

BEMIDJI CITY COUNCIL REGULAR MEETING AGENDA

Monday, January 5, 2026

**Council Chambers
City Hall – 317 4th Street NW
6:00 PM**



ROLL CALL

PLEDGE OF ALLEGIANCE TO THE FLAG

AMENDMENTS TO THE AGENDA

MINUTES

- 1) November 17, 2025 Council Meeting
November 24, 2025 Work Session

CONSENT AGENDA #1

Items in the Consent Agenda are approved with one motion without discussion/debate. The Mayor will ask if any Councilmember wishes to remove an item. If no items are to be removed, the Mayor will then ask for a motion to approve the Consent Agenda.

- 2) Claims Submitted by Finance Officer in the Amount Of \$1,161,855.38
- 3) Claims Submitted by Legends Global for the Sanford Center in the Amount of \$128,766.69
- 4) Approve November Financials from Legends Global for the Sanford Center
- 5) 2026 Business License Approvals
- 6) Designate Mayor Pro Tem
- 7) Designate Official Newspaper of Publication for 2026
- 8) Approve City Council Commission/Committee Assignments for 2026
- 9) Approve Appointment of Councilmember Designees for City Manager Annual Performance Evaluation Process
- 10) Approve Appointment of Debra Faver to the Parks and Recreation Commission
- 11) Approve Special Event Permit for Let's Plant Trees (May 2-3)
- 12) Approve Special Event Permit for March for Life (January 24)
- 13) Approve Purchase of 2025 Altoz XP 610 HDi Mower in the Amount of \$13,123.17 (Parks)
- 14) Approve Purchase of a Bobcat SG 60 Stump Grinder in the Amount of \$10,178.13 (Parks)
- 15) Approve Purchase of 2025 Toro Field Pro 6040 in the Amount of \$47,003.72 (Parks)
- 16) Approve Purchase of Garbage Receptacles in the Amount of \$15,483.88 (Parks)
- 17) Approve Crossing Surface Installation Agreement with BNSF
- 18) Approve 5th Street NW Easement Agreement with BNSF

- 19) Approve Sidewalk Construction and Maintenance Agreement with BNSF
- 20) Approve MOU's with Local #49
- 21) Approve MOU's with UFCW 1189
- 22) Resolution Accepting Donation for Casting with Cops
- 23) Approve Council Travel Authorization-2026 Elected Leaders Institute-Plymouth, February 6-7 - Fiskevold Gould

CONSENT AGENDA #2

- 24) Approve Tourist Information Center Lease Agreement
- 25) Claims Submitted by Finance Officer to Visit Bemidji in the Amount of \$36,660.97

CITIZENS WITH BUSINESS BEFORE THIS COUNCIL-NOT ON AN AGENDA

Public Comment – Please give your name, address, and state your concern/comment. Visitors may share their concerns with City Council on any issue, which is not already on the agenda. Each person will have 3 minutes to speak. The Mayor reserves the right to limit an individual's presentation if it becomes redundant, repetitive or overly argumentative. The Mayor may also limit the number of individual presentations on any issue to accommodate the scheduled agenda items. COMMENTS WILL BE TAKEN UNDER ADVISEMENT BY THE COUNCIL.

ORDINANCES

- 26) a. Public Hearing of an Ordinance Granting to Minnesota Energy Resources Permission to Construct, Operate, Repair and Maintain in the City of Bemidji a Gas Distribution System (Franchise)
 - b. First Reading of Said Ordinance

BUSINESS

- 27) Consider Creation of Council Budget Committee for 2026

COUNCIL COMMITTEE REPORTS

UPCOMING MEETINGS

- 28) January 12, 2026 (5:30 pm) - Planning Board
- January 20, 2026 (6:00 pm) - Council Meeting
- January 26, 2026 (5:30 pm) - Work Session- 2026 Initiatives and Priorities

ADJOURN

RECONVENE AS BEDA FOR ANNUAL MEETING

CITY COUNCIL PROCEEDINGS
BEMIDJI, MINNESOTA
Regular Meeting – November 17, 2025

DRAFT

Pursuant to due call and notice, a regular meeting of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Monday, November 17, 2025, at 6:00 p.m. in the Council Chambers of City Hall, Mayor Prince presiding.

Upon roll call, the following Councilmembers were declared present: Prince, Fiskevold Gould, Peterson, Dickinson, Rivera, Eaton, Thayer.

Staff Present: City Manager Rich Spiczka, City Engineer Sam Anderson, Planning Director Jamin Carlson, Finance Director Donna Coe, City Clerk Michelle Miller

AMENDMENTS TO AGENDA

Mayor Prince called for any amendments to the agenda. **Motion by Peterson, seconded by Thayer, approving the agenda as presented. Motion carried by unanimous voice vote.**

MINUTES

The following minutes were presented for approval:

October 6, Council Meeting

Motion by Eaton, seconded by Dickinson, approving minutes as presented. Motion carried by unanimous voice vote.

CONSENT AGENDA

Mayor Prince called for any amendments to be made to Consent Agenda. The following Consent Agenda items were presented for approval. **Motion by Fiskevold Gould, seconded by Thayer, to approve Consent Agenda as follows:**

1. Claims Submitted by Finance Officer in the Amount Of \$1,629,009.42
2. Claims Submitted by ASM Global for the Sanford Center in the Amount of \$67,598.07
3. 2026 Business License Approvals
4. 2026 Liquor, Sunday Liquor and Wine License Renewals
5. Approve Special Event Permit for Kids Dash (November 28)
6. Approve Special Event Permit for Reindeer Run (November 29)
7. Approve Hardship Assessment Deferral for Property at 1414 Norton Ave NW - City Project 25-01
8. Approve Hardship Assessment Deferral for Property at 819 14th Street NW - City Project 25-01
9. Approve Hardship Assessment Deferral for Property at 1611 Park Ave NW - City Project 25-02
10. Approve CIP Requests for the Sanford Center
11. Approve Purchase of 2026 Police Patrol Vehicles
12. Approve MOU Between MN DOT and the City of Bemidji
13. Authorize Grant Funding Application to MN DNR for Personal Protective Gear
14. Approve Memorandum of Understanding with McKinstry Essention LLC for a No Cost Preliminary Energy Evaluation
15. Approve Policy Regarding Minnesota Paid Family Leave

Motion carried by unanimous voice vote.

CITIZENS WITH BUSINESS NOT ON AGENDA

- Charles Biberg, 1109 Beltrami Ave NW, addressed council on the unfair enforcement of parking tickets.

ORDINANCES

Ordinance Amending 2026 Fee Schedule

Staff stated that fire inspection fees needed to be reduced for childcare/foster care, commercial property, and pyrotechnics from \$55 to \$50 to comply with statutory limits. Staff also stated that the 95-gallon residential refuse rate needed to be changed to \$18.50/week to match the 65-gallon rate.

Public Hearing of an Ordinance Amending Fee Schedule for 2026

Pursuant to published notice a public hearing was held regarding input on an Ordinance Amending Fee Schedule for 2026. Mayor Prince opened the Public Hearing at 6:14 p.m.

Councilmember Rivera proposed an increase to the annual renewal fees for long-term rental property business licenses by 10%, noting rental renewal fees haven't been meaningfully adjusted in several years. This increase would be for the 1 unit residential, duplex residential and multi-unit residential annual fees. Thayer noted concern that landlords might pass this increase onto tenants.

Spiczka provided clarification on the changes to the park fees.

Motion by Fiskevold Gould, seconded Rivera accepting the changes to the Ordinance Amending 2026 Fee Schedule. Motion carried by unanimous voice vote.

Motion by Rivera, seconded by Eaton, to increase the long-term rental property, business license, annual renewal for all single unit to multi-unit residential buildings by 10%. Motion carried by the following roll call vote: Yeas: Peterson, Thayer, Fiskevold Gould, Prince, Rivera, Eaton, Dickinson.

Hearing no public comments Prince closed the Public Hearing at 6:30 p.m.

First Reading of Said Ordinance

AN ORDINANCE Amending Fee Schedule for 2026 was given a first reading.

REPORT

Emily Thabes, Executive Director for Beltrami County History Center provided a report highlighting the following:

- Their 2025 theme was "Empowering Women," with year-long programs highlighting women's history, health, and leadership in the county. Major initiatives included monthly women's panels, community workshops, health equity programming, and art collaborations.
- The society completed a grant-funded shelving upgrade to preserve over a million county archives.
- A major ongoing project is the digitization of approximately 50,000 negatives from the Bemidji Sherling Studio (1937–1975), with support from the Minnesota Digital Library. Once digitized, these historical photos will be accessible online, and workshops will help families search for portraits.
- In 2026, they will launch the "Voices of the Mississippi" oral history project, aiming to record at least 100 residents' stories of community, migration, and identity.
- The History Center is undergoing a major exhibit redesign with an advisory committee for community inclusiveness, targeted to open in late 2026.
- Facility upgrades (notably to HVAC) are nearly complete, improving preservation conditions.

BUSINESS

Consider Solar Developer Contract for Water Treatment Plant Rooftop Solar Array

Anderson reported that the Water Treatment Plant - Phase 2 project design included future accommodations for adding a solar array on the Phase 2 rooftop when the main facility construction

was completed. Now that the contract 1-year warranty periods are close to expiring, staff have completed a Request for Proposal (RFP) process with the assistance of the Minnesota Department of Administration State Procurement office to select the most qualified pre-approved solar developer to install the solar array on the City's behalf.

Two solar developers submitted proposals that were scored by city staff, and Wolf Track Energy was the highest scoring proposal. Below are the two developers and submitted pricing:

Wolf Track Energy - \$155,124.00 or \$2.78 (\$/watt DC)
Cedar Creek Energy - \$122,774.40 or \$3.024 (\$/watt DC)

The solar array should be eligible for the currently available 30% federal tax credits and Ottertail Power has tax rebates up to \$1500/KW (or up to \$60,000 maximum) available to assist with project costs. The RFP also included language that has the selected solar developer submitting for the currently available "Solar on Public Buildings Program" grant, which provides up to 70% project funding not to exceed \$112,000, if selected. Any gap in funding not covered by a combination of these funding sources would then come from our City's Water Utility Fund. The solar array would be scheduled to be installed and online by Summer 2026.

Questions and concerns were raised regarding the award of the grants, the impact to the utility fund if grants are not awarded the long-term maintenance and return on investment of the solar array.

Motion by Rivera, seconded by Thayer authorizing the Mayor and City Manager to finalize and execute a contract with Wolf Track Energy to install a solar array on the Water Treatment Plant - Phase 2 facility in an amount not to exceed \$160,000. Motion carried by the following roll call vote: Yeas: Prince, Rivera, Thayer, Dickinson, Eaton, Fiskevold Gould, Peterson.

Consider Solar Developer Contract for City Facilities

At the October 20 council meeting, council approved submission of RFPs regarding solar installations for city facilities through the MN Commerce Department Solar on Public Buildings Grant. Only one solar developer, Wolf Track Energy, submitted proposals that were submitted to city staff for those locations. Their proposals are attached to this memo. Below is the submitted pricing:

Wolf Track Energy
- Fire Station 2: \$104,129.72 or \$3.94 (\$/watt DC)
- Sanford Center: \$159,864.62 or \$2.90 (\$/watt DC)
- Curling Club: \$127,481.38 or \$3.54 (\$/watt DC)
- City Park Warming House: \$159,995.37 or \$2.90 (\$/watt DC)

The solar arrays should be eligible for the currently available 30% federal tax credits and Ottertail Power has tax rebates up to \$1500/KW (or up to \$60,000 maximum) available to assist with project costs. The RFP also included language that has the selected solar developer submitting for the currently available "Solar on Public Buildings Program" grant, which provides up to 70% project funding not to exceed \$112,000 per project, if selected. Any gap in funding not covered by a combination of these funding sources would then come from other funding sources. The solar arrays would be scheduled to be installed and online by Summer 2026.

During consideration of solar installations for additional city facilities, the council discussed several key points and concerns:

- Councilors asked how and why certain city facilities were chosen for solar installations. Staff explained that selections were based on feasibility (roof orientation, age, existing utility connections, available open space) and quick turnaround to meet grant deadlines.
- Specific discussion focused on whether some sites (like city park) were appropriate for ground-mounted arrays, with councilmembers concerned about preserving usable public space and visual impact.

- There was repeated concern about financial risk if only the 70% state grant was secured, leaving the city potentially responsible for covering up to 30% of project costs (about \$150,000). Staff could not specify exact funding sources for this contingency, raising concerns about budget impact, especially given recent storm recovery expenses.
- Council and staff reviewed the process whereby the contractor requires an authorization to apply for grants but clarified that the project would not proceed if grant funding wasn't secured.
- Questions were raised about whether some of the projects (such as at the curling club) would generate savings for the city if utilities were paid by tenants or clubs, rather than by the city itself.
- The council discussed possibly scaling back or removing projects/sites from the plan if costs exceeded grant funding or if logistical problems arose at sites.
- Staff noted that the timeline was accelerated due to imminent grant deadlines and that detailed contract language (including deposit/refund clauses) would be developed, with projects brought back to council should circumstances change.
- There was some uncertainty and discomfort with the rushed process, unknowns regarding project scale or precise city cost share, and a desire to confirm legal review of contracts before any money was expended.

Motion by Rivera, seconded by Thayer, authorizing the Mayor and City Manager to finalize and execute a contract with Wolf Track Energy to install a solar array on the four City locations not to exceed \$552,000. Motion carried by the following roll call vote: Yeas: Eaton, Prince, Thayer, Dickinson, Rivera, Fiskevold Gould. Nays: Peterson.

COUNCIL COMMITTEE UPDATES

- Councilmember Eaton reported on upcoming meetings with animal ordinance review, library board and airport.
- Councilmember Rivera had no report.
- Councilmember Eaton Thayer attended CGMC board meeting and conference.
- Councilmember Peterson reported on fire department relief association and upcoming Heritage Preservation Commission.
- Councilmember Fiskevold Gould had no report.
- Councilmember Dickinson had no report.
- Mayor Prince attended LMC meeting, Greater MN Housing meeting and CGMC conference.

UPCOMING MEETINGS

- November 24, 2025 (5:30 pm) - Work Session (2026 Budget/Levy Discussion and Comp Plan Report by HRDC)
- December 1, 2025 (6:00 pm) - Council Meeting
- December 8, 2025 (5:30 pm) - Work Session
- December 15, 2025 (6:00 pm) - Council Meeting
- December 22, 2025 (5:30 pm) - Work Session

ADJOURN

There being no further business, motion by Peterson, seconded by Eaton, to adjourn the meeting. Motion carried by unanimous voice vote. Meeting adjourned at 7:33 p.m.

Respectfully submitted,



Michelle R. Miller
City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Work Session – November 24, 2025

DRAFT

Pursuant to due call and notice, a work session of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Monday, November 24, 2025 at 5:30 p.m. in the Council Chambers of City Hall, Mayor Prince presiding.

Upon roll call, the following Councilmembers were declared present: Prince, Fiskevold Gould (5:33), Peterson, Dickinson, Rivera, Eaton, Thayer.

Present: Rich Spiczka, Michelle Miller, Anna Carlson, Naomi Carlson

Comprehensive Plan Update from HRDC

The process began with HRDC outlining their engagement-focused approach, guided by the principle "if you want to go far, go together." Over the preceding 10 months, HRDC conducted community outreach through events like picnics, surveys, and one-on-one meetings to build relationships and gather initial feedback. The goal of the current phase is to work with the City Council to establish alignment, clarity, and shared leadership for the plan's future direction. HRDC explained their methodology was designed to build a unified vision and momentum that would outlast the planning document itself.

Proposed Structure for the Comprehensive Plan

After initial feedback, HRDC presented a revised proposal to streamline the plan's focus. This new structure consists of four main priority areas and four cross-cutting themes:

- **Priority Areas:**
 1. Housing
 2. Transportation, mobility, and parking
 3. Business development
 4. Quality of life (including arts, education, and health)
- **Cross-Cutting Themes:**
 1. Land use and zoning
 2. Safety, security, and emergency response
 3. Sustainability (air, water, land, waste, energy)
 4. Community partnerships and ongoing engagement

Council Feedback and Key Priorities

Councilmembers provided extensive feedback on the proposed structure and the overall process, highlighting several key priorities:

- **Housing and Business Development:** There was a strong consensus that housing is the number one priority, followed closely by business development and job creation. Councilmembers emphasized that growing the tax base through development is essential to fund all other city initiatives.
- **Removing Barriers:** A recurring theme was the need for the city to "get out of the way" by identifying and removing restrictive ordinances and other barriers that hinder housing and business development. A key question raised was what changes would encourage developers to build within the city limits rather than in surrounding townships.
- **Stakeholder Engagement:** The council stressed the critical importance of deeply engaging the business community, developers, and major employers. It was noted that the stakeholder list for engagement sessions needed to be expanded to include more local business leaders. Councilmembers should submit suggestions for the stakeholder list to the City Manager.

- **Scope of the Update:** HRDC clarified the process as an update to the existing 2016 plan, not a complete rewrite. However, some councilmembers stated that foundational elements like the city's mission, vision, and values needed to be revisited, as there might not be a current consensus on them.
- **Data and Accessibility:** The council requested a breakdown of community survey responses by ward for better analysis and asked that all future presentations be digitally accessible for screen readers and individuals with colorblindness.

Next Steps and Unresolved Issues

- **Refining Focus Areas:** The council did not formally adopt the proposed priority areas. HRDC will incorporate the council's feedback to refine the framework.
- **Stakeholder Engagement:** The consultants will update the stakeholder list with council suggestions and plan a series of 90-minute facilitated sessions focused on each priority area, with a specific focus on inviting business and development leaders.
- **Business Survey:** The distribution of a previously developed business survey with the Chamber of Commerce, which had been paused, was identified as a priority to gather crucial input.
- **Council/Staff Meeting:** The proposed luncheon for council and staff received mixed reactions. The idea was floated to potentially hold it as a "wrap-up" event after community feedback is gathered, but no decision was made.
- **Path Forward:** Councilmembers will send feedback on the proposed plan structure and stakeholder names to the City Manager. The consultants will then provide an updated model timeline and refined language for the council to review and act upon.

ADJOURN

There being no further business, motion by Fiskevold Gould, seconded by Thayer, to adjourn the meeting. Motion carried by unanimous voice vote. Meeting adjourned at 7:35 p.m.

Respectfully submitted,



Michelle R. Miller
City Clerk

Bill List Summary

January 5th, 226

<u>Check /Wire</u>	<u>Vendor</u>	<u>Amount</u>
ACH/Wire	Wolf Track Energy	\$70,493.64
44168 - 44260	See Attached List	<u>1,091,361.74</u>
		\$1,161,855.38
	TOTAL	\$1,161,855.38

Accounts Payable

Blanket Voucher Approval Document

User: denisea
Printed: 12/31/2025 - 2:05PM
Warrant Request Date: 1/6/2026
DAC Fund:



Batch: 00406.01.2026

COUNCIL BILL LIST

Line	Claimant	Voucher No.	Amount
1	Ace On The Lake	000044168	1,989.62
2	Acme Tools-Bemidji	000044169	58.13
3	Alltech Engineering Corp	000044170	6,359.70
4	Anderson, Todd	000000000	150.00
5	Arrow Printing	000044171	322.60
6	Artisan Beer Company	000044172	565.90
7	Auto Value Bemidji	000044173	599.16
8	Barr Engineering Co	000044174	61,633.90
9	Barr Engineering Company	000044175	612.00
10	Baycom, Inc.	000044176	2,675.60
11	Bellboy Corporation	000000000	4,329.95
12	Beltrami County Auditor/Treasurer	000044177	1,047.91
13	Bemidji Coca-Cola Bottling Co, Inc	000044178	518.95
14	Bemidji Paper Sales, Inc.	000044179	1,851.21
15	Bemidji State University	000044180	2,171.02
16	Bernick's	000000000	49,535.74
17	Bessler Electric	000000000	13,471.83
18	Bialozynski, John	000000000	52.00
19	BNSF	000044181	9,250.00
20	Bonded Lock & Key of Bemidji	000044182	612.54
21	Breakthru Beverage Minnesota Beer, LLC	000044183	1,456.45
22	Breakthru Beverage Minnesota Wine & Spirits, LLC	000044184	25,815.70
23	BW Distributing	000044185	360.00
24	Cenex Fleetcard	000044186	22,355.75
25	Christiansen Construction Co, Inc.	000044187	6,600.00
26	CivicPlus	000044188	14,413.46
27	Cleaning Maid Simple	000000000	1,915.00
28	CM2 Supply	000044189	199.17
29	Column Software PBC	000044190	198.84
30	Compass Minerals America Inc.	000044191	27,612.80
31	Core & Main	000044192	11,478.22
32	Crysteel Truck Equip., Inc	000044193	25,357.00
33	Dahlheimer Beverage Brainerd	000000000	4,651.63
34	DEMCO	000000000	230.08
35	DeZURIK, Inc.	000044194	6,531.81
36	Dick's Northside Service, Inc	000044195	12,580.20
37	Dick's Plumbing & Heating, Inc	000044196	16,182.12
38	DLT Solutions, LLC	000044197	4,931.15
39	Dondelinger Chev-Buick, Inc	000044198	15.42
40	D-S Beverages	000044199	49,617.84
41	Fastenal Company	000044200	36.53
42	Fed Ex	000044201	145.78
43	Firehouse LLC	000000000	24,049.24
44	Flaherty & Hood, P. A.	000044202	79,161.33

Page Total: \$493,703.28

Line	Claimant	Voucher No.	Amount
45	FleetPride, Inc.	000044203	209.05
46	Forestedge Winery	000000000	3,174.00
47	Forum Communications Company	000000000	1,405.00
48	Gaslin Garage Door	000044204	210.00
49	Graham,Greg	000000000	111.24
50	Grand Forks Fire Equipment LLC	000000000	2,779.44
51	Hach Company	000044205	3,579.20
52	Harris Mountain West LLC	000044206	2,210.51
53	Hawkins, Inc.	000044207	13,305.00
54	HBI Radio Bemidji	000044208	324.00
55	Herzog Roofing	000044209	59,375.00
56	HM Cragg Critical Power	000044210	68,461.41
57	Home City Ice Co.	000044211	389.42
58	Hunt Electric Corporation	000044212	1,515.25
59	Ironhide Equipment, Inc.	000000000	1,465.79
60	Jim Hirt Trucking, Inc	000044213	3,398.24
61	Joe's Northwoods Pest Control	000044214	107.50
62	Johnson Bros., Inc.	000044215	63,421.27
63	Johnson, Britani	000000000	150.00
64	Jon's Refuse Solutions, Inc	000044216	2,009.00
65	Katzenmeyer,Martin	000000000	186.98
66	Keller Fence Company-North, Inc	000044217	928.76
67	Kenny's	000044218	1,396.80
68	Larry's Machine Shop	000044219	362.31
69	LeadsOnline LLC	000044220	4,324.00
70	Locators & Supplies, Inc.	000000000	376.50
71	Lovold,Shawn	000000000	150.00
72	Macqueen Emergency Group	000000000	384.64
73	Marco, Inc.	000000000	1,231.60
74	Mastin,Mike	000000000	16.99
75	Maverick Beverage Company	000044221	2,577.70
76	McKinnon Co., Inc.	000044222	18,909.18
77	Menards-Bemidji	000044223	1,047.34
78	Mission Communications, LLC	000044224	7,288.87
79	MN Bureau of Criminal Apprehension	000044225	15.00
80	MN Dept of Revenue ACH	000000000	80,205.00
81	MN Energy Resources	000000000	21,181.89
82	MN North Customized Training Solutions	000044226	7,950.00
83	MN Rural Water Assn	000044227	425.00
84	MN Valley Testing Lab, Inc.	000000000	300.80
85	MN-LEAP	000044228	50.00
86	Moyer,Randy	000000000	14.00
87	NAPA Auto Parts/Premier	000044229	49.42
88	Naylor Heating & Refrigeration, LLC	000000000	171.55
89	NCL of Wisconsin, Inc	000000000	1,039.72
90	Nei Bottling, Inc.	000044230	256.50
91	Northern Rides Inc.	000044231	2,900.35
92	Northland Consulting Engineers LLP	000044232	1,710.00
93	NW MN Hazardous Waste Management	000044233	715.00
94	Olson,Cory	000000000	284.10
95	O'Reilly Auto Parts	000044234	22.39
96	Otter Tail Power Company	000044235	6,187.05
97	Paul Bunyan Communications	000044236	3,152.14
98	Paustis & Sons	000044237	5,034.00
99	Pemberton Law, P.L.L.P.	000044238	11,484.10
100	Peterson Sheet Metal, Inc.	000000000	1,614.77
101	Phillips Wine & Spirits	000044239	67,738.40

Page Total: \$479,283.17

Line	Claimant	Voucher No.	Amount
102	Quality Flow Systems, Inc.	000000000	21,700.00
103	Richards Publishing Company	000044240	60.00
104	RMB Environmental Laboratories, Inc.	000044241	1,380.45
105	Sanford Health	000044242	4,053.42
106	Sanitation Products Inc.	000044243	458.58
107	Schaeffer Mfg. Co.	000044244	435.54
108	SERVPRO of Edina/Eden Prairie	000000000	13,650.53
109	Short Elliott Hendrickson, Inc.	000044245	5,396.25
110	Skumavc,Kori	000000000	66.71
111	Smith,Skyler	000000000	277.31
112	Southern Glazer's of MN	000044246	29,836.46
113	Southside Tow & Rec, Inc	000044247	2,658.43
114	Staples Advantage	000044248	1,300.17
115	Stittsworth,Diana	000000000	59.15
116	Streicher's	000044249	3,225.30
117	Superior Outdoors LLC	000044250	631.14
118	T & K Outdoors, Inc.	000044251	75.00
119	TC Lighting Supplies & Recycling, Inc	000044252	2,250.00
120	Tennant Sales and Service Company	000044253	1,210.40
121	UPS Store	000044254	34.56
122	Vestis	000044255	1,562.06
123	Vinocopia, Inc.	000000000	8,521.27
124	W.D. Larson Companies LTD, Inc.	000044256	161.12
125	Wanco	000044257	256.00
126	Waste Management of WI-MN	000044258	14.95
127	Wes Plumbing & Heating	000044259	9,679.33
128	Wine Merchants	000044260	1,760.00
129	Ziegler, Inc.	000000000	7,661.16
Page Total:			\$118,375.29
Grand Total:			\$1,091,361.74

**Sanford Center
Cash Requirements
As of Jan 6, 2026**

Filter Criteria includes: 1) Invoices Due (no discount available). Report order is by ID. Report is printed in Detail Format.

