

AGENDA
CITY COUNCIL
CITY OF EAST GRAND FORKS
OCTOBER 19, 2010
5:00 P.M.

CALL TO ORDER:

CALL OF ROLL:

DETERMINATION OF A QUORUM:

PLEDGE OF ALLEGIANCE:

OPEN FORUM:

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

APPROVAL OF MINUTES:

1. Consider approving the minutes of the Regular Meeting for the East Grand Forks, Minnesota City Council of October 5, 2010.
2. Consider approving the minutes of the Budget Work Session for the East Grand Forks, Minnesota City Council of October 6, 2010.
3. Consider approving the minutes of the Work Session for the East Grand Forks, Minnesota City Council of October 12, 2010
4. Consider approving the minutes of the Budget Work Session for the East Grand Forks, Minnesota City Council of October 13, 2010.

SCHEDULED BID LETTINGS: NONE

SCHEDULED PUBLIC HEARINGS: NONE.

CONSENT AGENDA:

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

5. Consider adopting Resolution No. 10-10-102 a Resolution approving the application for a gambling premise permit by the ALS Association, Minnesota Chapter for the Eagles Club.
6. Consider approving the application for a special event license from Whitey’s Steak and Seafood for the placement of a tent and a live band on city-owned property in the boardwalk area on October 22 and 23.

7. Consider adopting Resolution No. 10-10-103 accepting a Business Development Public Infrastructure (BDPI) award of \$250,000 from the State of Minnesota and authorizing the city to enter into an agreement with the State of Minnesota for the project.
8. Consider adopting Resolution No. 10-10-104 approving a Consent Agreement and Final Order with the United States Environmental Protection Agency and authorizing the City Administrator and the Mayor to execute all appropriate documents.
9. Consider adopting Resolution No. 10-10-106 approving a one-year lease for city storage facilities with the Minnesota Department of Natural Resources, Region 1.

ACKNOWLEDGE RECEIPT OF REPORTS OF OFFICERS, BOARDS AND COMMISSIONS:

10. Regular meeting minutes of the Water, Light, Power and Building Commission for September 16, 2010.

COMMUNICATIONS: NONE.

OLD BUSINESS:

11. Consider adopting Resolution No. 10-10-105 to support the LaFave Multi-Use Trail for the City of East Grand Forks; Project: #C023-10-1C

NEW BUSINESS:

12. Consider adopting Ordinance No. 314 3rd Series, an Ordinance of the City of East Grand Forks, Minnesota, amending City Code Provision in Title VII: Traffic Code, Chapter 70 entitled "General Provisions" by amending Section 70.02 entitled "Definitions" and by amending Chapter 72 entitled "Parking Regulations" by amending Section 72.04, Section 72.10, and Section 72.11 (1st Reading).
13. Consider adopting Resolution No. 10-10-107 amending the City Personnel Policy Manual to incorporate a Sick Leave Donation Policy.

CLAIMS:

14. Consider adopting Resolution No. 10-10-108 a Resolution authorizing the City of East Grand Forks to approve purchases from Hardware Hank the goods referenced in check number 7726 for a total of \$914.20 whereas Council Member Buckalew is personally interested financially in the contract.
15. Consider authorizing the City Administrator/Clerk-Treasurer to issue payment of recommended bills and payroll.

ADJOURN:

Upcoming Meetings:

Budget Meeting – October 20, 2010 – 5:00 PM – Training Room

Work Session – October 26, 2010 – 5:00 PM – Training Room

Budget Meeting – October 27, 2010 – 5:00 PM – Training Room

Regular Meeting – November 4, 2010 – 5:00 PM – Council Chambers
(Note date change due to General Election)

UNAPPROVED
MINUTES
OF THE
EAST GRAND FORKS
CITY COUNCIL
TUESDAY, OCTOER 5, 2010 – 5:00 PM

CALL TO ORDER:

The Regular Meeting of the East Grand Forks City Council for October 5, 2010 was called to order by Council President Dick Grassel at 5:00 P.M.

CALL OF ROLL:

On a Call of Roll the following members of the East Grand Forks City Council were present: Mayor Lynn Stauss, Council President Dick Grassel, Council Vice President Henry Tweten, Council Member Marc Demers, Craig Buckalew, Wayne Gregoire, Mike Pokrzywinski, and Greg Leigh.

STAFF PRESENT:

Dave Aker, Parks & Recreation Superintendent; Greg Boppre, City Engineer; Nancy Ellis, Planning & Zoning; Michelle French, Executive Assistant; Ron Galstad, City Attorney; Randy Gust, Fire Chief; Mike Hedlund, Police Chief; Charlotte Helgeson, Library Director; Scott Huizenga, City Administrator; Teri Kouba, Transit; Jim Richter, EDHA Director; and John Wachter, Public Works Superintendent.

DETERMINATION OF A QUORUM:

The Council President Determined a Quorum was present

PLEDGE OF ALLEGIANCE:

OPEN FORUM:

“An opportunity for members of the public to address the City Council on items not on the current Agenda. Items requiring Council action maybe deferred to staff or Boards and Commissions for research and future Council Agendas if appropriate.” If you would like to address the City Council, please come up to the podium to do so.

APPROVAL OF MINUTES:

1. Consider approving the minutes of the “Regular Meeting” for the East Grand Forks, Minnesota City Council of September 21, 2010.
2. Consider approving the minutes of the “Work Session” for the East Grand Forks, Minnesota City Council of September 28, 2010.

A MOTION WAS MADE BY COUNCIL MEMBER LEIGH, SECONDED BY COUNCIL MEMBER TWETEN, TO APPROVE ITEMS ONE (1) AND TWO (2) AS SUBMITTED.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

SCHEDULED BID LETTINGS:

3. Consider rejecting the bids for “2010 Assessment Job No. 2 – Storm Sewer Improvements” and rebid the project in the Spring of 2011.

A MOTION WAS MADE BY COUNCIL MEMBER GREGOIRE, SECONDED BY COUNCIL MEMBER TWETEN, TO REJECT THE BIDS FOR “2010 ASSESSMENT JOB NO. 2 – STORM SEWER IMPROVEMENTS” AND REBID THE PROJECT IN THE SPRING OF 2011.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

SCHEDULED PUBLIC HEARINGS: NONE.

CONSENT AGENDA:

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

4. Consider approving the lease with Butler Equipment for for snow removal for \$2025 per month plus \$51 per hour and freight.
5. Consider approving the Taxi-Cab License to S&S Towing and Repair, Mike Swehla, 300 2nd Ave. NE, East Grand Forks, MN 56721.
6. Consider approving the successful completion of the six month probationary period of Kevin Hanson, Mechanic, in the East Grand Forks Public Works Department.
7. Consider approving the successful completion of the six month probationary period of Jason Stordahl, Truck Driver, in the East Grand Forks Public Works Department.

A MOTION WAS MADE BY COUNCIL MEMBER LEIGH, SECONDED BY COUNCIL MEMBER POKRZYWINSKI, TO APPROVE CONSENT MOTIONS NUMBER FOUR (4) THROUGH SEVEN (7) AS SUBMITTED.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

ACKNOWLEDGE RECEIPT OF REPORTS OF OFFICERS, BOARDS AND COMMISSIONS:

8. Regular meeting minutes of the Planning Commission for August 12, 2010.

9. Regular meeting minutes of the Water, Light, Power and Building Commission for September 2, 2010.

10. Regular meeting minutes of the Resurrection Cemetery Commission for September 29, 2010.

COMMUNICATIONS: NONE.

OLD BUSINESS: NONE.

NEW BUSINESS:

11. Consider approving the request to rezone the Stokes Property and City of East Grand Forks property called the "Coulee View Addition" from UER to R-1.

A MOTION WAS MADE BY COUNCIL MEMBER TWETEN, SECONDED BY COUNCIL MEMBER LEIGH, TO APPROVE THE REQUEST TO REZONE THE STOKES PROPERTY AND CITY OF EAST GRAND FORKS PROPERTY CALLED THE "COULEE VIEW ADDITION" FROM UER TO R-1.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

12. Consider approving the Preliminary Plat for Coulee View Addition.

A MOTION WAS MADE BY COUNCIL MEMBER TWETEN, SECONDED BY COUNCIL MEMBER BUCKALEW, TO APPROVE THE PRELIMINARY PLAT FOR COULEE VIEW ADDITION.

Council Member Leigh asked when the lots would be available to purchase. Ms Ellis stated that the plat will go to Council for final approval on November 4 and then the plat needs to be signed. She would hope that it would be completed by the beginning of next year.

Council Member DeMers asked if a pedestrian easement could along the coulee. Ms Ellis stated that he will need to bring that up at the next Planning Commission meeting.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

13. Consider approving the Request for Proposal (RFP) for Paratransit (Dial-A-Ride) and Senior Rider Services Proposal for the Cities of Grand Forks, ND and East Grand Forks, MN.

A MOTION WAS MADE BY COUNCIL MEMBER LEIGH, SECONDED BY COUNCIL MEMBER GREGOIRE, TO APPROVE THE REQUEST FOR PROPOSAL (RFP) FOR PARATRANSIT (DIAL-A-RIDE) AND SENIOR RIDER SERVICES PROPOSAL FOR THE CITIES OF GRAND FORKS, ND AND EAST GRAND FORKS, MN.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

14. Consider approving the request to hire a new full-time Fire-Fighter to fill the current vacancy.

A MOTION WAS MADE BY COUNCIL MEMBER BUCKALEW, SECONDED BY COUNCIL MEMBER DEMERS, TO APPROVE THE REQUEST TO HIRE A NEW FULL-TIME FIRE-FIGHTER TO FILL THE CURRENT VACANCY.

Council Member Leigh stated that he is not against hiring a Fire-Fighter; however, we need to look at the budget and look at each position as one becomes vacant. Council Vice President Tweten stated that all Council Members look at protecting the City and the first five minutes are very important when a 911 call is placed. Mr. Gust stated that full-time Fire-Fighters are required to be an EMT.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

15. Consider adopting Resolution No. 10-10-XX a Resolution to support LaFave multi-use trail for the City of East Grand Forks; Project: #C023-10-1C.

A MOTION WAS MADE BY COUNCIL MEMBER POKRZYWINSKI, SECONDED BY COUNCIL MEMBER TWETEN, TO ADOPT RESOLUTION NO. 10-10-XX A RESOLUTION TO SUPPORT LAFAVE MULTI-USE TRAIL FOR THE CITY OF EAST GRAND FORKS; PROJECT: #C023-10-1C.

Council Member Leigh stated that spending approximately \$100,000 on a trail. He would like the City look at other options. Mayor Stauss announced that applying for a grant from the State then rejecting it doesn't look good. Council Member Buckalew stated that he would also like to look into this further and look at funding sources. Mr. Aker stated that he cannot change the plans, the City would lose the funding. Discussion occurred regarding TIF funds.

A MOTION WAS MADE BY COUNCIL MEMBER LEIGH, SECONDED BY COUNCIL MEMBER BUCKALEW, TO TABLE THIS ITEM FOR FURTHER DISCUSSION AT THE NEXT WORK SESSION.

Voting Aye: Gregoire, Leigh, DeMers, Buckalew, and Tweten.

Voting Nay: Pokrzywinski and Grassel.

CLAIMS:

16. Consider adopting Resolution No. 10-10-100 a Resolution authorizing the City of East Grand Forks to approve purchases from Bert's Truck Equipment the goods referenced in check number 7569 for a total of \$26.60 whereas Council Member Gregoire is personally interested financially in the contract.

A MOTION WAS MADE BY COUNCIL MEMBER BUCKALEW, SECONDED BY COUNCIL MEMBER LEIGH, TO ADOPT RESOLUTION NO. 10-10-100 A RESOLUTION AUTHORIZING THE CITY OF EAST GRAND FORKS TO APPROVE PURCHASES FROM BERT'S TRUCK EQUIPMENT THE GOODS REFERENCED IN CHECK NUMBER 7569 FOR A TOTAL OF \$26.60 WHEREAS COUNCIL MEMBER GREGOIRE IS PERSONALLY INTERESTED FINANCIALLY IN THE CONTRACT.

Voting Aye: Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.
 Voting Nay: None.
 Abstain: Gregoire.

17. Consider adopting Resolution No. 10-10-101 a Resolution authorizing the City of East Grand Forks to approve purchases from Hardware Hank the goods referenced in check number 7601 for a total of \$468.95 whereas Council Member Buckalew is personally interested financially in the contract.

A MOTION WAS MADE BY COUNCIL MEMBER POKRZYWINSKI, SECONDED BY COUNCIL MEMBER LEIGH, TO ADOPT RESOLUTION NO. 10-10-101 A RESOLUTION AUTHORIZING THE CITY OF EAST GRAND FORKS TO APPROVE PURCHASES FROM HARDWARE HANK THE GOODS REFERENCED IN CHECK NUMBER 7601 FOR A TOTAL OF \$468.95 WHEREAS COUNCIL MEMBER BUCKALEW IS PERSONALLY INTERESTED FINANCIALLY IN THE CONTRACT.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, and Tweten.
 Voting Nay: None.
 Abstain: Buckalew.

