

**AGENDA  
OF THE CITY COUNCIL  
CITY OF EAST GRAND FORKS  
TUESDAY, OCTOBER 15, 2024 – 5:00 PM**

**CALL TO ORDER:**

**CALL OF ROLL:**

**DETERMINATION OF A QUORUM:**

**PLEDGE OF ALLEGIANCE:**

**OPEN FORUM:**

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

**APPROVAL OF MINUTES:**

1. Consider approving the minutes of the “Regular Meeting” for the East Grand Forks, Minnesota City Council of October 1, 2024.
2. Consider approving the minutes of the “Special Meeting” for the East Grand Forks, Minnesota City Council of October 8, 2024.
3. Consider approving the minutes of the “Work Session” for the East Grand Forks, Minnesota City Council of October 8, 2024.

**SCHEDULED BID LETTINGS: NONE.**

**SCHEDULED PUBLIC HEARINGS:**

4. Public hearing regarding the proposed updates to the business subsidy policies.

**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. 24-10-78 appointing Maggie Brockling to the Polk County Affordable Housing Advisory Board.
6. Consider adopting Resolution No. 24-10-79 approving the appointment to the Water and Light Commission to fill the current vacancy.

Individuals with disabilities, language barriers or other needs who plan to attend the meeting and will need special accommodations should contact Nancy Ellis, ADA Coordinator at (218)-773-2208. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements. Also, materials can be provided in alternative formats for people with disabilities or with limited English proficiency (LEP) by contacting the ADA Coordinator (218)-773-2208 five (5) days prior to the meeting.

**ACKNOWLEDGE RECEIPT OF REPORTS OF OFFICERS, BOARDS AND COMMISSIONS:**

- 7. Regular meeting minutes of the Water, Light, Power, and Building Commission for September 18, 2024.

**COMMUNICATIONS: NONE**

**OLD BUSINESS:**

- 8. Consider adopting Ordinance 42, 4<sup>th</sup> Series amending City Code Chapter 152 by adding section 152.400 concerning Solar Energy Systems within city limits and by adopting reference city code Chapter 10 and Section 10.99 which among other things, contain penalty provisions (2<sup>nd</sup> Reading).

**NEW BUSINESS:**

- 9. Consider adopting the updated Business Subsidy Policy, the Revolving Loan Guidelines, and Border Cities Tax Credit Policy.
- 10. Consider approving the change order totaling \$46,866.45 from Equity Builders for the City Hall roof project.
- 11. Consider approving the updated Transit Procurement Policy contingent upon review and approval from the Minnesota Department of Transportation.

**CLAIMS:**

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

**COUNCIL/STAFF REPORTS:**

**ADJOURN:**

**Upcoming Meetings**

- Work Session – Tuesday, October 22, 2024 – Training Room – 5:00 PM
- Council Meeting – Wednesday, November 6, 2024 – Council Chambers – 5:00 PM
- Work Session – Tuesday, November 12, 2024 – Training Room – 5:00 PM
- Council Meeting – Tuesday, November 19, 2024 – Council Chambers – 5:00 PM

Individuals with disabilities, language barriers or other needs who plan to attend the meeting and will need special accommodations should contact Nancy Ellis, ADA Coordinator at (218)-773-2208. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements. Also, materials can be provided in alternative formats for people with disabilities or with limited English proficiency (LEP) by contacting the ADA Coordinator (218)-773-2208 five (5) days prior to the meeting.

**UNAPPROVED MINUTES  
OF THE CITY COUNCIL  
CITY OF EAST GRAND FORKS  
TUESDAY, OCTOBER 1, 2024 – 5:00 PM**

**CALL TO ORDER:**

*The Council Meeting of the East Grand Forks City Council for Tuesday, October 1, 2024 was called to order by Council President Olstad 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 Steve Gander (via Interactive Technology), Council President Mark Olstad, Council Vice-President Tim Riopelle, Council Members Clarence Vetter, Ben Pokrzywinski, Dale Helms, Brian Larson, and Karen Peterson.*

*Staff Present: Karla Anderson, Finance Director; Maggie Brockling, Economic Development Director; Steve Emery, City Engineer; Ron Galstad, City Attorney; Paul Gorte, Economic Development Director; Rod Hajicek, Police Lieutenant; Charlotte Helgeson, Library Director; Reid Huttunen, City Administrator; Jeremy King, Parks and Recreation Superintendent; Keith Mykleseth, Water and Light General Manager; Megan Nelson, City Clerk; and Jason Stordahl, Public Works Director.*

**DETERMINATION OF A QUORUM:**

*The Council President Determined a Quorum was present.*

**PLEDGE OF ALLEGIANCE:**

**OPEN FORUM:**

Council President Olstad stated the open form was an opportunity for members of the public to address the City Council on items not on the current agenda and items requiring Council action maybe deferred to staff or Boards and Commissions for research and future Council Agendas if appropriate. He asked if anyone would like to address the City Council, please come up to the podium to do so. No one came forward.

**APPROVAL OF MINUTES:**

1. Consider approving the minutes of the “Regular Meeting” for the East Grand Forks, Minnesota City Council of September 17, 2024.
2. Consider approving the minutes of the “Work Session” for the East Grand Forks, Minnesota City Council of September 24, 2024.

**A MOTION WAS MADE BY COUNCIL MEMBER HELMS, SECONDED BY COUNCIL MEMBER RIOPELLE, TO APPROVE ITEMS ONE (1) AND TWO (2).**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

**SCHEDULED BID LETTINGS: NONE.**

**SCHEDULED PUBLIC HEARINGS: NONE**

**CONSENT AGENDA:**

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

3. Consider adopting Resolution No. 24-10-71 appointing election judges for the November 5<sup>th</sup> General Election.
4. Consider approving the Exempt Gambling Permit Application for the East Grand Forks Home Run Club to hold a raffle on November 7, 2024 at the Eagles Club located at 227 10<sup>th</sup> St NW East Grand Forks, MN 56721 and waive the 30-day waiting period.
5. Consider adopting Resolution No. 24-10-72 approving the Food Shelf program allowing for street maintenance tickets issued until the end of December 2024 to be paid with either food items or case, all of which will be donated to the East Grand Forks Food Shelf.
6. Consider approving the parade application for the Hollydazzle Parade scheduled for November 24, 2024 contingent upon the Minnesota Department of Transportation approval for the closure of the Sorlie Bridge.
7. Consider approving the Special Event Application for the Hollydazzle Festival of Lights event and authorize the closure of the parking lot by restaurant row on November 24, 2024.
8. Consider approving the Fireworks/Pyrotechnic Special Effects Permit Application for the fireworks display for the Hollydazzle event scheduled for November 24, 2024.
9. Consider approving the Exempt Gambling Permit Application for the Knights of Columbus Christ the King Council 53541 to hold a raffle on June 6, 2025 at the Sacred Heart Catholic Church & School located at 200 3<sup>rd</sup> St NW East Grand Forks, MN 56721 and waive the 30-day waiting period.
10. Consider approving the Exempt Gambling Permit Application for the East Grand Forks Home Run Club to hold a bingo event on November 8, 2024 at the Eagles Club located at 227 10<sup>th</sup> St NW East Grand Forks, MN 56721 and waive the 30-day waiting period.
11. Consider declaring the 30 library chairs as surplus and authorize the disposal of them.
12. Consider adopting Resolution No. 24-10-75 approving the appointment and reappointments to the Charter Commission.
13. Consider adopting Resolution No. 24-10-76 approving the Civic Center celebration as a community festival and authorizing The Spud Jr. to serve at the event.

**A MOTION WAS MADE BY COUNCIL MEMBER HELMS, SECONDED BY COUNCIL MEMBER RIOPELLE, TO APPROVE ITEMS THREE (3) THROUGH THIRTEEN (13).**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

**ACKNOWLEDGE RECEIPT OF REPORTS OF OFFICERS, BOARDS AND COMMISSIONS:**

14. Regular meeting minutes of the Water, Light, Power, and Building Commission for September 4, 2024.

**COMMUNICATIONS: NONE**

**OLD BUSINESS: NONE**

**NEW BUSINESS:**

15. Consider approving Ordinance 42, 4<sup>th</sup> Series amending City Code Chapter 152 by adding section 152.400 concerning Solar Energy Systems within city limits and by adopting reference city code Chapter 10 and Section 10.99 which among other things, contain penalty provisions (1<sup>st</sup> Reading).

**A MOTION WAS MADE BY COUNCIL MEMBER VETTER, SECONDED BY COUNCIL MEMBER POKRZYWINSKI, TO APPROVE ORDINANCE 42, 4<sup>TH</sup> SERIES AMENDING CITY CODE CHAPTER 152 BY ADDING SECTION 152.400 CONCERNING SOLAR ENERGY SYSTEMS WITHIN CITY LIMITS AND BY ADOPTING REFERENCE CITY CODE CHAPTER 10 AND SECTION 10.99 WHICH AMONG OTHER THINGS, CONTAIN PENALTY PROVISIONS (1<sup>ST</sup> READING).**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

16. Consider approving the purchase of two 2025 Police Interceptor SUVs from Ten Voorde Ford for a total of \$89,723.88.

**A MOTION WAS MADE BY COUNCIL MEMBER RIOPELLE, SECONDED BY COUNCIL MEMBER LARSON, TO APPROVE THE PURCHASE OF TWO 2025 POLICE INTERCEPTOR SUVs FROM TENVOORDE FORD FOR A TOTAL OF \$89,723.88.**

Council member Helms said this was discussed at the work session, it was said the vehicles that were going to be replaced were going to have over 100,000 miles on them, and how that might not be a lot of miles but found out that the vehicles would have over 15,000 hours on them which made a big difference and gave a different perspective.

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

17. Consider approving the request to start the hiring process for the position of Recreation Coordinator.

**A MOTION WAS MADE BY COUNCIL MEMBER POKRZYWINSKI, SECONDED BY COUNCIL MEMBER PETERSON, TO APPROVE THE REQUEST TO START THE HIRING PROCESS FOR THE POSITION OF RECREATION COORDINATOR.**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

18. Consider adopting Resolution No. 24-10-73 granting Border City Development Zone Tax Credits up to \$67,000 and approving a business subsidy agreement between the City of East Grand Forks and Northern Valley Investments LLC.

**A MOTION WAS MADE BY COUNCIL MEMBER LARSON, SECONDED BY COUNCIL MEMBER VETTER, TO ADOPT RESOLUTION NO. 24-10-73 GRANTING BORDER CITY DEVELOPMENT ZONE TAX CREDITS UP TO \$67,000 AND APPROVING A BUSINESS SUBSIDY AGREEMENT BETWEEN THE CITY OF EAST GRAND FORKS AND NORTHERN VALLEY INVESTMENTS LLC.**

Mr. Gorte informed the Council this item and the next item did not require a public hearing, a notice to competitors was advertised for comments for both business subsidy agreements, and he had not received any comments for either item. Council Vice-President Riopelle asked if the first business subsidy agreement was for two years. Mr. Gorte said it was. Council Vice-President Riopelle then asked why the other business subsidy agreement was for three years. Mr. Gorte said it was because they had previously worked with the Northern Valley Machine over multiple years and this would conclude some of the work they had done with that company. He added the second agreement was from a new application and was based upon 30% additional investment from the company.

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

19. Consider adopting Resolution No. 24-10-74 granting Border City Development Zone Tax Credits up to \$130,000 and approving a business subsidy agreement between the City of East Grand Forks and Lumber Mart Inc.

**A MOTION WAS MADE BY COUNCIL MEMBER LARSON, SECONDED BY COUNCIL MEMBER PETERSON, TO ADOPT RESOLUTION NO. 24-10-74 GRANTING BORDER CITY DEVELOPMENT ZONE TAX CREDITS UP TO \$130,000 AND APPROVING A BUSINESS SUBSIDY AGREEMENT BETWEEN THE CITY OF EAST GRAND FORKS AND LUMBER MART INC.**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Helms, Olstad, and Larson.*

*Voting Nay: Riopelle.*

20. Consider approving the Facility Use Agreement between the City of East Grand Forks and the East Grand Forks Arts & Crafts Council for the use of the Civic Center and Blue Line Club Arena for the annual Arts & Craft Show for a rental fee of \$1,500 for both facilities.

**A MOTION WAS MADE BY COUNCIL MEMBER RIOPELLE, SECONDED BY COUNCIL MEMBER HELMS, TO APPROVE THE FACILITY USE AGREEMENT BETWEEN THE CITY OF EAST GRAND FORKS AND THE EAST GRAND FORKS ARTS & CRAFTS COUNCIL FOR THE USE OF THE CIVIC CENTER AND BLUE LINE CLUB ARENA FOR THE ANNUAL ARTS & CRAFT SHOW FOR A RENTAL FEE OF \$1,500 FOR BOTH FACILITIES.**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

**CLAIMS:**

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

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

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

**COUNCIL/STAFF REPORTS:**

Council Member Helms welcomed Ms. Brockling and that he when out to see the new round-a-bout at Highway 21 and Highway 75 and they will see how things go.

Mr. Emery stated the fencing for the quiet zone was completed, the remaining work would be completed in the spring, and they would be filing for a notice of establishment of the quiet zone before the horns would stop. Council member Vetter asked if BNSF would be cleaning up the garbage that would be sticking to the fence and if they would be blowing the snow onto the city streets from the fenced in area. Mr. Emery said he would ask. Council Vice-President Riopelle asked when the lights were going to be taken down by 3<sup>rd</sup> Street. Mr. Emery said that was scheduled to be done in the first week or two of October. He added that the Federal Railroad Administration was on site for an inspection and did see any issues. He continued with the LaFave Park project, how all the work was done below the water had been completed, they were working on sidewalks, and would be starting on the curb and gutter for the parking lot area.

Mr. King informed the Council there were 40 people that had applied for the deer hunt set up by the deer management plan. He stated 15 were selected, the mandatory orientation was held, and now there are 10 participants that were eager to get into the field in November.

**ADJOURN:**

**A MOTION WAS MADE BY COUNCIL MEMBER HELMS, SECONDED BY COUNCIL MEMBER RIOPELLE, TO ADJOURN THE OCTOBER 1, 2024 COUNCIL MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 5:13 P.M.**

*Voting Aye: Peterson, Vetter, Pokrzywinski, Riopelle, Helms, Olstad, and Larson.*

*Voting Nay: None.*

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Megan Nelson, City Clerk

**UNAPPROVED MINUTES  
OF THE SPECIAL MEETING  
CITY OF EAST GRAND FORKS  
TUESDAY, OCTOBER 8, 2024 – 5:00 PM**

**CALL TO ORDER:**

*The Special Meeting of the East Grand Forks City Council for Tuesday, October 8, 2024 was called to order by Council President Olstad 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 Steve Gander, Council President Mark Olstad, Council Vice-President Tim Riopelle, Council Members Clarence Vetter, Ben Pokrzywinski, Dale Helms, Brian Larson, and Karen Peterson.*

*Staff Present: Maggie Brockling, Economic Development Director; Nancy Ellis, City Planner; Ron Galstad, City Attorney; Paul Gorte, Economic Development Director; Michael Hedlund, Police Chief; Charlotte Helgeson, Library Director; Reid Huttunen, City Administrator; Jeremy King, Parks and Recreation Superintendent; Keith Mykleseth, Water and Light General Manager; Megan Nelson, City Clerk; and Jason Stordahl, Public Works Director.*

**DETERMINATION OF A QUORUM:**

*The Council President Determined a Quorum was present.*

1. Consider adopting Resolution No. 24-10-77 approving the hiring of Jayden Hagl as a truck driver starting at a salary of \$21.48 per hour.

