Agreement as an inducement to Ultima and as in consideration for Ultima to provide financing to the Borrowers.

6. **Financial Covenants**

EDHA agrees to provide Ultima with annual audited financial statements within 6 months of the end of each fiscal year end. If the EDHA reports cash and cash equivalents of less than $850,000 or unrestricted net assets of less than $2,700,000 Ultima may demand, and the EDHA agrees to provide, security for this guarantee in an amount equal to at least 1.3 times the amount of the outstanding principal balance of the loan at the time. EDHA agrees to provide such security and compete the related documentation within 60 days of written notice by Ultima that such security is required. This security may be in the form of assignments of cash or cash equivalent accounts or first priority liens on other assets. The EDHA agrees to pay any costs incurred to provide such security, including but not limited to recording or filing fees, attorney expenses or other actual charges incurred for such action.

Cash and Cash equivalents are calculated by using the gross amount reported as unrestricted cash and cash equivalents and reducing that amount by the amount in funds with external restrictions. This would include such as funds as those held for the benefit of Tax Increment Financing Districts and loan funds that would not be available to pay this guarantee. Based on the 12/31/2006 financial statements the cash and cash equivalent calculation yields a net amount of $981,639 ($2,672,438 less TIF #1-1, less TIF #1-2, less IRP Loan fund, less DRLF Loan Fund).

7. Exclusive Benefits.

To the extent the terms and provisions of this Agreement benefit Ultima and Borrowers and their respective successors and assigns, said benefits shall be exclusively for their benefit, and no other person, firm, entity or corporation shall have any right, benefit, priority or interest under or because of this Agreement.

8. Preservation of Rights.

election, all other provisions herein shall continue to be effective and binding upon the parties, their heirs, successors, representatives, administrators and assigns.

14. Venue.

All actions arising out of this Agreement shall be venued in Polk County. Each party hereby specifically waives any and all right to have any action commenced hereunder venued elsewhere.

15. Interchangeable Terms.

References to gender shall not be exclusive. Where appropriate, specific reference to feminine, masculine and neuter may be read to include the others. Where appropriate the singular may be read to include the plural and vice versa.

16. Captions.

Captions and headings are for convenience only and shall not be construed as a limitation or supplementation of any term or condition of this agreement.

17. Binding Effect.

This agreement shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and assigns of the parties hereto.

18. Integration Clause.

This instrument contains the entire agreement between the parties hereto, and no prior agreement, whether oral or written, shall be effective to modify or supplement the terms of this agreement. No contemporaneous or future modification or addition shall be effective unless made in writing and endorsed by all parties hereto.

19. Joint Responsibility.

With respect to the form of this agreement, all parties assume joint responsibility for the form and composition of each paragraph and they further agree that this agreement shall be interpreted as though each of the parties participated equally in the composition of each part thereof.

This agreement is not to be strictly construed for or against any of the parties. It shall be interpreted simply and fairly to all parties.

20. Recitals.

For purposes of this agreement, the recitals (whether denoted separately or integrated into provisions of this agreement) shall be deemed by any court or other tribunal as determinative of the facts set forth therein. Said recitals shall be used to construe the terms, conditions, and purposes of this agreement and to decide any dispute or claim which may arise in connection herewith.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

ULTIMA BANK OF MINNESOTA, a Minnesota Corporation

By: _____

Its: Sr. Vice Pres.

EAST GRAND FORKS ECONOMIC DEVELOPMENT HOUSING AUTHORITY, a municipal corporation

By: _____

Its: _____

By: _____

Its: Executive Director

BORROWERS

_____

Robert Moore

_____

Jan Moore

River Cinema, Inc., a Minnesota corporation

By: _____

Robert Moore

It's President

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By: _____

Its: President

By: _____

Its: Executive Director

BORROWERS

_____

Robert Moore

_____

Jan Moore

River Cinema, Inc., a Minnesota corporation

By: _____

Robert Moore

It's President

ORIGINAL

COMMERCIAL LEASE

THIS LEASE, dated for reference purposes on the 23 day of April, 2007 is being made and entered into by and between the City of East Grand Forks, Minnesota, a municipal corporation organized under the laws of the State of Minnesota, P.O. Box 373, East Grand Forks, Minnesota 56721(hereinafter referred to as the "Landlord"); and Moore Family Theatres, Inc. and/or Bob and Jan Moore (hereinafter referred to as the "Tenant").

Landlord, in consideration of the rents and covenants hereinafter set forth, does lease and let to Tenant, and Tenant does hereby rent, lease and take from Landlord, the following premises located in the City of East Grand Forks, County of Polk, State of Minnesota, to-wit:

> A portion of that certain building currently described as the Riverwalk Centre located in the 200 Block of DeMers Avenue Northwest, East Grand Forks, Polk County, Minnesota, such portion compromising approximately Thirty-eight Thousand (38,000) square feet of space identified on the attached Exhibit A with the demised premises outlined in Red. The premises outlined in Red is hereinafter referred to as "the leased premises".