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

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|-------------------------------------|---|------------|
| Airgas | Oxygen | \$87.03 |
| Aker Dave | Reimb Conf Fees/2010 NRPA Congress & Expo/ | \$1,334.00 |
| American Business Solutions | Books/Reference | \$499.99 |
| American Media Solution | American Media Directory | \$579.99 |
| Ameripride Linen & Apparel Services | Cleaning Service/Supplies | \$519.16 |
| Animal Care Equipment & Services | x-Resistor Gloves | \$172.48 |
| Athletica Inc | Goal Crease Kits/Line Kit | \$1,592.11 |
| Berg-Johnson Associates Inc | Ametek Transmitter For Lift | \$955.58 |
| Bert's Truck Equipment | Mirror #320 | \$26.60 |
| Blue Cross Blue Shield of ND | Health Insurance | \$5,764.50 |
| Border States Electric Supply | Light Bulbs | \$247.02 |
| Brady Martz & Associates | EDHA Audit | \$1,200.00 |
| Brodart Co | Books | \$205.61 |
| Burlage Lisa | AFG Grant | \$575.00 |
| Chemsearch | Grease | \$2,612.12 |
| CL Linfoot Co. | Repair Hail Damage | \$662.50 |
| Cold Spring Granite Company | Balance Due On Columbarium | \$6,232.50 |
| D&S Hydraulics | Maint Parts | \$657.98 |
| Dakota Student | Ad For Winter Help | \$16.00 |
| Dakota Supply Group | Light Bulbs/City Hall | \$85.19 |
| Dragich Mark | Reimb Postage/Meals | \$33.05 |
| Eagle Electric | Replace Ballast/Relocate Outlets/Lift Station Repairs | \$2,399.81 |

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| East Side Express | Luigi's Dinner/Board Meeting | \$47.93 |
| EGF Postmaster | Stamps | \$200.00 |
| Electric Pump | Service Lift Stations | \$14,743.66 |
| Explorer Post #38 | Squad Car Cleaning | \$90.00 |
| Follett Software Company | Software Training/Support | \$600.00 |
| FS Engineering | Prof Services | \$64,633.20 |
| G&K Services | Mats | \$173.02 |
| Gahlon Gregory | Reimb Meal Exp/Lodging | \$141.11 |
| Gale | Books | \$313.73 |
| Gardner Publishing | Books | \$132.93 |
| GF Fire Equipment | Field Guides | \$438.00 |
| GF Park District | Temper Glass For Arena | \$5,000.00 |
| GF Welding & Machine | Angle Iron For Green Site Gate | \$4.71 |
| GGF Convention & Visitors Bureau | Lodging Tax/Plaza Motel Aug 2010 | \$473.70 |
| H&H Masonry | Masonry Work on Creatorium | \$250.00 |
| H&S Construction | 10 CP6 Est 3 FINAL Street Repairs | \$25,028.60 |
| Hajicek Rick | Cleaning 9/06/10 - 9/24/10 | \$427.50 |
| Hajicek Rod | Reimb Meal Exp/Fargo Grand Jury | \$8.25 |
| Hardware Hank | Maint Supplies | \$468.95 |
| Heartland Paper | Misc Supplies | \$104.54 |
| Hirshfield's Decorating Centers | Paint | \$772.54 |
| Huizenga Scott | Mileage&Meal Reimb/City Admin & EDA Meeting | \$120.25 |
| Hussey Plumbing | Plumbing Fixtures @ Sr.Center | \$865.60 |
| Inventory Trading Company | Uniforms For Julie & Deb | \$205.75 |
| Kelly Services | Temp Services | \$290.50 |
| Knutson Printing Company | Invitations & Envelopes | \$106.00 |
| Larson Brian | Reimb 2 Meals | \$22.00 |
| League of MN Cities | 2010-2011 Membership Dues | \$6,611.00 |
| League of MN Cities | 4th Qtr Workers Comp | \$33,772.60 |
| Liberty Business Systems | Copier Lease | \$73.59 |
| Lucke Gerald | Travel Reimb/ MN GFOA Conf | \$637.58 |
| Lynne Gladwin | Reimb/Brace | \$13.61 |
| M&W Services | Mow | \$160.32 |
| Marco | Copier Contract | \$285.83 |
| Mark Cowger Construction | Repairs/Nash Park/Hail Storm/Door Finishing | \$14,806.77 |
| McDonald's of EGF | Prisoner Meals | \$33.91 |
| Menards | Maint Supplies | \$59.09 |
| Micro-Marketing LLC | Books | \$172.81 |
| Mike's Pizza | Dinner Planning Meeting | \$53.64 |
| MN Dept of Human Services | Markers | \$20.70 |
| MN Dept of Revenue VOID****VOID****VOID*** | Use Tax Aug 2010 | \$1,546.00 |
| MN Drivers & Vehicle Services | Registration/07 Suzuki/PD | \$6.25 |
| MN Mayors Association | Mayors Assoc Dues | \$20.00 |

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| Mosca Design Inc. | Downtown Banners | \$5,550.00 |
| Newman Signs | 2 Installation Charges | \$1,000.00 |
| Northern Safety Tech | Recess Partition Panels & Gun Lock | \$472.11 |
| Noyes Brian & Laurie | New Construction Incentive Program | \$5,000.00 |
| NW Tire Inc | Tire Repair | \$15.78 |
| O'Reilly Auto Parts | Catalytic Converter | \$918.74 |
| Opp Construction | Alley off 8th St NW Asphalt | \$2,100.00 |
| Paras Contracting | 2010 CP3 Est2 Str Repairs Central Ave | \$32,897.55 |
| Pembina Trail | Music For Campground Event | \$225.00 |
| Polk County Recorder | Filing Fees | \$138.00 |
| Praxair Distribution | Welder Rental | \$19.54 |
| Quill Corp | Office Supplies | \$625.72 |
| Quirk Michelle | Landscaping Incentive Reimb | \$500.00 |
| R&R Specialties of Wisconsin Inc | Zamboni Cloth For Outdoor Rink/VFW | \$281.10 |
| RDJ Specialties Inc | Police Car Magnets | \$211.75 |
| RDO Powerplan OIB | Left Door & Post Hinges /Hyd Quick Couplers | \$690.41 |
| Richter James | Reimb Meal/Taxi/EDA Conf/Chicago | \$53.42 |
| Right Choice Electric Inc | Light Repair | \$55.00 |
| RMB Environmental Lab Inc | 4 Hr Composite Sample | \$43.00 |
| Roto Rooter | Cleaned San. Sewers | \$6,418.50 |
| Rydell Chevrolet | Ignition Switch #761/Door handle #761 | \$260.55 |
| S&S Towing & Repair | Fix Wheel Hub/Inspect 2 Trailers | \$40.00 |
| Sellin Brothers Inc | 10 CP4 Est 1 Utility Replacement | \$33,048.00 |
| Spielman Paul | Radio Repair | \$50.25 |
| Spruce Valley Corporation | 09 CP1 Est9 | \$83,651.50 |
| Stone Kay | Artist/Arts & Cultural Heritage Grant | \$935.00 |
| Stone's Mobile Radio Inc | Install Jumper For Auto Turn On Radio #541 | \$172.37 |
| Strata Corp | 10 CP1 Est | \$268,696.20 |
| Stuart's Towing | Towing/2000 Pontiac Grand Am/99 Nissan Path | \$106.88 |
| The Child's World Inc | Books | \$46.85 |
| Thomas Bouregy & Co | Books | \$139.50 |
| Try-County Refrigeration | Repairs/Compressor & Boilers | \$579.00 |
| Valley Truck | DOT Truck #157/Air Fittings #617 | \$599.57 |
| Vilandre Heating & A/C | Rpr Damage - Hail Storm/Water Fountain/Toilet Rpr | \$2,352.59 |
| Water & Light Department | Lift#4/ 8/5/10 - 9/5/10 | \$18,431.59 |
| Wilbur-Ellis | Fertilizer Nash Park | \$350.00 |
| Wizard's Enterprises Inc. | Custodial Services | \$490.00 |
| | | <u>\$667,559.86</u> |

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

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

COUNCIL/STAFF REPORTS:

Mayor Stauss asked Mr. Huizenga to check the flexibility of the DNR on the trail.

Council Member DeMers stated that he will be holding a meeting on Wednesday, October 06, 2010 at 7:00 pm regarding 14th Avenue street improvement at the Myer's residents.

Council Member Buckalew reminded everyone to drive safe during harvest.

Council Vice President Tweten announced that the Water & Light Commission had a budget meeting this past Monday night. Mr. Boyce would like the Council and Mayor review the financial reports.

Council Member Gregoire reminded everyone that the budget meetings will begin on Wednesday at 5:00 pm.

Council Member Leigh suggested that the City Council get a copy of the plans and look at the bike path. He stated that everyone should look at it at a walker and a bikers view and think safety.

Council Member Pokrzywinski stated that he is now a resident of Ward 2.

Council President Grassel reminded everyone of beet harvest. He asked Chief Hedlund to put the speed control sign up on 5th Ave. SE. Council President Grassel gave an update on campers in the Red River State Recreation Area. He stated that there were 1,273 campers in September and so far this year 6,572.

Mr. Wachter reminded everyone of Fall Cleanup this week.

Mr. Ellis reminded everyone of the public meeting regarding the 2040 Land Use Plan on October 14, 2010 at 7:00 pm in the Training Room at City Hall.

ADJOURN:

A MOTION WAS MADE BY COUNCIL MEMBER LEIGH, SECONDED BY COUNCIL MEMBER POKRZYWINSKI, TO ADJOURN THE OCTOBER 5, 2010 REGULAR MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 5:43 P.M.

Voting Aye: Gregoire, Leigh, Pokrzywinski, DeMers, Grassel, Buckalew, and Tweten.

Voting Nay: None.

Scott Huizenga, City Administrator/Clerk-Treasurer

UNAPPROVED MINUTES
OF THE
EAST GRAND FORKS
CITY COUNCIL
BUDGET MEETING
TUESDAY, OCTOBER 6, 2010 – 5:00 PM

CALL TO ORDER

The Work Session of the East Grand Forks City Council for October 6, 2010 was called to order by Council President Dick Grassel at 5:02P.M.

CALL OF ROLL

On a Call of Roll the following members of the East Grand Forks City Council were present: Mayor Lynn Stauss, Council President Dick Grassel, Council Members Marc DeMers, Craig Buckalew, Wayne Gregoire, Mike Pokrzywinski, and Greg Leigh.

STAFF PRESENT:

Nancy Ellis, Planning & Zoning; Scott Huizenga, City Administrator; and John Wachter, Public Works Superintendent.

DETERMINATION OF A QUORUM

1. Planning & Transit – Nancy Ellis, Earl Haugen, Teri Kouba

Ms. Ellis presented the Proposed 2011 Budget for the Planning and Zoning. Majority of expense from the General Fund for Planning is from salaries.

Ms. Kouba presented the budget for Transit. She made note that the contract for Dial-A-Ride services is being bid for 2011. From the bids they have received the prices are going to go up and it looks like the City's share will increase approximately \$6500. Transit ridership is up around 40% and they will continue to look at possible routes. The contract with Northland Tech College will be re-done in April 2011.

2. Public Works – John Wachter

Mr. Wachter presented the 2011 Proposed Budget for Public Works. Items discussed were staffing levels, capital purchases for equipment, street repairs, and Storm Water/Wastewater building addition. Mr. Wachter is still looking for alternative plans since the bids are coming in at higher than expected amounts. Council Member Demers also suggested we look at lowering the number of city-wide cleanups to one instead of two.

ADJOURN

A MOTION WAS MADE BY COUNCIL MEMBER D EMERS, SECONDED BY COUNCIL MEMBER GREGOIRE, TO ADJOURN THE OCTOBER 6, 2010 BUDGET MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 6:40 P.M.

Voting Aye: Pokrzywinski, DeMers, Grassel, Buckalew, and Gregoire.

Voting Nay: None.

Scott Huizenga, City Administrator/Clerk-Treasurer

UNAPPROVED MINUTES
OF THE
EAST GRAND FORKS
CITY COUNCIL
WORK SESSION
Tuesday, October 12, 2010 – 5:00 PM

CALL TO ORDER

The Work Session of the East Grand Forks City Council for October 12, 2010 was called to order by Council President Dick Grassel at 5:00 P.M.

CALL OF ROLL

On a Call of Roll the following members of the East Grand Forks City Council were present: Mayor Lynn Stauss, Council President Dick Grassel, Council Vice President Henry Tweten, Council Members, Craig Buckalew, Wayne Gregoire, and Mike Pokrzywinski.

STAFF PRESENT:

Dave Aker, Parks & Recreation Superintendent; Greg Boppre, City Engineer; Nancy Ellis, City Planner; Ron Galstad, City Attorney; Randy Gust, Fire Chief; Mike Hedlund, Police Chief; Charlotte Helgeson, Library Director; Scott Huizenga, City Administrator; and Jim Richter, EDHA Director.

DETERMINATION OF A QUORUM

1. LaFave Multi-Use Trail

Mr. Huizenga stated that he held a conference call with the Minnesota Department of Natural Resources (DNR) along with Mr. Boppre and Mr. Aker. DNR officials stated that the City could request scope changes to the proposed trail project. Any existing roads could not be included as grant expenditures for the trail unless the road was closed to automobile traffic. Mr. Huizenga also stated that he believed local Tax Increment Financing (TIF) funds could be used for the city match based on the 2010 Jobs Bill legislation and the original legislation that established the boundaries of the Red River State Recreational Area (RRSRA).

Council President Grassel and Council Vice President Tweten expressed support for the existing trail proposal. Mayor Stauss also supported the existing proposal with the premise that the City may deed some RRSRA lands back to state ownership. Council Member Buckalew stated that he favored the project if TIF funds are allowed for the City match. Council Member Pokrzywinski expressed support for the existing proposal.

2. Street Maintenance Parking Proposal

Chief Hedlund introduced a proposed ordinance that would change street maintenance parking to an year-round schedule. The City would divide the maintenance into districts so that parking would be restricted

in each district one day per week year-round. Chief Hedlund also proposed to change snow emergency parking enforcement to a 24-hour tag system. The Chief stated that this would lead to better enforcement and fewer resident complaints.

Mayor Stauss stated that a restriction of one day per week was reasonable.

3. Sick Leave Donation Policy

Mr. Huizenga introduced a proposed resolution to implement a sick leave donation policy into the Personnel Policy manual. He stated that the draft had been prepared for some time; and that the plan was to incorporate the policy into an overall policy manual revision. Recent events necessitated that the City adopt Sick Leave Donation Policy before the full Personnel Policy revision was presented for approval.

ADJOURN

A MOTION WAS MADE BY COUNCIL MEMBER POKRZYWINSKI, SECONDED BY COUNCIL MEMBER GREGOIRE, TO ADJOURN THE OCTOBER 12, 2010 WORK SESSION OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 5:28 P.M.

Voting Aye: Tweten, Gregoire, Pokrzywinski, Grassel, and Buckalew.

Voting Nay: None.

Absent: DeMers, Leigh.

Scott Huizenga, City Administrator/Clerk-Treasurer

UNAPPROVED
BUDGET WORK SESSION
MINUTES
OF THE
EAST GRAND FORKS
CITY COUNCIL
Wednesday, October 13, 2010 – 5:00 PM

CALL TO ORDER

The Budget Work Session of the East Grand Forks City Council for October 13, 2010 was called to order by Council President Dick Grassel at 5:00 P.M.

CALL OF ROLL

On a Call of Roll the following members of the East Grand Forks City Council were present: Mayor Lynn Stauss (5:34), Council President Dick Grassel, Council Vice President Henry Tweten, Council Members Marc DeMers, Craig Buckalew, Wayne Gregoire, Mike Pokrzywinski.

STAFF PRESENT:

Scott Huizenga, City Administrator; Mike Hedlund, Police Chief, Randy Gust, Fire Chief; and Erin Johnson, Accounting Technician.

