

BEMIDJI CITY COUNCIL COUNCIL WORK SESSION AGENDA

Tuesday, May 26, 2026

**City Hall
317 4th Street NW
5:30 PM**



CALL TO ORDER/ROLL CALL

BUSINESS

- a) Discuss Sanford Center Management and Contract

ADJOURN

MEMBER ATTENDING REMOTELY

MEMBERS OF THE COUNCIL MAY BE ATTENDING VIA WEBEX UNDER THE AUTHORITY OF MINNESOTA STATUTES SECTION 13D.02. MEMBERS OF THE PUBLIC MAY MONITOR THE MEETING BY ACCESSING THE REMOTE MEETING LINK ON THE CITY WEBSITE
<https://bemidjimn.portal.civicclerk.com/>

CITY COUNCIL AGENDA ITEM



Meeting Date: May 26, 2026
Action Requested: Direction on Future Management of the Center, OR a Clear Process and Timeline for Determining It
Prepared By: Rich Spiczka, City Manager

Background:

The work session is to discuss the current and future management of the Sanford Center. The current contract is a 5-year term that is set to expire in March of 2027. The City will need to make some determinations in the near future on how it will proceed with the management of the center in order to either develop a new plan or to begin negotiations with ASM/Legends Global on a new contract.

The agenda has hundreds of pages of materials attached to it that include:

- Previous work session materials that provided an entire Sanford Center summary up to 2021
- Current Management Contract with ASM/Legends Global, including the exhibits referred to in said contract
- Email exchange with some documentation that summarizes goals ASM/Legends had set with the City regarding performance of the Center.
- Memo from December 2023 showing a summary of operations and budget impacts and ASM/Legends Global request for cash to assist with cash flow concerns
- Memo from September 2024 regarding ASM/Legends Global request for cash to assist with cash flow concerns

I think it is safe to say that as a community, we all want the best for the center and what it provides for our community. Working towards a busy center, that can find consistent financial footing while providing opportunities for entertainment, engagement and experiences for all is imperative to a successful future. Furthermore, the more efficiency with which it operates helps the general operation of all the services the City provides the community.

The goal would be clear direction for staff regarding how the council wishes to move forward or timing of a path and process of how that will be determined. This will allow staff to start working that plan and providing the necessary mechanisms to ensure we are doing the best we can in regards to the Center.

Recommendation:

Either clear direction of council wishes on how to move forward with management of the center OR a clear set of steps, process and timelines in which that will be determined.

BEMIDJI CITY COUNCIL

CITY OF BEMIDJI

NOTICE OF REGULAR MEETING OF CITY COUNCIL PURSUANT TO MINNESOTA STATUTES SECTIONS 13D.015, 13D.021 and 13D.04

NOTICE OF MEETING OF CITY COUNCIL BY TELEPHONE OR OTHER ELECTRONIC MEANS

In accordance with the requirements of Minn. Stat. Sections 13D.015, 13D.021, and 13D.04, the Mayor of the City of Bemidji has determined that an in person meeting is not practical or prudent because of a health pandemic and Peace Time State of Emergency, declared under Chapter 12 of the Minnesota Statutes.

Because of the health pandemic and Peace Time State of Emergency, it has been determined that attendance at the regular meeting location by members of the public is not feasible.

Because of the health pandemic and Peace Time State of Emergency, it has been determined that the physical presence at the regular meeting location by at least one member of the body, chief legal counsel or chief administrative officer is not feasible.

Therefore, some or all of the City Council members may be participating by telephone or other electronic means.

NOTICE IS HEREBY GIVEN that the City Council of the City of Bemidji will hold a Council Work Session Meeting on Monday, May 24, 2021 at 5:30 p.m. at Bemidji City Hall.

To join by video conference, go to Cisco Webex website (www.webex.com), click on "join" in the upper right corner and enter information below (access will open at 5:15 p.m.):



Meeting number (access code): 182 034 1559

- **Meeting password: YKkKs9WaM84 (95557992 from phones and video systems)**
 - o **Click Join Meeting**

To join by phone, dial: +1-408-418-9388. Follow the prompts and use the following access codes (access will open at 5:30 p.m.):

- **Password: 182 034 1559**
- **Press # for no attendee ID number**

BEMIDJI CITY COUNCIL

Work Session Agenda

Monday, May 24, 2021

**City Hall
317 4th Street NW
5:30 P.M.**



1. CALL TO ORDER / ROLL CALL
2. SANFORD CENTER DISCUSSION
 - Review and Discuss Current Structure of Sanford Center Board
 - Discuss Current Contracts
 - Discuss Creation of New Sanford Center Task Force
3. ADJOURN



City Manager's Office

TO: Honorable Mayor Prince and City Councilmembers
FROM: Nate Mathews, City Manager *Nate*
DATE: May 20, 2021
RE: Sanford Center Work Session Materials

At Monday's meeting the City Council will discuss the Sanford Center. In preparation for Monday, Sanford Center Executive Director Tiffany Vickaryous Hubbard and I met with Mayor Prince to ask what background materials could be helpful for Council to review ahead of time. The following materials are included in your packet:

1. November 6, 2006 General Election Canvassing Results (Sales Tax Ballot Question)
2. 2008 CSL Feasibility Study
3. MNSCU/BSU Facility Lease Agreement
4. Naming Rights Agreement (2010) and Extension (2019)
5. Sanford Center Work Group Documents (2017)
6. Facility Management Contract (Renewal-2018)
7. Special Use Tax Presentations (2)
 - a. Special Use/Hospitality Tax Projections
 - b. Council Minutes (1/14/2016-9/26/2019)
 - c. Hospitality Tax Committee Minutes (2019)
8. City of Bemidji Resolution No. 6281 (Sales tax/bonding-2020)
9. Sanford Center Debt Repayment Schedule
10. Sanford Center Capital Improvement Plan (CIP)

Knowing this is a lot of information, if you feel other information would be helpful to review and consider, please let me know and we'll do our best to assemble it by Monday evening.

Regarding the potential discussion points/outcomes, Mayor Prince would like to suggest to the Council:

1. Review and discuss current structure of Sanford Center Board of Directors
2. Discuss current Sanford naming rights contract, BSU contract, and VenuWorks contract
3. Discuss creating a new Sanford Center Task force that will evaluate:
 - a. Sanford Center Board and committee structure.
 - b. Create performance metrics for the Sanford Center.
 - c. Discuss creating a food and beverage tax to support the Sanford Center.
 - d. Review the BSU, Sanford, and VenuWorks contracts.

CITY OF BEMIDJI
CANVASSING BOARD
GENERAL ELECTION
November 7, 2006

	ONE	TWO	THREE	FOUR	FIVE	TOTALS
Registered Voters as of 11/07/06, 7 am	1022	1060	1783	1309	1555	6729
Voters Registering Election Day	243	194	427	214	146	1224
TOTAL REGISTERED VOTERS	1265	1254	2210	1523	1701	7953
Number Voting at Polling Place 11/07/06	537	627	1157	741	1099	4161
Number Voting Absentee 11/07/06	34	60	141	101	86	422
TOTAL PERSONS VOTING 11/07/06	571	687	1298	842	1185	4583
PERCENTAGE OF VOTER TURNOUT	56%	65%	73%	64%	76%	68%

MAYOR:

RICHARD LEHMANN	261	321	623	439	586	2230
MIKE BAKKE	193	298	542	339	532	1904
Write Ins	5	2	5	7	5	24
Number of Over Votes	1	1	1	0	1	4
Number of Under Votes (blank for this race)	111	65	127	57	61	421
TOTAL VOTES CAST	571	687	1298	842	1185	4583

COUNCILMEMBER-AT-LARGE:

BARB MEUERS	241	350	617	429	608	2245
MARK R. ELLIOTT	183	231	460	309	461	1644
Write Ins	2	1	4	1	4	12
Number of Over Votes	0	0	0	0	0	0
Number of Under Votes (blank for this race)	145	105	217	103	112	682
TOTAL VOTES CAST	571	687	1298	842	1185	4583

COUNCILMEMBER WARD 2

ROGER HELLQUIST		513				513
Write Ins		4				4
Number of Over Votes		1				1
Number of Under Votes (blank for this race)		169				169
TOTAL VOTES CAST		687				687

COUNCILMEMBER WARD 4

JERRY DOWNS				666		666
Write Ins				11		11
Number of Over Votes				0		0
Number of Under Votes (blank for this race)				165		165
TOTAL VOTES CAST				842		842

REFERENDUMS:

QUESTION #1 - Shall the Bemidji City Council seek special Legislative authorization to extend the current one half of one percent local sales and use tax (.5%) for the purpose of paying 60% of the cost to construct the Bemidji Regional Events Center? (The projected cost of constructing the Event Center is \$35 million. The State is responsible for appropriating 40% of the cost. If authorized, the City will issue General Obligation Bonds up to the authorized amount for the purpose of paying capital and administrative costs of acquisition, demolition, construction, infrastructure improvements, furniture, fixtures and equipment. Revenues from the extended Sales and Use Tax will be pledged to the payment of the Bonds, with Bond payments also guaranteed by the City's Property Taxes.)

YES	369	310	645	400	511	2235
NO	183	353	598	409	648	2191
Write Ins						
Number of Over Votes	0	0	0	0	0	0
Number of Under Votes (blank for this race)	19	24	55	33	26	157
TOTAL VOTES CAST	571	687	1298	842	1185	4583

	ONE	TWO	THREE	FOUR	FIVE	TOTALS
QUESTION #2 - Shall Section 2.06 of the Charter be amended to add the requirement that the mayor provide an annual state of the city address to city residents and delete the reference to election of president pro-tem?						
YES	331	430	804	552	809	2926
NO	111	151	269	186	268	985
Write Ins						
Number of Over Votes	0	0	1	2	0	3
Number of Under Votes (blank for this race)	129	106	224	102	108	669
TOTAL VOTES CAST	571	687	1298	842	1185	4583
QUESTION #3 - Shall Section 2.09 of the Charter be amended to delete and restate in stronger language the prohibition that the mayor and/or councilmembers not publicly or privately direct or manage the work of a subordinate of the city manager?						
YES	281	405	759	516	783	2744
NO	130	160	265	207	277	1039
Write Ins						
Number of Over Votes	0	0	2	0	0	2
Number of Under Votes (blank for this race)	160	122	272	119	125	798
TOTAL VOTES CAST	571	687	1298	842	1185	4583
QUESTION #4 - Shall Section 6.01 of the Charter be amended to delete the current provision which permits the council to pay the city manager salary and/or benefits for an additional calendar month, not to exceed two calendar months salary and/or benefits, after the council's adoption of a preliminary resolution to suspend the city manager from duty?						
YES	260	336	662	440	688	2386
NO	150	217	365	288	381	1401
Write Ins						
Number of Over Votes	0	1	3	2	1	7
Number of Under Votes (blank for this race)	161	133	268	112	115	789
TOTAL VOTES CAST	571	687	1298	842	1185	4583



April 11, 2008

Mr. John Chattin
City Manager
City of Bemidji
317 Fourth Street NW
Bemidji, Minnesota 56601

Dear Mr. Chattin:

Conventions, Sports & Leisure International ("CSL") has completed a report related to an updated financial operating analysis for the proposed Bemidji Regional Event and Convention Center ("Center") in Bemidji, Minnesota. The attached report presents our research, analysis and findings and is intended to assist the City of Bemidji ("City") in its continued planning efforts related to the project.

The analysis presented in this report is based on estimates, assumptions and other information developed from industry research, market data provided by the City, surveys of potential facility users and analysis of competitive/regional facilities and communities. The sources of information, the methods employed and the basis of significant estimates and assumptions are stated in this report. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur. Therefore, actual results achieved will vary from those described and the variations may be material.

The findings presented herein are based on analysis of present and near-term conditions in the Bemidji area as well as existing interest levels by a new Center's potential base of users. Any significant future changes in the characteristics of the local community, such as growth in population, corporate inventory and visitor amenities/attractions, could materially impact the key market, financial and economic conclusions developed as a part of this study. As in all studies of this type, the estimated results are based on competent and efficient management of the potential facility and assume that no significant changes in the convention and spectator event markets or related markets will occur beyond those set forth in this report. Furthermore, all information provided to us by others was not audited or verified and was assumed to be correct.

This report has been prepared for the internal use of the City and should not be relied upon by any other party. The report has been structured to assist City representatives in evaluating potential event market demand in Bemidji, as well as the estimated operating characteristics of the proposed Bemidji Regional Event and Convention Center, and should not be used for any other purpose.

We sincerely appreciate the assistance and cooperation we have been provided in the compilation of this report and would be pleased to be of further assistance in the interpretation and application of our findings.

Very truly yours,

CSL International

1. Introduction and Background

Conventions, Sports and Leisure International (CSL) was retained by the City of Bemidji (City) to perform an updated financial operating analysis related to the proposed Bemidji Regional Event and Convention Center (Center) in Bemidji, Minnesota. This report outlines the key findings associated with the analysis.

In July 2006, CSL was retained by the City to perform a market, program, financial and economic Feasibility Study of the Center. In September 2006, the City selected the team of Leo A Daly and Widseth Smith Nolting for facility design and other architectural services. CSL issued its final report related to the Feasibility Study on December 13, 2006.

Since the completion of the Feasibility Study, project planning for the Center has continued and a variety of aspects relating to the site, programmatic components, design, tenants, private partners and operating issues have changed or evolved from original assumptions that formed the basis of the previous financial analysis efforts. As such, the purpose of this analysis is to update the financial operating estimates associated with the Center given the current state of project planning.

Key project aspects and issues that have changed since the original study include:

1. **Site/Location**—The identified location for the Center has changed from a relatively small and constrained downtown Bemidji site to a location on the southeast shore of Lake Bemidji. The Center would be the focal-point of a 130-acre mixed-use redevelopment project, leveraging both public and private sector investment. A significantly greater opportunity for economic development and synergy exists at the new site. It is believed that the new site/location has materially improved the marketability of the Center, through the possible creation of an “iconic” destination with attractive amenities, including lodging, retail, restaurants, recreation and leisure infrastructure.
2. **Programmatic Concepts**—The original Feasibility Study analyzed a facility program consisting of an Arena (with a seating capacity of 4,000 and between 10 and 15 private suites), a Second Ice Sheet, and a Convention Center (with 10,000 square feet of multipurpose/ballroom space and approximately 5,000 square feet of breakout meeting space). Current project plans now call for (1) the Arena to contain 25 private suites, (2) no Second Ice Sheet, and (3) a slightly greater amount of event space in the Convention Center. Furthermore, as construction cost figures and funding contributions have yet to be finalized, certain “scaled back” variations of the overall Center may need to be pursued. Therefore, for purposes of this analysis, three different building program scenarios have been developed (to be subsequently discussed).
3. **Possible Private Partner Involvement**—In an effort to potentially defray capital costs and reduce annual operating funding obligations, the City is presently exploring the opportunity to partner with a private hotel developer/operator. Under this possibility, a private partner would be selected and development/operating agreements would be struck, including the potential provision of a capital contribution, that would result in the construction of a new hotel that is physically attached to the Center. The hotel operator would market/operate the Convention Center space at its own risk. The market capture and operating characteristics of convention centers functioning under public/private partnerships of this nature are often different than facilities operating under traditional public sector owned/operated “stand-alone” models.
4. **BSU Lease Terms**—Following a series of steps including research, analysis and negotiations, a Memorandum of Understanding was signed between the City and Bemidji State University (BSU)

in January 2008 outlining the terms of a long-term lease for BSU hockey. These terms vary from the assumptions used for the original Feasibility Study.

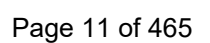
5. **Design**—With the involvement of the selected architect team, the design of the Center has significantly evolved since the issuance of the original Feasibility Study. The latest design concepts that are continuing to be developed arguably represent a more “ambitious” Center with stronger aesthetics and functionality than the concept and designs that formed the subject facility under the original Feasibility Study.

The drawings shown in the exhibit below and on the following page illustrate the evolution of the Events Center project from the time of the 2006 Feasibility Study to those presently under consideration.

Exhibit 1
2006 Events Center Concept and Site Drawings (Schoen Associates)

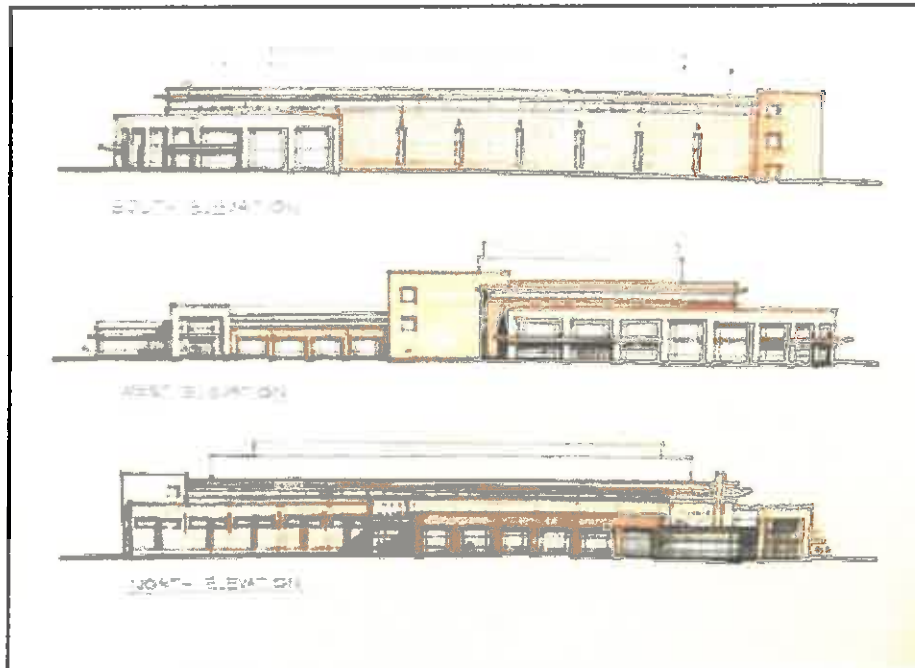


Views within Bowl



In early April 2008, the Center's architect team conducted a design charrette with community members focusing on the exterior design of the Center. The results of the exercise suggest that exterior aesthetics of the ultimate Center may be "softened" somewhat from previous designs to better incorporate a "Bemidji look and feel", as evidenced by the preliminary conceptual drawings in the exhibit below.

Exhibit 3
2008 Events Center Revised Exterior Concept (Leo A Daly)



Based on discussions with the City, three individual Center development/operational models have been identified for the analysis presented herein. They include:

- **Scenario 1**
 - Arena and Convention Center (no 2nd ice sheet)
 - City-owned
 - City-controlled operations (via contracted third party private management)
 - BSU Division I hockey as Arena tenant
- **Scenario 2**
 - Arena and Convention Center (no 2nd ice sheet)
 - City-owned
 - Arena operations—City controlled (via contracted third party private management); Convention Center operations—Hotel controlled
 - BSU Division I hockey as Arena tenant
- **Scenario 3**
 - Convention Center and Multipurpose Hall (no Arena)
 - City-owned
 - City-controlled operations (via contracted third party private management)
 - No primary tenant

As indicated on the previous page, each of the three identified scenarios only comprise two primary components rather than the three primary components the original project concept once contained (i.e., Arena, Convention Center, and Second Ice Sheet). Under all scenarios, the Second Ice Sheet has been removed from the program. Under Scenario 3, BSU Hockey is not assumed and, therefore, the Arena component (conforming to Division I hockey and modern touring entertainment show standards) has been replaced by a Multipurpose Hall with a concrete floor. The envisioned Multipurpose Hall would be roughly the same size and dimensions as the previously contemplated "Second Ice Sheet" (or offering approximately 30,000 square feet of floor space). It would be flexible enough to host a variety of events and activities, including exhibitions, large assemblies, civic events and could also accommodate a temporary ice sheet during certain periods for special activities/events. As it is considered unlikely that a hotel partner would be willing to absorb the financial burden of the Convention Center component and the Multipurpose Hall component (under Scenario 3) under its operations, it is assumed that the City would control the operations of the whole facility.



2. Financial Operations Analysis

The purpose of this section is to present estimated operating revenues and expenses for the proposed Bemidji Regional Event and Convention Center under the previously defined development/operating scenarios. Assumptions used in this analysis are based on the current state of project planning, discussion with City and Design Team representatives, results of the market analysis (conducted both under the original 2006 Feasibility Study and updated research performed for this current analysis), industry trends, knowledge of the marketplace, and financial results from comparable facilities.

This presentation is designed to assist the City and other project representatives in estimating the financial attributes of the planned Center and cannot be considered to be a presentation of expected future results. Accordingly, this analysis may not be useful for any other purpose. The assumptions disclosed herein are not all inclusive, but are those deemed to be significant; however, there will be differences between estimated and actual results, and these differences may be material.

