

BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY

Special Meeting Agenda
Monday, October 3, 2011

**City Hall
Council Chambers
7:00 P.M. (or soon thereafter)**



1. CALL TO ORDER

2. CONSIDER APPROVAL OF AMENDMENT TO AN AGREEMENT FOR PROFESSIONAL REAL ESTATE BROKERAGE SERVICES (FOR SALE OR LEASE OF PROPERTY) WITH NORTH CENTRAL COMMERCIAL REAL ESTATE LLC

3. ADJOURN

AGREEMENT FOR PROFESSIONAL REAL ESTATE BROKERAGE SERVICES

(FOR SALE OR LEASE OF PROPERTY)

THIS REAL ESTATE BROKERAGE SERVICES AGREEMENT is entered into as of the 22nd day of November 2010, by and between the **City of Bemidji, MN, and the Bemidji Economic Development Authority (together referred to herein as "City/BEDA") ("Owners")**, and **North Central Commercial Real Estate LLC ("NCCRE")**.

RECITALS:

Whereas, the City of Bemidji (the "City") is a Home Rule Charter City under the laws of the State of Minnesota, vested with all the powers and authority inherent in or incidental to Municipal Government not expressly limited or restricted by the Constitution or laws of the State of Minnesota, and including but not limited to, the authority to sell real property and to contract for professional services to assist with the development and sale of such property; and,

Whereas, the Bemidji Economic Development Authority (the "BEDA") was created by the City of Bemidji by its adoption of Ordinance Number 87, Second Series, dated October 16 1989, whereby the BEDA Board was granted all of the powers, rights, duties, and obligations as set forth in Minnesota Statutes §§469.090 through 469.1082, and including the authority to sell real property owned by it within the City or in an economic development district if it determines that the sale and conveyance are in the best interests of the city or district and its people, and that the transaction furthers its general plan of economic development; and

Whereas, the BEDA has caused real property it owns along the south shore of Lake Bemidji in the City and within the Economic Development District established under BEDA Resolution No. 15, to be platted into what is known as "South Shore Addition", and a number of the lots platted therein are intended for sale for commercial development purposes (the "BEDA Property"); and

Whereas, the City owns several parcels of property located along Highway 197 and Shevlin Avenue in the City, commonly known as the "Former MnDOT Headquarters Site" (the "City Property"), and which City Property is no longer needed for municipal use and which the City desires to sell for redevelopment purposes (together the BEDA and City Property are referred to herein as the "Properties"); and

Whereas, NCCRE, in cooperation with the Headwaters Regional Development Commission (hereinafter the "HRDC"), has offered to assist the City/BEDA in the development, marketing and sale of the Properties, and the City/BEDA have already agreed to accept the HRDC's development assistance, and are agreeable as well to contracting for the professional real estate brokerage services of NCCRE to market (list) the Properties, identify and advertise for prospective purchasers, and to represent and assist the City/BEDA in negotiations for the sale and conveyance of the Properties, subject to the terms and conditions agreed to hereinafter.

Now, therefore, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Contact Person: *NCCRE:* Russell McGinty, Chief Manager
Address: 1075 Marsh Ridge Circle
Maple Plain, MN 55359
Phone: (612) 619-9611
Cell:
Email: russ.mcginty@frontiernet.net

City/BEDA: John Chattin, City Manager/BEDA Executive
Director
Address: 317 4th street N.W.
Bemidji, MN 56601
Phone: (218) 759-3565
Cell: (218) 368-9316
Email: jchattin@ci.bemidji.mn.us