The terms, covenants and conditions of this Lease are as follows:

1. LEASE TERM: This Lease shall be for a term of Eight (8) months commencing on May 1, 2007 and terminating on December 31, 2007, or until such time that the tenant is open for business, whichever occurs first.

   a. Early Possession. Landlord hereby grants Tenant an early possession date of April 23, 2007. Should Tenant partially or totally occupy the Premises after the early possession date but prior to the commencement date, Tenant's obligation to pay rent shall be in abated for the period of such early occupancy. All other terms of this Lease, however, shall be in effect during such period. Any

ORIGINAL

such early possession shall not affect nor advance the termination date of the original term.

b. Delay in Possession. If for any reason Landlord cannot deliver possession of the Premises to Tenant by the commencement date, Landlord shall not be subject to any liability therefore, nor shall such failure affect the validity of this Lease, or the obligations of Tenant hereunder, or extend the term hereof; but in such case, Tenant shall not, except as otherwise provided herein, be obligated to pay rent or perform any other obligation of Tenant under the terms of this Lease until Landlord delivers possession of the Premises to Tenant.

2. CONDITION OF PREMISES: The Tenant shall receive the leased premises in **"As Is" condition.** All Alterations or improvements to the Leased Premises shall be done at Tenant's expense.

3. BASE RENT: Tenant shall pay rent to the Landlord as follows:

a. From May 1, 2007 through September 30, 2007 the lease term the Tenant shall pay such rent in monthly installments of $10.00 per month in advance with the first such installment for the month of May, being due and payable on May 1, 2007, with a similar sum being due and payable on the 1st day of each month thereafter through September of 2007. The monthly installment shall be considered delinquent after the 10th day of the month. Any payment received after the 10th day of any month shall be considered delinquent and Tenant shall pay an additional late fee/penalty equal to ten percent (10%) of the monthly payment. Payment of the late fee/penalty by the Tenant shall not prevent Landlord from availing itself of other remedies set forth in this commercial lease.

b. Thereafter, the Landlord and the Tenant will negotiate a long term lease of the leased premises as contemplated by the "Lease and Development Agreement of even date which is hereby attached and incorporated by reference .

4. PROPERTY TAXES, UTILITIES AND MAINTENANCE:

a. During the Lease period Landlord shall pay all real estate taxes when due and shall provide the normal and customary utility services to the Premises for heating, air conditioning, water and sewage disposal and electric power. Landlord shall pay for all charges and costs for water and sewage disposal, the cost of electric power used or consumed on the Premises until the utility services are separated as contemplated by the Lease and Development Agreement. The Landlord shall pay for all costs for removal and disposal of refuse, waste, garbage or other discarded material. Should the projection of the total of these costs in any one year exceed the previous year by more than 5%, then in that event the parties agree to renegotiate the base rents as set forth in the preceding Paragraph 3.

b. Tenant shall bag and tie all of its garbage, trash, refuse and paper, and shall break down all cardboard containers. Tenant shall deliver such bagged trash and cardboard to appropriate receptacles as designated by Landlord. Tenant's failure to comply with these requirements shall constitute a breach of the lease.

5. USE OF THE PREMISES: Tenant will use and occupy the Premises for the purpose of operating a Movie Theatre.

6. ASSIGNMENT. The interest of tenant in this Lease shall not be assigned or transferred to any other person, corporation or entity by Tenant without the written consent of Landlord.

7. MAINTENANCE, REPAIRS OR REPLACEMENT BY LANDLORD. Landlord shall, at its expense, maintain the roof, foundation, basic structural elements, common areas and underground or otherwise concealed plumbing of the Riverwalk Center in good repair and condition. Tenant shall give written notice to Landlord of the need for repairs or replacement of any such times for which Landlord is responsible, and Landlord shall, within ten (10) working days of its receipt of Tenant's written notice, commence to make such repairs or replacements. If Landlord fails to commence to make such repairs or replacements within ten (10) working days of its receipt of Tenant's notice, Tenant may do so and deduct such amounts expended from future rents. Landlord shall not be responsible for damages caused by the failure as the result of or caused by conditions, events or happenings beyond the control of Landlord. In any such instance Tenant shall notify Landlord of any such failure.

8. MAINTENANCE, REPAIRS OR REPLACEMENT BY TENANT: Tenant shall, throughout the lease term, keep the Riverwalk Center free from waste or nuisance and shall deliver the Premises "broom clean" at the termination of this lease, in good repair and condition. Reasonable wear and tear and damage by fire or other casualty is excepted.

9. ALTERATIONS, ADDITIONS AND IMPROVEMENTS:

   a. Tenant may make such alterations and improvements to the Premises without the written consent of Landlord as are consistent with Tenant's use of said Premises. Tenant may finish the interior portion of the leased Premises as appropriate for its business conducted therein. Landlord is under no obligation to make any interior alterations, decorations, additions or improvements in or to the leased Premises except as expressly set forth in this Lease. It is understood that before any such alterations and improvements can

be made the Tenant will have authorization from the City Building inspector.

b. All alterations, decorations, additions or improvements in or to the Premises made by Tenant and commonly referred to as "fixtures" shall become the property of Landlord upon expiration of the lease term if a long term lease is not entered into by the parties. It is understood Tenant shall have the right to remove during the remaining term of the Lease all movable furniture and furnishings brought to the Premises by Tenant.[1]

c. If at the termination of this lease agreement the Tenant does not purchase or enter into a long term lease with the Landlord, the Tenant, at its sole expense shall restore the leased premises back as close as possible to its original condition, if requested to do so by the Landlord.