Key assumptions used to estimate the potential financial operations of the planned Center include, but are not limited to the following:

- Physical facility and operational characteristics are consistent with each of the three Scenarios outlined in the previous section of this report.
- Figures represent a stabilized year of operations (assumed to occur by the fifth full year of operations), presented in 2008 dollars.
- Developed Center is consistent with the type, quality and size outlined herein.
- Center will be owned by the City or other public sector entity and will be exempt from property taxes.
- Under the Scenarios 1 and 2, the BSU Men's Hockey Program is assumed to have either gained entry into the WCHA or, at a minimum, realize an increase in annual scheduled non-conference games with WCHA opponents (relative to typical levels experienced in the recent past).
- A professional, competent and experienced facility management company will manage the Arena component under Scenarios 1 and 2.
- No parking revenues have been assumed as part of this analysis, but is discussed later in this report.
- While the sale of naming rights may be possible, they have not been assumed in the estimates of financial operations, but will be discussed later in this report.
- The facility is aggressively marketed, providing competitive guarantees and, where applicable, rental rates.
- There are no significant or material changes in the supply or quality of existing event venues in the marketplace.

The presentation of financial operating results is divided into the following components:

- Estimated Event and Attendance Levels
- BSU Lease Terms
- Estimated Financial Operating Characteristics by Scenario
- Hypothetical Deficit Reduction Opportunities

For purposes of this analysis, it is assumed that BSU men's and women's hockey would be the primary tenants of the Center under Scenarios 1 and 2, and will remain competitive within their respective conferences. At least in the short-term, it is not believed one or more secondary tenants (i.e., minor league sports franchise) should be assumed. As such, a secondary tenant has not been assumed. Further, the analysis presented herein presents a range of expected financial operations based on the key assumptions stated in this report.

2.1 Estimated Event and Attendance Levels

The purpose of this section is to analyze estimated event and utilization levels associated with the planned Center for a stabilized year, with "stabilization" assumed to occur by the fifth full year of operation. For purposes of this analysis, three specific sub-scenarios were developed for evaluation and comparison under each of the three primary scenarios (a "Low Case," "Base Case" and "High Case"). The Base Case should be considered a moderate scenario, or an average anticipated year upon stabilization of operations (and pursuant to the key assumptions described herein). The High Case should be considered an "aggressive" scenario that also involves certain favorable event and efficient operational outcomes.



Exhibit 4 summarizes the estimated annual number of events under each of the three scenarios for the Center in a stabilized year of operations.

Exhibit 4
Estimated Number of Events By Scenario (upon stabilization)

Event Type	Scenario 1			Scenario 2			Scenario 3		
	Low	Base	High	Low	Base	High	Low	Base	High
Arena Events:									
BSU Men's Hockey	16	20	21	16	20	21	0	0	0
BSU Women's Hockey	15	16	18	15	16	18	0	0	0
Concerts	4	5	8	4	5	8	0	0	0
Ice Shows	2	3	4	2	3	4	0	0	0
Family Shows	4	6	9	4	6	9	0	0	0
High School Sports	4	6	10	4	6	10	0	0	0
Motor Sports	0	1	1	0	1	1	0	0	0
Other Sports	2	3	4	2	3	4	0	0	0
Flat Floor Shows	2	3	4	2	3	4	0	0	0
Miscellaneous Events	5	7	9	5	7	9	0	0	0
Subtotal	54	70	88	54	70	88	0	0	0
Convention Center Events:									
Conventions/Tradeshows	8	10	13	0	0	0	10	13	16
Conferences	15	25	30	0	0	0	15	25	30
Public/Consumer Shows	4	6	8	0	0	0	5	8	10
Meetings/Banquets	100	175	225	0	0	0	100	150	200
Other Events	5	10	15	0	0	0	15	25	30
Subtotal	132	226	291	0	0	0	145	221	286
Total	186	296	379	54	70	88	145	221	286

As shown, event levels are highest under Scenario 1 (Arena and Convention Center operated by the City). Under Scenario 2, the operations of the Convention Center is assumed to be the responsibility of the project's hotel partner. As such, since the purpose of this analysis is to estimate the financial operating characteristics of the Center as it relates to the City, no event levels for the Convention Center component of Scenario 2 are represented. Under Scenario 3, the Arena is not assumed to be a component of the project; rather, a flexible multipurpose hall represents the largest contiguous space, along with the Convention Center component (consisting of a ballroom and breakout meeting rooms). As such, no event levels are represented under the "Arena" portion of the exhibit.

Exhibit 5 summarizes the estimated average actual attendance by event category under each of the three scenarios for the Center in a stabilized year of operations. "Actual" attendance relates to the average number of attendees that are patronizing an event per day (or per event/show for ticketed and entertainment events). For ticketed events, this is also referred to as "turnstile" attendance. For multi-day conventions or conferences, this figure represents a per-day attendance count. Different than "paid" attendance, "actual" attendance estimates are necessary for calculating revenues and economic impacts on a "per capita" basis (i.e., concessions and merchandise revenue, etc.).

Exhibit 5
Estimated Average Actual Attendance By Scenario (upon stabilization)

Event Type	Scenario 1			Scenario 2			Scenario 3		
	Low	Base	High	Low	Base	High	Low	Base	High
Arena Events:									
BSU Men's Hockey	2,500	3,000	3,250	2,500	3,000	3,250	0	0	0
BSU Women's Hockey	250	250	375	250	250	375	0	0	0
Concerts	3,000	3,000	3,000	3,000	3,000	3,000	0	0	0
Ice Shows	2,800	2,800	2,800	2,800	2,800	2,800	0	0	0
Family Shows	2,600	2,600	2,600	2,600	2,600	2,600	0	0	0
High School Sports	1,200	1,200	1,200	1,200	1,200	1,200	0	0	0
Motor Sports	2,900	2,900	2,900	2,900	2,900	2,900	0	0	0
Other Sports	1,500	1,500	1,500	1,500	1,500	1,500	0	0	0
Flat Floor Shows	1,000	1,000	1,000	1,000	1,000	1,000	0	0	0
Miscellaneous Events	250	250	250	250	250	250	0	0	0
Convention Center Events:									
Conventions/Tradeshows	300	300	300	0	0	0	350	350	350
Conferences	225	225	225	0	0	0	225	225	225
Public/Consumer Shows	1,250	1,250	1,250	0	0	0	1,200	1,200	1,200
Meetings/Banquets	50	50	50	0	0	0	50	50	50
Other Events	500	500	500	0	0	0	450	450	450

Exhibit 6 summarizes the estimated average paid attendance by event category under each of the three scenarios for the Center in a stabilized year of operations. "Paid" attendance relates to the average number of tickets sold per event. These figures are necessary to calculate estimated ticket revenue and ticket surcharge revenue.

Exhibit 6
Estimated Average Paid Attendance By Scenario (upon stabilization)

Event Type	Scenario 1			Scenario 2			Scenario 3		
	Low	Base	High	Low	Base	High	Low	Base	High
Arena Events:									
BSU Men's Hockey	2,000	2,500	2,750	2,000	2,500	2,750	0	0	0
BSU Women's Hockey	175	175	250	175	175	250	0	0	0
Concerts	2,800	2,800	2,800	2,800	2,800	2,800	0	0	0
Ice Shows	2,700	2,700	2,700	2,700	2,700	2,700	0	0	0
Family Shows	2,400	2,400	2,400	2,400	2,400	2,400	0	0	0
High School Sports	1,200	1,200	1,200	1,200	1,200	1,200	0	0	0
Motor Sports	2,800	2,800	2,800	2,800	2,800	2,800	0	0	0
Other Sports	1,400	1,400	1,400	1,400	1,400	1,400	0	0	0
Flat Floor Shows	0	0	0	0	0	0	0	0	0
Miscellaneous Events	0	0	0	0	0	0	0	0	0
Convention Center Events:									
Conventions/Tradeshows	0	0	0	0	0	0	0	0	0
Conferences	0	0	0	0	0	0	0	0	0
Public/Consumer Shows	0	0	0	0	0	0	0	0	0
Meetings/Banquets	0	0	0	0	0	0	0	0	0
Other Events	0	0	0	0	0	0	0	0	0

As illustrated in the exhibit, Convention Center events are not normally "ticketed", so paid attendance estimates were not calculated. Likewise, there is not a traditional spectator Arena under Scenario 3; as such, paid attendance was not calculated. If the Center hosts any ticketed events, it is assumed that Center rental rates will be charged in terms of a fixed rent fee rather than utilizing a "percentage of gate" component (like many traditional spectator arenas).

2.2 BSU Lease Terms

A Memorandum of Understanding was signed between the City and Bemidji State University (BSU) in January 2008 outlining the terms of a 20-year lease for BSU hockey. Exhibit 7 presents a summary of the key lease terms between the City and BSU with regard to revenue sharing and expense responsibility.

Exhibit 7
Key BSU Hockey Lease Terms (Scenarios 1 and 2)

	University	City	
Revenues:			
Gate Receipts	100%	\$7,500/game	(1)
Ticket Surcharge	0%	100%	
Parking	0%	100%	
Concessions	25%	75%	
Merchandise	100%	0%	
Naming Rights	0%	100%	
Advertising - Temporary/Ice	100%	0%	
Advertising - Permanent	10%	90%	
Premium Seating	100%	0%	
Expenses:			
Game Day	100%	0%	
Arena Operations	0%	100%	
Capital Repairs	0%	100%	

- (1) University's rent payment is \$7,500 per men's game with a CPI inflator adjusted annually. Should the University cease participation in Division I men's hockey, the University will be responsible for \$150,000 per year (with CPI adjustment) for the remainder of the lease.

2.3 Estimated Financial Operating Characteristics By Scenario

The following three exhibits present the operating revenues and expenses estimated to be generated by the proposed Bemidji Center. Additionally, an assumed annual expenditure amount has been estimated for capital repair and replacement reserve account funding. This figure is based on an industry standard 0.5 percent of total hard construction costs related to the project. Since architectural costing has not yet been completed, hard construction costs have been assumed at \$40 million for Scenarios 1 and 2 and \$30 million for Scenario 3. Should hard construction costs (excluding site, infrastructure and soft costs) materially differ from this figure, it is suggested that the reserve expenditure assumption should be adjusted appropriately. All estimates are presented in 2008 dollars and represent a stabilized year of operations (Year 5). Operating revenue and expense figures presented herein represent those which are estimated to be retained or borne by the City. Where possible, revenue figures are "net" of associated expenses to best isolate retained income. For example, food and beverage and merchandise revenues are "net" of cost of goods sold and reflect the revenue split retained by the City.



A detailed description of each of the revenue and expense line items proposed herein is provided in the original 2006 Feasibility Study report.

Exhibit 8 presents the estimated financial operating results associated with a new Bemidji Center upon stabilization of operations under Scenario 1 (Arena and Convention Center operated by the City).

Exhibit 8
Scenario 1 (Arena & Convention Center Operated by the City) –
Estimated Financial Operating Results (upon stabilization, in 2008 dollars)

	Low	Base	High
Rental Revenue	\$341,000	\$497,000	\$602,000
Food & Beverage (net)	191,000	274,000	325,000
Merchandise (net)	15,000	21,000	32,000
Private Suites (net)	0	0	0
Advertising & Sponsorships (net)	140,000	150,000	160,000
Ticket Rebates/Charges	100,000	138,000	179,000
Ice Rental	0	0	0
Contract Service & Other	93,000	113,000	136,000
Total Operating Revenue	\$880,000	\$1,193,000	\$1,434,000
Salaries, Wages & Benefits	\$765,000	\$786,000	\$812,000
Utilities	233,000	270,000	285,000
Repair & Maintenance	58,000	63,000	70,000
General & Administrative	121,000	125,000	130,000
Insurance	59,000	59,000	59,000
Materials & Supplies	39,000	41,000	44,000
Advertising	21,000	21,000	21,000
Facility Management Fee	150,000	125,000	125,000
Total Operating Expenses	\$1,446,000	\$1,490,000	\$1,546,000
Net Operating Profit / (Deficit)	(\$566,000)	(\$297,000)	(\$112,000)
Capital Reserve Expense	\$200,000	\$200,000	\$200,000
Net Income / (Loss) Before Debt	(\$766,000)	(\$497,000)	(\$312,000)

Exhibit 9 presents the estimated financial operating results associated with a new Bemidji Center upon stabilization of operations under Scenario 2 (Arena operated by the City, Convention Center operated by the hotel partner).

Exhibit 9
Scenario 2 (Arena Operated by the City, Convention Center Operated by Hotel) –
Estimated Financial Operating Results (upon stabilization, in 2008 dollars)

	Low	Base	High
Rental Revenue	\$209,000	\$282,000	\$339,000
Food & Beverage (net)	120,000	160,000	208,000
Merchandise (net)	15,000	22,000	32,000
Private Suites (net)	0	0	0
Advertising & Sponsorships (net)	125,000	140,000	150,000
Ticket Rebates/Charges	91,000	138,000	186,000
Ice Rental	0	0	0
Contract Service & Other	70,000	79,000	88,000
Total Operating Revenue	\$630,000	\$821,000	\$1,003,000
 Salaries, Wages & Benefits	 \$540,000	 \$563,000	 \$590,000
Utilities	211,000	207,000	221,000
Repair & Maintenance	35,000	35,000	38,000
General & Administrative	71,000	65,000	73,000
Insurance	50,000	47,000	47,000
Materials & Supplies	30,000	29,000	32,000
Advertising	10,000	11,000	15,000
Facility Management Fee	150,000	100,000	110,000
Total Operating Expenses	\$1,097,000	\$1,057,000	\$1,126,000
Net Operating Profit / (Deficit)	(\$467,000)	(\$236,000)	(\$123,000)
 Capital Reserve Expense	 \$200,000	 \$200,000	 \$200,000
Net Income / (Loss) Before Debt	(\$667,000)	(\$436,000)	(\$323,000)

Exhibit 10 presents the estimated financial operating results associated with a new Bemidji Center upon stabilization of operations under Scenario 3 (Multipurpose Hall and Convention Center operated by the City).

Exhibit 10
Scenario 3 (Multipurpose Hall & Convention Center Operated by the City) –
Estimated Financial Operating Results (upon stabilization, in 2008 dollars)

	Low	Base	High
Rental Revenue	\$242,000	\$357,000	\$424,000
Food & Beverage (net)	91,000	141,000	175,000
Merchandise (net)	0	0	0
Private Suites (net)	0	0	0
Advertising & Sponsorships (net)	35,000	42,000	42,000
Ticket Rebates/Charges	0	0	0
Ice Rental	0	0	0
Contract Service & Other	79,000	99,000	99,000
Total Operating Revenue	\$447,000	\$639,000	\$740,000
 Salaries, Wages & Benefits	 \$412,000	 \$447,000	 \$458,000
Utilities	125,000	119,000	137,000
Repair & Maintenance	27,000	26,000	29,000
General & Administrative	86,000	100,000	101,000
Insurance	35,000	32,000	32,000
Materials & Supplies	22,000	21,000	24,000
Advertising	21,000	21,000	23,000
Facility Management Fee	125,000	95,000	100,000
Total Operating Expenses	\$853,000	\$861,000	\$904,000
 Net Operating Profit / (Deficit)	 (\$406,000)	 (\$222,000)	 (\$164,000)
 Capital Reserve Expense	 \$150,000	 \$150,000	 \$150,000
 Net Income / (Loss) Before Debt	 (\$556,000)	 (\$372,000)	 (\$314,000)

2.4 Hypothetical Deficit Reduction Opportunities

In order to minimize the operating deficit that will be the responsibility of the City, there may be some opportunities to enhance income generation and/or reduce or defray expenses. These opportunities have not been assumed in the previously presented financial operating estimates, but may warrant further exploration as project planning and implementation progresses. These hypothetical opportunities may include, but are not necessarily limited to:

1. **Sale of Naming Rights**—As discussed in the 2006 Feasibility Study report, the sale of naming rights is possible; however, it has not been specifically assumed in this analysis. Based on a review of naming deals at comparable event facilities, it is possible that a naming rights agreement in Bemidji, if secured, could hypothetically yield between \$75,000 and \$150,000 per year in income.
2. **Assessment of Event Parking Fees**—Charges for parking at planned City-owned parking lots near the Center have not been specifically assumed under this analysis. Nevertheless, this may be an opportunity to generate additional income if a relatively nominal parking charge was assessed for City-owned parking spots near the Center during ticketed events. However, this consideration should be made carefully, as parking fees tend to be accepted by facility patrons and local citizens very differently in communities throughout the country. The negatives (in terms of reduced patronage, perception by non-local event planners and/or community relations) could, after careful consideration, outweigh the benefits of such a course of action.
3. **Higher Ticket Surcharge**—Under this analysis, a surcharge of \$1.00 per ticket is assumed, with all associated revenue retained by the City. It would be possible to levy a slightly higher ticket surcharge (i.e., \$1.50 to \$2.00); however, amounts higher than \$1.00 may work to the detriment of attracting events and patrons. It is difficult to evaluate the ultimate impacts of various ticket surcharges, but some comparable venues do charge amounts higher than \$1.00.
4. **Hotel Partner Contribution**—Under Scenarios 1 and 2, a private sector hotel partner has been assumed for the project. The financial operating analysis included in this report did not specifically evaluate the level of any contribution by the private partner in terms of “capital” for off-setting the construction of the Center; rather, consistent with most public/private partnerships involving hotels, it only assumed that the operating responsibility of the Convention Center component would be borne by the hotel partner (and removed as an ongoing funding responsibility for the City). It may be possible to “shift” some of the private partner’s contribution away from the “construction” (or capital) side to the “operations” side, in terms of structuring the operating agreement to include an annual lease payment. However, this would theoretically result in a commensurate decrease in the amount of the “construction” or “capital” contribution.
5. **Establishing a Budget Mandate**—There are some municipally-owned event facilities in communities throughout the country that have established operating budget “mandates” that require the operator to meet a target for Net Operating Loss. As an example, the mandate may be for the operator to end the fiscal year with an operating deficit of no more than \$200,000. In some cases, this can lead to high rental rates thereby working to the detriment of event attraction, as well as reduced affordability and availability for local/civic/nonprofit users.

There may be other hypothetical opportunities for deficit reduction that could be possible beyond those discussed above. As an example, securing a minor league sport tenant (i.e., Hockey, Lacrosse, Indoor Football, etc.) could enhance the operating performance of the Center. However, given the demographic characteristics of Bemidji and surrounding areas, this is not considered likely.

LEASE AGREEMENT

CITY OF BEMIDJI, AS LESSOR

AND

**STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF
Minnesota State Colleges & Universities, ON BEHALF OF BEMIDJI STATE
UNIVERSITY**

Dated as of:

January 26, 2009

**BEMIDJI REGIONAL EVENTS CENTER
LEASE**

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement") is entered into by and between the City of Bemidji, a municipal corporation under the laws of Minnesota, (hereinafter referred to as "City") and the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges & Universities (MnSCU), on behalf of Bemidji State University (hereinafter collectively referred to as "University").

WHEREAS, MnSCU is an agency of the State, and a "Public Officer or Agency" for purposes of Minnesota Statutes, Section 16A.695, Subd.1(c), with all the powers and duties granted under Minnesota Statutes Chapter 136F, to govern the state colleges and universities and all related property, including entering into contracts and agreements for and on behalf of member state universities and their students; and

WHEREAS, Bemidji State University (BSU) is a state university governed by MnSCU under Minnesota Statutes Chapter 136F; and

WHEREAS, the City of Bemidji is a Home Rule Charter City under the laws of the State of Minnesota, vested with all the powers and authority inherent in or incidental to Municipal Government not expressly limited or restricted by the Constitution or laws of the State of Minnesota, and including, but not limited to, the authority to construct, own and operate a regional event center and to provide for all lawful uses consistent with such public facility and, particularly, with reference to Minnesota Statutes, Section 471.15-471.191 and Minnesota Statutes, Chapter 136F; and

WHEREAS, Chapter 179, Section 21, Subdivision 5, Minnesota Laws of 2008 (the "State Bonding Authorization"), appropriated \$20,000,000 for a grant to the City of Bemidji to acquire land, pre-design, design, construct, furnish and equip the Bemidji Regional Event Center (the "BREC"); and

WHEREAS, this State Bonding Authorization shall be made available when the Commissioner of Finance or successor agency head determines that at least \$25,000,000 has been committed to the project from nonstate sources; and

WHEREAS, Chapter 154, Article 5, Section 3, Minnesota Laws of 2008 (the "Sales Tax Authorization"), authorized the City to impose a sales and use tax to pay all or part of the City's share of costs for acquisition, design and construction of the BREC, plus any associated costs and debt service on bonds or other obligations issued to finance the BREC. Authorized expenses include, but are not limited to, acquiring property, construction expenses, improving associated infrastructure, and purchasing furniture, fixtures and equipment for the BREC; and

WHEREAS, the State Bonding and Sales Tax Authorizations were premised in part on the BREC benefitting BSU, primarily the hockey arena and related facilities for use by BSU's men's and women's intercollegiate hockey programs, where the teams will play their home games; and

WHEREAS, the BREC will serve as a regional entertainment and convention center and hockey arena (collectively the “Events Center”); and

WHEREAS, the University values the long-standing relationship between the University and City, recognizes the importance of the Events Center to the City of Bemidji and to the University’s plans to be a member of the Western Collegiate Hockey Association (WCHA), and desires to become the anchor tenant of the Events Center; and

WHEREAS, the City will recognize the University as the anchor tenant in the Events Center arena (“New Arena”); and

WHEREAS, the City has included University representatives in the Events Center design and planning process in order to ensure that the New Arena design and improvements reflect that it is the home of Bemidji State University Hockey; and

WHEREAS, the Board of Trustees of Minnesota State Colleges and Universities approved the lease during their meeting November 19, 2008, subject to the Chancellor agreeing to the final lease terms; and

WHEREAS, University has agreed to lease the Events Center from the City upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and other good and valuable consideration, University and City agree as follows:

Section 1. Definitions.