**A MOTION WAS MADE BY COUNCIL MEMBER RIOPELLE, SECONDED BY COUNCIL MEMBER LARSON, TO ADOPT RESOLUTION NO. 24-10-77 APPROVING THE HIRING OF JAYDEN HAGL AS A TRUCK DRIVER STARTING AT A SALARY OF \$21.48 PER HOUR.**

*Voting Aye: Vetter, Pokrzywinski, Riopelle, Helms, Olstad, Larson, and Peterson.*

*Voting Nay: None.*

**ADJOURN:**

**A MOTION WAS MADE BY COUNCIL MEMBER RIOPELLE, SECONDED BY COUNCIL MEMBER LARSON, TO ADJOURN THE OCTOBER 8, 2024 SPECIAL MEETING OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 5:01 P.M.**

*Voting Aye: Vetter, Pokrzywinski, Riopelle, Helms, Olstad, Larson, and Peterson.*

*Voting Nay: None.*

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Megan Nelson, City Clerk

**UNAPPROVED MINUTES  
OF THE WORK SESSION  
CITY OF EAST GRAND FORKS  
TUESDAY, OCTOBER 8, 2024 – FOLLOWING THE SPECIAL MEETING**

**CALL TO ORDER:**

*The Work Session of the East Grand Forks City Council for Tuesday, October 8, 2024 was called to order by Council President Olstad at 5:01 P.M.*

**CALL OF ROLL:**

*On a Call of Roll the following members of the East Grand Forks City Council were present: Mayor Steve Gander, Council President Mark Olstad, Council Vice-President Tim Riopelle, Council Members Clarence Vetter, Ben Pokrzywinski, Dale Helms, Brian Larson, and Karen Peterson.*

*Staff Present: Maggie Brockling, Economic Development Director; Nancy Ellis, City Planner; Ron Galstad, City Attorney; Paul Gorte, Economic Development Director; Michael Hedlund, Police Chief, Charlotte Helgeson, Library Director; Reid Huttunen, City Administrator; Jeremy King, Parks and Recreation Superintendent; Keith Mykleseth, Water and Light General Manager; Megan Nelson, City Clerk; and Jason Stordahl, Public Works Director.*

**DETERMINATION OF A QUORUM:**

*The Council President Determined a Quorum was present.*

**1. Updated Assistance & Lending Policies – Paul Gorte**

Mr. Gorte told the Council he had been working with the loan committee and the Economic Development Authority (EDA) Board to update these policies and there was one significant change to the policies, which was to change the maximum loan amount from \$150,000 to \$300,000 because of the impact the primary businesses had on the local economy. He stated the EDA Board had requested three other changes, the first item was to create at least 1 full-time job, the Council did have the right to make a change, if necessary, but it would require a public hearing. He said the second change was having the party receiving the loan pay the mortgage registration tax, not the City or EDA. He added the third change was a removal of an item that required an investment along with the creation of a job and leaving a requirement of investment. He informed the Council the EDA Board had approved the changes, requested the Council also approve the changes, and there would be a public hearing about this at the next meeting. There were no questions.

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

**2. Consider Approving the Change Order from Equity Builders for Roof Project – Nancy Ellis**

Ms. Ellis explained she was submitting a change order from the roof project, it was for the initial replacement of the insulation under the old roofing, and it was a part of the contract. She stated the original bid included the flat roof, seamed metal roof, and the gutter and downspouts. She said it was unknown

how much insulation was going to be replaced and needed, they replaced all the wet and moldy insulation, and she reviewed how the cost of the insulation was determined. She added how there had been a lot of water damage due to the project along with concrete repairs that were needed, they came to an agreement on the amount which would reduce the overall amount of the change order bringing it down to \$46,866 that would be paid to the contractor. She said the water damage was already paid for and there was still retainage they could remove those costs from because the job still needed to be completed. She commented on how they could be completed this week so the concrete could be replaced the following week.

Council member Larson asked about the charges used for the change order and if they were a part of the original bid. Ms. Ellis said they were. Council member Larson commented there was not any price gouging on the change order. Ms. Ellis stated the project manager went over everything, documenting items, and how they knew there was going to be an additional cost for the insulation replacement from the leaks from before. She added she had included the list of prices from the contract in the packet. Council Vice-President Riopelle asked if there were also labor charges included with the water damages. Ms. Ellis said there were. Council member Helms said he understood the insulation needed to be replaced and asked how long the roof sat opened. Discussion followed about how the replaced insulation was calculated prior to the metal roof being removed and the first heavy rain, there was still retainage that was being held, and they need to look more closely when hiring for projects. Ms. Ellis said the contract met all requirements, all references that were called said the work was fine, and all references were checked because the bid had come in so much lower than the rest. More discussion followed about how things could have been done differently, things were not sealed properly, and materials did not arrive when expected. There were no other questions.

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

### **3. Review of Cannabis Plan – Reid Huttunen**

Mr. Huttunen explained meetings had continued with staff since this item had been discussed in July, he thanked Ms. Ellis and Mr. Galstad for their assistance with this and continued with the updates that were done with the proposed zoning. He stated in July the proposed buffer areas were 750 feet from a school, that was reduced down to 550 feet for a school, it opened up both sides of Demers Avenue for the downtown commercial district, and the 300 feet buffer from a childcare center, treatment facility, or public park or playground was kept. He told the Council there were updated maps provided and the buffer was added to the Riverside Christian School.

Mr. Huttunen informed the Council there were 16 different license types that the State would issue, zoning was reviewed for all license types, and a chart was put together of where the different license types could be located. He added the recommendation was being made for indoor cultivation or manufacturing in the industrial park area, not allowing outdoor cultivation, and currently there were no agricultural zones within city limits at this time. He continued saying the city would have to allow one retail location, so the suggestion was to set the number of retail locations at two and limit it to one location within the downtown commercial district and one within the highway commercial district. He stated the business registration fees were set by the State and those fees would be included in the ordinance. He said the hours of operation were somewhat restricted by the State, so staff was recommending starting the hours of operation on Monday through Saturday from 8am to 9pm and on Sunday from 10am to 9pm.

Mr. Huttunen told the Council there were five registered retailers that were selling low potency hemp edibles, currently there was no city code regarding low potency edibles, and recommended including this in the ordinance so the zoning was set allowing it within the commercial districts. He added the buffer zones that were proposed would not apply to the low potency edibles, but they could set up a registration for these businesses as well. He said these businesses did have to register with the Minnesota Department of Health, they would be moved so they were under Office of Cannabis Management, the registration would change to a license, so the City would be able to register these businesses. He stated there was also a temporary license for event organizers, it was a special license, someone that held a retail license from the State would be eligible to hold a temporary cannabis event in the community, by statute the City could regulate these events, require a special event permit, and the City could also limit if people would be allowed to smoke or vape at the event. He said they could also restrict those events from being held on public property. He reminded the Council there was already an ordinance in place that prohibits the consumption or use of cannabis on public property or public spaces so they would need to determine how a temporary event could be held. He asked for questions, comments, or direction.

Council President Olstad asked if there was any direction from the State about what could be charged for a special event. Mr. Huttunen said he would need to verify, he did believe so but needed to confirm. Mr. Galstad said if they were going to be registering these businesses, he would like to suggest again the City should have a business registration process in place for all local businesses. He stated it would help with economic development, it would help with notifications, and would inform the City on who was operating a business. He added it would give contact information and assist during inspections. There were no other questions or comments.

#### **ADJOURN:**

**A MOTION WAS MADE BY COUNCIL MEMBER HELMS, SECONDED BY COUNCIL MEMBER RIOPELLE, TO ADJOURN THE OCTOBER 8, 2024 WORK SESSION OF THE EAST GRAND FORKS, MINNESOTA CITY COUNCIL AT 5:22 P.M.**

*Voting Aye: Vetter, Pokrzywinski, Riopelle, Helms, Olstad, Larson, and Peterson.*

*Voting Nay: None.*

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Megan Nelson, City Clerk

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of East Grand Forks, Minnesota (the “City”), will hold a public hearing on Tuesday, October 15, 2024, at or after 5:00 p.m. at City Hall, 600 East DeMers Ave, East Grand Forks, Minnesota. The purpose of the public hearing is the consideration and adoption of criteria for business subsidies under Minnesota Statutes, Sections 116J.993 to 116J.995, as amended (the “Business Subsidy Act”).

A copy of the proposed business subsidy policy is available for inspection at the office of the Economic Development Director during regular business hours.

Anyone wishing to express an opinion regarding the proposed business subsidy policy shall be heard at the hearing. Questions regarding the matter should be directed to the Economic Development Director at 218-773-8939.

Dated: October 2, 2024

BY ORDER OF THE CITY COUNCIL OF  
THE CITY OF EAST GRAND FORKS,  
MINNESOTA

/s/ Reid Huttunen  
City Administrator  
City of East Grand Forks, Minnesota

**RESOLUTION NO. 24 – 10 - 78**

**A RESOLUTION DESIGNATING THE MAYOR’S APPOINTMENT TO MAGGIE BROCKLING, ECONOMIC DEVELOPMENT DIRECTOR, TO THE POLK CO. AFFORDABLE HOUSING ADVISORY BOARD**

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

WHEREAS, the Mayor appoints citizens and staff to fill vacancies on various Advisory Boards and Commission for the City of East Grand Forks each year; and

WHEREAS, the Northwest MN Multi-County Housing and Redevelopment Authority (NWMNHRA) has a Polk County Housing Advisory Board, which meets annually and regularly reviews loan and down payment assistance applications received by the authority; and

WHEREAS, the East Grand Forks Economic Development Authority Director has been assigned to this advisory board position and the current position will be vacated with the retirement of current director, Paul Gorte; and

THEREFORE BE IT RESOLVED, that the City Council of the City of East Grand Forks ratifies the following appointment of Mayor Steven Gander to the respective Board:

**Polk Co. Affordable Housing Advisory Board (NW MN Multi-County HRA)**

Members

Maggie Brockling, Economic Development Director

Expires

On-going with EDA Director position

*Voting Aye:*

*Voting Nay:*

*Absent:*

The President declared the resolution passed.

Passed: October 15, 2024

Attest:

\_\_\_\_\_  
City Administrator/Clerk-Treasurer

\_\_\_\_\_  
President of Council

I hereby approve the foregoing resolution this 15<sup>th</sup> day of October, 2024.

\_\_\_\_\_  
Mayor

**RESOLUTION NO. 24 – 10 - 79**

**A RESOLUTION DESIGNATING THE MAYOR’S APPOINTMENT TO THE EAST GRAND FORKS BOARD AND COMMISSIONS FOR 2024**

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

WHEREAS, the Mayor appoints citizens to fill vacancies on various Boards and Commissions of the City of East Grand Forks each year; and

WHEREAS, These Boards and Commissions are important to the operation of the City due to the value of citizen input on recommendations that are forwarded to the City Council on many important issues.

THEREFORE BE IT RESOLVED, that the City Council of the City of East Grand Forks ratifies the following appointments of Mayor Steven Gander to the respective Board and/or Commission for the designated term:

**WATER, LIGHT, POWER & BUILDING COMMISSION** – Commissioners appointed by the Mayor, subject to approval by the City Council, for 3 year terms.

Members

Randy Rapacz (Appointment to Vacancy)

Expires

12/31/25

*Voting Aye:*

*Voting Nay:*

The President declared the resolution passed.

Passed: October 15, 2024

Attest:

\_\_\_\_\_  
City Administrator/Clerk-Treasurer

\_\_\_\_\_  
President of Council

I hereby approve the foregoing resolution this 15<sup>th</sup> day of October, 2024.

\_\_\_\_\_  
Mayor

Minutes of the regular meeting of the Water, Light, Power and Building Commission of the City of East Grand Forks, Minnesota held on September 18, 2024, at 8:00 am in the City Council Chambers.

Present: Grinde, Quirk, Riopelle

Absent: None

Also present: Ron Galstad, Keith Mykleseth, Todd Grabanski, Todd Forster, Jordan Midgarden, Corey Thompson, Karla Anderson, Ray Rakoczy

It was moved by Commissioner Quirk supported by Commissioner Riopelle to approve the minutes of the previous regular meeting held on September 4, 2024.

Voting Aye: Grinde, Quirk, Riopelle

Voting Nay: None

It was moved by Commissioner Quirk supported by Commissioner Riopelle to authorize the Secretary to issue payment of the recommended bills and payroll in the amount of \$1,652,078.26.

Voting Aye: Grinde, Quirk, Riopelle

Voting Nay: None

It was moved by Commissioner Quirk supported by Commissioner Riopelle to approve obsolete inventory items for salvage

Voting Aye: Grinde, Quirk, Riopelle

Voting Nay: None

It was moved by Commissioner Quirk supported by Commissioner Riopelle to approve adding the 2001 Dodge Truck (#764A) to the online EGFPD City Auction.

Voting Aye: Grinde, Quirk, Riopelle

Voting Nay: None

It was moved by Commissioner Quirk supported by Commissioner Riopelle to adjourn at 8:17 am to the next regular meeting on October 2, 2024, at 8:00 am to be held in the City Council Chambers.

Voting Aye: Grinde, Quirk, Riopelle

Voting Nay: None

Kristen Shipes  
Commission Secretary

**ORDINANCE NO. 42, 4th SERIES**

**AN ORDINANCE OF THE CITY OF EAST GRAND FORKS, MINNESOTA, AMENDING CITY CODE CHAPTER 152: BY ADDING SECTION 152.400 CONCERNING SOLAR ENERGY SYSTEMS WITHIN THE EAST GRAND FORKS CITY LIMITS 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 DOES ORDAIN AS FOLLOWS:

**SECTION 1:** The East Grand Forks City Code is amended to include the following:

**Sec. 152.400. - Solar energy systems.**

*(A) Purpose.* It shall be the purpose of this section to permit, as an accessory use, solar energy systems, while protecting the health, safety and welfare of city residents and the property interests of adjacent and surrounding land uses through appropriate zoning and land use controls.

*(B) Definitions.*

*(1) Building-integrated solar energy system.* A solar energy system that is directly integrated into the building by replacing typical building materials.

*(2) Ground-mounted solar energy systems.* A solar energy system that is installed directly onto the ground by means of brackets or poles.

*(3) Interconnection.* When a customer-owned solar energy system is connected to or has access to the electric grid.

*(4) Roof-mounted solar energy systems.* A solar energy system where the panels are mounted to a house or other building.

*(5) Solar energy system.* A set of devices whose primary purpose is to provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation or water heating.

*(6) Solar thermal system.* A system that includes a solar collector and a heat exchanger that heats or preheats water for building heating systems or other hot water needs of the building.

*(C) Permitted accessory use.* *Roof-mounted solar energy systems* are allowable as an accessory use in all zoning districts. *Ground-mounted solar energy systems* are prohibited in residential districts and are a conditional use in all other zoning districts, subject to the following requirements:

*(1) Height.* Roof-mounted solar energy systems shall not project beyond the peak elevation of a pitched roof and shall not project more than 10 feet above the surface of a flat roof to which they are attached. Ground-mounted solar energy systems shall not exceed 20 feet in height or the height of the principal structure, whichever is less.

(2) *Location.* Ground-mounted solar energy systems must be in the rear yard only. Ground-mount systems' total collector area shall not exceed half the building footprint of the principal structure.

(3) *Setbacks.* Ground-mounted solar energy systems, at minimum design tilt, setback distance from property lines shall be equivalent to the setback requirements of the underlying district or as otherwise needed so as not to impair sight distance for safe access to the property or other traffic or properties in the vicinity. All solar energy systems using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties. Roof-mounted solar energy systems shall comply with all building setbacks in the applicable zoning district and shall not extend beyond the exterior perimeter of the building on which the system is mounted.

(4) *Feeder lines.* All power exterior electrical, or other service lines, must be buried below the surface of the ground.

(5) *Exemption.* Building integrated solar energy systems are exempt from the requirements of this section and shall be regulated as any other building element.

(6) *Standards.* Reflection angles from collector surfaces shall be oriented away from neighboring windows. Where necessary, screening may be required to address glare.

(7) *Abandonment.* Any solar energy system that ceases to produce energy on a continuous basis for 6 months will be considered abandoned, unless the property owner provides substantial evidence to the Community Development director or their designee of the intent to maintain and reinstate the operation of that solar energy system within an acceptable designated time. Upon abandonment of a solar energy system, the property owner must remove all components of the solar energy system and restore the real property to its condition prior to development and installation of the solar energy system. If the property owner does not remove the abandoned solar energy system within 180 days of receiving written notice from the zoning administrator, the city may remove the solar energy system, sell any removed materials and initiate judicial proceedings or take any other steps legally authorized against the responsible parties to recover the costs required to remove the solar energy system and restore the site to a non-hazardous condition. All end-of-life disposal of solar products must comply with the Federal Resource Conservation and Recovery Act and any state policies governing solar product waste. If an applicant has received a permit but has not completed construction of the solar energy system within 18 months from the date of issuance of the permit, the system shall be deemed abandoned.

(8) *Restoration.* Upon abandonment, the property owner must ensure the site is restored to a useful, non-hazardous condition in a timely manner, including, but not limited to the following:

(a) Removal of aboveground and below ground equipment, structures and foundations.

(b) Restoration of the surface grade and soil after removal of solar energy equipment.

(c) Re-vegetation of restored soil areas with native seeds mixes, excluding any invasive species.

(9) *Design plan.* Any permit submittal shall include a site or design plan indicating the adequacy, location, arrangement, size, design and general site compatibility of the proposed solar energy system.