I. Description of Brokerage Services to be Provided.

A. Services Provided to the City of Bemidji:

1. This Agreement shall serve as a Listing Agreement with NCCRE for the City Property described in Exhibit B attached.
2. NCCRE shall serve as the City's Real Estate Broker respecting the marketing, advertising and sale of the City Property, and in that capacity shall solely represent the City and act on its behalf and in its best interests, unless and until the City should subsequently modify that relationship through agreement to a "Dual Agency" relationship as defined in Article VI hereinafter.
3. NCCRE acknowledges and agrees that all negotiations for a sale or lease of the City Property is/are subject to the final approval of the Bemidji City Council. NCCRE further understands and acknowledges that according to its Home Rule Charter, the City cannot sell and convey real property except by ordinance, which ordinance process includes three (3) readings (typically three consecutive City Council meetings) with the second reading being a public hearing, and that an ordinance does not take effect until 30 days after publication in the City's official newspaper. Furthermore, NCCRE acknowledges and understands that no ordinance can be adopted at the meeting at which it is introduced and that at least three (3) weeks must elapse between the ordinance's introduction and its final passage.
4. NCCRE further understands and agrees that the BEDA's Proposal Review Committee must review and recommend approval of any Development Proposal for City Property sold pursuant to this Agreement, and that the BEDA's Design Review Committee must also review and approve of the design, appearance, and exterior materials used for any proposed construction in the development of the Property.

B. Services Provided to the BEDA:

1. This agreement shall serve as a Listing Agreement with NCCRE for the BEDA Property described in Exhibit B attached.

2. NCCRE shall serve as the BEDA's Real Estate Broker respecting the marketing, advertising and sale of the BEDA Property, and in that capacity shall solely represent the BEDA and act on its behalf and in its best interests, unless and until the BEDA should subsequently modify that relationship through agreement to a "Dual Agency" relationship as defined in Article VI hereinafter.
3. NCCRE acknowledges and agrees that all negotiations for a sale or lease of the BEDA Property is subject to the final approval of the BEDA BOARD. NCCRE further acknowledges and understands that the BEDA can only sell real property owned by the BEDA in accordance with the powers, procedures and conditions set forth under Minnesota Statutes Section 469.105, and that the conditions codified under and/or set pursuant to Sections 469.90 to 469.108 shall be incorporated into any conveyance of property as a covenant running with the land. Furthermore, NCCRE understands that the aforementioned statutory requirements prohibit any delegation of BEDA authority to NCCRE to finally approve and authorize the sale of BEDA Property.
4. NCCRE further understands and agrees that the BEDA's Proposal Review Committee must review and recommend approval of any Development Proposal for BEDA Property sold pursuant to this Agreement, and that the BEDA's Design Review Committee must also review and approve of the design, appearance, and exterior materials used for any proposed construction in the development of the Property.

C. Subject to the foregoing terms, conditions and requirements, as well as the terms and conditions hereafter set forth, Owners hereby employ NCCRE and grant to NCCRE the exclusive right to assist Owners with the negotiation and sale or lease of the Properties shown on Exhibit "B" attached hereto. This Agreement shall apply to all portions of or individual parcels within the described Properties.

D. NCCRE hereby accepts said Agreement and agrees to use its continuing and good faith efforts to affect a sale or lease of the Properties upon the minimum terms and conditions specified herein or on such other terms and/or conditions as Owners may direct or agree upon from time to time in writing as determined by the respective approval processes described in Subparagraphs A. and B. above.

NOTICE: THE COMMISSION RATE FOR THE SALE, LEASE, RENTAL OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS CLIENT.

II. Term of Agreement.

The term of this Agreement ("**Term**") shall commence on the date hereof and end at midnight on November 30, 2011. This agreement may be terminated by either party with 60-day advance written notice.

III. Commission Arrangements

1. Sale Brokerage Commission Fee

Six (6%) percent of the gross sales price for sales or ground leases sourced by NCCRE. For sales transactions that involve an outside broker the sales fee shall be Eight (8%) percent of the gross sales price. Sale commission will be shared equally between the listing broker and the outside broker and shall be payable at closing.