The following terms shall have the meanings set forth below:

Bemidji Economic Development Authority (BEDA). The owner and ground lessor of the underlying real property, which includes the Leased Premises.

Bemidji Regional Events Center – Shall mean the project developed by the City of Bemidji which includes convention and meeting space, a collegiate hockey arena, parking, and related amenities as approved by the City and financially supported by state general bonding appropriation authorized by the Minnesota Legislature. Plans for the Center are attached **Exhibit A-1 and A-2**.

City of Bemidji. The developer, ground lessee and Landlord of the Events Center.

G.O. Compliance Legislation. Minnesota Statute 16A.695, as amended.

Governmental Program. The property leased herein is State Bond Financed Property, operated by the City to provide a forum for public uses and activities consistent with a regional event center, including the provision of a hockey arena and related athletic

facilities for Bemidji State University men's and women's intercollegiate hockey teams, as well as other Bemidji State University uses consistent with Minnesota Statutes Chapter 136F and Minnesota Statutes, Section 471.15-471.191.

Grant Agreement. An agreement between the City of Bemidji and the Department of Employment and Economic Development governing the grant of general obligation bond proceeds to the City of Bemidji for the development of the Bemidji Regional Events Center, as further referenced in Section 2 herein.

Landlord. The City of Bemidji, a municipal corporation and body politic.

Leased Premises. That portion of real property legally described on **Exhibit A** attached hereto, associated with the Event Center improvements to be constructed thereon, all located in the City of Bemidji, Minnesota, as amended from time to time, which premises more specifically include use of the Events Center Arena and those exclusive areas as set forth on **Exhibit B**, attached and incorporated herein.

Order. Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property dated July 13, 1995.

State. Minnesota Department of Employment and Economic Development (DEED).

State Grant Proceeds. The State Grant in the amount of \$20,000,000 made to the City pursuant to the terms of the Grant Agreement.

Tenant. State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities, on behalf of Bemidji State University.

Section 2. Acknowledgment of State Bond Financed Properties/Ground Lease/Governmental Program/Condition Precedent.

The City and University acknowledge herein that the City's interest in the premises leased hereunder, will be subject to the General Obligation Bond Proceeds Grant Agreement Construction Grant for the Bemidji Regional Event Center (the "Grant Agreement"), a copy of which is attached hereto as **Exhibit D** and incorporated herein, and the Declaration by City in favor of the State (the "Declaration").

The City and University further acknowledge herein that the City's interest in the premises leased hereunder is by way of a long-term Ground Lease between the City and the Bemidji Economic Development Authority (BEDA), the owner of the underlying real property, as described on **Exhibit A**.

This Lease Agreement is entered into in order to carry out that portion of the governmental program consisting of use of the BREC arena and related athletic facilities for men's and women's intercollegiate hockey and/or other University uses consistent with Minnesota Statutes, Section 471.15-471.191 and/or Minnesota Statutes Chapter 136F.

This Lease Agreement is conditioned upon consent in writing given by the Commissioner of the Minnesota Department of Management and Budget (formerly Finance).

Section 3. Financing and Construction of the New Arena.

The Event Center Arena (hereinafter the "New Arena"), which shall provide hockey seating for 4,000 fans, a 200 foot by 85 foot ice hockey rink that meets the standards of the National Collegiate Athletic Association (NCAA) and the Western Collegiate Hockey Association (WCHA), not fewer than 25 private suites, and 250 club seats, all of the associated improvements customarily constructed as part of a Division I hockey facility, shall be constructed at the City's expense substantially in accordance with the program, plans and specifications identified in the attached **Exhibits A1 and A2** and incorporated in this Lease Agreement (collectively, the "2008 Plan") or with such revisions as may be made from time to time after consultation with the University. During the planning and construction period, University shall continue to have the right to be advised in advance of all material meetings between the City and its architect and Construction Manager, to promptly receive minutes of project meetings, to participate in meetings between the City and its project team for the purpose of assuring University that the completed facility will conform to the 2008 Plan and will otherwise be suitable for University's permitted uses, and to periodically and for its sole benefit visit the site and make observations as to the progress of construction. The New Arena shall include a scoreboard acquired and installed by the City. The University shall be consulted in the selection of an appropriate scoreboard, which shall meet or exceed any necessary requirements of the NCAA or WCHA. The City shall cooperate with the University, as needed, to ensure the facility's design supports the University's efforts to gain admission to the WCHA men's conference.

Section 4. Completion Date.

Time is of the essence. The City expects to complete the Events Center by January 11, 2011. For purposes of this Lease Agreement, the New Arena shall be deemed to be completed and ready when a certificate of occupancy for the New Arena has been issued by the Bemidji building official and the New Arena is ready for full occupancy by the University which includes the ice being available for practice and play, all exclusive University spaces are completed, and all public areas including concourses, seating and concession areas are completed (the "Completion Date").

Section 5. Term.

The term of this Lease Agreement shall be 20 years, commencing on the Completion Date and ending on the 20th anniversary of such date, unless terminated as provided hereinafter. The University shall begin paying rent at the end of the University's first month of occupancy. ("Rent Commencement Date").

Section 6. Periodic Review and Evaluation.

The City and University shall meet as needed and no less than annually to review lease matters such as the University's initial implementation plan for provision of intercollegiate hockey programs and, thereafter, University's annual "evaluation report and budget" of and for governmental programs implemented under this Lease Agreement as required under Paragraph 36 herein. The parties may also meet to discuss proposed amendments to the Lease Agreement wherein each will extend reasonable efforts to mutually accommodate the other to effect necessary modifications, including, by way of example, the University's compliance with the rules of the NCAA and WCHA as may from time to time be enacted and which impact the University's performance under the Lease Agreement, or the City's potential procurement of a Facility Operator to assume the City's operational functions under the Lease Agreement. Also, per the signed Memorandum of Understanding between the City and BSU, the parties will periodically re-evaluate financial terms, including revenue sharing and/or operational responsibilities, in order to maintain compliance with laws, rules and other agreements governing the Events Center and its operations, and to allow for renegotiation of financial terms to maintain economic feasibility of and for each party's performance under the Lease Agreement.

Section 7. University Use of the New Arena.

- A. University shall have the right to use the New Arena for men's and women's inter-collegiate pre-season, regular season (both conference and nonconference), and post-season and tournament hockey games, as well as for practice sessions.
 1. University Priority Use During Hockey Games. The University shall have priority use of the New Arena for scheduled home hockey games between October 1 - March 31 (the "Hockey Season") each year during the Term of the Lease Agreement. The University shall notify City by February 1 of each year (or later if WCHA conference schedules are not completed by February 1) during the term of the dates of all regular, post-season, and tournament games that will be played in the New Arena in the upcoming Hockey Season. A schedule of University practice sessions will be mutually agreed upon by July 1 of each year for the upcoming season, and shall be incorporated by reference into this Lease Agreement. The City reserves authority over final scheduling of events provided that no events shall conflict with the University's home hockey game schedule.
 2. Ice Sheet. The ice sheet of the New Arena shall be set up by the City in accordance with the rules of the National Collegiate Athletic Association and the Western Collegiate Hockey Association as may from time to time be in force, if any, for the entire BSU Beavers Hockey Season, unless the City notifies the University at least 90 days in advance of the Hockey Season that the New Arena is required for another event. The BSU

Beavers logo provided by the University to the City shall be prominently placed in the center of the New Arena ice sheet.

3. Exclusive University Areas. University shall have exclusive use of the following areas in the New Arena 24 hours a day, 7 days a week, year-round, all identified on the 2008 Plan shown on **Exhibit B**:

- i. Two locker rooms, dressing rooms, and a uniform storage and drying room.
- ii. 12 offices totaling approximately 2,000 usable sq. ft.
- iii. Weight room for student athletes of approximately 2,000 usable sq. ft.
- iv. At least 500 square feet of a larger retail store front shared with the City and located on the concourse level, which designated area and operation is dedicated to selling only University merchandise.
- v. Any other areas designated in the 2008 Plan as exclusive BSU Areas.

4. Post-Season Tournaments. Notwithstanding anything in this Lease Agreement to the contrary, City shall have the right to manage and use the New Arena in connection with the Men's WCHA Final Five games, Men's NCAA tournament games, and Women's NCAA tournament games that do not involve Bemidji State University as a tournament participant, and the City shall have the right to enter into separate rental agreements in connection with such tournament games.

- B. Alternative Governmental Program Use. In the event the University no longer has Division I men's and women's intercollegiate hockey programs or operates any other intercollegiate hockey program that would otherwise use facilities provided by the New Arena, the University shall continue to have the right to use the New Arena for Commencement at least twice a year, for training facilities, office uses, and for other University-sponsored events as may be identified by February 1 in advance of an upcoming Lease Year. Rent for such alternative use shall be as provided under Section 10D. herein.
- C. All other uses shall be subject to charges based on a schedule of charges prepared by the City, amended from time to time, and provided to University annually.

Section 8. University's Rights.

- A. Sponsorships and Signage.

1. Advertising in the Arena. Except as set forth in Section 8(A)(2), University shall have the right to enter into and retain revenue from sponsorship and advertising agreements with third parties for advertising displays and signs (whether fixed or electronic) on the ice, dasher boards, time clocks, the space behind both team's benches, and the penalty box areas during the term of this Lease Agreement.
 2. Interior Signage. The University shall have the right to signage outside all areas of the New Arena designated for University's exclusive use, designated concourse areas where BSU Hockey History can be displayed, and shall be subject to the City's approval of the size of the sign and display, which shall not be unreasonably withheld or delayed.
 3. All university advertising shall be subject to NCAA rules and regulations, federal, state or municipal statutes, laws, regulations, and policies and procedures of Minnesota State Colleges and Universities.
- B. Tickets. The University shall have the right to sell advertising on all hockey tickets produced during the hockey season. The University shall reimburse the City for any additional printing costs incurred to accommodate such advertising on hockey tickets.
- C. Public Address Announcements. University shall have the right to enter into agreements with third parties for the broadcast of sponsorship and advertising messages over the public address of the New Arena during University hockey games and other University events at the Events Center. University shall retain any revenues generated from such sponsorship or advertisement agreements, and shall pay the cost of producing all such messages.
- D. Naming Opportunities. University shall have the exclusive right to designate the name of all spaces that are University exclusive spaces or used exclusively for the University's hockey program, and to retain all monies paid in connection with such designation. The City shall have exclusive rights to all other areas.
- E. Media Broadcast. University shall have the right, without payment to the City, to film, record, televise, broadcast and otherwise make available to the public University hockey games and other University events occurring at the New Arena and use the broadcast booths and other facilities of the New Arena in connection with such activities. This right includes the right to broadcast events over the internet or via new technologies not specifically named herein. In connection with University's exercise of this right, City shall reasonably cooperate with University and with those parties actually producing any such broadcasts and productions. City shall make available for use, without charge, parking space for mobile units and similar equipment in television production parking areas in close proximity to the New Arena.

- F. Programs, Yearbooks, Media Guides, Merchandise and Novelties. University shall have the exclusive right to produce and sell game programs, yearbooks and media guides at the BSU hockey games. University shall have the exclusive right to sell BSU-branded apparel and novelties, including without limitation jerseys, t-shirts, hats, pennants, and pins, at BSU hockey games.
- G. Parking. Included in the rent paid by the University to the City, the City shall provide the University with designated parking for men's and women's hockey staff, coaches, and players in the parking lot east of the BREC.
- H. Commemorative Signage. At the University's request, the City will install and maintain banners and signs that commemorate the achievements of the hockey teams and players (including championship and runner-up banners and retired numbers). University shall pay the cost of preparing any such banners and signs. City shall have the right to approve all such banners and signs, which approval shall not be unreasonably denied.
- I. New Arena Interior Design. The University shall have the ability to participate through the BREC Design Review Committee in the selection of the New Arena color schemes including seat colors, artwork selected for the New Arena walls, and other interior design aspects.

Section 9. City's Rights.

- A. Arena Naming Rights. The City shall have the exclusive right to designate the name of the New Arena and to retain all monies paid in connection with such designation, excluding any suite revenues due the University under this Lease Agreement in the event the naming rights includes suite usage. The New Arena will not have a name that includes (i) the name or nickname of, or a name confusingly similar to, the name or nickname of any other Division I hockey team, any professional sports team, or any college or university; (ii) the name of any intoxicating or non-intoxicating alcoholic beverage or the maker of any such beverage; or (iii) the name of any tobacco product or the maker of any such product.
- B. Sponsorship and Signage. The City shall retain the rights to enter into sponsorship and advertising agreements with third parties not specifically granted to the University in Section 8 and **Exhibits B and C** herein, and including specifically the rights for advertising displays and signs on its ice-scraping machines (or other machines serving the same purpose).
- C. Parking. City shall have exclusive control over Event Center parking. All parking rights and privileges, including the placement of any pamphlet, notice, sticker, or other type of advertising upon any vehicle parked in parking lots controlled and operated by City, shall be controlled or managed by City. City shall have the right to collect all parking fees and charges related to an event at the New Arena.

Section 10. Payments by University to City.

- A. Rent. To reimburse the City for ordinary and necessary expenses related to the City's operation and maintenance of the premises leased hereunder, as well as to defray in part the City's debt service on bonds or other obligations issued to finance the BREC and improvements related hereto, the University shall pay Rent in the amount of \$9,500 per men's home hockey game with a minimum annual amount of \$190,000, payable within thirty 30 days of such home game. Additional amounts due to meet the minimum annual payment shall be due by the end of the University's fiscal year, June 30th. Beginning on the July 1 that follows completion of the first full Lease Year, and on each subsequent July 1 during the term, rent shall increase by three percent (3%) annually of the amount paid in the prior Lease Year.
- B. The University shall fulfill its obligation to pay all Rent due to the City as required. Its lease obligations contained herein shall be absolute and unconditional, except as and otherwise provided for in this Lease Agreement, and University will not, during the Lease Term suspend or discontinue any payments of Rent, and shall not withhold any payment of Rent pending resolution of any dispute or assert any right of set-off or counterclaim against its obligation to make such payment of Rent, except as otherwise set out in this Lease Agreement. Notwithstanding the foregoing, the rent payments shall be met solely from the revenues generated by home hockey games or amounts budgeted and encumbered by the University for such purposes in the University's annual budget, and shall constitute a current expense of the University for the fiscal year then in effect. It shall not constitute an indebtedness of the University or the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities within the meaning of the Constitution and laws of the state of Minnesota.
- C. This Lease Agreement is subject to Minnesota Statute Section 16B.24, subdivision 6. The University shall encumber funds necessary to pay the rent due under this Lease Agreement on a fiscal year basis. If the University lacks sufficient funds which can be budgeted and encumbered to pay the Rent due under this Lease Agreement in the next fiscal year, as determined by the University's budget for the fiscal year in question, then the University shall request sufficient funds from MnSCU prior to effecting non-budgeting of this Lease Agreement. In such event, the University shall also notify the City as soon as possible of the budget funding deficit and of its solicitation to MnSCU. Moreover, upon such decision, and with notice to the City, the University and MnSCU shall make best efforts to fulfill the annual rental obligations of the Lease Agreement up to and including a budget request to the Board of Trustees to include the request for funds in the biennial operating budget request that the Board requests of the Governor and Legislature, with such request including appropriations sufficient to pay the University's financial obligations under this Lease Agreement in an amount at least equal to the Rent which is to become due during the upcoming biennium. Upon exhaustion of

University's best efforts to secure funding for the Rent payment hereunder, University shall notify City, and this Lease Agreement shall terminate for lack of funds. Notwithstanding the foregoing, in the event that the Minnesota State Legislature does not appropriate to the Board of Trustees of the Minnesota State Colleges and Universities funds necessary for the continuation of this Lease Agreement at any time during the term of this Lease Agreement or in the event the Governor unallots funds from the Board during a Lease year that either obligates the University or greatly influences a decision by it to terminate this Lease Agreement, the University shall provide City with notice as soon as practical prior to any expected unallotment of operating funds or other actions influencing the University to terminate this Lease Agreement for lack of funds. Moreover, in that rent payments are expected to be met in whole or in large part from revenues generated by home hockey games, the notice of any expected unallotment of operating funds shall be cause for the University and City to meet pursuant to Section 6 herein, in order to re-evaluate and enable possible re-negotiation of the Lease Agreement's financial terms in an attempt to maintain financial feasibility for both to continue their performance under the Lease Agreement and avoid termination.

Upon such notice to the City of such non-appropriation or unallotment of funds, and the parties' failure to avoid termination through re-negotiation of revised financial terms pursuant to Section 6 herein, this Lease Agreement shall terminate and be of no further force and effect. Before such termination, the University shall pay any rent which is due in the then current fiscal year which has not been paid.

- D. Alternative Governmental Program Payment Use. In the event the University no longer has Division I men's and women's intercollegiate hockey or operates any other intercollegiate hockey program(s) that would otherwise use facilities provided by the New Arena, and commences to use the New Arena for the Alternative Governmental Program Uses provided under Section 7B. herein, the University shall pay rent adjusted to \$230,000 annually to reflect the change in use. The Rent shall be payable in equal monthly installments in arrears. Additionally, beginning on each subsequent July 1 during the term after the University has stopped using the facility for intercollegiate hockey program purposes, Rent shall increase by three percent (3%) of the amount paid in the prior Lease Year.
- E. Surrender and Title Upon Termination. In the event this Lease Agreement is terminated, University shall remove its personal property and vacate and surrender possession of the Leased Premises to the City in as good condition as when the University took possession, ordinary wear and damage excepted. Furthermore, upon termination, University shall quit and surrender the Leased Premises, and all right, title and interest in and to all improvements and equipment constructed or installed on the Leased Premises shall vest in the City free and clear of any and all liens and encumbrances created.
- F. Taxes, Governmental Charges and Other Charges. The site of the New Arena is currently tax exempt real property, and the real property and BREC improvements

are expected to remain tax exempt during the term of this Lease Agreement. The City shall take all reasonable steps to ensure that the entire Events Center, including the New Arena, maintains its property tax exempt status. Notwithstanding the foregoing, in the event that portion of the New Arena property leased exclusively by University becomes subject to taxation or special assessments, the University shall pay, as the same respectively become due but only to the extent the same would be payable if the State were the owner of the such property leased exclusively hereunder, all taxes, special assessments, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the property exclusively leased hereunder (or the City's interest therein) or to any furnishings, equipment or other property installed or brought by the University therein or thereon, including ad valorem, sales, use and other excise taxes, and all claims for rent, royalties, labor, materials, supplies, private utilities and other charges incurred by the University's in its individual operation, maintenance, use, occupancy and/or upkeep of the property exclusively leased hereunder.

Section 11. Ticketing and Arena Operations.

