



# City of Grand Forks Staff Report

**APPROVED & ACCEPTED**  
by City Council

12/19/2016

*Maureen Storstad*  
Maureen Storstad  
City Auditor

**Committee of the Whole – December 12, 2016**  
**City Council – December 19, 2016**

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**Agenda Item:** Housing First Purchase Agreement Extension Request

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**Submitted by:** Meredith Richards, Community Development Deputy Director

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**Staff Recommended Action:** Authorize execution of attached amendment to extend closing date to April 30, 2017, subject to City Attorney review.

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**Committee Recommended Action:** Refer to City Council with the recommendation to approve.

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**Council Action:**

To approve the amendment granting an extension of time to April 30, 2017, in case it is needed, and further, to lower the sale price from the original \$350,000 to \$325,000 to be consistent with the appraisal that was received.

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## **BACKGROUND:**

City Council authorized the sale of the property located at 500 First Avenue S. to the Grand Forks Housing Authority (GFHA) on September 19. The attached purchase agreement was subsequently signed, which states closing shall occur on or before December 31, 2016. Per Section 11 of that agreement, the sale is contingent on satisfactory completion of environmental reviews. The GFHA hired Terracon to perform environmental testing and analysis but they have not yet received a report from them. The GFHA has therefore requested that the City execute the attached amendment to the purchase agreement, which would extend the closing date to April 30, 2017.

## **SUPPORT MATERIALS**

- Purchase Agreement
- Requested amendment

## PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** (Agreement) is made and entered into this 21 day of September, 2016, by and between **The City of Grand Forks North Dakota**, hereinafter (the "Seller,") and **The Housing Authority of the City of Grand Forks**, hereinafter (the "Buyer").

### **WITNESSETH:**

**WHEREAS**, Seller is the owner of real property, legally described as follows:

**Lots 5, 6 & 7, Block 1, Renewal Resubdivision No.6  
Plat at 152 deeds, page 324**

**WHEREAS**, Buyer desires to purchase the Subject Property and pay Seller under the terms and conditions hereinafter stated.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Purchase Price. The purchase price for the Subject Property shall be the sum of **\$350,000.00**.
2. Payment of Purchase Price. Buyer is paying to Seller the sum of **\$1,000.00** as earnest money (the "Earnest Money") at the time of execution of this Agreement, to be deposited into a trust account held by **Camrud, Maddock, Olson and Larson, Ltd.**, the receipt of which is hereby acknowledged. The balance of **\$349,000.00** shall be payable in full on the Closing Date.
3. Taxes and Special Assessments. Taxes and special assessments, if any, due and payable in 2016 shall be prorated to the Closing Date. Real estate taxes and special assessment installments due and payable in 2015 and all prior years are the responsibility of the Seller. Real estate taxes and special assessments due and payable in 2017 and subsequent years are the responsibility of the Buyer.
4. Closing Date and Transfer of Possession. Closing of this transaction shall take place on or before **December 31, 2016** (the "Closing Date") and shall occur at a mutually agreeable location. Buyer shall take possession of the Subject Property upon Closing Date.
5. Liens and Encumbrances. The Subject Property shall be conveyed to Buyer free and clear of all liens and encumbrances except special assessments, and subject, however, to all easements or covenants of record, if any.
6. Title. Buyer wishes to take title as follows:

**The Housing Authority of the City of Grand Forks, North Dakota**

Conveyance of the Subject Property shall be by warranty deed in the usual form used in North Dakota. The Seller will arrange preparation of the warranty deed.

7. Personal Property. Personal Property included in this transaction is: NONE.

8. Closing Costs. It is understood and agreed that as part of this purchase, the cost of preparation of the deed, the cost of preparation of and recording fees for any documents necessary to remove any liens or encumbrances or to clear title; and one-half of the fee for any closing agent or company shall be paid by the Seller. Buyer shall pay the cost of recording the deed and mortgage, the cost of a title opinion, the cost of an appraisal, if any, and one-half of the fee for any closing agent or company.

9. Title. Seller will furnish good and marketable title free of all encumbrances, unless otherwise agreed herein. Seller agrees to execute a good and sufficient Deed, subject to conditions, zoning, restrictions and easements of record, if any, which do not restrict the existing use of the Subject Property.