10. COMMON AREAS:

a. Definition. The term "Common Area" is defined as all areas and facilities outside the Premises and within the exterior walls of the Riverwalk Centre that are provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Riverwalk Centre.

b. Tenant's Rights. Landlord hereby grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers and customers during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the common area as it exists from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions. Under no

[1] The parties acknowledge that a Lease and Development Agreement includes provisions that provide the Lender, Ultima Bank with a priority position regarding improvements and furniture and equipment.

circumstances shall the right therein granted to use the Common Area be deemed to include the right to store or display any property, temporarily or permanently, in the Common Area. Only the prior written consent to Landlord, which consent may be revoked at any time, shall permit any such storage or display. In the event that any unauthorized storage or display shall occur, then Landlord shall have the right, without notice, in addition to such other rights and remedies that Landlord may have, to remove the property and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

c. Rules and Regulations. Landlord shall have the exclusive control and management of the Common Area and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations with respect thereto. Tenant agrees to abide by and conform to all such rules and regulations and to cause its employees, suppliers, shippers and customers to so abide and conform. Landlord shall not be responsible to Tenant for the non-compliance with said rules and regulations by other Tenants.

d. Changes. Landlord shall have the right, in Landlord's sole discretion, from time to time, to make changes to the Common Area, to temporarily close any of the Common Area for maintenance so long as reasonable access to the Premises remains available, and to do and perform such other acts and make such other changes in or with respect to the Common Area as Landlord may, in its sole exercise of sound business judgment, deems to be appropriate.

11. RULES AND REGULATIONS. Tenant agrees that it will abide by, and keep and observe all reasonable rules and regulations which Landlord

may make from time to time for the management, safety, care and cleanliness of the Riverwalk Centre.

12. QUIET ENJOYMENT. Landlord warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, upon payment of the rent and performing the covenants herein contained, shall peacefully and quietly have, hold and enjoy the Premises during the full term of this Lease and any extension or renewal hereof. Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien hereafter placed on the demised premises, and Tenant agrees upon demand to execute such instruments, subordinating this Lease as Landlord may request, provided that such subordination shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to perform all of the covenants of this Lease.

13. PARKING. To allow for maximum parking for patrons, employee parking for The Riverwalk Centre tenants will be in the parking lot north of 5th Avenue NW. . (Between 5th Avenue NW and the dike) Tenant shall be responsible to inform all employees of parking location while working their shift. A fine of $100.00 will be assessed to tenant after Landlord has given five (5) written warnings per Tenant.

14. LIABILITY INSURANCE.

a. Tenant's Obligation. During the entire term of this Lease Tenant shall, at Tenant's sole cost and expense, maintain general public liability insurance against claims from personal injury, death or property damage occurring in, upon, or about the Premises, in and on any sidewalks, parking area, or other area directly adjacent to the Premises. The limitation of liability of such insurance shall not be less than One Million and No/100 ($1,000,000.00) Dollars in respect to inquiries or death in respect to any one accident and the

limit of not less than One Hundred Thousand and No/100 ($100,000.00) Dollars in respect to property damage.

b. Landlord's Obligation. Landlord shall also maintain liability insurance described in Paragraph 14.a. above, in addition to and not in lieu of the insurance required to be maintained by Tenant in the amount required by Minnesota statutes. Tenant shall not be named as an additional insured therein.

15. FIRE AND PROPERTY INSURANCE.

a. Landlord shall secure and pay for insurance coverage upon the Premises for fire, windstorm, and the risks covered by extended coverage; Tenant shall secure and pay for such insurance coverage upon its own property, furniture, fixtures, inventory or other risks as it, in its discretion, shall determine.

b. Tenant shall not permit any operation to be conducted on the premises that would cause suspension or cancellation or a premium increase of any insurance coverage secured by Landlord pursuant to this Paragraph or Paragraph 14.b.

c. Any insurance secured by Landlord covering the perils of fire, windstorm, and extended coverage, and insuring the Premises against loss or damage to the Riverwalk Center or other improvements situated on the Leased Premises shall be for the sole benefit of Landlord and the policy shall be under its sole control.