- A. Ticket Sales. City shall sell tickets, including tickets associated with suites and club seating for Hockey Games, at prices established in coordination with the University. Receipts from any such sales shall be turned over to University within fifteen (15) days of the date of the event, except for presold suite and club seat revenues, which shall be remitted to University within fifteen (15) days after payment by the suite or club seat licensee. City shall determine by the Completion Date whether it will operate the facility itself or whether it will engage the services of an operator for the facility that will manage ticketing and arena operations. In any event, City reserves the right to collect a ticket surcharge ("Ticket Surcharge") toward the cost of maintenance and toward the establishment of a reserve fund for purposes of capital upkeep and improvements. The City also reserves the right to charge a per ticket fee to recoup certain operational expenses, such as credit card charges, arena operator costs and similar expenses. ("Operational Expense Fees"). The City shall have the right to adjust the Ticket Charges and Fees during the lease term.
- B. Suite and Club Licenses.
1. Suites. All suites shall include in its charge the cost of season hockey tickets for all BSU men's and women's hockey games and other University events at the New Arena for the seating capacity of such licensee's suite. The rental for each suite shall not be less than the cost of the tickets for the seating capacity in that suite.
 2. Suite Rental and Revenue Sharing. All suite rental agreements for Hockey Season occupancy shall be between suite renters and the City, and the University shall not be a party to such agreements. City shall pay to University ninety percent (90%) of the total revenue derived from the suites, exclusive of payments made for concessions which the City shall

retain, and exclusive of payment for BSU Hockey ticket sales, which University shall retain (less Ticket or Operational surcharges). The City shall have the right to rent the suites for all other non-University events, with hockey suite and club seat holders having first right of refusal, and shall retain one hundred percent (100%) of such non-University events revenues, including suite rentals.

3. Priority List; Season Ticket Prices. City shall have the right, and shall make reasonable efforts in collaboration with the University, to market the use of the suites and the Club Seats in the New Arena in accordance with any priority or pre-sale list prepared by the University and initially delivered to the City not later than the Completion Date. Any amendments to the priority or pre-sale list and the price of suite season tickets, which the University intends to charge a premium over regular-priced, bowl season tickets for, shall be delivered by the University to the City not later than six (6) months prior to the beginning of the hockey season for which it will be applicable. The University shall have the right to market directly to Suite Licensees and Club Seat Licensees to participate in BSU fundraising and hockey booster activities, and City shall provide University with a list of such licensees, as may be requested from time to time.
4. Complimentary Suites. Before the Completion Date, University shall select for its own use two (2) suites for all BSU men's and women's hockey games, which the University, at its discretion, can make available for sale on a game by game basis. Revenues from these complimentary suites shall be allocated the same as for all other suites.

C. Arena Operations. The City shall provide the following:

1. Utilities. All utilities, excepting telephone and telecommunication services generally, but including heat, light, ventilation, air conditioning, ice making equipment for the hockey rink, hot and cold running water, and sewer service required for University's comfortable use and occupancy, including, but not limited to training, practice and game events, of the New Arena and the operation of the New Arena as a hockey and entertainment venue;
2. Janitorial. All janitorial service for all parts of the New Arena (except the retail shop) after each University event including, but not limited to the University locker rooms and the suites after each use, and regular cleaning of offices and other daily occupancy space;
3. Maintain and keep in repair and useable condition the entire New Arena, including the ice equipment and the facility, both inside and out;

4. Provide security for the New Arena, except for additional necessary game day security (which additional security shall either be provided by the University or the cost for which shall be reimbursed to the City.)
5. Provide University keys to all areas as required.

D. Game Day Expenses.

1. The University shall pay the costs of all Game Day Expenses. The University shall provide staffing for a public address announcer, scorekeeper, timekeeper, goal judges, penalty box attendants, video replay staff, and medical and first aid personnel assigned to care for players and referees for game-days; staff for the retail kiosks and/or stores located in the New Arena; and other personnel not normally staffed by the City on a non-game day basis.
2. The City shall provide: normal, non-game day personnel, including but not limited to ticket sellers, minimal security personnel, maintenance workers to ensure the ice is prepared for games, concession workers, ice-scraper drivers, and personnel normally required for the day-to-day operation and maintenance of the New Arena. Other available City Staff may be used by the University per the City's established rate schedule (to be developed).

Section 12. Revenue Sharing and Payments between the Parties.

- A. The parties have agreed to a revenue sharing scheme as outlined on a percentage basis as shown on **Exhibit C**, attached and incorporated herein.
- B. City agrees to pay to University the University's share of all ticketing, suites, club seats, advertising, and all other revenue events due to University described within this Lease Agreement within fifteen (15) after the end of each month of the Lease Year, if not otherwise provided for in this Lease Agreement.
- C. City agrees (i) that not later than sixty (60) days after the end of each Lease Year it will deliver to University a statement signed by City or by an authorized officer or agent of City showing the Gross Ticket, Suites and Club Seat Sales, and all other revenue ("Gross Sales") subject to this Lease Agreement made in the preceding Lease Year, and the net revenues remitted to University ("University's Share"); and (ii) that not later than sixty (60) days after the close of each Lease Year it will deliver to University a statement of Gross Sales for the preceding Lease Year accompanied by the signed opinion of an independent Certified Public Accountant stating specifically that he or she has examined the report of Gross Sales of the preceding Lease Year, that his or her examination included such tests of City's books and records as he or she considered necessary under the circumstances, and that such report presents fairly the Gross Sales of the preceding Lease Year. If City shall fail to deliver the foregoing to University within said sixty (60) day period, University shall

have the right thereafter to employ an independent Certified Public Accountant to examine such books and records as may be necessary to certify the amount of City's Gross Sales for such Lease Year, and City shall promptly pay to University the cost thereof.

- D. University shall have the right at any time and from time to time to have its employees or outside auditors, including Legislative Auditors, to make a special audit of City's records pertaining to Sales on or in connection with the Premises. If any audit provided for herein shall disclose that the Gross Sales payable pursuant to audited Gross Sales records exceeds the amount paid pursuant to City's statement by more than two percent (2%), City shall promptly pay to University the cost of said audit in addition to the deficiency in Sales due, which shall be payable in any event. University shall have the right to audit City's books and records for the three (3) Sales Years prior to the Sales Year of the most recent audited statement received by University pursuant to Section 8(b) above.

Section 13. Concessions and Catering.

- A. All concession, food and beverage, and catering rights and proceeds shall be retained by the City, except for revenues from BSU-branded apparel and novelties, and programs, yearbooks and media guides exclusively sold in the BSU Hockey Shop operated by University. Catering packages shall be selected as part of the Suite Packages. These packages are in addition to and separate from the cost of the Suite. City concession rights shall include selling, delivering, servicing and otherwise hawking food stuffs and beverages. The City agrees that it will offer concessions at all University events in the New Arena and that the concessions sold at University events will be of at least the same quality, variety, and dependability as provided in comparable facilities. The City shall have the same rights to sell food and beverages in the BSU Lounge as it otherwise enjoys in the New Arena.
- B. Notwithstanding the foregoing, but subject to NCAA requirements, state, city, or county statutes, and Minnesota State Colleges & Universities policies and procedures, and any other applicable laws, regulations and rules, alcoholic beverages may be sold during University events. The City intends to sell alcoholic beverages during hockey games.
- C. University shall pay no commission to City in connection with sales of apparel, novelties, or programs.

Section 14. Insurance.

- A. Physical Property Damage. It shall be the duty of University and City to maintain insurance or self-insurance on their own property, both real and personal.
- B. Worker's Compensation. Throughout the Lease Term, the University and City shall each maintain Worker's Compensation Coverage to the extent required by law.

- C. Liability insurance. City and University agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Each shall maintain their own liability insurance covering their respective liability(s). University's liability shall be otherwise governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law. City's liability shall be governed by Minnesota Statutes, Chapter 466.

Section 15. Liability.

(See also 11.C. above) During the Lease Term, the University assumes all risks and liabilities to the extent authorized by law for loss or damage to the Leased Property and for injury to or death of any person or damage to any property proximately caused by the negligent conduct of the University, its officers or employees, whether such injury or death be with respect to agents or employees of the University or to third parties, and whether such property damage be to the University's property or the property of others. The City assumes all risks and liabilities to the extent authorized by law for loss or damage to the Leased Property and for injury to or death of any person or damage to any property proximately caused by the negligent conduct of the City, its officers or employees, whether such injury or death be with respect to agents or employees of the City or to third parties, and whether such property damage be to City's property or the property of others. The City and University shall cooperate fully in the handling and conduct of any such claim, suit or proceeding. As noted above, the University's obligations to pay moneys hereunder shall be subject to the Minnesota State Tort Claims Act and other applicable law. Notwithstanding the University's obligations hereunder, the City does not waive any immunities it may have under Minnesota Statutes, Chapter 466.

Section 16. Damage, Destruction or Condemnation.

- A. Damage or Destruction. If the New Arena is totally or in material part damaged or destroyed, either party may elect to terminate this Lease Agreement by written notice to the other party given within forty-five (45) days of such damage or destruction. If City does not elect to terminate the Lease Agreement, the City shall use insurance proceeds, if any, and repair, rebuild or restore the New Arena to a condition at least as good as that which existed immediately prior to such damage or destruction. Additionally, City shall within forty-five (45) business days of the damage or destruction notify University, in writing, of its estimate of the time period in which restoration will be complete. If the New Arena is totally or in material part damaged or destroyed, University may terminate this Lease Agreement by written notice to City as stated above, or by written notice to the City given within thirty (30) days of either of the following: (a) notification by the City that it cannot restore the New Arena and improvements and alterations to the same or better condition as existed immediately before such destruction or damage; or (b) after the expiration of the time estimated by City in its notice to University for the completion of the

restoration, if by such date the restoration has not been substantially completed. If the New Arena is totally or in material part damaged or destroyed, then regardless of whether either party has terminated the Lease Agreement as provided above, City shall refund any rent and advertising fees University has pre-paid for the period during which the New Arena is expected to be unusable. Rent and advertising fees payable by University shall be abated commencing on the date of damage or destruction and continuing during the restoration period. For purposes of this Lease Agreement, damage that can with reasonable diligence be repaired in fewer than ninety (90) days shall not be the basis for termination by either party.

- B. Condemnation. If at any time during the term of this Lease Agreement title to all or substantially all of the New Arena property shall be taken in any Proceeding involving exercise of the right of eminent domain, this Lease Agreement may be terminated at such time as title vests pursuant to said Proceeding, and the City shall be entitled to receive the Net Proceeds of the award not made for damage to or the taking of University property or the interference with the University's right to possess, use or occupy the New Arena property. For purposes herein, "all or substantially all of the New Arena property" shall be deemed to have been taken if the proposed taking described in the Condemnor's Petition in the Proceeding shall involve such an area, or such impairment of public access to the New Arena, that the University cannot in its opinion based upon the described proposed taking, and evidenced by written notice to the City given within thirty (30) days after the commencement of the Proceeding, reasonably maintain its activities or operations in the remainder of the New Arena after the taking substantially in the same manner and as satisfactorily as before.

If, during the term of this Lease Agreement, title to less than all or substantially all of the New Arena property shall be taken in any Proceeding, neither the terms of this Lease Agreement nor any of the obligations of either party under this Lease Agreement shall be reduced or affected in any way, unless the partial taking renders the property unusable to the University, in which case rent and advertising fees shall be abated to the extent of the interference and commencing from the date of the taking. The City shall to the extent of available Net Proceeds promptly repair, rebuild or restore the New Arena property to the extent necessary to render the property a complete architectural unit. The City will cause its portion of the Net Proceeds received from any award made in such proceeding to be applied to any such repair, rebuilding or restoration.

The City and University shall cooperate fully in the handling and conduct of any prospective or pending Proceeding with respect to the New Arena property.

- C. Proceeds of Insurance or Condemnation of Event Center Property. The University shall also be entitled to the Net Proceeds of any condemnation award or portion thereof made for damages to or taking of its own property or for damages on account of the taking of or interference with the University's right to possession, use of or occupancy of the New Arena property. Similarly, the University shall also be

entitled to the Net Proceeds of any fire and extended coverage or similar insurance on its own property not constituting part of the property leased under this Lease Agreement.

Section 17. Miscellaneous Provisions Related to University's Use.

- A. University warrants that all copyrighted material to be performed by University in the New Arena has been duly licensed or authorized by the copyright owners or their representatives.
- B. University shall not stage any act or performance in which fire or flame is involved without first seeking written permission from the City and the City of Bemidji Fire Department.
- C. University shall not use any decorative material prohibited by Bemidji ordinances or the State Uniform Building and Fire Codes including, but not limited to, crepe paper (flameproof or not), cellophane (shredded or not), confetti, cotton, corn stalks, leaves, evergreen bough, sheaves of grain, streamers, straw paper, vines, moss, coniferous foliage or any similar flammable or combustible materials in or about the New Arena.
- D. University shall not cause or permit others to cause the New Arena to be damaged, marred, or defaced, and will not without approval of the City drive or permit to be driven, nails, hooks, tacks, or screws into any part of the New Arena or the Event Center, and will not make or allow to be made any alterations of any kind.
- E. Erection of special platforms, water tanks, scaffolding, rigging and other apparatus may be undertaken by University but, in order to ensure the safety to performers and the public, all of the foregoing shall be installed according to specifications provided by the City of Bemidji Building Inspector and City.
- F. If University requests equipment and/or staging from the City that the City must rent from third parties, University will be charged for actual rental cost plus other costs related thereto incurred by the City. University agrees that it will not use City's equipment, tools, or furnishings, located in or about the New Arena, without the prior consent of City, which approval shall not be unreasonably withheld.
- G. University shall comply with all laws, ordinances and rules applicable to the use of the New Arena.
- H. City agrees to ensure that University's men's and women's ice hockey teams receive equivalent treatment and benefits, consistent with 20 U.S.C. 5 1681 et seq. and its implementing regulations.
- I. University will not sell or dispose of, or permit to be sold or dispose of tickets in excess of seating capacity or admit a larger number of persons that can safely and

freely move about in the space contracted for, and the decision of the City in this respect shall be final.

- J. University understands and agrees that during the term of this Lease Agreement other events may be held in other parts of the Event Center not included in this Lease Agreement and University shall so conduct its activities so as not to unreasonably interfere with such other events. Similarly, City agrees that it will conduct these other events so as not to interfere with University's activities.
- K. University shall allow access to the exclusive areas leased under this Lease Agreement by City or its authorized representatives at any reasonable time during the life of this Lease Agreement for purposes of maintaining, repairing or otherwise within the scope of this Lease Agreement.
- L. University agrees to observe reasonable precautions to prevent waste of heat, electricity, water, air conditioning, and other utility or any service, whether such is furnished by the City or obtained and paid for by University.
- M. Pursuant to Minnesota Statute Section 16B.24, Subd. 9, and the City's own smoke-free environment policy, occupants of the Event Center shall not smoke nor permit smoking in any areas of the Events Center.
- N. University will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, charge, lien encumbrance or claim, except the respective rights of the City and University as herein provided, to be established or remain on the premises leased herein, including any mechanic's liens for labor or materials furnished in connection with any modifications, repairs, improvements or replacements. University will promptly, at its own expense, take such action as may be necessary to duly discharge any such charge, lien or claim if the same shall arise at any time.
- O. University shall at all times conduct its activities with full regard to public safety, and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with the City to ensure such safety. City retains the right to cause the interruption of any activity in the interest of public safety, and to likewise cause, the termination of such activity when, in the sole judgment of the City, after exercising reasonable discretion, such act is determined to be necessary in the interest of public safety.
- P. Assignment. University shall not assign or transfer this Lease Agreement or sublet any portion of the New Arena without the prior written consent of City, whose consent shall not be unreasonably withheld.

Section 18. Default and Termination.

The failure of a party to perform any obligation required by this Agreement, which default continues for more than thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying the nature of the default, shall constitute an event of default entitling the non-defaulting party to exercise the remedies conferred upon the non-defaulting party by law or this Agreement. If a default reasonably requires more than thirty (30) days to cure, then the defaulting party shall have such additional time as is required to cure the default provided that the defaulting party immediately commences and diligently pursues to completion the curing of the default.

In the event that either party fails to observe, perform or comply in the provision or operation of eligible Governmental Programs by, on behalf, or for the benefit of the University, and that party fails to cure such failure within thirty (30) days of written notice of default from the non-defaulting party, then an event of default shall exist under this Lease.

In the event of a default, whatever the reason or basis, in addition to any remedy available by law or otherwise under this Lease Agreement, either party may commence an action in equity to compel the performance by the other party or take such other action and seek such other remedy as may be available to that party in law and equity, provided, however, that failure to compel the provision or operation of an eligible governmental program by, on behalf, or for the benefit of the University shall result in termination of this Lease.

Section 19. Remedies.

If a default is not cured within the time specified in Section 18 above, the non-defaulting party's remedies shall include the following:

- A. Terminate the Lease Agreement; or
- B. If a default can be cured by the expenditure of less than \$100,000, the nondefaulting party's sole remedy is to cure the default and charge such cost to the defaulting Party.

If the Lease Agreement is terminated or the non-defaulting party cures a default pursuant to Subparagraph B. above, within thirty (30) days after either the effective date of termination, or in the case of Subparagraph B, after the non-defaulting party's expenditure to cure a default, the defaulting party shall reimburse the non-defaulting party its cost for curing the default, or in the case of termination, the defaulting party shall pay the non-defaulting party all revenues and fees due but as yet unpaid to the non-defaulting party, including but not limited to either payment of rent or, in the alternative, the refund of rent and/or advertising fees pre-paid for the remainder of the fiscal year in which termination occurs.

Section 20. Remedies Cumulative; Waiver of Rights.

All remedies conferred on City or University shall be deemed cumulative and no one exclusive of any other, or of any other remedy conferred by law or in equity. The failure of either party to insist on any one or more cases upon the strict performance of any of the covenants of this Lease Agreement or to exercise any option contained in this Lease Agreement shall not be construed as a waiver or relinquishment for the future of such covenant or right. Receipt by City of any payment due with knowledge of the breach of any covenant shall not be deemed a waiver of such breach. No waiver by City or University of any of the provisions of this Lease Agreement shall be deemed to have been made unless expressed in writing and signed by the party expressing such waiver.

Section 21. Notices.

All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally or by facsimile, electronic mail (provided such delivery is confirmed), a recognized overnight courier service, or United States mail, first class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

City: Bemidji Regional Events Center
C/O City Hall,
317 4th Street NW
Bemidji, MN 56601
Attn: City Manager

University: Bemidji State University
1500 Birchmont Drive NE
Bemidji MN 56601-2699
Attn: Finance and Administration

With a copy to: Minnesota State Colleges & Universities
350 Wells Fargo Place
30 E. 7th Street
St. Paul MN 55101
Attn: Real Estate Services

Section 22. Relationship of the Parties.

Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, partnership, joint venture, or of any other association whatsoever between City and University, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease Agreement nor any act or acts of the parties shall be deemed to create any relationship between City and University other than the relationship of licensor and licensee.

Section 23. Covenant of Quiet Enjoyment.

City covenants that it has the right to make this Lease Agreement for the term aforesaid and covenants that if the University shall pay the rent and perform all of the covenants, terms and conditions of this Lease Agreement to be performed by University, then University shall, during the Term, freely, peaceably and quietly occupy and enjoy the full possession of those portions of the Event Center leased herein.

Section 24. Audit and Retention of Books and Records.

University shall ~~have~~ the right to inspect and copy such books, records, and documents (in whatever medium they exist) to verify all expenses submitted by City to University pursuant to the terms of this Lease Agreement. City shall make such items available for inspection during normal business hours at City's place of business. All such items shall be retained by City for a period of three (3) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Lease Agreement shall be retained by City, its agents and subcontractors, if any, until the claim has been resolved. Similarly, University books, records, and documents relevant to this Lease Agreement shall be subject to examination by the City and/or its auditor during normal business hours and after reasonable notice to University.

Section 25. Use of Names and/or Logos.

City and University each agree not to use the other's name, logo, or any other marks (including, but not limited to, colors and music) in any sales promotion work or advertising, or any form of publicity, without the other's written permission, which permission shall not be unreasonably denied.

Section 26. Amendment.

No amendment, modification, or waiver of any condition, provision or term of the Lease Agreement shall be valid unless in writing, signed by both University and City, and approved in writing by the Commissioner of Minnesota Management and Budget.

Section 27. Entire Agreement.

This Lease Agreement (including all addenda, exhibits and schedules) is intended by the parties to be the final and binding expression of their agreement with respect to the transaction contemplated herein and supersedes all prior agreements and understandings between the parties with respect to the subject matter of this Lease Agreement.

Section 28. Counterparts.

This Lease Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which shall constitute one Lease Agreement.

Section 29. Headings.

The headings of the sections of this Lease Agreement are used for convenience only and do not form a substantive part of the Lease Agreement.

Section 30. Governing Law; Jurisdiction.

The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Lease Agreement. All suits, actions, claims, and causes of action relating to the construction, validity, performance, and enforcement of this Lease Agreement shall be venued in Beltrami County District Court.

Section 31. Copyright.

The parties acknowledge and agree that University shall own all rights, titles, and interests in and to the University events (including all rights to reproduce, telecast, distribute or otherwise use the events, and all copyrights therein) taking place in the New Arena.

Section 32. Force Majeure.