Vendor	Description	Date	Amount Due
Advanced Business Integrations	Timeclock Software	12/18/25	<u>467.34</u>
ADP, Inc	Payroll Software	12/19/25	<u>800.24</u>
Amanda Schackman	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Hunt Electric Corporation	Annual Fire Alarm Service	12/23/25	<u>455.57</u>
Bemidji Coca-Cola Company	Inventory - Beverage	12/19/25	<u>1,198.32</u>
Bemidji Coop Assn	Gas Fuel	12/11/25	19.29
Bemidji Coop Assn	Gas Fuel	12/15/25	51.19
Bemidji Coop Assn	Gas Fuel	12/19/25	37.38
Bemidji Coop Assn	Gas Fuel	12/22/25	<u>48.70</u>
Bemidji Coop Assn	Bemidji Coop Assn		<u>156.56</u>
Brandon Mack	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Breakthru Beverage Mn Wine & Spirits	Inventory - Beverage and Liquor	12/18/25	<u>672.84</u>
Brille Design LLC	Event Chair Cover Rental Reimbursable	12/10/25	<u>275.08</u>
Bemidji State University	Event Laundry Service Reimbursable	12/30/25	<u>281.25</u>
Bemidji Youth Hockey Association	NPO Payment	12/21/25	<u>275.00</u>
Central McGowan Inc	Propane Fuel	12/15/25	322.52
Central McGowan Inc	Food and Beverage CO2	12/15/25	<u>203.11</u>
Central McGowan Inc	Central McGowan Inc		<u>525.63</u>
City of Bemidji	Utility - Water and Sewer	11/30/25	<u>5,938.16</u>
Commercial Refrigeration Systems, Inc	Ice Plant - Compressor Repair	12/29/25	<u>2,087.00</u>
Constellation Newenergy-Gas Div. LLC	Utility - Natural Gas	12/18/25	<u>7,748.80</u>
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37
Country Inn & Suites Bemidji	Event Lodging Reimbursable	12/15/25	139.37

**Sanford Center
Cash Requirements
As of Jan 6, 2026**

Filter Criteria includes: 1) Invoices Due (no discount available). Report order is by ID. Report is printed in Detail Format.

Vendor	Description	Date	Amount Due
Country Inn & Suites Bemidji	Lodging - Legends RVP John Drum	12/20/25	139.37
Country Inn & Suites Bemidji	Lodging - Event F&B Staff	12/23/25	1,672.46
Country Inn & Suites Bemidji	Lodging - Event F&B Staff	12/24/25	1,672.46
Country Inn & Suites Bemidji	Lodging - Event F&B Staff	12/24/25	1,672.46
Country Inn & Suites Bemidji	Lodging - Event F&B Staff	12/25/25	1,811.83
Country Inn & Suites Bemidji	Country Inn & Suites Bemidji		8,362.28
D-S Beverages Inc	Inventory - Liquor and Beer	12/18/25	1,116.00
Dacotah Paper Co	Janitorial Supplies	12/9/25	1,785.64
Dacotah Paper Co	Janitorial Supplies	12/16/25	66.93
Dacotah Paper Co	Janitorial Supplies	12/19/25	131.87
Dacotah Paper Co	Dacotah Paper Co		1,984.44
Dick's Plumbing & Heating of Bemidji	HVAC Repair	12/10/25	538.94
Docu Shred	Document Shredding Services	12/8/25	60.42
Ethan Rogers	December Cell Phone Reimbursement	12/31/25	60.00
First City of Lights Foundation	NPO Payment	12/22/25	312.00
G & R Controls Inc	HVAC Repair	12/30/25	412.50
Green Mill Bemidji	Inventory - Food	12/14/25	36.60
Guardian Pest Solutions	Pest Control	12/17/25	299.11
Hard Target, Inc.	Contracted Security & EMT Reimbursable	12/16/25	1,057.50
Heidi Neese	December Cell Phone Reimbursement	12/31/25	60.00
Higgins Heating, A/C	HVAC Repair	12/11/25	1,686.09
Janine Johnson	Reimbursement: Catering Supplies	12/14/25	59.68
Janine Johnson	December Cell Phone Reimbursement	12/31/25	60.00
Janine Johnson	Janine Johnson		119.68
Jason Larimer	December Cell Phone Reimbursement	12/31/25	60.00
John Barlow	F&B Contractor; Reimbursement: Travel	12/26/25	6,558.90

Sanford Center
Cash Requirements
As of Jan 6, 2026

Filter Criteria includes: 1) Invoices Due (no discount available). Report order is by ID. Report is printed in Detail Format.

Vendor	Description	Date	Amount Due
John Drum	Reimbursement: Operating Supplies, Office Supplies Toolcat Fuel, Show Marketing Reimbursable, Staff Christmas Cards, and Square, Adobe, & Canva Subscriptions	12/30/25	1,309.68
Jordan Mann	December Cell Phone Reimbursement	12/31/25	60.00
Lake Superior Cutting Edge, LLC	Operating Supplies	12/10/25	350.00
Lexi Mudrick	December Cell Phone Reimbursement	12/31/25	60.00
Lil' Bitty Donuts LLC	Contracted F&B Vendor Payment	12/29/25	799.68
Luekens Village Foods - North	Inventory - Food	12/16/25	15.21
Luekens Village Foods - North	Inventory - Food	12/18/25	27.78
Luekens Village Foods - North	Inventory - Food	12/19/25	10.74
Luekens Village Foods - North	Inventory - Food	12/20/25	129.33
Luekens Village Foods - North	Inventory - Food	12/31/25	32.30
Luekens Village Foods - North	Luekens Village Foods - North		215.36
Luekens Village Foods - South	Inventory - Beverage	12/14/25	29.24
Luekens Village Foods - South	Inventory - Food	12/15/25	7.50
Luekens Village Foods - South	Inventory - Food	12/16/25	20.28
Luekens Village Foods - South	Luekens Village Foods - South		57.02
McKinnon Company Inc	Inventory - Liquor and Beer	12/17/25	588.10
Morgan Skiles	December Cell Phone Reimbursement	12/31/25	60.00
Nate Anderson	December Cell Phone Reimbursement	12/31/25	60.00
Natures Edge Garden Center Inc	Contracted Snow Removal	12/29/25	8,800.00
NLFX Professional	Contracted AV Reimbursable	12/1/25	365.00
NLFX Professional	Contracted AV Reimbursable	12/19/25	45.00
NLFX Professional	Contracted AV Reimbursable	12/31/25	205.00
NLFX Professional	Contracted AV Reimbursable	12/31/25	50.00
NLFX Professional	NLFX Professional		665.00
Dennis A. Noska	HVAC Maintenance	12/25/25	250.00
ODP Business Solutions, LLC	Office Supplies	12/10/25	78.00
OtterTail Power Company	Utility - Electric	12/23/25	25,325.02

Sanford Center
Cash Requirements
As of Jan 6, 2026

Filter Criteria includes: 1) Invoices Due (no discount available). Report order is by ID. Report is printed in Detail Format.

Vendor	Description	Date	Amount Due
Performance Food Group	Inventory - Food	12/11/25	4,003.08
Performance Food Group	Inventory - Food	12/12/25	2,433.25
Performance Food Group	Inventory - Food	12/15/25	4,643.52
Performance Food Group	Inventory - Food	12/16/25	1,678.74
Performance Food Group	Inventory - Food	12/17/25	2,706.11
Performance Food Group	Inventory - Food	12/18/25	4,247.29
Performance Food Group	Inventory - Food	12/19/25	1,507.26
Performance Food Group	Inventory - Food	12/19/25	2,978.15
Performance Food Group	Inventory - Food	12/19/25	418.86
Performance Food Group	Inventory - Food	12/22/25	1,333.09
Performance Food Group	Inventory - Food	12/22/25	1,835.23
Performance Food Group	Inventory - Food	12/23/25	871.51
Performance Food Group	Inventory - Food	12/29/25	136.17
Performance Food Group	Inventory - Food	12/31/25	780.86
Performance Food Group	Inventory - Food	12/31/25	89.28
Performance Food Group	Inventory - Food	12/31/25	2,621.51
Performance Food Group	Performance Food Group		<u>32,283.91</u>
Rodney Anderson	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Sandstrom's Inc	Inventory - Food & Beverage	12/23/25	<u>1,942.26</u>
Saundra McLean	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Sean Crampton	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Shelana Ysen	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Skeeter Stitch, Inc.	Inventory - Event Merchandise	12/16/25	<u>6,186.45</u>
Stephanie Hollatz	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Sysco Western Minnesota, Inc	Inventory - Food	12/11/25	68.10
Sysco Western Minnesota, Inc	Inventory - Food	12/12/25	1,863.80
Sysco Western Minnesota, Inc	Inventory - Food	12/16/25	925.38
Sysco Western Minnesota, Inc	Inventory - Food	12/19/25	1,618.16
Sysco Western Minnesota, Inc	Sysco Western Minnesota, Inc		<u>4,475.44</u>
Tennant Sales & Service Company	Floor Scrubber Repair	12/13/25	<u>275.94</u>
Trevor Johnson	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
Trisha Vojak	December Cell Phone Reimbursement	12/31/25	<u>60.00</u>
United Way of Bemidji Area	NPO Payment	12/19/25	<u>314.00</u>
Vestis Group, Inc	Laundry and Linen	12/11/25	154.86

Sanford Center
Cash Requirements
As of Jan 6, 2026

Filter Criteria includes: 1) Invoices Due (no discount available). Report order is by ID. Report is printed in Detail Format.

Vendor	Description	Date	Amount Due
Vestis Group, Inc	Laundry and Linen	12/18/25	154.86
Vestis Group, Inc	Laundry and Linen	12/25/25	154.86
Vestis Group, Inc	Vestis Group, Inc		464.58
			128,766.69



SANFORD CENTER



Sanford Center

FOR THE MONTH ENDING NOVEMBER 30, 2025

DISTRIBUTED NOVEMBER 25, 2025

Prepared by: Trevor Johnson
Director of Finance, The Sanford Center

Distribution List:

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LEGENDS GLOBAL ARENA MANAGEMENT - The Sanford Center

The Sanford Center

Nov-25

Financial Statements

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Legends Global Management LLC

The Sanford Center – Bemidji, Minnesota

For the month of November 2025, The Sanford Center was filled with hockey games and events. This month's activity concluded the Sanford Center closing its book with a net operating income of \$58,142. This result is \$43,772 ahead of what was budgeted for November. Based on the November forecast we are still on track to close the year with a NOL of \$614,769.

The variance between November's budget and November's actuals is the result of direct event income outperforming budget, and indirect expenses falling in line with the budget. With these points, the Sanford Center is behind budget by (\$120,196) year to date through November.

Coming up in December we have our annual Rock and Roll Christmas Spectacular, and the anticipated World Juniors Hockey games. In January we have various hockey games and the Harlem Globetrotters on January 3rd. In addition, we are launching our first annual 218 sports showcase of events in January and February. These events will include both men's and women's hockey as well as both men's and women's basketball. We are looking forward to hosting this event as well as watching the various sporting events that will take place during January and February.

A recap of events for the month of November:

- Bemidji Youth Hockey
- Bemidji Figure Skating
- Rotary
- BSU VS ST Thomas
- BSU VS Lake Superior State
- BSU VS SCS
- BSU VS Northern Michigan
- BSU VS UND
- West Fraser Training
- EON Inc Holiday Party
- Rubys Pantry
- MSHSL
- Nymore Hockey League
- AOG Ice Rental

The current rolling forecast as of November projects a net operating loss of (\$614,769) for FY2025; We do not anticipate the forecasted loss increasing through the end of the year. Again, this projected loss is the result of a few different components, but the two main ones are as follows; an increase in general liability insurance (55k) and moving the property insurance to above the line (90k). Without these items we would have beat our 2025 submitted budget by 24k.

	Current Month Actual	Current Month Budget	Current Month Act vs Budget	Year to Date Actual	Year to Date Budget	Year to Date Act vs Budget	YTD Prior Year
EVENT INCOME							
Direct Event Income							
Rental Income	83,972	86,005	(2,033)	429,247	514,933	(85,686)	468,732
Service Revenue	100,134	112,128	(11,994)	738,336	1,206,331	(467,995)	853,555
Service Expenses	(49,940)	(75,716)	25,776	(441,866)	(890,763)	448,897	(749,343)
Total Direct Event Income	134,166	122,417	11,749	725,717	830,501	(104,784)	572,944
Ancillary Income							
F & B Concessions	45,765	71,892	(26,127)	201,818	322,338	(120,520)	402,745
F & B Catering	21,311	37,753	(16,442)	366,848	549,347	(182,499)	263,778
Novelty Sales	0	0	0	4,728	16,550	(11,822)	12,157
Promoter Share	0	0	0	0	0	0	0
Promoter Share	0	0	0	0	0	0	0
Booth Cleaning Wages	0	0	0	0	0	0	0
Other Ancillary Sales	0	0	0	0	0	0	0
Total Ancillary Income	67,076	109,645	(42,569)	573,394	888,235	(314,841)	678,680
Other Event Income							
Ot Event Related	0	0	0	0	0	0	0
Suite Sales	0	0	0	24,356	26,852	(2,496)	57,736
Club Seat Tickets	0	0	0	1,421	2,533	(1,112)	11,326
Ad Income	0	0	0	0	0	0	0
Ticket Rebates	12,200	0	12,200	40,104	23,080	17,024	83,165
Facility Fees	31,885	5,670	26,215	113,356	77,962	35,394	99,261
Total Other Event Income	44,085	5,670	38,415	179,237	130,427	48,810	251,488
Total Event Income	245,327	237,732	7,595	1,478,348	1,849,163	(370,815)	1,503,112
OTHER OPERATING INCOME							
Luxury Suite Premiums	10,667	9,216	1,451	29,010	18,432	10,578	8,571
Suite Service Premium	6,298	1,266	5,032	10,377	2,532	7,845	7,447
Advertising & Sponsorship	25,477	32,006	(6,529)	256,926	352,066	(95,140)	208,780
Sanford Naming Rights	16,667	16,667	0	183,333	183,337	(4)	183,333
Coke Mktg Sponsorship	0	0	0	0	0	0	10,000
Ice Rental Revenue	0	0	0	0	0	0	0
Interest & Other Income	1,807	0	1,807	16,173	3	16,170	26,157
Total Oth. Operating Income	60,916	59,155	1,761	495,819	556,370	(60,551)	444,288
Adjusted Gross Income	306,243	296,887	9,356	1,974,167	2,405,533	(431,366)	1,947,400
INDIRECT EXPENSES							
Salaries & Wages	99,306	114,096	(14,790)	1,134,099	1,255,056	(120,957)	1,044,285
Payroll Taxes & Benefits	42,106	38,877	3,229	323,035	427,647	(104,612)	340,846
Net Salaries and Benefits	141,412	152,973	(11,561)	1,457,134	1,682,703	(225,569)	1,385,131
Contracted Services	0	0	0	0	0	0	0
General and Administrative	18,462	21,560	(3,098)	194,889	241,060	(46,171)	226,333
Operating	12,635	13,510	(875)	105,322	89,810	15,512	119,552
Repairs & Maintenance	1,683	2,583	(900)	26,043	30,747	(4,704)	52,121
Operational Supplies	3,880	9,208	(5,328)	72,838	109,288	(36,450)	48,538
Insurance	15,818	13,374	2,444	114,450	147,114	(32,664)	56,978
Utilities	43,602	58,700	(15,098)	395,553	408,200	(12,647)	401,633
ASM Management Fees	10,609	10,609	0	116,699	116,699	0	113,300
Other Mgmt Fees	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	625
Total Indirect Expenses	248,101	282,517	(34,416)	2,482,928	2,825,621	(342,693)	2,404,211
Net Income (Loss)	\$ 58,142	\$ 14,370	\$ 43,772	(\$ 508,761)	(\$ 420,088)	(88,673)	(\$ 456,811)
Non-Operating Income							
City of Bemidji Subsidy	0	0	0	350,000	0	350,000	442,558
Property Insurance	0	0	0	(38,566)	-	(38,566)	(82,954)
Adjusted Net Income (Loss)	\$ 58,142	\$ 14,370	\$ 43,772	(\$ 197,327)	(\$ 420,088)	222,761	(\$ 97,207)

ASSETS

Current Assets

Cash	\$	963,870	
Accounts Receivable		200,577	
Prepaid Assets		193,368	
Inventory		<u>69,170</u>	
Total Current Assets			1,426,985

Fixed Assets

Building		28,681	
Machinery & Equipment		49,088	
Acc. Depreciation		<u>(51,856)</u>	
Total Fixed Assets			25,913

Other Assets

Other Assets		0	
Deposits		<u>0</u>	
Total Other Assets			<u>0</u>

Total Assets		<u>\$ 1,452,898</u>	
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LIABILITIES AND EQUITY

Current Liabilities

Accounts Payable	\$	255,704	
Working Capital Loan		350,000	
Accrued Expenses		75,196	
Deferred Income		594,004	
Advance Ticket Sales/Deposits		228,682	
Other Current Liabilities		<u>0</u>	
Total Current Liabilities			1,503,586

Equity

Net Funds Received		0	
Retained Earnings		146,640	
Net Income (Loss)		<u>(197,328)</u>	
Total Equity			<u>(50,688)</u>

Total Liabilities & Equity		<u>\$ 1,452,898</u>	
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The Sanford Center
2025
Rolling Forecast

Event Income

Direct Event Income

Rental Income	429,247	67,020	496,267	541,183	(44,916)	-8.30%	522,224	(25,957)	-4.97%
Service Income	738,336	42,626	780,962	1,076,938	(295,976)	-27.48%	908,408	(127,446)	-14.03%
Service Expenses	(441,866)	(67,334)	(509,200)	(948,124)	438,924	-46.29%	(806,057)	296,857	-36.83%
Total Direct Event Income	725,717	42,312	768,029	669,997	98,032	14.63%	624,575	143,454	22.97%

Ancillary Income

F & B Concessions	201,818	6,335	208,153	356,336	(148,183)	-41.59%	438,743	(230,590)	-43.23%
F & B Catering	366,848	91,861	458,709	797,794	(339,085)	-42.50%	279,329	179,380	55.24%
Novelty Sales	4,728	-	4,728	16,550	(11,822)	-71.43%	12,157	(7,429)	-64.57%
Total Ancillary Income	573,394	98,196	671,590	1,170,680	(499,090)	-42.63%	730,229	(58,639)	-8.03%

Other Event Income

Luxury Box Ticket Sales	24,356	-	24,356	7,500	16,856	224.75%	68,178	(43,822)	-64.28%
Club Seat Ticket Sales	1,421	-	1,421	-	1,421	0.00%	12,241	(10,820)	-88.39%
Event Advertising Income	-	14,750	14,750	-	14,750	0.00%	-	14,750	0.00%
Ticket Rebates (Per Event)	40,104	2,250	42,354	23,080	19,274	83.51%	132,580	(90,226)	-93.70%
Facility Fees	113,356	8,900	122,256	101,277	20,979	20.71%	192,833	(70,577)	-40.74%
Total Other Event Income	179,237	25,900	205,137	131,857	73,280	55.58%	405,832	(200,695)	-49.45%

Total Event Income

1,478,348	166,408	1,644,756	1,972,534	(327,778)	-16.62%	1,760,636	(115,880)	-6.58%
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Other Operating Income

495,819	53,151	548,970	637,403	(88,433)	-13.87%	490,830	58,140	11.85%
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Adjusted Gross Income

1,974,167	219,559	2,193,726	2,609,937	(416,211)	-15.95%	2,251,466	(57,740)	-2.56%
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Operating Expenses

Employee Salaries and Wages	1,134,099	105,842	1,239,941	1,369,148	(129,207)	-9.44%	1,144,135	95,806	-8.07%
Benefits	323,035	36,800	359,835	466,519	(106,684)	-22.87%	371,020	(11,185)	5.11%
Net Employee Wages and Benefits	1,457,134	142,642	1,599,776	1,835,667	(235,891)	-12.85%	1,515,155	84,621	-4.84%
General and Administrative	194,889	21,550	216,439	262,610	(46,171)	-17.58%	241,689	(25,250)	14.15%
Operations	105,322	11,564	116,886	80,100	36,786	45.93%	127,734	(10,848)	14.44%
Repair & Maintenance	26,043	3,413	29,456	55,434	(25,978)	-46.86%	55,572	(26,116)	35.60%
Supplies	72,838	9,212	82,050	118,500	(36,450)	-30.76%	49,064	32,986	-84.87%
Insurance	114,450	70,377	184,827	160,491	24,336	15.16%	60,996	123,831	-111.39%
Utilities	395,553	56,200	451,753	464,400	(12,647)	-2.72%	436,513	15,240	-3.70%
SMG Management Fees	116,699	10,609	127,308	127,308	-	0.00%	123,600	3,708	-3.00%
Less: Expenses Allocated	-	-	-	-	-		625	(625)	100.00%
Total Operating Expenses	2,482,928	325,567	2,808,495	3,104,510	(296,015)	11.72%	2,610,948	197,547	-4.97%

Net Income (Loss) From Operations

(508,761)	(106,008)	(614,769)	(494,573)	(120,196)	24.30%	(359,482)	(255,287)	71.02%
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Other Income (Expenses)

311,434	-	311,434	-	(311,434)		-	311,434	0.00%
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Net Income After Other Income (Expenses)

(197,327)	(106,008)	(303,335)	(494,573)	191,238	-38.67%	(359,482)	56,147	-15.62%
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The Sanford Center
Fiscal Year 2025
Operating Cash Flow Forecast

Month Ending	November 11/30/2025	December 12/31/2025	January 1/31/2026	February 2/28/2026	March 3/31/2026
Beg Cash Flow (Non Ticketing/Unrestricted)	-	258,935.00	195,086.00	30,935.00	43,773.00
Beginning Bank Balance 11/24/2025	192,935.00				
F&B Revenue	7,000.00	104,067.00	120,000.00	77,000.00	55,000.00
Rent Revenue			-	35,000.00	61,000.00
Service Revenue			13,000.00	2,000.00	44,000.00
Ticketing Transer	127,000.00	150,000.00	25,000.00	120,000.00	80,000.00
A/R Collections	22,000.00	90,000.00	3,000.00	42,000.00	2,800.00
Total Inflows	348,935.00	344,067.00	161,000.00	276,000.00	242,800.00
Net Employee Wages and Benefits	-	(225,000.00)	(200,748.00)	(137,260.00)	(137,260.00)
BSU Settlement	-				
Uncashed AP Checks	(16,000.00)				
Unpaid AP	(74,000.00)				
General and Administrative		(21,550.00)	(19,323.00)	(19,323.00)	(19,323.00)
Operations		(11,564.00)	(13,663.00)	(13,663.00)	(13,663.00)
Repair & Maintenance		(3,413.00)	(11,005.00)	(8,504.00)	(8,504.00)
Supplies		(9,212.00)	(4,443.00)	(4,443.00)	(4,443.00)
Insurance		(70,377.00)	(16,625.00)	(16,625.00)	(16,625.00)
Utilities		(56,200.00)	(48,417.00)	(52,417.00)	(41,717.00)
SMG Management Fees		(10,600.00)	(10,927.00)	(10,927.00)	(10,927.00)
Other Cash Outflows					
	(90,000.00)	(407,916.00)	(325,151.00)	(263,162.00)	(252,462.00)
Available Cash	258,935.00	195,086.00	30,935.00	43,773.00	34,111.00
Other Cash Inflow/Outflow					
Intercompany Payments					
Funding					
Ending Cash balance	258,935.00	195,086.00	30,935.00	43,773.00	34,111.00

BUSINESS LICENSES APPROVALS - 2026

Type of License	Business Name	Business Location	Fee Paid
Massage Establishment			
	RONALD TUCK THERAPEUTIC MASSAGE	522 BELTRAMI AVE NW, SUITE 108 Ron Tuck	\$120.00
	TIEDEN MASSAGE	522 BELTRAMI AVE NW SUITE 110 Lisa Tieden	\$120.00
Massage Therapist			
	LISA MARIE TIEDEN	522 BELTRAMI AVE NW SUITE 102 Tieden Massage	\$85.00
	RONALD CALVIN TUCK	522 BELTRAMI AVE NW, SUITE 108 Ron Tuck Massage	\$85.00
Plumber			
	HOME DEPOT U.S.A. INC.	WITHIN BEMIDJI CITY LIMITS PC147263	\$95.00
	LUNDEEN PLUMBING	WITHIN BEMIDJI CITY LIMITS 006292PM	\$95.00
Restaurant/Food Service			
	PAUL BUNYAN SUB SHOP	119 2ND STREET NW	\$35.00
Tree Service			
	NORTHLAND TREE SERVICE & LOGGING	WITHIN BEMIDJI CITY LIMITS	\$65.00

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Designation of Mayor Pro Tem
Prepared By: Michelle Miller, City Clerk

Background:

At the annual meeting of the City Council, the Mayor designates a Councilor as Mayor Pro-Tem in the absence of the Mayor. Mayor Prince recommends that Councilor Josh Peterson act as Mayor Pro-tem.

Recommendation:

Designate Councilor Josh Peterson as Mayor Pro-tem for 2026.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Official Newspaper of Publication
Prepared By: Michelle Miller, City Clerk

Background:

The City Charter provides that the Council shall annually, at its first meeting of the year, designate a legal newspaper of general circulation in the City as its official newspaper. Law establishes the qualifications for an official newspaper, and only a newspaper that qualifies may be selected.

The Bemidji Pioneer is the preferred local newspaper that meets these qualifications. Therefore, recommendation is to designate the Pioneer as the City's official newspaper of publication for the year 2026.

Recommendation:

Designate the Pioneer as the City's official newspaper of publication for the year 2026.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approve City Council Commission/Committee Assignments for 2026

Prepared By: Michelle R. Miller, City Clerk

Background:

Approve City Council Commission/Committee Assignments for 2026 per the attached list.

Recommendation:

Approve City Council Commission/Committee Assignments for 2026

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Appointment of Councilmember Designees for City Manager Annual Performance Evaluation Process

Prepared By: Michelle Miller, City Clerk

Background:

Pursuant to the evaluation process for the City Manager for the City of Bemidji:

"1. Annually, at a January Regular City Council Meeting, Mayor appoints, subject to City Council approval, the City Manager Annual Performance Evaluation designees."

From 14 to 28 days before the annual performance evaluation process will begin, the City Manager Performance Evaluation designees, legal counsel, and City Manager will consult about the process, as laid out in the attached, which will then be communicated to the City Council.

The Mayor is recommending appointment of the Mayor, Councilmember Eaton and Councilmember Rivera as the City Manager Annual Performance Evaluation designees.

Recommendation:

Appoint the Mayor, Councilmember Eaton and Councilmember Rivera as the City Manager Annual Performance Evaluation designees.



Amended Process for City of Bemidji City Manager Annual Performance Evaluation

Summary of evaluation process for City Manager for City of Bemidji (City):

1. Annually, at a January Regular City Council Meeting, Mayor appoints, subject to City Council approval, the City Manager Annual Performance Evaluation designees.
2. From 14 to 28 days before the annual performance evaluation process will begin, City Manager Performance Evaluation designees, legal counsel, and City Manager will consult about the process, as laid out below herein, which will be communicated to the City Council.
- 4.3. Flaherty & Hood, P.A., another third-party, or an in-house designee submits to: (a) City Council members; (b) City Manager; and (c) City Department Heads and three randomly selected City employees,¹ three separate Performance Evaluation Review forms through Google Forms.
 - a. One form for City Council members for completion.
 - b. One form for City Manager for completion.²
 - c. One form for City Department Heads and three randomly selected City employees (i.e., 360-Review Form).³
- 2.4. City Council members, City Manager, City Department Heads, and the three randomly selected City employees individually complete the Performance Evaluation Review form no later than a week prior to the next City Council meeting.
 - a. City Council members to consider the City Manager's job description in evaluating the performance of the City Manager.
 - b. The identity of the individual completing the form will be anonymous.

¹ Flaherty & Hood, P.A., another third-party, or an in-house designee can develop a system to randomly select the three City employees.

² The questions on the City Manager review form are the same questions from the City Council review form. A copy of the questions and the rating rubric can be found on page 4 and 5 of this document.

³ The questions on the 360-Review form contain some questions from the City Council review form and some additional questions. A copy of the questions and the rating rubric can be found on page 6 and 7 of this document.

- c. The completed forms are private personnel data on City Manager under Minn. Stat. sec. 13.43, subd. 4, which means they are not accessible to the public but are accessible to the City Manager if they make a valid data request.

3.5. Flaherty & Hood, P.A., another third-party, or an in-house designee drafts aggregate evaluation responses received from all individual responses and submits such to City Council, City Manager, and appropriate administrative staff at least three days prior to the next City Council meeting.