16. WAIVER OF SUBROGATION. Each party hereto waives any and every claim which arises or may arise in its favor and against the other party hereto during the term of this Lease or any renewal or extensions thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of the Premises leased to Tenant hereunder,

which loss or damage is covered by valid and collectable fire, windstorm, tornado or extended coverage insurance policies, to, and only to, the extent that such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waivers or release contained in this Lease with respect to loss of, or damage to, property of the parties hereto. Because the above mutual waivers preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person) each party hereto agrees immediately to give to the insurance company which has issued its polices of fire, tornado, windstorm or extended coverage insurance, written notice of the terms of said mutual waivers, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

17. INDEMNIFICATION AND RELEASE. Tenant shall indemnify and save harmless Landlord against and from any and all claims by or on behalf of any person or persons, including Tenant, for personal injuries, wrongful death or property damage arising out of any act or occurrence committed or happening in, on, to or for any part of the Premises except to the extent that, (i) such claims are covered by applicable insurance maintained by Landlord covering the Premises, provided that this exception shall not apply insofar as such claims exceed the actual limits of such insurance as Landlord shall maintain (ii) or such claims as are based on the negligence or willful conduct of Landlord or its agents or employees (iii) or such claims as are based on Landlord's breach of the covenants or obligations contained in this Lease. Tenant's agreement, herein set forth, to indemnify and save Landlord harmless, shall include any and all claims by Tenant for damages to any of Tenant's improvements and betterments arising out of any act or occurrence committed or happening in and about the

Premises except for such acts caused by Landlord. The indemnification agreement set forth above shall include, but not by way of limitations, all costs, counsel fees and expenses and liabilities incurred in connection with the defense of such claim or claims.

18. FIRE AND CASUALTY DAMAGE. If the Riverwalk Centre or other improvements on the Leased Premises shall be damaged or destroyed by fire, tornado or other casualty, this Lease shall terminate and Landlord shall refund to Tenant a pro-rata share of Tenant's prepaid rental payment, if any.

19. CONDEMNATION. If the Leased Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power, this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. However, if a condemning authority takes a substantial portion of the Riverwalk Centre, Tenant shall have the sole option to cancel and terminate this Lease.

20. DEFAULT BY THE TENANT: The following events shall be deemed to be events of default by Tenant under this Lease:

    a. If Tenant shall fail to pay any installment of the rent on the date the same is due and such failure continues for a period of thirty (30) days.

    b. If Tenant shall fail to comply with any terms, conditions, or covenants of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to the Tenant; or if such failure cannot reasonably be cured within said thirty (30) days after written notice thereof to Tenant; or if such failure cannot reasonably be cured within said thirty (30) days and Tenant does not thereafter with reasonable diligence in good faith proceed to cure such failure.

c. If Tenant shall become insolvent or shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors.

d. If Tenant shall file a petition under any section or chapter of the National Bankruptcy Act, as amended, or any similar law or statute of the United States or any state thereof, or if Tenant shall be adjudged a bankrupt or insolvent in proceeding filed against Tenant thereunder.

e. A receiver or trustee is appointed for all or substantially all of the assets of the Tenant.

f. A fraud practiced upon one party hereto by the other party, in which case the aggrieved party may, at its option, terminate the Lease.

g. Upon the occurrence of any such events of default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever;

   i) Terminate this Lease, in which event the Tenant shall immediately surrender the Premises to the Landlord, and if Tenant fails to do so, the Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, and Tenant agrees to pay the Landlord on demand the amount of all loss and damages which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.

   ii) Enter upon and take possession of the Premises and expel or remove Tenant or any other person who may be occupying said Premises or any part thereof, and relet the Premises and

receive the rent therefore, and Tenant agrees to pay Landlord on demand any deficiency that may arise by reason of such reletting.

iii) Enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for expenses which Landlord may incur in effecting compliance with Tenants' obligation under this Lease.

h. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law; nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions or covenants herein contained. If , on account of any breach or default by Tenant of its obligations to any of the parties hereto, under the terms, conditions and covenants of this Lease, it shall become necessary for Landlord to employ an attorney to enforce or defend any of its rights or remedies hereunder, and should Landlord prevail, Landlord shall be entitled to any reasonable attorneys' fees incurred in such connection.

21. DEFAULT BY LANDLORD. The following events shall be deemed to be events of default by Landlord under this Lease;

a. If Landlord shall fail to comply with any term, condition or covenant of this Lease and shall not cure such failure within thirty (30) days after written notice thereof to Landlord; or such failure cannot reasonably be cured within said thirty (30) days and Landlord has not commenced to cure such failure within thirty (30) days after written notice thereto Landlord; of if such failure cannot

reasonable cured within said thirty (30) days and Landlord does not thereafter with reasonable diligence and good faith proceed to cure such failure.

b. If a receiver or trustee is appointed for all or substantially all of the assets of Landlord.

c. If fraud practiced upon one party hereto by the other party, in which case the aggrieved party may, at its option, terminate this Lease.

d. Upon the occurrence of any such event of default, Tenant shall have the option to terminate this Lease and abate the rent immediately.

22. WAIVER OF DEFAULT. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

23. HOLDING OVER. Should Tenant or any of its successors in interest hold over the Premises or any part thereof after the expiration of the term of this Lease, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only for a monthly rental equal to the rent paid for the last month of the term of this Lease.