Neither party shall be considered to be in default of its delay or failure to perform its obligations herein when such delay or failure arises out of causes beyond the reasonable control of the party. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather; but in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the party.

Section 33. Human Rights.

If applicable, City certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, Section 363A.36. University agrees not to discriminate against any employee or any applicant for employment because of race, religion, sex, marital status, age or national origin and further agrees to likewise not discriminate for those same reasons against any persons relative to admission, services or privileges offered to or enjoyed by the general public.

Section 34. Short Form Lease.

At the request of either party hereto, a short form lease shall be prepared in form and substance reasonably satisfactory to each of the parties and shall be executed by each of

the parties in duplicate, such short form lease to be filed for record in Beltrami County, Minnesota.

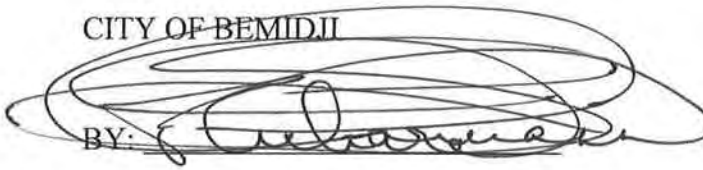
Section 35. Effective Date.

This Lease Agreement is effective on the date that is the last date on which this Lease Agreement is fully executed by all the necessary parties.

Section 36. Program Evaluation Reports and Budget.

In satisfaction of the requirements pursuant to the Grant Agreement and G.O. Compliance Legislation, the University shall provide the City with an initial governmental program implementation plan regarding execution of its responsibilities under the Lease Agreement, and at least annually on or before the anniversary date of the Lease Agreement, an evaluation report and a budget showing revenues and expenses, all such plans, reports and budgets relating to provision of eligible governmental program uses or such documentation required to satisfy the City's reporting obligations. The City, as the operator of the facility, shall cooperate with University in providing any required annual financial details, such as ticket sales and expenses, related to the operation of the New Arena to assist in the compliance requirements.

CITY OF BEMIDJI

BY: 

ITS: MAYOR

Date: 01-26-09

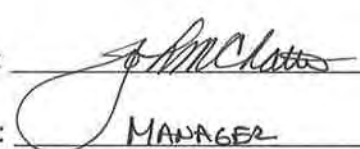
STATE OF MINNESOTA, BY AND
THROUGH THE BOARD OF
TRUSTEES OF MINNESOTA STATE
COLLEGES AND UNIVERSITIES

BY: 
Laura M. King

ITS: Vice Chancellor- CFO

Date: 1/22/09

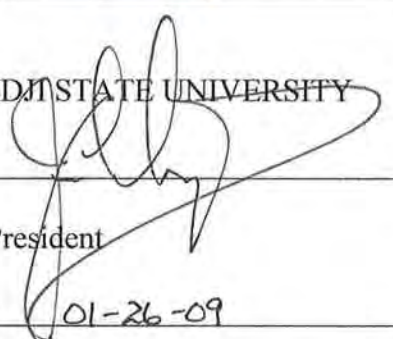
CITY OF BEMIDJI

BY: 

ITS: MANAGER

Date: 01-26-09

BEMIDJI STATE UNIVERSITY

BY: 

ITS: President

Date: 01-26-09

CONSENT OF COMMISSIONER OF
MANAGEMENT AND BUDGET IN
SATISFACTION OF MINN. STAT.
§16A.695 AS AMENDED:

By: _____

Its: _____

Date: _____

EXHIBIT LIST

EXHIBIT A: Leased Premises

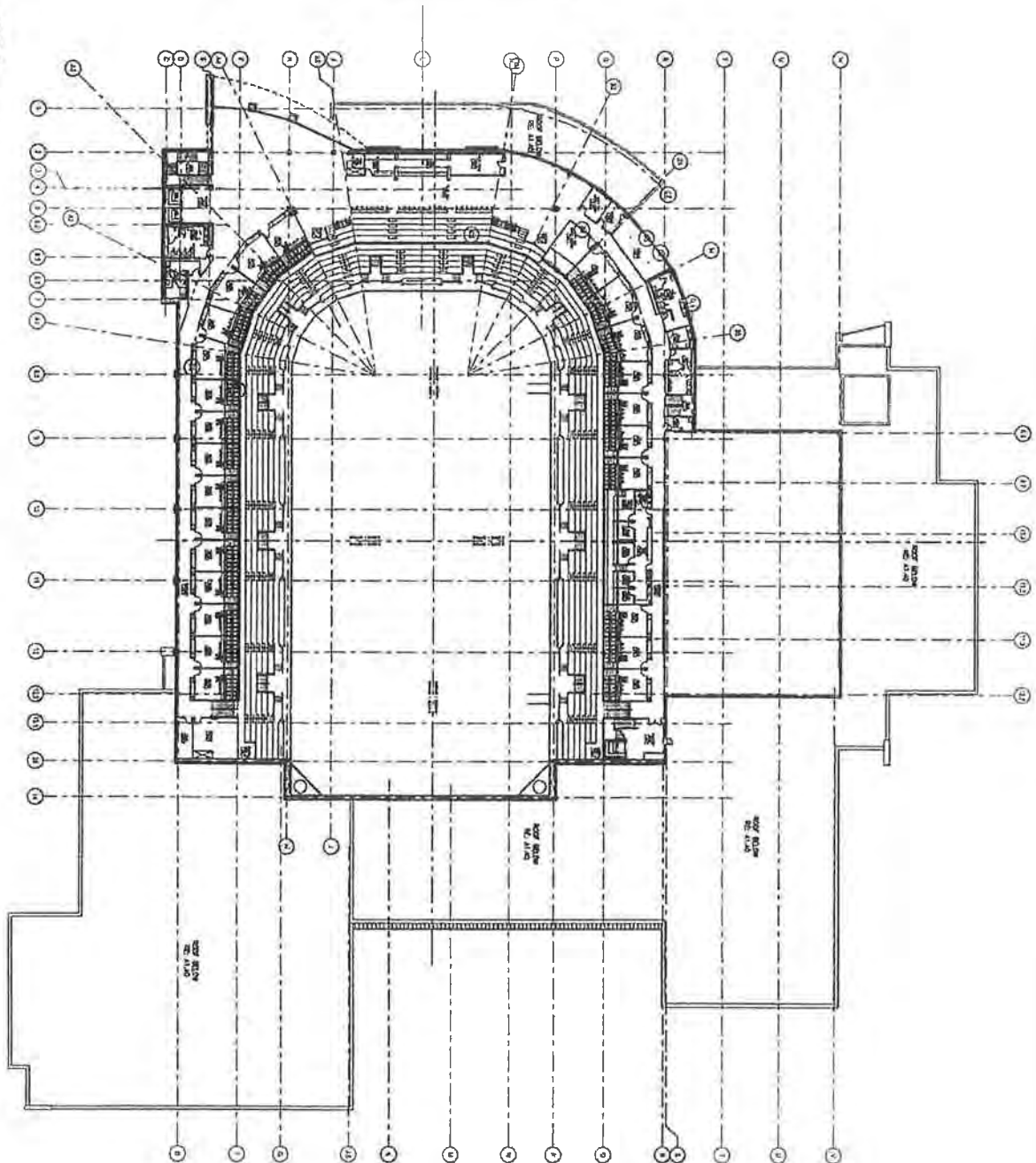
EXHIBIT A1 and A2: 2008 Plans – BREC

EXHIBIT B: Exclusive University Space

EXHIBIT C: Revenue Sharing

EXHIBIT D: Grant Agreement between State and City for BREC

LEVEL 2
OVERALL FLOOR PLAN
A1
SCALE 1" = 30'-0"



- [illegible]

**BEMIDJII REGIONAL
EVENT CENTER**
BEMIDJII, MINNESOTA
CITY OF BEMIDJII
117 4TH ST. NW

LEO A DALY

— "The Religion of the
Abolition," *Times* 2/1/4
and 7/1 last 1841. P. 26. 502-504. 2/1/41

LEO A DAILY

Stevens

100

11

101-9118 HCT/m/m

5213

1	2
3	4

**Family with a
new member?**

1

CON

1

1

OVERALL: 1

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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At least 500 square feet of store space
Exclusive to BSU merchandise – Balance
Shared with City for their merchandise

Exclusive BSU areas

[illegible][illegible]

SEALING METHODS:

1. SEAL CRACKS AND DISCONTINUITIES AND GROUT FOR BEARING CAPACITIES ONLY. SEAL COUANTS ARE SHOWN IN FOLLOWING TABLE. n IS THE NUMBER OF SEALS PER FOOT.

SEAL TYPE	CRACKS	DISCONTINUITIES	BEARING CAPACITIES
1. EPICRETE	1	1	1
2. EPOXY	1	1	1
3. POLYURETHANE	1	1	1
4. POLYURETHANE	1	1	1
5. POLYURETHANE	1	1	1
6. POLYURETHANE	1	1	1
7. POLYURETHANE	1	1	1
8. POLYURETHANE	1	1	1
9. POLYURETHANE	1	1	1
10. POLYURETHANE	1	1	1
11. POLYURETHANE	1	1	1
12. POLYURETHANE	1	1	1
13. POLYURETHANE	1	1	1
14. POLYURETHANE	1	1	1
15. POLYURETHANE	1	1	1
16. POLYURETHANE	1	1	1
17. POLYURETHANE	1	1	1
18. POLYURETHANE	1	1	1
19. POLYURETHANE	1	1	1
20. POLYURETHANE	1	1	1
21. POLYURETHANE	1	1	1
22. POLYURETHANE	1	1	1
23. POLYURETHANE	1	1	1
24. POLYURETHANE	1	1	1
25. POLYURETHANE	1	1	1
26. POLYURETHANE	1	1	1
27. POLYURETHANE	1	1	1
28. POLYURETHANE	1	1	1
29. POLYURETHANE	1	1	1
30. POLYURETHANE	1	1	1
31. POLYURETHANE	1	1	1
32. POLYURETHANE	1	1	1
33. POLYURETHANE	1	1	1
34. POLYURETHANE	1	1	1
35. POLYURETHANE	1	1	1
36. POLYURETHANE	1	1	1
37. POLYURETHANE	1	1	1
38. POLYURETHANE	1	1	1
39. POLYURETHANE	1	1	1
40. POLYURETHANE	1	1	1
41. POLYURETHANE	1	1	1
42. POLYURETHANE	1	1	1
43. POLYURETHANE	1	1	1
44. POLYURETHANE	1	1	1
45. POLYURETHANE	1	1	1
46. POLYURETHANE	1	1	1
47. POLYURETHANE	1	1	1
48. POLYURETHANE	1	1	1
49. POLYURETHANE	1	1	1
50. POLYURETHANE	1	1	1
51. POLYURETHANE	1	1	1
52. POLYURETHANE	1	1	1
53. POLYURETHANE	1	1	1
54. POLYURETHANE	1	1	1
55. POLYURETHANE	1	1	1
56. POLYURETHANE	1	1	1
57. POLYURETHANE	1	1	1
58. POLYURETHANE	1	1	1
59. POLYURETHANE	1	1	1
60. POLYURETHANE	1	1	1
61. POLYURETHANE	1	1	1
62. POLYURETHANE	1	1	1
63. POLYURETHANE	1	1	1
64. POLYURETHANE	1	1	1
65. POLYURETHANE	1	1	1
66. POLYURETHANE	1	1	1
67. POLYURETHANE	1	1	1
68. POLYURETHANE	1	1	1
69. POLYURETHANE	1	1	1
70. POLYURETHANE	1	1	1
71. POLYURETHANE	1	1	1
72. POLYURETHANE	1	1	1
73. POLYURETHANE	1	1	1
74. POLYURETHANE	1	1	1
75. POLYURETHANE	1	1	1
76. POLYURETHANE	1	1	1
77. POLYURETHANE	1	1	1
78. POLYURETHANE	1	1	1
79. POLYURETHANE	1	1	1
80. POLYURETHANE	1	1	1
81. POLYURETHANE	1	1	1
82. POLYURETHANE	1	1	1
83. POLYURETHANE	1	1	1
84. POLYURETHANE	1	1	1
85. POLYURETHANE	1	1	1
86. POLYURETHANE	1	1	1
87. POLYURETHANE	1	1	1
88. POLYURETHANE	1	1	1
89. POLYURETHANE	1	1	1
90. POLYURETHANE	1	1	1
91. POLYURETHANE	1	1	1
92. POLYURETHANE	1	1	1
93. POLYURETHANE	1	1	1
94. POLYURETHANE	1	1	1
95. POLYURETHANE	1	1	1

2. SEALING CRACKS (POCKET SEALING):

TELESCOPIC RELEASERS	CRACKS	DISCONTINUITIES	BEARING CAPACITIES
1. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
2. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
3. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
4. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
5. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
6. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
7. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
8. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
9. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
10. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
11. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
12. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
13. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
14. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
15. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
16. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
17. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
18. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
19. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
20. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
21. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
22. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
23. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
24. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
25. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
26. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
27. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
28. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
29. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
30. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
31. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
32. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
33. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
34. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
35. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
36. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
37. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
38. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
39. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
40. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
41. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
42. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
43. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
44. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
45. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
46. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
47. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
48. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
49. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
50. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
51. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
52. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
53. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
54. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
55. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
56. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
57. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
58. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
59. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
60. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
61. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
62. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
63. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
64. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
65. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
66. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
67. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
68. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
69. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
70. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
71. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
72. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
73. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
74. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
75. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
76. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
77. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
78. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
79. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
80. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
81. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
82. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
83. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
84. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
85. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
86. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
87. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
88. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
89. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
90. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
91. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
92. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
93. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
94. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1
95. 1/2" SEALING GROUT TO BE CENTER OF CRACK	1	1	1

[illegible]

CONSTRUCTION DOCUMENTS
 Drawn: 1/20/2000 Issued: 2000
 Client: CH2M HILL
 Project: CH2M HILL
 Description: CH2M HILL
 Location: CH2M HILL
 Date: 1/20/2000

REVISIONS
 No. Description Date
 1 1 1/20/2000
 2 2 2/20/2000
 3 3 3/20/2000
 4 4 4/20/2000
 5 5 5/20/2000
 6 6 6/20/2000
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 8 8 8/20/2000
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EXHIBIT C

Revenue and Expense Terms

	<u>BSU</u>	<u>City</u>
Gate Receipts – BSU Hockey games	100%	0%
Gate Receipts – Non-BSU Games/Events	0%	100%
Ticket Surcharges	0%	100%
Parking	0%	100%
Concessions	0%	100%
BSU Merchandise	100%	0%
Naming Rights – Arena & Non-Exclusive BSU Areas	0%	100%
Naming Rights – Exclusive BSU Areas	100%	0%
Ice/Dasher Board Temporary Advertising	100%	0%
Permanent Advertising – Not sold by BSU	0%	100%
Permanent Advertising – Sold by BSU	10%	90%
Suites and Club Seat Revenues – Hockey Season	90%	10%
Suites and Club Seat Revenues – Non-University Events	0%	100%
Game Day Expenses	100%	0%
Facility Maintenance & Repairs	0%	100%
Arena Operations	0%	100%

Per Men's Game Fee - \$9,500 with a minimum of \$190,000 annually

Guaranteed annual payment without BSU Hockey - \$230,000

General Obligation Bond Proceeds

Grant Agreement - Construction Grant
for the
BEMIDJI REGIONAL EVENTS
CENTER
Project

SPAP-08-0005-P-FY08

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General Obligation Bond Proceeds

**Grant Agreement - Construction Grant
for the
Bemidji Regional Events Center
Project**

THIS AGREEMENT shall be effective as of April 7, 2008, and is between City of Bemidji, a Home Rule City (the "Public Entity"), and the MN Dept. of Employment & Economic Development (the "State Entity").

RECITALS

A. Under the provisions contained in M.S. 471.15 - 471.191, the Public Entity has been given the authority to acquire land, predesign, design, construct, furnish and equip a regional events center; and

B. Under the provisions contained in MN Statutes, Chapter 179, Section 21, Subd. 5, (the "GO Bonding Legislation") the State of Minnesota has allocated \$ 20,000,000 (the "Grant"), which is to be given to the Public Entity as a grant to assist it in acquiring land, predesigning, designing, constructing, furnishing, and equipping a regional events center, as authorized by such legislation; and

C. Under the provisions contained in M.S. 471.15 - 471.191, the Public Entity has been given the authority to operate a recreational facility (the "Governmental Program"); and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity's receipt and use of the Grant to acquire and/or improve real property (the "Real Property") and, if applicable, structures situated thereon (the "Facility") will cause all of such real property and structures to become "state bond financed property", as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the then Commissioner of Finance on July 20, 1995 (the "Commissioner's Order"), even though such funds may only be a portion of the funds being used to acquire and/or improve the Real Property and, if applicable, Facility and that such funds may be used to only acquire and/or improve a part of the Real Property and/or, if applicable, Facility.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

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

Article I DEFINITIONS

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

“Advance(s)” – means an advance made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Bemidji Regional Events Center Project.

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

“Architect”, if any - means Leo A. Daly, which will administer the Construction Contract Documents on behalf of the Public Entity.

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

“Commissioner” - means the commissioner of the Minnesota Department Finance and Employee Relations, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the then Commissioner of Finance on July 20, 1995.

“Completion Date” – means January 31, 2011 the date of projected completion of the Project.

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

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

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

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

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

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

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

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

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

“GO Bonding Legislation” – means the legislation delineated in Recital B hereinabove.

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

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

“Governmental Program” – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “Grant” in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained in Sections 2.11 and 6.01.

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

“Inspecting Engineer”, if any - means the State Entity's construction inspector, or its designated consulting engineer.

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

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

“Outstanding Balance of the Grant” – means the portion of the Grant that has been disbursed to or on behalf of the Public Entity minus any amounts received by the Commissioner under Section 2.08.B.

“Ownership Value”, if any – means the value of the Public Entity’s ownership interest, if any, in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the

Commissioner. The parties hereto agree and acknowledge that such value is \$ _____ or X Not Applicable; provided, however, the Commissioner is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank "Not Applicable" should only be selected and checked when a portion of the funds delineated in Attachment III attached hereto are to be used to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in Attachment III and not in this definition for Ownership Value).*

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03 herein. *(If the Public Entity is not using any portion of the Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in Attachment III hereto and instead shall be included in the definition for Ownership Value under this Section 1.01.)*

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

"Real Property" - means the real property located in the County of Beltrami, State of Minnesota, legally described in **Attachment II** to this Agreement.

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

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

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

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the

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

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

Article II GRANT

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

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

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

Ownership Interest in the Real Property.

☐ Fee simple ownership of the Real Property.

☒ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.

[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point
_____.]

- ☐ An easement for the Real Property (i) that is in form and substance acceptable to the State Entity and the Commissioner, (ii) that is for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or for a term authorized by a Minnesota statute, rule or session law, and (iii) which cannot be modified, restated, amended, changed in any other way, or prematurely cancelled or terminated without the prior written consent of the State Entity and the Commissioner.
[If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]

Ownership Interest in, if applicable, the Facility.

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

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

(Check all appropriate boxes.)

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



(Describe other or additional purposes.)

Section 2.04 Operation of the Real Property and Facility. The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

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

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised

program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner certified copies of such resolution and budget.

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

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

B. It has legal authority to use the Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

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

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

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

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

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

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach

of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

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

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

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

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

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

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

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

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

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

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

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

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

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

W. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner.

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

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

1. It must be in form and contents acceptable to the State Entity and the Commissioner, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the State Entity and the Commissioner.

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

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

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.
 5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.
 6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.
 7. It must contain a provision that prohibits the Lessor from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased Premises or the Lessor's interest in the Real Property/Facility Lease, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease as if such holder had been an original Lessor under the Real Property/Facility Lease.
 8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms; conditions and provisions contained in the Real Property/Facility Lease.
 9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease, and that such use restrictions will terminate and not apply to any successor lessee who purchases the Public Entity's interest in the Real Property/Facility Lease.
- B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease that are not inconsistent with or contrary to the requirements contained in this Section.
- C. The expiration of the term of a Real Property/Facility Lease shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the Grant, and upon such expiration the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

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

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

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

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

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

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

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

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

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

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

B. If the Event of Default does not involve a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner.

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

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

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

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

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

Section 2.10 Effect of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only be terminated upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or in accordance with the provisions contained in Section 2.11.

Section 2.11 Termination/Modification of Grant. If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the Grant has not

been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the Grant shall terminate. In such event, (i) if none of the Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

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

Article III USE CONTRACTS

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

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

A. The purpose for which it was entered into must be to operate the Governmental Program.

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

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

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

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

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

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

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

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

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

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair

or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

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

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

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

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

Section 3.04 Receipt of Monies Under a Use Contract. If the Public Entity receives any monies under a Use Contract in excess of the amount the Public Entity needs and is

authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner shall be determined by the Commissioner, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Grant and the denominator of which is sum of the Grant and the Approved Debt.