(a) *Historic Buildings* - Solar energy systems on buildings within designated historic districts or on locally designated historic buildings (exclusive of State or Federal historic designation) must receive approval of the community Heritage Preservation Commission, consistent with the standards for solar energy systems on historically designated buildings published by the U.S. Department of Interior.

(D) *Safety.*

(1) *Compliance with building code.* All solar energy systems shall comply with all local and state building codes.

(2) *Compliance with electrical code.* All solar energy systems shall comply with the national electrical code.

(3) *Compliance with state plumbing code.* All solar energy systems shall comply with the Minnesota state plumbing code requirements.

(4) *Compliance with state fire code.* All solar energy systems shall comply with the Minnesota state fire code requirements.

(5) *Certifications.* Solar energy system components shall be certified by Underwriters Laboratories Inc. and the solar rating and certification corporation. The city reserves the right to deny a building permit for proposed solar energy systems deemed to have inadequate certification.

(6) *Batteries.* When solar storage batteries are included as part of a solar energy system, they must meet the requirements of the Minnesota state building code.

(E) *Approval.*

(1) *Permits.* The erection, alteration, improvement, reconstruction, and movement of all solar energy systems shall require a building permit from the city. The city council shall set the solar energy system permit fee by resolution.

(2) *Utility notification.* All solar energy systems that will interconnect with the electric grid shall have an agreement with the local utility prior to the issuance of a building permit. Any connection with a local utility must be inspected by the local utility prior to use.

(3) *Aviation.* If the solar energy system is over ½ acre in size and located within 5 nautical miles of an airport, or is located within the airport zoning district, airport or FAA notification shall be provided and approval obtained.

**SECTION 2.** City Code Chapter 10 entitled "General Provisions" applicable to entire city code including penalty for violation and Section 10.99 entitled "General Penalty" are hereby adopted in their entirety, by reference, as though repeated verbatim herein.

**SECTION 3.** This ordinance shall take effect and be in force from and after its passage and publication and be given the Number 42, 4th Series.

*Voting Aye:*  
*Voting Nay:*  
*Absent:*

ATTEST:

PASSED: October 15, 2024

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
President of Council

I hereby approve the foregoing Ordinance this 15<sup>th</sup> day of October, 2024.

\_\_\_\_\_  
Mayor

# Request for Council Action

Date: October 15, 2024

To: East Grand Forks City Council Mayor Steve Gander, Council President Mark Olstad, Council Vice-President Tim Riopelle, Council members Clarence Vetter, Ben Pokrzywinski, Dale Helms, Brian Larson, and Karen Peterson.

Cc: File

From: Economic Development Director

RE: Policy Update

NOTE: This is a PUBLIC HEARING item

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The Business Subsidy Policy, Revolving Loan Fund Guidelines, and Border Cities Tax Credit Policy and not undergone an overall review in will over 10 years. With a new Director and changes to laws and the economy, it seemed appropriate to review and update the policies. The new Director was kept apprised of the process and participated in the October 1 Loan Committee meeting that reviewed the policies. The updated policies have been reviewed by Kennedy and Graven. The firm provided comments to make sure the policies conformed with legal requirements and is performing a final review that should be completed prior to this meeting. This is the first time that all of these policies will be considered as a complete and complementary package. All of the policies have been applied in the past but have not been considered together as a package. The polices generally remain unchanged except for some exceptions to update them.

The EDA Loan Committee met several times to discuss the policies. The EDA is a gap lender, not a primary lender. There was extensive conversation about the maximum loan amount, the maximum percentage of City/EDA participation in a loan, and whether owner/business participation should be required. In short, the final Committee recommendation sets a maximum loan amount of \$300,000 for primary businesses and \$149,999 for all other businesses to maximize the resources available and recognize the impact of primary businesses upon the City. The Committee retained a maximum 33 1/3% public participation percentage. The Committee decided not to require owner/business participation because the lender will likely do so and because the limited percentage of public participation requires that most of the investment come from other sources.

## Business Subsidy Policy

The policy clarifies when the City/EDA will provide assistance. Assistance may be in the form of loans, Border Cities tax credits, tax abatements, or other types of assistance. It clarifies jobs and wages goals in

accordance with State law. The revisions clearly set forth the consequences of failing to meet the goals; these consequences were contained in State law but not in the local policies per se.

#### Revolving Loan Fund Guidelines

Policies regarding the identification of businesses eligible for defined loan interest rates and origination fees were included in the policy. The policy increases the maximum loan amount for primary businesses to \$300,000 but decreases the maximum loan amount from \$150,000 to \$149,999 because of the reporting requirements associated with the higher amount. The \$149,999 has been the effective amount for some time now.

#### Border Cities Tax Credit Policy

The policy defines the amount and duration of the Border Cities tax credit program. The term is limited to 5 years for any approval. The policy defines the investment and other justifications needed for additional years.

The policies have been referred to Kennedy and Graven for a final review prior to approval. The response is anticipated prior to the EDA meeting.

The EDA is scheduled to review and take action on October 8. The City Council will be apprised of its action.

#### Recommendation

That the recommend that the City Council approve the policies as submitted.

**CITY OF EAST GRAND FORKS  
&  
ECONOMIC DEVELOPMENT AUTHORITY**

**BUSINESS SUBSIDY POLICY**

**A. PURPOSE**

The purpose of the East Grand Forks Business Subsidy Policy is to establish criteria for the granting of business subsidies, including assistance through Tax Increment Financing, Tax Abatement, Border City Enterprise Zone Credits, Border City Development Zone Credits, EDA Loan Programs and other incentive and assistance programs that may become available through the City of East Grand Forks, Minnesota (the “City”); the Economic Development Authority, (the “Authority”); or the State of Minnesota (the “State”).

The City and Authority’s ability to grant certain subsidies is governed by Minnesota Statutes, Sections 116J.993 through 116J.995, as amended (the “Business Subsidy Act”).

The criteria set forth in this Business Subsidy Policy shall be used as a guide in processing and reviewing applications requesting business subsidy assistance and shall be used in conjunction with other relevant policies of the City and the Authority. The requirements of this policy shall be met for all assistance considered a business subsidy under the Business Subsidy Act.

The City may amend this Business Subsidy Policy at any time. Amendments to this Plan are subject to public hearing requirements contained in the Business Subsidy Act.

**B. MANDATORY CRITERIA**

All projects must comply with the following criteria:

1. Public Purpose. The business subsidy must meet a public purpose which may include, but may not be limited to, increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is specific and demonstrable. Suggestions for business subsidy public purposes are set forth in Exhibit A.

2. Jobs and Wages Goals. Projects provided a business subsidy must create at least 1 full-time equivalent jobs. Where job loss is specific and demonstrable, the project may meet the jobs and wages goals by retaining jobs at the project. If retaining jobs is a goal of the project, the project must retain at a minimum 75 % of the existing full-time equivalent jobs. After a public hearing, if the creation or retention of jobs is determined not to be a goal, the wage and job goals may be set at zero.

The wage floor for wages to be paid for the jobs created or retained shall be greater of the minimum wage rate for assistance established by MnDEED under its MIF lending guidelines or 100% of the State minimum wage in effect at the time the subsidy is granted. The City will seek to create jobs with higher wages as appropriate for the overall public purpose of the subsidy. Wage goals may also be set to enhance existing jobs through increased wages, which increase must result in wages higher than the minimum under this Section.

3. Economic Feasibility. Upon application for a business subsidy, the City will require the requesting entity to provide certain information regarding the proposed project, including but not limited to proposed sources and uses of funds to pay for project costs, estimated revenues, estimated number of jobs created and the expected wages. The City will review the requested materials to determine if the proposed project

is economically feasible in its sole judgment and discretion.

4. Compliance With Act. The business subsidy from the City must satisfy all requirements of the Act as set forth in Section E below.

**C. PROJECT REVIEW AND EVALUATION POLICY**

1. The City recognizes that the creation and retention of good paying jobs is a desirable goal which benefits the community. Nevertheless, not all projects assisted with subsidies derive their public purposes and importance solely by virtue of job creation. In addition, the imposition of high job creation requirements and high wage level requirements may be unrealistic and counter-productive in the face of larger economic forces, and the financial and competitive circumstances of an individual business. In determining the requirements for a project under consideration for a business subsidy, the determination of the number of jobs to be created and the wage levels therefor will be guided by the following principles and criteria:

a. Each project will be evaluated on a case by case basis. The evaluation will take into consideration the project's importance in and benefit to the community from all perspectives, including created or retained jobs.

b. If a particular project does not involve the creation of jobs, but is nonetheless found to be worthy of support and subsidy, assistance may be approved without any specific job or wage goals provided the City documents in writing the reasons for deviating from the jobs and wage goals set forth in Section B.

c. In cases where the objective is the retention of existing jobs, the recipient of the subsidy will be required to provide evidence acceptable to the City demonstrating that the loss of those jobs is imminent.

2. Because it is not possible to anticipate all the needs and requirements of every type of project and the ever-changing needs of the community and in order to retain the flexibility necessary to respond to all proposed projects, the City retains the right to approve projects and business subsidies which may vary from the principles and criteria set forth herein. The reasons for deviations from the business subsidy criteria set forth herein shall be documented in writing.

3. Certain financial assistance provided by the City may be exempted from this policy pursuant to Section 116J.993, subd 3 of the Act, as amended.

**D. PROJECT REVIEW AND EVALUATION PROCEDURE**

1. The City will consider one or more of the criteria listed in this Section D in determining whether to provide financial or other assistance to a project as a business subsidy. In applying the criteria to a specific project, the following will apply:

a. The City may consider the requirements of any other business subsidy received, or to be received, from a grantor other than the City.

b. If the business subsidy involves the conveyance of real or personal property at a write-down, the amount of the subsidy will be difference between the conveyance price and the fair market value of the property as determined by the City.

- c. If the business subsidy is received over time, the City may value the subsidy at its present value using a discount rate equal to an interest rate which the City determines is fair and reasonable under the circumstances.
2. When deciding whether to grant a business subsidy, the City will consider the following:
- a. Land Use. The City will consider:
- i. Compliance with Comprehensive or other Plans. Whether, apart from any needed services to the community described in Section D.2.d, the project is more compatible with the comprehensive plan than other permitted uses for the property. For example, the project may involve a "clean" industry such as a technology or service business which is preferred over other permitted uses.
  - ii. Compliance with Zoning and Land Use Regulations. Whether the proposed use of the site complies with the regulations of the City Zoning Ordinance and Land Use Regulations.
  - ii. Marginal Property. Whether the project is located on property which needs but is not likely to be developed or redeveloped because of blight or other adverse conditions of the property. For example, property may be so blighted that the cost of making land ready for redevelopment exceeds the property fair market value.
  - iii. Design and/or Other Amenities. Whether, as a result of the business subsidy, the project will include design and/or amenity features not otherwise required by law. For example, the project may, at the request of the City, include landscaping, open space, public trails, employee work out facilities or day care facilities which serve a public purpose but are not required by law.
  - iv. Highest and Best Use. Whether the project will encourage and promote the highest and best use of land.
  - v. Appropriateness. Whether the project is an appropriate land use for the location.
- b. Impact on Existing and Future Public Investment. The City will consider:
- i. Utilization of Existing Infrastructure Investment. Whether and to what extent (i) the project will utilize existing public infrastructure capacity and (ii) the project will require additional publicly funded infrastructure investments.
  - ii. Direct Monetary Return on Public Investment. Arrangements made or to be made for the City to receive a direct monetary return on its investment in the project. For example, the business subsidy may be in the form of an interest bearing loan or may involve a project sharing arrangement.
- c. Economic Development. The City will consider:
- i. Leveraged Funds. The amount of the business subsidy to be provided for the project as compared to the amount of private funds which will be applied towards the capital cost of the project.

- ii. Spin Off Development. The dollar amount of nonsubsidized development the project is expected to generate in the surrounding area and the need for and likelihood of such spin off development.
- iii. Growth Potential. Based on the recipient's market studies and plans for expansion, whether and to what extent the project will produce a net increase of full-time equivalent jobs and of payroll, over and above the minimum number of jobs and wages set forth in Section B above.
- d. Quality of Life. The City will consider:
  - i. Community Services. Whether the project will provide services in the community and the need for such services. For example, the project may provide health services, retail convenience services such as a nearby grocery store, or social services needed in the community.
  - ii. Unmet Housing Needs. Whether the project will provide housing the City currently needs but which is not available.
- e. Other.
  - i. Other Factors. Depending on the nature of the project, the City will consider such other factors as the City may deem relevant in evaluating the project and the business subsidy proposed for it.

**E. COMPLIANCE WITH BUSINESS SUBSIDY ACT.**

1. Jobs and Wages. Each project granted a business subsidy must meet the jobs and wages goals set forth in Section B within two years of the benefit. As used herein "benefit date" means the date the business subsidy is received. If the business subsidy involves the purchase, lease, or donation of physical equipment, then the benefit date occurs when the recipient puts the equipment into service. If the business subsidy is for improvements to property, then the benefit date refers to the earlier of (i) when the improvements are finished for the entire project, or (ii) when a business occupies the property (upon receipt of a certificate of occupancy).
2. Continued Operation of Project. Each project granted a business subsidy must continue its operations at the site of the project for at least five years following the benefit date.
3. Business Subsidy Agreements. Each subsidy recipient must enter into a Business Subsidy Agreement with the City that includes:
  - a. a description of the subsidy, including the amount and type of subsidy, and type of tax increment district if the subsidy is tax increment financing;
  - b. a statement of the public purposes for the subsidy;
  - c. measurable, specific, and tangible goals for the subsidy;
  - d. a description of the financial obligation of the recipient if the goals are not met;
  - e. a statement of why the subsidy is needed;
  - f. a commitment to continue operations in the jurisdiction where the subsidy is used for at least five years after the benefit date;
  - g. the name and address of the parent corporation of the recipient, if any; and
  - h. a list of all financial assistance by all grantors for the project.

i. wage and job goals

Subsidies in the form of grants shall be structured as forgivable loans. For other types of subsidies, the agreement shall state the fair market value of the subsidy to the recipient, including the value of conveying property at less than a fair market price, or other in-kind benefits to the recipient.

If a subsidy benefits more than one recipient, the City must assign a proportion of the subsidy to each recipient that signs the agreement. The proportion assessed to each recipient must reflect a reasonable estimate of the recipient's share of the total benefits of the project.

4. Failure to Meet Goals. The Business Subsidy Agreement must specify the recipient's obligation if the recipient does not fulfill the agreement. At a minimum, the Business Subsidy Agreement must require a recipient failing to meet subsidy agreement goals to pay back the assistance plus interest to the City pursuant to the terms of the Business Subsidy Act. The interest rate must be set equal to 4.0% or the implicit price deflator for government consumption expenditures and gross investment for state and local governments prepared by the Bureau of Economic Analysis of the United States Department of Commerce for the 12-month period ending March 31 of the previous year, whichever is greater.

The City, after a public hearing, may extend for up to one year the period for meeting the wage and job goals provided in the Business Subsidy Agreement. The City may extend the period for meeting other goals by documenting in writing the reason for the extension and attaching a copy of the document to its next annual report to the Department of Employment and Economic Development.

5. Reports by Recipients to City. The City must monitor the progress by the recipient of a business subsidy in achieving agreement goals.

The Business Subsidy Act requires annual reports from recipients of Business Subsidies, including wage and job goal information. The information must be submitted on forms developed by the Department of Employment and Economic Development. Copies of the completed forms must be sent to the City annually no later than March 1 of each year for the previous year.

Recipients who fail to submit annual reports to the City may face financial penalties.

Adopted by the City Council of the City of East Grand Forks on \_\_\_\_\_, 2024  
Date of Public Hearing of City Council \_\_\_\_\_, 2024

Adopted by the Board of Commissioners of the Economic Development Authority on October 8, 2024  
Date of Public Hearing of Economic Development Authority: October 8, 2024

## **EXHIBIT A**

### **SUGGESTIONS FOR SUBSIDY PUBLIC PURPOSES**

Grantors may wish to consider any of the following public purposes, among others, when considering an applicant's request:

1. Increasing the tax base may be used as a public purpose as long as it is not the only public purpose.
2. Job retention may only be used in cases where job loss is specific and demonstrable.
3. The project provides a service or meets a consumer need not currently addressed in the City.
4. The project represents a significant investment in an area of the City that is economically depressed.
5. The project will remove blighting influences or rehabilitate an area of the City in need of revitalization.
6. The project will stimulate additional capital investment in a geographic area of the City and act as a catalyst for future (re)development.
7. The project will cause surrounding property values to increase and will stabilize the area.
8. The project will anchor a needed commercial center for the City.
9. The project will enhance the viability of other businesses in the City.
10. The project will assist in the processing, packaging, distribution, or marketing of agricultural products grown in the region.
11. The project will assist in the orderly growth of the City and generate significant economic spin off.
12. The project will prevent the closure of business needed in the community due to merger, physical expansion, change in market or economic factors, downsizing, and other factors.
13. The project will employ a classification of people in the community at large who are not fully employed.
14. A business subsidy will permit the project to employ more people, pay higher wages, be of better quality, or in some way be of more value to the City.
15. The proposed subsidy will facilitate other business activities deemed important and valuable to the City if so determined by the EDA and City Council.