- a. This data is also private personnel data on City Manager under Minn. Stat. sec. 13.43, subd. 4, which means they are not accessible to the public but are accessible to the City Manager and the City Council members.

4.6. On the date of the City Council meeting, the City Council will discuss with City Manager the aggregate review responses, their responses, their individual responses if they wish, City Manager's comments, and/or any other comments City Council members have.

- a. The meeting will be closed and electronically recorded, unless the City Manager requests that it be open under Minn. Stat. sec. 13d.05, subd. 3(a).
- b. The meeting can proceed as follows:
 - i. City Council discuss evaluation process without City Manager in attendance, or at minimum, not participating
 - ii. With City Manager in attendance, City Council chairperson simply reference or summarize the aggregate review responses and then allow each City Council member to state anything they wish about their evaluation of City Manager.
 - iii. City Manager comment as they wish on statements on the review responses and statements from City Council Members.
 - iv. City Council chairperson ask City Manager to state goals for upcoming year and then allow City Council members to respond on goals and reach concurrence on such goals.
 - v. Without City Manager in attendance, City Council chairperson solicit feedback on the summary of conclusions and then City Council chairperson ask each member to state their concurrence or not with such conclusions.
- c. Flaherty & Hood, P.A., another third-party, or in-house designee draft summary of conclusions to City Manager in writing during or shortly after meeting.

- d. Evaluation of the City Manager generally includes the intertwined issue of ratings and comments on specific area of the City Manager's job, goals, application of the employment agreement, and salary change.
- i. Though the City Council can reference and discuss a potential salary change or adjustment as part of the performance evaluation (e.g., City Council is discussing the adequacy of performance in order to receive a salary increase), it should not negotiate such a change or otherwise make any decision on such a change outside an open meeting based on Minnesota Department of Administration, Data Practices Office ([DPO](#)), Advisory Opinion 15-002 stating:

The Open Meeting Law does not contain a provision allowing public bodies to close meetings for general personnel reasons; meetings can only be closed in the specific circumstances described in section 13D.05 or by other statutes. As discussed in Issue 1, a performance evaluation may naturally include references to "compensation and prospective extension of [an] employment agreement." However, once a public body has determined that the employee will remain employed with a possible change in pay based on his performance, and the discussion logically turns to the specifics about the employment agreement, the City Council is no longer evaluating the performance of an individual per section 13D.05, subdivision 3(a). In these circumstances, contract negotiations must be done in an open meeting.

[5.7.](#) At the next open meeting following the closed session, the City Council:

- a. Summarizes its conclusions regarding the evaluation under Minn. Stat. sec. 13D.05, subd. 3(a) and take action on any salary change.
- i. The City Council chairperson typically reads a statement summarizing the conclusions from the meeting.
- ii. ~~The Minnesota Department of Administration Data Practices Office~~[DPO](#) opined in Advisory Opinion 02-021 as follows related to the summary:

Clearly, the language of the Open Meeting Law indicates that the City Council ought to summarize each salient point of the evaluation so that the public is given the opportunity to get the best possible sense of the performance - good, bad, or indifferent - of the public employee.

- b. Take a motion and vote for any salary increase.



City of Bemidji Evaluation Rubric City Manager Performance Evaluation Review (*Form for City Council and City Manager*)

Ratings

Use this rating key for the following evaluation below:

1 = *Unsatisfactory Performance*

Does not perform required tasks. Requires constant supervision.

2 = *Not Meeting Expectations*

Needs improvement in quality of work. Completes tasks, but not on time.

3 = *Meets Expectations*

Meets basic requirements. Tasks are completed on time.

4 = *Exceeds Requirements*

Goes above and beyond expectations.

5 = *Exceptional Performance*

Always gets results far beyond what is required.

Questions

Rating Questions

Question 1: Achieves Set Objectives

Question 2: Open to Constructive Criticism

Question 3: Demonstrates Required Job Skills and Knowledge

Question 4: Demonstrates Effective Management and Leadership

Question 5: Completes All Assigned Responsibilities

Question 6: Meets Attendance Requirements

Question 7: Ability to Work with Staff

Question 8: Ability to Work with the Public (e.g., has developed positive relationships, communicates effectively, etc.)

Question 9: Recognizes Potential Problems and Develops Solutions

Question 10: Demonstrates Problem Solving Skills

Question 11: Offers Constructive Suggestions for Improvement

Question 12: Generates Creative Ideas and Solutions



Question 13: Provides Alternative When Making Recommendations

Question 14: Conducts Work in an Ethical Manner

Narrative Questions

Question 15: What are three goals you would like the City Manager to achieve for the next year? How will the City Manager meet them?

Question 16: What does the City Manager do well?

Question 17: What could the City Manager do better?

Question 18: Is there any training or resources the City Manager needs in order to be able to perform the City Manager job better?

Question 19: What can the City Council or the City do that will improve service to our customers?

Question 20: What ideas for improvements do you see that would help the City Manager be more effective or efficient in the City Manager's work?

Rating Questions Related to Whether City Manager Met Prior Year's Goals

Question 21: [Rating Question on Goal 1 (e.g., if previous year's goal is to communicate more effectively with the public, rating question can be, "City Manager's Ability to Communicate Effectively with the Public")]

Question 22: [Rating Question on Goal 2]

Question 23: [Rating Question on Goal 3]



City of Bemidji Evaluation Rubric City Manager Performance Evaluation Review (360-Review Form)

Ratings

Use this rating key for the following evaluation below:

1 = Unsatisfactory Performance

Does not perform required tasks. Requires constant supervision.

2 = Not Meeting Expectations

Needs improvement in quality of work. Completes tasks, but not on time.

3 = Meets Expectations

Meets basic requirements. Tasks are completed on time.

4 = Exceeds Requirements

Goes above and beyond expectations.

5 = Exceptional Performance

Always gets results far beyond what is required.

Questions

Rating Questions

- Question 1: Open to Constructive Criticism
- Question 2: Demonstrates Required Job Skills and Knowledge
- Question 3: Demonstrates Effective Management and Leadership
- Question 4: Communicates Effectively with Others
- Question 5: Ability to Work with Staff
- Question 6: Recognizes Potential Problems and Develops Solutions
- Question 7: Demonstrates Problem Solving Skills
- Question 8: Offers Constructive Suggestions for Improvement
- Question 9: Generates Creative Ideas and Solutions
- Question 10: Provides Alternative When Making Recommendations
- Question 11: Conducts Work in an Ethical Manner
- Question 12: Understands Departmental Needs and Goals



Narrative Questions

- Question 13: What does the City Manager do well?
- Question 14: What could the City Manager do better?
- Question 15: What ideas for improvements do you see that would help the City Manager be more effective or efficient in the City Manager's work?
- Question 16: What are three goals you would like the City Manager to achieve for the next year? How will the City Manager meet them?

Rating Questions Related to Whether City Manager Met Prior Year's Goals

- Question 17: [Rating Question on Goal 1 (e.g., if previous year's goal is to communicate more effectively with the public, rating question can be, "City Manager's Ability to Communicate Effectively with Staff")]
- Question 18: [Rating Question on Goal 2]
- Question 219: [Rating Question on Goal 3]



Amended Process for City of Bemidji City Manager Annual Performance Evaluation

Summary of evaluation process for City Manager for City of Bemidji (City):

1. Annually, at a January Regular City Council Meeting, Mayor appoints, subject to City Council approval, the City Manager Annual Performance Evaluation designees.
2. From 14 to 28 days before the annual performance evaluation process will begin, City Manager Performance Evaluation designees, legal counsel, and City Manager will consult about the process, as laid out below herein, which will be communicated to the City Council.
3. Flaherty & Hood, P.A., another third-party, or an in-house designee submits to: (a) City Council members; (b) City Manager; and (c) City Department Heads and three randomly selected City employees,¹ three separate Performance Evaluation Review forms through Google Forms.
 - a. One form for City Council members for completion.
 - b. One form for City Manager for completion.²
 - c. One form for City Department Heads and three randomly selected City employees (i.e., 360-Review Form).³
4. City Council members, City Manager, City Department Heads, and the three randomly selected City employees individually complete the Performance Evaluation Review form no later than a week prior to the next City Council meeting.
 - a. City Council members to consider the City Manager's job description in evaluating the performance of the City Manager.
 - b. The identity of the individual completing the form will be anonymous.

¹ Flaherty & Hood, P.A., another third-party, or an in-house designee can develop a system to randomly select the three City employees.

² The questions on the City Manager review form are the same questions from the City Council review form. A copy of the questions and the rating rubric can be found on page 4 and 5 of this document.

³ The questions on the 360-Review form contain some questions from the City Council review form and some additional questions. A copy of the questions and the rating rubric can be found on page 6 and 7 of this document.

- c. The completed forms are private personnel data on City Manager under Minn. Stat. sec. 13.43, subd. 4, which means they are not accessible to the public but are accessible to the City Manager if they make a valid data request.
5. Flaherty & Hood, P.A., another third-party, or an in-house designee drafts aggregate evaluation responses received from all individual responses and submits such to City Council, City Manager, and appropriate administrative staff at least three days prior to the next City Council meeting.
 - a. This data is also private personnel data on City Manager under Minn. Stat. sec. 13.43, subd. 4, which means they are not accessible to the public but are accessible to the City Manager and the City Council members.
6. On the date of the City Council meeting, the City Council will discuss with City Manager the aggregate review responses, their responses, their individual responses if they wish, City Manager's comments, and/or any other comments City Council members have.
 - a. The meeting will be closed and electronically recorded, unless the City Manager requests that it be open under Minn. Stat. sec. 13d.05, subd. 3(a).
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 - ii. With City Manager in attendance, City Council chairperson simply reference or summarize the aggregate review responses and then allow each City Council member to state anything they wish about their evaluation of City Manager.
 - iii. City Manager comment as they wish on statements on the review responses and statements from City Council Members.
 - iv. City Council chairperson ask City Manager to state goals for upcoming year and then allow City Council members to respond on goals and reach concurrence on such goals.
 - v. Without City Manager in attendance, City Council chairperson solicit feedback on the summary of conclusions and then City Council chairperson ask each member to state their concurrence or not with such conclusions.
 - c. Flaherty & Hood, P.A., another third-party, or in-house designee draft summary of conclusions to City Manager in writing during or shortly after meeting.

- d. Evaluation of the City Manager generally includes the intertwined issue of ratings and comments on specific area of the City Manager's job, goals, application of the employment agreement, and salary change.
 - i. Though the City Council can reference and discuss a potential salary change or adjustment as part of the performance evaluation (e.g., City Council is discussing the adequacy of performance in order to receive a salary increase), it should not negotiate such a change or otherwise make any decision on such a change outside an open meeting based on Minnesota Department of Administration, Data Practices Office (DPO), Advisory Opinion 15-002 stating:

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7. At the next open meeting following the closed session, the City Council:

- a. Summarizes its conclusions regarding the evaluation under Minn. Stat. sec. 13D.05, subd. 3(a) and take action on any salary change.
 - i. The City Council chairperson typically reads a statement summarizing the conclusions from the meeting.
 - ii. DPO opined in Advisory Opinion 02-021 as follows related to the summary:

Clearly, the language of the Open Meeting Law indicates that the City Council ought to summarize each salient point of the evaluation so that the public is given the opportunity to get the best possible sense of the performance - good, bad, or indifferent - of the public employee.

- b. Take a motion and vote for any salary increase.



City of Bemidji Evaluation Rubric City Manager Performance Evaluation Review (*Form for City Council and City Manager*)

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Use this rating key for the following evaluation below:

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Meets basic requirements. Tasks are completed on time.

4 = *Exceeds Requirements*

Goes above and beyond expectations.

5 = *Exceptional Performance*

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Questions

Rating Questions

Question 1: Achieves Set Objectives

Question 2: Open to Constructive Criticism

Question 3: Demonstrates Required Job Skills and Knowledge

Question 4: Demonstrates Effective Management and Leadership

Question 5: Completes All Assigned Responsibilities

Question 6: Meets Attendance Requirements

Question 7: Ability to Work with Staff

Question 8: Ability to Work with the Public (e.g., has developed positive relationships, communicates effectively, etc.)

Question 9: Recognizes Potential Problems and Develops Solutions

Question 10: Demonstrates Problem Solving Skills

Question 11: Offers Constructive Suggestions for Improvement

Question 12: Generates Creative Ideas and Solutions



Question 13: Provides Alternative When Making Recommendations

Question 14: Conducts Work in an Ethical Manner

Narrative Questions

Question 15: What are three goals you would like the City Manager to achieve for the next year? How will the City Manager meet them?

Question 16: What does the City Manager do well?

Question 17: What could the City Manager do better?

Question 18: Is there any training or resources the City Manager needs in order to be able to perform the City Manager job better?

Question 19: What can the City Council or the City do that will improve service to our customers?

Question 20: What ideas for improvements do you see that would help the City Manager be more effective or efficient in the City Manager's work?

Rating Questions Related to Whether City Manager Met Prior Year's Goals

Question 21: [Rating Question on Goal 1 (e.g., if previous year's goal is to communicate more effectively with the public, rating question can be, "City Manager's Ability to Communicate Effectively with the Public")]

Question 22: [Rating Question on Goal 2]

Question 23: [Rating Question on Goal 3]



City of Bemidji Evaluation Rubric City Manager Performance Evaluation Review (360-Review Form)

Ratings

Use this rating key for the following evaluation below:

1 = Unsatisfactory Performance

Does not perform required tasks. Requires constant supervision.

2 = Not Meeting Expectations

Needs improvement in quality of work. Completes tasks, but not on time.

3 = Meets Expectations

Meets basic requirements. Tasks are completed on time.

4 = Exceeds Requirements

Goes above and beyond expectations.

5 = Exceptional Performance

Always gets results far beyond what is required.

Questions

Rating Questions

- Question 1: Open to Constructive Criticism
- Question 2: Demonstrates Required Job Skills and Knowledge
- Question 3: Demonstrates Effective Management and Leadership
- Question 4: Communicates Effectively with Others
- Question 5: Ability to Work with Staff
- Question 6: Recognizes Potential Problems and Develops Solutions
- Question 7: Demonstrates Problem Solving Skills
- Question 8: Offers Constructive Suggestions for Improvement
- Question 9: Generates Creative Ideas and Solutions
- Question 10: Provides Alternative When Making Recommendations
- Question 11: Conducts Work in an Ethical Manner
- Question 12: Understands Departmental Needs and Goals



Narrative Questions

- Question 13: What does the City Manager do well?
- Question 14: What could the City Manager do better?
- Question 15: What ideas for improvements do you see that would help the City Manager be more effective or efficient in the City Manager's work?
- Question 16: What are three goals you would like the City Manager to achieve for the next year? How will the City Manager meet them?

Rating Questions Related to Whether City Manager Met Prior Year's Goals

- Question 17: [Rating Question on Goal 1 (e.g., if previous year's goal is to communicate more effectively with the public, rating question can be, "City Manager's Ability to Communicate Effectively with Staff")]
- Question 18: [Rating Question on Goal 2]
- Question 219: [Rating Question on Goal 3]

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Appointment to Parks and Recreation Commission
Prepared By: Michelle Miller, City Clerk

Background:

There is currently a vacancy on the Parks and Recreation Commission. Two applications were received. Debra Faver is being recommended to be appointed to the Parks and Recreation Commission.

Recommendation:

Appoint Debra Faver to the Parks and Recreation Commission.



BOARD/COMMISSION APPLICATION

General Objectives and Guidelines

The City Council invites all interested parties to become involved in city government. It is the Council's desire to engage full participation in the development and implementation of the policies of the City of Bemidji. The Boards and Commissions of the City of Bemidji are voluntary advisory bodies to the City Council, charged with the responsibility of researching, reviewing and making recommendations to the City Council. Completed applications can be mailed or dropped off at City Hall or by email at cityclerk@ci.bemidji.mn.us.

Personal Information

Full Name: Debra Lynn Faver Date: 11/18/2025
Home Address: 1101 Lake Blvd. NE, Bemidji, MN 56601
Phone (C): [REDACTED] Phone (H): N/A
Email Address: [REDACTED]

Please select the Board/Commission you are applying for (additional information attached):

- | | |
|---|--|
| ☐ City Library Board | ☐ Heritage Preservation Commission |
| ☐ Merit Hearing Board | ☐ Housing & Redevelopment Authority |
| ☒ Parks & Recreation Commission | ☐ Housing Appeals Board |
| ☐ City Planning & Zoning Commission | ☐ Public Arts Commission |
| ☐ South Shore Design Review Committee | ☐ City Charter Commission |
| ☐ Sanford Center Advisory Board | ☐ Sustainability Commission |
| ☐ Community and Police Advisory Board | ☐ Other _____ |

Please provide a statement as to why you are interested in serving on this board or commission (additional information attached):

I love Bemidji, which is the city I was born and raised in. I feel my input and experience would benefit this board and enhance the quality of our city's appearance.

Please provide a description of professional, civic or community activities which are relevant in qualifying to serve on this board or commission (additional information attached):

I managed a condominium association in St. Anthony MN for 11 years. There were 148 units, with approximately 20 acres of green space. I worked with multiple contractors and managed the internal maintenance crew. I brought this association to a higher level of quality living by upgrading the appearance of the landscape and onsite buildings. I had an excellent relationship with the City of St. Anthony council, staff, police and fire departments.

Please provide your qualifying education and experience which are relevant in qualifying to serve on this board or commission (additional information attached):

- * I have a business degree.
- * I was the president of an association board, following Robert's Rules to conduct monthly and annual meetings.
- * I worked for Medtronic Quality Department for approximately 35 years, giving me a skillset to identify issues and find resolutions.

Please provide your availability to attend meetings and fulfill responsibilities to serve on this board or commission (additional information attached):

I am retired, therefore my calendar is usually open or flexible.

Please provide any references relevant in applying for this board or commission (optional):

██████████	████████████████████	██████████
Name	Address	Phone
██████████	████████████████████	██████████
Name	Address	Phone
██████████	████████████████████	██████████
Name	Address	Phone

NOTE: This application is of public record. Public Service opportunities are offered by the City of Bemidji without regard to race, color, national origin, religion, disability, sex or sexual orientation.



BOARD/COMMISSION APPLICATION

General Objectives and Guidelines

The City Council invites all interested parties to become involved in city government. It is the Council's desire to engage full participation in the development and implementation of the policies of the City of Bemidji. The Boards and Commissions of the City of Bemidji are voluntary advisory bodies to the City Council, charged with the responsibility of researching, reviewing and making recommendations to the City Council. Completed applications can be mailed or dropped off at City Hall or by email at cityclerk@ci.bemidji.mn.us.

Personal Information

Full Name: CT Marhula Date: 11/16/2025

Home Address: 4524 Birchmont Drive #10

Phone (C): [REDACTED] Phone (H):

Email Address: [REDACTED]

Please select the Board/Commission you are applying for (additional information attached):

- | | |
|---|--|
| ☐ City Library Board | ☐ Heritage Preservation Commission |
| ☐ Merit Hearing Board | ☐ Housing & Redevelopment Authority |
| ☒ Parks & Recreation Commission | ☐ Housing Appeals Board |
| ☐ City Planning & Zoning Commission | ☐ Public Arts Commission |
| ☐ South Shore Design Review Committee | ☐ City Charter Commission |
| ☐ Sanford Center Advisory Board | ☐ Sustainability Commission |
| ☐ Community and Police Advisory Board | ☐ Other <u> </u> |

Please provide a statement as to why you are interested in serving on this board or commission (additional information attached):

Quality of life is essential for Bemidji to grow. Parks can provide a great quality of life. I think we have too much quantity and not enough quality. I would advocate for a data driven analysis of the use of each park. And I think we can expand use beyond traditional seasonal use. Example, Curling Club. Does it make financial sense to use that during off season for 3 x 3 hockey leagues and figure skating lessons?

Please provide a description of professional, civic or community activities which are relevant in qualifying to serve on this board or commission (additional information attached):

See below

Please provide your qualifying education and experience which are relevant in qualifying to serve on this board or commission (additional information attached):

Please provide your availability to attend meetings and fulfill responsibilities to serve on this board or commission (additional information attached):

Retired, not an issue.

Please provide any references relevant in applying for this board or commission (optional):

 
Name Address Phone

Name Address Phone

Name Address Phone

NOTE: This application is of public record. Public Service opportunities are offered by the City of Bemidji without regard to race, color, national origin, religion, disability, sex or sexual orientation.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approve Special Event Permit for Let's Plant Trees (May 2-3)

Prepared By: Michelle Miller, City Clerk

Background:

Let's Plant Trees has submitted an application for a Reforest tree giveaway event in May at the parking lot in the South Shore Addition (Sanford Center Parking Lot). Staff have no concerns with the application.

Recommendation:

Approve Special Event Permit for Let's Plant Trees (May 2-3).

Special Event Application



Special Event means an event held in the city in which one or more of the following occurs:

- (1) A temporary alcoholic beverage license is required or an existing on-sale alcoholic beverage license is authorized by the city council to dispense intoxicating liquor off-premises at the event location as part of a community festival according to City Code section 4-97(b);
- (2) A street, sidewalk or other public way or place is closed for the benefit of the event attendees;
- (3) Use of a city park or public way which exceeds 300 attendees;
- (4) Amplified sound, sound device or apparatus is to be used in connection with a gathering of 100 or more attendees; or
- (5) A cannabis event which is regulated under Minn. Stat., Section 342.40, as may be amended from time to time; or
- (6) The event will adversely impact a considerable number of members of the public or city resources.

If your gathering does not fall under the above, please contact parks.trails@ci.bemidji.mn.us for any questions.

Application Due Dates:

- 300 or less participants: Due 30 days prior to event date
- 300-1000 participants: Due 90 days prior to the event
- 1,000 or more participants: Due 120 days prior to the event

Applicant Information

Organization Name (Required): Lets Plant Trees

Address: 105 Sawmill Drive Lutsen, MN 55612

Event Contact Name (Required): Mike Nicklow

This person is the primary contact and must be able to coordinate with other members of the event

Cell Phone (Required): (612) 2265385

Event Contact Email (Required): info@LetsPlantTrees.org

Event Contact Name #2 (Required): Carrie Nicklow

Contact #2 Phone (Required): (612) 2106099

Event Information

Event Name (Required): Reforest Bemidji 2026 - Community planting the future of Bemidji

Event Date(s):

Location Requested:

☐ Nymore Park

☐ Cameron Park

☐ City Park

☐ Paul Bunyan Park

☐ Library Park

☐ Rotary Pavilion

☐ Roger Lehmann Park

☐ City Paved Trail (lakeshore/east west Trail)

☐ City Streets

☐ City Parking Lot

☒ Other

If Other, please explain: Sanford Event Center

Special Event Application



Event Time: Start: May 2, 2026 End: May 3, 2026

Set-up Time: 7am

Clean-up Time: 6pm

Expected Daily Attendance: 500

Event Description:

Please check the type of event (all that apply) and write a description of the event.

☐ Festival

☐ Bike Ride

☐ Walk/Fun Run

☐ Concert/Performance

☒ Other

☐ Block Party

If Other, please explain: Free Tree Distribution

Please provide a description of your event:

Let's Plant Trees gives away free native tree seedlings to Minnesota residents that they plant on their own property. We will have a group of volunteers and will set up a tent and signage for residents to come and pick up tree seedlings. We are planning to give away about 10,000 tree seedlings over the course of this weekend in Bemidji. Most of the tree seedlings will be pre-ordered by residents on our website, and any leftover will be made available first come, first served at the end of the event. We will also be supporting several community tree planting projects in the local area with volunteers from the area.

Event Features

Amplified Sound (Required):

(Select only one option)

Any amplified sound in a city park is subject to the City of Bemidji Noise Ordinance.

☒ No

☐ Yes

List type of amplified sound: _____

Electricity (Required):

(Select only one option)

Available in most parks upon request. Event organizers must communicate with the Parks Department regarding electricity for events on city streets. The Parks Department can be reached at 218-333-1861.

☒ Yes

☐ No

Tents/Structures

- If you plan to put up a tent or other structure (including volleyball nets, horseshoes, etc.), you must call GOPHER STATE ONE CALL 1-800-252-1166 then notify our office of the ticket number.
- Structures may be erected the day before your event with prior approval.

Special Event Application



- Prior permission is required by the Public Works Director or City Manager for tent poles to be installed in/on paved surfaces in public right of way or parking lots.
- The City is not responsible for any stolen or damaged property.
- All structures must be removed immediately following your event (same day) unless prior arrangements are made.
- Banners/signs are allowed in the park on day(s) of event only. Banners and/or signs shall not be affixed or attached to any tree, shrub, park structure or statue.

Special Event Signs

Banners – Obstructions on Public Property (City Code 20-2) (off-site banner)

☒ Yes Location requested: Center Parking lot

No

☐

- Banners may be attached to non-utility poles, tents, and buildings, provided they are well secured and are prevented from being blown around uncontrollably by the wind.
- All banners shall be maintained so that they do not become ripped, torn, defaced, damaged, loose, or unsecured.
- Sight lines will not be affected at intersections and all utility locates must be obtained if anchoring below turf/soil line as well as immediate removal when event is completed.
- You must call GOPHER STATE ONE CALL 1-800-252-1166 before placing your banner.

Tents or Canopies (Required):

☒ Yes

☐ No

Quantity and Size of Tents. Must be identified on the site map:

We have a two 14' x 16' tents that we will provide and set up.

Alcohol (Select One) (Required):

(Select only one option)

**Application needs to be submitted with any applicable fee to the City Clerk and requires City Council approval.*

☐ Temporary 1-4 day Intoxicating liquor license*

☐ Temporary 3.2 Percent Malt Liquor License*

☐ Temporary Off-Premises Liquor License (only to holders of intoxicating liquor licenses)

Name of Establishment _____

☐ Catered Event, Licensee holding caterer's permit.

☒ No Alcohol

Site plan and written security plan are required for events with alcohol. The written security plan must include plans for checking IDs, wrist banding and perimeter security. Event organizers may contract with the Bemidji Police Department for uniformed police officers at your event. Please contact the Police Captain at 218-333-8396 for cost and contract details.

Food Vendors

Applicants shall specify the location of all proposed food vendors by including them on a site plan.

Applicants are responsible for acquiring and/or verifying State Health Permit for food handling and ensure compliance with local and state regulation included grease/debris collection. The Special Event Permit will allow you control and regulation of any concessionaires /vendors with your defined venue.

Special Event Application



Approval for food concessions in parks shall be granted only in connection with organized activities or large group gatherings.

Please indicate the number of food vendors: 0

Request to Use City Property

Barricades and Cones

Barricades and cones can be requested from the Street Department - pending availability. Please contact the Street Superintendent at 333-1855 to make arrangements for pick-up of equipment.

Number of Cones Requested: _____

Number of Barricades Requested: _____

Picnic Tables, Benches, and Event Bike Racks

The Parks and Recreation Department has additional amenities, available upon request. Please contact the Parks Superintendent at 333-1861. It is the responsibility of the event organizers to pick up and return the requested amenities.

Number of picnic tables requested: 6

There are 14 larger/heavier picnic tables and 12 of the smaller light weight tables.

Bike Racks Requested: _____

Event Logistics

If you are planning to install or use any of these structures, please describe below and identify location on the Site Map. Event Organizer is liable for any damage caused to the site or facility and must obtain prior approval.

Portable Restrooms

Events larger than 200 persons will be required to provide portable restrooms. Events in public spaces must be compliant with American Disabilities Act.

Portable/temporary restrooms may be placed 24 hours prior to the event and must be removed within 24 hours following the event.