10. Subject Property Purchased "AS IS". The Buyer represents to the Seller that the Subject Property has been inspected by Buyer and that Buyer has been assured by means independent of the Seller or any agent of the Seller of the truth of all facts material to this contract and that the Subject Property as it is described in this contract is and has been purchased by the Buyer as a result of such inspection or investigation and not by or through any representations made by the Seller or by an agent of the Seller. The Buyer hereby expressly waives any and all claims for damages or for rescission or cancellation of this contract because of any representations by the Seller or any agent of the Seller other than such representation as may be contained in this contract. The Buyer further agrees that the Seller and any and all agents of the Seller shall not be liable for or on account of any inducements, promises, representations, or agreements not contained in this contract and no agent or employee of the Seller is or has been authorized by the Seller to make any representations with respect to the Subject Property and that if any such representations have been made, they are wholly unauthorized and not binding on the Seller.

11. Contingencies. The terms of this Agreement are contingent upon certain conditions, referred to as "contingencies", being met on or before the Closing Date:

11.1 Financing. Buyer shall not be obligated to close, and may declare the Agreement void, if Buyer is unable to obtain grant approval, other funding and approved financing on or before the Closing Date, adequate to the project in the Buyer's sole discretion.

11.2 Environmental. Buyer shall have satisfied itself, in its sole discretion, that the soils on the Subject Property are (1) free from hazardous substances, wastes, pollutants and other contaminants and (2) sufficient for Buyer's proposed use of the Subject Property.

11.3 Environmental Review: Environmental Review: Buyer shall not be obligated to close, and may declare the Agreement void, if Buyer is unable to obtain a favorable determination by the City of Grand Forks and/or the State of North Dakota on the desirability of the Subject Property as a result of the completion of an Environmental Review in accordance

with 24 CFR Part 58 – Environmental Review Procedures For Entities Assuming HUD Environmental Responsibilities, and the environmental provisions of 24 CFR Part 93.301 (f) as it relates to the National Housing Trust Fund environmental provisions.

11.4 Inspection. The Buyer shall be satisfied that the land and improvements, if any, are in a condition such that the land may be developed for Buyer's purposes and that the same are in all respects acceptable to Buyer, in Buyer's sole discretion. From and after the date of this Agreement, Buyer shall have the right to enter upon the Subject Property and make such inspections of the Subject Property as Buyer may deem desirable. Buyer agrees to indemnify, defend and hold harmless Seller and the Subject Property from any cost, charge, claim or lien arising therefrom, except for liability arising from conditions which existed prior to Buyer's presence on the Subject Property and which were disclosed by Buyer's investigations of the Subject Property.

11.5 Approvals. Buyer shall have obtained, at its sole cost and expense, during the Contingency Period all governmental and other approvals including Buyer's Board of Commissioners and, permits necessary in Buyer's sole discretion for Buyer's intended use and development of the Subject Property, containing terms and conditions acceptable to Buyer.

11.6 Survey. Buyer shall have obtained a survey, at Buyer's cost and expense, not disclosing any condition rendering the Subject Property unusable for Buyer's proposed use of the Subject Property, which determination shall be in Buyer's sole discretion.

11.7 Title Evidence. Buyer shall obtain a commitment for title Insurance to the Subject Property evidencing marketable title in Seller. If title to the Subject Property is unmarketable, Seller shall have a period of thirty (30) days in which to correct the title and make it marketable. Closing shall, in such event, be extended accordingly. If the title to the Subject Property cannot be made marketable within said period of time or such further time as may be granted by Buyer in writing, this agreement shall terminate and be of no further effect. Title objections may be based upon any survey or other documents or information, as well as upon the review of the abstract.

11.8 Utility Availability. Buyer shall have satisfied itself, in Buyer's sole discretion, that water and gas mains, electric power lines, and sanitary and storm sewers are available to the Subject Property and adequate for Buyer's proposed use of the Subject Property.

11.9 Appraisal. Buyer shall have obtained an appraisal, at Buyer's cost and expense, indicating the Subject Property as improved appraises for an amount equal to or greater than the Purchase Price.

11.10 Re-zoning. Seller shall work with Buyer to submit to the City of Grand Forks an application to re-zone the Subject Property for Multi-family use. The Re-zoning would need to be approved by the City of Grand Forks prior to Closing.

11.11 Vacant Property. Property must be vacant – not occupied at time of conveyance.

Buyer's obligation under this Agreement is subject to, and contingent upon, the property being vacant and not occupied at the closing and conveyance.