**CITY OF EAST GRAND FORKS  
ECONOMIC DEVELOPMENT AUTHORITY  
REVOLVING LOAN FUND**

**LENDING GUIDELINES**

**Background**

The City of East Grand Forks Revolving Loan Program (the “Revolving Loan Program”) was established with proceeds from several sources, including a grant of funds from the Minnesota Investment Fund (“MIF”) for the purpose of providing financial assistance to businesses which suffered physical and economic losses as a direct result of the flooding of April 1997, the Intermediary Relending Program of USDA Rural Development, Community Development Block Grant, and other sources. It is important to remember that the dollars generally remain subject to the original statutory, regulatory, and grant restrictions.

The purpose for the establishment of the Revolving Loan Program was partly to assist existing, formerly healthy businesses in meeting their financial needs, related to business re-establishment, brought about by physical losses and adverse economic impacts resulting from the April 1997 Red River Valley flooding and partly to provide assistance to businesses expanding within East Grand Forks and locating into the City, particularly in a highly competitive local market. The aim of the program is the retention and/or expansion of businesses which provide essential services and employment to the East Grand Forks community and the attraction of new businesses into the business community of the City of East of Grand Forks (the “City”). The City program is a gap financing program, not a primary financing program. As a gap financing program, it provides funding when other sources are inadequate.

**I. Purpose and Goals**

The purpose of the Revolving Loan Program is to provide financial and technical assistance for the creation and retention of employment and capital investment in the business. These objectives may be accomplished through the following means:

- A. creation or retention of regular private-sector jobs in order to create above-average economic growth consistent with environmental protection, which includes investments in technology and equipment that increase productivity and provide for a higher wage;
- B. stimulation or leverage of private investment to ensure economic renewal and competitiveness;
- C. increasing the local tax base, based on demonstrated measurable outcomes, to guarantee a diversified industry mix;
- D. improving the quality of existing jobs, based on increases in wages or improvements in the job duties, training, or education associated with those jobs;

E. improvement of employment and economic opportunity for citizens in the region to create a reasonable standard of living, consistent with federal and state guidelines on low- to moderate-income persons; and

F. stimulation of productivity growth through improved manufacturing or new technologies, including cold weather testing.

## **II. Eligible Projects**

Assistance must be evaluated on the existence of the following conditions:

A. creation of new jobs, retention of existing jobs, or improvements in the quality of existing jobs as measured by the wages, skills, or education associated with those jobs;

B. increase in the tax base;

C. the project can demonstrate that investment of public dollars induces the investment of private funds;

D. the project can demonstrate an excessive public infrastructure or improvement cost beyond the means of the affected community and private participants in the project;

E. the project provides higher wage levels to the community or will add value to current workforce skills;

F. the project supports the development of microenterprises, as defined by federal statutes, through financial assistance, technical assistance, advice, or business services;

G. whether assistance is necessary to retain existing business;

H. whether assistance is necessary to attract out-of-state business;

I. the project promotes or advances the green economy as defined in section 116J.437;

J. the project is located within the city limits of the City of East Grand Forks; and

K. the project would not happen “but for” the provision of public assistance.

A grant or loan cannot be made based solely on a finding that the conditions in clause (G), (H), or (J) exist. A finding must be made that a condition in clause (A), (B), (C), (D), (E), or (F) also exists. Funding will not be provided unless there is a finding that the condition in clause (K) has been met.

## **III. Eligible Borrowers**

- A. Existing or new businesses in the City of East Grand Forks.
- B. Borrower must demonstrate that funds from the Revolving Loan Program will not exceed a portion of the total cost of the project for which financing is sought as per Paragraph VIII.A.1.a.
- C. Businesses shall pay each employee total compensation, including benefits not mandated by law, that on an annualized basis is equal to at least 110% of the federal poverty level for a family of four or the minimum compensation set by the Minnesota Department of Employment and Economic Development, whichever is greater.
- D. Revolving Loan Program funds shall not be used for sports facilities or casinos. Assistance may be provided for firms engaged in retailing merchandise, provided such assistance is not prohibited by State law or regulations.

**IV. Eligible Activities:**

Loans may be provided for the following activities:

- A. Acquisition of Land
- B. Construction or Rehabilitation of Facilities
- C. Site Improvements
- D. Utilities or Infrastructure
- E. Machinery and Equipment
- F. Training
- G. Working Capital, not to exceed \$20,000

**V. Terms of Loan:**

- A. No loan shall be extended for a period exceeding 11 years. Principal payments on loans shall be made monthly. The initial principal payment may, if approved by the EDA, be deferred for not more than 1 year.
  - 1. Loans used for machinery and/or equipment purchases will generally not be extended for a period exceeding 10 years (11 years if the initial payment is deferred for a year).
  - 2. Loans used for working capital will generally not be extended for a period exceeding 5 years (6 years if the initial payment is deferred for a year).
- B. The terms of loan repayment shall be those stipulated in the loan agreement and/or promissory note. In the event of conflict between the documents, the terms of the loan agreement shall govern.

**VI. Interest on Loans:**

- A. Interest rates will be in accordance with the EDA's Loan Interest Rate Policy adopted by the EDA on September 1, 2015, as amended, as follows:
  - 1. Loans to manufacturing businesses which function as "primary" industries shall be 1% per annum.
  - 2. Loans to firms who combine manufacturing and non-manufacturing and serve a regional or larger market shall be 2.5% per annum.
  - 3. All other eligible loans shall be 4% per annum.
  - 4. The EDA shall maintain a list of the firms eligible for 1% and 2.5% loans.
- B. Loans may be deferred for a period of no longer than one year with no interest.
- C. Once the deferral period, if any, has lapsed monthly payments are required.
- D. Each payment by the recipient will be applied first to accrued interest and the balance of the payment, if any, will be applied to the principal balance.

**VII. Security:**

- A. Adequate security shall be required for all loans, including but not limited to, corporate guaranties, personal guaranties, mortgage and/or a security agreement. Purchase for deed is not considered to be adequate security.
- B. All loans shall be secured with the best collateral available. Where necessary the EDA loan may take a subordinate collateral position to other lending sources upon approval by the Board of the EDA.

**VIII. Loan Agreements and Requirements:**

- A. Each loan shall be supported by a loan agreement. The loan agreement shall specify the following :
  - 1. Amount of the loan.
    - a. The amount of the loan shall not exceed the following amounts:
      - 1. Industrial Projects for primary businesses: not more than the lesser of \$300,000 or thirty-three and one-third per centum (33 and 1/3%) of total project costs.
      - 2. Other projects: not more than the lesser of \$149,999 or thirty-three and one-third per centum (33 and 1/3%) of total project costs.
    - b. The amount of funding from the Revolving Loan Program shall not exceed the amount necessary to fill the "gap" between the actual total funds needed and the amount of other funds which are available. This determination will be made at the sole discretion of

the EDA.

- c. The loan amount is at the sole discretion of the EDA, subject to approval by the City Council.

2. Terms and Repayment Schedule.

- a. The loan will be repaid according to the lending guidelines.
- b. The recipient will pay a late charge of 10 percent of the payment due if the payment is not received within 45 calendar days following the due date. The late charge will be considered unpaid if not received within 60 calendar days of the missed due date for which it is imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge does not constitute a waiver of default.

3. Disbursement Procedures.

- a. Disbursement of loan funds shall take place after the loan agreement and the promissory note are executed, payment of the loan origination fee and other applicable fees and costs, and any other conditions precedent to disbursement of funds have been fully satisfied.
- b. All required documentation shall have been received before any funds can be disbursed.
- c. Recipient shall apply their funds before loan funds are disbursed.
- d. In the event of interim disbursements, said disbursements shall be limited to not more than eighty per centum (80%) of work completed and shall be substantiated by contractor bills and supported by lien waivers prior to any disbursement.
- e. Final disbursement will be made only upon completion of all work and inspection(s) by a representative(s) of the lender. The owner or contractor shall submit a final bill certifying that all work has been completed and submit a final lien waiver.

4. Insurance Requirements.

- a. The recipient shall provide evidence of hazard insurance (fire and windstorm and extended coverage) in an amount sufficient to cover the amount of the loan.

- b. The recipient shall provide evidence of flood insurance coverage or evidence that the project is not in a flood plain.
  - c. Workers Compensation insurance, if required by the State of Minnesota.
  - d. The City of East Grand Forks and the EDA shall be named as additional insured on all insurance policies.
5. Other Required Documentation.
- a. The applicant shall document that property taxes are current.
  - b. For existing businesses (corporate and non-corporate)
    - 1. 3 years of prior year's profit and loss statements (all borrowers)
    - 2. 3 years of prior year's financial statements (all borrowers)
    - 3. A 3 year projection (all borrowers)
    - 4. 2 years personal tax returns
    - 5. Articles of incorporation for corporations or other organizational documents for other business entities
    - 6. Copy of Corporate Charter (corporations) or comparable business formation documents (non—corporations)
    - 7. Employer Identification Number (EIN)
    - 8. Minnesota State Tax Number
    - 9. Corporation or entity resolution approving the financing and identifying who is authorized to sign documents and agreements

**IX. Other Conditions**

A. Cost Reasonableness

Applicants for funding from the Revolving Loan Program shall be required to submit a breakdown of all project costs to the EDA, including quotes from vendors, contracts, subcontractors, etc. The EDA will then use this breakdown as a basis on which the reasonableness of the cost is determined.

The EDA may, in its discretion, compare any cost element which exceeds \$10,000

with a third party fair market price quotation to determine reasonableness. If the EDA cannot use third-party price quotations to verify cost elements, then the City may conduct its own cost analysis using appropriate cost estimating manuals or services.

**B. Commitment of all Project Sources of Financing:**

The EDA shall verify, prior to committing Revolving Loan Program funds, that:

1. Sufficient sources of other funds have been identified to finance the project.
2. All participating parties have affirmed their intention to make funds available.
3. All the participating parties have the financial capacity to make the funds available.
4. For loan applications in which there are participating lenders as part of the project financing package, the participating lenders shall supply to the EDA a letter of intent to participate in the project funding along with copies of any supporting documents generated by the participating lender.

**C. Financial Feasibility of Project.**

The EDA shall, as part of the loan process, evaluate the financial viability of each project to determine if there is a reasonable chance for the project's success. A project will be considered financially viable if all of the assumptions about the project's market share, sales levels, growth potential, projections of revenue, project expenses and debt service (are determined to be realistic and met the project's breakeven point (which is generally the point at which all revenues are equal to all expenses). Generally speaking, an economic development project that does not reach this breakeven point over time is not financially feasible.

**X. Fees and Costs**

- A. Applicants shall pay any required legal fees, loan origination fees, loan closing fees, and/or application fees at the time of loan closing.
- B. The applicant is responsible for all hard loan costs, including by not limited to, title opinions, appraisals, recording fees and mortgage registration tax and shall pay the same at the time of loan closing.

**XI. Data Practices Act**

The information provided in an application to the EDA will be used to assess eligibility for financial assistance. The EDA will not be able to process your application without this

information. The Minnesota Government Data Practices Act (Minnesota Statutes, Chapter 13) governs whether the information that you are providing to the EDA is public or private. If financial assistance is provided for the project, the information submitted in connection with your application will become public, except for those items protected under Minnesota Statutes, Section 13.59, Subdivision 3(b) or Section 13.591, Subdivision 2.

**XII. Business Subsidy**

All businesses receiving financial assistance from the EDA shall be subject to the EDA’s Business Subsidy Policy, as amended, and Minnesota Statutes, Section 116J.993 to 116J.994, as amended (the “Minnesota Business Subsidy Act”).

**XIII. Conflict of Interest**

The applicant shall submit the name(s) or the owner(s), shareholder(s), partner(s), sole proprietor, corporation member(s), or other person(s) or business(es) with any financial interest in the project and its financing in order to preclude any conflict of interest in the RLF loan review and approval process.

**XIV. Right of Refusal**

The EDA may deny any project which it deems inappropriate according to the guidelines established in this document and in accordance with the EDA’s Application Evaluation Criteria attached to the loan application.

Adopted by the City Council of the City of East Grand Forks on \_\_\_\_\_, 2024  
Date of Public Hearing of City Council \_\_\_\_\_, 2024

Adopted by the Board of Commissioners of the Economic Development Authority on October 8, 2024  
Date of Public Hearing of Economic Development Authority: October 8, 2024

## Appendix A

### **ORIGINATION FEE POLICY**

Approved May 2017

The following shall apply to all loans:

- The fee shall be 1% of the loan amount
- The minimum fee shall be \$500
- Legal expenses shall be billed separately
- Mortgage registration tax to be paid by the party receiving the loan and not by the City/EDA
- The City/EDA shall only loan the net amount

## Appendix B

### **LOAN INTEREST RATE POLICY**

Approved July 2020

There shall be three levels of interest applied to loans.

- Loans to manufacturing businesses which function as “primary” industries shall be 1% per annum.
- Loans to firms who combine manufacturing and non-manufacturing and serve a regional or larger market shall be 2.5% per annum.
- All other eligible loans shall be 4% per annum.

The EDA may apply reduced rates to non-manufacturing businesses provided that said businesses are primary or anchor or because of exceptional circumstances, with the reasons for the reduced rate documented and made a part of the file.

**Border Cities  
Tax Credit Policy for Businesses**

City of East Grand Forks, Minnesota

Adopted: June 5, 2018

Amended: October 15, 2024

## **Policy Goals**

The City of East Grand Forks (the “City”) has established this Border City Tax Credit Policy (the “Policy”) to help promote Minnesota investment and economic development, increase the local tax base, and promote job retention and creation in the City. Funding for the program will be provided through the City’s Border City Development Zone established under Minn. Stat. Sections 469.166 through 469.1735, as amended (the “Act”).

## **Assistance Provided**

A new business in the City or an expanding business in the City may receive a one-year tax reduction or tax credit. The City may extend the tax reduction or credit for a period not to exceed five years, provided that the additional term of the benefit is appropriate to the particular needs of the business and benefits the community.

The assistance shall be provided in one of the following forms:

- A. For newly constructed facilities, a partial property tax reduction for property taxes based on the portion of the property taxes created by a new business in the City;
- B. For expanded business, a partial property tax reduction for additional property taxes created by an expansion to an existing business in the City; or
- C. A sales tax exemption for sales tax on construction materials or new machinery and equipment to be used at the newly constructed or expanded facility to be located within the City.

The assistance to be provided by this program, if any, is limited by the amount of credits remaining in the City’s existing Border City Enterprise Zone allocation from the State. Funds for this program are limited and will be awarded to qualifying applicants on a first-come, first-served basis.

## **Qualifying Businesses/Criteria for Assistance**

To receive assistance under this policy, an applicant must be a new business in the City, a business expanding within the City, or a business being retained by the City.

For an existing business, a qualifying business must either (i) make a minimum \$30,000 investment towards physical improvements to its property in the City; or (ii) make at least \$25,000 investment in equipment and to other assets and create one new full-time equivalent job in the City. The wage floor for wages to be paid for the jobs created or retained shall be greater of the minimum wage rate for assistance established by MnDEED under its MIF lending guidelines or 100% of the State minimum wage in effect at the time the subsidy is granted. The City will seek to create jobs with higher wages as appropriate for the overall public purpose of the subsidy. Wage goals may also be set to enhance existing jobs through increased wages, which increase must result in wages higher than the minimum under this Section.

One additional year of tax credits may be approved for each \$500,000 of capital investment, to retain one or more full-time equivalent job(s) that meet the above criteria, or to retain a primary or secondary business.

Prior to consideration of this application by the City, a business must request and receive a tax clearance letter from the Minnesota Department of Revenue. The tax clearance letter received from the Minnesota Department of Revenue must affirmatively establish that, as of the date of the application, the business owner does not owe delinquent income or sales tax pursuant to Minnesota Statutes, Chapters 290, 296A, 297A, 297B, 197For 297G. In addition, qualifying businesses and their owners and principals shall not owe property taxes to the City or to Polk County.