DETERMINATION OF A QUORUM

1. Fire – Chief Randy Gust
Chief Gust presented the 2010 Fire Department Proposed Budget. He also presented the history, staffing levels, department activities, response statistics and training. Discussion ensued regarding, grants, capital improvements, a Fire Station on the Point, and a new Aerial Tower Truck.
2. Police – Chief Mike Hedlund
Chief Mike Hedlund presented the 2010 Police Department Proposed Budget and department update. Discussion ensued regarding staffing levels, overtime, capital improvements, and electronic upgrades.

ADJOURN

Meeting adjourned at 6:46 PM

Scott Huizenga, City Administrator/Clerk-Treasurer

RESOLUTION NO. 10 - 10 - 102

A RESOLUTION APPROVING THE APPLICATION FOR A GAMBLING PREMISE PERMIT BY THE ALS ASSOCIATION, MINNESOTA CHAPTER, FOR THE EAGLES CLUB.

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

WHEREAS, The organization has presented copies of the new application to the City for consideration; now therefore

BE IT RESOLVED, that the City Council of the City of East Grand Forks, Minnesota, does hereby approve the ALS Association, Minnesota Chapter gambling premise permit application for Eagles Club, which will be submitted to the Minnesota Gambling Control Board for final approval.

Voting Aye:

Voting Nay:

.

The President declared the resolution passed.

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 19th of October, 2010.

Mayor

Minnesota Lawful Gambling
LG220 Application for Exempt Permit

An exempt permit may be issued to a nonprofit organization that:
 - conducts lawful gambling on five or fewer days, and
 - awards less than \$50,000 in prizes during a calendar year.

| Application fee for each event If application postmarked or received: | |
|--|---|
| less than 30 days before the event \$100 | more than 30 days before the event \$50 |

ORGANIZATION INFORMATION Check # _____ \$ _____

Organization name **The ALS Association, Minnesota Chapter** Previous gambling permit number **X-04770**

Type of nonprofit organization. Check one.
 Fraternal Religious Veterans Other nonprofit organization

Mailing address **333 N Washington Ave; Ste 105** City **Minneapolis** State **MN** Zip Code **55401** County **Hennepin**

Name of chief executive officer (CEO) **Susan J Spalding** Daytime phone number **612-672-0484** Email address **sue@alsmn.org**

Attach a copy of ONE of the following for proof of nonprofit status. Check one.

- Do not attach a sales tax exempt status or federal ID employer numbers as they are not proof of nonprofit status.
- Nonprofit Articles of Incorporation OR a current Certificate of Good Standing.**
 Don't have a copy? This certificate must be obtained each year from:
 Secretary of State, Business Services Div., 180 State Office Building, St. Paul, MN 55155 Phone: 651-296-2803
 - IRS income tax exemption [501(c)] letter in your organization's name.**
 Don't have a copy? To obtain a copy of your federal income tax exempt letter, have an organization officer contact the IRS at 877-829-5500.
 - IRS - Affiliate of national, statewide, or international parent nonprofit organization (charter)**
 If your organization falls under a parent organization, attach copies of both of the following:
 a. IRS letter showing your parent organization is a nonprofit 501(c) organization with a group ruling, and
 b. the charter or letter from your parent organization recognizing your organization as a subordinate.
 - IRS - proof previously submitted to Gambling Control Board**
 If you previously submitted proof of nonprofit status from the IRS, no attachment is required.

GAMBLING PREMISES INFORMATION

Name of premises where gambling activity will be conducted (for raffles, list the site where the drawing will take place)
Eagle's Club

Address (do not use PO box) **227 10th St NW** City **East Grand Forks** Zip Code **56721** County **Polk**

Date(s) of activity (for raffles, indicate the date of the drawing)
January 22, 2011

Check the box or boxes that indicate the type of gambling activity your organization will conduct:
 Bingo* Raffles Paddlewheels* Pull-Tabs* Tipboards*

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

To find a licensed distributor, go to www.gcb.state.mn.us and click on List of Licensed Distributors, or call 651-639-4000.

Also complete
Page 2 of this form.

Print Form

Reset Form

LOCAL UNIT OF GOVERNMENT ACKNOWLEDGMENT

If the gambling premises is within city limits, a city official must check the action that the city is taking on this application and sign the application.

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

Print city name _____
On behalf of the city, I acknowledge this application.

Signature of city official receiving application

Title _____ Date ____/____/____

If the gambling premises is located in a township, a county official must check the action that the county is taking on this application and sign the application.

A township official is not required to sign the application.

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

Print county name _____
On behalf of the county, I acknowledge this application.
 Signature of county official receiving application

 Title _____ Date ____/____/____

(Optional) TOWNSHIP: On behalf of the township, I acknowledge that the organization is applying for exempted gambling activity within township limits. [A township has no statutory authority to approve or deny an application [Minnesota Statute 349.166]]

Print township name _____

 Signature of township official acknowledging application
 Title _____ Date ____/____/____

CHIEF EXECUTIVE OFFICER'S SIGNATURE

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

Chief executive officer's signature Sam Spalby Date 10/7/10

Complete a separate application for each gambling activity:

- one day of gambling activity,
- two or more consecutive days of gambling activity,
- each day a raffle drawing is held

Send application with:

- a copy of your proof of nonprofit status, and
- application fee for each event.

Make check payable to "State of Minnesota."

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

Financial report and recordkeeping required

A financial report form and instructions will be sent with your permit, or use the online fill-in form available at www.gcb.state.mn.us. Within 30 days of the activity date, complete and return the financial report form to the Gambling Control Board.

Print Form

Reset Form

This form will be made available in alternative format (i.e. large print, Braille) upon request.
Data privacy notice:The information requested on this form (and any attachments) will be used by the Gambling Control Board (Board) to determine your organization's qualifications to be involved in lawful gambling activities in Minnesota. Your organization has the right to refuse to supply the information requested; however, if your organization refuses to supply this information, the Board may not be able to determine your organization's qualifications and, as a consequence, may refuse to issue a permit. If you supply the information requested,

the Board will be able to process your organization's application. Your organization's name and address will be public information when received by the Board. All other information provided will be private data until the Board issues the permit. When the Board issues the permit, all information provided will become public. If the Board does not issue a permit, all information provided remains private, with the exception of your organization's name and address which will remain public. Private data are available to: Board members, Board staff whose work requires access to the

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

BOARD OF TRUSTEES

Chairman Emeritus
Lawrence R. Barnett

Chairman
Hon. Jay Daugherty
Vice Chairman
Robin R. Ganzert, Ph.D.
Treasurer and CFO
Benjamin S. Ohrenstein, Esq.
Secretary
Laural Winston

Robert V. Abendroth, Esq.
Lawrence R. Barnett, Esq.
Robert J. Bjorseth
Andrew T. Brophy
Barbara J. Dickinson
Cynthia Denton Douthat
Richard P. Essey
Allen L. Finkelstein, Esq.
Andrew Fleeson
Alan R. Griffith
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Wilson N. Krahnke
John P. Krave
Luis E. Leon
William G. Matthews
Edmund G. McCurtain II
Stuart Obermann
Elizabeth Rosenberg
Howard B. Safenowitz, Esq.
Stephen H. Saltzman
Kenneth F. Wiegand, Jr.

LIFETIME TRUSTEES

Morton Charlestein
Artemis A.W. Joukowsky
Lawrence A. Rand
Andrew J. Soffel

President and CEO
Jane H. Gilbert

February 4, 2010

Sue Spalding
Executive Director
The ALS Association
Minnesota Chapter
333 North Washington Ave., Suite 105
Minneapolis, MN 55401

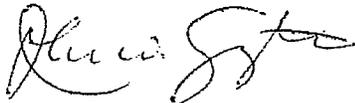
Re: IRS Tax ID Number 41-1756085

Dear Sue:

Please be advised that the Minnesota Chapter is classified as a subordinate of The ALS Association under the guidelines for filing an IRS 501(c)(3) Federal Tax Group Exemption. It is included in The ALS Association's annual filing for tax exemption status and therefore considered tax-exempt as well. The IRS has Assigned Group Number 4119 to The ALS Association and its subordinates.

For your convenience I am attaching a copy of the latest information that I have from the IRS (letter dated 12-14-09) stating our current tax-exempt status.

Sincerely yours,



John W. Applegate
Vice President, Finance

Enclosures 1



000044.672410.0001.001 1 6P 0.440 370

AMYOTROPHIC LATERAL SCLEROSIS A
SSOCIATION
27001 AGOURA RD STE 150
CALABASAS HLS, CA 91301-5104259

REC'D DEC 15 2009

00044

Taxpayer Identification Number: 13-3271855
GEN Number: 4119
Name of Organization: AMYOTROPHIC LATERAL SCLEROSIS A
SSOCIATION
Tax Period Ending: JAN. 31, 2010
Form: SGRI

Dear Taxpayer:

Thank you for sending the annual supplemental information about your subordinate organizations as required by Revenue Procedure 80-27 to keep the tax exempt status for your group.

We have made the requested changes to your exemption roster. No further information is needed.

If you have any questions, please write to us at the address shown at the top of the this letter. Or, you may call us at (801) 620-6019. If this number is outside your local calling area, there will be a long-distance charge to you.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

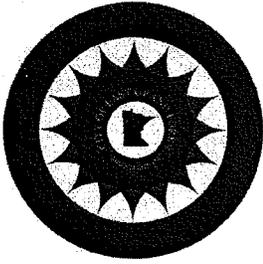
We apologize for any inconvenience we have caused you, and thank you for your cooperation.

Sincerely yours,



Kim Tolsma
Manager, Code & Edit/Entity 3

Enclosures



City of East Grand Forks

600 DeMers Ave · P.O. Box 373 · East Grand Forks, MN 56721
 218-773-2483 · 218-773-9728 fax www.eastgrandforks.net

APPLICATION FOR SPECIAL EVENT

License Fee: 0

| Organization Information | |
|-------------------------------------|---------------------------|
| <u>Whiteys Steaks & Seafood</u> | <u>773-2118</u> |
| Organization Name | Organization Phone Number |
| <u>121 DEMERS AVE</u> | <u>EGF MN 56721</u> |
| Organization Address | City State Zip |

| Applicant Information | |
|-----------------------|------------------------|
| <u>DAVID W NORMAN</u> | <u>218-779-8470</u> |
| Applicant Name | Applicant Phone Number |
| <u>121 DEMERS AVE</u> | <u>EGF MN 56721</u> |
| Applicant Address | City State Zip |

| Special Event Information | | |
|---|----------------|-----------------|
| <u>Oct 22/23 2010</u> | <u>8:30 PM</u> | <u>12:30 AM</u> |
| Date of Event | Start Time | End Time |
| <u>GRAND OPENING</u> | | |
| Explanation of Event | | |
| <u>PLACEMENT OF TENT ON WHITEYS DECK AND</u> | | |
| <u>PARCIAL ON BOARDWALK SIDEWALK, THERE WOULD</u> | | |
| Route/Area of Event (include map) | | |
| <u>BE A LIVE BAND INSIDE TENT PLAYING FROM</u> | | |
| <u>8:30 TO 12:30 ACCESS WOULD STILL BE AVAILABLE ON BOARDWALK</u> | | |
| Special Requests (Staff, Road Closures, Etc) | | |

I hereby certify that I have completely filled out the entire above application, together and that the application is true, correct, and accurate.

David E Norman
 Signature of Applicant

Oct 10, 2010
 Date

DAVID NORMAN
 Print Name

OWNER
 Title

City of East Grand Forks Map



City of East Grand Forks
Application for Special Event

Internal Use Only

The following items need to be completed and/or attached in order for the application to be processed:

*Application fee paid in full: yes no n/a
Payment Type: cash check # _____ Receipt # _____

*Application completed in full and signed: yes no

*Map of route is provided: yes no

*Copy of voluntary waiver of liability agreement for participants: yes no n/a

*Event Sponsor – Release & Indemnification Agreement: yes no

*Liability Insurance: yes no

*MnDot (if applicable): approved denied n/a

*Appropriate Staff: approved denied n/a

Notes: _____

Staff Signature: _____ Date: _____

*Council Approval ____/____/____ approved denied

Notes: _____

City Administrator Signature: _____ Date: _____

*License Number _____

City of East Grand Forks
Application for Special Event

Whiteys

**-EVENT SPONSOR-
RELEASE AND INDEMNIFICATION AGREEMENT
CITY OF EAST GRAND FORKS, MINNESOTA**

**THIS IS A RELEASE OF LIABILITY INDEMNIFICATION AGREEMENT
SPECIAL EVENTS HOLDER MUST READ CAREFULLY BEFORE SIGNING.**

In consideration for being permitted to engage in the following special event activities on the City of East Grand Forks' property:

Special Events Holder hereby acknowledges, represents, and agrees as follows:

- A. We understand that the above described activities are or may be dangerous and do or may involve risks or injury, loss, or damage to us and/or third parties. We further acknowledge that such risks may include but not be limited to bodily injury, personal injury, sickness, disease, death, and property loss or damage, arising from the following circumstances, among others:

(Special Events Holder initials here) AEV

- B. If required by this paragraph, we agree to require each participant in our special event to execute a **RELEASE AND INDEMNIFICATION AGREEMENT** for ourselves and for the City of East Grand Forks, on a form approved by the City of East Grand Forks.

Participant Release and Indemnification required? YES NO

(Special Events Holder initials here) AEV

- C. We agree to procure, keep in force, and pay for special event insurance coverage, from an insurer acceptable to the City of East Grand Forks, for the duration of the above described activities.

(Special Events Holder initials here) AEV

City of East Grand Forks
Application for Special Event

D. By signing this **RELEASE AND INDEMNIFICATION AGREEMENT**, we hereby expressly assume all such risks of injury, loss, or damage to us or any related third party, arising out of or in any way related to the above described activities, whether or not caused by the act, omission, negligence, or other fault of the City of East Grand Forks, its officers, its employees, or by any other cause.

(Special Events Holder initials here) DEJ

E. By signing this **RELEASE AND INDEMNIFICATION AGREEMENT**, we further hereby exempt, release and discharge the City of East Grand Forks, its officers, and its employees, from any and all claims, demands, and actions for such injury, loss, or damage to us or to any third party, arising out of or in any way related to the above described activities, whether or not caused by the act, omission, negligence, or other fault of the City of East Grand Forks, its officers, its employees, or by any other cause.