24. SIGNS. Tenant shall have the right to erect signs on the interior walls of the building, securely attached to and parallel to said walls, subject to applicable laws, if any, subject to Landlord's written permission. Exterior signs may be installed by Tenant, with the written permission of the Landlord, so long as the same do not cause any structural damage to Landlord's property, and so long as the same conform to applicable ordinances. All such proposals for the erection of exterior signs shall be submitted, in writing, to Landlord, with appropriate drawings or plans to

reasonably illustrate the manner in which the sign is to be erected, and Landlord may approve the same but may require adequate security or safeguards guaranteeing adequate repair or restoration of the building or property upon removal of such exterior signs.

25. LANDLORD'S RIGHT OF ENTRY. Landlord and its authorized agents shall have the right to enter the Premises during normal working hours for the following purposes:

    a. Inspecting the general condition and state of repair of the Premises;

    b. The making of repairs required of Landlord, if any;

    c. For any other reasonable purpose; provided, however, that such entry shall not unreasonably interfere with the conduct of Tenant's business.

26. TENANT'S BUSINESS HOURS. Tenant agrees to operate its business in the Premises and operate at the regular theatre hours that are standard in the industry. The landlord understands that the tenant will not be open for business during the construction period.

27. NOTICE. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not, when deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at their respective addresses set out opposite their names below or at such other addresses as they have heretofore specified by written notice delivered in accordance herewith:

As to the Landlord: City of East Grand Forks
P.O. Box 373
East Grand Forks, MN 56721

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As to the Tenant: 105 W 1st St.
Fosston, MN 56542

28. TIME OF ESSENCE: Time is of the essence with respect to the performance of all obligations to be performed or observed by the parties under this Lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the day and year first above written.

LANDLORD:	TENANT:
BY: Lynn Stauss	By: Bob Moore
Mayor Lynn Stauss	Bob Moore
By: Bob Brooks	By: Jan Moore
City Administrator, Bob Brooks	Jan Moore

This instrument drafted by:

Ronald I. Galstad
GALSTAD, JENSEN & MCCANN, P.A.
1312 Central Avenue N.E.
P.O. Box 386
East Grand Forks, MN 56721
(218) 773-9729

(COMMERCIAL LEASE.doc. Riverwalk Centre)

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LEASE AND DEVELOPMENT AGREEMENT

Moore Family Theatres, Inc., a corporation created under the laws of the State of Minnesota and/or Bob Moore and Jan Moore (hereinafter referred to as "Moore"), and the City of East Grand Forks, a municipal corporation existing under the laws of the State of Minnesota (hereinafter referred to as "EGF"), hereby make the following agreement as to the lease by EGF to Moore of property leased to Moore under the terms of that certain Lease dated and entered into between the parties this same date and the terms hereof being due consideration the parties do set forth herein the terms and conditions pursuant to which the relationship between the parties will continue thereafter.

WHEREAS, EGF and Moore entered into a Lease Agreement dated this same date, (hereinafter all referred to as the " Lease Agreement"), that the terms herein would govern the relationship between the parties; and

WHEREAS, the parties do agree that the terms set forth in this agreement shall bind the parties hereto and govern their relationship contractually; and

WHEREAS, the parties desire to enter into the Lease and Development Agreement and that Moore will make substantial renovations to the leased premises based on their agreement to abide by the terms set forth herein and agrees to enter into any documentation required to place Moore in the position of lessee or lessee with the option to purchase as set forth in this agreement; and

WHEREAS, the parties hereto are not aware of any claims or other reasons why this agreement cannot be entered into and they have full authority to enter into the agreement and carry out the terms and conditions set forth herein;

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NOW, THEREFORE, in consideration of the terms and conditions set forth herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. **Lease to Moore with the option to purchase.** EGF hereby agrees that the portion of the Riverwalk Center property depicted on the attached site plan (See Exhibit A), and referred to in the Lease Agreement will be leased to Moore with the option to purchase for the sum of two hundred thousand dollars ($200,000.00). The lease payment shall be based upon the option price of $200,000.00 payable at 4% interest over fifteen years with a balloon payment due in year ten (10). The lease shall be for a term of ten (10) years with an option to renew in the Lessee for an additional ten (10) years. If Moore decides to exercise the option to purchase, Moore shall exercise the option to purchase by giving EGF written notice within sixty (60) days after written notice by EGF that the Agreement and Mortgage having Document number 558872 dated the 16th day of April, 1998 and having been recorded the 17th day of April, 1998 has been satisfied. Once written notice has been provided Moore shall have three hundred (300) days to complete the purchase or the option will automatically lapse. Should Moore fail to exercise the option within said sixty (60) days or should the option lapse after the three hundred (300) day closing period whichever comes first, then the parties shall renegotiate the base rent in good faith for the remaining term of the lease. Further upon closing of the purchase all lease payments made by Moore shall be applied to the purchase price in full until EGF is able to convey title at the end of the term set forth in the Lease Agreement. At the time title can be conveyed, the property shall be deeded to Moore and any balance owing of the purchase price shall be converted to a mortgage which shall