### **Required Findings**

The business must declare that it could have invested the money outside the state of Minnesota but chose to invest in the City.

Granting of the tax credit is subject to approval by the City Council after a finding that the granting of the tax reduction or offset is necessary to retain a business within the City or attract a business to the City.

Tax reductions must be approved by the Commissioner of the Minnesota Department of Employment and Economic Development.

### **Process**

The business must submit an application to the City. The application shall become the property of the City and is subject to Minnesota Statutes, Chapter 13 (the Government Data Practices Statute). Upon submittal of an application to the City, the applicant shall pay the City an application fee of \$100.00 for each year of tax credits sought.

The business must meet all qualifications set forth in Minnesota Statutes, Sections 469.1731 through 469.1735, as amended.

In accordance with Minnesota Statutes, Section 469.1734, subdivision 7, as amended, before any assistance is provided pursuant to this policy, notice must be provided to competitors of the applicant. To meet this requirement, two notices regarding the assistance must be published in the official newspaper of the City at least one week apart not less than 15 days nor more than 30 days prior to the date the City Council will consider approving the assistance.

The assistance must be approved by the Minnesota Department of Employment and Economic Development and the City Council.

Business relocating to the City from within Polk County are subject to the requirements of Minnesota Statutes, Section 469.1733, subdivision 2, as amended. Business relocating to the City from a location within Minnesota but outside of Polk County are subject to the requirements of Minnesota Statutes, Section 469.1733, subdivision 3, as amended.

If obtaining a sales tax exemption under Minnesota Statutes, Section 469.1734, subdivision 5, the business must apply to the City for a tax credit certificate in accordance with Minnesota Statutes, Section 469.1735, subdivision 1.

The City reserves the right to approve or reject projects on a case-by-case basis, taking into consideration established policies. Meeting policy criteria does not guarantee the award of business assistance to the project. Approval or denial of one project is not intended to set precedent for approval or denial of another project.

The City can deviate from this policy for projects that supersede the objectives identified herein.

### **Repayment**

A business receiving the tax credit must maintain its operations in the City for 5 years. If the business leaves the City before the expiration of the 5-year period, it must repay the full amount of assistance provided pursuant to this policy.

This policy replaces the City's prior Enterprise Zone Credit Criteria policy.

# Request for Council Action

Date: October 8, 2024

To: East Grand Forks City Council Mayor Steve Gander, Council President Mark Olstad, Council Vice-President Tim Riopelle, Council members Clarence Vetter, Ben Pokrzywinski, Dale Helms, Brian Larson, and Karen Peterson.

From: Nancy Ellis, Community Development Director

RE: Approve the Change Order from Equity Builders to complete the Roof project

### RECOMMENDATION:

Approve the change order from Equity Builders for \$46,866.45, which includes the replacement of the damaged/wet insulation under the old roof minus the water and concrete damage to City Hall we had during the project.

### BACKGROUND INFORMATION:

At the beginning of May, Equity Builders started the roof replacement job for City Hall. They were awarded the replacement base bid of \$375,000.00 for the rubber roof and the alternate bid of \$435,190 (deduct \$174,630 dome roof) for the metal roofing replacement. Additional charges listed under the contract were \$10.00 per board foot for wood blocking and \$5.25 per board foot to replace damaged insulation under the old roof. There was a lot of damaged insulation under the roofing that needed to be replaced, and a change order was going to be coming for said insulation. However, with the damages to City Hall from water inside the building and landscaping and concrete damages outside the building due to the contractors; we are deducting the cost of the damage repair from the insulation replacement. The Change Order explanation is as follows:

Wet insulation replacement - 81,732.00

Water Damage - 5,477.55

Landscaping - 3,900.00

Concrete repair - 31,860.00 X .80 = 25,488

Total = 34,865.55

81,732.00

-34,865.55

**\$46,866.45 Net add to contract.**

### SUPPORT MATERIALS:

- Change order
- Contract pricing page



[ X ] Not later than Ninety ( 90 ) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Six Hundred Thirty-Five Thousand Five Hundred Sixty Dollars and Zero Cents (\$635,560.00 ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Add- standing seam roofing	+\$435,190.00
Deduct-Standing seam roofing at dome roof.	-\$174,630.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

Item	Price
------	-------

#### § 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
Additional wood blocking	Board Foot	\$10.00
Replace damaged insulation	Board Foot	\$5.25

#### § 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

#### § 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

Init.

RV /

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# Request for Council Action

Date: October 15, 2024

To: East Grand Forks City Council Mayor Steve Gander, Council President Mark Olstad, Council Vice-President Tim Riopelle, Council members Clarence Vetter, Ben Pokrzywinski, Dale Helms, Brian Larson, and Karen Peterson

Cc: File

From: Nancy Ellis, Transit Manager

RE: Approve the 2024 Updated Procurement Policy Manual

---

## RECOMMENDATION:

Staff recommends approval of the updated Transit Procurement Policy, subject to MnDOT review and approval.

## BACKGROUND:

The City of East Grand Forks must update its' transit procurement policy to meet the new FTA and MnDOT requirements. Our last version of the procurement policy update was approved in 2018, and we must update the policy and submit to MnDOT for approval by October 31, 2024. The policy (following a state template) is currently being reviewed by Cities Area Transit and will also need review by our Attorney and MnDOT's transit attorney for any corrections, changes or deletions before the October 31<sup>st</sup> deadline.

This policy establishes guidelines and minimum standards that East Grand Forks Transit/Cities Area Transit (service provider) will use in the management of its third-party contracts. This manual is intended to ensure that East Grand Forks Transit/Cities Area Transit (service provider) complies with Federal Transit Administration (FTA) and the Minnesota Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of East Grand Forks Transit/Cities Area Transit (service provider) is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.IF "Third Party Contracting Guidance" or latest version thereof;
- FTA Circular 4220.IF "FTA Best Practices Procurement and Lessons Learned Manual"
- 2 CFR § 200.318 – 200.327

The procurement policy is attached for your review.

**CITY OF EAST GRAND FORKS TRANSIT/CITIES AREA TRANSIT  
PROCUREMENT POLICY**

**October 15, 2024**

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# 1. INTRODUCTION

## 1.1. Purpose

This policy establishes guidelines and minimum standards that East Grand Forks Transit/Cities Area Transit (service provider) will use in the management of its third-party contracts. This manual is intended to ensure that East Grand Forks Transit/Cities Area Transit (service provider) complies with Federal Transit Administration (FTA) and the Minnesota Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of East Grand Forks Transit/Cities Area Transit (service provider) is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- FTA Circular 4220.1F "FTA Best Practices Procurement and Lessons Learned Manual"
- 2 CFR § 200.318 – 200.327

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition while preventing the use of state or federal funds for unallowable costs, as discussed in 2 C.F.R. 200 and other applicable regulations. East Grand Forks Transit/Cities Area Transit (service provider) outlines the local restrictions and guidance on unallowable costs within the [Financial Policy](#).

When East Grand Forks Transit/Cities Area Transit (service provider) undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy. When any conflict exists between this policy and the existing policies of the East Grand Forks Transit/Cities Area Transit (service provider), the procedures in this policy shall prevail. If any employee of East Grand Forks Transit/Cities Area Transit (service provider) determines that a conflict exists between these policies and state or local law, East Grand Forks Transit/Cities Area Transit (service provider) shall contact MnDOT and communicate the conflict.

## 1.2. Third Party Contracting Capacity

FTA regulations (2 CFR § 200.319(c) and FTA Circular 4220.1F, Chapter III, § 3a) require East Grand Forks Transit/Cities Area Transit (service provider) to have written procurement procedures. This policy is designed to meet FTA and MnDOT's requirements in this regard.

### **1.3. Procurement Planning**

Planning is East Grand Forks Transit/Cities Area Transit (service provider)'s first step in the procurement process. It is the process of deciding what to buy, when, and from what sources. In order to plan effectively, East Grand Forks Transit/Cities Area Transit (service provider) must have the internal organizational capability with the proper checks and balances to facilitate the procurement process with the highest degree of integrity. This includes having trained, experienced contract personnel that have the authority to contractually bind the agency. Furthermore, East Grand Forks Transit/Cities Area Transit (service provider) uses Federal funds in support of their procurement actions and must ensure that contract personnel are fully knowledgeable of the numerous laws and regulations that apply to funded procurements. East Grand Forks Transit/Cities Area Transit (service provider) invests the time and resources to establish standards of conduct, organize effectively, and develop short- and long-range plans will avoid last minute, emergency or ill-planned procurements, which are contrary to open, efficient and effective procurements. FTA C. 4220.1F Best Practices.

### **1.4. Policy Review and Amendment**

Once per year, the East Grand Forks Transit Manager, the Cities Area Transit Division Director, the Cities Area Transit Mobility Manager, the Cities Area Transit Bus Operations Supervisor and any employees the East Grand Forks Transit Manager requests to be present, shall meet and review this policy for revisions or updates that need to be made. The City Council(s) will be notified of changes to this policy at their next regularly scheduled meeting and at that time, adopt any revisions or updates to the Policy.

If any changes or revisions are adopted to this policy, East Grand Forks Transit/Cities Area Transit (service provider) will upload the updated policy to BlackCat with an indication of the date when the changes were made.

## **2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY**

### **2.1. Purpose**

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

### **2.2. Applicability**

No employee, officer or agent may participate in the selection, award, or administration of a contract supported by a Federal award if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. 2 C.F.R. 200.318(c)(1).

### **2.3. Gifts/Gratuities**

No officer, employee, agent, or board member of East Grand Forks Transit/Cities Area Transit (service provider) may solicit or accept gratuities, gifts, favors, or anything of monetary value from contractors or parties to subcontracts. 2 C.F.R. 200.318(c)(1).

### **2.4. Employee Conflicts of Interest**

#### **2.4.1. Conflicts of Interest**

It shall be a breach of ethical standards for any East Grand Forks Transit/Cities Area Transit (service provider) listed employee or member to participate directly or indirectly in a procurement when the employee or member knows:

- The employee or any member of the employee's immediate family, board member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement. 2 C.F.R. 200.318(c)(1); FTA C. 4220.1F, Chpt. III(1)(a).

#### **2.4.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)**

Regardless of the organizational structure, East Grand Forks Transit/Cities Area Transit (service provider) establishes for its procurement activities, a strong need for autonomy or independence of the procurement function from internal customers. It is very important that all procurement responsibilities are carried out without undue influence by the agency's internal customers and users of the goods and services procured. While the degree of autonomy and organizational reporting relationships will vary with the size of the organization and its established policies, autonomy enables procurement personnel to give unbiased consideration to procurement principles and requirements, as well as to the schedule, budget, functional and other requirements of the internal customers. The procurement personnel must be free from undue influence or pressure in the award and administration of contracts. (See 2 C.F.R. § 200.318 *General procurement standards*; FTA Circular 4220.1F, Chapter III, paragraph 3 – *Third Party Contracting Capacity*; and FTA Best Practices 2.2)

Remedies. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. FTA C. 4220.1F, Chpt. VI(2)(h).

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the East Grand Forks Transit Manager or Cities Area Transit Transportation Division Director; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the East Grand Forks Transit Manager or Cities Area Transit Transportation Division Director, an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the Procurement Officer to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

### **2.4.3. Employee Disclosure Requirements**

An East Grand Forks Transit/Cities Area Transit (service provider) employee, who has reason to believe that they or their immediate family have an interest that may be affected by their official acts or actions as a East Grand Forks Transit/Cities Area Transit (service provider) employee or by the official acts or actions of East Grand Forks Transit/Cities Area Transit (service provider), shall disclose the precise nature and value of such interest in a written disclosure statement to the East Grand Forks Transit Manager or Cities Area Transit Division Director. The employee's disclosure statement will be reviewed by the East Grand Forks Transit Manager or Cities Area Transit Division Director and the East Grand Forks Transit Manager or Cities Area Transit Division Director will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the East Grand Forks Transit Manager or Cities Area Transit Transportation Division Director has reason to believe that they or their immediate family has an interest that may be affected by their official acts or actions as an East Grand Forks Transit/Cities Area Transit (service provider) employee or by the official acts or actions of East Grand Forks Transit/Cities Area Transit (service provider), they shall disclose the precise nature and value of such interest in a written disclosure statement to the East Grand Forks Transit Manager or Cities Area Transit Transportation Division Director.

### **2.4.4. Confidential Information**

An East Grand Forks Transit/Cities Area Transit (service provider) employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with East Grand Forks Transit/Cities Area Transit (service provider). 2 C.F.R. 200.303(e).

## **2.5. Organizational Conflicts of Interest**

The East Grand Forks Transit Manager, Cities Area Transit Transportation Division Director and other transit supervisors, managers and related personnel are encouraged to closely scrutinize all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor who is unable, or potentially unable, to render impartial assistance or advice to the Subrecipient;
- A contractor's whose objectivity in performing contract work is or might be impaired;
- A contractor who has an unfair competitive advantage; or

- An organization that has a parent, affiliate, subsidiary or similar organizational relationship with East Grand Forks Transit/Cities Area Transit (service provider).

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. East Grand Forks Transit/Cities Area Transit (service provider) will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature. 2 C.F.R. 200.318(c)(2); 2 C.F.R. 200.319(b).

## **2.6. Penalties**

For violation of any provision of this Code of Ethics or Conflict of Interest, the East Grand Forks Transit/Cities Area Transit (service provider) may avail itself of every remedy in law or equity, to enact penalties to the employee, up to and including dismissal.

Civil/Criminal Penalties Additionally, violation of the Ethics Policy or a provision thereof may subject the Employee to criminal or civil penalties under State or Federal law.

In East Grand Forks, employees who violate this policy shall be subject to disciplinary action. A first violation shall be reviewed by the East Grand Forks Transit Manager, the Cities Area Transit Transportation Division Director or Human Resources and may result in a verbal reprimand, termination, or other action as recommended by the East Grand Forks Transit Manager, the Cities Area Transit Transportation Division Director or Human Resources. A second violation of this policy shall result in termination.

Upon the discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall 1) promptly file a written statement of disqualification with the East Grand Forks Transit Manager, the Cities Area Transit Transportation Division Director or Human Resources Manager and 2) withdraw from further participation in the procurement. The employee may request from the East Grand Forks Transit Manager, the Cities Area Transit Transportation Division Director or Human Resources Manager, an advisory opinion as to what further participation, if any, the employee may have in the procurement.

The East Grand Forks Transit Manager, the Cities Area Transit Transportation Division Director or Human Resources Manager shall have sole discretion—considering the type of conflict of interest, the degree to which the employee may have dual interests in the procurement outcome, and the knowledge and ability of other members of the staff to handle the procurement without that employee—to determine if and to what extent the employee may participate further in the procurement.

### 3. EAST GRAND FORKS TRANSIT/CITIES AREA TRANSIT RESPONSIBILITIES

#### 3.1. Third-Party Contracting Capacity

East Grand Forks Transit/Cities Area Transit (service provider) must maintain adequate technical capacity to carry out its FTA and State assisted projects and comply with Federal and State rules. East Grand Forks Transit/Cities Area Transit (service provider) third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements. FTA C. 4220.1F, Chpt. 3(3).

#### 3.2. Contract Administration System

East Grand Forks Transit/Cities Area Transit (service provider) must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state and local requirements. See Section 6 of this policy for a full discussion of contract administration. FTA C. 4220.1F, Chpt. 3(3).

##### 3.2.1. Adequate Third-Party Contract Provisions

East Grand Forks Transit/Cities Area Transit (service provider) must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement. Provisions identified in the solicitation must carry over into the contract. FTA C. 4220.1F, Chpt. 3(3)(b).

##### 3.2.2. Revenue Contracts

East Grand Forks Transit/Cities Area Transit (service provider) may enter into a revenue contract with a third-party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA or State funded asset. Any such said contract opportunity will follow an open and competitive selection procedures and principles outlined herein. FTA C. 4220.1F, Chpt. 2(b)(4).