It is further agreed that Owners shall pay NCCRE a Brokerage fee upon occurrence of any of the following conditions:

- a. The sale and conveyance of the Property listed in Exhibit B attached, or execution of contract for deed for said Property, or the execution of a lease of all or a portion of the said Property, or an exchange of all or a portion of the said Property during the period of this Agreement by NCCRE, in accordance with the price, terms, or exchange as set forth herein or as otherwise authorized and agreed to by Owner(s).
- b. If Owner(s) grants an option to purchase any or all of the Property listed in Exhibit B attached, Owner(s) shall pay NCCRE a sales commission in the percentage provided herein based on the price paid for the option and for any extensions thereof. In the event such option is exercised, whether during the term of this Agreement, or thereafter, Owner(s) shall also pay NCCRE a sales commission on the gross sales price of the Property in accordance with the provision herein, less the sales commission paid in relation to the option.
- c. Within the "Override Period" (as defined below), Owner(s) enters into any of the transactions set forth in clauses a. or b. above with anyone who has made an affirmative showing of interest in the Property by responding to an advertisement or by contacting NCCRE or its salesperson involved or has been physically shown the Property by NCCRE or its salesperson. It is understood that NCCRE shall not seek to enforce collection of a commission under this subparagraph 1.c. unless the name of the prospect is on a written list given to Owners within seventy-two (72) hours after expiration of this Listing Agreement. The protection list shall include the following language:

IF YOU RELIST WITH ANOTHER BROKER WITHIN THE OVERRIDE PERIOD AND THEN SELL OR LEASE YOUR PREMISES TO ANYONE WHOSE NAME APPEARS ON THE LIST, YOU COULD BE LIABLE FOR FULL COMMISSION TO BOTH BROKERS. IF THIS NOTICE IS NOT FULLY UNDERSTOOD, SEEK COMPETENT ADVICE.

"**Gross Sale Price**" as used herein shall mean the total amount to be paid or value of other consideration given for the Property including assumption of existing liabilities or the listed gross sales price, as the case may be.

"**Override Period**" shall mean the period of time within one hundred twenty (120) days after the expiration of the Term.

Owners hereby authorizes NCCRE to disburse part of NCCRE's commission, which may become due and payable hereunder, to any cooperating broker, including brokers solely representing buyers of the Property, in accordance with industry practice or agreements with any such brokers.

2. **Non-Commission Fee Transactions.**

Sale or Lease transactions involving the following potential Purchasers, Buyers, or Lessees of the Properties hereunder shall not be subject of a sales commission under this Agreement:

- ✓ **Ray Brenny/Holiday Inn Resorts Remove from list deal is past expiration date**
- ✓ **Drew Olson/Bemidji Lodge Remove from list deal is past expiration date**

- ✓ **Tom Hanson (Zorbaz) Remove from list**
- ✓ **Mitch Ratio (Keg N Cork) Remove from list deal is past expiration date**
- ✓ **Sheila Johnson (?) Remove from list deal is past expiration date**
- ✓ **Minnesota Department of Natural Resources**
- ✓

The exclusion of the above referenced prospects shall continue thru June 1, 2011. In the event negotiations have ceased or a letter of intent or purchase agreement has not been delivered to the City of Bemidji by buyer, the above stated exclusions shall be removed from the listing agreement.

3. **Expenses.**

The expenses incurred by NCCRE and OWNERS in performance of this Agreement shall be borne as follows:

- a. Signage, mail campaigns, advertising, marketing material, staffing, and other relative travel and entertainment expense shall be on at NCCRE'S expense.
- b. All other expenses, including but not limited to, direct expenses such as appraisal fees, title charges and fees, survey charges and fees, attorneys fees for preparing or negotiating purchase agreements and environmental reports shall be at Owners' expense.

4. **Signs and Advertisements.**

NCCRE is authorized to advertise the Property in whatever manner it deems appropriate and to contact such other brokers as may, in NCCRE'S judgment, assist in concluding a sale or lease of the Properties. NCCRE is further authorized to place signs in and about the Properties if, in NCCRE'S opinion, such would facilitate the leasing or sale of the Properties.