(Special Events Holder initials here) DEJ

F. We further agree to defend, indemnify and hold harmless the City of East Grand Forks, its officers, employees, insurers, and self insurance pool, from and against all liability, claims, and demands, court costs and attorneys fees, including those arising from any third party claim asserted against the City of East Grand Forks, its officers, employees, insurers or self insurance pool, on account of injury, loss or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property damage or loss, or any other loss of any kind whatsoever, which arise out of or are in any way related to the above described activities, whether or not caused by our act, omission, negligence, or other fault of the City of East Grand Forks, its officers, its employees, or by any other cause.

(Special Events Holder initials here) DEJ

G. By signing this **RELEASE AND INDEMNIFICATION AGREEMENT**, we hereby acknowledge and agree that said Agreement extends to all acts omissions, negligence, or other fault of the City of East Grand Forks, its officers, and/or its employees, and that said Agreement is intended to be as broad and inclusive as is permitted by the laws of the State of Minnesota. If any portion thereof is held invalid, it is further agreed that the balance shall, notwithstanding, continue in full legal force and effect.

(Special Events Holder initials here) DEJ

H. We understand and agree that this **RELEASE AND INDEMNIFICATION AGREEMENT** shall be governed by the laws of the State of Minnesota and that jurisdiction and venue for any suit or cause of action under this agreement shall lie in the courts.

(Special Events Holder initials here) DEJ

I. This **RELEASE AND INDEMNIFICATION AGREEMENT** shall be effective as of the date or dates of the applicable special event, shall continue in full force until our responsibilities hereunder are fully discharged, and shall be binding upon us, or successors, representatives, heirs, executors, assigns, and transferees.

(Special Events Holder initials here) DEJ

IN WITNESS THEREOF, THIS RELEASE AND INDEMNIFICATION AGREEMENT is executed by the special events holder, acting by and through the undersigned, who represents that he or she is properly authorized to bind the Special Events Holder hereto.

PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SPECIAL EVENTS HOLDER:

City of East Grand Forks
Application for Special Event

Name _____

Title _____

Signature Paul Z. Norman

Date 10/10/10

**PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SPECIAL EVENTS
HOLDER:**

Name DAVID LEE NORMAN

Title MGR

Signature Paul Z. Norman

Date 10/11/10

RESOLUTION NO. 10-10-103

A RESOLUTION ACCEPTING A BUSINESS DEVELOPMENT PUBLIC INFRASTRUCTURE (BDPI) AWARD OF \$250,000 FROM THE STATE OF MINNESOTA AND AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE STATE OF MINNESOTA FOR THE PROJECT.

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

WHEREAS, the City of East Grand Forks applied for and received a \$250,000 Business Development Public Infrastructure (BDPI) grant from the Minnesota Department of Employment and Economic Development (DEED) for development within the City's industrial park.

WHEREAS, the City of East Grand Forks the required local match requirements and agreement terms in the BDPI program.

NOW, THEREFORE, BE IT RESOLVED, the City of East Grand Forks agrees to accept the grant award of \$250,000 from the aforementioned funding grant program, and may enter into an agreement with the State of Minnesota for the above referenced project. The City of East Grand Forks will comply with all applicable laws, environmental requirements and regulations as stated in the grant agreement.

Voting Aye:
Voting Nay: .
Absent:

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 19th day of October, 2010.

Mayor

September 15, 2010

The Honorable Lynn Stauss
Mayor, City of East Grand Forks
PO Box 373
East Grand Forks, MN 56721

RECEIVED
SEP 27 2010

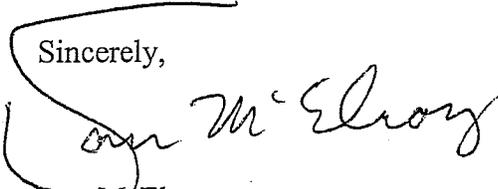
Lynn
Dear Mayor Stauss:

I am pleased to inform you that the City of East Grand Forks' application for a Greater Minnesota Business Development Public Infrastructure Program grant has been approved in the amount of \$250,000. We are pleased to provide this financial assistance to the city to assist with an industrial park expansion. The expansion will help accommodate planned growth for RJ Zavoral & Sons, Drummers Diesel and Jetway Inc. BDPI funds will be used for sanitary sewer, storm sewer, and water infrastructure improvements in the industrial park. This award will provide the necessary resources for continued economic growth and enhance employment in the community and surrounding area. All parties involved in the preparation of the city's application can be proud of this award.

DEED's Business and Community Development staff will provide you with the Grant Agreements and information on the implementation of your funding award and will assist you and your staff in achieving your business and community development. For additional information, please contact Patrick H. Armon at 651.259.7455 or by e-mail at patrick.armon@state.mn.us.

Finally, let me extend my congratulations to you and your staff for developing an approach that will effectively address your business and community development needs.

Sincerely,


Dan McElroy
Commissioner

C: James Richter, EDA Coordinator ✓

Business and Community Development Division

1st National Bank Building ■ 332 Minnesota Street, Suite E200 ■ Saint Paul, MN 55101-1351 USA ■ www.positivelyminnesota.com

Toll Free: 800-657-3858 ■ Phone: 651-259-7114 ■ Fax: 651-296-5287 ■ TTY/TDD: 651-296-3900

An equal opportunity employer and service provider

September 24, 2010

The Honorable Lynn Stauss
Mayor, City of East Grand Forks
PO Box 373
East Grand Forks, MN 56721

Grant Number: BDPI-10-0015-O-FY11
Grant Title: City of East Grand Forks

Dear Mayor Stauss:

Attached is an electronic copy of the contract between the State of Minnesota Department of Employment and Economic Development (DEED) and the City of East Grand Forks. Please review, print three copies and have the authorized individual who was designated in the local government resolution sign, date and return the three copies to my attention at the address listed below.

In addition to signing the contract, a signed, notarized and recorded Declaration (part of attached contract, as Attachment I and II) must be provided as well. DEED requires the *original recorded* Declaration to be returned.

A signed and recorded Declaration may be returned to DEED at a later date; however, DEED will not make any disbursements under this contract until we have received the recorded Declaration.

Our address is:

Minnesota Department of Employment and Economic Development
Business and Community Development Division
Attention: Gloria Stiehl, Contract Coordinator
1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351

If you have any questions, please feel free to contact me at 651.259.7462 or by e-mail at gloria.stiehl@state.mn.us.

Sincerely,



Gloria Stiehl
Contract Coordinator

Attachment

C: James Richter, EDA Coordinator

Business and Community Development Division

1st National Bank Building ■ 332 Minnesota Street, Suite E200 ■ Saint Paul, MN 55101-1351 USA ■ www.positivelyminnesota.com
Toll Free: 800-657-3858 ■ Phone: 651-259-7114 ■ Fax: 651-296-5287 ■ TTY/TDD: 651-296-3900

An equal opportunity employer and service provider.

**Minnesota Department of Employment and
Economic Development**

**2010 Greater Minnesota Business Development
Public Infrastructure Grant Program**

**General Obligation Bond Proceeds
Grant Agreement - Construction Grant
for the
East Grand Forks Industrial Park
Project**

Grant #BDPI-10-0015-O-FY11

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Minnesota Department of Employment and Economic Development
Greater Minnesota Business Development Public Infrastructure Program

General Obligation Bond Proceeds

Grant Agreement – Construction Grant
for the
East Grand Forks Industrial Park
Project

Grant #BDPI-10-0015-O-FY11

THIS AGREEMENT shall be effective as of August 26, 2010, and is between the City of East Grand Forks, a home rule charter city (the “Public Entity”), and the Minnesota Department of Employment and Economic Development (“DEED”) (the “State Entity”).

RECITALS

A. DEED has, under the provisions contained in Minn. Stat. 116J.431, created and implemented the Greater Minnesota Business Development Public Infrastructure Grant Program (the “DEED Greater Minnesota Business Development Public Infrastructure Grant Program”) under which it provides grants to statutory and home rule charter cities located outside the metropolitan area (as defined in Minn. Stat. § 473.121, Subd. 2) to assist such cities in the financing of public infrastructure necessary to support eligible projects under Minn. Stat. § 116J.431, Subd. 2.

B. The Public Entity is either a statutory or home rule charter city and as such has the legal authority to own, construct and maintain public infrastructure.

C. Under the State Program, DEED is authorized to provide grants that are funded with proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution.

D. Under the State Program the recipients of a grant must use such funds to perform those functions delineated in the State Program Enabling Legislation.

E. The Public Entity submitted, if applicable, a grant application to DEED in which the Public Entity requests a grant from the State Program the proceeds of which will be used for the purposes delineated in such grant application.

F. The Public Entity has applied to and been selected by DEED for a receipt of a grant from the State Program in an amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) (the “Program Grant”), the proceeds must be used by the Public Entity to perform those functions and activities imposed by DEED under the State Program and, if applicable, delineated in that certain grant application (the “Grant Application”).

G. The Public Entity's receipt and use of the Program Grant to acquire an ownership interest in and/or improve real property (the "Real Property") and, if applicable, structures situated thereon (the "Facility") will cause the Public Entity's ownership interest in all of such real property and structures to become "state bond financed property", as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Second Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Minnesota Management and Budget and dated March 9, 2010 (the "Commissioner's Order"), even though such funds are being used to only acquire such ownership interest and/or improve a part of such real property and structure.

H. The Public Entity and DEED desire to set forth herein the provisions relating to the granting and disbursement of the proceeds of the Program Grant to the Public Entity and the operation of the Real Property and, if applicable, Facility.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

"Agreement" - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the East Grand Forks Industrial Park Project under Greater Minnesota Business Development Public Infrastructure Program, as such exists on its original date and any amendments, modifications or restatements thereof.

"Approved Debt" - means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

"Code" - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

"Commissioner of MMB" - means the commissioner of the Minnesota Department of Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Second Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated March 9, 2010.

“Completion Date” – means December 31, 2012, the date of projected completion of the Project.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to DEED, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” – means the work to be performed under the Construction Contract Documents.

“Counterparty” - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Declaration” - means a declaration, or declarations, in the form contained in Attachment I to this Agreement and all amendments thereto, indicating that the Public Entity’s ownership interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Draw Requisition” - means a draw requisition that the Public Entity, or its designee, submits to DEED when a payment is requested, as referred to in Section 6.02.

“DEED” – means the Minnesota Department of Employment and Economic Development.

“DEED Greater Minnesota Business Development Public Infrastructure Grant Program” – means the program authorized by Minn. Stat. § 116J.431 and under which DEED supplies financial assistance in the form of grants to statutory and home rule charter cities located outside the metropolitan area (as defined in Minn. Stat. § 473.121, Subd. 2) to assist such cities in the financing of public infrastructure necessary to support eligible projects under Minn. Stat. § 116J.431, Subd. 2.

“Event of Default” - means one or more of those events delineated in Section 2.07.

“Facility”, if applicable, - means public infrastructure, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the Program Grant.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution the proceeds of which are used to fund the Program Grant and any bonds issued to refund or replace such bonds.

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695, as it may be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“Grant Application” – means that certain grant application that the Public Entity submitted to DEED. *This definition is only needed and only applies if the Public Entity submitted a grant application to DEED. If the Public Entity did not submit a grant application to DEED, then this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Public Entity’s ownership interest in Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

“Outstanding Balance of the Program Grant” – means the portion of the Program Grant that has been disbursed to or on behalf of the Public Entity minus any portions thereof previously paid back to the Commissioner of MMB.

“Program Grant” - means a grant of monies from DEED to the Public Entity in the amount identified as the “Program Grant” in Recital E to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Project” - means the Public Entity’s acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03 herein. *(If the Public Entity is not using any portion of the Program Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in Attachment III hereto and instead shall be included in the definition for Ownership Value under this Section.)*

“Public Entity” - means the entity identified as the “Public Entity” in the lead-in paragraph of this Agreement.

“Real Property” - means the real property located in the County of Polk, State of Minnesota, legally described in Attachment II to this Agreement.

“Real Property/Facility Lease” - means a long term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“State Entity” - means the Minnesota Department of Employment and Economic Development.

“State Program” – means the program delineated in the State Program Enabling Legislation.

“State Program Enabling Legislation” – means the legislation contained in the Minnesota statute(s) delineated in Recital A and all rules related to such legislation.

“Subsequent Betterment Costs” – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by DEED and the Commissioner of MMB.

“Use Contract” - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Useful Life of the Real Property and, if applicable, Facility” – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

Article II GRANT

Section 2.01 Grant of Monies. DEED shall make and issue the Program Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The Program Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to DEED or the Commissioner of MMB under certain circumstances.

Section 2.02 Public Ownership. The Public Entity acknowledges and agrees that the Program Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership, a Real Property/Facility Lease, or an easement. In order to establish that this public ownership requirement is satisfied, the Public Entity represents and warrants to DEED that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

- Fee simple ownership of the Real Property.
- A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.
[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point
_____.]
- An easement for the Real Property that complies with the requirements contained in Section 2.06.
[If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point
_____.]

Ownership Interest in, if applicable, the Facility.

- Fee simple ownership of the Facility.
- A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06.
[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]
- Not applicable because there is no Facility.

Section 2.03 Use of Grant Proceeds. The Public Entity shall use the Program Grant solely to reimburse itself for expenditures it has already made in the performance of the following activities, and may not use the Program Grant for any other purpose.

(Check all appropriate boxes.)

- Acquisition of fee simple title to the Real Property.
- Acquisition of a leasehold interest in the Real Property.
- Acquisition of an easement for the Real Property.
- Improvement of the Real Property.
- Acquisition of fee simple title to the Facility.
- Acquisition of a leasehold interest in the Facility.
- Construction of the Facility.
- Renovation of the Facility.
- _____

(Describe other or additional purposes.)

Section 2.04 Operation of the Real Property and Facility. The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for those purposes required by the State Program and in accordance with the information contained in the Grant Application, or for such other purposes and uses as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

Section 2.05 Public Entity Representations and Warranties. The Public Entity further covenants with, and represents and warrants to DEED as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the Program Grant for the purpose or purposes described in the State Program Enabling Legislation.

C. It has legal authority to operate the State Program and the Real Property and, if applicable, Facility for the purposes required by the State Program and for the functions and activities proposed in the Grant Application.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the State Program.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the Program Grant, and all of the information it has submitted or will submit to DEED or Commissioner of MMB relating to the Program Grant or the disbursement of any of the Program Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of DEED and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, DEED and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to

pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Property and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the Program Grant to complete and fully pay for the Project.

U. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with, if applicable, the Facility will be situated entirely on the Real Property.

V. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

W. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to DEED and to Minnesota Management and Budget (attention: Capital Projects Manager) that contains all of the recording information.

X. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either DEED or the Commissioner of MMB.

Section 2.06 Ownership by Leasehold or Easement. *This Section shall only apply if the Public Entity's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease or an easement. For all other circumstances this Section is not needed and should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.*

A. A Real Property/Facility Lease or easement must comply with the following provisions.

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any

way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of DEED and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor's/Grantor's interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, DEED and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership

interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12 The Public Entity must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Public Entity to reimburse DEED for any portion of the Program Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by DEED and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either DEED or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by DEED and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this

Agreement, or in order to induce DEED to disburse any of the Program Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Public Entity fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the State Program Enabling Legislation.

D. If the Public Entity fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

F. If the Public Entity fails to record the Declaration and deliver copies thereof as set forth in Section 2.05.W.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by DEED and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either DEED or the Commissioner of MMB giving the Public Entity written notice of such event.

Section 2.08 Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of DEED, DEED or the Commissioner of MMB may enforce any or all of the following remedies.

A. DEED may refrain from disbursing the Program Grant; provided, however, DEED may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained in herein other than the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Program Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either DEED or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that DEED or the Commissioner of MMB would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor of DEED and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to DEED and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 Survival of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

Section 2.11 Term of Grant Agreement. This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Governmental Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

Section 2.12 Modification and/or Early Termination of Grant. If the Project is not started before the Completion Date of this Agreement or all of the Program Grant has not been disbursed as of the Completion Date, or such later dates to which the Public Entity and DEED may agree in writing, then DEED's obligation to fund the Program Grant shall terminate. In such event, (i) if none of the Program Grant has been disbursed by such dates then DEED's obligation to fund any portion of the Program Grant shall terminate and this Agreement shall

terminate and no longer be of any force or effect, and (ii) if some but not all of the Program Grant has been disbursed by such dates then DEED shall have no further obligation to provide any additional funding for the Program Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Program Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Public Entity's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Public Entity's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination DEED shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public Entity's ownership interest in the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Section. 2.13 Excess Funds. If the full amount of the Program Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the State Program Enabling Legislation indicates otherwise, the Program Grant shall be reduced by the amount not needed.

Article III USE CONTRACTS

This Article III and its contents is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents is not needed and should be ignored and treated as if it were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 General Provisions. If the Public Entity has statutory authority to enter into a Use Contract, then it may enter into Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which it was entered into must be to operate the State Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the State Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the State Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the State Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the State Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the State Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the State Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

I. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of DEED and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Public Entity's ownership interest in the Real Property or, if

applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, DEED and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the Program Grant exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Agreement beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Agreement to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property and, if applicable, Facility or contract with some other entity to operate the governmental program in the Real Property and, if applicable, Facility.

Section 3.02 Initial Term and Renewal. The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Public Entity's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (i) the term of any renewal may not exceed the initial term, (ii) the Public Entity must make a determination that renewal will continue to carry out the State Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (iii) the Use Contract may not include any provisions that would require, either directly or indirectly, the Public Entity to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (iv) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Public Entity's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity to renew such Use Contract.

Section 3.03 Reimbursement of Counterparty. A Use Contract may but need not contain, at the sole option and discretion of the Public Entity, a provision that requires the Public Entity to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 Receipt of Monies Under a Use Contract. The Public Entity does not anticipate the receipt of any funds under a Use Contract; provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Program Grant and the denominator of which is sum of the Program Grant and the Approved Debt.

Article IV SALE

Section 4.01 Sale. The Public Entity shall not sell any part of its ownership interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

A. The Public Entity determines, by official action, that the such ownership interest is no longer usable or needed for the operation of the State Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Public Entity's ownership interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's ownership interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such

portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the State Program.

Section 4.02 Proceeds of Sale. Upon the sale of the Public Entity's ownership interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing by the Commissioner of MMB, but not including the repayment of any debt associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the Program Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the Program Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as DEED under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing, and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to DEED, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that DEED, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to DEED shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Public Entity shall not be required to pay or reimburse DEED or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the Program Grant.

Article V
COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION
AND THE COMMISSIONER'S ORDER

Section 5.01 State Bond Financed Property. The Public Entity and DEED acknowledge and agree that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Public Entity's ownership interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the Program Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the Program Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the GO Bonds.

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as

a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the Program Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner's Order. In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity's ownership interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity DEED shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity's ownership interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

Article VI DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the Program Grant, the Public Entity shall submit to DEED a Draw Requisition duly executed on behalf of the Public Entity. Each Draw Requisition shall be submitted on or before dates determined by DEED. Each Draw Requisition with respect to construction items shall be limited to 50 percent of amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and DEED, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to DEED, less (iii) any applicable retainage.

Notwithstanding anything herein to the contrary, no payments for materials stored on or off the Real Property will be made by DEED unless the Public Entity shall advise DEED, in writing, of its intention to so store materials prior to their delivery and DEED has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to DEED such supporting evidence as may be requested by DEED to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Real Property and, if applicable, Facility and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Public Entity shall submit to DEED: (i) such supporting evidence as may be requested by DEED to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date a payment is desired the Public Entity has complied with all requirements of this Agreement and DEED approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then DEED shall disburse the amount of the requested payment to the Public Entity.

Section 6.02 Additional Funds. If DEED shall at any time in good faith determine that the sum of the undisbursed amount of the Program Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then DEED may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in DEED's notice.

Section 6.03 Condition Precedent to Any Payment. The obligation of DEED to make any payment hereunder (including the initial payment) shall be subject to the following conditions precedent:

A. DEED shall have received a Draw Requisition for such payment specifying the amount of funds being requested, which such amount when added to all prior requests for an payment shall not exceed the amount of the Program Grant delineated in Section 1.01.

B. DEED shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration will promptly be recorded and delivered to DEED.

C. DEED shall have received evidence, in form and substance acceptable to DEED, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Public Entity.

D. DEED shall have received evidence, in form and substance acceptable to DEED, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. DEED shall have received evidence, in form and substance acceptable to DEED, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. DEED shall have received evidence, in form and substance acceptable to DEED, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. DEED shall have received evidence, in form and substance acceptable to DEED, that the Real Property and, if applicable, Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. DEED shall have received evidence, in form and substance acceptable to DEED, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. DEED shall have received evidence, in form and substance acceptable to DEED, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. DEED shall have received evidence, in form and substance acceptable to DEED, that the Project will be completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04.

K. DEED shall have received evidence, in form and substance acceptable to DEED, that the Public Entity has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. DEED shall have received evidence, in form and substance acceptable to DEED, that the insurance requirements under Section 7.01 have been satisfied.

M. DEED shall have received evidence, in form and substance acceptable to DEED, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair of the Minnesota House of Representatives Capital Investment Committee has, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. DEED shall receive evidence, in form and substance acceptable to DEED, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name DEED and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and DEED.

P. No determination shall have been made by DEED that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 6.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to DEED that sufficient funds are available.

Q. The Public Entity has supplied to DEED all other items that DEED may reasonably require.

Section 6.04 Construction Inspections. The Public Entity shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify DEED, in writing. DEED and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either

may deem necessary for the protection of DEED's interest, and that any inspections which may be made of the Project by DEED or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of DEED, and the Public Entity will not rely thereon.

Article VII MISCELLANEOUS

Section 7.01 Insurance. The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to DEED under which DEED and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the Real Property and Facility. If the Public Entity elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

DEED agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Public Entity shall have DEED as an additional named insured therein.

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either DEED or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then DEED may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by DEED to obtain or maintain such insurance shall be due and payable on demand by DEED and bear interest from the date of advancement by DEED at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require DEED to obtain or maintain such insurance, and DEED's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 Condemnation. If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's ownership interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's ownership interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its ownership interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, DEED agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements that this Section imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike

manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's ownership interest in the Real Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

The Public Entity shall not, without the written consent of DEED and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the State Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the Program Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then DEED may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers DEED to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by DEED hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require DEED to take any action, incur any expense, or expend any funds, and DEED shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by DEED to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by DEED and bear interest from the date of advancement by DEED at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 Records Keeping and Reporting. The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the State Program Enabling Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow DEED, auditors for DEED, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Public Entity shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 Inspections by State Entity. Upon reasonable request by DEED and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow DEED to inspect the Real Property and, if applicable, Facility.

Section 7.06 Data Practices. The Public Entity agrees with respect to any data that it possesses regarding the Program Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 Non-Discrimination. The Public Entity agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 Worker's Compensation. The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 Antitrust Claims. The Public Entity hereby assigns to DEED and the Commissioner of MMB all claims it may have for over charges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 Review of Plans and Cost Estimates. The Public Entity agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that DEED may request in order for DEED to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Program Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility

to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

Section 7.11 Prevailing Wages. The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the State Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the State Program on or in the Real Property and, if applicable, Facility.

Section 7.12 Liability. The Public Entity and DEED agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of DEED and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity,

including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 Indemnification by the Public Entity. The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless DEED, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against DEED, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of DEED, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of DEED, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold DEED, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, DEED, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of DEED, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with DEED, the Commissioner of MMB, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or

employees shall in no way be the responsibility of DEED, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from DEED, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

City of East Grand Forks
699 DeMers Avenue
East Grand Forks, MN 56721
Attention:

To DEED at:

1st National Bank Building
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
Attention: DEED, Small Cities Program (SCDP)

To the Commissioner of MMB at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 Binding Effect and Assignment or Modification. This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and DEED, and their respective successors and assigns. Provided, however, that neither the Public Entity nor DEED may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Public Entity or DEED unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 Waiver. Neither the failure by the Public Entity, DEED, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or

provision hereof, nor the failure of the Public Entity, DEED, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, DEED, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 Entire Agreement. This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and DEED, and there are no other agreements, either oral or written, between the Public Entity and DEED on the subject matter hereof.

Section 7.19 Choice of Law and Venue. All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 Severability. If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 Time of Essence. Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 Matching Funds. The Public Entity must obtain and supply 50% of the eligible, capital costs for the Project:

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

Section 7.24 Source and Use of Funds. The Public Entity represents to DEED and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the

completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down amongst the following categories:

- (i) State funds including the Program Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the Public Entity, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- (v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses that are to be reimbursed and paid from proceeds of the G.O. Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to DEED and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that DEED or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Public Entity's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the State Program Enabling Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

Section 7.25 Project Completion Schedule. The Public Entity represents to DEED and the Commissioner of MMB that Attachment IV correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 Third-Party Beneficiary. The State Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both DEED and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 Public Entity Tasks. Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 7.28 State Entity and Commissioner Required Acts and Approvals. DEED and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.29 Applicability to Real Property and Facility. This Agreement applies to the Public Entity's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's ownership interest in the Real Property.

Section 7.30 E-Verification. The Public Entity agrees and acknowledges that it is aware of Governor's Executive Order 08-01 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order and impose a similar requirement in any Use Agreement to which it is a party.

Section 7.31 Additional Requirements. The Public Entity and DEED agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

(If there are no additional requirements then insert the word "NONE".)

NONE

IN TESTIMONY HEREOF, the Public Entity and DEED have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the East Grand Forks Industrial Park Project under the Greater Minnesota Business Development Public Infrastructure Program on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

City of East Grand Forks
a home rule charter city

By: _____

Its: _____

Dated: _____, _____

And: _____

Its: _____

Dated: _____, _____

DEED:

Department of Employment and Economic
Development

By: _____

Its: Deputy Commissioner

Dated: _____, _____

ENCUMBERED:

Department of Employment and Economic
Development

By: _____
(Name)

Date Encumbered

[Individual signing certifies that funds have been
encumbered as required by Minnesota Statute 16A.]

City of East Grand Forks
Grant #BDPI-10-0015-O-FY11

Attachment I to Grant Agreement

State of Minnesota
Greater Minnesota Business Development Public Infrastructure Program
General Obligation Bond Financed
DECLARATION

The undersigned has the following interest in the real property located in the County of Polk, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively referred to as the "Restricted Property"):

(Check the appropriate box.)

a fee simple title,

a lease, or

an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in paragraph B below, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, or its successor, which approval must be evidenced by a written statement signed by said commissioner and attached to DEED, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain East Grand Forks Industrial Park Project between the City of East Grand Forks and DEED, dated August 26, 2010 (the "G.O. Grant Agreement").

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for as long as the G.O. Grant Agreement is in force and effect; at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of Minnesota Department of Employment and Economic Development and the Commissioner of Minnesota of Management and Budget, or their successors, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota of Management and Budget, or its successor.

(SIGNATURE BLOCK, ACKNOWLEDGMENTS, AND STATEMENT AS TO WHOM IT WAS DRAFTED BY.)

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

**Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY**

**Attachment III to Grant Agreement
SOURCE AND USE OF FUNDS FOR THE PROJECT**

| Source of Funds | | Use of Funds | |
|----------------------------------|-----------|---------------------------------|-----------|
| Identify Source of Funds | Amount | Identify Items | Amount |
| State GO Funds | | Ownership Acquisition | |
| Program Grant | \$250,000 | and Other Items Paid for | |
| | | with Program Grant Funds | |
| Other State Funds | | Purchase of Ownership | \$ |
| | \$ | Interest | |
| | \$ | Other Items of a Capital | |
| | \$ | Nature | |
| Sub-Total | \$ | Sanitary and Storm Sewer | \$250,000 |
| | | and Water | |
| | | | \$ |
| | | | \$ |
| Matching Funds | | Sub Total | \$250,000 |
| City/County | \$175,000 | | |
| Federal EDA | \$425,000 | Items Paid for with | |
| Sub Total | \$600,000 | Non- Program Grant Funds | |
| | | Engineering (during) | \$103,000 |
| Other Public Entity Funds | | Administration, storm | |
| | \$ | sewer and streets | \$497,000 |
| | \$ | | \$ |
| | \$ | | \$ |
| Sub-Total | | Sub Total | \$600,000 |
| | | | |
| Loans | | | |
| | \$ | | |
| | \$ | | |
| Sub-Total | \$ | | |
| | | | |
| Other Funds | | | |
| | \$ | | |
| | \$ | | |
| Sub-Total | \$ | | |
| | | | |
| Prepaid Project Expenses | | | |
| | \$ | | |
| | \$ | | |
| Sub-Total | \$ | | |
| | | | |
| TOTAL FUNDS | \$850,000 | TOTAL PROJECT COSTS | \$850,000 |

**Attachment IV to Grant Agreement
PROJECT COMPLETION SCHEDULE**

RESOLUTION NO. 10-10-104

A RESOLUTION APPROVING A CONSENT AGREEMENT AND FINAL ORDER WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND AUTHORIZING THE CITY ADMINISTRATOR AND THE MAYOR TO EXECUTE ALL APPROPRIATE DOCUMENTS.