##### 3.2.3. Record Keeping

East Grand Forks Transit/Cities Area Transit (service provider) must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. East Grand Forks Transit/Cities Area Transit (service provider) must maintain these records in the event of litigation or in other limited circumstances, until six years (in accordance with MN State Record Retention requirements) after East Grand Forks Transit/Cities Area Transit (service provider) and any contractors or subcontractors have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – East Grand Forks Transit/Cities Area Transit (service provider) must maintain and make available to MnDOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level East Grand Forks Transit/Cities Area Transit (service provider) must maintain records relating to:
  - (1) Procurement Method – East Grand Forks Transit/Cities Area Transit (service provider) must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
  - (2) Contract Type – East Grand Forks Transit/Cities Area Transit (service provider) must state the reasons for selecting the contract type it used;

- (3) Contractor Selection – East Grand Forks Transit/Cities Area Transit (service provider) must state its reasons for contractor selection or rejection;
- (4) Contractor Responsibility – East Grand Forks Transit/Cities Area Transit (service provider) must provide a written determination of responsibility for the successful contractor;
- (5) Cost or Price – East Grand Forks Transit/Cities Area Transit (service provider) must evaluate and state its justification for the contract cost or price; and
- (6) Reasonable Documentation – East Grand Forks Transit/Cities Area Transit (service provider) must retain documentation commensurate with the size and complexity of the procurement;
- (7) Vendor Verification – East Grand Forks Transit/Cities Area Transit (service provider) must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.

(b) Access to Records – East Grand Forks Transit/Cities Area Transit (service provider) must provide FTA and MnDOT officials, Minnesota Department of Management and Budget, the State Auditor, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance. 2 C.F.R. 200.334.

### **3.3. Determination of Needs**

East Grand Forks Transit/Cities Area Transit (service provider) must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. East Grand Forks Transit/Cities Area Transit (service provider) shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

#### **3.3.1. Eligibility**

All products and services to be acquired with FTA or State funds must be eligible under the Federal or State law authorizing the FTA or State assistance award and any regulations thereunder. All products and services to be acquired with FTA or State funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA or State assistance to be used is derived. FTA C. 4220.1F, Chpt. IV(1)(a).

#### **3.3.2. Necessity**

East Grand Forks Transit/Cities Area Transit (service provider) shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need. FTA C. 4220.1F, Chpt. IV(1)(b).

##### **3.3.2.1. Unnecessary Reserves**

East Grand Forks Transit/Cities Area Transit (service provider) shall limit the acquisition of Federally or State-assisted property, goods, and services to the amount it needs to support its operations. FTA C. 4220.1F, Chpt. IV(1)(b)(1).

### 3.3.2.2. Acquisition for Assignment Purposes

East Grand Forks Transit/Cities Area Transit (service provider) shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third-party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements. FTA C. 4220.1F, Chpt. IV(1)(b)(2).

- (a) General Prohibition – East Grand Forks Transit/Cities Area Transit (service provider) may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third-party contracts solely to permit assignment to another party at a later date.
  
- (b) Exceptions – These limits on assignments, however, do not preclude:
  - (1) Joint Procurements – East Grand Forks Transit/Cities Area Transit (service provider) and one or more other FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
  - (2) Participation in MnDOT Sponsored Vehicle Procurements – East Grand Forks Transit/Cities Area Transit (service provider) may enter into contracts developed by the State of Minnesota to acquire vehicles. See Section 4.3 of this policy for a full discussion of state government purchasing schedules and contracts.
  
- (c) Procurement Size – For every procurement, East Grand Forks Transit/Cities Area Transit (service provider) shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, East Grand Forks Transit/Cities Area Transit (service provider) shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
  
- (d) Options - East Grand Forks Transit/Cities Area Transit (service provider) shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, East Grand Forks Transit/Cities Area Transit (service provider) may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
  
- (e) Lease Versus Purchase – East Grand Forks Transit/Cities Area Transit (service provider) shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If East Grand Forks Transit/Cities Area Transit (service provider) chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.

- (f) Lease of Rolling Stock – For rolling stock and related equipment, the Fixing America’s Surface Transportation (FAST) Act requires East Grand Forks Transit/Cities Area Transit (service provider) to submit a report to MnDOT, on behalf of FTA, within three years of executing a rolling stock lease that includes: (1) An evaluation of the overall costs and benefits of leasing rolling stock; and (2) A comparison of the expected short-term and long-term maintenance costs under a lease versus maintenance costs when buying rolling stock.
- (g) Specifications – East Grand Forks Transit/Cities Area Transit (service provider) procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. p East Grand Forks Transit/Cities Area Transit (service provider) procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of Federal or Minnesota laws or regulations.

### **3.4. Contractor Responsibilities**

East Grand Forks Transit/Cities Area Transit (service provider), in awarding contracts financed in whole or in part with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal law at 49 U.S.C. § 5325(j) and State Law (MN Statute 16C.285) limits third-party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, East Grand Forks Transit/Cities Area Transit (service provider) must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### **3.4.1. Debarment and Suspension**

Debarment and suspension regulations and guidance include the following provisions.

##### **3.4.1.1. DOT Debarment and Suspension Regulations**

U.S. Department of Transportation (DOT) regulations apply to each third-party contract at any tier of \$25,000 or more, to each third-party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third-party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 C.F.R.1200). East Grand Forks Transit/Cities Area Transit (service provider) shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of the Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 C.F.R. 180).

##### **3.4.1.2. System for Award Management**

East Grand Forks Transit/Cities Area Transit (service provider) will search and ensure that every offeror considered appears as a registered vendor within the results of a SAM.gov search and print the screen with the results of the search to be included in the procurement file. It is the

policy of East Grand Forks Transit/Cities Area Transit (service provider) to verify that the prospective third-party vendor is not listed as a debarred contractor on SAM.

### **3.4.2. Lobbying Certification and Disclosure**

If a third-party contract will exceed \$100,000, before awarding the contract, East Grand Forks Transit/Cities Area Transit (service provider) will obtain a signed lobbying certification, and if applicable, a lobbying disclosure from a prospective third-party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

### **3.4.3. Required Contract Clauses**

In addition to the requirements outlined above, there are various required clauses that may apply to East Grand Forks Transit/Cities Area Transit (service provider) third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of East Grand Forks Transit/Cities Area Transit (service provider) to assess each procurement and determine the applicable FTA third party terms and conditions that should be included in the solicitation and contract documents. Coordination with MnDOT on the appropriate clauses will be completed. These clauses may include:

- All FTA Assisted Third Party Contracts and Subcontracts:
  - No Federal government obligation to third parties
  - False or fraudulent statements or claims
  - Access to records
  - Federal changes
  - Civil rights
  - Incorporation of FTA terms
  - Energy conservation
  - Safe operation of motor vehicles
  - Prohibition on certain telecommunications and video surveillance services or equipment
- Contracts Exceeding \$10,000:
  - Termination provisions
- Contracts Exceeding \$25,000:
  - Debarment and suspension
  - Notice regarding disputes, breaches, defaults, and litigation
- Contracts Exceeding \$100,000:
  - Byrd Anti-Lobbying Amendment
- Contracts Exceeding \$150,000:
  - Clean Air Act
  - Federal Water Pollution Control Act
  - Build America, Buy America (“BABA”) & Buy America (“BA”) (procurements involving iron, steel, manufactured products, and constructions materials)
- Contracts Exceeding the Simplified Acquisition Threshold:
  - Legal remedies for violation or breach
- Contracts for Construction:
  - Davis-Bacon Act
  - Copeland Anti-Kickback Act
  - Contract Work Hours and Safety Standards Act

- Seismic safety
- Veterans hiring preference
- Bonding
- Contracts for Transit Operations:
  - School bus restrictions
  - Charter bus restrictions
  - Transit employee protective arrangements
  - Substance abuse requirements
- Miscellaneous:
  - Conformance with Intelligent Transportation Systems (ITS) national architecture
  - Cargo preference
  - Fly America
  - Patent rights
  - Rights in data and copyrights
  - Procurement of recovered materials
- Rolling Stock Certifications:
  - Bus testing
  - Transit Vehicle Manufacturer (TVM) compliance with DBE requirements
  - Pre-Award Buy America Certification
  - Pre-Award Purchaser’s Requirements
  - Pre-Award Federal Motor Vehicle Safety Standards (FMVSS) Certification
  - Post-Delivery Buy America Certification
  - Post-Delivery Purchaser’s Requirements
  - Post-Delivery FMVSS Certification

FTA C. 4220.1F, Matrix D; *see also* FTA Master Agreement.

### **3.5. Bonding**

Some procurements may necessitate East Grand Forks Transit/Cities Area Transit (service provider) to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects).

#### **3.5.1. Thresholds**

**3.5.2. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, when bonding is required, MnDOT may accept the bonding policy and requirements of the Subrecipient provided that MnDOT has made a determination that the Federal interest is adequately protected.**

### **3.6. Preference for U.S. Property—Buy America**

Any contract exceeding \$150,000 entered into by East Grand Forks Transit/Cities Area Transit (service provider) with FTA assistance requires that all iron, steel, manufactured products (including rolling stock), and construction materials used are produced or manufactured in the United States, unless FTA has granted a waiver authorized by Buy America regulations. FTA cautions that its Buy America regulations are complex and different from the Federal “Buy American Act” regulations in FAR Subparts 25.1 and 25.2. FTA C. 4220.1F, Chpt. IV(2)(c)(5).

East Grand Forks Transit/Cities Area Transit (service provider) will, to the great practical extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or

materials produced in the United States of America, even when Buy America and other regulations do not apply. 2 C.F.R. § 200.322

### **3.7. Accessibility**

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR § 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB’s “Americans with Disabilities Act Accessibility Guidelines” (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

## **4. SOURCES OF ACQUISITIONS**

### **4.1. Force Account**

Force account means use of East Grand Forks Transit/Cities Area Transit (service provider) own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the Subrecipient’s ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient’s decision. East Grand Forks Transit/Cities Area Transit (service provider) does not charge force account labor to its FTA grants. FTA C. 4220.1F, Chpt. V(1).

### **4.2. Joint Procurements**

East Grand Forks Transit/Cities Area Transit (service provider) may participate in joint procurements whereby East Grand Forks Transit/Cities Area Transit (service provider) and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to East Grand Forks Transit/Cities Area Transit (service provider) participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- East Grand Forks Transit/Cities Area Transit (service provider) is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal and State requirements and that the solicitation document and contract includes all required clauses and certifications.

FTA C. 4220.1F, Chpt. V(3).

### **4.3. State or Local Government Purchasing Schedules or Purchasing Contracts**

#### **4.3.1. Definition**

FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use. (FTA C. 4220.1F Chpt I 5.cc.)

#### **4.3.2. Small Quantity Conditions for Rolling Stock**

To the extent practicable, East Grand Forks Transit/Cities Area Transit (service provider) will use the innovative procurement tools authorized under section 3019 of the FAST Act. If East Grand Forks Transit/Cities Area Transit (service provider) conducts a stand-alone procurement (i.e., not part of a state contract or joint/cooperative procurement) for fewer than five buses, it must prepare a written justification for not using an authorized “innovative procurement tool” pursuant to 49 USC § 5339(a)(10)(B).

#### **4.3.3. Applicability of Federal Provisions**

When obtaining property or services in this manner, East Grand Forks Transit/Cities Area Transit (service provider) must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document. While MnDOT takes all precautions to ensure that such provisions are in the original solicitation and contract documents, it is ultimately East Grand Forks Transit/Cities Area Transit (service provider) responsibility to ensure such documents and certifications are obtained. Solicitation of these vendors is conducted in the same manner as any other procurement.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, East Grand Forks Transit/Cities Area Transit (service provider) may request the vendor to append the required Federal clauses in the purchase order or other document that effects the East Grand Forks Transit/Cities Area Transit (service provider) procurement. When this method is used, East Grand Forks Transit/Cities Area Transit (service provider) shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA’s Buy America requirements.

#### **4.3.4. Existing Contracts**

East Grand Forks Transit/Cities Area Transit (service provider) may use existing contract rights as an acquisition source. An “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto. FTA C. 4220.1F, Chpt. V(7).

##### **4.3.4.1. Permissible Actions**

Within the conditions set forth below, East Grand Forks Transit/Cities Area Transit (service provider) may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – East Grand Forks Transit/Cities Area Transit (service provider) may use contract options held by another recipient of FTA assistance with the following limitations:

- (1) Consistency with the Underlying Contract – East Grand Forks Transit/Cities Area Transit (service provider) must ensure that the terms and conditions of the option it seeks to exercise are substantially like the terms and conditions of the option as stated in the original contract at the time it was awarded.
  - (2) Price – East Grand Forks Transit/Cities Area Transit (service provider) may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
  - (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
    - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
    - ii. Negotiating a Lower Option Price – Exercising an option after East Grand Forks Transit/Cities Area Transit (service provider) has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
- (b) Assignment of Contract Rights (“Piggybacking”) – If East Grand Forks Transit/Cities Area Transit (service provider) finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another MnDOT subrecipient if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. East Grand Forks Transit/Cities Area Transit (service provider) may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. East Grand Forks Transit/Cities Area Transit (service provider) need not perform a second price analysis if a price analysis was performed for the original contract; however, East Grand Forks Transit/Cities Area Transit (service provider) must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. East Grand Forks Transit/Cities Area Transit (service provider) shall be responsible for ensuring the contractor’s compliance with FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, East Grand Forks Transit/Cities Area Transit (service provider) shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that East Grand Forks Transit/Cities Area Transit (service provider) seeks, do not exceed the amounts available under the assigning recipient’s contract.

#### **4.3.4.2. Impermissible Actions**

East Grand Forks Transit/Cities Area Transit (service provider) may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

## **5. PROCEDURES FOR OPEN MARKET PROCUREMENTS**

### **5.1. Solicitation of Competitive Price Quotes, Bids or Proposals**

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition.” 2 C.F.R. 200.319(a).

### **5.2. Solicitation Requirements and Restrictions**

Every procurement solicitation that East Grand Forks Transit/Cities Area Transit (service provider) issues above the micro-purchase level (currently established in Federal guidance at \$10,000), must include the following information and be advertised in a manner that ensures adequate and open competition. 2 C.F.R. 200.319(d).

#### **5.2.1. Description of the Property or Services**

The solicitation and the contract awarded thereunder must include a clear and accurate description of East Grand Forks Transit/Cities Area Transit (service provider) technical requirements for the products or services to be acquired in a manner that provides for full and open competition. 2 C.F.R. 200.319(d)(1).

##### **5.2.1.1. Descriptive Elements**

East Grand Forks Transit/Cities Area Transit (service provider) will prepare descriptions of property, goods, or service in terms of functions to be performed, or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if possible; however, there is no prohibition against their use when appropriate. 2 C.F.R. 200.319(d)(1).

#### **5.2.1.2. Quantities**

Additional quantities or options above East Grand Forks Transit/Cities Area Transit (service provider) needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date. FTA C. 4220.1F, Chpt. IV(1)(b).

#### **5.2.1.3. Brand Name or Equal**

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified. 2 C.F.R. 200.319(b)(6).

#### **5.2.1.4. Prohibited Practices**

Solicitations with requirements that contain features that unduly restrict competition may not be used. East Grand Forks Transit/Cities Area Transit (service provider) shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.
- Make a noncompetitive award to any person or firm on a retainer contract with East Grand Forks Transit/Cities Area Transit (service provider) if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to East Grand Forks Transit/Cities Area Transit (service provider) is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
  - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to East Grand Forks Transit/Cities Area Transit (service provider) due to other activities, relationships, contracts, or circumstances.
  - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

- Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

2 C.F.R. 200.319.

**5.2.2. Evaluation Factors.**

All solicitations shall identify all factors to be used in evaluating bids or proposals. At the discretion of the East Grand Forks Transit Manager or the Cities Area Transit Transportation Division Director, the relative order of importance and/or weights shall be communicated to prospective offerors. FTA C. 4220.1F, Chpt. VI2.c.1. and 2.

**5.2.3. Permissible Contract Types**

East Grand Forks Transit/Cities Area Transit (service provider) shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

**5.2.3.1. Firm Fixed Price**

A firm fixed price contract includes a price that remains fixed irrespective of the contractor’s cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

**5.2.3.2. Cost Reimbursement**

A cost-reimbursement contract provides for payment of the contractor’s allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

**5.2.4. Prohibitive or Restricted Contract Types**

The following contract types are prohibited or restricted:

**5.2.4.1. Cost Plus Percentage of Cost**

Cost plus Percentage of Cost type contracts are prohibited.

**5.2.4.2. Time and Materials**

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between East Grand Forks Transit/Cities Area Transit (service provider) and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

**5.2.5. Other Federal Requirements Affecting the Property or Services to be Acquired**

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

### **5.2.6. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor**

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

### **5.2.7. Reservation of Right to Award to Other Than the Low Bidder or Offeror**

The solicitation must specifically reserve East Grand Forks Transit/Cities Area Transit (service provider) right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, East Grand Forks Transit/Cities Area Transit (service provider) will be obligated to award the contract to the low bidder.