IV. Owners Responsibilities.

1. Furnish NCCRE with pertinent information regarding: (i) the status of established tenants, including rent rolls which, among other data, set forth lease expirations, (ii) the environmental status of the Properties, including information on wells or septic systems, above or below ground tanks, and environmental reports which have been performed with respect to the Properties.
2. Prepare Purchase Agreements and or proposed Lease Agreements for execution with Buyers and/or Lessees.
3. It is further agreed that **Owner** shall permit NCCRE to erect an "Available" sign on the Properties and to remove all other "For Sale or For Lease" signs from the Properties during the period of this Agreement. It is further agreed that Owners shall permit NCCRE to erect a "Sold or Leased" sign on the Property(s) for a period of thirty (30) days following the sale, lease or exchange of any property by NCCRE.
4. Forward to NCCRE any inquiry of any sort received with regard to the sale or lease of the Properties or any portion thereof.

Owners warrant that they are the record fee Owners of the Properties and have the legal authority to enter into this Agreement. Owners agree to hold NCCRE harmless from any liability, damages, costs, and expenses arising from any incorrect information supplied by Owners.

Owners do not request NCCRE to arrange for closing services. Owners will separately arrange for their closing services arising out of any lease of the Property(s).

V. NCCRE Agrees That It Shall:

1. Endeavor to procure buyers or tenants by all reasonable means available, including direct solicitation, consultation, and marketing presentations, mail campaigns, processing of inquiries received from any and all sources and advertising, all as NCCRE deems prudent.
2. Provide Owners with reports detailing the status of the sale/leasing program as such times as Owners shall reasonably request.

VI. NCCRE's Warranties.

NCCRE warrants that it is a duly licensed broker under the laws of Minnesota and that all agents and salespersons working for NCCRE in connection with the Properties are also duly licensed salespersons and/or brokers under the laws of Minnesota. NCCRE further warrants that it has the legal authority to enter into this Agreement. NCCRE agrees to hold Owners harmless from any liability, damages, costs and expenses arising from any incorrect information (unless supplied by Owners) given by NCCRE to others with respect to the Properties.

Though NCCRE is the Owners' representative under this Agreement, it has represented buyers and tenants looking for property including properties which may be similar to the Properties herein. If a potential buyer or tenant previously represented by NCCRE becomes interested in the Properties, a dual agency circumstance could be created. This means that NCCRE would owe the same duties to the potential buyer or tenant that it does to the Owners. NCCRE cannot act as a dual agent unless both Owner(s) and the potential buyer or tenant agrees to the dual agency after it is disclosed to each of Owner(s) and the potential buyer or tenant. By agreeing to a possible dual agency, Owners would be giving up the right of exclusive representation in the proposed transaction; however, if Owners decide not to agree to a possible dual agency, it may be giving up the opportunity to sell or lease the Property(s). Having read and understood the foregoing, NCCRE and Owners agree to discuss the creation of dual agency representation should the circumstance arise, and to do so on a case by case basis, and Owners do not foreclose herein the opportunity to consider offers made by potential buyers or tenants previously represented by NCCRE.

VII. Miscellaneous. (reserved)

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective the day and year first above written.

Accepted by:

CITY OF BEMIDJI, MN

By _____
John M. Chattin
Its City Manager

317 4th Street NW
Bemidji, MN 56601
218-759-3565

Accepted by:

**BEMIDJI ECONOMIC
DEVELOPMENT AUTHORITY (BEDA)**

By _____
John M. Chattin
Its Executive Director

317 4th Street NW
Bemidji, MN 56601
218-759-3565

NORTH CENTRAL COMMERCIAL REAL ESTATE LLC

By _____
Its _____

1075 Marsh Ridge Circle
Maple Plain, MN 55359
Telephone: (612) 619-9611
russ@nccrealestate.com