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

WHEREAS, the City of East Grand Forks, (hereinafter "The City") by and through its Water and Light Building Commission (hereinafter Water and Light" received a notice of noncompliance from the United States Environmental Protection Agency (EPA) regarding the Risk Mitigation Program (RMP).

WHEREAS, the City brought the Risk Mitigation Program into compliance.

WHEREAS, the Plan has been agreed upon and accepted by the Federal EPA.

WHEREAS, the City and the EPA have tentatively agreed on a Consent Agreement and Final Order.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council approves the proposed Consent Agreement and Final Order with the EPA and authorizes the City Administrator and the Mayor to execute appropriate documents.

Voting Aye:
Voting Nay:
Absent:

The President declared the resolution passed.

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 19th day of October, 2010.

Mayor

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|--------------------------------------|---|------------------------------|
| IN THE MATTER OF: |) | |
| |) | DOCKET NO.: |
| CITY OF EAST GRAND FORKS, MN, |) | |
| |) | PROCEEDING TO ASSESS |
| RESPONDENT. |) | A CIVIL PENALTY UNDER |
| |) | SECTION 113(d) OF THE |
| EPA ID: 1000 0007 7957 |) | CLEAN AIR ACT, |
| _____ |) | 42 U.S.C. § 7413(d) |

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1), and sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).

2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

4. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

5. Respondent stipulates that the United States Environmental Protection Agency (EPA) has jurisdiction over the subject matter of this CAFO, and waives any jurisdictional objections it may have. Respondent neither admits nor denies Complainant's findings of fact and conclusions of law set forth in paragraphs 21 through 31 of this CAFO.

6. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

7. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator of EPA to issue regulations regarding the prevention and detection of accidental releases of designated chemicals. This section further requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to detect, prevent or minimize risks of accidental releases of those designated substances.

8. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 112(r)(7)(A) and (B), the Administrator promulgated the Chemical Accident Pollution Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. part 68 and has been modified from time to time since.

9. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.15, conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the “Risk Management Program.”

10. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), defines a Program 3 process as one which does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 U.S.C. § 1910.119.

11. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “stationary source” as: “any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.”

12. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “process” as “ ... any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of those activities. ... ”

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “regulated substance” as “ ... any substance listed pursuant to section 112(r)(3) of the Clean Air Act ... in [40 C.F.R.] § 68.130.”

14. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “ ... any person who owns, leases, operates, controls or supervises a stationary source.”

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “threshold quantity” as “ ... the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act ... , listed in [40 C.F.R.] § 68.130 and determined to be present at a stationary source as specified in [40 C.F.R.] § 68.115. ... ”

16. The Chemical Accident Pollution Prevention rule, in Tables 1 and 2 referenced in 40 C.F.R. § 68.130, lists chlorine as a regulated toxic substance with a threshold quantity of 2,500 pounds.

17. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7), it is unlawful for any person to operate any stationary source in violation of such requirement.

18. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator may issue an administrative order against any person assessing civil administrative penalties of up to \$25,000 per day of violation, to a maximum of \$200,000, whenever the Administrator finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

19. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$32,500 per day of violation effective March 15, 2004, through January 12, 2009, to a maximum of \$270,000, and \$37,500 per day of violation after January 12, 2009, to a maximum of \$295,000.

20. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

21. Complainant is, by lawful delegation, the Director of the Superfund Division, EPA Region 5.

22. Respondent is the City of East Grand Forks, Minnesota, a municipality organized under the laws of the State of Minnesota, and is thus a "person" according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. At all times relevant to this Complaint, Respondent owned, operated, controlled and supervised a facility located at 11801 2nd Street NE, East Grand Forks, Minnesota (the Facility), which includes buildings, structures, equipment, installations, which belong to the same industrial group, are located on one or more contiguous properties and which are under the control of Respondent. Respondent's Facility stores

and uses chlorine (CAS No. 7782-50-5), a regulated substance, in a process to disinfect drinking water prior to its distribution.

24. Respondent's Facility in East Grand Forks is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

25. Respondent is an "owner or operator" of the Facility as that term is used in 40 C.F.R. § 68.3.

26. Respondent's Facility maintained chlorine in quantities exceeding 2,500 pounds during calendar years 1999 through 2010, and thus maintained a hazardous substance in quantities exceeding a threshold quantity under the Chemical Accident Pollution Prevention rule.

27. Respondent's processes subject it to the Program 3 requirements because the distance to a public receptor, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the process is subject to the process safety management standard at 29 U.S.C. § 1910.119.

28. On September 21, 2009, the Administrator and the Attorney General of the United States, each through their respective delegates, jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

SPECIFIC ALLEGATIONS OF LIABILITY

29. On June 4, 2008, Respondent's Risk Management Program for the Facility, prepared pursuant to 40 C.F.R. § 68.12(d), failed to include numerous elements

required by those regulations. A table listing the deficiencies in Respondent's Risk Management Program at the Facility is attached as Table A.

30. Respondent's failure to develop and implement a complete Risk Management Program at the Facility is a violation of the requirements of 40 C.F.R. § 68.12(d).

31. Respondent's violation of 40 C.F.R. § 68.12(d) constitutes the unlawful operation of a stationary source subject to a regulation or requirement promulgated under section 112(r) of the CAA, 42 U.S.C. § 7412(r), and authorizes the Administrator to seek penalties pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

CIVIL PENALTY

32. Based on an analysis of the factors as specified in section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation in quickly resolving this matter and other factors as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is \$42,000.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the \$42,000 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

34. The check must note the following: the case caption, the docket number of this CAFO and the billing document number to be assigned by EPA upon filing of this CAFO.

35. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Greg Chomycia (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than

30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

GENERAL PROVISIONS

39. This CAFO resolves only Respondent's liability and any liability of Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, employees, agents, servants, successors and assigns for federal civil penalties for the violations alleged in the CAFO.

40. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

42. This CAFO is a "final order" for purposes of EPA's enforcement response policy for section 112(r) of the CAA.

43. The terms of this CAFO bind Respondent, Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, employees, agents, servants, successors and assigns.

44. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

46. This CAFO constitutes the entire agreement between the parties.

City of East Grand Forks, Minnesota, Respondent

Date

Lynn Strauss
Mayor

Date

Scott Huizenga
City Administrator

Environmental Protection Agency, Complainant

Date

Richard C. Karl
Director
Superfund Division

In the Matter of:
City of East Grand Forks, Minnesota
Docket No: _____

In the Matter of:
City of East Grand Forks, Minnesota
Docket No: _____

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: _____

By: _____
Susan Hedman
Regional Administrator
Environmental Protection Agency
Region 5

RESOLUTION NO. 10-10-106

A RESOLUTION APPROVING A ONE-YEAR LEASE FOR CITY STORAGE FACILITIES WITH THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES, REGION 1 .

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

WHEREAS, the City of East Grand Forks for several years has leased storage facilities at the South Point Fire Station location to the Minnesota Department of Natural Resources (DNR) for the purpose of storing and maintaining equipment used for the Red River State Recreational Area (RRSRA) campground; and

WHEREAS, DNR has requested a renewal term of one year to the existing lease.

NOW, THEREFORE, BE IT RESOLVED, the City of East Grand Forks agrees to enter into a lease agreement with the Minnesota Department of Natural Resources, Region 1 for a term of one year, commencing on December 1, 2010 and continuing through November 30, 2011.

Voting Aye:

Voting Nay: .

Absent:

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 19th day of October, 2010.

Mayor

STATE OF MINNESOTA

AMENDMENT OF LEASE

Amendment No. 3

Lease No. 11320

THIS AMENDMENT, made by and between City of East Grand Forks, hereinafter referred to as LESSOR, and the State of Minnesota, Department of Administration, hereinafter referred to as LESSEE, acting for the benefit of the Department of Natural Resources, Region 1, shall be an amendment and addition to Lease No. 11320.

WHEREAS, LESSOR and LESSEE entered into Lease No. 11320, dated August 5, 2003, involving the lease of approximately one thousand two hundred fifty (1,250) usable square feet of shop and storage space, in the northeast quarter of the building known as South Point Fire Hall located at 243 5th Avenue SE, East Grand Forks, along with the metal Quonset storage building located just east of the fire station site;

WHEREAS, the parties deem certain amendments and additional terms and conditions mutually beneficial for the effective continuation of said Lease;

NOW THEREFORE, LESSOR and LESSEE agree to substitution and/or addition of the following terms and conditions, which shall become a part of the Lease No. 11320 effective as of the date set forth herein.

1. **RENEWAL TERM** This Lease shall be renewed for a period of one (1) year, commencing December 1, 2010 and continuing through November 30, 2011 ("Renewal Term"), at the same terms and conditions as set forth in the Lease, except as otherwise provided herein.
2. **RENT** LESSOR and LESSEE hereby agree there is no rent for the use of the Leased Premises.
3. **SNOW REMOVAL**
 - 3.1 **Deletion** Clause 7.7 of the Lease is hereby deleted and of no further force and effect.
 - 3.2 **Replacement** LESSOR shall keep the public sidewalks adjacent to the building and any sidewalks or stairways leading from the public sidewalks to the building free from snow and ice, including the parking lot. Snow plowing, snow shoveling and ice removal must be completed by 6:30 a.m., unless snow or wind conditions make this impossible. If said snow and ice removal is not completed by 6:30 a.m., LESSOR will make every effort to complete the snow removal as soon as possible.

4. **DISABILITY ACCESS GUIDELINES**

- 4.1 **Deletion** Clause 7.15 of the Lease is hereby deleted and of no further force or effect.
- 4.2 **Replacement** LESSOR agrees to provide and maintain the Leased Premises and the building of which the Leased Premises are a part with accessibility and facilities for persons with disabilities meeting code requirements including, but not limited to: Title II and III of the American with Disabilities Act (ADA), all applicable laws, rules, ordinances and regulations issued by any federal, state or local political subdivisions having jurisdiction and authority in connection with said property.

5 **GOVERNMENT DATA PRACTICES ACT COMPLIANCE**

- 5.1 LESSOR must comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data provided by LESSEE in accordance with this Lease and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by LESSOR in accordance with this Lease. The civil remedies of Minnesota Statutes, section 13.08, apply to LESSOR and LESSEE.
- 5.2 Minnesota Statutes, Chapter 13, provides that all government data are public unless otherwise classified. If LESSOR receives a request to release the data referred to in this Clause, LESSOR must immediately notify LESSEE and consult with LESSEE as to how LESSOR should respond to the request. LESSOR'S response shall comply with applicable law, including that the response is timely and, if LESSOR denies access to the data, that LESSOR'S response references the statutory basis upon which LESSOR relied. LESSOR does not have a duty to provide public data to the public if the public data is available from LESSEE.
- 6 Except as modified by the provisions of this Amendment, said Lease is ratified and confirmed as originally written.

NO ATTACHMENTS

IN WITNESS WHEREOF, the parties have set their hands on the date(s) indicated below intending to be bound thereby.

LESSOR:

CITY OF EAST GRAND FORKS

LESSOR certifies that the appropriate person(s) have executed this Amendment to the Lease on behalf of LESSOR as required by applicable articles, bylaws, resolutions, or ordinances.

By _____

Title _____

Date _____

By _____

Title _____

Date _____

LESSEE:

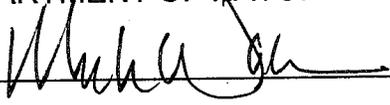
STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
COMMISSIONER

By _____
Real Estate and Construction Services

Date _____

APPROVED:

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

By 

Title ASA

Date 8.30.10

RECOMMENDED:

DEPARTMENT OF NATURAL RESOURCES

By 

Title LEASE Administrator

Date 8/26/10

STATE ENCUMBRANCE VERIFICATION

Individual signing certifies that funds have been encumbered as required by Minn. Stat. §16A.15 and §16C.05.

By _____ N/A

Date _____ N/A

CFMS Contract No. N/A

Minutes of the regular meeting of the Water, Light, Power and Building Commission of the City of East Grand Forks, Minnesota held September 16, 2010 at 5:00 P.M.

Present: Quirk, Ogden, Tweten

Absent: Brickson

It was moved by Commissioner Tweten second by Commissioner Ogden that the minutes of the previous meeting of September 2, 2010 be approved as read.

Voting Aye: Quirk, Ogden, Tweten

Voting Nay: None

It was moved by Commissioner Ogden second by Commissioner Tweten to authorize the Secretary to issue payment of the recommended bills and payroll in the amount of \$1,007,671.03.

Voting Aye: Quirk, Ogden, Tweten

Voting Nay: None

It was moved by Commissioner Ogden second by Commissioner Tweten to authorize the Customer & Energy Services Manager to advertise for RFP's to provide energy audit services for East Grand Forks residential customers.

Voting Aye: Quirk, Ogden, Tweten

Voting Nay: None

It was moved by Commissioner Ogden second by Commissioner Tweten to authorize the preparation of plans and specifications for the Water Treatment Plant filter project.

Voting Aye: Quirk, Ogden, Tweten

Voting Nay: None

It was moved by Commissioner Ogden second by Commissioner Tweten that the meeting be adjourned to Oct 7, 2010 at 5:00 P.M.

Voting Aye: Quirk, Ogden, Tweten

Voting Nay: None

Lori Maloney
Sec'y

RESOLUTION NO. 10-10-105

A RESOLUTION TO SUPPORT THE LAFAVE MULTI-USE TRAIL FOR THE CITY OF EAST GRAND FORKS; PROJECT: #C023-10-1C

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

WHEREAS, the City of East Grand Forks supports the grant application made to the Minnesota Department of Natural Resources for the Local Trail Connections Program or Regional Trail Program. The City of East Grand Forks will act as the legal sponsor for the application made to the Department of Natural Resources for the reimbursement grant. The project is to construct .75 miles of a 10 foot wide bituminous trail for pedestrian use to replace the deteriorating lower section of the trail along the Red Lake River.

WHEREAS, the City of East Grand Forks recognizes the fifty (50) percent match requirement for the Federal Recreational Trail grant program in the 2010 Local Trail Connections Program or Regional Trail Program.