Article IV SALE

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

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

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

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

The acquisition of the Public Entity's interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

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

Section 4.02 Proceeds of Sale. Upon the sale of the Public Entity's interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale, but not including the repayment of any

debt associated with the Public Entity's interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

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

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to pay in full any outstanding Approved Debt in the order of priority of such debt.

C. The remaining portion, after the distributions specified in Sections 4.02A and B, shall be distributed to (i) reimburse the Public Entity for its Ownership Value, and (ii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution, the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing.

D. The remaining portion, after the distributions specified in Sections 4.02.A, B and C, shall be divided and distributed to the State Entity and the Public Entity in proportion to the contributions that the State Entity and the Public Entity made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

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

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

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

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

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

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

- A. It will not use the Real Property or, if applicable, Facility, or use or invest the Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.
- B. It will deposit into and hold all of the Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.
- C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the GO Bonds.
- D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either; (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.
- E. It will not otherwise use any of the Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should

take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner's Order.

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

Article VI

DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 The Advances. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the Grant. If the amount of Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature delineated in **Attachment III** to this Agreement, (ii) accrued no earlier than the effective date of the GO Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the Commissioner.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances $\leq$ (Grant) x (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Advances $\leq$ (Grant) x (percentage of Project completed)

Section 6.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to; (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

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

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

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

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

Section 6.03 Additional Funds. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State Entity

may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 6.04 Condition Precedent to Any Advance. The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

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

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

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

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

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

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

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

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future

date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

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

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

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

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

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

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

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the

amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

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

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

Section 6.05 **Construction Inspections.** The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

Article VII MISCELLANEOUS

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

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

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

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

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

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

Section 7.02 Condemnation. If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the

Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

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

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's interest in the Real Property and, if applicable, Facility, is a leasehold interest, and (vi) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

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

utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

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

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

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

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

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

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

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

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

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

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

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways

and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

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

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

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

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

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

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of

Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

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

Section 7.12 Liability. The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

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

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of

any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

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

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

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with either the State Entity, the Commissioner, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

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

To the Public Entity at:

City of Bemidji
317 4th Street NW
Bemidji, MN 56601
Attention: John Chattin

To the State Entity at:

MN Dept. of Employment & Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
Attention: Bart Bevins

To the Commissioner at:

Minnesota Department of Finance and Employee Relations
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

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

Section 7.17 Waiver. Neither the failure by the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

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

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

and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

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

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

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

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project:

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

\$25,000,000 in non-state resources

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

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner that **Attachment III** to this Agreement is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

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

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

(i) State funds including the Grant, identifying the source and amount of such funds.

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

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

Previously paid project expenses may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner.

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

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

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

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

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

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

Section 7.28 State Entity and Commissioner Required Acts and Approvals. The State Entity and the Commissioner shall not (i) perform any act herein required or authorized by

it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

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

Section 7.30 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

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

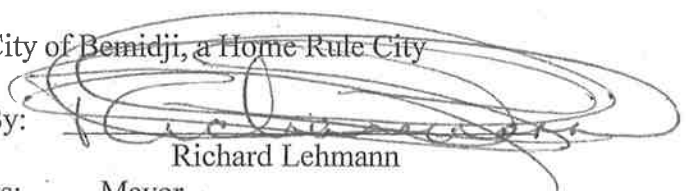
NONE

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IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Bemidji Regional Events Center Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

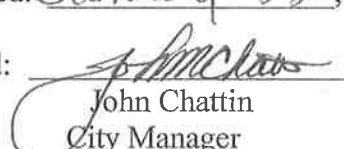
City of Bemidji, a Home Rule City

By: 

Richard Lehmann

Its: Mayor

Dated: January 22, 2009

And: 

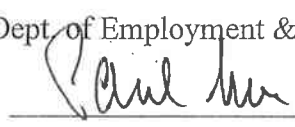
John Chattin

Its: City Manager

Dated: JANUARY 22, 2009

STATE ENTITY:

MN Dept of Employment & Economic Development,

By: 

Its:

Dated: 1-29, 2009


B22 14353 1/20/09

**Attachment I
DECLARATION**

The undersigned has the following interest in the real property legally described in **Exhibit A** attached and all facilities situated thereon (cumulatively referred to as the "Restricted Property"):

(Check the appropriate box.)

☐ a fee simple title,

☒ a lease, or

☐ an easement,

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

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in B hereinbelow, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the commissioner of the Minnesota Department of Finance and Employee Relations, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain «Insert the name of the grant agreement at this point exactly as it appears on the title page of the grant agreement» between City of Bemidji and the MN Dept. of Employment & Economic Development, dated April 7, 2008.

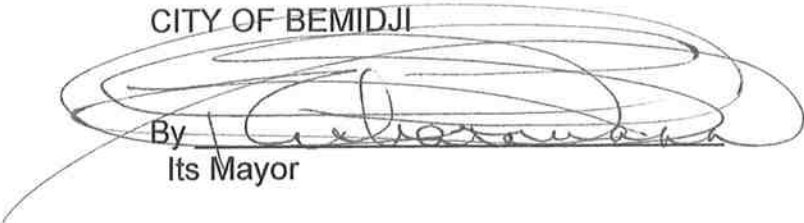
The Restricted Property shall remain subject to such restrictions and encumbrances until it is released therefrom by way of a written release in recordable form signed by both the MN Dept. of Employment & Economic Development and the commissioner of the Minnesota Department of Finance and Employee Relations, and such written release is recorded in the real estate records relating to the Restricted Property.

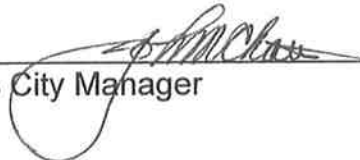
This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the commissioner of the Minnesota Department of Finance and Employee Relations.

Address:

City of Bemidji
317 4th Street NW
Bemidji, MN 56601

CITY OF BEMIDJI

By 
Its Mayor

By 
Its City Manager

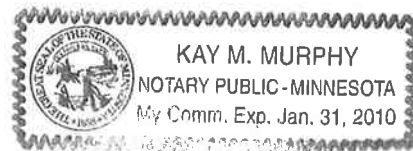
STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing Declaration was acknowledged before me this 22nd day of January, 2009, by Richard Lehmann and John M. Chattin, the Mayor and City Manager of City of Bemidji, a home rule charter city of the State of Minnesota, on behalf of said entity.


Notary Public



This Instrument was drafted by:
Alan R. Felix, City Attorney
317 4th Street NW
Bemidji, MN 56601
Phone: (218)759-3575

Attachment II
LEGAL DESCRIPTION OF REAL PROPERTY
SEE ATTACHED DESCRIPTIONS

Attachment III
SOURCE AND USE OF FUNDS FOR THE PROJECT

Source of Funds

Entity Supplying Funds	Amount
State Funds	
State GO Grant	\$ 20,000,000
State GF Grant	\$-----
Other	
2006 State Bond Funds	\$ 3,000,000
-----	\$-----
-----	\$-----
Sub-Total	\$ 23,000,000
Matching Funds	
-----	\$-----
-----	\$-----
Sub-Total	\$-----
Other Public Entity Funds	
Sales Tax Revenue Bonds	\$ 44,000,000
City Utility Funds	\$ 1,100,000
Sub-Total	
Loans	
-----	\$-----
Sub-Total	\$-----
Other Funds	
-----	\$-----
Sub-Total	\$-----
Prepaid Project Expenses	
-----	\$-----
Sub-Total	\$-----
TOTAL FUNDS	\$ 68,100,000

Use of Funds

Identity of Items	Amount
Ownership Acquisition and Other Items Paid for with GO Grant Funds	
Purchase of Ownership	\$-----
Interest	
Other Items of a Capital Nature	
Building Construction	\$ 20,000,000
-----	\$-----
-----	\$-----
Sub-total	\$ 20,000,000
Items Paid for with Non-GO Grant Funds	
Building Construction	\$ 26,473,000
FF&E	\$ 2,259,125
Site Correction	\$ 1,397,600
BREC Improvement	\$ 4,901,104
Design	\$ 6,442,065
Contingency	\$ 5,547,300
Construction Admin.	\$ 1,079,806
Sub-total	\$ 48,100,000
TOTAL PROJECT COSTS	\$ 68,100,000

Attachment IV
PROJECT COMPLETION SCHEDULE

Activity		Date Complete
Design Development Phase	6 Weeks	
Design Development Kickoff		08/04/08
Submit DD for Owner's review		09/01/08
Review for Owner's comments		09/15/08
Owner approves DD documents		09/15/08
Construction Documents	15 Weeks	
Authorize A/E start –CDs		09/15/08
A/E submit 50% CDs for Owner's review		TBD
Joint review for Owner's comments		TBD
A/E submit 95% for review		TBD
Joint review for Owner's comments		TBD
A/E submit 100% CDs for review		TBD
Joint review for Owner's comments 1		2/22/08
Owner approved 100% construction documents		TBD
Bidding Phase	7 Weeks	
Phase I		TBD
Phase II		
Bidding Period		01/06/09 to 02/17/09
Contract Award		02/28/09
Construction Phase (Phase I & II)		
Start of Phase I Site Preparation		TBD
<i>Documents developed after</i>		09/15/08
Start of Phase II General Construction (22 months)		03/09
Project Substantial Completion		12/10/10
Owner Installed FF&E		12/10/10 to 01/11/11
Final Completion		01/11/11

No delinquent taxes and transfer entered;
Certificate of Real Estate Value
(☒) filed (☐) not required
Certificate of Real Estate Value No. 16962
March 3, 2008
KAY L. MACK AUDITOR-TREASURER
Beltrami County Auditor-Treasurer
by 80.0029400 JAM
Deputy

OFFICE OF COUNTY RECORDER
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
THAT THIS INSTRUMENT
WAS FILED IN THIS
OFFICE ON 03/03/2008 AT
11:06:12PM BY DOCUMENT NUMBER

Paula L. Coons
COUNTY RECORDER

CHARLENE B. STURK
COUNTY RECORDER

PAGES: 1

WARRANTY DEED
LLC to Individual

SAI-4355

STATE DEED TAX DUE HEREON: \$2,846.25

Date: February 29, 2008

Beltrami County, MN

Deed Tax Paid 2846.25

Deed Tax Receipt No. 131428 jm

FOR VALUABLE CONSIDERATION, NORTH CENTRAL DOOR COMPANY, LLC, a limited liability company under the laws of Minnesota, Grantor, hereby conveys and warrants to BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

That part of Government Lot Two (2), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Commencing at a point on the East-West Quarter section line 1916.5 feet east of the southwest corner of Government Lot Three (3) in said Section 15; thence North parallel with the North-South Quarter section line a distance of 40 feet to the point of beginning; thence north parallel with the North-South Quarter section line a distance of 542.78 feet; thence west parallel with the East-West Quarter section line a distance of 33 feet; thence north parallel with the North-South Quarter section line a distance of 108.62 feet; thence east parallel with the East-West Quarter section line to the intersection with the east boundary line of said Lot 2; thence south on the east boundary line of said Lot 2 to a point 208 feet north of the southeast corner of said Lot 2; thence west parallel with the East-West Quarter section line a distance of 208 feet; thence south parallel with the North-South Quarter section line a distance of 168 feet; thence west parallel with the East-West Quarter section line to the point of beginning, less the following described parcel: That part of Government Lot 2, Section 15, Township 146, Range 33, described as follows: The West 62 feet of the North 240 feet of the South 280 feet lying easterly of a line described as beginning at a point on the East-West Quarter section line 1,916.5 feet east of the southwest corner of Government Lot 3 in said Section 15; thence North parallel with the North-South one quarter section line of said Section 15;

together with all hereditaments and appurtenances belonging thereto, and subject to any prior conveyances of minerals or mineral rights, any prior reservations, restrictions, easements, rights of way and any zoning and use regulations, and subject also to the lien of any unpaid special assessments and interest thereon.

Check if applicable:

- ☐ Grantor certifies that Grantor does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☒ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

OFFICE OF COUNTY RECORDER
BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

NORTH CENTRAL DOOR COMPANY, LLC

By Steve Holley
Steve Holley, President

STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 29th day of February, 2008, by Steve Holley, the President of North Central Door Company, LLC, a limited liability company under the laws of Minnesota, Grantor, on behalf of the company

TERRI L. MIDBOE
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2013

Notary Public

THIS INSTRUMENT DRAFTED BY:
DRAHOS KIESON & CHRISTOPHER, P.A.
Attorneys at Law
502 - 24th Street N.W.
Bemidji, MN 56601
(218) 444-1750

TAX STATEMENTS SHOULD BE SENT TO:
Bemidji Economic Development Authority

TERRI L. MIDBOE
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2013

317 4th St NW
BEMIDJI, MN 56601

F:\D Y K\SAVEDOCS\ree08\FR-NCD-BEDA-WD.wpd (njp)

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (✓) filed () not required
 Certificate of Real Estate Value No: 16897
January 30, 2008
KARL MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 180.00 239.01 2281.01 290.02
 by 290.03 290.04 290.05 0.00
 5 331.01 6 290.01 291.818 818.01 Deputy
 819, 820, 821, 826,
 8) 4900, 4901, 4902

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 01/30/2008 AT
 11:42:59AM BY DOCUMENT NUMBER

Paula D. Sturk
 CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 6

LIMITED WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ 37,191.00

Date: January 25, 2008

SAI-4306

FOR VALUABLE CONSIDERATION, ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto. Grantor covenants and represents that Grantor has not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter, shall or may be imperiled, charged or encumbered in any manner, and Grantor will warrant the title to the above-described property against all persons claiming the same from or through Grantor as a result of any such act or thing,

EXCEPT: NONE

- ☐ The Seller certifies that the Seller does not know of any wells on the described property
- ☐ A well disclosure certificate accompanies this document.
- ☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

Beltrami County, MN
 Deed Tax Paid \$ 37,191.00
 Deed Tax Receipt No. 130313CW

ShoreQuest, L.L.C.

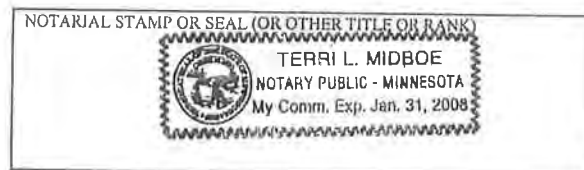
By *John Zacher*
 John Zacher
 Its Chief Manager

STATE OF MINNESOTA

COUNTY OF BELTRAMI

ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the Chief Manager of ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, on behalf of the Grantor.



Terri L. Midboe
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

[CONTINUED ON BACK]

LEGAL DESCRIPTIONS

Parcel 1:

A strip of land 100 feet in width, being 50 feet on each side of the center line of the main track of the Minnesota & International Railway Company as constructed through and upon Government Lot 2, Section 10, Township 146, Range 33, and lying Southwesterly of a line drawn at right angles to said main track centerline distant 1680.0 feet Southwesterly of the East line of Government Lot 1, Section 10, Township 146, Range 33, as measured along said main track centerline.

AND

An additional 20.0 foot wide strip of right of way lying adjacent to and Southeasterly of the hereinabove described 100.0 foot wide right of way situated in the W $\frac{1}{2}$ of Government Lot 2, Section 10, Township 146, Range 33, lying between two lines drawn parallel with and distant respectively 50.0 feet and 70.0 feet Southeasterly of, as measured at right angles to said main track centerline, and lying Southwesterly of a line drawn at right angles to said main track centerline distant 1680.0 feet Southwesterly of the East line of said Section 10, as measured along said main track centerline.

Parcel 2:

All that portion of Government Lot 1 and of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33, lying on the Westerly side of a line lying parallel to and 175 feet distant, Easterly from the main track centerline of the Minnesota and International Railway Company right of way as constructed through and upon said Government Lot 1 and the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33. Less that portion of said right of way situated in the East 30.0 feet of Government Lot 1, Section 15, Township 146, Range 33, lying between two lines drawn parallel with and distant respectively 70.0 feet and 175.0 feet Southeasterly of, as measured at right angles to, said main track centerline.

AND

That part of the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33, lying Northwesterly of a line drawn parallel to and distant 70 feet Southeasterly from the main track centerline of the Minnesota and International Railway Company as constructed through and upon Government Lot 1 and the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33.

Parcel 3:

The East 825.00 feet of Government Lot 2, Section 15, Township 146, Range 33, less the South 691.4 feet thereof.

Parcel 4:

That part of Government Lots 2 and 3, Section 15, Township 146, Range 33, described as follows: Beginning at the Southwest corner of said Government Lot 3, Section 15; thence North 01°33' 57" East along the West line of said Government Lot 3, Section 15, a distance of 89.26 feet to the Northwestern right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 63°00'57" East, along said Northwestern right-of-way line, a distance of 1917.29 feet to a point which is 891.00 feet West of the East line of Government Lot 2, said Section 15; thence South 00°04'38" East along said 891 feet line a distance of 282.50 feet to a point on the North line of the South 691.37 feet of said Government Lot 2, said point also being the Southerly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 89°30'27" West along said 691.37 foot line a distance of 275.08 feet; thence South 63°00'57" along said right-of-way line a distance of 303.03 feet; thence South 69°47'17" West along said right-of-way a distance of 212.00 feet; thence South 63°00'57" West along said right-of-way a distance of 1017.34 feet, more or less, to the South line of said Government Lot 3; thence West along the South boundary line of Government Lot 3, said Section 15, a distance of 47.6 feet, more or less, to the point of beginning.

Parcel 5:

That part of the NW ¼ of SW ¼, Section 15, Township 146, Range 33, lying Northwesternly of a line drawn parallel to and distant 50 feet Southeasterly from the main track center line of the Minnesota and International Railway Company as re-located and constructed through and upon Government Lot 3, Section 15, and Government Lot 4, Section 16, Township 146, Range 33, in 1902.

Parcel 6:

That part of Government Lot 4, Section 16 and Government Lots 2 and 3, Section 15, All in Township 146 North, Range 33 West of the Fifth Principal Meridian, described as follows: Commencing at the southeast corner of said Government Lot 4, said southeast corner being at coordinates 117657.8880 North and 496628.1602 East, bearings and coordinates based on NAD83 (1986) Beltrami County South Zone; thence North 01°33'57" East along the East line of said Government Lot 4, Section 16, a distance of 89.26 feet to the northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway and the point of beginning of the land to be described; thence continuing North 01°33'57" East, along the east line of said Government Lot 4, a distance of 45.70 feet; thence South 63°00'57" West along said northwesterly right-of-way line a distance of 97.33 feet; thence southwesterly along said northwesterly right-of-way line a distance of 143.04 feet along a tangential curve concave to the northwest having a radius of 626.77 feet and a central angle of 13°04'33", to the north right-of-way line of First Street East which is 40.00 feet north as measured at a right angle from the south line of said Government Lot 4; thence North 89°45'15" West, along said north right-of-way line, a distance of 80.78 feet to the northeasterly right-of-way line of Trunk Highway Number 197 as shown on Minnesota Department of Transportation Right-of-Way Plat No. 04-26; thence North 36°56'47" West along said northeasterly right-of-way line a distance of 596.22 feet; thence South 53°03'13" West along said northeasterly right-of-way line a distance of 50.00 feet; thence North 37°33'58" West along said northeasterly right-of-way line a distance of 121.81 feet; thence northwesterly along said northeasterly right-of-way line a distance of 89.96 feet along a curve not tangential with the last described line to a point having coordinates 118314.5104 North and 495804.6338 East, said curve is concave to the southwest, has a radius 1959.87 feet, a central angle of 02°37'47" and the chord of said curve is 89.95 feet in length and bears North 36°24'08" West; thence North 24°18'00" East a distance of 545.14 feet to an iron monument at coordinates 118811.3596 North and 496028.9561 East; thence North 86°53'50" East a distance of 544.20 feet to an iron monument at coordinates 118840.8157 North and 496572.3583 East; thence continuing North 86°53'50" East a distance of 20.00 feet; thence North a distance of about 5 feet to the shoreline of Lake Bemidji; thence easterly along said shoreline to the intersection with the west line of the East 825.00 feet of said Government Lot 2, Section 15; thence South 00°04'38" East along said west line a distance of about 583 feet to a point on the north line of the South 691.37 feet of said Government Lot 2, said point being at coordinates 118334.0056 North and 498405.5371 East; thence South 89°30'27" East, parallel with the east-west quarter line of said Section 15, a distance of 105.13 feet; thence South 00°04'38" East parallel with the north-south quarter line of said Section 15, a distance of 108.62 feet; thence South 89°30'27" East, parallel with said east-west quarter line, a distance of 33.00 feet; thence South 00°04'38" East, parallel with said north-south quarter line, a distance of 392.78 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 200.00 feet; thence South

00°04'38" East, parallel with said north-south quarter line a distance of 150.00 feet to the north right-of-way line of First Street East which is 40.00 feet north as measured at a right angle from said east-west quarter line; thence North 89°30'27" West along said north right-of-way line a distance of 214.22 feet; thence North 00°44'40" East, parallel with the east line of said Government Lot 3, Section 15 a distance of 200.00 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 200.00 feet to the intersection with the east line of said Government Lot 3; thence South 00°44'40" West along said east line a distance of 200.00 feet to said north right-of-way line; thence North 89°30'27" West along said north right-of-way line, a distance of 168.13 feet; thence North 01°33'57" East parallel with the west line of said Government Lot 3, a distance of 104.02 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 620.00 feet; thence North 01°33'57" East parallel with the west line of said Government Lot 3, a distance of 100.85 feet to the southeasterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 63°00'57" East, along said southeasterly right-of-way line, a distance of 502.34 feet; thence North 69°47'17" East along said southeasterly right-of-way, a distance of 212.00 feet; thence North 63°00'57" East along said southeasterly right-of-way line, a distance of 303.03 feet to the north line of the South 691.37 feet of said Government Lot 2; thence South 89°30'27" East along said north line a distance of 275.08 feet to the west line of the East 891.00 feet of said Government Lot 2; thence North 00°04'38" West along said west line a distance of 282.50 feet to the northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence South 63°00'57" West, along said northwesterly right-of-way line, a distance of 1917.29 feet to the point of beginning.