Company & Number of portable restrooms: Port-Able John Rental & Service Inc Qty 1

Garbage

Event applicants/organizers must arrange for trash and recycling services.

Street, boulevard, and adjacent property must be left clean. The applicant shall properly dispose of debris from the event. If the City Parks or Public Works determines cleanup is inadequate, the cost for cleanup will be charged to the applicant. Cleanup shall be completed within three (3) hours of the end of the event.

Certificate of Insurance

For events and series of events occurring on city-owned property, the Applicant/Event Organizer must provide a Certificate of Insurance for commercial general liability, auto liability (if applicable), and liquor liability (if applicable) naming the City of Bemidji as additional insured and Certificate holder for up to \$1,000,000.

The city requires the Certificate of Insurance be provided at least two (2) weeks prior to the event. Insurance coverage must be maintained for the duration of the event including setup and tear-down dates. The certificate must indicate the dates and location of the event. The person/organization listed on the certificate must be the Applicant/Event Organizer. Minimum limits are as follows:

- \$1,000,000 per occurrence
- \$2,000,000 aggregate general liability
- \$1,000,000 automobile liability (or non-owned automobile liability) (if applicable)
- \$1,000,000 liquor liability insurance (if applicable). Additional limits may be required after review.

For information on the Tenant User Liability Insurance Program (TULIP) offered by the League of Minnesota Cities, check out the following link: [TULIP](#)

Special Event Application



Street Closures

In residential neighborhoods, applicant shall notify affected property owners 14 days prior to the closure, excluding parade events. In commercial areas, applicant shall notify in writing at least 14 days prior to the street closure and provide a blank written objection form with the notice to businesses. Businesses electing to object, must do so no later than 7 days prior to the scheduled event. If 51% of affected businesses file such written objection, the City may consider withholding or canceling the event permit. Applicant and City staff will meet to determine which businesses may be affected. Parade applicants shall provide notice 7 days prior to the event by releasing a Public Service Announcement.

- a) Applicant is responsible for posting, maintaining and removal of the "No Parking" signs. Signs must be posted 24 hours before street closure and can be mounted on existing parking regulations signage; signs must be removed within 24 hours of the conclusion of the event.
- b) If any vehicles need to be towed on the day of the event, notify dispatch at 218-333-9111.

Are you requesting a street closure?	No
Date(s) of requested street closure:	
Street Name(s) and/or number to be closed:	
	Between _____ & To _____
Start Time of Street Closure:	
End Time of Street Closure:	
Number of No Parking Signs Requested:	

Event Maps

Please submit a site or route map either via email or as an upload.

Site Map

Please submit a site map clearly indicating the setup of the event. All site maps should indicate the location of the following (if Applicable):

- All amplified sound and direction of the sound
- Food Vendors
- Tents/canopies (Include sizes)
- Stages
- Promotional vehicles
- Inflatables
- Portable toilets
- Refuse containers
- Fencing
- Barricades and other structures

Route Map

All events that include a run, walk, or other activity in which participants will be following a course will be required to attach a Route Map Banner and a written document of the proposed route of the event. All proposed Route Maps are subject to approval. The use of any roads outside the parkways or parks, such as city streets are subject to approval. For a more detailed route map, use mapmyrun.com (this is a free website), Bing maps or Google maps.

Detour Map

All events requesting a street closure must provide a detailed map showing the requested street closure and detour route(s).

Vehicle Policy

Vehicles will be restricted to a designated route in order to ensure public safety and to preserve the turf of the park. Sidewalks, trails, and pedestrian routes are not built to withstand vehicle traffic. Once the set-up is complete, vehicles will be required to park in the parking lot.

Special Event Application



Applicant Signature

I agree to abide by the event guidelines and attest that all of the information in this application is correct. I, the undersigned, do hereby accept responsibility for compliance with the above policies and guidelines and for payment of all fees. I hereby agree to comply with all rules and ordinances including, but not limited to, City Ordinance Chapter 20, Section 20-8 "Special Events, City Ordinance Chapter 14, Section 14-35 "Rules and Regulations governing public parks" and City of Bemidji Parks and Recreation Department Tobacco and Vaping Free Policy. The applicant agrees to indemnify and hold the City of Bemidji harmless from any and all liability to any person resulting from any property damage or personal injury (including death) occurring in connection with the event caused by the application or the sponsoring organization, its officers, employees or any person under its control.

Signature:

A handwritten signature in black ink, appearing to be a stylized "M" or "W", is written over a horizontal line.

Return paper applications to City Hall, Attn: City Clerk, 317 4th Street NW, Bemidji, MN 56601 56601 or email: cityclerk@ci.bemidji.mn.us



CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approve Special Event Permit for March for Life (January 24)

Prepared By: Michelle Miller, City Clerk

Background:

Knights of Columbus and St. Gianna Committee has submitted an application for the March for Life walk January 24. Staff have no concerns with the application.

Recommendation:

Approve Special Event Permit for March for Life (January 24).

Special Event Application



Special Event means an event held in the city in which one or more of the following occurs:

- (1) A temporary alcoholic beverage license is required or an existing on-sale alcoholic beverage license is authorized by the city council to dispense intoxicating liquor off-premises at the event location as part of a community festival according to City Code section 4-97(b);
- (2) A street, sidewalk or other public way or place is closed for the benefit of the event attendees;
- (3) Use of a city park or public way which exceeds 300 attendees;
- (4) Amplified sound, sound device or apparatus is to be used in connection with a gathering of 100 or more attendees; or
- (5) A cannabis event which is regulated under Minn. Stat., Section 342.40, as may be amended from time to time; or
- (6) The event will adversely impact a considerable number of members of the public or city resources.

If your gathering does not fall under the above, please contact parks.trails@ci.bemidji.mn.us for any questions.

Application Due Dates:

- 300 or less participants: Due 30 days prior to event date
- 300-1000 participants: Due 90 days prior to the event
- 1,000 or more participants: Due 120 days prior to the event

Applicant Information

Organization Name (Required): Knights of Columbus and St. Gianna Committee

Address: 702 Beltrami Ave., Bemidji, MN 56601

Event Contact Name (Required): D. J. Bakken

This person is the primary contact and must be able to coordinate with other members of the event

Cell Phone (Required): (218) 556-2338

Event Contact Email (Required): foresterdj@hotmail.com

Event Contact Name #2 (Required): John Marcum

Contact #2 Phone (Required): (320) 293-4515

Event Information

Event Name: 2026 March for Life

Event Date(s): January 24, 2026

Location Requested:

- | | |
|---|---|
| ☐ Nymore Park | ☐ Cameron Park |
| ☐ City Park | ☐ Paul Bunyan Park |
| ☐ Library Park | ☐ Rotary Pavilion |
| ☐ Roger Lehmann Park | ☐ City Paved Trail (lakeshore/east west Trail) |
| ☐ City Streets | ☐ City Parking Lot |
| ☒ Other | |

If Other, please explain: Sidewalk from in front of Court House south to 3rd, 4th or 5th (depending on weather) east to Bemidji, north to St. Philips

Special Event Application



Event Time: Start: 12:00 End: 12:20
Set-up Time: 11:30 same day
Clean-up Time: 12:20 - 12:30 same day
Expected Daily Attendance: Rarely more than 100 in attendance, weather depending

Event Description:

Please check the type of event (all that apply) and write a description of the event.

- ☐ Festival ☐ Bike Ride
☐ Walk/Fun Run ☐ Concert/Performance
☒ Other ☐ Block Party

If Other, please explain: A walk to promote Pro-Life

Please provide a description of your event:

A one-day event, about 1 hour from set-up to completion. (After that the luncheon and speakers are in the St. Philips social hall. The actual walk on the sidewalks last about 20 minutes.

Event Features

Amplified Sound (Required):

(Select only one option)

Any amplified sound in a city park is subject to the City of Bemidji Noise Ordinance.

- ☐ No
☒ Yes

List type of amplified sound: PA system, though for the small group size this is not critical.

Electricity (Required):

(Select only one option)

Available in most parks upon request. Event organizers must communicate with the Parks Department regarding electricity for events on city streets. The Parks Department can be reached at 218-333-1861.

- ☐ Yes
☒ No

Tents/Structures

- If you plan to put up a tent or other structure (including volleyball nets, horseshoes, etc.), you must call GOPHER STATE ONE CALL 1-800-252-1166 then notify our office of the ticket number.
- Structures may be erected the day before your event with prior approval.

Special Event Application



- Prior permission is required by the Public Works Director or City Manager for tent poles to be installed in/on paved surfaces in public right of way or parking lots.
- The City is not responsible for any stolen or damaged property.
- All structures must be removed immediately following your event (same day) unless prior arrangements are made.
- Banners/signs are allowed in the park on day(s) of event only. Banners and/or signs shall not be affixed or attached to any tree, shrub, park structure or statue.

Special Event Signs

Banners – Obstructions on Public Property (City Code 20-2) (off-site banner)

☒ Yes Location requested: Hand carried signs and banner by those marching

No

☐

- Banners may be attached to non-utility poles, tents, and buildings, provided they are well secured and are prevented from being blown around uncontrollably by the wind.
- All banners shall be maintained so that they do not become ripped, torn, defaced, damaged, loose, or unsecured.
- Sight lines will not be affected at intersections and all utility locates must be obtained if anchoring below turf/soil line as well as immediate removal when event is completed.
- You must call GOPHER STATE ONE CALL 1-800-252-1166 before placing your banner.

Tents or Canopies (Required):

☐ Yes

☒ No

Quantity and Size of Tents. Must be identified on the site map:

NA

Alcohol (Select One) (Required):

(Select only one option)

**Application needs to be submitted with any applicable fee to the City Clerk and requires City Council approval.*

☐ Temporary 1-4 day Intoxicating liquor license*

☐ Temporary 3.2 Percent Malt Liquor License*

☐ Temporary Off-Premises Liquor License (only to holders of intoxicating liquor licenses)
Name of Establishment _____

☐ Catered Event, Licensee holding caterer's permit.

☒ No Alcohol

Site plan and written security plan are required for events with alcohol. The written security plan must include plans for checking IDs, wrist banding and perimeter security. Event organizers may contract with the Bemidji Police Department for uniformed police officers at your event. Please contact the Police Captain at 218-333-8396 for cost and contract details.

Food Vendors

Applicants shall specify the location of all proposed food vendors by including them on a site plan.

Applicants are responsible for acquiring and/or verifying State Health Permit for food handling and ensure compliance with local and state regulation included grease/debris collection. The Special Event Permit will allow you control and regulation of any concessionaires /vendors with your defined venue.

Special Event Application



Approval for food concessions in parks shall be granted only in connection with organized activities or large group gatherings.

Please indicate the number of food vendors: NA

Request to Use City Property

Barricades and Cones

Barricades and cones can be requested from the Street Department - pending availability. Please contact the Street Superintendent at 333-1855 to make arrangements for pick-up of equipment.

Number of Cones Requested: 0

Number of Barricades Requested: 0

Picnic Tables, Benches, and Event Bike Racks

The Parks and Recreation Department has additional amenities, available upon request. Please contact the Parks Superintendent at 333-1861. It is the responsibility of the event organizers to pick up and return the requested amenities.

Number of picnic tables requested: 0

There are 14 larger/heavier picnic tables and 12 of the smaller light weight tables.

Bike Racks Requested: 0

Event Logistics

If you are planning to install or use any of these structures, please describe below and identify location on the Site Map. Event Organizer is liable for any damage caused to the site or facility and must obtain prior approval.

Portable Restrooms

Events larger than 200 persons will be required to provide portable restrooms. Events in public spaces must be compliant with American Disabilities Act.

Portable/temporary restrooms may be placed 24 hours prior to the event and must be removed within 24 hours following the event.

Company & Number of portable restrooms: NA

Garbage

Event applicants/organizers must arrange for trash and recycling services.

Street, boulevard, and adjacent property must be left clean. The applicant shall properly dispose of debris from the event. If the City Parks or Public Works determines cleanup is inadequate, the cost for cleanup will be charged to the applicant. Cleanup shall be completed within three (3) hours of the end of the event.

Certificate of Insurance

For events and series of events occurring on city-owned property, the Applicant/Event Organizer must provide a Certificate of Insurance for commercial general liability, auto liability (if applicable), and liquor liability (if applicable) naming the City of Bemidji as additional insured and Certificate holder for up to \$1,000,000.

The city requires the Certificate of Insurance be provided at least two (2) weeks prior to the event. Insurance coverage must be maintained for the duration of the event including setup and tear-down dates. The certificate must indicate the dates and location of the event. The person/organization listed on the certificate must be the Applicant/Event Organizer. Minimum limits are as follows:

- \$1,000,000 per occurrence
- \$2,000,000 aggregate general liability
- \$1,000,000 automobile liability (or non-owned automobile liability) (if applicable)
- \$1,000,000 liquor liability insurance (if applicable). Additional limits may be required after review.

For information on the Tenant User Liability Insurance Program (TULIP) offered by the League of Minnesota Cities, check out the following link: [TULIP](#)

Special Event Application



Street Closures

In residential neighborhoods, applicant shall notify affected property owners 14 days prior to the closure, excluding parade events. In commercial areas, applicant shall notify in writing at least 14 days prior to the street closure and provide a blank written objection form with the notice to businesses. Businesses electing to object, must do so no later than 7 days prior to the scheduled event. If 51% of affected businesses file such written objection, the City may consider withholding or canceling the event permit. Applicant and City staff will meet to determine which businesses may be affected. Parade applicants shall provide notice 7 days prior to the event by releasing a Public Service Announcement.

- Applicant is responsible for posting, maintaining and removal of the "No Parking" signs. Signs must be posted 24 hours before street closure and can be mounted on existing parking regulations signage; signs must be removed within 24 hours of the conclusion of the event.
- If any vehicles need to be towed on the day of the event, notify dispatch at 218-333-9111.

Are you requesting a street closure?	No
Date(s) of requested street closure:	
Street Name(s) and/or number to be closed:	
	Between _____ & To _____
Start Time of Street Closure:	
End Time of Street Closure:	
Number of No Parking Signs Requested:	None

Event Maps

Please submit a site or route map either via email or as an upload.

Site Map

Please submit a site map clearly indicating the setup of the event. All site maps should indicate the location of the following (if Applicable):

- All amplified sound and direction of the sound
- Food Vendors
- Tents/canopies (Include sizes)
- Stages
- Promotional vehicles
- Inflatables
- Portable toilets
- Refuse containers
- Fencing
- Barricades and other structures

Route Map

All events that include a run, walk, or other activity in which participants will be following a course will be required to attach a Route MapBanner and a written document of the proposed route of the event. All proposed Route Maps are subject to approval. The use of any roads outside the parkways or parks, such as city streets are subject to approval. For a more detailed route map, use mapmyrun.com (this is a free website), Bing maps or Google maps.

Detour Map

All events requesting a street closure must provide a detailed map showing the requested street closure and detour route(s).

Vehicle Policy

Vehicles will be restricted to a designated route in order to ensure public safety and to preserve the turf of the park. Sidewalks, trails, and pedestrian routes are not built to withstand vehicle traffic. Once the set-up is complete, vehicles will be required to park in the parking lot.

Special Event Application



Applicant Signature

I agree to abide by the event guidelines and attest that all of the information in this application is correct. I, the undersigned, do hereby accept responsibility for compliance with the above policies and guidelines and for payment of all fees. I hereby agree to comply with all rules and ordinances including, but not limited to, City Ordinance Chapter 20, Section 20-8 "Special Events, City Ordinance Chapter 14, Section 14-35 "Rules and Regulations governing public parks" and City of Bemidji Parks and Recreation Department Tobacco and Vaping Free Policy. The applicant agrees to indemnify and hold the City of Bemidji harmless from any and all liability to any person resulting from any property damage or personal injury (including death) occurring in connection with the event caused by the application or the sponsoring organization, its officers, employees or any person under its control.

Signature:

Darrel J. Bakken

Return paper applications to City Hall, Attn: City Clerk, 317 4th Street NW, Bemidji, MN 56601 56601 or email: cityclerk@ci.bemidji.mn.us

Bemidji March for Life

January 24, 2026

March begins on the sidewalk in front of the Court House on Beltrami Ave, west side. After a prayer and brief talk the attendees take their pro-life signs and banners and walk south on the sidewalks on the west side of Beltrami Ave. The length and route is somewhat weather and sidewalk condition dependent. The longest planned march goes down to 3rd street, then turns east over to the sidewalks along the west side of Bemidji Ave, then proceeds north back to St. Philips. With very cold or poor walkway conditions the march has at times shortened to just 4th or 5th street before cutting over to Bemidji Ave. The sidewalk along the west side of Beltrami from 6th street north is sometimes blocked by deep snow from street plowing, in which case the walk turns west on 6th and north on Beltrami to get back to St. Philips. The remainder of the event is inside the St. Philips Social Hall.

Set up starts about 11:30 with signs placed at starting point ("S" on map). A brief prayer and talk is at 12:00 noon, the march starting about 12:10 at latest. The march takes maybe a half hour maximum after that, to end at St. Philips ("E" on map), then we make sure all signs are loaded up.



CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approval for the purchase of a 2025 Altoz XP610 HDi and bagger
Prepared By: Scott Schroeder, Parks and Trails Director

Background:

The Parks and Trails Department included the replacement and expansion of mowing equipment in the 2025 Capital Improvement Program to support ongoing maintenance demands across the park system. The department currently maintains approximately 244.5 acres of turf grass within City parks and greenspaces, requiring consistent, efficient, and reliable mowing operations throughout the growing season.

The Sourcewell cooperative purchasing program provides pricing for the Altoz XP610 HDi zero-turn mower with bagger at a total cost of \$13,123.17. Adding this mower to the Parks equipment fleet will improve operational efficiency by increasing mowing capacity, reducing overall mowing time, and allowing staff to be redeployed to other essential maintenance activities within the park system. Increased equipment availability will help minimize service delays during peak growing periods and reduce wear on existing equipment.

There is currently a 2016 Altoz XP610 mower in the Parks and Trails fleet that is anticipated to be declared surplus in spring 2026, following the integration of the new equipment.

T & K Outdoors, Bemidji, MN

Sourcewell Price: \$13,123.17

TOTAL: \$13,123.17

Recommendation:

It is recommended that the City Council pass a motion approving the purchase of the Altoz XP610 HDi mower and bagger through T & K Outdoors of Bemidji, MN for the purchase price of \$13,123.17. The purchase will be funded through the Parks and Trails CIP budget.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approve purchase of a Bobcat SG 60 stump grinder
Prepared By: Scott Schroeder, Parks and Trails Director

Background:

The Parks and Recreation Department has identified a need for a SG 60 Stump Grinder. The City's urban forest is forever growing and changing. With every publicly owned tree that is removed, currently the city needs to contact a vendor to remove the stumps. With the purchase of the SG 60 Stump Grinder, there would be cost savings in doing the work ourselves. The efficiency of the machine will create a productive method of stump grinding for years to come. It will save time and money by eliminating vendor expenses. The new SG 60 Stump Grinder can mount to any of our City owned skid steers and toolcats. Making the stump grinder process mobile to achieve maximum efficiency. A stump grinder is an essential piece of equipment for managing our City's urban forest.

Staff has received a Sourcewell contract pricing from Bobcat of Bemidji. Staff has worked with Bobcat of Bemidji for years on our current fleet Bobcat equipment.

Bobcat of Bemidji, Bemidji, MN

Sourcewell Contract Price: \$10,178.13

TOTAL: \$10,178.13

Recommendation:

It is recommended that the City Council pass a motion approving the purchase of the 2025 Bobcat SG 60 Stump Grinder through Bobcat of Bemidji for the purchase price of \$10,178.13. Fund will come from the Parks and Trails CIP budget.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approve Purchase of 2025 Toro Field Pro 6040
Prepared By: Scott Schroeder, Parks and Trails Director

Background:

The Parks and Recreation Department has identified a need for a Toro Field Pro 6040 Ballfield Groomer Per the number of games (250+) that are played on the softball fields located at City Park. To ensure playing surfaces are safe, level, and free of hazards for athletes of all ages, they should be leveled annually, if not bi-annually. In 2024 there was \$26,800 of work done on the softball fields by an outside contractor. A lot of that expense was due to the fields not being leveled since 2020. The Toro 6040 ballfield groomer is a multi use piece of equipment. The Toro 6040 has the ability to meet the day to day needs, along with the needs of leveling the ball fields. It will allow for parks staff to level the ballfields in house, in lieu of hiring outside resources. Investing in a Toro Field Pro 6040 demonstrates the department's commitment to providing high-quality recreational facilities for the community, while using our skillful staff to save on outside vendor resources.

Staff has received state contract pricing from MTI Distributing. Staff has worked with MTI Distributing in the past for ground maintenance equipment.

MTI Distributing, Brooklyn Park MN

State Contract Price: \$47,003.72

TOTAL: \$47,003.72

Recommendation:

It is recommended that the City Council pass a motion approving the purchase of the 2025 Toro Field Pro 6040 Ballfield Groomer through MTI Distributing for the purchase price of \$47,003.72. This purchase will be funded by the Parks and Trails CIP budget.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approve the purchase of 16 garbage receptacles
Prepared By: Scott Schroeder, Parks and Trails Director

Background:

The Parks Department maintains over 75 garbage receptacles throughout the City of Bemidji with the forethought of keeping our parks clean and user friendly. These garbage receptacles are a vital part of our City's parks system. The Parks Department has identified a need to replace the 16 garbage receptacles located within City Park. The receptacles were installed when the park was renovated in 2012.

The long-term goal for the future is to replace receptacles (in need of replacement) throughout the parks bi-annually to avoid large expenditures going forward.

Staff received two quotes for the requested furnishings. While Anova Furnishings was not the lowest bidder, their quote of \$15,483.88 represents the best overall value to the City. The City of Bemidji currently uses several Anova products throughout its facilities, which have consistently demonstrated high quality, durability, and long-term performance. Selecting Anova Furnishings ensures product consistency, reduces lifecycle and maintenance costs, and minimizes operational risk. Based on proven past performance and overall value, staff recommends awarding the purchase to Anova Furnishings as being in the City's best interest.

Vendor	Size	Unit cost	Units	Freight	Cost
Anova Furnishings	32 gallon	\$910.80	16	\$911.08	\$15,483.88
The Park Catalog	32 gallon	\$800.00	16	\$1,945.00	\$14,745.00
Park Warehouse	32 gallon				Did not supply

Recommendation:

It is recommended that the City Council pass a motion approving the purchase of 16 receptacles for the purchase price of \$15,483.88 from Anova Furnishings to be funded from the Parks and Trails CIP budget.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approve Crossing Surface Installation Agreement with BNSF

Prepared By: Samuel C. Anderson City Engineer/DPW

Background:

City staff have been working with Burlington Northern Sante Fe (BNSF) railway over the past few months to obtain the necessary permits/agreements for the proposed addition of a grant-funded paved bike trail along 5th Street NW planned for 2026 construction. The 5th Street NW city street crosses BNSF railroad property and operates under an easement for that purpose. In order to accommodate the future paved trail crossing, BNSF will need to upgrade the railroad crossing and this agreement covers that proposed work with an estimated price of \$117,559 for those upgrades. In addition to the estimated cost in the agreement, the City will need to assist with coordination with traffic control and approach pavement replacement. All of these costs will be tracked and are eligible for reimbursement using our State Aid Construction Account.

Recommendation:

It is recommended that the City Council pass a motion authorizing the City Manager to sign the attached BNSF Crossing Surface Installation Agreement.



Contract Number: BF-20583506

CROSSING SURFACE INSTALLATION AGREEMENT

BNSF File No.: BF-20583506
Mile Post 89.5
Line Segment 31
U.S. DOT Number 075710V
Grand Forks Subdivision

This Crossing Surface Installation Agreement (hereinafter called, this "Agreement") is entered into effective as of [_____, ____], by and between City of Bemidji (hereinafter called, "**AGENCY**") and BNSF Railway Company (hereinafter called, "**BNSF**").

WHEREAS, BNSF operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, AGENCY desires to replace the existing concrete crossing surface at 5th Street NW with a new concrete crossing surface;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1) **BNSF Work.** The Company will install a new concrete crossing surface for a width of 80 feet from the edge of the pavement on the East side of the tracks to the edge of the pavement on the West side of the tracks. The new crossing surface will adequately cover all vehicular driving lanes at 5th Street NW. The Company will perform all necessary track upgrades to accommodate the new crossing surface.
- 2) **AGENCY Work.** AGENCY must construct the Project as shown on the attached Exhibit A and do all work ("AGENCY's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY's Work. The principal elements of AGENCY's Work are as follows:
 - A. Design and Construction of 5TH Street NW Trail;
 - B. Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
 - C. Installation of advance warning signs in accordance with the MUTCD;



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- D. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- E. Provide suitable drainage, both temporary and permanent;
- F. Provide all barricades, lights, flagmen or traffic control devices as necessary, during the installation of the concrete pedestrian crossing surfaces;
- G. Construct concrete sidewalk surface on approaches to each track, if desired; and
- H. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.

- 3) **Payment; Invoicing.** Upon execution of this Agreement by both parties hereto, Company will send Agency an invoice detailing the total amount owed by Agency for the new crossing surface. Company shall send to Agency a final invoice upon completion and Agency shall pay the final invoice within 30 days of receipt.

Agency's **ESTIMATED** total cost for the new crossing surface and signal bell is One Hundred Seventeen Thousand Five Hundred Fifty-Nine and No/100 Dollars (\$ 117,559).

- 4) **Maintenance of the Crossing Surface.** After installation of the new crossing surface is completed, BNSF will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, BNSF shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.
- 5) **Vehicular Traffic during Installation.** The AGENCY shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring vehicular/pedestrian traffic at the 5th Street NW crossing during installation of the new crossing surface.
- 6) **Drainage.** The AGENCY agrees to allow BNSF to drain water from the 5th Street NW Street crossing area into existing AGENCY storm sewers, if such storm sewers are available. Drain pipes and filter fabric necessary for such drainage will be furnished and installed by BNSF.
- 7) **Roadway Surfacing Work.** The AGENCY agrees to provide, at its sole cost and expense, enough asphalt to cover the distance between the existing roadway surface at 5th Street NW Street/Ave and the new crossing surface on both sides of the track as well as the area between the tracks.



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- 8) **Contractor Requirements:** AGENCY must require its contractor to comply with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

No work shall be commenced within BNSF's right of way until the AGENCY's contractor shall have (i) executed and delivered to BNSF an agreement in the form of said Exhibit C-1 and (ii) delivered to and secured BNSF's approval of the required insurance.

- 9) **Term.** This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and AGENCY's payment of the amounts set forth in Section 3 above.



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

BNSF Railway Company:

By: _____

Printed Name: _____

Title: _____

AGENCY:

City of Bemidji

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

SIGN SCHEDULE		
SIGN #	SIGN	QUANTITY
R15-1		2
R1-1		2
W10-1		2





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EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General

- A.** The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Asphalt work of the approaches to the crossing.
- B.** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- C.** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- D.** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:



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1351 5th Street NW
Bemidji, MN 56601
Sam.anderson@ci.bemidji.mn.us
218-333-1851

- E. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to Environmental Laws (as defined below) and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- F. The Contractor must notify **City of Bemidji** at 218-333-1851 and Railway's Manager Public Projects, telephone number 901-495-3778 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file .
- G. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- H. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor



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will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

2) Contractor Safety Orientation

- A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

3) Railway Requirements

- A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.**
- B. The Contractor must notify the Railway's Manager of Engineering Dan Peltier at 763-782-3495 and provide blasting plans to the Railway for review seven calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.**
- C. The Contractor must abide by the following temporary clearances during construction:**
- 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- D. Upon completion of construction, the following clearances shall be maintained:**



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- 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- E. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **City of Bemidji** and must not be undertaken until approved in writing by the Railway, and until the **City of Bemidji** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- F. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **City of Bemidji** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan



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- A.** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- B.** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
- i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.erailsafe.com, in addition to any other applicable regulatory requirements.
 - ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
 - iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.