NOW, THEREFORE, BE IT RESOLVED, the City of East Grand Forks agrees to accept the grant award from the aforementioned funding grant program, and may enter into an agreement with the State of Minnesota for the above referenced project. The City of East Grand Forks will comply with all applicable laws, environmental requirements and regulations as stated in the grant agreement, and

BE IT FURTHER RESOLVED, the City Council of the City of East Grand Forks names the fiscal agent for the City of East Grand Forks for the project as:

Director of Finance
City of East Grand Forks
600 DeMers Avenue
East Grand Forks, MN 56721

BE IT FURTHER RESOLVED, the City of East Grand Forks hereby assures the LaFave Multi-Use Trail will be maintained for a period of no less than 20 years by the East Grand Forks Parks and Recreation Department.

Voting Aye:
Voting Nay: None.
Absent: None.

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 19th day of October, 2010.

Mayor

Request for Council Action

Date: September 22, 2010

To: East Grand Forks City Council, Mayor Lynn Stauss, President Dick Grassel, Council Vice President Henry Tweten, Council Members: Marc Demers, Craig Buckalew, Wayne Gregoire, Greg Leigh, and Mike Pokrzywinski.

Cc: File

From: Dave Aker

RE: La Fave Multi-use trail

Background:

I have applied for a grant that would move the trail in La Fave Park up to higher grounds. The grants I applied for were the Parks and Trails Legacy Grant and the Local Trail Connections Program or Regional Trail Program. The Parks and Trails Legacy Grant is 80/20 split and we were NOT accepted for that grant. The Local Trail Connections Program is 50/50 split and we were awarded that grant.

I have to turn paperwork in so we don't actually have the contract until all of the paperwork has been sent in. A resolution is the first part of the paperwork.

Recommendation: The grant has to have a resolution passed to continue the process.

Enclosures: Information included.

Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40



September 17, 2010

Dave Aker, Parks & Rec Superintendent
City of East Grand Forks
600 DeMers Avenue
East Grand Forks, MN

Dear Dave Aker:

RE: City of East Grand Forks, Project #C023-10-1C
LaFave Multi-Use Trail

I am pleased to inform you that your application to the 2010 Local Trail Connections Program or Regional Trail Program has been selected for funding. A reimbursement grant in the amount of \$95,000 will be established contingent upon final processing of your application.

Over \$3.1 million in grant requests were received for these programs with \$655,000 available for funding.

Enclosed is a letter from department program staff with more information on how to proceed with your project. If you have questions, please contact Andrew Korsberg (651-259-5642) or Traci Vibo (651-259-5619).

Trails add to the quality of life in Minnesota. Thank you for advancing outdoor recreation opportunities in your area.

Sincerely,

A handwritten signature in blue ink that reads "Forrest L. Boe".

Forrest L. Boe, Deputy Director
Parks and Trails Division

CC: Kim Greendahl, Greenway Specialist, Greenway & Trails Users Advisory Group
File #C023-10-1C



NW

Hill Street

1st Ave NW

2nd Street NW

Central Ave

3rd Street NE

1st Ave NE

2nd Street NE

2nd Ave NE

3rd Ave NE

1st Street NW

Central Ave

1st Street NE

1st Ave NE

Dike Street NE

LAKE

RIVER

Scott M. Huizenga

From: Ron Galstad [rgalstad@gjmlaw.com]
Sent: Wednesday, October 13, 2010 1:20 PM
To: Scott M. Huizenga
Subject: RRSRA

To: Scott Huizenga, City Administrator

From: Ron Galstad, City Attorney

Re: TIF Increments to pay for City portion of Trail Development in the Red River State Recreation Area

Memo:

I have reviewed the following materials:

1. Minnesota Session Laws 2000 Chapter 488;
2. Red River State Recreation Area Management Plan Dated March 22, 2002
3. Minnesota Statute 86A
4. Jobs Bill Chapter -216 laws of Minnesota for 2010 Section 59

Based upon my review of the above materials the Red River State Recreational Area was created by Legislative action and signed by the Governor on May 15, 2000 as a part of the Minnesota's Outdoor Recreation System (MS 85.013, subd.20a).

The Red River State Recreation Area Management Plan was approved by Allen Garber, Commissioner of the Minnesota Department of Natural Resources as required by Minnesota Statutes 86A Section 09 Subd. 1. The plan reflects a cooperative effort between the Minnesota Department of Natural Resources in partnership with Minnesota citizens and an interdisciplinary resource team. The development of recreational facilities is a part of the plan recommendations which includes the development of trails. Specifically to "connect where feasible the trail system built by the Corps with the SRA trail; system and existing local and regional trails."

The Minnesota Jobs bill Chapter 216, Section 59 states:

Sec. 59. CITY OF EAST GRAND FORKS; PERMITTED USE OF TIF.

Notwithstanding any other law to the contrary or the provisions of the tax increment financing plan, the governing body of the city of East Grand Forks may authorize, by Resolution, the expenditure of tax increments from redevelopment district 1-1, 1-2 or both for the purpose of making improvements to the Red River State Recreation Area, including the construction of additional campsites. If so authorized, the expenditures are permitted expenditures of tax increments by the authority.

EFFECTIVE DATE. This section is effective the day following final enactment without local approval.

The City is proposing to develop a trail and use as matching funds the TIF increments available from redevelopment districts 1-1 or 1-2. Based upon the above it is my opinion that the use of the TIF increments is appropriate as it a permitted use for making improvements to the Red River State Recreation Area. I am not aware of any other law to the contrary.

Respectfully Submitted,

Ron Galstad

ORDINANCE NO. _____ 3RD SERIES

AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE PROVISION IN TITLE VII: TRAFFIC CODE, CHAPTER 70 ENTITLED "GENERAL PROVISIONS" BY AMENDING SECTION 70.02 ENTITLED DEFINITIONS AND BY AMENDING CHAPTER 72 ENTITLED "PARKING REGULATIONS" BY AMENDING SECTION 72.04, SECTION 72.10 AND SECTION 72.11;

AND BY ADOPTING BY REFERENCE CITY CODE CHAPTER 10 AND SECTION 10.99 WHICH, AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS.

THE CITY OF EAST GRAND FORKS ORDAINS:

Section 1. Purpose and Intent. The purpose and intent of this ordinance is to update the general provisions definitions to reflect the amendments to Minnesota Statute Chapter 169 and to amend the parking regulations in the City of East Grand Forks to have the ordinance reflect the definitions set forth in the Minnesota Statutes, to enact a year round period of enforcement for street maintenance for the purpose the removal of snow, ice, sand, gravel and other debris from the public streets, and to amend trucking parking in the cities commercial and industrial zones.

Section 2. Amendments Chapter 70.

Chapter 70 of Title VII of the Traffic Code is hereby amended as follows:

SECTION 70.02. DEFINITIONS. The introductory sentence shall read as follows:

"ALL Terms used in this title "TITLE VII: TRAFFIC CODE" shall have the meanings set forth in M.S. ' 169.001 unless otherwise provided."

VEHICLE shall be defined as:

VEHICLE. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon any street or highway, excepting devices used exclusively upon stationary rails or tracks as the same are defined in M.S. Chapter 169, as such chapter may be from time to time amended, supplemented or replaced, or as known in the highway traffic regulations, as adopted by the Council, as such regulations may be from time to time amended, supplemented or replaced.

Section 3. Amendments Chapter 72.

SECTION 72.04 shall be amended to read as follows:

72.04 RECREATIONAL VEHICLE, TRAILER, TRAVEL TRAILER,
PARK TRAILER AND OTHER TRAILER PARKING.

It is unlawful for any person to leave, park or let stand any trailer, travel trailer, park trailer motor home, recreational vehicle, bus or other similar vehicle or trailer as defined in either section 168.002 of Chapter 168 or section 169.001 of Chapter 169 of Minnesota Statutes as they may be amended from time to time, on or within the limits of any street or right of way or municipal parking lot, except where signs are erected designating the same as a campsite for more than 12 consecutive hours.

SECTION 72.10 CALANDER PARKING shall be amended to read as follows:

72.10 STREET MAINTENANCE PARKING.

In order to facilitate the removal of snow, ice, sand, gravel and other debris from the public streets and other rights-of-way, the following additional parking restrictions shall be in effect.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS DISTRICT.

Bygland Rd. SE from 5th Ave. SE to 4th St. SE

Central Ave. NE NW

Central Ave. service roads NE and NW

College Dr. NE

Demers Ave.

Gateway Dr. NE service road

Gateway Dr. NW service road from Central Ave. service road NW to 3rd Ave.

NW

River St. NW

Sherlock Parkway to Demers Ave.

Terrace Dr. NW to Sherlock Parkway

1st St. SE from Point Bridge to 3rd Ave. SE

2nd Ave. NE 17th St. NW - Louie Murray Bridge

2nd St. NW

3rd Ave. NW from Central Avenue to River St.

3rd Ave. SE to 5th Ave. SE

3rd St. NW

3rd St. NE 200 - 1000 blocks
4th St. NE from 5th Ave. NE - 9th Ave. NE
4th St. NW
5th Ave. NE from 23rd St. NE to 4th Ave. NW east side of street 1400 - 1600 blocks
5th Ave. NW from Hwy 2 - 4th St. NW
6th Ave. NE
6th Ave. NW west side 1400 - 1500 blocks
7th Ave. NE
8th Ave. NE
9th Ave. NE
10th St. NW from Central to Terrace Dr. NW
10th St. NE
14th St. NE
15th St. NE
15th St. NW south side 600 - 700 blocks
17th St. NE
20th St. NE

Maintenance District 1 – All areas North of 17th Street NW and West of Central Avenue.

Maintenance District 2 – The areas South of 17th Street NW and North of Gateway Drive and Northstar Terrace.

Maintenance District 3 – East end and Central Areas – South of Gateway Drive and North of the Red Lake River.

Maintenance District 4 – Point area – East of Bygland Road.

Maintenance District 5 – Point area – West of Bygland Road

PERIOD OF ENFORCEMENT – Year round.

(B) Parking prohibitions.

(1) It is unlawful to park or leave standing any vehicle or trailer in the business district between the hours of 2:00 a.m. and 7:00 a.m. Monday through Friday during the period of enforcement.

(2) In all areas of the city excluding the business district, it is unlawful to park or leave standing any vehicle or trailer on any street or right-of-way designated between the hours of 7:30 a.m. and 12:00 noon during the period of enforcement based upon the following schedule:

- Monday – District 4
- Tuesday – District 5
- Wednesday – District 2
- Thursday – District 1
- Friday – District 3

(3) It shall not be unlawful to otherwise lawfully park a vehicle with its motor idling on any street for a duration of 5 minutes or less during the time periods in which parking is restricted as set forth in this section.

(4) During such hours that the street maintenance parking prohibitions are in effect, the owner or occupant of real property adjacent to any street, avenue, road, court, drive, way or cul-de-sac may park operable, registered, licensed and insured motor vehicles on the city right-of-way between the curb and the sidewalk (or adjacent to the curb if there is no sidewalk) commonly referred to as the berm, with the exception that such owner or occupant of real property may only park the motor vehicles on the portion of the berm that is immediately adjacent to the residence occupied by the owner or occupant, and with the further exceptions that the parking shall not be permitted within 10 feet of an intersection or corner, or within 10 feet of a fire hydrant, and that the parked motor vehicles shall not block a sidewalk.

(C) Presumption. For purposes of this section, any vehicle or trailer parked or left on a street or right-of-way of the city in violation of this section shall be presumed to have been parked or left by the registered owner of the vehicle or trailer.

(D) Snow emergency. A snow emergency automatically goes into effect when 2 inches or more of snow has fallen until the streets are cleaned. Under a snow emergency, no parking on any city street is allowed until that street has been cleared to its full width. Violators will be ticketed and towed

Section 4.

SECTION 72.11 TRUCK PARKING subdivision (C) shall be amended to read as follows:

SECTION 72.11 TRUCK PARKING

(C) It is unlawful to park a vehicle of more than 12,000 pounds gross weight upon any street in the Commercial/Industrial District as defined in the City Zoning Ordinance except streets as specifically designated by the Council by resolution and sign posted, but parking of such vehicle for a period of not more than 60 minutes shall be permitted in such space for the purpose of necessary

access to abutting property while actively loading or unloading when such access cannot reasonably be secured from an alley or from an adjacent street where truck parking is not so restricted.

Section 5. City Code Title 1 General Provisions, Chapter 10 entitled General Provisions are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

Section 6. This ordinance shall take effect and be in force after its passage, publication and then beginning on _____. It shall be given the Number _____, 3rd Series.

VOTING AYE: _____

VOTING NAY: _____

ABSENT: _____

The President declared the Ordinance passed.

ATTEST:

PASSED: _____, 2010

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing Ordinance this ____ day _____, 2010.

Mayor

Adopted by the City Council this ____ day of _____ 2010

Request for Council Action

Date: 10/11/10

To: East Grand Forks City Council, Mayor Lynn Stauss, President Dick Grassel, Council Vice President Henry Tweten, Council members: Marc DeMers, Craig Buckalew, Wayne Gregoire Greg Leigh and Mike Pokrzywinski

Cc: File

From: Scott Huizenga, City Administrator

RE: Sick Leave Donation Policy

Currently, the City does not have a sick leave policy. A proposed policy is attached. The proposal is nearly identical to a clause that is in the tentatively-agreed labor agreement with the Teamsters 120 bargaining unit. A draft personnel manual revision also contains the proposed language. The revised personnel manual will appear before the City Council later this year. Unfortunately, recent events dictate that we request approval on the sick leave donation policy prior to the adoption of the entire revised personnel policy. The policy dictates the following.

- City employees may donate sick leave to co-workers with extended illnesses to themselves or immediate family members on a voluntary basis.
- Donors must maintain at least 90 days (720 hours) of sick time unless waived by the City Administrator.
- The recipient cannot receive more than 30 days of sick leave per illness or injury or within a 12-month period after returning to work.
- The recipient must have completed at least 12 months in a full-time, sick-leave accruing, position.

Recommendation:

Adopt the sick leave policy into the City's personnel policy manual.

Attachments:

Draft Resolution

RESOLUTION NO. 10 – 10 – 107

A RESOLUTION AMENDING THE CITY PERSONNEL POLICY MANUAL TO INCORPORATE A SICK LEAVE DONATION POLICY.