Parcel 7:

That part of the Southwest Quarter of the Northeast Quarter of Section 15, Township 146 North, Range 33 West of the 5th Principal Meridian described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Northeast Quarter, thence North 00 degrees 34 minutes 21 seconds West (assumed bearing) along the west line of said Southwest Quarter of Northeast Quarter a distance of 33.00 feet to the northerly right of way line of First Street South; thence North 89 degrees 59 minutes 35 seconds East along said northerly right of way line of First Street South a distance of 20 feet to the point of beginning of the land to be described; thence North 00 degrees 34 minutes 21 seconds West parallel with said West line a distance of 298.54 feet; thence North 89 degrees 59 minutes 35 seconds East parallel with the South line of said Southwest Quarter of Northeast Quarter a distance of 565.80 feet; thence South 00 degrees 34 minutes 21 seconds East parallel with said West line a distance of 298.54 feet to said Northerly right of way line of First Street South; thence South 89 degrees 59 minutes 35 seconds West along said Northerly right of way line of First Street South a distance of 565.80 feet to the point of beginning and there terminating.

Parcel 8:

Lots 6, 7 and 8, Block 1, Jackpine Acres, according to the recorded plat thereof, Bemidji, Beltrami County, Minnesota.

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (☒) filed () not required
 Certificate of Real Estate Value No. 16895
January 30, 2008
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by CW
80.00279.00 + 282 Deputy

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 01/30/2008 AT
11:42:33AM BY DOCUMENT NUMBER

Paula R. Coons DEPUTY

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 3

LIMITED WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ 1,650.00

Date: January 25, 2008

SAI - 4306A

FOR VALUABLE CONSIDERATION, LeisureTime Land Co., a corporation under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto. Grantor covenants and represents that Grantor has not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter, shall or may be imperiled, charged or encumbered in any manner, and Grantor will warrant the title to the above-described property against all persons claiming the same from or through Grantor as a result of any such act or thing,

EXCEPT: NONE

- ☐ The Seller certifies that the Seller does not know of any wells on the described property.
- ☐ A well disclosure certificate accompanies this document.
- ☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Beltrami County, MN

Deed Tax Paid 1650.00

Deed Tax Receipt No. 130311 CW

LeisureTime Land Co.

By John Zacher
 Its President

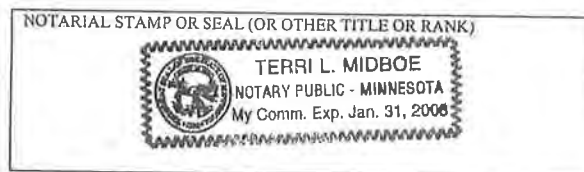
OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

STATE OF MINNESOTA

COUNTY OF BELTRAMI

ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the President of LeisureTime Land Co., a corporation under the laws of Minnesota, on behalf of the Grantor.



John Zacher
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

[CONTINUED ON BACK]

That part or portion of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Beginning at a point on the center line of said Section 15, Township 146, Range 33, 691.4 feet north of the center of said Section 15; thence East on a line parallel with the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, a distance of 371 feet; thence South 20 feet; thence West on a line parallel with the North line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, a distance of 371 feet; thence North 20 feet to the place of beginning.

AND

That part or portion of the Southwest Quarter of Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) and Government Lot One (1), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: The East 400 feet of the West 771 feet of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the said Government Lot One (1), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), lying South of the right-of-way of the Northern Pacific Railway Company (formerly the Minnesota and International Railway Company), and excepting therefrom the South 671.4 feet of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, Township 146, Range 33.

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (☒) filed () not required
 Certificate of Real Estate Value No. 16791
December 14, 2007
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by jm Deputy
80.00280.00 + 281.00

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 12/14/2007 AT
 02:28:51PM BY DOCUMENT NUMBER

Charlene D. Sturk DEPUTY

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 1

LIMITED WARRANTY DEED

Individual to Municipal Corporation

SAI-4323

STATE DEED TAX DUE HEREON: \$412.50

Date: December 7, 2007

FOR VALUABLE CONSIDERATION, JOSEPH S. WASLASKI and KRISTI M. KLASSEN, husband and wife, Grantors, hereby convey and quit claim to CITY OF BEMIDJI, Minnesota, a municipal corporation under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

The West 371 feet of the Southwest Quarter of the Northeast Quarter (SW¼ of NE¼), less the South 691.4 feet thereof and less railroad right-of-way (Minnesota and International Railway), and the West 371 feet of Government Lot One (1), less railroad right-of-way, all in Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33);

together with all hereditaments and appurtenances belonging thereto. Grantors covenant and represent that:

- (1) This deed conveys after-acquired title; and
- (2) Grantors have not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter shall or may be imperiled, charged or encumbered in any manner, and Grantors will warrant the title to the above-described property against all persons claiming the same from or through Grantors as a result of any such act or thing.

Check if applicable:

- ☒ Grantor certifies that Grantor does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☐ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Beltrami County, MN

Deed Tax Paid 412.50

Deed Tax Receipt No. 128994 jm

Joseph S. Waslaski
 Joseph S. Waslaski

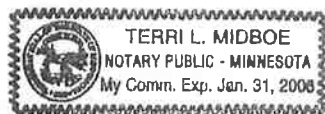
Kristi M. Klassen
 Kristi M. Klassen

STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 7th day of December, 2007, by Joseph S. Waslaski and Kristi M. Klassen, husband and wife, Grantors.



[Signature]
 Notary Public

THIS INSTRUMENT DRAFTED BY:
 DRAHOS KIESON & CHRISTOPHER, P.A.
 Attorneys at Law
 502 - 24th Street N.W.
 Bemidji, MN 56601
 (218) 444-1750

TAX STATEMENTS SHOULD BE SENT TO:
 City of Bemidji, Minnesota
 317 Fourth Street NW
 Bemidji, MN 56601

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

F:\D Y K\SAVEDOC\svree071Waslaski&Klassen-CityBemidji-LWD.wpd (ajp)

No delinquent taxes and transfer entered;
Certificate of Real Estate Value
() filed (☒) not required
Certificate of Real Estate Value No. January 30, 2008
KAY L. MACK AUDITOR-TREASURER
Beltrami County Auditor-Treasurer
by 80.60280.00 + 281 *cu* Deputy

OFFICE OF COUNTY RECORDER
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
THAT THIS INSTRUMENT
WAS FILED IN THIS
OFFICE ON 01/30/2008 AT
11:42:59AM BY DOCUMENT NUMBER

Paula R. Stora
CHARLENE D. STORA
COUNTY RECORDER

PAGES: 2

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: \$ 1.65

Date: January 25, 2008 (6)

SAI-4306

FOR VALUABLE CONSIDERATION, ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto.

THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS LESS THAN \$500.00

Beltrami County, MN

Deed Tax Paid 1.65 cu

Deed Tax Receipt No. 130314

ShoreQuest, L.L.C.

By *John Zacher*
John Zacher
Its Chief Manager

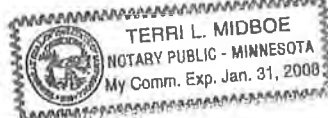
STATE OF MINNESOTA

COUNTY OF BELTRAMI

} ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the Chief Manager of ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, on behalf of the Grantor.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



[Signature]
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Mark Wangberg
CARPENTER & WANGBERG, P.A.
Attorney at Law
201 Seventh Street NW
Bemidji, MN 56601
218-444-7564

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

Bemidji Economic Development
Authority
317 - 4th St. NW.
Bemidji, mn
56601

OFFICE OF COUNTY RECORDER
BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

That part of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and Government Lot 1, Section 15, Township 146, Range 33, described as follows: Beginning at a point on the North and South center line of said Section 15, 691.4 feet North of the center of said Section 15, measured along said center line; thence Easterly, parallel to the East and West center line of said Section 371 feet; thence Northerly parallel to the North and South center line of said Section 693 feet, more or less, to the intersection with the South line of the right of way of the Minnesota and International Railway Company, (which line is 175 feet Southerly from the center line of the main track measured at right angles); thence in a Southwesterly direction, along said South line of said right of way 431 feet, more or less, to the intersection with the North and South center line of said Section; thence Southerly, along said North and South center line 481 feet, more or less, to the place of beginning. (It being the intention to convey the strip of land 371 feet wide, lying along and on the East side of the North and South center line of said Section 15, beginning 691.4 feet North of the center of said Section and extending Northerly to the property of the Minnesota and International Railway Company).

SANFORD/BEMIDJI AGREEMENT

THIS AGREEMENT is made this 6th day of December, 2010, by and between the CITY OF BEMIDJI, MINNESOTA ("Bemidji") and SANFORD (collectively SANFORD, SANFORD NORTH, SANFORD MEDICAL CENTER FARGO, SANFORD CLINIC NORTH, and all of their subsidiaries and affiliates, "Sanford").

WHEREAS, Bemidji has recently completed construction of the Bemidji Regional Event Center, a multi-purpose facility consisting of approximately 185,000 square feet located at 1111 Event Center Drive and utilized primarily for BSU Hockey, conventions, conferences and arena events (the "Event Center"); and

WHEREAS, Bemidji is seeking to raise third-party funds to assist in the financing and on-going operational support of the Events Center; and

WHEREAS, Bemidji believes contributions to the Event Center can be solicited by granting donor recognition in the form of exclusive Event Center naming rights along with certain other recognitions; and

WHEREAS, Sanford and Bemidji agree that adequate funding and support for the Event Center would further the health, fitness and economic development infrastructure for the betterment of the Bemidji community; and

WHEREAS, Sanford desires to assist the Bemidji community in its health and fitness endeavors and economic development, and agrees to contribute to Bemidji the sum of \$2 million to help finance the Event Center and its ongoing operational support; and

WHEREAS, the Event Center is owned by Bemidji. The property where the Event Center is located, is owned by the Bemidji Economic Development Association ("BEDA"). Bemidji leases the land from BEDA for the Event Center. Bemidji has obtained a State grant in the form of bond financing in order to assist with the funding of the Event Center; and

WHEREAS, in consideration for Sanford's \$2 million contribution, Bemidji desires to provide Sanford with certain exclusive recognition, including the naming of the Event Center as "The Sanford Center" and other exclusive Signage Rights and Sponsorship rights as more particularly described herein.

NOW, THEREFORE, Bemidji and Sanford, in consideration of the mutual promises and covenants set forth herein, do hereby agree as follows:

1. Payments. Subject to the terms and conditions hereof, Sanford agrees to deliver certain cash Installment Payments to Bemidji in accordance with the following.

A. First Installment Payment. Subject to the terms and conditions of this Agreement, Sanford hereby agrees to deliver a cash payment (the "First Installment Payment") of Two Hundred Thousand and no/100 Dollars (\$200,000.00) to Bemidji on or about November 1, 2010. All obligations of Sanford, including without limitation, the Second through Tenth Installment Payments (defined below), are subject to the condition precedent that Sanford shall have received, on or prior to the delivery of the First Installment Payment, all of the following (unless waived in writing by Sanford), each in form and substance satisfactory to Sanford:

- (i) Resolutions. Resolutions of the Board of Trustees of Sanford approving the terms and conditions of this Agreement;
- (ii) Approval of Bemidji City Council. Authorization in writing of the approval of this Agreement by the Bemidji City Council or any other governmental entity required by law or policy to approve the terms and conditions of this Agreement;
- (iii) Opinion of Bemidji's Counsel. A favorable opinion of legal counsel to Bemidji that all necessary approvals, including without limitation the Minnesota Department of Employment and Economic Development (DEED) and the Bemidji Economic Development Authority (BEDA), have been received by Bemidji; and
- (iv) Lien/Title Search. Sanford shall have received the results of a Uniform Commercial Code lien search and a title search of the Event Center property showing all liens on file against Bemidji or encumbering the Event Center property, with lien release documentation satisfactory to Sanford with respect to those secured parties with liens or security interests impairing any rights granted to Sanford hereunder.

B. Second through Tenth Installment Payments. Subject to the terms and conditions of this Agreement, Sanford hereby agrees to deliver a cash payment (the "Second Installment Payment") of Two Hundred Thousand and no/100 Dollars (\$200,000.00) to Bemidji on or about November 1, 2011 and eight subsequent Installment Payments each in the amount of Two Hundred Thousand and no/100 Dollars (\$200,000.00) to be made on each of the Third through Tenth anniversary dates of the Effective Date (each, an "Installment"). The obligation of Sanford to make the Second through Tenth Installment Payments is subject to the conditions precedent that:

- (i) Compliance with Agreement. Bemidji is not in material breach of any term or condition of this Agreement;

- (ii) Formal Evaluation. The parties agree to engage in a formal evaluation of their relationship at least annually, such evaluation to be attended by the Bemidji City Manager, Sanford's CEO and Sanford's Vice President of National Orthopedic and Sports Medicine Practice and/or their designees or invitees; and,
 - (iii) Board Approval. Resolutions of the Board of Trustees of Sanford confirming that the conditions set forth in Section 1(B)(i) and (ii) have occurred.
- C. Annual Statements from Bemidji. Bemidji will send out a statement annually to Sanford thirty (30) days prior to the payment dates set forth above. All bills will be addressed as follows:

Sanford
Public Affairs Corporate Office
801 Broadway North
PO Box 2010
Fargo, ND 58122-0404

2. Exclusive Recognition. In recognition of Sanford's contributions to the funding of the Event Center, Bemidji hereby grants to Sanford, the following exclusive recognitions:

- A. Exclusive Naming Recognition. Bemidji hereby covenants and agrees that Sanford shall have naming rights on the exterior of the Event Center and Bemidji irrevocably transfers, sets over and assigns to Sanford, exclusive naming recognition with respect to the exterior of the Event Center, including the exterior entrance for the Bemidji State University ("BSU") athletics (the "Naming Recognition"). The Event Center, shall be referred to as: "The Sanford Center". All announced, displayed or broadcast references to the Event Center or departments or facilities therein shall refer to the Event Center using The Sanford Center name. Sanford acknowledges and agrees that certain naming recognition with respect to other interior areas within the Event Center may be provided naming recognition by Bemidji to others; provided, however, that Bemidji will be in compliance with Sanford's recognition as the exclusive health care presence in the Event Center as provided in Section 2.C herein. The other areas where Bemidji may grant secondary naming recognition shall include all other areas except the exterior of the Event Center and the exterior entrance for BSU athletics. Such named areas shall always be referenced as a component of the Sanford Center using The Sanford Center name, e.g. XZY Corporation court at The Sanford Center. Sanford reserves the right to subsequently change the name of the Event Center provided that (i) Sanford first consults with Bemidji to ensure the new name does not violate any naming restrictions contained in any Event Center agreements in place prior to the Effective Date of this Agreement; and (ii) Sanford shall be responsible for costs associated with

changes of Event Center signage and logos that result from any such name change by Sanford. The parties acknowledge that consumables that are impacted by any name change by Sanford will be made as new consumables are ordered and the costs associated therewith will be the responsibility of the party responsible to pay for the consumables.

B. Exclusive Signage Recognition. Bemidji hereby covenants and agrees that Sanford shall have, and Bemidji irrevocably transfers, sets over and assigns to Sanford, exclusive signage recognition (the "Signage Recognition") with respect to the Event Center, as such Signage Recognition is described below.

- (i) Bemidji agrees that Sanford shall be allocated exclusive signage rights at the main entrance of the Event Center and the exterior entrance for BSU athletics. Sanford shall be responsible for the cost of construction and installation of such signage; provided, however, Bemidji agrees to be responsible for fifty percent (50%) of the cost for the exterior signage at the main entrance, up to a maximum of Twenty-five Thousand Dollars (\$25,000). Signage, or any changes to the signage, at the main entrance of the Event Center and the exterior entrance for BSU athletics's, shall require prior approval by Bemidji, which approval shall not be unreasonably withheld. Any subsequent changes to the signage at the entrance of the Event Center or the BSU athletic entrance shall be at Sanford's cost. Bemidji agrees to reasonably maintain backlighting, electrical service, etc. in connection with continued operation or display of such signage. In addition, Bemidji agrees to perform maintenance of such signage, when reasonably necessary, in the event of wear and tear; provided, however, Sanford shall reimburse Bemidji for such maintenance in the event of ordinary wear and tear (unless such wear and tear is caused by the gross negligence or intentional misconduct of Bemidji).

C. Exclusive With Respect to Advertising of Health Care Products/Services. Bemidji hereby agrees, covenants and promises during the term or any renewal or extension of any term of this Agreement that it shall not, without the prior written consent of Sanford, which consent may be granted or withheld in the exercise of Sanford's sole discretion, directly or indirectly sell or lease, or solicit or market to sell or lease, or permit any naming or other advertising in any medium in, on or from the Event Center or any Event Center's marquee signage, to any person or entity substantially engaged in the provision of health care services or products, with the exception of temporary signage of and for exhibitors and vendors at conventions and trade shows being held at the Event Center. For purposes hereof "temporary signage" shall mean non-permanent signage installed by exhibitors and vendors in direct connection with their participation in an active trade show or convention, and in no event shall such temporary

signage be installed and visible for a period of time exceeding seven (7) days. Notwithstanding the forgoing, Bemidji has disclosed, and Sanford acknowledges, that specified entities disclosed by Bemidji in a separate letter to Sanford are presently advertising at or on the Event Center and shall be permitted to continue to advertise for the respective periods set forth in the disclosure letter to Sanford. Said disclosure letter is incorporated herein by reference.

For the purposes of this Agreement, "health care services and products" shall include: businesses and/or entities that operate a hospital and/or physician clinic, including without limitation a clinic such as a "walkup", "rapid care", or "urgent care" clinic, which provide health care services and/or for the provision of dialysis, physical therapy, chiropractic care, occupational therapy, occupational health, oral surgery, audiology, psychiatry, dietetics, optometry, ophthalmology, laser surgery, plastic surgery, maxial facial surgery services and/or for the sale of health care accessories, the sale or operation of health care plans and/or as a pharmacy. Notwithstanding the foregoing, traditional dentistry, massage, and orthodontics are not restricted. Bemidji acknowledges that at the time of the execution of this agreement, no agreements or informal arrangements exist that would conflict with Sanford's exclusive advertising rights as set forth in this paragraph, except as disclosed or exempted pursuant to this Agreement.

In addition, Bemidji covenants and agrees to include said exclusive health care advertising rights requirement in each of its own facility use agreements or leases and in any agreement or lease it may enter into with owners or operators of adjacent facilities to the extent such facilities may reasonably be considered part of, or affiliated with the Event Center (meaning owned by the BEDA or the City of Bemidji). For purposes of the requirement that Bemidji include the exclusive health care advertising rights requirement in each of its own facility use agreements or leases, a hotel which will be connected to the Event Center is not affiliated with Bemidji. Sanford may, upon the written request of Bemidji and in the exercise of Sanford's sole discretion, waive the foregoing exclusive health care advertising rights with respect to lessees/users of the Sanford Event Center on an event-specific basis, unless said lessees/users are otherwise exempt under the terms of this Agreement.

- D. Termination. At the end of the term of this Agreement, Sanford shall transfer and assign to Bemidji all of its right, title and interest in and to the foregoing interior Signage Rights referenced under paragraph 2 of this Agreement, without recourse and without representation or warranty.