### **5.2.8. Reservation of Right to Reject All Bids or Offers**

The solicitation must specifically reserve East Grand Forks Transit/Cities Area Transit (service provider) right to reject all bids or offers.

## **5.3. Methods of Procurement**

East Grand Forks Transit/Cities Area Transit (service provider) shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Minnesota and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA and State policies that address the needs of FTA recipients.

### **5.3.1. Informal Procurements: Micro Purchases**

#### **5.3.1.1. Definition**

Per 2 C.F.R. 200.320, micro-purchases are those purchases of products and services that cost \$10,000 or less (or current threshold established by Federal Acquisition Regulations (FAR)); for purposes of this policy, East Grand Forks Transit/Cities Area Transit (service provider) will use \$10,000 as the threshold for relatively simple purchases as a means to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.

#### **5.3.1.2. Approval Authority**

Micro-purchases must be approved in writing by one of the following East Grand Forks Transit/Cities Area Transit (service provider) employees:

- Transit Manager
- Cities Area Transit Transportation Division Director
- Cities Area Transit Bus Operations Supervisor
- Cities Area Transit Mobility Manager

#### **5.3.1.3. Competition**

East Grand Forks Transit/Cities Area Transit (service provider) may acquire products and services valued at less than **(\$10,000)** without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers.

Micro purchases are exempt from FTA’s Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures. 2 C.F.R. 200.320(a)(1)(ii).

**5.3.1.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women’s business enterprises in East Grand Forks Transit/Cities Area Transit (service provider) Federally assisted procurements. FTA C. 4220.1F, Chpt. IV(3)(a)(2)(b).

**5.3.1.5. Documentation**

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made. FTA C. 4220.1F, Chpt. IV(3)(a)(2)(c).

**5.3.2. Informal Procurements: Small Purchases**

**5.3.2.1. Definition**

Minnesota law, which is applicable to East Grand Forks Transit/Cities Area Transit (service provider) per Minn. Stat. 471.345, defines small purchases as those purchases of products and services, including construction services, that cost greater than \$10,000 but not more than \$175,000. For purposes of this policy, East Grand Forks Transit/Cities Area Transit (service provider) will consider small purchase those that cost greater than \$10,000 but not more than \$175,000.

**5.3.2.2. Approval Authority**

Small purchases must be approved in writing by one of the following East Grand Forks Transit/Cities Area Transit (service provider) employees:

- East Grand Forks Transit Manager
- Cities Area Transit Transportation Division Director
- East Grand Forks City Administrator
- City Council
- Other identified per local decision

**5.3.2.3. Required Competition**

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of East Grand Forks Transit/Cities Area Transit (service provider) to ensure that an adequate number of quotations, bids, or proposals are received. 2 C.F.R. 200.320(2)(i).

**5.3.2.4. Prohibited Divisions**

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women’s

business enterprises in East Grand Forks Transit/Cities Area Transit (service provider) Federally assisted procurements. FTA C. 4220.1F, Chpt. IV(3)(b)(2)(b).

**5.3.2.5. Documentation**

Every small purchase must be documented in the grantee’s written procurement history file. The level of documentation is stipulated in Section 6.6.1. 2 C.F.R. 200.334.

For small purchases, price quotations may be oral or written.

**5.3.2.6. Special Considerations**

East Grand Forks Transit/Cities Area Transit (service provider) reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Procurement Officer believes it is in the best interests of the East Grand Forks Transit/Cities Area Transit (service provider) to do so.

**5.3.3. Formal Procurements**

**5.3.3.1. Definition**

Per Minn. Stat. 471.345, formal purchases are those purchases of products and services that cost greater than the current state threshold of \$175,000. For purposes of this policy, East Grand Forks Transit/Cities Area Transit (service provider) will use formal procedures for all purchases over \$175,000.

**5.3.3.2. Approval Authority**

Large purchases must be approved in writing by the following East Grand Forks Transit/Cities Area Transit (service provider) employees or officials:

- East Grand Forks City Administrator
- City Council
- Other local identified officials

No further delegation of approval authority for large purchases may be made.

**5.3.3.3. Procurement Methods**

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method (IFB); and
- Competitive Proposal (RFP) method.

**5.3.3.4. Required Competition**

Formal bids and competitive proposals must be publicly advertised. 2 C.F.R. 200.320(b).

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business. 2 C.F.R. 200.320(b)(1)(i)(B).

For formal purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal. 2 C.F.R. 200.320(b)(2).

#### **5.3.3.5. Required Documentation**

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase. 2 C.F.R. 200.320; 2 C.F.R. 200.324(a).

#### **5.3.3.6. Procedural Methods for Sealed Bids**

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted. 2 C.F.R. 200.320(b)(1).

(a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than simplified threshold or Small Purchase threshold. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:

- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
- (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
- (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
- (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
- (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

FTA C. 4220.1F, Chpt. IV(3)(c)(1).

(b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:

- (1) Publicity – The Invitation for Bids must be publicly advertised.

- i. The East Grand Forks Transit Manager or Cities Area Transit Transportation Division Director shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
  - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
    - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
    - b. Use of advertisement by electronic means.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
  - (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
  - (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
  - (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
  - (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
  - (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

FTA C. 4220.1F, Chpt. IV(3)(c)(2).

#### **5.3.3.7. Competitive Proposals**

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to East Grand Forks Transit/Cities Area Transit (service provider) or that is considered to be the “best value” to East Grand Forks Transit/Cities Area Transit (service provider). The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable. FTA C. 4220.1F, Chpt. IV(3)(d).

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than **(\$25,000)** when the nature of the procurement does not lend itself to sealed bidding and East Grand Forks Transit/Cities Area Transit (service provider) expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:

- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
- (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
- (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.

FTA C. 4220.1F, Chpt. IV(3)(d)(1).

(b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:

- (1) Publicity – The Request for Proposals must be publicly advertised.
- (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
- (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
- (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to East Grand Forks Transit/Cities Area Transit (service provider) or that represents the “best value” to East Grand Forks Transit/Cities Area Transit (service provider) with price and other factors considered.
- (6) Best Value – East Grand Forks Transit/Cities Area Transit (service provider) may award a contract to the offeror whose proposal provides the greatest value to East Grand Forks Transit/Cities Area Transit (service provider). To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. East Grand Forks Transit/Cities Area Transit (service provider) must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

FTA C. 4220.1F, Chpt. IV(3)(d)(2).

#### **5.3.3.8. Two-Step Procurements**

East Grand Forks Transit/Cities Area Transit (service provider) may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained. FTA C. 4220.1F, Chpt. IV(3)(e).

Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to East Grand Forks Transit/Cities Area Transit (service provider) request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications. FTA C. 4220.1F, Chpt. IV(3)(e)(1).

Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors. FTA C. 4220.1F, Chpt. IV(3)(e)(2).

**5.3.3.9. Architectural and Engineering (A&E) Services and Other Services**

FTA’s enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. § 1101 through 1104, to acquire A&E services. FTA C. 4220.1F, Chpt. IV(3)(f).

(a) Qualifications-Based Procurement Procedures Required – East Grand Forks Transit/Cities Area Transit (service provider) must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:

- Program management;
- Construction management;
- Feasibility studies;
- Preliminary engineering;
- Design, architectural, engineering;
- Surveying, mapping; and
- Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used. FTA C. 4220.1F, Chpt. IV(3)(f)(1).

(b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property. FTA C. 4220.1F, Chpt. IV(3)(f)(2).

(c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:

- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
- (2) Price – Price is excluded as an evaluation factor.
- (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.
- (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

FTA C. 4220.1F, Chpt. IV(3)(f)(3).

#### **5.4. Noncompetitive Procurements**

Normally, East Grand Forks Transit/Cities Area Transit (service provider) must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 C.F.R. 200.320(f)(1) – (4), however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

##### **5.4.1. When Appropriate**

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

###### **5.4.1.1. Competition Adequacy**

After soliciting several sources and receiving an inadequate response, East Grand Forks Transit/Cities Area Transit (service provider) shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If East Grand Forks Transit/Cities Area Transit (service provider) determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, East Grand Forks Transit/Cities Area Transit (service provider) may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs. FTA C. 4220.1F, Chpt. IV(3)(i)(1)(a).

###### **5.4.1.2. Sole Source**

When East Grand Forks Transit/Cities Area Transit (service provider) requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, East Grand Forks Transit/Cities Area Transit (service provider) may make a sole source award. In addition, when East Grand Forks Transit/Cities Area Transit (service provider) requires an existing contractor to make a change to its contract that is beyond the scope of that contract, East Grand Forks Transit/Cities Area Transit (service provider) will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
- (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to East Grand Forks Transit/Cities Area Transit (service provider) only from one source and has not in the past been available to East Grand Forks Transit/Cities Area Transit (service provider) from another source.
  - (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
  - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling East Grand Forks Transit/Cities Area Transit (service provider) needs. FTA C. 4220.1F, Chpt. IV(3)(i)(1)(b)(1).
- (b) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, East Grand Forks Transit/Cities Area Transit (service provider) should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond East Grand Forks Transit/Cities Area Transit (service provider) control.
  - (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within East Grand Forks Transit/Cities Area Transit (service provider) control. FTA C. 4220.1F, Chpt. IV(3)(i)(1)(b)(2).
- (c) Unusual and Compelling Urgency – East Grand Forks Transit/Cities Area Transit (service provider) may limit the number of sources from which it solicits bids or proposals when East Grand Forks Transit/Cities Area Transit (service provider) has such an unusual and urgent need for the products or services that East Grand Forks Transit/Cities Area Transit (service provider) would be seriously injured unless it were permitted to limit the solicitation. East Grand Forks Transit/Cities Area Transit (service provider) may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services. FTA C. 4220.1F, Chpt. IV(3)(i)(1)(c).

- (d) Authorized by MnDOT – East Grand Forks Transit/Cities Area Transit (service provider) may request permission from MnDOT to allow it to use noncompetitive proposals for a particular procurement. FTA C. 4220.1F, Chpt. IV(3)(i)(1)(e).
- (e) When Prohibited – Less than full and open competition is not justified based on:
  - (1) Failure to Plan – East Grand Forks Transit/Cities Area Transit (service provider) lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
  - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement. FTA C. 4220.1F, Chpt. IV(3)(i)(2).
- (f) Procurement Procedures – The following requirements apply when East Grand Forks Transit/Cities Area Transit (service provider) completes a procurement utilizing less than full and open competition:
  - (1) Potential Sources – East Grand Forks Transit/Cities Area Transit (service provider) must solicit offers from as many potential sources as is practicable under the circumstances.
  - (2) Sole Source Justification – East Grand Forks Transit/Cities Area Transit (service provider) must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the Procurement Officer. If East Grand Forks Transit/Cities Area Transit (service provider) decides to solicit an offer from only one source, East Grand Forks Transit/Cities Area Transit (service provider) must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
  - (3) Cost Analysis – East Grand Forks Transit/Cities Area Transit (service provider) must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase. FTA C. 4220.1F, Chpt. IV(3)(i)(3).
- (g) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the East Grand Forks Transit Manager or Cities Area Transit Transportation Division Director to be in the best interest of East Grand Forks Transit/Cities Area Transit (service provider), noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA or State financial assistance. Any such determination must be requested and authorized in writing by MnDOT.

## **5.5. Evaluation Requirements**

The following standards shall apply to all evaluations of bids or proposals conducted by East Grand Forks Transit/Cities Area Transit (service provider) .

### **5.5.1. General**

When evaluating bids or proposals received in response to a solicitation, East Grand Forks Transit/Cities Area Transit (service provider) shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. East Grand Forks Transit/Cities Area Transit (service provider) may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation. FTA C. 4220.1F, Chpt. IV(7).

### **5.5.2. Options**

The following standards shall apply when awarding contracts that include options:

#### **5.5.2.1. Evaluation Required**

In general, East Grand Forks Transit/Cities Area Transit (service provider) must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded. For formal procurements, the use of a team to conduct the evaluation will be used.

#### **5.5.2.2. Evaluation Not Required**

East Grand Forks Transit/Cities Area Transit (service provider) need not evaluate bids or offers for any option quantities when East Grand Forks Transit/Cities Area Transit (service provider) does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests. FTA C. 4220.1F, Chpt. IV(7)(b).

## **5.6. Contract Award Requirements**

The following standards shall apply to all contract award decisions made by East Grand Forks Transit/Cities Area Transit (service provider):

### **5.6.1. Award to Other Than the Lowest Bidder or Offeror**

East Grand Forks Transit/Cities Area Transit (service provider) may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. East Grand Forks Transit/Cities Area Transit (service provider) may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, East Grand Forks Transit/Cities Area Transit (service provider) must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror. FTA C. 4220.1F, Chpt. IV(8)(a).

#### **5.6.1.1. Award Only to a Responsible Bidder or Offeror**

East Grand Forks Transit/Cities Area Transit (service provider) may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. East Grand Forks Transit/Cities Area Transit (service provider) must consider such matters as contractor integrity, compliance with public policy,

record of past performance and financial and technical resources when making a determination of contractor responsibility. East Grand Forks Transit/Cities Area Transit (service provider) must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by East Grand Forks Transit/Cities Area Transit (service provider). For every procurement action above the micro-purchase level, East Grand Forks Transit/Cities Area Transit (service provider) must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, East Grand Forks Transit/Cities Area Transit (service provider), at a minimum, must determine and ensure that the prospective contractor satisfies the criteria of Integrity and Ethics, Debarment and Suspension, Affirmative Action and DBE, Public Policy, Administrative and Technical Capacity, Licensing and Taxes, Financial Resources, Production Capability, Timeliness, and Performance Record. FTA C. 4220.1F, Chpt. IV(8)(b).

#### **5.6.1.2. Rejection of Bids and Proposals**

East Grand Forks Transit/Cities Area Transit (service provider) may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. East Grand Forks Transit/Cities Area Transit (service provider) must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project. FTA C. 4220.1F, Chpt. IV(8)(c).

#### **5.6.2. Affirmative Action and DBE**

Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements, including completing an ICE and Scope of Work for any federally or state funded projects over \$5,000. 2 C.F.R. 200.321.

### **5.7. Independent Cost Estimate and Cost and Price Analysis**

#### **5.7.1. Independent Cost Estimate**

For every solicitation above the micro-purchase threshold, East Grand Forks Transit/Cities Area Transit (service provider) shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals. FTA C. 4220.1F, Best Practices 4.6.1.

#### **5.7.2. Cost or Price Analysis**

East Grand Forks Transit/Cities Area Transit (service provider) shall perform a cost or price analysis in connection with every procurement over **\$25,000** and ensure a Cost Analysis for all sole source and contract modifications. 2 C.F.R. 200.324(a); FTA C. 4220.1F, Chpt. IV(6).

**5.7.2.1. Price Analysis**

If East Grand Forks Transit/Cities Area Transit (service provider) determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. 2 C.F.R. 200.324(a); FTA C. 4220.1F, Chpt. IV(6).

**5.7.2.2. Cost Analysis**

East Grand Forks Transit/Cities Area Transit (service provider) must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

2 C.F.R. 200.324(a); FTA C. 4220.1F, Chpt. IV(6)(a).

## **6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS**

### **6.1. East Grand Forks Transit/Cities Area Transit Staff Responsibilities**

Prior to execution of third-party contracts, East Grand Forks Transit/Cities Area Transit (service provider) shall designate a Project Manager to serve as East Grand Forks Transit/Cities Area Transit (service provider) principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

### **6.2. Administrative Restrictions on the Acquisition of Property and Services**

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third-party procurements.

#### **6.2.1. Legal Eligibility**

The property or services acquired must be eligible for support under the scope or restrictions accompanying the Federal statute or State laws authorizing the Federal and/or State assistance to be used. FTA C. 4220.1F, Chpt. IV(1)(a).

#### **6.2.2. Period of Performance**

East Grand Forks Transit/Cities Area Transit (service provider) will use sound business judgment and be judicious in establishing and extending a contract's period of performance. FTA C. 4220.1F, Chpt. IV(b)(3).

##### **6.2.2.1. General Standards**

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. East Grand Forks Transit/Cities Area Transit (service provider) will also consider competition, pricing, fairness, and public perception. East Grand Forks Transit/Cities Area Transit (service provider) procurement files will document its rationale for determining the performance period designated for each contract. FTA C. 4220.1F, Chpt. IV(b)(3)(a).

##### **6.2.2.2. Time Extensions**

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once East Grand Forks Transit/Cities Area Transit (service provider) awards a third-party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification. FTA C. 4220.1F, Chpt. IV(b)(3)(c).