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- iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

5) Railway Flagger Services

- A. The Contractor must give BNSF's Scheduling Agent (BNSFScheduling@wilsonco.com) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Scheduling Agent can make appropriate arrangements (i.e., obtain availability and cost estimate for three (3) approved vendors for selection). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Scheduling Agent ten (10) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- B. Unless determined otherwise by Railway's Project Representative, protective flagging services will be required when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - i) When, upon inspection by Railway's Representative, other conditions warrant.
 - ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - iii) When work in any way interferes with the safe operation of trains at timetable speeds.
 - iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- C. Flagging services will be performed by qualified Railway flaggers.
 - i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.



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- ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- iii) The cost of flagger services provided by the Railway will be borne by **City of Bemidji** and invoiced through BNSF's Scheduling Agent. The estimated cost for one (1) flagger is approximately between \$1,200.00-\$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision, scheduling and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
The cost of **inspector coordinator services** provided by the railway will be borne by **Contractor**. The estimated cost for inspector coordinator services is approximately \$1,200 per day. The contractor shall reimburse the railroad for actual costs of inspection services.
- iv) The average train traffic on this route is 1 freight trains per 24-hour period at a timetable speed 49 MPH and N/A passenger trains at a timetable speed of N/A MPH.

6) Contractor General Safety Requirements

- A.** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- B.** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- C.** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how



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to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- D. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- E. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- F. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- G. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- I. **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE**



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STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.

- J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- K. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation

- A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative Ben Peterson**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor



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must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.
- E. Excavations and restoration must be conducted in accordance with all applicable Legal Requirements and the environmental provisions of Section 8.
- F. All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway-approved source, and must otherwise be suitable for its intended purpose as backfill material. Supporting documentation shall be provided to Railway upon request.
- G. Contractor must meet the appropriate compaction requirements for all fills and will be responsible for settlement of all fills, erosion, and embankments that may occur as a result of the placement fill.

8) Environmental Requirements:

- A. Contractor must comply with all Environmental Laws (as defined below). Contractor must not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below).
- B. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any release of Hazardous Materials non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the



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impact of such release. Contractor must also give Railway prompt notice of all measures undertaken to investigate, remediate, or respond to any aforementioned condition.

- C. If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws arising in any way with respect to the work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.
- D. If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall, at Contractor's expense, characterize any such impacted soils. Upon receiving sampling results, Contractor shall, at Contractor's expense, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.
- E. All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility, at Contractor's expense, in accordance with all Environmental Laws. Contractor shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.
- F. Notwithstanding anything in this Section 1.08, Contractor understands that Railway has no duty or obligation to monitor Contractor's use of the property or right of way to determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.
- G. "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency



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Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- H. "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

9) Personal Injury Reporting

- A. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C) ☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)
- ☐ Contractor/safety ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H) ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

Treatment:

- ☐ First Aid Only
☐ Required Medical Treatment
☐ Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).



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EXHIBIT "C-1"

**Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

Railway File: _____

Agency Project: _____

Account Name, a/an State or Country of Formation Type of Organization (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, with the **City of Bemidji** for the performance of certain work in connection with the following project:_____. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the **City of Bemidji** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

- A.** Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property



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belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

- B. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**
- C.** Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.
- D.** In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**



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- E. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

- A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability "CGL" Insurance

- i) The policy will provide a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - (1) Bodily Injury and Property Damage
 - (2) Personal Injury and Advertising Injury
 - (3) Fire legal liability
 - (4) Products and completed operations
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - (1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's



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property.

- (2) Waiver of subrogation in favor of and acceptable to RAILWAY; and
 - (3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and
 - (4) Separation of insureds; and
 - (5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.
- iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.
- iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance

- i) The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - (1) Bodily injury and property damage
 - (2) Any and all vehicles owned, used or hired
- ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - (1) Waiver of subrogation in favor of and acceptable to RAILWAY;
 - (2) Additional insured endorsement in favor of and acceptable to RAILWAY;
 - (3) Separation of insureds;
 - (4) The policy shall be primary and non-contributing with respect to any



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insurance carried by RAILWAY.

C. Workers Compensation and Employers Liability Insurance

- i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
 - (1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - (2) Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - (1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

- i) Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
 - (1) Endorsed to include the Pollution Exclusion Amendment
 - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (3) Endorsed to remove any exclusion for punitive damages.
 - (4) No other endorsements restricting coverage may be added.
 - (5) The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement.
 - (6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on



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the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

E. Other Requirements:

- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- ii) Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.
- iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- iv) Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- v) Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF	Railway	Company
c/o		CertFocus
P.O.	Box	140528
Kansas	City,	MO
Toll	Free:	877-576-2378
Fax	number:	817-840-7487



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Email:
www.certfocus.com

BNSF@certfocus.com

- vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.
- vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.
- ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.
- x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.
- xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.
- xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity



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provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

- xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.
- xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.
- xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

- A.** In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.
- B.** Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made



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against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

- C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) ENVIRONMENTAL

- i) Contractor shall strictly comply with all Environmental Laws (as defined below). Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises. Small quantities of diesel fuel, engine oil, and hydraulic fluids used in the operation of Contractor's equipment shall not be deemed a violation of this Section 5.
- ii) Contractor shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Contractor shall immediately respond to any release on or from the Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of the Premises must be immediately reported to Railroad at EnvironmentalLeases@bnsf.com. Contractor also shall give Railroad prompt notice of all measures undertaken on behalf of



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Contractor to investigate, remediate, respond to or otherwise cure a release or violation.

iii) If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws caused by Contractor or arising in any way with respect to Contractor's work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.

iv) If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall characterize any such impacted soils. Upon receiving sampling results, Contractor shall, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

v) All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility in accordance with all Environmental Laws. Either Contractor or Agency shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

vi) All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway approved source, and supporting documentation shall be provided to Railway upon request.

Contractor shall promptly report to Railroad in writing any conditions or activities upon the Railroad Property known to Contractor which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Contractor's reporting to Railroad shall not relieve Contractor of any obligation whatsoever imposed on it by this Agreement. Contractor shall promptly respond to Railroad's request for information regarding said conditions or activities.

vii) Notwithstanding anything in this Section 5, the parties agree that BNSF has no duty or obligation to monitor Contractor's use of the property or right of way to



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determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.

viii) "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

ix) "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

6) EXHIBIT "C" CONTRACTOR REQUIREMENTS



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- A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

7) TRAIN DELAY

- A. Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.
- B. For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
- C. Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.
- D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway



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confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

- E. Contractor and its subcontractors must give Railway's representative Ben Peterson 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.
- F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



Contract Number: Document ID

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

BNSF RAILWAY COMPANY

Account Name

Signature:_____

Signature:_____

Printed Name:_____

Printed Name:_____

Title: Manager Public Projects

Title:_____

Date:_____

Date:_____

Accepted and effective this _____ day of 20__.

Contact Person:_____

Address:_____

City:_____

State:_____

Zip:_____

Fax:_____

Phone:_____

E-mail:_____

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approve 5th Street NW Easement Agreement with BNSF
Prepared By: Samuel C. Anderson DPW/City Engineer

Background:

City staff have been working with Burlington Northern Sante Fe (BNSF) railway over the past few months to obtain the necessary permits/agreements for the proposed addition of a grant-funded paved bike trail along 5th Street NW planned for 2026 construction. The 5th Street NW city street crosses BNSF railroad property and has operated under an easement for that purpose.

The section of 5th Street NW that crosses the active BNSF railroad was previously owned by Beltrami County and transferred to the City of Bemidji. The original easement for the at-grade road crossing was between BNSF and Beltrami County so a new easement has been development between BNSF and City of Bemidji. There's no change in cost to get this easement executed for the current purpose.

Recommendation:

It is recommended that the City Council pass a motion authorizing the City Manager and Mayor to sign the attached Easement Agreement for the 5th Street NW street crossing.

EASEMENT AGREEMENT
FOR 5th Street NW At Grade Crossing
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR 5th Street NW Grade Crossing ("Easement Agreement") is made and entered into as of the _____ day of _____ 2026 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and **CITY OF BEMIDJI**, a _____ ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Bemidji, County of Beltrami, State of Minnesota, at Railroad Line Segment 31 Mile Post 89.5, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 No Warranty of Any Conditions of the Premises Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, INCLUDING ENVIRONMENTAL CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut

and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all Environmental Laws (as defined below). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Grantee shall use its best efforts to immediately respond to any release on or from the Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises must be immediately reported to Grantor at EnvironmentalLeases@bnsf.com. Grantee also shall give Grantor prompt notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure a release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises.

7.4 Soils and Materials Management.

(a) If during the construction or subsequent maintenance of the Improvements or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Grantee will stop work immediately and notify Grantor. After consultation with Grantor, Grantee shall, at Grantee's expense, characterize any such impacted soils. Upon receiving sampling results, Grantee shall, at Grantee's expense in consultation with Grantor, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

(b) All soils and materials to be removed from the Grantor's property or right of way must be properly characterized, managed, transported, and disposed at an appropriately-licensed facility, at Grantee's expense, in accordance with all Environmental Laws. Grantee shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

(c) All fill materials to be imported to Grantor's property shall be certified clean fill or from a BNSF-approved source.

7.5 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any

obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.6 Evidence of Compliance. Upon request by Grantor, Grantee agrees to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

7.7 Notwithstanding anything in this Section 7, the parties agree that Grantor has no duty or obligation to monitor Grantee's use of the Premises to determine Grantee's compliance with Environmental Laws, it being solely Grantee's responsibility to ensure that Grantee's use of the Premises is compliant. Neither the exercise nor the failure by Grantor to exercise any rights granted in this Section will alter the liability allocation provided by this Easement Agreement.

7.8 "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

7.9 "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises, including, but not limited to, environmental damage;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2650 Lou Menk Drive AOB 2, Ft. Worth, TX 76131, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 90 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **Minnesota** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement and the C&M Agreement, which is incorporated herein, is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

Section 15. Administrative Fee. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Easement Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,500.00 over and above the agreed upon acquisition price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: Cary Hutchings
Title: Director Real Estate

GRANTEE:

CITY OF BEMIDJI
a political subdivision of the State of Minnesota

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

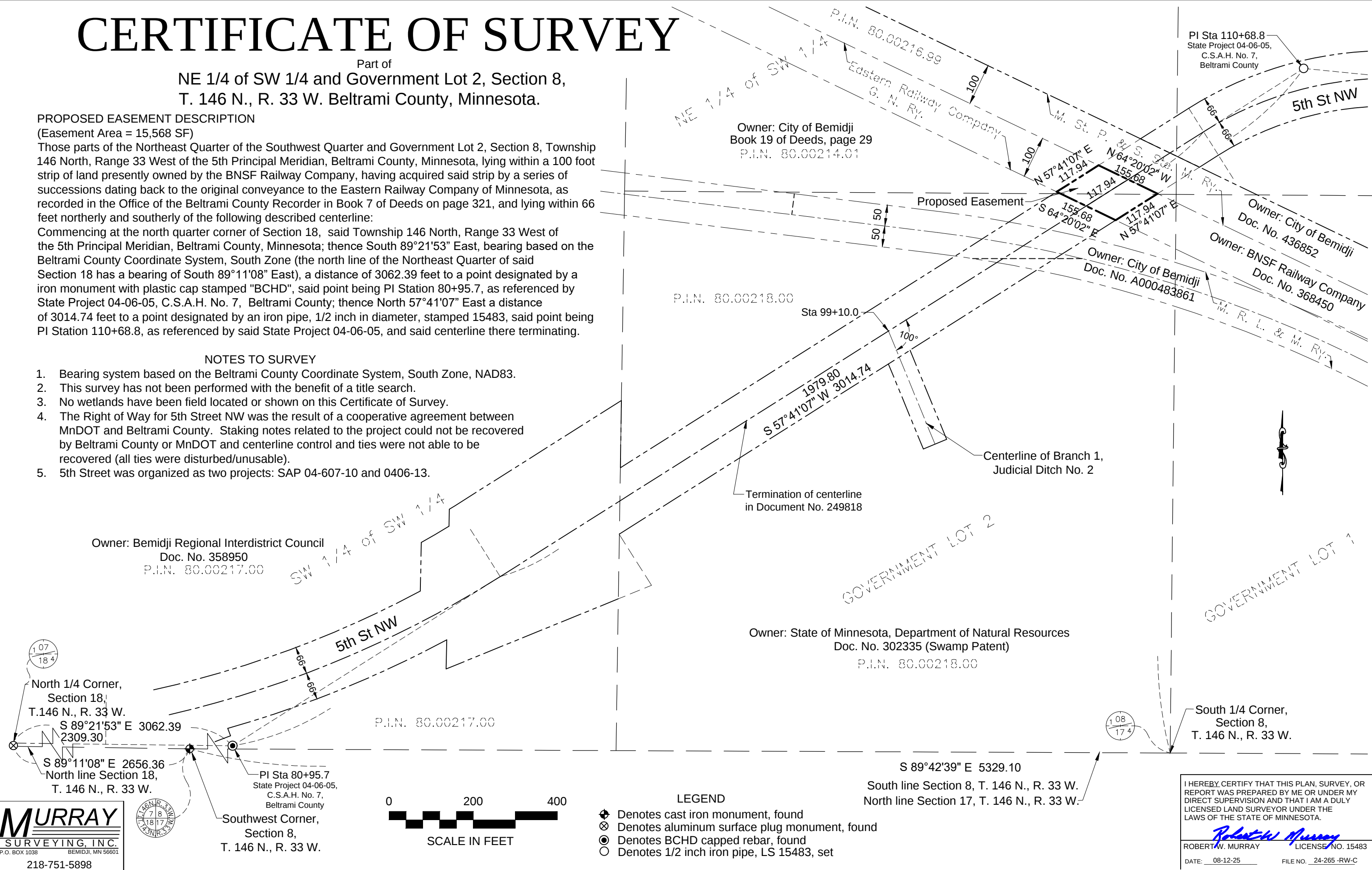
Premises

CERTIFICATE OF SURVEY

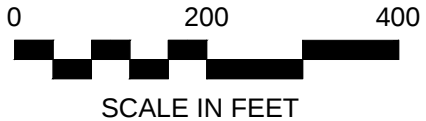
Part of
NE 1/4 of SW 1/4 and Government Lot 2, Section 8,
T. 146 N., R. 33 W. Beltrami County, Minnesota.

PROPOSED EASEMENT DESCRIPTION
(Easement Area = 15,568 SF)
Those parts of the Northeast Quarter of the Southwest Quarter and Government Lot 2, Section 8, Township 146 North, Range 33 West of the 5th Principal Meridian, Beltrami County, Minnesota, lying within a 100 foot strip of land presently owned by the BNSF Railway Company, having acquired said strip by a series of successions dating back to the original conveyance to the Eastern Railway Company of Minnesota, as recorded in the Office of the Beltrami County Recorder in Book 7 of Deeds on page 321, and lying within 66 feet northerly and southerly of the following described centerline:
Commencing at the north quarter corner of Section 18, said Township 146 North, Range 33 West of the 5th Principal Meridian, Beltrami County, Minnesota; thence South 89°21'53" East, bearing based on the Beltrami County Coordinate System, South Zone (the north line of the Northeast Quarter of said Section 18 has a bearing of South 89°11'08" East), a distance of 3062.39 feet to a point designated by a iron monument with plastic cap stamped "BCHD", said point being PI Station 80+95.7, as referenced by State Project 04-06-05, C.S.A.H. No. 7, Beltrami County; thence North 57°41'07" East a distance of 3014.74 feet to a point designated by an iron pipe, 1/2 inch in diameter, stamped 15483, said point being PI Station 110+68.8, as referenced by said State Project 04-06-05, and said centerline there terminating.

- NOTES TO SURVEY**
1. Bearing system based on the Beltrami County Coordinate System, South Zone, NAD83.
 2. This survey has not been performed with the benefit of a title search.
 3. No wetlands have been field located or shown on this Certificate of Survey.
 4. The Right of Way for 5th Street NW was the result of a cooperative agreement between MnDOT and Beltrami County. Staking notes related to the project could not be recovered by Beltrami County or MnDOT and centerline control and ties were not able to be recovered (all ties were disturbed/unusable).
 5. 5th Street was organized as two projects: SAP 04-607-10 and 0406-13.



MURRAY
SURVEYING, INC.
P.O. BOX 1038 BEMIDJI, MN 56601
218-751-5898



- LEGEND**
- ⊕ Denotes cast iron monument, found
 - ⊗ Denotes aluminum surface plug monument, found
 - Denotes BCHD capped rebar, found
 - Denotes 1/2 inch iron pipe, LS 15483, set

I HEREBY CERTIFY THAT THIS PLAN, SURVEY, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Robert W. Murray
ROBERT W. MURRAY LICENSE NO. 15483
DATE: 08-12-25 FILE NO. 24-265 -RW-C

EXHIBIT "B"

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 2026, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2650 Lou Menk Drive AOB 2, Fort Worth, Texas 76131, and **CITY OF BEMIDJI**, ("**Grantee**"), whose address for purposes of this instrument is 317 4th Street NW Bemidji MN 56601, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Beltrami County, Minnesota as described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 2026 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

END OF PAGE – SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY,

a Delaware corporation

By: _____
Name: Cary Hutchings
Title: Director Real Estate

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 2026, by _____ (name) as _____ (title) of **BNSF RAILWAY COMPANY**, a Delaware corporation.

Notary Public

My appointment expires: _____

(Seal)

GRANTEE:

CITY OF BEMIDJI

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2026, by _____ (name) as
_____ (title) of _____, a
_____.

Notary Public

My appointment expires: _____

(Seal)

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2026, by _____ (name) as
_____, (title) of _____, a
_____.

Notary Public

My appointment expires: _____

(Seal)

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approve Sidewalk Construction and Maintenance Agreement with BNSF

Prepared By: Samuel C. Anderson DPW/City Engineer

Background:

City staff have been working with Burlington Northern Sante Fe (BNSF) railway over the past few months to obtain the necessary permits/agreements for the proposed addition of a grant-funded paved bike trail along 5th Street NW planned for 2026 construction. The 5th Street NW city street crosses BNSF railroad property and has operated under an easement for that purpose.

BNSF has drafted an agreement to include the addition of the new paved trail into the existing road crossing agreement. BNSF refers to the trail as a sidewalk in this document which is customary for them in other agreements with other communities. There is an administrative fee of \$2,500 and a fee for the sidewalk/trail addition of \$6,750 for a total of \$9,250 that will be paid to BNSF to complete this transaction. The fee will be covered under the 5th Street NW trail project budget and reimbursed using the City's State Aid Construction account.

Recommendation:

It is recommended that the City Council pass a motion authorizing the City Manager to sign the attached Sidewalk Construction and Maintenance Agreement with BNSF.



Contract Number: BF-20585214

SIDEWALK CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No.: BF-20585214
Mile Post 89.5
Line Segment 31
U.S. DOT Number 075710V
Grand Forks Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of [_____, ____]
("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware
corporation ("**BNSF**") and the **City of BEMIDJI**, a political subdivision of the State of
Minnesota ("**Agency**").

RECITALS

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Bemidji,
State of Minnesota;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is
undertaking a project to install a sidewalk east of the existing at-grade crossing at 5th
Street NW, located at BNSF Line Segment **31** and Milepost **89.5**, and designated by
D.O.T. No. **075710V** within the existing roadway easement across the BNSF right-of-way
as indicated on the Exhibit A, attached hereto and incorporated herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the
parties contained herein, the receipt and sufficiency of which are hereby acknowledged,
the parties agree as follows:

ARTICLE I – SCOPE OF WORK

- 1) The term "**Project**" as used herein includes any and all work related to the
construction of the sidewalk of the 5th Street NW by Agency more particularly
described on the Exhibit A, including, but not limited to, any and all changes to
telephone, telegraph, signal and electrical lines and appurtenances, temporary and
permanent track work, fencing, grading, alterations to or new construction of drainage
facilities, preliminary and construction engineering and contract preparation.

ARTICLE II – RAILROAD OBLIGATIONS



Contract Number: BF-20585214

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

- 1) Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement to enter upon and use the portion of BNSF's right-of-way as is necessary to construct the sidewalk and thereafter maintain the sidewalk as described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:
 - A. Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
 - B. Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
 - C. Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of Six Thousand Seven Hundred Fifty and No/100 Dollars (\$6,750), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 16 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.



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- 1) BNSF required work is described below. Construction of the Project must include the following railroad work by BNSF:
 - A. Preliminary engineering, design, and contract preparation;
 - B. Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
 - C. Furnishing engineering and inspection as required in connection with the construction of the Project;
 - D. Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.
- 2) BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
- 3) Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.
- 4) BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

ARTICLE III – AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:



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- 1) Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
- 2) Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3) Agency must acquire all rights of way necessary for the construction of the Project, including those in which may be conveyed or transferred to BNSF. Agency must reimburse BNSF for any costs of conveyance of property interests including but not limited to, environmental analyses, appraisals, or title inquiries.
- 4) Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
- 5) Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:
 - A. Design and Reconstruction/Construction of 5th Street NW to install the sidewalk east of the crossing;
 - B. Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
 - C. Installation of advance warning signs in accordance with the MUTCD
 - D. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - E. Provide suitable drainage, both temporary and permanent;
 - F. Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the



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installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.

- G. Construct asphalt/concrete roadway surface on approaches to each track.
 - H. Provide and place six (6) to twelve (12) inch wide section of asphalt between roadway concrete headers (and sidewalks) and the new concrete crossing surfaces, including that portion of 5th Street NW when constructing the sidewalk.
 - I. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
- 6) The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.
 - 7) The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.
 - 8) The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
 - 9) For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "www.contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.
 - 10) Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its



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contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

11) Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- A.** The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- B.** Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Dan Peltier at 763-782-3495 to stop construction at no cost to the Agency or BNSF until these items are completed.
- C.** The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- D.** In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM**



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WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

- 13) Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.
- 14) Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:
- A. All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
 - B. Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
 - C. No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
 - D. If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
 - E. To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 30 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable



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work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

- 15) Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.
- 16) **TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE PROJECT BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE**



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CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

- 1) All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
- 2) The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
- 3) Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.
- 4) BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement



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of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Sam Anderson
City Engineer/Director of Public Works
Sam.Anderson@ci.bemidji.mn.us
218-333-1851

- 5) Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Sam Anderson; Sam.Anderson@ci.bemidji.mn.us for appropriate corrective action.
- 6) Pursuant to this section and Article II, Section 6 herein, Agency must, reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).
- 7) All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that



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BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

- 8) The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number BF-20585214 and D.O.T. Crossing No. 075710V and must state the time that construction activities will begin.
- 9) In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:
 - A. Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 5th Street NW roadway.
 - B. Agency will maintain the elevation of the 5th Street NW roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
 - C. Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
 - D. Agency will do nothing and permit nothing to be done in the maintenance of the 5th Street NW roadway, which will interfere with or endanger facilities of BNSF.
 - E. It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
 - F. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.



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- G. If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the crossing surface after review from both parties, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
 - H. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
 - i) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
 - ii) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
 - I. If the Crossing Signal Equipment and/or Crossing Signal House cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.
- 10)** Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.
- 11)** Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Minnesota and the Federal Highway Administration, for a period of one (1) year from the date of the final BNSF invoice under this Agreement.



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- 12)** The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- 13)** In the event construction of the Project does not commence within 24 months of the Effective Date, this Agreement will become null and void.
- 14)** Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
- 15)** To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
- 16)** This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.
- 17)** Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF: BNSF's Manager Public Projects

80 44th Ave NE

Minneapolis, MN 55421

Agency: CITY OF BEMIDJI
 317 4th Street NW
 Bemidji, MN 56601



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SIGNATURE PAGE FOLLOWS



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

WITNESS:

**AGENCY
CITY OF BEMIDJI**

WITNESS:

By: _____

Printed Name: _____

Title: _____



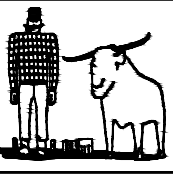
Contract Number: BF-20585214

Exhibit A

SIGN SCHEDULE		
SIGN #	SIGN	QUANTITY
R15-1		2
R1-1		2
W10-1		2



City of Bemidji
Engineering Department



RAILROAD CROSSING EXHIBIT

5TH STREET BIKE TRAIL




DATE: 05/23/25

SHEET: 1 of 1

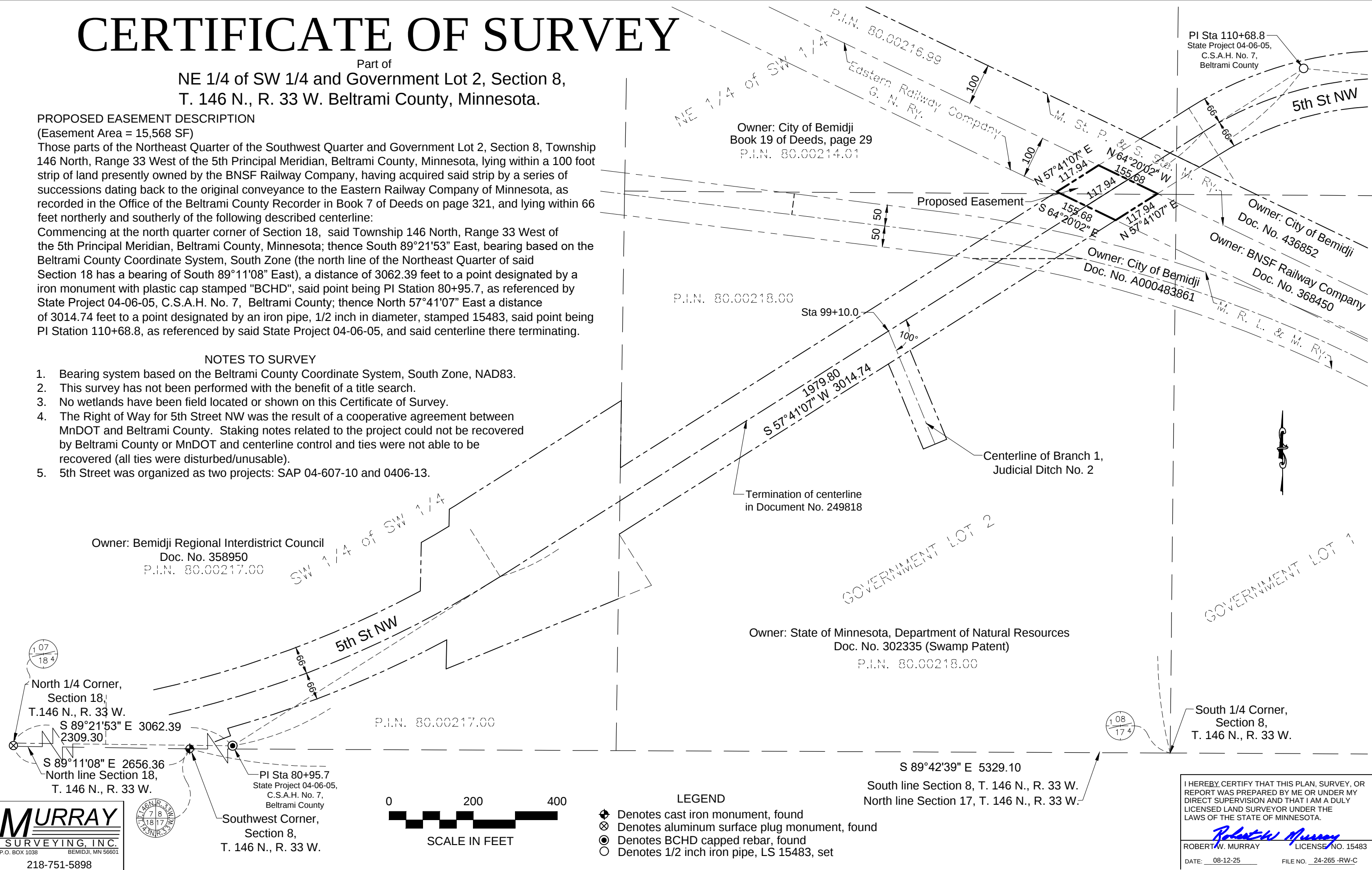
Exhibit A-1

CERTIFICATE OF SURVEY

Part of
NE 1/4 of SW 1/4 and Government Lot 2, Section 8,
T. 146 N., R. 33 W. Beltrami County, Minnesota.