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be inferior and subordinate in position to any mortgage in place prior to the new EGF mortgage. Prior to entering into a long term lease the parties will execute a short term Lease Agreement which shall remain in effect on its terms and conditions until the first full month the theatre is open to the public. EGF will work with the Northwest Minnesota Foundation, the Northwest Regional Development Commission and the City of East Grand Forks Economic Development and Housing Authority to assist Moore with obtaining loan funds of $500,000.00 at 4-6%. Moore shall be required to execute all appropriate loan documents including loan agreements, security agreements, commercial guarantees, personal guarantees, mortgages, notes and assignment of rents to obtain said financing. EGF agrees to utilize Enterprise Zone Credits for sales tax on construction materials and equipment purchases and full time equivalent employees for approximately $60-75,000.00

2. **Option to Purchase the Balance of the Property.** EGF hereby gives Moore an option to purchase the balance of the Riverwalk Center property, not including the front of the property on DeMers Avenue, for the sum of $350,000.00. EGF will provide Moore written notice that the Agreement and Mortgage having Document number 558872 dated the 16th day of April, 1998 and having been recorded the 17th day of April, 1998 has been satisfied. Once written notice has been provided Moore shall have sixty (60) days to exercise said option and three hundred (300) days to complete the purchase or the option will automatically lapse. In the event that Moore exercises the option to purchase the balance of the Riverwalk Property Moore will be required to sign all appropriate documents to include but not be limited to the following; loan agreement, security agreement, commercial guarantee, personal guarantee, mortgage, note and an

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assignment of rents. If Moore exercises said option and completes the purchase it is understood that Moore will become responsible for the care, control and maintenance of said building. The parties agree that it is in all parties best interest to wait to create a condominium for the property until such time as it is clear if the Moore's are going to exercise the options to purchase and which portions of the existing property Moore is going to own. All condominium documents shall be drafted with the Moore's consent and the consent of their lender to the terms thereof, which consent shall not be unreasonably withheld. Any required party wall agreements, covenants, restrictions etc. will be entered into by the parties.

3. **Leases of other spaces.** Moore shall be consulted as to all other leases and EGF will give consideration to Moore's preferences. In all events and under all circumstances which may occur under the various scenarios presented herein, Moore shall have access to the side streets and to Demers Avenue as well as to the back parking lot as they shall choose to maintain, providing access from all four sides of the mall to the theatre.

4. **Improvements.** In consideration of the foregoing, Moore will make and pay for all improvements to the afore-mentioned property to create a theatre in the space. EGF acknowledges that any lender used by Moore to assist with financing those improvements shall have first priority in those improvements and further EGF agrees that an assignment of any lease and purchase option, if required by said lender, shall be consented to by EGF. Until such time as the lender can be placed in priority position with a mortgage interest, East Grand Forks Economic Development and Housing Authority agree to guarantee the lender in accordance with the terms of a separate

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agreement. (See attached as Exhibit "B") The guarantee shall be for six hundred and seventy five thousand dollars ($675,000.00) which shall be reduced yearly based upon a fifteen (15) year loan amortization of the principal. The guarantee would be relied upon to make up any difference between what Ultima was able to recover in a liquidation and the total funds due Ultima. Recovery is limited to the maximum of the loss chargeable to the debtor or the dollar amount of the guarantee, whichever is less. EGF will pay the sum of up to $50,000.00 towards the cost of the outside marquee to be acquired by Moore, with all costs above that amount to be paid by Moore. EGF will acknowledge, cooperate and execute the appropriate documentation required by Moore's lender to create a security interest in the items, fixtures or property financed. Signage may be placed on the ends of the building by Moore on both sides denoting the theatre after the appropriate permits have been requested and granted by the appropriate City departments. No arcade games will be allowed in the common area.

5. **EGF's Costs and Expenses**. All charges and amounts due for maintaining the parking area, parking lot, and sidewalks around the mall shall be maintained by EGF as public property until such time as an agreement for maintenance is entered into by all parties and properties benefiting therefrom. EGF will maintain and pay for any flood insurance required for the mall building until the same is no longer necessary. Moore shall be responsible for insurance on contents, including flood insurance. EGF shall, pay for any common area expenses not contributed by Moore until Moore exercises its right to purchase Riverwalk Center property as referred to in the Lease Agreement. After exercising the option to purchase and completing the sale Moore shall pay its share of common area expenses but only as to actual costs incurred, unless

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Moore purchases the balance of the building as referred to in paragraph two (2) above, then Moore would be responsible for the care, control and maintenance of said building. Further, appropriate signage may be placed for the theatre as is usual and customary in the movie theatre industry as agree upon between the parties. Additionally, it is understood that a variance for signage, if required will not be unreasonably withheld. The common area wall may be used on the upper portion by EGF to create a city history or to highlight events. EGF shall pay all utilities associated with the property until such time as the utilities are all separated. EGF shall pay all cost of such separation.

6. **Agreement Binding.** This agreement shall be binding upon the successors and assigns of all the parties. The parties shall execute and deliver such additional and further instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this agreement.

7. **Living Space.** EGF acknowledges that Moore may place living quarters on the second floor of the space, should Moore so desire.