The contingencies set forth in this Agreement benefit Buyer and Buyer reserves the right to waive performance of any or all of the conditions. Buyer shall provide Seller with written notice of the failure of any contingency as of the Contingency Deadline set forth above and, in such event, this Agreement shall be terminated. Upon termination of this Agreement by reason of Buyer's exercise of any of the Contingencies described in this Agreement, the Earnest Money and any interest accrued thereon shall be released to Buyer and upon such return, neither party will have any further rights or obligations regarding this Agreement or the Subject Property.

12. Entry Upon Subject Property. From and after the date of this Agreement, Buyer shall have the right to enter upon the Subject Property for purposes of inspection, survey or such other matters related to these contingencies and this Agreement as may be necessary for Buyer's purposes. Buyer agrees to indemnify, defend and hold harmless Seller and the Subject Property from any cost, charge, claim or lien arising therefrom, except for liability arising from conditions which existed prior to Buyer's presence on the Subject Property and which were disclosed by Buyer's investigations of the Subject Property.

13. Representations And Warranties. As a further inducement to Buyer to enter into this Agreement and to consummate the transaction contemplated by this Agreement, Seller does hereby represent and warrant to Buyer and agrees as follows as of both the date of this Agreement and as of the Closing Date:

13.1 Seller will have good and insurable title to the Subject Property and has full right, power, and authority and has taken all requisite action to enter into this Agreement and to grant, sell, and convey the Subject Property to Buyer as provided in this Agreement;

13.2 Seller has not received notice from any city or other governmental authority of any violation affecting any portion of the Subject Property except as disclosed, if at all, in writing to Buyer prior to the execution of this Agreement;

13.3 No work has been performed or is in progress by Seller or at the direction of Seller, and no materials have been furnished to the Subject Property or any portion thereof, which might give rise to mechanics, materialman's, construction, or other liens against the Subject Property;

13.4 No consent or approval of any person, entity, or governmental agency or authority is required with respect to the execution and delivery of this Agreement by Seller and, as of the Closing Date, no such consent or approval will be required with respect to the sale by Seller of the Subject Property to Buyer;

13.5 Seller shall not grant, sell, convey, or encumber the Subject Property prior to the Closing Date;

13.6 There is no indebtedness outstanding and no outstanding or unpaid bills incurred for labor and materials in connection with the Subject Property, or for the services of architects,

surveyors, or engineers in connection with the Subject Property;

13.7 There are no outstanding, pending, or, to the best of Seller's knowledge and belief, threatened suits, judgments, executions, bankruptcies, condemnation proceedings, zoning changes, or any other proceedings pending or of record in any court of any nature or before or by any governmental or administrative agency which could in any manner now affect Buyer's title to, possession of, or use of the Subject Property, or which could now or hereafter constitute a lien upon the Subject Property or materially or adversely affect or change the Subject Property;

13.8 Seller is not surety on any bond or indebtedness wherein through the default thereof, a lien against the Subject Property would be created without further legal action; and

13.9 As of the Closing Date, there will be no recorded or unrecorded liens, security interests, security agreements, or UCC financing statements, against the Subject Property or any part thereof.

In the event that any of the representations and warranties set forth in paragraph 13, above, is not true in any material respect as of the Closing Date, Buyer may terminate this Agreement. In such instance, the Earnest Money and any interest accrued thereon, shall be returned to Buyer.

#### 14. Remedies.

14.1 If Buyer defaults in its obligation to proceed to the Closing Date in accordance with the terms of this Agreement and fails to cure such default within ten (10) days after being notified in writing thereof, Seller shall be entitled, as its sole and exclusive remedy, to terminate this Agreement and to retain the Earnest Money as liquidated damages. The parties agree that in the event of default by Buyer, subject to the expiration of the cure period above, Seller's damages will be difficult or impractical to ascertain and the Earnest Money will be deemed to constitute a reasonable estimate of Seller's damages and shall not be deemed to constitute a forfeiture or penalty. Seller shall not have the right to recover any other damages of any kind from Buyer or to obtain other equitable adjustment to the terms of the sale of the Property.

14.2 If Seller defaults on any of its material obligations under this Agreement and fails to cure such default within ten (10) days after receiving written notice thereof, Buyer shall be entitled to exercise any remedies available to Buyer at law or equity for a default by Seller hereunder including, without limitation, (i) the immediate return of the Earnest Money, along with any interest thereon, (ii) to apply for and to receive from a court of competent jurisdiction equitable relief by way of specific performance to enforce Seller's performance of the terms of this Agreement, and/or (iii) to seek and recover from Seller damages for nonperformance of this Agreement for all of Buyer's out-of-pocket costs and fees, including without limitation, reasonable attorneys' fees, accountants' fees and other consultants' fees incurred by Buyer in preparing and negotiating this Agreement, preparing for the closing, obtaining financing commitments, investigating the status, title and condition of the Property, and other similar and reasonable costs and expenses.