PROPOSED EASEMENT DESCRIPTION
(Easement Area = 15,568 SF)
Those parts of the Northeast Quarter of the Southwest Quarter and Government Lot 2, Section 8, Township 146 North, Range 33 West of the 5th Principal Meridian, Beltrami County, Minnesota, lying within a 100 foot strip of land presently owned by the BNSF Railway Company, having acquired said strip by a series of successions dating back to the original conveyance to the Eastern Railway Company of Minnesota, as recorded in the Office of the Beltrami County Recorder in Book 7 of Deeds on page 321, and lying within 66 feet northerly and southerly of the following described centerline:
Commencing at the north quarter corner of Section 18, said Township 146 North, Range 33 West of the 5th Principal Meridian, Beltrami County, Minnesota; thence South 89°21'53" East, bearing based on the Beltrami County Coordinate System, South Zone (the north line of the Northeast Quarter of said Section 18 has a bearing of South 89°11'08" East), a distance of 3062.39 feet to a point designated by a iron monument with plastic cap stamped "BCHD", said point being PI Station 80+95.7, as referenced by State Project 04-06-05, C.S.A.H. No. 7, Beltrami County; thence North 57°41'07" East a distance of 3014.74 feet to a point designated by an iron pipe, 1/2 inch in diameter, stamped 15483, said point being PI Station 110+68.8, as referenced by said State Project 04-06-05, and said centerline there terminating.

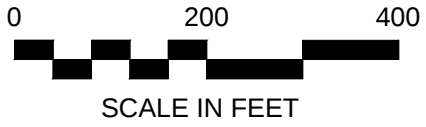
- NOTES TO SURVEY**
1. Bearing system based on the Beltrami County Coordinate System, South Zone, NAD83.
 2. This survey has not been performed with the benefit of a title search.
 3. No wetlands have been field located or shown on this Certificate of Survey.
 4. The Right of Way for 5th Street NW was the result of a cooperative agreement between MnDOT and Beltrami County. Staking notes related to the project could not be recovered by Beltrami County or MnDOT and centerline control and ties were not able to be recovered (all ties were disturbed/unusable).
 5. 5th Street was organized as two projects: SAP 04-607-10 and 0406-13.



MURRAY
SURVEYING, INC.
P.O. BOX 1038 BEMIDJI, MN 56601
218-751-5898



Southwest Corner,
Section 8,
T. 146 N., R. 33 W.



- LEGEND**
- ⊕ Denotes cast iron monument, found
 - ⊗ Denotes aluminum surface plug monument, found
 - Denotes BCHD capped rebar, found
 - Denotes 1/2 inch iron pipe, LS 15483, set

S 89°42'39" E 5329.10
South line Section 8, T. 146 N., R. 33 W.
North line Section 17, T. 146 N., R. 33 W.

I HEREBY CERTIFY THAT THIS PLAN, SURVEY, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.

Robert W. Murray
ROBERT W. MURRAY LICENSE NO. 15483
DATE: 08-12-25 FILE NO. 24-265 -RW-C

EASEMENT AGREEMENT
FOR 5th Street NW At Grade Crossing
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR 5th Street NW Grade Crossing ("Easement Agreement") is made and entered into as of the _____ day of _____ 2025 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and **CITY OF BEMIDJI**, a _____ ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Bemidji, County of Beltrami, State of Minnesota, at Railroad Line Segment 31 Mile Post 89.5, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, INCLUDING ENVIRONMENTAL CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary

in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all Environmental Laws (as defined below). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Grantee shall use its best efforts to immediately respond to any release on or from the

Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises must be immediately reported to Grantor at EnvironmentalLeases@bnsf.com. Grantee also shall give Grantor prompt notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure a release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises.

7.4 Soils and Materials Management.

(a) If during the construction or subsequent maintenance of the Improvements or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Grantee will stop work immediately and notify Grantor. After consultation with Grantor, Grantee shall, at Grantee's expense, characterize any such impacted soils. Upon receiving sampling results, Grantee shall, at Grantee's expense in consultation with Grantor, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

(b) All soils and materials to be removed from the Grantor's property or right of way must be properly characterized, managed, transported, and disposed at an appropriately-licensed facility, at Grantee's expense, in accordance with all Environmental Laws. Grantee shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

(c) All fill materials to be imported to Grantor's property shall be certified clean fill or from a BNSF-approved source.

7.5 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.6 Evidence of Compliance. Upon request by Grantor, Grantee agrees to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

7.7 Notwithstanding anything in this Section 7, the parties agree that Grantor has no duty or obligation to monitor Grantee's use of the Premises to determine Grantee's compliance with Environmental Laws, it being solely Grantee's responsibility to ensure that Grantee's use of the Premises is compliant. Neither the exercise nor the failure by Grantor to exercise any rights granted in this Section will alter the liability allocation provided by this Easement Agreement.

7.8 "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

7.9 "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises, including, but not limited to, environmental damage;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the

Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 90 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **Minnesota** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement

a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement and the C&M Agreement, which is incorporated herein, is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

Section 15. Administrative Fee. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Easement Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,500.00 over and above the agreed upon acquisition price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: Cary Hutchings
Title: Director Real Estate

GRANTEE:

CITY OF BEMIDJI
a political subdivision of the State of Minnesota

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Premises



Contract Number: Document ID

EXHIBIT "B"

MEMORANDUM OF EASEMENT

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 2025, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and **CITY OF BEMIDJI**, ("**Grantee**"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Beltrami County, Minnesota as described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 2025 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

END OF PAGE – SIGNATURE PAGE FOLLOWS



Contract Number: Document ID

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY,

a Delaware corporation

By: _____
Name: Cary Hutchings
Title: Director Real Estate

STATE OF TEXAS

§

COUNTY OF TARRANT

§
§

This instrument was acknowledged before me on the _____ day of _____, 2025, by _____ (name) as _____ (title) of **BNSF RAILWAY COMPANY**, a Delaware corporation.

Notary Public

My appointment expires: _____

(Seal)



Contract Number: Document ID

GRANTEE:

CITY OF BEMIDJI , _____

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2025_,
by _____ (name) as _____ (title) of
_____, a _____.

Notary Public

My appointment expires: _____

(Seal)



Contract Number: Document ID

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1) General

- A.** The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the sidewalk at 5th Street NW.
- B.** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- C.** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- D.** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:



Contract Number: Document ID

- E. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to Environmental Laws (as defined below) and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- F. The Contractor must notify City of Bemidji and Railway's Manager Public Projects, telephone number 901-495-3778 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- G. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- H. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor



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will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

2) Contractor Safety Orientation

- A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.**

3) Railway Requirements

- A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.**
- B. The Contractor must notify the Railway's Manager of Engineering Dan Peltier at and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.**
- C. The Contractor must abide by the following temporary clearances during construction:**
- 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- D. Upon completion of construction, the following clearances shall be maintained:**
- 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail



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- E. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Bemidji and must not be undertaken until approved in writing by the Railway, and until the City of Bemidji has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- F. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City of Bemidji for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

4) Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in



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the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- B.** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
- i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.erailsafe.com, in addition to any other applicable regulatory requirements.
 - ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
 - iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.
 - iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.



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5) Railway Flagger Services

- A. The Contractor must give BNSF's Scheduling Agent (BNSFScheduling@wilsonco.com) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Scheduling Agent can make appropriate arrangements (i.e., obtain availability and cost estimate for three (3) approved vendors for selection). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Scheduling Agent ten (10) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- B. Unless determined otherwise by Railway's Project Representative, protective flagging services will be required when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
- i) When, upon inspection by Railway's Representative, other conditions warrant.
 - ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - iii) When work in any way interferes with the safe operation of trains at timetable speeds.
 - iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- C. Flagging services will be performed by qualified Railway flaggers.
- i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - iii) The cost of flagger services provided by the Railway will be borne by **City of Bemidji** and invoiced through BNSF's Scheduling Agent. The estimated cost for one (1) flagger



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is approximately between \$1,200.00-\$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision, scheduling and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

The cost of **inspector coordinator services** provided by the railway will be borne by **Contractor**. The estimated cost for inspector coordinator services is approximately \$1,200 per day. The contractor shall reimburse the railroad for actual costs of inspection services.

- iv) The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

6) Contractor General Safety Requirements

- A.** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- B.** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- C.** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.



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- D. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- E. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- F. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- G. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- I. **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**

- J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- K. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) Excavation

- A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.
- E. Excavations and restoration must be conducted in accordance with all applicable Legal Requirements and the environmental provisions of Section 8.
- F. All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway-approved source, and must otherwise be suitable for its intended purpose as backfill material. Supporting documentation shall be provided to Railway upon request.
- G. Contractor must meet the appropriate compaction requirements for all fills and will be responsible for settlement of all fills, erosion, and embankments that may occur as a result of the placement fill.

8) Environmental Requirements:

- A. Contractor must comply with all Environmental Laws (as defined below). Contractor must not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below).
- B. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any release of Hazardous Materials non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release. Contractor must also give Railway prompt notice of all measures undertaken to investigate, remediate, or respond to any aforementioned condition.
- C. If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws arising in any way with respect to the work which occurred or may occur during the



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term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.

- D. If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall, at Contractor's expense, characterize any such impacted soils. Upon receiving sampling results, Contractor shall, at Contractor's expense, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.
- E. All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility, at Contractor's expense, in accordance with all Environmental Laws. Contractor shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.
- F. Notwithstanding anything in this Section 1.08, Contractor understands that Railway has no duty or obligation to monitor Contractor's use of the property or right of way to determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.
- G. "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now



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or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- H. "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

9) Personal Injury Reporting

- A. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C) ☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp
involved in vehicle accident, including company
vehicles)
- ☐ Contractor/safety ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H) ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing
accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing
accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name) (Employee No.) (Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING
REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903
AND 83 U.S.C. 490**



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

Treatment:

- ☐ First Aid Only
☐ Required Medical Treatment
☐ Other Medical Treatment: _____

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).



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EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Agency Project: _____

Account Name, a/an State or Country of Formation Type of Organization (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20__, with for the performance of certain work in connection with the following project: Sidewalk construction_. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Bemidji (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

- A. Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and



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Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

- B. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**
- C. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.
- D. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**



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E. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability "CGL" Insurance

i) The policy will provide a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the provider. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury and Advertising Injury
- (3) Fire legal liability
- (4) Products and completed operations

ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- (1) definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of RAILWAY's



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property.

- (2) Waiver of subrogation in favor of and acceptable to RAILWAY; and
 - (3) Additional insured endorsement in favor of and acceptable to RAILWAY and include coverage for ongoing operations and completed operations; and
 - (4) Separation of insureds; and
 - (5) The policy will be primary and non-contributing with respect to any insurance carried by RAILWAY.
- iii) It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.
- iv) No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance

- i) The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - (1) Bodily injury and property damage
 - (2) Any and all vehicles owned, used or hired
- ii) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - (1) Waiver of subrogation in favor of and acceptable to RAILWAY;
 - (2) Additional insured endorsement in favor of and acceptable to RAILWAY;
 - (3) Separation of insureds;
 - (4) The policy shall be primary and non-contributing with respect to any



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insurance carried by RAILWAY.

C. Workers Compensation and Employers Liability Insurance

- i) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
 - (1) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - (2) Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- ii) This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
 - (1) Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance

- i) Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
 - (1) Endorsed to include the Pollution Exclusion Amendment
 - (2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - (3) Endorsed to remove any exclusion for punitive damages.
 - (4) No other endorsements restricting coverage may be added.
 - (5) The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement.
 - (6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on



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the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

E. Other Requirements:

- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- ii) Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.
- iii) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- iv) Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- v) Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF	Railway	Company
c/o		CertFocus
P.O.	Box	140528
Kansas	City,	MO
Toll	Free:	877-576-2378
Fax	number:	817-840-7487



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Email:
www.certfocus.com

BNSF@certfocus.com

- vi) Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.
- vii) Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- viii) If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.
- ix) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.
- x) Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- xi) If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.
- xii) Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.
- xiii) The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity



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provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

- xiv) In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.
- xv) These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.
- xvi) For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

- A.** In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.
- B.** Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made



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against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

- C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) ENVIRONMENTAL

- i) Contractor shall strictly comply with all Environmental Laws (as defined below). Contractor shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Railway Property or the right of way. Contractor will not handle, transport, release or suffer the release of Hazardous Materials (as defined below) on or about the Premises. Small quantities of diesel fuel, engine oil, and hydraulic fluids used in the operation of Contractor's equipment shall not be deemed a violation of this Section 5.
- ii) Contractor shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Contractor shall immediately respond to any release on or from the Premises. Any violation of Environmental Laws or any inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of the Premises must be immediately reported to Railroad at EnvironmentalLeases@bnsf.com. Contractor also shall give Railroad prompt notice of all measures undertaken on behalf of



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Contractor to investigate, remediate, respond to or otherwise cure a release or violation.

iii) If Railway has notice from Contractor or otherwise of a release or violation of Environmental Laws caused by Contractor or arising in any way with respect to Contractor's work which occurred or may occur during the term of this Agreement, Railway may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Railway's Property.

iv) If during the construction or subsequent maintenance of the work or Structures, or any other soil-disturbing activities, soils or other materials considered to be environmentally impacted are encountered, Contractor will stop work immediately and notify Railway. After consultation with Railway, Contractor shall characterize any such impacted soils. Upon receiving sampling results, Contractor shall, in consultation with Railway, manage, remove, and/or dispose any such impacted soils offsite at an appropriately-licensed facility in accordance with Environmental Laws. Soil characterization and applicable disposal requirements, shall be in accordance with applicable federal, state, and local Environmental Laws or in consultation with an agency having the capacity and authority to make such a determination.

v) All soils and materials to be removed from the Railway Property or right of way must be properly characterized, managed, transported, and disposed of at an appropriately-licensed facility in accordance with all Environmental Laws. Either Contractor or Agency shall be the "Generator" of any and all such materials and waste, as such term is defined in Environmental Laws.

vi) All fill materials to be imported to Railway's property shall be certified clean fill or from a Railway approved source, and supporting documentation shall be provided to Railway upon request.

Contractor shall promptly report to Railroad in writing any conditions or activities upon the Railroad Property known to Contractor which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Contractor's reporting to Railroad shall not relieve Contractor of any obligation whatsoever imposed on it by this Agreement. Contractor shall promptly respond to Railroad's request for information regarding said conditions or activities.

vii) Notwithstanding anything in this Section 5, the parties agree that BNSF has no duty or obligation to monitor Contractor's use of the property or right of way to



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determine Contractor's compliance with Environmental Laws, it being solely Contractor's responsibility to ensure that Contractor's use is compliant. Regulatory plans and a minimum of two (2) years of records/inspections shall be readily available. Contractor shall promptly provide the same to the Railroad upon request.

viii) "Environmental Law(s)" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; CERCLA; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

ix) "Hazardous Material(s)" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

6) EXHIBIT "C" CONTRACTOR REQUIREMENTS



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- A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

7) TRAIN DELAY

- A. Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.
- B. For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
- C. Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.
- D. The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway



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confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

- E. Contractor and its subcontractors must give Railway's representative Ben Peterson 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.
- F. Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



Contract Number: Document ID

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

BNSF RAILWAY COMPANY

Account Name

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: Manager Public Projects

Title: _____

Date: _____

Date: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____

Zip: _____

Fax: _____

Phone: _____

E-mail: _____

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approve MOU's with Local #49
Prepared By: Rich Spiczka, City Manager

Background:

The approval of the following two MOU's is requested:

MOU to implement the compensation and grading study results into the Local #49 pay scale.

MOU to agree to a 50/50 split between employee and employer regarding MN Paid Family Leave premiums.

Recommendation:

Staff is recommending approval of both MOU's.

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL NO. 49, 49A, 49B, 49C, 49D, 49E, 49L
MINNESOTA • NORTH DAKOTA • SOUTH DAKOTA

EUGENE J. GROVER, President
MARK J. POTHEN, Vice President
STEVE R. PIPER, Recording-Corresponding Secretary
MARVIN J. HOSE, Treasurer



RYAN P. DAVIES
Business Manager/Financial Secretary

2829 Anthony Lane South, Minneapolis, MN 55418-3285
Phone (612) 788-9441 • Toll Free (866) 788-9441 • Fax (612) 788-1936

MEMORANDUM OF UNDERSTANDING

Between

City of Bemidji

and

International Union of Operating Engineer Local #49 Union

WHEREAS, the City of Bemidji (hereinafter "City") and International Union of Operating Engineer Local #49 Union (hereinafter "Union") representing the I.U.O.E. Local #49 Members of the City of Bemidji, are bound by the Collective Bargaining Agreement (hereinafter "Bargaining Agreement") dated January 1, 2025, through December 31, 2027; and

WHEREAS, the City hired an independent and credentialed firm (Baker Tilly) that performed a comprehensive and classification study in April 2025 for full-time (2080 hours per year) city positions, including positions held by members of the Union; and

WHEREAS, as a result of the study, the City has established a new pay structure that is designed to more accurately reflect the value of the positions, market conditions, and internal equity; and

WHEREAS, implementation of the study results is an increase of 1.4% for all Local #49 Union positions that are covered under the Collective Bargaining Agreement; and

WHEREAS, the Local #49 Union has reviewed the new pay structures attached, that include the additional 1.4% increase in Wage Schedule 2026 (3.5% COLA) and Wage Schedule 2027 (3.0% COLA) and acknowledges that the City's proposed implementation of it exceeds the pay levels established in the existing Collective Bargaining Agreement.

NOW, THEREFORE, the City and the Local #49 Union agree that the City will implement the new wage schedules for Local #49 Union positions on January 1, 2026.

IN WITNESS WHEREOF, the parties acknowledge that they have read the forgoing agreement and, by signing, hereby affirm that they fully understand and agree to its terms and applications.

City Bemidji – City Manager

Date: _____

I.U.O.E. Local #49 Union Business Agent

Date: 12-29-25

Hourly Grade	Step A	B	C	D	E	F	G	H	I
1 \$	20.34 \$	20.95 \$	21.58 \$	22.22 \$	22.89 \$	23.58 \$	24.28 \$	25.01 \$	25.76
2 \$	21.66 \$	22.31 \$	22.98 \$	23.67 \$	24.38 \$	25.11 \$	25.86 \$	26.64 \$	27.44
3 \$	23.07 \$	23.76 \$	24.47 \$	25.21 \$	25.96 \$	26.74 \$	27.54 \$	28.37 \$	29.22
4 \$	24.57 \$	25.30 \$	26.06 \$	26.84 \$	27.65 \$	28.48 \$	29.33 \$	30.21 \$	31.12
5 \$	26.16 \$	26.95 \$	27.76 \$	28.59 \$	29.45 \$	30.33 \$	31.24 \$	32.18 \$	33.14
6 \$	27.86 \$	28.70 \$	29.56 \$	30.45 \$	31.36 \$	32.30 \$	33.27 \$	34.27 \$	35.30
7 \$	29.67 \$	30.56 \$	31.48 \$	32.43 \$	33.40 \$	34.40 \$	35.43 \$	36.50 \$	37.59
8 \$	31.60 \$	32.55 \$	33.53 \$	34.53 \$	35.57 \$	36.64 \$	37.74 \$	38.87 \$	40.03
9 \$	33.66 \$	34.67 \$	35.71 \$	36.78 \$	37.88 \$	39.02 \$	40.19 \$	41.39 \$	42.64
10 \$	35.85 \$	36.92 \$	38.03 \$	39.17 \$	40.34 \$	41.55 \$	42.80 \$	44.09 \$	45.41
11 \$	38.18 \$	39.32 \$	40.50 \$	41.71 \$	42.97 \$	44.26 \$	45.58 \$	46.95 \$	48.36
12 \$	40.66 \$	41.88 \$	43.13 \$	44.43 \$	45.76 \$	47.13 \$	48.55 \$	50.00 \$	51.50
13 \$	43.30 \$	44.60 \$	45.94 \$	47.31 \$	48.73 \$	50.20 \$	51.70 \$	53.25 \$	54.85
14 \$	46.11 \$	47.50 \$	48.92 \$	50.39 \$	51.90 \$	53.46 \$	55.06 \$	56.71 \$	58.42
15 \$	49.11 \$	50.58 \$	52.10 \$	53.67 \$	55.27 \$	56.93 \$	58.64 \$	60.40 \$	62.21
16 \$	52.30 \$	53.87 \$	55.49 \$	57.15 \$	58.87 \$	60.63 \$	62.45 \$	64.33 \$	66.26
17 \$	55.70 \$	57.37 \$	59.10 \$	60.87 \$	62.69 \$	64.57 \$	66.51 \$	68.51 \$	70.56
18 \$	59.32 \$	61.10 \$	62.94 \$	64.82 \$	66.77 \$	68.77 \$	70.84 \$	72.96 \$	75.15
19 \$	63.18 \$	65.08 \$	67.03 \$	69.04 \$	71.11 \$	73.24 \$	75.44 \$	77.70 \$	80.03
20 \$	67.29 \$	69.31 \$	71.38 \$	73.53 \$	75.73 \$	78.00 \$	80.34 \$	82.75 \$	85.24
21 \$	71.66 \$	73.81 \$	76.02 \$	78.31 \$	80.65 \$	83.07 \$	85.57 \$	88.13 \$	90.78
22 \$	76.32 \$	78.61 \$	80.97 \$	83.40 \$	85.90 \$	88.47 \$	91.13 \$	93.86 \$	96.68
Step (2496 hours)									
Firefighter A	28.05 \$	28.89 \$	29.76 \$	30.65 \$	31.57 \$	32.52 \$	33.49 \$	34.50 \$	35.53

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL NO. 49, 49A, 49B, 49C, 49D, 49E, 49L
MINNESOTA • NORTH DAKOTA • SOUTH DAKOTA

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RYAN P. DAVIES
Business Manager/Financial Secretary

2829 Anthony Lane South, Minneapolis, MN 55418-3285
Phone (612) 788-9441 • Toll Free (866) 788-9441 • Fax (612) 788-1936

Memorandum of Agreement

This Memorandum of Agreement is entered into between the City of Bemidji (hereafter "Employer") and the International Union of Operating Engineers Local No. 49 (hereafter "Union").

WHEREAS, the Employer and the Union are parties to a Collective Bargaining Agreement in effect January 1, 2025 through December 31, 2027 (the "Collective Bargaining Agreement"); and

WHEREAS, the parties have agreed to negotiate the Employer and Employee Minnesota Paid Family and Medical Leave ("PFML") premium contribution rate, which are effective January 1, 2026, or such other date as required by Minnesota law;

NOW THEREFORE, the Employer and the Union agree to the following:

1. Pursuant to Minn. Stat. § 268B.14, the Employer agrees to pay 50% of the PFML premiums for all regular employees represented by the Union for the duration of the Collective Bargaining Agreement. The employees agree to pay 50% of the MetLife, qualifying for a replacement plan maintained by the Employer, whichever is less.
2. Qualifying employees are not required to exhaust their accrued vacation and/or sick leave and/or compensatory time prior to applying for or receiving PFML benefits offered or granted by the plan administrator, whether the State of Minnesota or the private administrator, responsible for providing such PFML benefits.
3. Qualifying employees may use certain paid benefits such as accrued vacation, accrued sick time, and/or accrued compensatory time as "supplemental benefits" during PFML to allow employees the option to receive up to, but not to exceed, a full salary continuation during their leave.
4. While an employee is on PFML, they shall be entitled to accrue all vacation, sick, holiday, and/or any other benefit time as provided in the Collective Bargaining Agreement.
5. While an employee is on PFML, he/she is entitled to holiday pay for all observed holidays as if such employee was not on leave.

All other provisions of the Collective Bargaining Agreement between the Employer and the Union will remain unchanged.

This Memorandum of Agreement represents the complete and total agreement of both parties.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement this ____ day
of _____, 2025.

NAME OF EMPLOYER

Date

I.U.O.E Local No. 49



Business Representative

12-29-25

Date

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Approve MOU's with UFCW 1189
Prepared By: Rich Spiczka, City Manager

Background:

The City needs to approve two MOU's with the UFCW 1189:

MOU agreeing to 50/50 split of the MN Paid Family Leave Premiums.

MOU officially adopting accurate Wage Grid in the labor agreement.

Recommendation:

Staff recommends approval of both MOU's.

**LETTER OF UNDERSTANDING BETWEEN
THE CITY OF BEMIDJI
AND
UFCW 1189**

This Letter of Understanding (LOU) is entered into between the City of Bemidji ("Employer") and the United Food and Commercial Workers Local 1189 ("Union") for the purpose of memorializing the parties shared understanding regarding the 2023 wage adjustments and subsequent wage grid incorporated into the current Collective Bargaining Agreement (CBA).

Background:

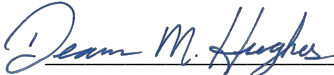
During the review of the updated wage grid following the 2025 negotiations, the parties discovered that certain wage increases had been implemented by the Employer in 2023, prior to the most recent round of bargaining. These 2023 adjustments were not reflected in the wage schedule contained in the CBA and were not discussed during negotiations because neither the Employer nor the Union representatives present were aware of those prior increases at the time.

The parties further acknowledge that:

- The wage adjustments implemented in 2023 were applied to employees at that time and have been in effect since.
- No back pay is owed because of this correction, as employees have continuously received the higher wage rates since the increases were implemented.
- The discrepancies in the wage grid were due to changes initiated following a compensation study that was completed after the former City Manager's departure and subsequent staff turnover within the Finance Department.

Agreement:

1. The parties agree that the intent of this LOU is to document the reason for the discrepancy between the wage grid included in the 2022-2024 CBA and the rates being paid to employees.
2. The parties will update the wage grid to accurately reflect the rates currently being paid, consistent with the 2023 and subsequent adjustments.
3. Both parties acknowledge that the oversight was unintentional and that neither party had personal knowledge of the 2023 adjustments during negotiations.
4. This clarification does not constitute a re-opener for wage negotiations and shall not be construed as precedent for future bargaining.
5. This LOU is effective upon signature by both parties and shall remain attached to the current Collective Bargaining Agreement for reference.