Dated this 8th day of May, 2007.

MOORE FAMILY THEATRES, INC.

By: Bob Moore
Its: President

Bob Moore

Jan Moore

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City of East Grand Forks, a municipal corporation

By: Lynn Stauss
Its: Mayor

By: Bob Brooks
Its: City Administrator

Economic Development and Housing Authority

By: George Wogaman
Its: President

By: James S. Richter
Its: Executive Director

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LEASE AND DEVELOPMENT AGREEMENT

River Cinema, Inc., a corporation created under the laws of the State of Minnesota and/or Robert Moore and Jan Moore (hereinafter referred to as "Moore"), and the City of East Grand Forks, a municipal corporation existing under the laws of the State of Minnesota (hereinafter referred to as "EGF"), hereby make the following agreement as to the lease by EGF to Moore of property leased to Moore under the terms of that certain Lease dated and entered into between the parties this same date and the terms hereof being due consideration the parties do set forth herein the terms and conditions pursuant to which the relationship between the parties will continue thereafter.

WHEREAS, EGF and Moore entered into a Lease Agreement dated this same date, (hereinafter all referred to as the "Lease Agreement"), that the terms herein would govern the relationship between the parties; and

WHEREAS, the parties do agree that the terms set forth in this agreement shall bind the parties hereto and govern their relationship contractually; and

WHEREAS, the parties desire to enter into the Lease and Development Agreement and that Moore will make substantial renovations to the leased premises based on their agreement to abide by the terms set forth herein and agrees to enter into any documentation required to place Moore in the position of lessee as set forth in this agreement; and

WHEREAS, the parties hereto are not aware of any claims or other reasons why this agreement cannot be entered into and they have full authority to enter into the agreement and carry out the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the terms and conditions set forth herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. **Lease to Moore.** EGF hereby agrees that the portion of the Riverwalk Center property depicted on the attached site plan (See Exhibit A), and referred to in the Lease Agreement will be leased to Moore for the sum of Fifteen Hundred and 00/100 dollars ($1,500.00) triple net per month. The lease shall be for a term of ten (10) years with an option to renew in the Lessee for an additional ten (10) years. The above monthly lease amount is subject to renegotiation for the lease period beginning in January of 2014. EGF previously gave Robert and Jan Moore the option to purchase a portion of the Riverwalk Centre at a future date. The Federal EDA had concerns over the potential sale and it was agreed that the option to purchase the property would be removed from the Lease and Development Agreement. The parties have entered into a Memorandum of Understanding to clarify the agreement and to memorialize the intent of the parties regarding any potential purchase of a portion of the Riverwalk Centre at a future date. It is further understood and agreed that the Federal EDA has a reversionary interest according to its Grant and Mortgage Agreement, document number 558872 on file in the office of the Polk County Recorder and may foreclose upon its mortgage in the event of any default by EGF. Further, the Federal EDA is under no obligation to honor the Memorandum of Understanding between the City and the Moore's. Prior to any future sale of the real property after the useful life of the facility has lapsed the parties must have prior written approval from the Federal EDA as indicated in the Memorandum of Understanding. Prior to entering into a long term lease the parties have executed a short

term Lease Agreement which shall remain in effect on its terms and conditions until the first full month the theatre is open to the public. EGF will work with the Northwest Minnesota Foundation, the Northwest Regional Development Commission and the City of East Grand Forks Economic Development and Housing Authority to assist Moore with obtaining loan funds of $500,000.00 at 4-6%. Moore shall be required to execute all appropriate loan documents including loan agreements, security agreements, commercial guarantees, personal guarantees, mortgages, notes and assignment of rents to obtain said financing. EGF agrees to utilize Enterprise Zone Credits for sales tax on construction materials and equipment purchases and full time equivalent employees for approximately $60-75,000.00

2. **Leases of other spaces.** Moore shall be consulted as to all other leases and EGF will give consideration to Moore's preferences. In all events and under all circumstances which may occur under the various scenarios presented herein, Moore shall have access to the side streets and to Demers Avenue as well as to the back parking lot as they shall choose to maintain, providing access from all four sides of the mall to the theatre.

3. **Improvements.** Moore will make and pay for all improvements to the afore-mentioned property to create a theatre in the space. EGF acknowledges that any lender used by Moore to assist with financing those improvements shall have first priority in those improvements and further EGF agrees that an assignment of any lease, if required by said lender, shall be consented to by EGF. Until such time as the lender can be placed in priority position with a mortgage interest, East Grand Forks Economic Development and Housing Authority agree to guarantee the lender in accordance with the

terms of a separate agreement. (See attached as Exhibit "B"). EGF will pay the sum of up to $50,000.00 towards the cost of the outside marquee to be acquired by Moore, with all costs above that amount to be paid by Moore. EGF will acknowledge, cooperate and execute the appropriate documentation required by Moore's lender to create a security interest in the items, fixtures or property financed. Signage may be placed on the ends of the building by Moore on both sides denoting the theatre after the appropriate permits have been requested and granted by the appropriate City departments. No arcade games will be allowed in the common area.