14.3 If either party hereto shall bring suit against the other to enforce the terms of this

Agreement, the losing party shall pay to the prevailing party the prevailing party's cost and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in enforcing such prevailing party's rights under this Agreement.

15. Miscellaneous Provisions.

15.1 Entire Agreement. This Agreement comprises the entire agreement between Buyer and Seller and any amendment to this Agreement shall be in writing only, signed by Buyer and Seller.

15.2 Text To Control. The headings of paragraphs are included solely for convenience. If a conflict exists between any heading and the text of this Agreement, the text shall control.

15.3 Extensions And Modifications. No extension, modification, or supplement to this Agreement will be effective unless made in writing and signed by each party, except as otherwise permitted herein.

15.4 Further Acts. Each party hereto agrees to do such further acts and execute, deliver, file and record such further documents and instruments as may be reasonably necessary to effectuate, evidence, and record the transactions contemplated by this Agreement.

15.5 Severability. The invalidity or unenforceability of any term or terms of this Agreement shall not invalidate, make unenforceable or otherwise affect any other term of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted, and in such event, the remaining terms of this Agreement shall remain in full force and effect.

15.6 Governing Law; Parties in Interest. This Agreement shall be governed by and be construed in accordance with the laws of the State of North Dakota.

15.7 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday.

15.8 Time of the Essence. All times, wherever specified herein for the performance by Seller or Buyer of their respective obligations hereunder, are of the essence of this Agreement.

15.9 Assignment. Neither party shall be entitled to assign or convey any interest in this Agreement to any third party, without first obtaining the prior written consent of the other party.

15.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument.

17. Notices. All notices and other communications in respect to this Agreement shall be deemed to have been duly given, if in writing and delivered personally or if mailed in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, or via facsimile, properly addressed to the parties as provided for in the first paragraph of this Agreement, or any nationally recognized overnight carrier.

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

SELLER:

**The City of Grand Forks, North Dakota**

By:   
Name: MICHAEL R. BROWN  
Its: Mayor

BUYER:

**The Housing Authority of the  
City of Grand Forks**

By:   
Name: CURTISS KREUN  
Its: Chairman

**AMENDMENT NUMBER ONE (1) TO PURCHASE AGREEMENT BETWEEN  
THE CITY OF GRAND FORKS, NORTH DAKOTA, AND THE HOUSING  
AUTHORITY OF THE CITY OF GRAND FORKS, NORTH DAKOTA, DATED  
SEPTEMBER 21, 2016**

**THIS AMENDMENT NUMBER ONE (1)**, entered into this \_\_\_\_\_ day of December, 2016, is made to the Purchase Agreement made and entered into on the 21<sup>st</sup> day of September, 2016, between The City of Grand Forks, North Dakota, hereinafter the "Seller," and The Housing Authority of the City of Grand Forks, North Dakota, hereinafter the "Buyer."

**WITNESSETH:**

**WHEREAS**, Seller is the owner of real estate, together with any improvements located thereon, the address for which is 500 1<sup>st</sup> Avenue South, Grand Forks, North Dakota, which is situated in the County of Grand Forks and State of North Dakota, legally described as follows (the "Subject Property"):

*Lots 5, 6 & 7, Block 1, Renewal Resubdivision No. 6  
Plat at 152 Deeds, Page 324*

**WHEREAS**, Buyer desires to purchase the Subject Property and pay Seller under the terms and conditions stated in the Purchase Agreement dated September 21<sup>st</sup>, 2016 with certain terms amended herein.

**NOW, THEREFORE**, it is hereby agreed that the terms of the September 21<sup>st</sup>, 2016 Purchase Agreement shall be amended as follows:

1. Closing Date and Transfer of Possession. Closing of this transaction shall take place on or before April 30th, 2017 (the "Closing Date") and shall occur at a place as Seller and Buyer may determine. Buyer shall take possession of the Subject Property upon Closing Date.
2. Effect. Except as modified by this Amendment Number One (1), all the provisions of the Purchase Agreement dated September 21<sup>st</sup>, 2016 continue in full force and effect.

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

SELLER:

The City of Grand Forks, North Dakota

By: \_\_\_\_\_  
Mayor Michael R. Brown

BUYER:

The Housing Authority of the City of Grand  
Forks, North Dakota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_