		11/10/25
Employer	Union	Date

*SCHEDULE A - WAGES

Liquor Sales Associate Full-Time									
	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H	Step I
2024	\$18.70	\$19.25	\$19.83	\$20.43	\$21.05	\$21.67	\$22.32	\$22.99	\$23.68
2025	\$19.26	\$19.83	\$20.42	\$21.04	\$21.68	\$22.32	\$22.99	\$23.68	\$24.39
2026	\$19.84	\$20.42	\$21.04	\$21.67	\$22.33	\$22.99	\$23.68	\$24.39	\$25.12
2027	\$20.43	\$21.03	\$21.67	\$22.32	\$23.00	\$23.68	\$24.39	\$25.12	\$25.88
Lead Liquor Sales Associate Full-Time									
	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H	Step I
2024	\$24.05	\$24.77	\$25.52	\$26.28	\$27.07	\$27.89	\$28.72	\$29.58	\$30.47
2025	\$24.77	\$25.51	\$26.29	\$27.07	\$27.88	\$28.73	\$29.58	\$30.47	\$31.38
2026	\$25.51	\$26.28	\$27.07	\$27.88	\$28.72	\$29.59	\$30.47	\$31.38	\$32.33
2027	\$26.28	\$27.07	\$27.89	\$28.72	\$29.58	\$30.48	\$31.38	\$32.32	\$33.30
Liquor Sales Associate Part-Time									
2024	\$15.84								
2025	\$16.32								
2026	\$16.80								
2027	\$17.31								

* The wage grid in question that was agreed to by the parties during the 2024-2025 bargaining process. This grid should be removed from the 2025-2027 Collective Bargaining Agreement and replaced with the updated grid.

*SCHEDULE A - WAGES

Lead Liquor Sales Associate Full-Time									
	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H	Step I
2024	\$26.28	\$27.07	\$27.88	\$28.72	\$29.58	\$30.47	\$31.38	\$32.32	\$33.29
2025	\$27.07	\$27.88	\$28.72	\$29.58	\$30.47	\$31.38	\$32.32	\$33.29	\$34.29
2026	\$27.88	\$28.72	\$29.58	\$30.47	\$31.38	\$32.32	\$33.29	\$34.29	\$35.32
2027	\$28.72	\$29.58	\$30.47	\$31.38	\$32.32	\$33.29	\$34.29	\$35.32	\$36.38
Liquor Sales Associate Full-Time									
	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H	Step I
2024	\$20.44	\$21.05	\$21.68	\$22.33	\$23.00	\$23.69	\$24.40	\$25.13	\$25.88
2025	\$21.05	\$21.68	\$22.33	\$23.00	\$23.69	\$24.40	\$25.13	\$25.88	\$26.66
2026	\$21.68	\$22.33	\$23.00	\$23.69	\$24.40	\$25.13	\$25.88	\$26.66	\$27.46
2027	\$22.33	\$23.00	\$23.69	\$24.40	\$25.13	\$25.88	\$26.66	\$27.46	\$28.28
Liquor Sales Associate Part-Time									
2024	\$16.82								
2025	\$17.32								
2026	\$17.84								
2027	\$18.38								

* Corrected wage grid

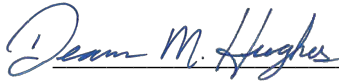
**LETTER OF UNDERSTANDING BETWEEN
THE CITY OF BEMIDJI
AND
UFCW 1189**

This Letter of Understanding is entered into between the City of Bemidji ("Employer") and United Food and Commercial Workers Union, Local 1189 ("Union").

The Employer and Union are parties to a Collective Bargaining Agreement (CBA) in effect from January 1, 2025, through December 31, 2027. The parties have agreed to clarify the application of Minnesota Paid Family and Medical Leave (PFML) for employees covered under this Agreement as follows:

Paid Family and Medical Leave:

1. Effective January 1, 2026, the Employer will pay 50% and the employee will pay 50%, through payroll deduction, of the Family and Medical Leave premiums assessed pursuant to Minnesota State Statute Section 268B.14.
2. Employees who qualify for family or medical leave benefits under Minnesota Statutes Chapter 268B may elect to use accrued Paid Time Off (PTO) or other paid leave provided under Article 10 - Paid Time Off (PTO) of the CBA as "supplemental benefits" during periods of approved Paid Family and Medical Leave.

		 11/10/2025
Employer	Date	Union Date

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Accept Donation for Casting with Cops
Prepared By: David LaZella, Police Captain

Background:

The Bemidji Police and Parks and Recreation Departments continue to engage community youth through their innovative and very popular program, "Casting with Cops". This program was initiated in 2023 and has been instrumental in providing opportunities for youth in the area who would normally not have a chance to go fishing in a controlled, safe, environment with representatives from the Bemidji Police Department.

As a result of this program, several persons and businesses have expressed desire to donate funding to help offset program costs which include fuel, bait, fishing equipment, safety equipment and refreshments/lunches for the participants.

On December 18th, 2025, Captain LaZella received a donation from Linda Spindler of Bemidji for \$100 to be donated to the Casting with Cops program.

Recommendation:

Staff recommends that the City Council authorize and accept the \$100 donation to BPD's Casting with Cops program at 223-00000-36230.

RESOLUTION NO.

A RESOLUTION ACCEPTING DONATION

(Linda Spindler)

WHEREAS, the City Council of the City of Bemidji encourages public donations to help defray the costs to the general public of providing services and improving the quality of life in the City of Bemidji; and

WHEREAS, Linda Spindler has offered to donate \$100 for use by the City of Bemidji Parks and Recreation Departments and Bemidji Police Department for Casting with Cops; and

WHEREAS, Minnesota Statutes 465.03, requires that all gifts and donations of real or personal property, including money, be accepted by adoption of a resolution approved by two-thirds of the members of the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bemidji, Beltrami County, Minnesota, that this donation is hereby accepted for the use it was intended.

BE IT FURTHER RESOLVED that the City sincerely thanks the Linda Spindler for the gracious and generous donation.

The foregoing resolution was offered by Councilmember _____, and upon due second by Councilmember _____, was passed by the following vote:

Yeas:

Nays:

Absent:

Passed:

ATTEST:

APPROVED

Michelle R. Miller, City Clerk

Jorge S. Prince, Mayor



Enhance your leadership skills and connect with peers from across the state. Next-Level Leaders explores advanced leadership topics such as building trust, fostering meaningful community engagement, and leading with empathy and authenticity. [Browse the agenda](#) for session descriptions, speakers and other details.

All activities will take place at the [Crowne Plaza – Minneapolis West](#) (Plymouth).

Dates

Feb. 6-7

Fee

\$350. ([Mayors Program](#) requires and additional \$40 fee.)

Registration

Register for Next-Level Leaders – Plymouth

Registration closes Jan. 30.

Location & lodging

[Crowne Plaza – Minneapolis West \(Plymouth\)](#)

[3131 Campus Drive](#)

[Plymouth, MN 55441](#)

Room rate: \$139

Phone: (763) 559-6600

Reservations can be made via phone or online with [this booking link](#). To receive the special room rate via phone, ask for the “League of Minnesota Cities” group block when making reservations. Book by Jan. 16 to receive this special rate.



Agenda – Next-Level Leaders (Plymouth)

Friday, Feb. 6

Mayors Program

Pre-registration required.

8:30 a.m.

Welcome & check-in open (*Mayors Program ONLY*)

9-10:30 a.m.

Own Your Mayoral Moments: Personal Branding Built By Every Gesture

Paul Omodt, Omodt & Associates Critical Communications LLC

As a mayor, you play a unique role in shaping your city, how your residents feel about their community, and spearheading effective change. But are you leaving important pieces of yourself out of the equation? This session will discuss how you can fully utilize the power of your personal brand – a brand built through every word, gesture, and moment you create – a brand you have control over! Learn how to craft what is said, what is not said, and what is felt to leave a lasting impression.

Next-Level Leaders Program – Day 1**10 a.m.**

Welcome & check-in open!

10:45 a.m.

Greeting from Host City

Mayor Jeff Wosje, Plymouth

10:50 a.m.

Welcome from League of Minnesota Cities Leadership

11 a.m.

Trust Starts Here: Communicating Confidence in Local Government

Paul Omodt, Omodt & Associates Critical Communications LLC

Today's post-truth and post-trust world poses a unique challenge to those who work and serve in government. Across the country, people are reporting an erosion of trust in established institutions and a lack of confidence in finding accurate sources of information. But within this widening problem are promising strategies to find new ways forward – ways that local level elected officials like you have a role in. In this workshop we will delve into the latest research on strategies you can deploy to build confidence in local government.

12:15 p.m.

Networking Lunch

1 p.m.

Public Participation and Community Engagement for Senior Leaders

Justin Schneider and Michell Gutt, facilitators, International Association for Public Participation (iap2)

This workshop will guide you through the important process of community engagement, looking at what makes engagement meaningful, and how to apply standards of practice that will enhance the public participation process. Through examples from cities from all sizes across the nation, we will explore your critical role as elected officials in building a positive culture of engagement that improves results, credibility and performance. Led by two skilled iap2 facilitators with national local government experience you will be introduced to the public participation framework, get a chance to explore the role of trust and culture in the engagement process, consider ways power and influence challenge engagement contexts, and evaluate your own city practices in public participation.

*****This session includes a break at 2:45 p.m.***

4:45 p.m.

Social time

5:30 p.m.

Dinner

6:30 p.m.

Adjourn for the day

Saturday, Feb. 7

Next-Level Leaders Program – Day 2

7:45 – 8:20 a.m.

Breakfast

8:30 a.m.

Panel discussion on emergency management – more details coming soon!

9:30 a.m.

Leading with Heart and Vision: Advancing Government Leadership in Complex Times

Daniel Jasper, keynote speaker and strategic advisor, Mall of America

Effective government leadership today requires more than managing daily operations—it calls for clarity, empathy, and the ability to lead through complexity. Daniel Jasper draws on real-world experiences from his work with the Mall of America, including crisis response and community engagement, to share practical strategies for stronger public leadership.

Participants will learn how to balance strategic vision with authentic connection, communicate clearly under pressure, and lead with confidence and purpose.

*****This session includes a break at 10:30 a.m.***

12 p.m.

Adjourn

Your LMC Resource

Event and Learning Staff

(651) 281-1200

registration@lmc.org

Cancellation Policy

Cancellations must be sent via email to registration@lmc.org seven (7) days prior to the start of the program and are subject to a \$50 cancellation fee. If you are unable to attend, please consider sending a substitute. Substitutions are permitted up to the day of the event. Please notify the staff at the check-in desk of any on-site substitutions.

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approval of the Lease Agreement between the City of Bemidji and Visit Bemidji for 909 square feet of the Tourist Information Center.

Prepared By: Rich Spiczka, City Manager

Background:

The City of Bemidji and Visit Bemidji have had an agreement for the leasing of 909 square feet of space at the Tourist Information Center in Paul Bunyan Park. The lease included is for 5 years and does allow for extensions with an agreed upon rent amount at each term.

Recommendation:

Approve Lease Agreement between the City of Bemidji and Visit Bemidji for 909 square feet of the Tourist Information Center.

Tourist Information Center Lease Agreement (Southwest Section)

THIS LEASE AGREEMENT is entered into on January 1st, 2026 (“Effective Date”) by and between the **City of Bemidji, Minnesota**, a municipal corporation, hereinafter referred to as CITY, and **Visit Bemidji**, a Visitor & Convention Bureau, hereinafter referred to as TENANT.

WHEREAS, CITY has office space available in the Southwest section of the Tourist Information Center Building (hereinafter known as the Southwest Section); and

WHEREAS, CITY and TENANT wish to enter into a lease arrangement for the Southwest Section and related common areas, including shared use of the staff restroom.

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

1. **LEASED PREMISES.** CITY leases to TENANT and TENANT leases from CITY that portion of the Tourist Information Center known as Southwest Section. The leased area consists of an approximate 909 sq.ft. defined area, as shown in **Exhibit “A”**, (hereinafter the “Leased Premises”), plus shared use of the staff restroom, together with all rights, easements and servient estates appurtenant to the Leased Premises.

2. **INITIAL TERM.** The term of this Lease shall be approximately five (5) years and, commencing on January 1, 2026 and ending on December 31, 2030, upon the condition that Tenant pays rent therefore, and otherwise performs as provided in the Lease.

3. **OPTION TO RENEW.** The Lease agreement may be renewed automatically for two (2) additional five (5) year terms. During each renewal term, excepting the amount and payment of rent and utilities, the same terms and conditions of this Lease Agreement shall remain in effect unless modified by subsequent written agreement of the parties. At the conclusion of the original term, and each renewal term thereafter, the parties shall renegotiate the amount and payment of rent and utilities for any renewal period. Such renegotiated terms shall be reduced to writing as an addendum to this Lease Agreement.

4. **RENT-INITIAL TERM.** TENANT agrees to pay CITY at the Bemidji City Hall, or at such other place or manner designated by CITY, without any prior demand therefore and without any deduction or setoff whatsoever, fixed rent at the rate of **\$909.00 (909 ft² x \$12/ft² divided by 12 months)** per month starting on January 1, 2026, and on the first of each succeeding calendar month thereafter during the initial term of this Lease. The rent shall include the following:

Rent, utilities (other than private telecommunication services) and general daily office custodial service.

5. **OTHER RENT.** All taxes, charges, costs and expenses that TENANT assumes or agrees to pay under this Lease Agreement, together with all interest and penalties that may accrue thereon in the event of a failure of the TENANT to pay those items, and all other damages, costs, expenses, and sums that CITY may incur or suffer, or that may come due, by reason of any default of TENANT or failure of TENANT to comply with the terms and conditions of this Lease Agreement shall be deemed to be additional rent, and, in the event of nonpayment, CITY shall have all rights and remedies as provided by this Lease Agreement and the law for failure to pay rent.

6. **REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.** The Leased Premises is currently tax exempt, and is expected to remain tax-exempt property as to the CITY under this Lease Agreement. However, as a non-governmental lessee, TENANT shall bear the cost of all real estate taxes (personal property taxes) and special assessments, and governmental charges of any kind whatsoever, if any, that may at any time be lawfully assessed or levied against or with respect to the Leased Premises or to any furnishings, equipment or other property installed or brought by TENANT therein or thereon.

7. **ADDITIONAL SERVICES.** CITY shall ensure that appropriate private utility infrastructure (Telecommunications primarily) is installed to serve the Leased Premises. However, TENANT shall bear the cost of any service or installation charges and the monthly billing connected with the use or repair of private telecommunication services.

8. **USE OF PREMISES.** TENANT shall use the Leased Premises only for Visit Bemidji related business operations and practices, subject to the terms and conditions of this Lease Agreement. TENANT shall neither use nor occupy the Leased Premises or any part thereof for any unlawful, disreputable or hazardous business purpose nor operate or conduct its business in a manner constituting a nuisance of any kind. TENANT shall immediately, on discovery of any unlawful, disreputable or ultra-hazardous use, take action to halt such activity.

9. **SIGNAGE.** Written approval from City is required prior to Tenant placing any signs on the exterior or interior of the Tourist Information Center Building.

10. **POSSESSION.** TENANT shall be entitled to possession on the first day of the term of this Lease Agreement, and shall yield possession to the CITY at the time and date of the termination of the Lease term, unless otherwise expressly provided in this Lease Agreement. Should CITY be unable to give possession on said date, TENANT's only damages shall be a rebating of the pro rata rental.

11. **ACCESS BY TENANT.** TENANT and its employees, customers, agents and invitees shall have the nonexclusive right to use, for entering and exiting from the Leased Premises, the common hallway(s), the "west" entrance door, and the sidewalk(s) serving the Tourist Information Center Building which provide reasonable and convenient access between the Leased Premises and the public rights-of-way. Further, CITY shall provide and maintain the

Leased Premises and the Tourist Information Center Building with accessibility and facilities meeting code requirements for handicapped persons, pursuant to all applicable laws, rules, ordinances and regulations as issued by any federal, state or local entities having jurisdiction and authority in connection with this property.

12. PARKING. TENANT TENANT's employees, customers, agents and invitees shall be permitted to park in the Paul Bunyan Park Parking Lot.

13. QUIET ENJOYMENT. Upon payment of the rent and performance of the covenants and agreements on the part of the TENANT to be performed hereunder, TENANT shall have quiet and peaceable possession of the Leased Premises during the term of the Lease Agreement.

14. SURRENDER OF PROPERTY. Upon the expiration or termination of the Term of this Lease Agreement, TENANT shall at its own expense:

- a. remove all items of personal property and equipment,
- b. repair any damage (less reasonable wear and tear) and make any necessary replacements caused or necessitated by such removal, and
- c. quit and deliver up premises to CITY, peaceably and quietly, in a clean and sanitary condition with all services and appurtenances included within the scope of this Lease Agreement in effect and in good running order.

15. UTILITIES, MAINTENANCE AND REPAIR.

A. UTILITIES.

- i. CITY initially shall pay all charges of public or private utility companies or commercial suppliers for electricity, water, sewage, natural gas, and other forms of energy, if any, furnished to the Tourist Information Center, including the Leased Premises.
- ii. TENANT agrees to observe reasonable precautions to prevent waste of heat, electricity, water, air conditioning, and any other utility or service, whether such is furnished by the CITY or obtained and paid for by TENANT.

B. MAINTENANCE. The parties shall share the responsibility and cost of maintenance, janitorial and common area expenses as follows:

- i. CITY shall be responsible for and shall keep in good repair and operating condition at its own expense:

- a. All structural parts of the existing building containing the Leased Premises, including roof, glass windows, doors, foundation and all structural parts of the floors, walls and ceilings, and
- b. All existing mechanical and utility systems serving the Leased Premises, including electrical wiring, heating, (and, where applicable, cooling) devices and ductwork.
- ii. TENANT shall be responsible for maintenance of its own implements or articles which are the personal property of TENANT.
- iii. Snow Removal. City shall keep the public sidewalks adjacent to the building and any public sidewalks or stairways leading from the public sidewalks to the building free from snow, ice and debris.
- iv. Trash Removal. City shall keep the common areas of the Tourist Information Center Building free of all accumulations of trash and debris, and shall provide the Leased Premises with a means or system of waste or trash disposal.
- v. Janitorial. City shall provide janitorial services and supplies to the common areas of the Tourist Information Center Building. TENANT shall be responsible for providing these services to the Leased Premises.
- vi. Exterior Lighting. CITY shall provide adequate exterior lighting in the Tourist Information Center building entrance/exits.
- C. **REPAIRS.** CITY shall make such necessary repairs so as to continue to provide all such service appurtenances as are required by this Lease Agreement, provided, however, that CITY shall not be responsible for repairs upon implements or articles which are the personal property of TENANT, nor shall the CITY bear the expense of repairs to the Leased Premises necessitated by damage caused by TENANT beyond normal wear and tear. TENANT also shall be responsible to CITY for damage to the Leased Premises caused by acts or negligence of TENANT or TENANT's agents, employees or invitees. However, CITY shall be responsible for damage to the Leased Premises and property of TENANT located thereon caused by acts or negligence of CITY.
- D. **MEDIATION COMMITTEE.** In the event of a dispute over, or a need for interpretation of, the division of responsibilities as set forth above or in this Lease Agreement generally, the Parties may appoint representatives to an ad hoc committee created for the specific purpose of mediating such issues as they arise.
- E. **REMODELING.** TENANT must receive prior written approval from the CITY before doing any remodeling or improvement to the Leased Premises.

16. HAZARDOUS SUBSTANCES. TENANT shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Leased Premises by TENANT, TENANT's agents, employees, contractors, or invitees. As used herein, "Hazardous Substance" means any material or substance that is toxic, ignitable, reactive, or corrosive and that is defined as "hazardous waste" and regulated by any local government, the State of Minnesota, or the United State Government.

17. TOBACCO AND VAPING FREE ENVIRONMENT. TENANT acknowledges that all indoor spaces of the Tourist Information Center Building, including the Leased Premises, are a Tobacco and Vaping free environment. TENANT, TENANT's agents, employees, contractors, or invitees shall adhere to all Tobacco and Vaping free environment regulations as put forth under State, County, and City Ordinances and statutes.

18. COMPLIANCE WITH LAWS. TENANT, TENANT's agents, employees, contractors, or invitees shall not use Leased Premises, or permit the Leased Premises to be used contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto which would violate any certificate of occupancy or for illegal purposes.

19. NON ASSIGNMENT. TENANT shall not assign, sublet, or otherwise transfer its interest in this Lease Agreement or the Leased Premises without the prior written consent of CITY.

20. INSURANCE.

A. At all times this Lease Agreement is in force, TENANT, at its cost, shall maintain General Liability policy or policies covering the Leased Premises, Products sold, and the operations authorized by this Lease Agreement. Additionally, at all times this Lease Agreement is in force, TENANT, at its cost, shall provide property insurance coverage for its contents, personal property, improvements and betterments to the Leased Premises on a replacement cost basis. CITY shall provide Property Insurance Coverage for the Tourist Information Center Building and all real property leased under this Lease Agreement. TENANT's general liability coverage shall provide minimum liability limits as outlined below:

<u>Single Limits</u>	<u>Combined</u>
General Aggregate	\$1 ,000,000
Personal Injury	\$ 300,000 (per person per occurrence)
Each Occurrence (bodily injury and property damage)	\$ 1,000,000
Fire Legal Liability	\$ 1,000,000
Premises Medical Payments	\$5 ,000 (each person)

B. TENANT's policy(s) shall name CITY as additional insured and the cancellation provision of said policy(ies) must provide for a thirty (30) day notice of cancellation by the issuing company to the CITY should the policy be cancelled for any reason before its expiration date.

TENANT shall at the beginning of the initial Lease Term and annually thereafter provide proof (Certificate) of such insurance coverage to CITY. TENANT will not do or omit the doing of any act which would vitiate any insurance, or increase the insurance rates in force upon the real estate improvements on the Leased Premises.

C. Throughout the Lease Term, TENANT shall maintain Worker compensation Coverage to the extent required by law.

21. INDEMNITY. TENANT shall fully indemnify and hold harmless the CITY, its agents and employees, from and against all claims, actions, judgments, costs and expenses of every kind, including reasonable attorney's fees, by or on behalf of any person or entity arising out of either (a) any injury to third persons or damage to property happening on or about the Leased Premises, (b) a failure by TENANT to perform any of the terms or conditions of this Lease Agreement, (c) failure to comply with any law of any governmental authority, (d) claims under the Unemployment Compensation or Workers Compensation Act of the State of Minnesota, on behalf of TENANT, its employees or other persons while so engaged in the performance of any services or uses contemplated under this Lease Agreement, or (e) any mechanic's lien or security interest filed against the Leased Premises or equipment, materials, or alterations of building or improvements thereon.

However, TENANT shall not be liable for any injury or loss occasioned by the negligence of the CITY, its agents, or employees; and, provided further, the TENANT shall give to CITY prompt and reasonable notice of any such claims or actions and CITY shall have the right to investigate, compromise and defend the same. The parties agree that the liability of the CITY is governed by the provisions contained in Minnesota Statutes Chapter 466, as such may be amended, modified or replaced from time to time.

22. DESTRUCTION OF PREMISES. In the event of a partial destruction of the Leased Premises during the Lease Term from any cause, CITY shall repair the same, provided the repairs can be made within ninety (90) days under applicable laws and regulations. Any partial destruction shall neither annul nor void this Lease Agreement, except that TENANT shall be entitled to a proportionate reduction of rent while the repairs are being made, any proportionate reduction of rent being based on the extent to which the making of repairs shall interfere with the business carried on by TENANT in the Leased Premises. If the repairs cannot be made in the specified time, CITY may, at its option, make repairs within a reasonable time, this Lease Agreement continuing in full force and effect and the rent to be proportionately rebated as previously set forth in this section. In the event that CITY does not elect to make repairs that cannot be made in the specified time, this Lease Agreement may be terminated at the option of either party. Should the Tourist Information Center Building in which the Leased Premises are situated be destroyed to the extent of greater than fifty percent (50%) of the replacement cost thereof, this Lease Agreement shall be terminated.

23. LANDLORD'S LIEN. CITY shall have a lien for security for the rent and other amounts due from TENANTS on all of TENANT's goods, chattels, fixtures, furniture, tools and other personal

property kept and used by TENANT on the Leased Premises. This lien shall be in addition to any lien provided by law, and shall, in addition, be considered a security interest under the Minnesota Uniform Commercial Code.

24. MECHANIC'S LIEN. Neither the TENANT nor anyone claiming by, thru, or under the TENANT, shall have the right to file or place any mechanic's lien or other lien of any kind of character whatsoever, upon the Leased Premises or upon the Tourist Information Center Building or improvement thereon, or upon the leasehold interest of the TENANT therein. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for the Leased Premises or the Tourist Information Center Building, improvements, alterations, repairs or any part thereof, shall at any time be or become entitled to any lien thereon, and for the further security of the CITY, the TENANT covenants and agrees to give actual notice thereof in advance, to any and all contractors and subcontractors who may furnish or agree to furnish any such material, service or labor.

25. RIGHT TO ENTER/INSPECTION OF PREMISES. CITY or its authorized agents may enter upon the Leased Premises at all reasonable times for the purpose of examining or inspecting the condition thereof, in order to exercise any right of power reserved to CITY within the scope of and under the terms and conditions of this Lease Agreement, or to perform any duties placed upon CITY under this Lease Agreement.

26. EVENTS OF DEFAULT OR BREACH. Each of the following events shall constitute a default or breach of this Lease Agreement:

A. In the event either party shall default in the performance of any of the terms or provisions of this Lease Agreement, the non-defaulting party shall promptly so notify the defaulting party in writing. If the defaulting party shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure, and the defaulting party shall fail to commence to do so within the thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, then in either event, the non-defaulting party may either cure such default itself or elect to immediately terminate this Lease Agreement subject to **Paragraph 27**.

B. If TENANT shall file or have filed against it a petition in bankruptcy or insolvency or for reorganization under any Bankruptcy Act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

C. If TENANT shall vacate or abandon the Leased Premises.

D. If this Lease Agreement becomes part of the estate of TENANT hereunder and shall be transferred to or shall pass to or devolve on any other person or party, except in the manner permitted by this Lease Agreement.

27. EFFECT OF DEFAULT OR BREACH. In the event of a default by TENANT and its failure to timely cure the same, CITY may re-enter the Leased Premises immediately and remove the property of TENANT, and store the property in a public warehouse or at a place selected by CITY, at the expense of TENANT. CITY may recover from TENANT all damages proximately resulting from the breach, including the cost of recovering the Leased Premises (including reasonable attorney's fees). After re-entry, CITY also may re-let the Leased Premises at the rent and on the terms as CITY may choose.

This provision in no way limits a party's other remedies for breach under common law or this Lease Agreement.

28. CANCELLATION.

A. **By Mutual Consent.** This Lease Agreement may be terminated at any time by mutual consent of CITY and TENANT.

B. **BY TENANT.** In addition to any rights of cancellation or any other rights herein given to the TENANT, the TENANT may cancel this Lease Agreement in its entirety and terminate its obligations hereunder at any time, by six (6) months written notice to the CITY. Notice shall be given as provided in **Paragraph 31**.

C. **BY CITY.** In addition to any rights of cancellation or any other rights herein given to the CITY, the CITY may cancel this Lease Agreement in its entirety and terminate all or any of its obligations hereunder as follows:

i. upon six (6) months written notice to the TENANT. Notice shall be given as provided in **Paragraph 31**.

ii. in the event that TENANT shall default in the performance of any terms or provision of this Lease Agreement and is not corrected by the TENANT within thirty (30) days of delivery by CITY to TENANT of written notice of the default, then the CITY shall have the right and option to terminate this Lease Agreement; provided, however, that before any such right of termination is exercised, the CITY shall give reasonable notice to the TENANT and extend it an opportunity to be heard before the City Council. The decision of the City Council shall be final.

Acceptance of rent by the CITY for any period or periods after the default of any of the terms and conditions contained herein to be performed by TENANT shall not be deemed a waiver of any right on the part of the CITY to cancel the Lease Agreement for such default.