4. **EGF's Costs and Expenses**. All charges and amounts due for maintaining the parking area, parking lot, and sidewalks around the mall shall be maintained by EGF as public property until such time as an agreement for maintenance is entered into by all parties and properties benefiting therefrom. EGF will maintain and pay for any flood insurance required for the mall building until the same is no longer necessary. Moore shall be responsible for insurance on contents, including flood insurance. EGF shall, pay for any common area expenses not contributed by Moore. Further, appropriate signage may be placed for the theatre as is usual and customary in the movie theatre industry as agree upon between the parties. Additionally, it is understood that a variance for signage, if required will not be unreasonably withheld. The common area wall may be used on the upper portion by EGF to create a city history or to highlight events. EGF shall pay all utilities associated with the property until such time as the utilities are all separated. EGF shall pay all cost of such separation.

5. **Agreement Binding.** This agreement shall be binding upon the successors and assigns of all the parties. The parties shall execute and deliver such

additional and further instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this agreement.

6. **Living Space.** EGF acknowledges that Moore may place living quarters on the second floor of the space, should Moore so desire.

Dated this 2nd day of August, 2007.

MOORE FAMILY THEATRES, INC.

By: Robert Moore
Its: President

By: Jan Moore
Its: Secretary

Robert Moore

Jan Moore

City of East Grand Forks, a municipal corporation

By:
Its: Mayor

By:
Its: City Administrator

Economic Development and Housing Authority

By: GEORGE WOGAMAN
Its: PRESIDENT

By: JAMES S. RICHTER
Its: Executive Director

MEMORANDUM OF UNDERSTANDING

Effective date:

I. Purpose

This memorandum is entered into this 2 day of August, 2007 between the City of East Grand Forks and Robert and Jan Moore individually and as officers and stockholders of River Cinema, Inc.(hereinafter the Moore's). Its purpose is to clarify the agreement, and to memorialize the intent of the parties regarding the potential purchase of a portion of the Riverwalk Centre if it becomes available for sale at a future date.

II. Authority

This agreement is entered into under the authorities of:

a. The City of East Grand Forks by previous council action ; and
b. Robert and Jan Moore individually and for River Cinema, Inc.

III. Background

The City of East Grand Forks, Robert and Jan Moore and River Cinema, Inc. entered into a Lease and Development agreement dated. Hereby attached and incorporated by reference. The agreement contained an option to purchase space in the mall for an agreed upon price. The Federal EDA had concerns that the option to purchase may violate the terms of the Federal EDA grant that the City used to remodel the Riverwalk Centre, that the option may violate the terms of its Agreement and Mortgage having Document number 558872 dated the 16th day of April, 1998 and having been recorded as a lien against the property on the 17th day of April, 1998, and that the option to purchase may create a cloud on the title that could negatively impact the EDA's security interests. That the City and the Economic Housing and Development Authority of and for the City of East Grand Forks sent a task force to Chicago to meet with the Federal EDA to rectify the concerns. That as a result of the meeting it has been mutually agreed by the City and Robert and Jan Moore that it is in the best interests of the parties to remove the option to purchase from Lease and Development Agreement and their intent in this Memorandum of Understanding is to comply with the EDA's concerns and to prevent any potential negative impact on the EDA's security interests.

IV. Legal Description

SEE ATTACHED EXHIBIT "A "

V. Scope of Agreement

a. Purpose

The City and the Moore's enter into this agreement for the purpose of working together to resolve the issues surrounding the movie theatre development project and for any potential future sale of the Riverwalk Center.

b. The City agrees to:

Enter into a sales contract, with River Cinema, Inc. as contemplated by the above mentioned Lease and Development Agreement for the same terms and conditions as previously negotiated after the useful life of the facility has lapsed and only after written approval by the Federal EDA which will not be withheld except for good cause which is primarily defined as a sale for a discriminatory or religious purpose.

c. The Moore's agree:

That they specifically understand that they do not obtain any possessory interest in the above referenced real property by virtue of this agreement or by virtue of leasing the property from the City of East Grand Forks.

The Moore's acknowledge that the Federal EDA has a reversionary interest and may exercise its rights in the Riverwalk Centre and that prior to any future sale of the real property after the useful life of the facility has lapsed must have prior written approval from the Federal EDA, which will not be withheld except for good cause which is primarily defined as a sale for a discriminatory or religious purpose.

It is also understood that the Federal EDA is under no obligation to the parties to authorize the sale of the Riverwalk Centre to the Moore's after the useful life of the property has lapsed.

Further, should the Federal EDA, in its sole discretion decide that there has been a material breach in the Grant Agreement and Mortgage having Document number 558872 on file in the office of the Polk County Recorder it may foreclose upon its mortgage and is under no obligation to honor this Memorandum of Understanding between the City and the Moore's.

Dated this 2 day of August, 2007

City of East Grand Forks

Robert Brooks, City Administrator

River Cinema, Inc.

Robert Moore
Individually and as Officer

Lynn Stauss, Mayor
Individually and as Officer

Jan Moore
Individually and as Officer