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

WHEREAS, the City Council of East Grand Forks desires to amend the Personnel Policy Manual of the City of East Grand Forks to incorporate changes to its compensation and leave structures related to a sick leave donation policy.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF EAST GRAND FORKS, that the City adopt the following amendments, effective October 11, 2010 to the City of East Grand Forks Personnel Policy Manual, where underscored language designates amended or new language:

Sick Leave Donation

Employees may, on a voluntary basis, donate accumulated sick leave hours to a co-worker after the affected co-worker has exhausted sick leave hours due to an illness or injury to the co-workers or a co-worker's immediate family member. The donor employee must maintain ninety (90) days in their bank unless otherwise approved by the City Administrator. The recipient cannot receive more than thirty (30) days per illness or injury. Employees are not eligible to participate until their probationary period is complete. An EMPLOYEE who is the recipient of sick leave donation must have completed at least twelve (12) months of full-time service in a sick-leave accruing position. Once the EMPLOYEE has exhausted accrued and donated sick leave, the EMPLOYEE is not eligible for any additional donated sick leave until twelve (12) months after returning to work from the last donated hour received.

Voting Aye:

Voting Nay:

The President declared the resolution passed.

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of the Council

I hereby approve the foregoing resolution this 19th day of October, 2010.

Mayor

RESOLUTION NO. 10 – 10 – 108

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

RESOLUTION RATIFYING CONTRACTS

WHEREAS, the City of East Grand Forks purchased from Hardware Hank the goods referenced in check number 7726 for a total of \$914.20.

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

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

1. The above mentioned purchase by the City and the claim of the vendor based thereon are confirmed and the Mayor and Clerk are directed to issue an order-check in payment of such claim on the filing of the affidavit of official interest required under Minnesota Statutes, Section 471.89.
2. It is hereby determined that the total price of \$914.20 paid for such goods is as low as, or lower than, the price at which they could have been obtained elsewhere at the time the purchase was made.
3. This resolution is passed to comply with the provisions of Minnesota Statutes, Section 471.87-89.
4. Resolution passed by unanimous vote of the council on October 19, 2010.

Voting Aye:
Voting Nay:
Abstain:

The President declared the resolution passed.

Passed: October 19, 2010

Attest:

City Administrator/Clerk-Treasurer

President of Council

I hereby approve the foregoing resolution this 19th of October, 2010.

Mayor

AFFIDAVIT OF OFFICIAL INTEREST CLAIM

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

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

1. I am 3rd Ward Council Member of the City of East Grand Forks.
2. The City of East Grand Forks check number 7726 for a total of \$914.20.
3. This resolution is passed to comply with the provisions of Minnesota Statutes, Section 471.87-89.
4. Resolution passed by unanimous vote of the council on October 19, 2010.

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

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

Dated: _____

(Signature of Official)

Accounts Payable

Check Register Totals Only

User: ejohnson
 Printed: 10/14/2010 - 1:20 PM



City of East Grand Forks

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

| Check | Date | Vendor No | Vendor Name | Amount | Voucher |
|-------|------------|-----------|-------------------------------------|-----------|---------|
| 7675 | 10/19/2010 | ADV001 | Advanced Business Methods Inc | 176.34 | 0 |
| 7676 | 10/19/2010 | AKE001 | Dave Aker | 150.00 | 0 |
| 7677 | 10/19/2010 | ALB001 | Albrecht Manufacturing | 599.65 | 0 |
| 7678 | 10/19/2010 | ALL001 | Alltel | 1,227.70 | 0 |
| 7679 | 10/19/2010 | AME002 | American Tire Service | 2,438.87 | 0 |
| 7680 | 10/19/2010 | AME008 | American Tire Service Inc | 455.52 | 0 |
| 7681 | 10/19/2010 | AME005 | Ameripride Linen & Apparel Services | 210.87 | 0 |
| 7682 | 10/19/2010 | AQU001 | Aqua Water Solutions | 33.10 | 0 |
| 7683 | 10/19/2010 | BAR005 | Barnes Distribution | 1,192.11 | 0 |
| 7684 | 10/19/2010 | BAT001 | Batteries Plus | 83.01 | 0 |
| 7685 | 10/19/2010 | BOB001 | Bobcat of Grand Forks | 1,627.21 | 0 |
| 7686 | 10/19/2010 | BOR001 | Border States Electric Supply | 11.20 | 0 |
| 7687 | 10/19/2010 | BOR003 | Joe Borgen | 100.00 | 0 |
| 7688 | 10/19/2010 | BRE006 | Shirlene Breidenbach | 245.00 | 0 |
| 7689 | 10/19/2010 | BRU001 | Jay Bruce | 60.00 | 0 |
| 7690 | 10/19/2010 | BUT001 | Butler Machinery Co | 1,906.81 | 0 |
| 7691 | 10/19/2010 | BYD001 | Bydal Designs | 1,243.90 | 0 |
| 7692 | 10/19/2010 | C&R001 | C&R Laundry & Cleaners | 424.44 | 0 |
| 7693 | 10/19/2010 | CAN001 | Canon Financial Services | 167.10 | 0 |
| 7694 | 10/19/2010 | GFT003 | Donald Scott Cash | 2,002.59 | 0 |
| 7695 | 10/19/2010 | CBC001 | CBCS | 110.00 | 0 |
| 7696 | 10/19/2010 | CHE004 | Leslie Cheever | 402.33 | 0 |
| 7697 | 10/19/2010 | COL002 | Cole Papers Inc | 181.50 | 0 |
| 7698 | 10/19/2010 | COM003 | Complete Pest Control Inc | 2,738.26 | 0 |
| 7699 | 10/19/2010 | CUS002 | Custom Stripes Inc | 665.00 | 0 |
| 7700 | 10/19/2010 | DAK002 | Dakota Fence | 4,892.00 | 0 |
| 7701 | 10/19/2010 | DAK006 | Dakota TV & Appliance | 1,237.23 | 0 |
| 7702 | 10/19/2010 | DIA001 | Richard Papenfuss Diamond Cleaning | 684.07 | 0 |
| 7703 | 10/19/2010 | DIS001 | Display Sales Co | 551.48 | 0 |
| 7704 | 10/19/2010 | DIS004 | District 16 Hockey | 400.00 | 0 |
| 7705 | 10/19/2010 | DUA001 | Duane W. Nielsen Company | 570.08 | 0 |
| 7706 | 10/19/2010 | EAG001 | Eagle Electric | 282.98 | 0 |
| 7707 | 10/19/2010 | EAS005 | East Side Express | 48.13 | 0 |
| 7708 | 10/19/2010 | EMP001 | Emphasys Computer Solutions | 1,826.52 | 0 |
| 7709 | 10/19/2010 | EXP002 | Exponent | 437.60 | 0 |
| 7710 | 10/19/2010 | FAS001 | Fastenal Company | 28.61 | 0 |
| 7711 | 10/19/2010 | FIL001 | Filter Care | 310.61 | 0 |
| 7712 | 10/19/2010 | FLE001 | Flexible Pipe Tool Company | 1,851.77 | 0 |
| 7713 | 10/19/2010 | FLO003 | Florian & Sons Excavating Inc | 310.00 | 0 |
| 7714 | 10/19/2010 | FLO001 | FS Engineering | 5,344.43 | 0 |
| 7715 | 10/19/2010 | G&K001 | G&K Services | 75.99 | 0 |
| 7716 | 10/19/2010 | GAF001 | Gaffaneys | 485.56 | 0 |
| 7717 | 10/19/2010 | GAL003 | Galstad Jensen & McCann PA | 6,998.50 | 0 |
| 7718 | 10/19/2010 | GAR001 | Garden Hut Inc | 48.25 | 0 |
| 7719 | 10/19/2010 | GEO001 | George's Quick Printing | 83.37 | 0 |
| 7720 | 10/19/2010 | GFC001 | GF City Utility Billing | 15,314.70 | 0 |
| 7721 | 10/19/2010 | GFH002 | GF Herald | 150.72 | 0 |
| 7722 | 10/19/2010 | GGF001 | GGF Convention & Visitors Bureau | 685.24 | 0 |
| 7723 | 10/19/2010 | GRE007 | Greater Northwest EMS | 198.00 | 0 |
| 7724 | 10/19/2010 | GRE011 | Greenberg Roofing | 10,220.00 | 0 |

| Check | Date | Vendor No | Vendor Name | Amount | Voucher |
|-------|------------|-----------|---------------------------------------|-----------|---------|
| 7725 | 10/19/2010 | HAJ002 | Rick Hajicek | 142.50 | 0 |
| 7726 | 10/19/2010 | HAR001 | Hardware Hank | 914.20 | 0 |
| 7727 | 10/19/2010 | HAW001 | Hawkins Chemical | 75.00 | 0 |
| 7728 | 10/19/2010 | HEA001 | Heartland Paper | 462.97 | 0 |
| 7729 | 10/19/2010 | HOM001 | Home of Economy | 444.15 | 0 |
| 7730 | 10/19/2010 | HUG001 | Hugo's | 106.48 | 0 |
| 7731 | 10/19/2010 | INT003 | Integra Telecom | 158.10 | 0 |
| 7732 | 10/19/2010 | INT008 | Intoximeters Inc | 42.75 | 0 |
| 7733 | 10/19/2010 | JobsHQ | JobsHQ | 236.88 | 0 |
| 7734 | 10/19/2010 | KEL001 | Kellermeyer Building Service | 2,671.88 | 0 |
| 7735 | 10/19/2010 | KEL003 | Kelly Services | 273.00 | 0 |
| 7736 | 10/19/2010 | LAB001 | Lab Safety Supply | 107.61 | 0 |
| 7737 | 10/19/2010 | LAK001 | Laker Chemical | 2,712.43 | 0 |
| 7738 | 10/19/2010 | LEA001 | League of MN Cities | 5,503.00 | 0 |
| 7739 | 10/19/2010 | LET001 | Lets Play Hockey | 99.00 | 0 |
| 7740 | 10/19/2010 | LIT001 | Lithia Payment Processing | 284.36 | 0 |
| 7741 | 10/19/2010 | LUM001 | Lumber Mart | 445.85 | 0 |
| 7742 | 10/19/2010 | M&K001 | M&K Porta Potties | 110.00 | 0 |
| 7743 | 10/19/2010 | MAN001 | Michelle Manias | 30.00 | 0 |
| 7744 | 10/19/2010 | MAR004 | Marco | 67.61 | 0 |
| 7745 | 10/19/2010 | MCD001 | McDonald's of EGF | 42.83 | 0 |
| 7746 | 10/19/2010 | MEN001 | Menards | 76.64 | 0 |
| 7747 | 10/19/2010 | MPO001 | Metropolitan Planning Organization | 5,805.46 | 0 |
| 7748 | 10/19/2010 | MID003 | Midcontinent Communications | 797.47 | 0 |
| 7749 | 10/19/2010 | MND003 | MN Dept of Labor & Industry | 2,496.54 | 0 |
| 7750 | 10/19/2010 | MND005 | MN Dept of Public Safety | 1,530.00 | 0 |
| 7751 | 10/19/2010 | MNM002 | MN Municipal Utilities Assoc | 3,578.12 | 0 |
| 7752 | 10/19/2010 | MNS003 | MN State Treasurer - Treasury Divisio | 338.15 | 0 |
| 7753 | 10/19/2010 | COM002 | Morgan Printing | 1,198.07 | 0 |
| 7754 | 10/19/2010 | MUS002 | Bob Mushitz | 100.00 | 0 |
| 7755 | 10/19/2010 | NEW001 | Newman Signs | 1,580.00 | 0 |
| 7756 | 10/19/2010 | NOR005 | Northern Safety Tech | 2,999.81 | 0 |
| 7757 | 10/19/2010 | NWR001 | NW Regional Small Business Develop | 250.00 | 0 |
| 7758 | 10/19/2010 | ORE001 | O'Reilly Auto Parts | 364.39 | 0 |
| 7759 | 10/19/2010 | OPP001 | Opp Construction | 40,190.86 | 0 |
| 7760 | 10/19/2010 | ORC002 | Richard Orchard | 1,045.13 | 0 |
| 7761 | 10/19/2010 | PAM001 | Pamida | 21.35 | 0 |
| 7762 | 10/19/2010 | PAU004 | Paul Grzadzieski | 860.25 | 0 |
| 7763 | 10/19/2010 | PET001 | Peterson Veterinarian Clinic P.C. | 466.09 | 0 |
| 7764 | 10/19/2010 | POL001 | Polk County Attorney-Widseth | 3,185.42 | 0 |
| 7765 | 10/19/2010 | POL004 | Polk County Recorder | 46.00 | 0 |
| 7766 | 10/19/2010 | PRA001 | Praxair Distribution | 19.54 | 0 |
| 7767 | 10/19/2010 | PRE001 | Premium Waters Inc | 85.12 | 0 |
| 7768 | 10/19/2010 | QUI001 | Quill Corp | 106.16 | 0 |
| 7769 | 10/19/2010 | QWE001 | Qwest | 2,258.68 | 0 |
| 7770 | 10/19/2010 | RDO001 | RDO Powerplan OIB | 8,189.99 | 0 |
| 7771 | 10/19/2010 | RDO003 | RDO Truck Centers | 460.24 | 0 |
| 7772 | 10/19/2010 | RMB001 | RMB Environmental Lab Inc | 56.00 | 0 |
| 7773 | 10/19/2010 | STA004 | Lynn Stauss | 25.00 | 0 |
| 7774 | 10/19/2010 | STE001 | Stennes Granite | 1,425.00 | 0 |
| 7775 | 10/19/2010 | STA005 | Strata Corp | 10,440.01 | 0 |
| 7776 | 10/19/2010 | SUN002 | Sun Dot Communications | 11.50 | 0 |
| 7777 | 10/19/2010 | TON001 | Tony Dorn Inc | 36.53 | 0 |
| 7778 | 10/19/2010 | TRU001 | True Temp | 237.01 | 0 |
| 7779 | 10/19/2010 | VIL001 | Vilandre Heating & A/C | 239.00 | 0 |
| 7780 | 10/19/2010 | WAS001 | Waste Mgmt | 35,321.98 | 0 |
| 7781 | 10/19/2010 | WAT001 | Water & Light Department | 42,777.84 | 0 |
| 7782 | 10/19/2010 | WDA001 | WDAZ TV | 71.00 | 0 |
| 7783 | 10/19/2010 | WHI001 | Whitey's Cafe Inc | 134.72 | 0 |

| Check | Date | Vendor No | Vendor Name | Amount | Voucher |
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| 7784 | 10/19/2010 | XCE001 | Xcel Energy | 1,748.11 | 0 |
| 7785 | 10/19/2010 | XER001 | Xerox Corporation | 64.28 | 0 |
| 7786 | 10/19/2010 | ZEE001 | Zee Medical Service | 39.40 | 0 |
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| Check Total: | | | | 257,095.81 | |
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