29. ALTERATIONS, ADDITIONS AND IMPROVEMENTS. No Alterations, Additions or Improvements shall be made to the Leased Premises during the Term of this Lease Agreement without first securing the prior written approval of CITY. Any Alterations, Additions or Improvements built, constructed or placed on the Leased Premises, with the exception of fixtures

removable without damage to the Leased Premises and TENANT's personal property, shall become the property of CITY.

30. **WAIVERS.** The failure of CITY or TENANT to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the right or remedies that CITY or TENANT may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

31. **NOTICES.** All notices to be given with respect to this Lease Agreement shall be deemed sufficiently given or rendered if in writing and delivered to either party personally or sent by registered or certified mail, postage prepaid, addressed as set forth below or at such other address as either party may from time to time designate in writing:

TO CITY:

City Manager
Bemidji City Hall
317 4th Street NW
Bemidji, MN 56601

TO TENANT:

Executive Director
Visit Bemidji
P.O. Box 66
Bemidji, MN 56619

32. **AUDIT.** The books, records, documents and accounting procedures and practices of TENANT relevant to this Lease Agreement are subject to examination by the CITY during normal business hours and after reasonable notice to the TENANT for a period of three (3) years after the creation or, in the case of procedures and practices, the year in which performed.

33. **MINNESOTA GOVERNMENT DATA PRACTICES COMPLIANCE.** TENANT shall at all times abide by Minnesota Statutes Sections 13.01 et seq., the Minnesota Government Data Practices Act, to the extent that the Act is applicable to data and documents in the possession of TENANT.

34. **NON-DISCRIMINATION.** During the performance of this Lease Agreement, TENANT shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age. TENANT further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes Section 363A.02, et seq., Title VI of the Civil Rights Act of 1964, and the American with Disabilities Act of 1990, as the same may be amended from time to time.

35. **RELATIONSHIP OF PARTIES.** TENANT is an independent contractor of CITY and shall not be deemed to be an employee, joint venture, or partner of the CITY.

36. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

37. **EXHIBITS.** Exhibits to this Lease Agreement shall form a part hereof, and are incorporated into this agreement.

38. **MERGER; AMENDMENTS.** It is understood and agree that the entire agreement of the parties is contained herein and that this Lease Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this Lease Agreement are incorporated or attached and deemed to be part of this Lease Agreement. Any waiver, alteration or modification of this Lease Agreement or any agreements in connection herewith shall be reduced to writing as an amendment and signed by each of the parties.

39. **SEVERABILITY.** If any term or provision of this Lease Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement or the application of such term or provision to persons with circumstances other than those as to which it is felt invalid or unenforceable, shall not be affected thereby.

40. **COUNTERPARTS.** This Lease Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterpart shall constitute one and the same instrument.

Dated: _____

Dated: _____

CITY OF BEMIDJI

VISIT BEMIDJI

By _____
Jorge S. Prince, Mayor

By _____
_____, Board President

By _____
Richard M. Spiczka, City Manager

BEMIDJI TOURIST INFORMATION CENTER

BEMIDJI, MINNESOTA

ARCHITECTURAL
RESOURCES, INC.

ARCHITECTURE
ENGINEERING
LANDSCAPE
ARCHITECTURE
PLANNING
INTERIOR
DESIGN

100 EAST WYOMING STREET
BEMIDJI, MINNESOTA 56601
TEL: (218) 755-0001
FAX: (218) 755-0002
100 EAST WYOMING STREET
BEMIDJI, MINNESOTA 56601
TEL: (218) 755-0001
FAX: (218) 755-0002

PLANS

PROJECT NO. 89-04
DATE: 9 DECEMBER 94
DRAWN BY: BF/SVB/JP

1. THESE PLANS ARE TO BE USED FOR THE CONSTRUCTION OF THE BEMIDJI TOURIST INFORMATION CENTER. ANY CHANGES TO THESE PLANS MUST BE APPROVED BY THE ARCHITECT. 2. THE OWNER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE ACCURACY OF THE SURVEY DATA. 3. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE SURVEY DATA OR FOR THE RESULTS OF ANY FIELD SURVEYING. 4. THE ARCHITECT IS NOT RESPONSIBLE FOR THE RESULTS OF ANY FIELD SURVEYING. 5. THE ARCHITECT IS NOT RESPONSIBLE FOR THE RESULTS OF ANY FIELD SURVEYING.

148 SE

2

FLOOR PLAN



FLOOR PLAN

SHEET NO. 10 OF 41 SHEETS

Visit Bemidji Leased Space (SW section)
909 ft²

Accounts Payable

Blanket Voucher Approval Document

User: denisea
Printed: 12/30/2025 - 1:13PM
Warrant Request Date: 1/6/2026
DAC Fund:



Batch: 00432.12.2025

COUNCIL BILL LIST

Line	Claimant	Voucher No.	Amount
1	VisitBemidji	000000000	36,660.97
Page Total:			\$36,660.97
Grand Total:			\$36,660.97

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026
Action Requested: Conduct Public Hearing and First Reading
Prepared By: Michelle Miller, City Clerk (via Flaherty & Hood)

Background:

Ordinance No. ____ establishes a new gas utility franchise by and between the City of Bemidji and Minnesota Energy Resources to ensure that gas services provided by Minnesota Energy Resources continue for the next 20 years prior to the previous ordinance, No. 421 2nd Series, expires in February 2026. The previous ordinance was for 20 years as well; this is standard for such utility franchises.

This ordinance has been negotiated with Minnesota Energy Resources and has been agreed to in its current state. The substance of this ordinance is in substantially the same form as the League of Minnesota Cities model franchise ordinance with additions from the City's Legal Counsel at Flaherty & Hood.

Flaherty & Hood is negotiating the City's remaining utility franchise ordinances, and these remaining ordinances will be presented for City Council approval in the coming weeks.

Recommendation:

Conduct Public Hearing and First Reading

GAS FRANCHISE ORDINANCE

ORDINANCE NO. _____, 3RD SERIES

AN ORDINANCE GRANTING TO MINNESOTA ENERGY RESOURCES, A SUBSIDIARY OF WEC ENERGY GROUP, A WISCONSIN CORPORATION, ITS SUCCESSORS AND ASSIGNS, PERMISSION TO CONSTRUCT, OPERATE, REPAIR AND MAINTAIN IN THE CITY OF BEMIDJI, MINNESOTA, A GAS DISTRIBUTION SYSTEM, INCLUDING NECESSARY GAS PIPES, MAINS AND APPURTENANCES, FOR THE TRANSMISSION OR DISTRIBUTION OF GAS TO THE CITY, ITS INHABITANTS, AND OTHERS, AND TO USE THE PUBLIC GROUNDS AND PUBLIC WAYS OF THE CITY FOR SUCH PURPOSES

THE CITY OF BEMIDJI ORDAINS:

SECTION 1. DEFINITIONS.

For purposes of this Ordinance, the following capitalized terms listed in alphabetical order shall have the following meanings:

- 1.1 **City.** The City of Bemidji, Beltrami County, State of Minnesota.
- 1.2 **City Utility System.** Facilities used for providing non-energy related public utility service owned or operated by City or an agency thereof, including but not limited to sewer, storm sewer, street lighting and traffic signals. and water services, but excluding facilities for providing heating, lighting or other forms of energy.
- 1.3 **Commission.** The Minnesota Public Utilities Commission, or any successor agency or agencies, including an agency of the federal government, which preempts all or part of the authority to regulate gas retail rates now vested in the Minnesota Public Utilities Commission.
- 1.4 **Company.** Minnesota Energy Resources, a subsidiary of WEC Energy Group, a Wisconsin corporation, its successors and assigns including all successors or assignees that own or operate any part or parts of the Gas Facilities subject to this franchise.
- 1.5 **Gas.** "Gas" as used herein shall be held to include natural gas, manufactured gas, or other form of gaseous energy.
- 1.6 **Gas Facilities.** Gas transmission and distribution pipes, mains, regulators, and other facilities owned or operated by Company for the purpose of providing gas service for public or private use.
- 1.7 **Notice.** A written notice served by one party on the other party. Notice to Company shall be mailed to Minnesota Energy Resources, Attn: Senior External Relations Manager, 2685 145th Street, Rosemount, MN 55068. Notice to the City shall be mailed to the City Clerk, 317 4th Street NW, Bemidji, MN 56601. Either party may change its respective address for the purpose of this Ordinance by written notice to the other party.

1.8 **Public Ground.** Land owned or otherwise controlled by the City for park, open space or similar public purpose, which is held for use in common by the public and is not a Public Way.

1.9 **Public Way.** Any public right-of-way within the City as defined by Minnesota Statutes, Section 237.162, subd. 3.

SECTION 2. ADOPTION OF FRANCHISE.

2.1 Grant of Franchise. The City hereby grants the Company, for a period of 20 years from the date this Ordinance is passed and approved by the City, the right to transmit, furnish, and sell Gas energy for light, heat, power and other similar purposes for public and private use within and through the limits of the City as its boundaries now exist or as they may be extended in the future. For these purposes, the Company may construct, operate, repair and maintain Gas Facilities in, on, over, under and across the Public Grounds and Public Ways of the City, subject to the provisions of this Ordinance. The Company may do all reasonable things necessary or customary to accomplish these purposes, subject, however, to such reasonable regulations as may be imposed by the City pursuant to ordinance or permit requirements, and to the further provisions of this franchise agreement.

2.2 Effective Date; Written Acceptance. This franchise agreement shall be in force and effect from and after passage of this Ordinance, its acceptance by the Company, and its publication as required by law. The City, by Council resolution, may revoke this franchise agreement, seek its enforcement in a court of competent jurisdiction or pursue other remedies in law or in equity if the Company does not file a written acceptance with the City within 90 days after publication. Each party is responsible for its own legal fees incurred related to granting of this Franchise.

2.3 Service and Rates. The service to be provided and the rates to be charged by the Company for Gas service in the City are subject to the jurisdiction of the Commission.

2.4 Publication Expense. The expense of publication of this Ordinance will be paid by the City and reimbursed to the City by the Company within 30 days of invoicing by the City.

2.5 Dispute Resolution. If either party asserts that the other party is in default in the performance of any obligation hereunder, the complaining party shall notify the other party of the default and the desired remedy. The notification shall be written. Representatives of the parties must promptly meet and attempt in good faith to negotiate a resolution of the dispute. If the dispute is not resolved within 30 days of the date of written notice, the parties may jointly select a mediator to facilitate further discussion. The parties will equally share the fees and expenses of this mediator. If a mediator is not used or if the parties are unable to resolve the dispute within 30 days after first meeting with the selected mediator, either party may commence an action in District Court in Beltrami County to interpret and enforce this franchise or for such other relief as may be permitted by law or equity for breach of contract, or either party may take any other action permitted by law.

2.6 Continuation of Franchise. If the City and the Company are unable to agree on the terms of a new franchise by the time this franchise expires, this franchise will remain in effect until a new franchise is agreed upon, or until 90 days after the City or the Company serves written Notice to the other party of its intention to allow the franchise to expire. However, in no event shall this franchise continue for more than one year after expiration of the term set forth in Section 2.1, unless

an extension is otherwise agreed in writing by the City and the Company in which case the franchise may be extended up to an additional six months.

SECTION 3. LOCATION, OTHER REGULATIONS.

3.1 Location of Facilities. Gas Facilities shall be located, constructed, installed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System. Gas Facilities shall be located on Public Grounds as determined by the City. The Company's construction, reconstruction, operation, repair, maintenance, location and relocation of Gas Facilities shall be subject to permits or such other requirements as provided by separate ordinance or law and to other reasonable regulations of the City imposed pursuant to ordinance, rule or statute to the extent not inconsistent with the specific terms of this franchise agreement.

3.2 Field Locations. The Company shall provide field locations for its underground Gas Facilities within the City consistent with the requirements of Minnesota Statutes, Chapter 216D.

3.3 Street Openings. The Company shall not open or disturb any Public Ground or Public Way for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may impose a reasonable fee. Permit conditions imposed on the Company shall not be more burdensome than those imposed on other utilities for similar facilities or work. The Company may, however, open and disturb the surface of any Public Ground or Public Way without permission from the City where an emergency exists requiring the immediate repair of Gas Facilities. In such emergency event, the Company shall notify the City by telephone, email or similar notice to the office designated by the City as soon as practicable, but before commencement of the emergency repair, if reasonably possible. Within a reasonable time period thereafter, the Company shall apply for any required permits and pay any required fees.

3.4 Restoration. After undertaking any work requiring the opening of any Public Ground or Public Way, the Company shall restore the same in accordance with Minnesota Rules, part 7819.1100 and applicable City ordinances consistent with law. The Company shall restore the same, including but not limited to paving and its foundation, to as good a condition as formerly existed and shall repair any defects in a repair to maintain the formally existing condition for one year thereafter. The work shall be completed as promptly as weather permits, and if Company shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Ground or Public Way in the said condition, the City shall have, after demand to the Company to cure and the passage of a reasonable period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of the Company. The Company shall pay to the City the cost of such work done for or performed by the City or its agent. This remedy shall be in addition to any other remedy available to the City for noncompliance with this Section 3.4. The City reserves the right to require a construction performance bond or other form of security acceptable to the City for new Facilities installation, relocation, replacement, or repairs, when the Company's completion of its work is required in order for the City to proceed with its work for constructing a public improvement project in the Public Way or additionally as allowed by applicable State statutes or rules consistent with the provisions of Minnesota Rules, parts 7819.3000 and 7819.0100, subpart 6.

3.5 Avoid Damage to Gas Facilities. The Company must take reasonable measures to prevent the Gas Facilities from causing damage to persons or property. The Company must take reasonable measures to protect the Gas Facilities from damage that could be inflicted on the Facilities by persons, property, or the elements. The Company must take protective measures when the City performs work near the Gas Facilities, if given reasonable notice by the City of such work prior to its commencement. Nothing in this Ordinance relieves any person, including the Company, from liability arising out of the failure to exercise reasonable care to avoid damaging Gas Facilities or other persons or property while performing any activity.

3.6 Notice of Improvements. The City must give the Company reasonable notice of plans for improvements to Public Grounds or Public Ways where the City has reason to believe that Gas Facilities may affect or be affected by the improvement. The notice must contain: (i) the nature and character of the improvements, (ii) the Public Grounds and Public Ways upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Ground or Public Way is involved, the order in which the work is to proceed. The notice must be given to the Company a sufficient length of time in advance of the actual commencement of the work to permit the Company to make any necessary additions, alterations, relocation, or repairs to its Gas Facilities the Company deems necessary.

3.7 Mapping Information. The Company must promptly provide mapping information for any of its underground Gas Facilities in accordance with Minnesota Rules parts 7819.4000 and 7819.4100, as the same may be amended from time to time.

SECTION 4. RELOCATIONS.

4.1 Relocation of Gas Facilities in Public Ways. The Company shall comply with Minnesota Rules, part 7819.3100 and applicable law, and any applicable City ordinances consistent with law regarding relocation of Gas Facilities in Public Ways.

4.2 Relocation of Gas Facilities in Public Ground. The City may require the Company, at the Company's expense, to relocate or remove its Gas Facilities from Public Ground upon a finding by the City that the Gas Facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground. Such relocation shall comply with applicable ordinances consistent with law.

4.3 Projects with Federal Funding. The City shall not order the Company to remove or relocate its Gas Facilities when a Public Way is vacated, improved or realigned for a right-of-way project or any other project which is financially subsidized in whole or in part by the Federal Government or any agency thereof, unless the reasonable non-betterment costs of such relocation are first paid to the Company; provided however, that the City is obligated to pay the Company only for those portions of its relocation costs for which the City has actually received federal funding specifically allocated for the relocation costs in the amount requested by the Company for such relocation costs. Relocation, removal or rearrangement of any Company Gas Facilities made necessary because of the extension into or through the City of a federally-aided highway project shall be governed by the provisions of Minnesota Statutes, Section 161.46, as supplemented or amended. It is understood that the rights herein granted to the Company are valuable rights.

4.4 No Waiver. The provisions of this franchise apply only to facilities constructed in reliance on a franchise from the City and shall not be construed to waive or modify any rights obtained by the Company for installations within a Company right-of-way acquired by easement or prescriptive right before the applicable Public Ground or Public Way was established, or the Company's rights under state or county permit.

SECTION 5. TREE TRIMMING.

Company may trim all trees and shrubs in the Public Grounds and Public Ways of the City to the extent the Company finds necessary to avoid interference with the proper construction, operation, repair and maintenance of Gas Facilities installed hereunder, provided that the Company shall save the City harmless from any liability arising therefrom, and subject to permit or other reasonable regulation by the City. The Company shall provide the City with reasonable notification prior to any proposed trimming other than trimming resulting from an emergency.

SECTION 6. INSURANCE AND INDEMNIFICATION.

6.1 Insurance. The Company is required to maintain Commercial General Liability Insurance on an occurrence basis protecting it from claims for damages for bodily injury, including death, and for claims for property damage, which may arise from operations under this Ordinance. Insurance minimum limits shall be those contained in the Company's insurance certificate, applicable law, or as follows, whichever are greater:

- \$2,000,000 – per occurrence
- \$5,000,000 – annual aggregate

The following coverages shall be included: Premises and Operations Bodily Injury and Property Damage; Personal and Advertising Injury Blanket Contractual Liability and Products and Completed Operations Liability.

The City must be endorsed as an Additional Insured.

With the City's consent, which shall not be unreasonably withheld, the Company shall have the option of providing a program of self-insurance to meet its obligation under this Ordinance. In such event, the Company shall submit to the City a Certificate of Self-Insurance or other documents showing proof of its financial responsibility.

6.2 Indemnity of City. The Company shall indemnify, keep, save, insure and hold the City free and harmless from any and all liability on account of injury to persons or damage to property occasioned by the construction, maintenance, repair, inspection, relocation, the issuance of permits, or the operation of the Gas Facilities located in the Public Grounds and Public Ways. The City shall not be indemnified for losses or claims occasioned through its own negligence except for losses or claims arising out of or alleging the City's negligence as to the issuance of permits for, or inspection of, the Company's plans or work.

6.3 Defense of City. In the event a suit is brought against the City under circumstances where this agreement to indemnify applies, the Company at its sole cost and expense shall defend the City in such suit if written notice thereof is promptly given to the Company within a period wherein

the Company is not prejudiced by lack of such notice. If the Company is required to indemnify and defend, it will thereafter have control of such litigation, but the Company may not settle such litigation without the consent of the City, which consent shall not be unreasonably withheld. This section is not, as to third parties, a waiver of any defense or immunity otherwise available to the City. The Company, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. This franchise agreement shall not be interpreted to constitute a waiver by the City of any of its defenses of immunity or limitations on liability under Minnesota Statutes, Chapter 466.

SECTION 7. VACATION OF PUBLIC WAYS.

The City shall give the Company at least two weeks prior written notice of a proposed vacation of a Public Way containing Gas Facilities. The City and the Company shall comply with Minnesota Rules, part 7819.3200 and applicable ordinances consistent with law applicable to right-of-way vacation. Pursuant to Minnesota Rules, Part 7819.3200, if the City vacates a Public Way that contains Gas Facilities of Company and the vacation requires the relocation of the Company's Gas Facilities, payment of the relocation costs must be determined as follows: (1) if the vacation proceedings are initiated by Company, Company must pay the relocation costs; (2) if the vacation proceedings are initiated by the City for a public project, Company must pay the relocation costs unless otherwise agreed to by the City and Company; or (3) if the vacation proceedings are initiated for the purpose of benefiting a person other than Company, the benefited person must pay the relocation costs. Except where required for a City project, the vacation of any Public Way, after the installation of Gas Facilities, shall not operate to deprive the Company of its rights to operate and maintain such Gas Facilities, until the reasonable cost of relocating the same and the loss and expense resulting from such relocation are first paid to the Company by the nongovernmental entity in favor of whom the vacation was granted. In no case, however, shall the City be liable to the Company for failure to specifically preserve a right-of-way under Minnesota Statutes, Section 160.29.

SECTION 8. CHANGE IN FORM OF GOVERNMENT.

Any change in the form of government of the City shall not affect the validity of this Ordinance. Any governmental unit succeeding the City shall, without the consent of the Company, succeed to all of the rights and obligations of the City provided in this Ordinance.

SECTION 9. FRANCHISE FEE.

9.1. Form. At any time during the term of this franchise hereby granted, and in addition to any permit fees being imposed or that the City has a right to impose on the Company, the City may charge the Company a franchise fee by separate ordinance. The fee may be (i) a percentage of gross revenues received by the Company for its operations within the City, or (ii) a flat fee per customer based on metered service to retail customers within the City or on some other similar basis, or (iii) a fee based on units of energy delivered to any class of retail customers within the corporate limits of the City. The method of imposing the franchise fee, the percentage of revenue rate, or the flat rate based on metered service may differ for each customer class. The City shall seek to use a formula that provides a stable and predictable amount of fees, without placing the Company at a competitive disadvantage. If the Company claims that the City's required fee formula is discriminatory or otherwise places the Company at a competitive disadvantage, the Company shall provide a formula that will produce a substantially similar fee amount to the City. The City will attempt to accommodate

the Company, but is under no franchise obligation to adopt the Company-proposed franchise fee formula and each review will not delay the implementation of the City-imposed franchise fee.

9.2. Separate Ordinance. The franchise fee shall be imposed by separate ordinance duly adopted by the City Council, which ordinance shall not be adopted until at least thirty (30) days after written notice enclosing such proposed ordinance has been served upon the Company. The fee shall not become effective until the beginning of a Company billing month at least ninety (90) days after written notice enclosing such adopted ordinance has been served upon the Company by certified mail. Section 2.5 shall constitute the sole remedy for solving disputes between Company and the City in regard to interpretation or enforcement of the separate ordinance.

9.3 Terms Defined. For the purpose of this Section 9, the following definitions apply:

9.3.1 “Customer Class” shall refer to the classes listed on the Fee Schedule and as defined or determined in Company’s gas rate book on file with the Commission.

9.3.2 “Fee Schedule” refers to the schedule setting forth the formula and/or various customer classes from which a franchise fee would be collected if a separate ordinance were implemented immediately after the effective date of this franchise agreement. The Fee Schedule in the separate ordinance may include new Customer Class added by Company to its gas tariffs after the effective date of this franchise agreement.

9.3.3 “Gross Revenues” means all sums, excluding any surcharge or similar addition to the Company’s charges to customers for the purpose of reimbursing the Company for the cost resulting from the franchise fee, received by the Company from the sale of gas to its retail customers within the corporate limits of the City.

9.4. Collection of Fee. The franchise fee shall be payable not less than quarterly and shall be based on the amount collected by Company during complete billing months during the period for which payment is to be made. The payment shall be due in accordance with the Franchise Fee Ordinance or on the last business day of the month following the period for which the payment is made, whichever occurs first. The franchise fee formula may be changed from time to time, however, each change shall meet the same notice requirements and not occur more often than annually. Such fee shall not exceed any amount that the Company may legally charge to its customers prior to payment to the City. Such fee is subject to subsequent reductions to account for uncollectibles and customer refunds incurred by the Company. The Company agrees to make available for inspection by the City at reasonable times all records necessary to audit the Company’s determination of the franchise fee payments.

9.5. Equivalent Fee Requirement. The separate ordinance imposing the fee shall not be effective against the Company unless it lawfully imposes a fee of the same or substantially similar amount on the sale of gas within the City by any other energy supplier, provided that, as to such supplier, the City has the authority or contractual right to require a franchise fee or similar fee through a previously agreed upon or new franchise.

9.6. Continuation of Franchise Fee. If this franchise expires and the City and the Company are unable to agree upon terms of a new franchise, the franchise fee, if any being imposed by the City at the time this franchise expires, will remain in effect until a new franchise is agreed upon

subject to the franchise expiration as provided in section 2.6 above. If a subsequent franchise ordinance is approved continuing the Franchise, the then existing franchise fee ordinance shall remain in full force and effect without additional action by City and subject to future changes as authorized in the successor franchise ordinance.

SECTION 10. ABANDONED FACILITIES.

The Company shall comply with City ordinances to the extent consistent with state law, Minnesota Statutes, Sections 216D.01, et seq., and Minnesota Rules Part, part 7819.3300, as they may be amended from time to time. Subject to applicable law, the Company may abandon its underground gas facilities in place, provided, at the City's request and at the Company's expense, the Company will remove abandoned metal, or concrete encased conduit or pipes interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project. The Company shall maintain records describing the exact location of all abandoned and retired Facilities within the City, produce such records at the City's request and comply with the location requirements of Section 216D.04 with respect to all Facilities, including abandoned and retired Facilities.

SECTION 11. SAFETY AND INFRASTRUCTURE REPORTING.

The Company and the City, upon written request by the City or Company, shall meet at a mutually convenient time to discuss items of concern or interest relating to the Company's safety and service reliability in the previous year, compared to other service areas, infrastructure plans for the coming year and other matters raised by the City or the Company. Upon request and subject to Minnesota Statutes, c. 13 and other applicable law and rules, the Company shall provide commercially-reasonable, non-confidential data that identifies aging infrastructure within the City that may need replacement and the Company's plans for replacement.

SECTION 12. PROVISIONS OF ORDINANCE.

12.1 Severability. Every section, provision, or part of this Ordinance is declared separate from every other section, provision, or part and if any section, provision, or part shall be held invalid, it shall not affect any other section, provision, or part provided, however, that if the City is unable to enforce its franchise fee provisions for any reason, the parties agree to negotiate in good faith to substitute, to the extent reasonably possible, amended provisions that validly carry out the primary purpose of the invalid provisions. Where a provision of any other City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall prevail.

12.2 Limitation on Applicability. This Ordinance constitutes a franchise agreement between the City and the Company as the only parties and no provision of this franchise shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.

SECTION 13. AMENDMENT PROCEDURE.

Either party to this franchise agreement may at any time propose that the agreement be amended to address a subject of concern and the other party will consider whether it agrees that the

amendment is mutually appropriate. If an amendment is agreed upon, this Ordinance may be amended at any time by the City passing a subsequent ordinance declaring the provisions of the amendment, which amendatory ordinance shall become effective upon the filing of Company's written consent thereto with the City Clerk within 90 days after the date of final passage by the City of the amendatory ordinance. This amendatory procedure is subject, however, to the City's police power and franchise rights under Minnesota Statutes, Sections 216B.36 and 301B.01, which rights are not waived hereby.

SECTION 14. PREVIOUS FRANCHISES SUPERSEDED.

This Franchise supersedes any previous Gas franchise granted to the Company or its predecessor. Ordinance No. 421, 2nd Series, of the City of Bemidji, Minnesota, is hereby repealed as of the effective date of this Ordinance. Ordinance No. 103, 3rd Series, of the City of Bemidji, Minnesota, shall remain in full force and effect on the effective date of this Ordinance such that there shall be no gap in the collection and payment of the required franchise fees.

Yeas:

Nays:

Absent:

First Reading:

Public Hearing:

Final Reading:

ATTEST:

APPROVED:

Michelle R. Miller, City Clerk

Jorge S. Prince, Mayor

CITY COUNCIL AGENDA ITEM



Meeting Date: January 5, 2026

Action Requested: Approve or deny the creation of a budget committee and appoint up to three council members to serve on it.

Prepared By: Rich Spiczka, City Manager

Background:

During the levy conversation in setting the levy for 2025 and 2026 there has been some discussion about a Council Budget Committee. This is a similar practice to other City and County practices. The City Manager and Finance Director would lead the scheduling and involvement of this committee through the budget year. The goal of the committee is for the members to spend time with staff in understanding department needs, evaluating budget decisions and be more involved during the ground-up process of creating the annual budget. If the council wishes to move forward, staff would be looking for the council to determine the appointees to this committee.

Recommendation:

Staff recommendation is to approve the Budget Committee and select up to three appointees.