### **6.2.2.3. Authority to Extend**

The Transit Manager or Division Director has the sole authority to approve and execute contract modifications. The Transit Manager, Division Director or Project Manager for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Transit Manager, Division Director or Project Manager shall prepare a written justification and cost analysis for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

### **6.3. Federal Cost Principles**

Federal rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal or State law or regulation, and must comply with Federal cost principles applicable to the recipient. FTA C. 4220.1F, Chpt. IV(b)(4).

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred East Grand Forks Transit/Cities Area Transit (service provider).

### **6.4. Payment Provisions**

East Grand Forks Transit/Cities Area Transit (service provider) will follow the provisions of this section when using Federal or State funds to support its third-party contracts. FTA C. 4220.1F, Chpt. IV(b)(5).

#### **6.4.1. Financial Support for the Project**

Costs may only be incurred by East Grand Forks Transit/Cities Area Transit (service provider) if MnDOT or FTA has awarded a financial assistance contract to East Grand Forks Transit/Cities Area Transit (service provider).

##### **6.4.1.1. Progress Payments**

Progress payments are payments for contract work that has not been completed. East Grand Forks Transit/Cities Area Transit (service provider) may use MnDOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. FTA C. 4220.1F, Chpt. IV(b)(5)(c).

##### **6.4.1.2. Adequate Security for Progress Payments**

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. East Grand Forks Transit/Cities Area Transit (service provider) should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance. FTA C. 4220.1F, Chpt. IV(b)(5)(c)(1).

**6.4.1.3. Adequate Documentation**

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made. FTA C. 4220.1F, Chpt. IV(b)(5)(c)(2).

**6.4.1.4. Percentage of Completion Method**

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein., East Grand Forks Transit/Cities Area Transit (service provider) however, may not make progress payments for other than construction contracts based on this percentage method. FTA C. 4220.1F, Chpt. IV(b)(5)(c)(3).

**6.5. Protections Against Performance Difficulties**

East Grand Forks Transit/Cities Area Transit (service provider) shall include provisions in its third-party contracts that will reduce potential problems that might occur during contract performance, as follows:

**6.5.1. Changes**

East Grand Forks Transit/Cities Area Transit (service provider) shall include provisions that address changes and changed conditions in all third-party contracts except for routine supply contracts. FTA C. 4220.1F, Chpt. IV(b)(6)(a).

**6.5.2. Remedies**

East Grand Forks Transit/Cities Area Transit (service provider) shall include provisions that address remedies in its third-party contracts. Provisions related to remedies may include provisions for:

**6.5.2.1. Liquidated Damages**

East Grand Forks Transit/Cities Area Transit (service provider) may use liquidated damages if East Grand Forks Transit/Cities Area Transit (service provider) reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect East Grand Forks Transit/Cities Area Transit (service provider) costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract’s delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the transit system account. FTA C. 4220.1F, Chpt. IV(b)(6)(b)(1).

**6.5.2.2. Violation or Breach**

Third party contracts exceeding \$250,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor. FTA C. 4220.1F, Chpt. IV(b)(6)(b)(2).

**6.5.2.3. Suspension of Work**

East Grand Forks Transit/Cities Area Transit (service provider) may include provisions pertaining to suspension of work in its third-party contracts. FTA C. 4220.1F, Chpt. IV(b)(6)(b)(3).

#### **6.5.2.4. Termination**

Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000. FTA C. 4220.1F, Chpt. IV(b)(6)(b)(4).

### **6.6. Contents of Complete Contract Files**

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

#### **6.6.1. Written Record of Procurement History**

East Grand Forks Transit/Cities Area Transit (service provider) shall maintain written records detailing the history of the procurement, including records relating to:

##### **6.6.1.1. Procurement Method**

East Grand Forks Transit/Cities Area Transit (service provider) must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive. FTA C. 4220.1F, Chpt. III(3)(d)(1)(a).

##### **6.6.1.2. Contract Type**

East Grand Forks Transit/Cities Area Transit (service provider) must state the reasons for selecting the contract type it used. FTA C. 4220.1F, Chpt. III(3)(d)(1)(b).

##### **6.6.1.3. Contractor Selection**

East Grand Forks Transit/Cities Area Transit (service provider) must state its reasons for contractor selection or rejection, including written justification and evaluation documents. FTA C. 4220.1F, Chpt. III(3)(d)(1)(c).

##### **6.6.1.4. Contractor Responsibility**

East Grand Forks Transit/Cities Area Transit (service provider) must provide a written determination of responsibility for the successful contractor. FTA C. 4220.1F, Chpt. III(3)(d)(1)(c).

##### **6.6.1.5. Cost or Price**

East Grand Forks Transit/Cities Area Transit (service provider) must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis. FTA C. 4220.1F, Chpt. III(3)(d)(1)(d).

##### **6.6.1.6. Reasonable Documentation**

East Grand Forks Transit/Cities Area Transit (service provider) must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt, and evaluation of offers, and contract award, negotiation and execution. FTA C. 4220.1F, Chpt. III(3)(d)(1)(e).

### **6.7. Contract Administration and Close-Out Documents**

East Grand Forks Transit/Cities Area Transit (service provider) shall maintain written records detailing the performance and close-out of the contract, including records relating to:

### **6.7.1. Contract Deliverables**

East Grand Forks Transit/Cities Area Transit (service provider) must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables. FTA C. 4220.1F, Chpt. III(3)(d).

### **6.7.2. Contract Changes**

East Grand Forks Transit/Cities Area Transit (service provider) must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation, and execution. FTA C. 4220.1F, Chpt. III(3)(d).

### **6.7.3. Contract Payments**

East Grand Forks Transit/Cities Area Transit (service provider) must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products. FTA C. 4220.1F, Chpt. III(3)(d).

### **6.7.4. Contract Close-Out**

East Grand Forks Transit/Cities Area Transit (service provider) must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to East Grand Forks Transit/Cities Area Transit (service provider), and contract audit and final reconciliation. FTA C. 4220.1F, Chpt. III(3)(d).

## **6.8. Protest Procedures**

See 2 C.F.R. 200.318(k); FTA C. 4220.1F, Best Practices 4.9.

### **6.8.1. Statement of Policy**

East Grand Forks Transit/Cities Area Transit (service provider) is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third-party procurements using good administrative practices and sound business judgment. FTA C. 4220.1F, Chpt. VII.

In general, MnDOT will not substitute its judgment for that of East Grand Forks Transit/Cities Area Transit (service provider) unless the matter is primarily a federal concern. Nevertheless, MnDOT and FTA can become involved in East Grand Forks Transit/Cities Area Transit (service provider) administrative decisions when an East Grand Forks Transit/Cities Area Transit (service provider) protest decision is appealed to MnDOT.

East Grand Forks Transit/Cities Area Transit (service provider) procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. East Grand Forks Transit/Cities Area Transit (service provider) shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

### **6.8.2. East Grand Forks Transit/Cities Area Transit (service provider) Staff Responsibilities**

The following staff responsibilities shall be assigned in all protests:

- Transit Manager or Division Director - Responsibilities include: ensuring that the East Grand Forks Transit/Cities Area Transit (service provider) Protest Procedure is included in all solicitation documents; and providing information to and assisting the legal counsel with the resolution of protests.
- Transit Manager, Division Director or City Council – Responsibilities include reviewing all procurement protests; and advising and assisting the Subrecipient as needed with the resolution of all procurement protests. FTA C. 4220.1F, Chpt. VII(1)(a).

### **6.8.3. Solicitation Provision**

East Grand Forks Transit/Cities Area Transit (service provider) shall insert the following provision in all solicitation documents:

#### **6.8.3.1. Pre-Proposal Protests**

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Procurement Officer as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Procurement Officer may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Procurement Officer as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Procurement Officer shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

#### **6.8.3.2. Pre-Award Protests**

With respect to protests made after the deadline for submission of bids/proposals but before contract award by East Grand Forks Transit/Cities Area Transit (service provider), protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, East Grand Forks Transit/Cities Area Transit (service provider) failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Procurement Officer as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by East Grand Forks Transit/Cities Area Transit (service provider)

The Procurement Officer may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that East Grand Forks Transit/Cities Area Transit (service provider) shall announce the contract award.

The decision by the Procurement Officer shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by MnDOT as specified below.

#### **6.8.4. Requirements for Protests**

All protests must be submitted to East Grand Forks Transit/Cities Area Transit (service provider) in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by East Grand Forks Transit/Cities Area Transit (service provider)

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Procurement Officer at the address shown in the solicitation documents.

#### **6.8.5. Protest Response**

The Procurement Officer shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, East Grand Forks Transit/Cities Area Transit (service provider) will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official East Grand Forks Transit/Cities Area Transit (service provider) response to the protest and East Grand Forks Transit/Cities Area Transit (service provider) will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

#### **6.8.6. Review of Protests by MnDOT**

All protests or complaints involving contracts financed with state or Federal assistance shall be disclosed to MnDOT and will keep FTA informed about the status of any such protest or complaint. East Grand Forks Transit/Cities Area Transit (service provider) shall disclose all information about any third party procurement protest to MnDOT upon request. Protesters shall exhaust all administrative remedies with East Grand Forks Transit/Cities Area Transit (service provider) prior to pursuing protests with MnDOT. MnDOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to MnDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of East Grand Forks Transit/Cities Area Transit (service provider) final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to MnDOT.



The East Grand Forks City Council has approved the updated Procurement Policy and Procedures Manual on \_\_\_\_\_. The Procurement Policy will go in effect after review and approval from MnDOT Transit.

\_\_\_\_\_  
(NAME AND TITLE OF AUTHORIZED OFFICER)

Date \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICER)

\_\_\_\_\_  
(NAME AND TITLE OF AUTHORIZED OFFICER)

Date \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF AUTHORIZED OFFICER)

Accounts Payable  
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**City of East Grand Forks**

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

User: rkringlen  
Printed: 10/11/2024 - 10:36 AM

Check	Date	Vendor No	Vendor Name	Amount	Voucher
43237	10/15/2024	ACM001	Acme Electric Companies	794.41	0
43238	10/15/2024	ADV007	Advanced Auto Parts	276.20	0
43239	10/15/2024	ADV001	Advanced Business Methods Inc	812.13	0
43240	10/15/2024	AE2S01	Advanced Engineering & Environmen	17,334.00	0
43241	10/15/2024	ATV001	Auto Value Grand Forks	152.93	0
43242	10/15/2024	BAL001	Balco Uniforms Co Inc	180.01	0
43243	10/15/2024	BAR009	Barnum Companies, Inc	1,210.00	0
43244	10/15/2024	BAT001	Batteries + Bulbs	40.93	0
43245	10/15/2024	BAU004	Brenda Baumer	600.00	0
43246	10/15/2024	BIG001	Big Jim's East Side Tire	1,206.74	0
43247	10/15/2024	BNS001	BNSF Railway Company	2,973.48	0
43248	10/15/2024	BOR001	Border States Electric Supply	99.59	0
43249	10/15/2024	C&R001	C&R Cleaners & Laundry	231.00	0
43250	10/15/2024	CAR018	CareHealth America	356.24	0
43251	10/15/2024	CIN001	Cintas Corporation No. 2	148.22	0
43252	10/15/2024	COL004	Coldspring Memorial	830.00	0
43253	10/15/2024	COL002	Cole Papers Inc	527.44	0
43254	10/15/2024	COM003	Complete Pest Control Inc	2,200.00	0
43255	10/15/2024	CUS002	Custom Stripes Inc	25.00	0
43256	10/15/2024	DAK006	Dakota TV & Appliance	4,188.55	0
43257	10/15/2024	DEW001	Christine Dewey	70.00	0
43258	10/15/2024	DIS004	District 16 Hockey	200.00	0
43259	10/15/2024	ELL006	Sarah Ellis	340.00	0
43260	10/15/2024	FIN003	Finest Auto Trim Inc.	199.00	0
43261	10/15/2024	FIR012	Fire Safety USA, Inc.	4,170.78	0
43262	10/15/2024	GAL003	Galstad Jensen & McCann PA	24,577.58	0
43263	10/15/2024	GGF001	GGF Convention & Visitors Bureau	7,255.44	0
43264	10/15/2024	GFW001	Grand Forks Welding & Machine	24.62	0
43265	10/15/2024	TCL001	Gregory Hufnagle	7,085.00	0
43266	10/15/2024	ICS002	Industrial Contract Services Inc. ICS	26,935.03	0
43267	10/15/2024	IRO002	Ironhide Equipment Inc	108.20	0
43268	10/15/2024	JOH026	Johnson Controls	2,463.68	0
43269	10/15/2024	JET002	Johnson Jet-Line	953.00	0
43270	10/15/2024	K&H001	K&H Custom	4,400.00	0
43271	10/15/2024	KEN002	Kennedy & Graven, Chartered	69.00	0
43272	10/15/2024	HAR081	Local Ace	21.98	0
43273	10/15/2024	HAR086	Local Ace	45.96	0
43274	10/15/2024	HAR087	Local Ace	122.12	0
43275	10/15/2024	HAR089	Local Ace	35.15	0
43276	10/15/2024	MTF001	M&T Fire and Safety	1,793.00	0
43277	10/15/2024	M&W001	M&W Services	478.33	0
43278	10/15/2024	MARCD1	Marco Technologies LLC	97.62	0
43279	10/15/2024	MAR008	Marshall & Polk Rural Water System	9.00	0
43280	10/15/2024	MCW002	Mariah McWalter	140.00	0
43281	10/15/2024	MEN001	Menards	201.60	0
43282	10/15/2024	MID003	Midcontinent Communications	48.42	0
43283	10/15/2024	BCA004	MN Bureau of Criminal Apprehension	6,120.00	0
43284	10/15/2024	MND003	MN Dept of Labor & Industry	20.00	0
43285	10/15/2024	MND013	MN Dept of Transportation	13,075.54	0
43286	10/15/2024	MNM002	MN Municipal Utilities Assoc	4,189.40	0

Check	Date	Vendor No	Vendor Name	Amount	Voucher
43287	10/15/2024	NDF01	North Dakota Firefighter's Association	150.00	0
43288	10/15/2024	NOR024	Northland Yard Service	400.00	0
43289	10/15/2024	ORE001	O'Reilly Automotive, Inc.	354.34	0
43290	10/15/2024	OFF002	ODP Business Solutions, LLC	37.64	0
43291	10/15/2024	OPP001	Opp Construction LLC	222,505.00	0
43292	10/15/2024	EXP002	Page 1 Publications, Inc.	678.44	0
43293	10/15/2024	PDQ001	PDQ Sanitary Services	145.00	0
43294	10/15/2024	PET001	Peterson Veterinary Clinic P.C.	1,047.00	0
43295	10/15/2024	PIO001	Pioneer Peat, Inc.	70.00	0
43296	10/15/2024	PKM001	PKM Electric Cooperative, Inc	1,524.16	0
43297	10/15/2024	POM001	Pomp's Tire Service, Inc	3,392.69	0
43298	10/15/2024	POW003	Powerplan OIB	1,295.05	0
43299	10/15/2024	PRE001	Premium Waters Inc	55.99	0
43300	10/15/2024	ZAV001	RJ Zavoral & Sons, Inc	885,641.66	0
43301	10/15/2024	RMB001	RMB Environmental Lab Inc	262.30	0
43302	10/15/2024	MIK001	SJA Thunder Corp	143.91	0
43303	10/15/2024	SKI001	Skinner Roofing	248.11	0
43304	10/15/2024	STE009	Sterling Carpet One	6,965.10	0
43305	10/15/2024	STO001	Stone's Mobile Radio Inc	1,850.00	0
43306	10/15/2024	TMO001	T-Mobile	229.40	0
43307	10/15/2024	THU002	Thur-O-Clean	394.00	0
43308	10/15/2024	TIZ002	Ti-Zack Concrete Inc	17,261.21	0
43309	10/15/2024	USB005	US Bank Corporate Payment Systems	192,015.42	0
43310	10/15/2024	VAL002	Valley Truck Parts and Services Inc.	1,401.21	0
43311	10/15/2024	VER001	Verizon Wireless	1,617.94	0
43312	10/15/2024	VES001	Vestis Services LLC	306.21	0
43313	10/15/2024	WAT001	Water and Light Department	37,506.40	0
43314	10/15/2024	WID001	Widseth Smith Nolting & Associates	54,845.00	0
43315	10/15/2024	XCE001	Xcel Energy	12.37	0
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				Check Total:	1,571,791.87
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