3. Sponsorship Recognition and Obligations. Bemidji hereby ensures access to Sanford and reasonably facilitates for the period beginning on the 1st day of November, 2010 and ending on the 31st of July, 2021, the following:

- A. Promotion of Future Events. Bemidji will work cooperatively with Sanford on promoting future events in the Bemidji market. Support may include sponsorship, cross-promotion, financial assistance, etc.
- B. Skybox/Suite Usage. Use of Event Center skybox/suite for each BSU hockey game and other events for which Sanford has purchased tickets.
- C. Designated Contacts. Operational contact persons to administer this agreement including operation oversight and all contractual responsibilities shall be the Bemidji City Manager and Sanford's Vice President of National Orthopedic and Sports Medicine Practice.
- D. Formal Evaluation. The parties agree to engage in a formal evaluation of their relationship at least annually, such evaluation to be attended by the Bemidji City Manager, Sanford's CEO, Vice President of National Orthopedic and Sports Medicine Practice and/or their designees or invitees.
- E. Concession Advertising. Bemidji will use its best efforts to have Sanford's logo featured on drinking cups and other concession media along with other sponsors. However, Sanford shall be the exclusive health care provider/service on any concession media.
- F. Other Advertising. The parties agree that Sanford shall have exclusive health care or health service logo/advertising rights including but not limited to:
- (i) Staff uniforms;
 - (ii) All external correspondence (i.e. Stationery, Letterhead, Press Releases, Email blasts);
 - (iii) Bemidji will use its best efforts to have all future event tickets conform to the exclusive rights provided to Sanford under this Agreement (however Sanford acknowledges that BSU season tickets for 2010-2011 have already been printed);
 - (iv) Event promotional materials (posters, flyers, radio/tv advertisements);
 - (v) Facility website;
 - (vi) All National Trade Publications (i.e. Pollstar, Venues Today, etc.);
 - (vii) Potential promotional giveaway items (i.e. mugs, pens, etc.); and

(viii) Bemidji will use its best efforts to assure that over the air broadcasts for BSU Men's Hockey on Lakeland Public TV and the Minnesota Public Television Network ("Live from The Sanford Center").

G. Sanford Logo. The parties agree that Sanford will have sole discretion of the branding of the Sanford logo to be used in the Event Center. However, Bemidji will be required to provide consent to the form and use of the logo in the Event Center which approval shall not be unreasonably withheld.

H. Use of Logo. The Sanford logo shall be displayed in numerous area around the Event Center including the marque, concessions, internal advertising, LED scoreboard, the LED ring immediately below the scoreboard, and all other locations as mutually agreed to between the parties.

4. Material Breach, Ceasing of Use, Impairment of Rights.

A. Default by Bemidji. Upon (a) a material impairment of any exclusive recognition-related rights granted by Bemidji hereunder which is not cured by Bemidji within thirty (30) days' written notice thereof, (b) a material breach of any other of Bemidji's obligations hereunder, which breach is not cured by Bemidji within thirty (30) days' written notice thereof, or (c) the ceasing of usage of the Event Center entirely, a permanent and material decrease in usage of the Event Center for events (unless such decrease is caused by elements outside of Bemidji's reasonable control), or the relocation to another venue of significant spectator activities to be held in the Event Center, Sanford shall have the right to terminate any future Installments set forth in this Agreement which become due and payable, including any past due payments. Upon any condemnation, abandonment, action or omission to act of Bemidji which results in a temporary material decrease in the usage of the Event Center, ("Impairment"), Bemidji shall promptly expand the term of this agreement for a period reasonably equivalent to the duration of such impairment. Upon any condemnation, abandonment, action or omission to act of Bemidji which results in a temporary material decrease in the useage of the Event Center, Sanford shall have the right to delay future payments that become due until the date of the first event held in the fully repaired or rebuilt Event Center. If all payments have been made by Sanford and a default by Bemidji as defined in this paragraph has occurred and has not been remedied within the timeline set forth in this paragraph, Sanford shall have the right to elect any and all remedies available under the law, equitable or legal, including but not limited to specific performance of this Agreement.

B. Default by Sanford. Upon Sanford's default in making any Installment due hereunder within thirty (30) days of its receipt of written notice that such Installment is delinquent (except to the extent such payment by Sanford is disputed in good faith hereunder or payments are delayed as a result of a

condemnation, abandonment, action or omission to act of Bemidji as set forth under paragraph 3 A. above), Bemidji may declare this Agreement cancelled, forfeited and determined by giving to Sanford thirty (30) days' notice in writing of its intention to cancel and determine this Agreement and/or Bemidji shall have the right to elect any and all remedies available under the law, equitable or legal, including but limited to specific performance of this Agreement.

5. Term; Right of Refusal. The exclusive naming, advertising and sponsorship rights of this Agreement shall commence on November 1, 2010 and continue through July 31, 2011. Sanford shall have the right to extend this agreement with the same identical rights and obligations of the parties for and additional five (5) year term by providing Bemidji at least twelve (12) months advance notice of its right to extend the Agreement. For the avoidance of doubt, in the event Sanford exercises its right to extend this Agreement for an additional five (5) year period, Sanford shall continue to make its annual Two Hundred Thousand and no/100 Dollars (\$200,000.00) Installment payment on each anniversary of the Effective Date, with the first renewal term Installment being due and payable on or about November 1, 2020 and the fifth and final renewal term Installment being due and payable on or about November 1, 2024. In addition, at least six (6) months prior to the end of the term or end of any term of extension of this Agreement, the parties shall in good faith commence discussions as to terms and conditions of a proposed extension. Upon expiration of the term, or any renewal term (if exercised), of this Agreement, (a) the exclusive signage and advertising rights granted to Sanford hereunder shall cease and terminate at the end of the term or renewal or extension of any term hereof and (b) Sanford shall, for an additional five (5) year period, have a right of first refusal with respect to any of the exclusive advertising or signage rights granted to Sanford hereunder. If at any time during said five (5) year period Bemidji receives a bona fide offer from a third party for the grant, sale, transfer or other disposition of any such exclusive advertising or signage rights, Bemidji shall give Sanford a first right of refusal with respect to such offer. Upon receipt of written notice and a copy of said offer from Bemidji that Bemidji has received an offer it is willing to accept, Sanford shall, within thirty (30) days after receipt of said notice, give written notice to Bemidji as to whether Sanford has elected to exercise its right to accept the same terms and conditions as contained in said offer. In the event Sanford does not exercise the right within said thirty day period, Sanford's rights of refusal under this Section shall terminate. The foregoing rights of first refusal shall survive termination of this Agreement for the period described above.

6. Operation of Event Center by Bemidji. Bemidji agrees to operate the Event Center in a manner which does not reflect adversely upon Sanford and its affiliation with Bemidji hereunder.

7. No Joint Venture. Nothing herein contained shall be construed to place the parties in a relationship of partners or joint venturers and neither party shall have the power to obligate or bind the other in any manner whatsoever.

8. Indemnity.

- A. To the extent permitted by the laws of the State of Minnesota, Bemidji shall save and hold harmless Sanford from any liability for damages and litigation costs, including attorney's fees arising from Bemidji's activity under this agreement or operation of the Event Center, except for damages due to the acts or omissions of Sanford, its sub-contractors, officers, employees or agents. Nothing herein shall preclude Bemidji from asserting against third parties any defenses to liability it may have under Minnesota law.
- B. Except to the extent arising as a result of any act or omission of Sanford, its employees, agents or officers, Sanford shall not be liable for and Bemidji hereby waives, indemnifies and holds Sanford harmless, relating to all claims for damage to person or property sustained by Bemidji or Bemidji's employees and agents, contractors, servants, lessees, assignees, concessionaires customers, licensees or invitees, resulting from the Event Center or Event Center operations; or any equipment, vehicle, appurtenances or apparatus located there being operated, used, repaired or being out of repair; or resulting from any accident or injury in or about the Event Center. Bemidji also waives indemnifies and holds Sanford harmless from any and all claims against Sanford resulting directly or indirectly from any act or negligence of any renter/user of the Event Center except for those claims resulting from the acts or omissions of Sanford.
- C. Bemidji's obligations under Parts A and B of this Section are subject to its liability limits under Minnesota Statutes, Chapter 466, and nothing in this Agreement will be construed to waive such limits.
- D. Sanford agrees to defend and hold harmless Bemidji, its subsidiary and affiliates and their respective officers, directors, agents, attorneys and employees harmless from and against any and all claims, actions, damages, liability and expenses, including attorneys' fees, in connection with any breach or default on the part of Sanford under this Agreement; and from any act or omission of Sanford or any of its agents, contractors, invitees, servants, employees, lessees, assignees, concessionaires, customers and licensees, in or about the Event Center.

9. Representations and Warranties of Bemidji. Bemidji hereby represents and warrants to Sanford the following:

- A. The execution, delivery and performance by Bemidji of this Agreement and the assignment of rights effectuated hereby have been duly authorized by all necessary entity action and do not and will not (i) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent,

approval, registration, declaration, filing or notice as has been disclosed by Bemidji in writing contemporaneously herewith and which has or have been obtained prior to the date hereof; (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to Bemidji; and (iii) result in a breach of or constitute a default under any material agreement, lease or instrument to which Bemidji is a party or by which it or its properties may be bound or affected.

- B. No material agreement, lease or instrument to which Bemidji is a party or by which its properties are bound or affected imposes upon the rights granted to Sanford hereunder any express or implied limitations on the exercise of such rights, except as disclosed by Bemidji in writing contemporaneously herewith. In relation to said agreements, leases or instruments, Bemidji and Sanford shall also endeavor to obtain a common letter of consent signed by all parties to said agreements, leases or instruments.
- C. Bemidji owns the Rights associated with the Naming, and upon the assignment of such rights to Sanford hereunder, such Naming Rights shall be free and clear of all claims, liens, security interests or encumbrances whatsoever.
- D. There is no litigation, proceeding or other investigation pending or, to the knowledge of Bemidji, threatened against Bemidji which would prevent consummation of the transaction contemplated by this Agreement.

10. Representations and Warranties of Sanford. Sanford hereby represents and warrants to Bemidji the following:

- A. Sanford is a non-profit corporation duly organized, existing and in good standing under the laws of the State of North Dakota.
- B. The execution, delivery and performance by Sanford of this Agreement has been duly authorized by all necessary corporate action and does not and will not (i) require any consent or approval of Sanford's Board of Trustees to enter into said Agreement; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to Sanford or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which Sanford is a party or by which it or its properties may be bound or affected.

11. Injunctive Relief. The parties acknowledge that breach or nonperformance with respect to certain of the covenants of this Agreement could cause irreparable harm and significant injury which may be difficult to estimate or ascertain. Accordingly, the parties agree that they each shall have, in addition to any other rights or remedies afforded by law, the right to seek immediate injunctive relief or specific performance due to any existing or threatened breach of this Agreement.

12. Risk of Loss. The parties acknowledge and agree that Bemidji will have title to the Event Center (subject to the rights granted to Sanford hereunder) and Bemidji shall bear the risk of damage, loss, theft, or condemnation of any and all portions of, or personal property located at, the Event Center, regardless of cause, and any and all repairs and replacements thereof shall be at the expense of Bemidji. Bemidji shall at all times during the term of this Agreement maintain physical damage insurance insuring against loss or damage to the Event Center in an amount not less than the full replacement value thereof. In the event of material casualty to the Event Center, Bemidji shall promptly repair the Event Center.

13. Insurance. During the term of this Agreement, Bemidji shall maintain, at its sole cost and expense, self insured comprehensive general liability insurance through the League of Minnesota Cities Insurance Trust with liability limits of not less than the limits currently maintained at the time of execution of this Agreement. Said coverage shall also include coverage for workers' compensation insurance (in accordance with Minnesota law) against any liability arising out of injuries to or death of any person or damage to tangible property in any way connected with the ownership or operation of the Event Center. Bemidji shall provide to Sanford a certificate evidencing such coverage, and naming Sanford as an additional insured.

During the term of this Agreement, Sanford shall maintain, at its sole cost and expense, professional liability, comprehensive general liability with minimum limits of \$1,000,000 per claim/\$3,000,000 annual aggregate (subject to applicable self-insured retention/deductibles) against any liability arising out of injuries to or death of any person or damage to tangible property in any way connected with Sanford's use of the Event Center for events as described in this Agreement. Sanford shall provide Bemidji a certificate evidencing such coverage upon request. Sanford shall maintain worker's compensation insurance as required by Minnesota law.

14. Dispute Resolution. In the event of a dispute concerning compliance with this Agreement, the Parties or their authorized representatives shall meet in Bemidji, Minnesota, at a mutually agreed location within seven (7) days of receipt of a written request from any of the Parties to do so, in a good faith effort to resolve such differences prior to instituting any further action.

If the good faith attempts to resolve the dispute referred to in the preceding paragraph are unsuccessful, after thirty (30) days of the initial meeting the Parties shall have the right to pursue any and all remedies in this Agreement or available under law.

15. Assignment. Bemidji may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Sanford, which consent may be granted or withheld in the exercise of Sanford's sole discretion. Sanford may not assign or transfer its rights or

obligations under this Agreement without the prior written consent of Bemidji, which consent may be granted or withheld in the exercise of Bemidji's sole discretion; provided, however, (i) Sanford may, without the necessity of consent, assign or transfer its rights or obligations under this Agreement to any parent, subsidiary or affiliate corporation or entity, any corporation resulting in the consolidation or merger of Sanford into or with any other entity, or any person, firm, entity or corporation acquiring all or substantially all of Sanford's assets. Any assignment or transfer prohibited by this provision will be void. Nothing in this Section will require Bemidji to obtain consent from Sanford in order to convey Bemidji's interest in the Event Center to any other governmental entity, so long as the transferee assumes all rights and obligations of the Bemidji under this Agreement.

16. Notices. Wherever in this Agreement it shall be required or permitted that notice or demand be given or served, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by registered or certified mail, postage prepaid, addressed as follows:

To Sanford:	Sanford Health PO Box 5039 Sioux Falls, SD 57117 Attn: Mike Begeman, Vice President-Public Affairs
To Bemidji:	City of Bemidji 317 4 th Street NW Bemidji, MN 56601 Attn: City Manager

Such addresses may be changed from time to time by serving notices as above provided

17. Miscellaneous.

- A. This Agreement shall be interpreted under and governed by the laws of the State of Minnesota. Any action arising out of or related to this Agreement, whether at law or in equity, shall be instituted in and litigated solely and exclusively in the state or federal courts in Beltrami County, State of Minnesota.
- B. This Agreement constitutes the entire agreement between the parties and supersedes all prior proposals and agreements, both written and oral, and all other written and oral communications between the parties.
- C. This Agreement may not be amended or altered in any manner except in a writing signed by both parties.
- D. No forbearance to exercise any rights or privileges under this Agreement or waiver of any breach of any of its terms shall be construed as a waiver of any such terms, rights, or privileges, but the same shall continue and remain in

full force and effect the same as if no such forbearance or waiver had occurred.

- E. The parties agree that if any part, term, paragraph, or provision of this Agreement is in any manner held to be invalid, illegal, void, or in any manner unenforceable, or to be in conflict with any law, then the validity of the remaining portions or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

SANFORD

Bill Marlette
By: Kelby Krabbenhoft Bill Marlette
Its: President and CEO of Sanford
Treasurer

CITY OF BEMIDJI, MINNESOTA

John M. Chattin
By: John M. Chattin
Its: City Manager

Tuesday, September 24, 2019

Via Certified Mail, Return Receipt Requested

City of Bemidji
317 4th Street NW
Bemidji, MN 56601
Attn: City Manager

Re: SANFORD/BEMIDJI AGREEMENT

Dear Sir or Madam:

Pursuant to Section 5 of the SANFORD/BEMIDJI AGREEMENT dated December 6, 2010 by and between City of Bemidji, MN and Sanford (the "Agreement"), Sanford hereby provides at least twelve (12) months advanced notice of its right to extend the Agreement for an additional five (5) year period. For the avoidance of doubt, Sanford shall continue to make its annual Two Hundred Thousand and no/100 Dollar Installment payment on each anniversary of the effective date with the first renewal term Installment being due on or about November 1, 2020 and the fifth and final renewal term Installment being due and payable on or about November 1, 2024

Sincerely,



Bryan Nermoe, President Sanford Bemidji Medical Center

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Work Session – September 26, 2016

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, September 26, 2016, at 5:30 p.m. in the Conference Room of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Hellquist, Johnson, Olson, Erickson, Larson

Staff Present: City Manager Nate Mathews, City Attorney Alan Felix, Finance Director Ron Eischens, Director of Public Works/Engineer Craig Gray, Deputy City Clerk Teresa Hanson

Others Present: Sanford Center Executive Director Jeff Kossow, Sanford Center Associate Executive Director Kristi Anderson

Mayor Albrecht stated the purpose of the work session was to receive updates on the Sanford Center and welcome the new Executive Director, Jeff Kossow.

Kossow introduced himself to Council noting he has been in the industry for 30+ years. He acknowledges the importance of meeting budget expectations, gaining support of sponsors, learning from past experiences, listening to comments and concerns from staff and citizens, growing the conference market with a “bring it home” campaign, staff growth and building rapport with part-time staff, and making sure all experiences at the Sanford Center are a good one from start to finish. With recent staffing changes, VenuWorks took the opportunity to update the organizational chart and shift some duties of its staff members. Among other things, Kossow indicated he would like to see more interaction with Council, make sure goals are met, widen the convention market and establish a maintenance plan for the facility and equipment to prepare for future needs. Kossow asked for one year, determine the progress and then judge him on those results.

Anderson reviewed the changes in the organizational chart and reported a variety of upcoming events are scheduled in the arena and conference center.

When Kossow asked Council members what their priorities are and what they expect from their partnership with VenuWorks, the following were identified and discussed:

- A comparative analysis of facilities in similar markets to determine performance and accuracy of previous feasibility studies
- Regular updates and communication regarding Advisory Board activity including financial/flash reports, scheduled events, agendas and minutes
- Stay within budget, keep costs down, minimize the deficit
- Diversify events in the arena and conference center, increase attendance and use of the facility
- Create a capital improvement and facility/equipment maintenance plan to prepare for the future
- Establish stability and consistency through leadership and staffing
- Focus on customer service

Discussion was held on further research and the establishment of a task force or committee to work with staff to address concerns and report back to Council. Issues may include addressing and resolving issues of concern; looking at long-range operations, management options and alternatives; and conducting a formal review of past financial records to determine if city/public funds were put at risk to back shows and events, which is also known as “co-pros” or co-promotions.

Consensus of Council was to establish a working committee consisting of two Councilmembers and City staff to address and resolve concerns, identify challenges and expectations, establish policies and procedures as referred to in the contract with VenuWorks, conduct a formal review of financial reports for events from 2012-2016, and possibly assist with creating by-laws for the Advisory Board. Meehlhause and Larson agreed to serve on the committee with City staff.

ADJOURN

There being no further business, motion by Meehlhause, seconded by Larson, to adjourn the meeting. Motion carried. Meeting adjourned at 7:06 p.m.

Respectfully submitted,



Teresa Hanson
Deputy City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Special Meeting/Work Session – January 30, 2017

Pursuant to due call and notice, a special meeting/work session of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Monday, January 30, 2017, at 5:30 p.m. in the Conference Room of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Johnson, Hellquist, Erickson Absent: Larson

Staff Present: City Manager Nate Mathews, Finance Director Ron Eischens, City Engineer Craig Gray, City Clerk Kay Murphy

Others Present: Jeff Kossow, VenuWorks Executive Director

Mayor Albrecht stated that the purpose of the special work session was to hear an update from the Sanford Center Work Group and discuss alternative revenue options.

City Manager Mathews stated that the City Council created a Sanford Center Work Group on September 26, 2016. The group included Councilors Larson and Meehlhause as well as city staff. He stated that the group has met several times and have primarily covered the following topics:

- Staffing stability and short term and long term staffing
- Three year look back on co-pros
- Event booking history and expectations
- BSU hockey use dynamic
- Financial impropriety updates - Mathews noted that the state auditor is currently reviewing the financial records at the event center.
- Event Center financial comparisons with other cities
- Identification of new policy and procedure needs
- Advisory Board governance, role and makeup
- VenuWorks contract review
- Hospitality tax/alternative revenue review and planning

Eischens reviewed a power point presentation regarding how the city wants to determine what success is at the event center. He stated that some businesses benefit more from the economic impact generated from the event center than others. Visitors add costs for the City budget, i.e., parks, streets, utilities and infrastructure impact. He stated that the event center provides a number of full-time and part-time jobs in the community, recruitment tool and home to BSU men's and women's hockey programs. Other City assets that benefit residents and tourists, i.e., parks & trails, library, arena, streets. He noted that Bemidji spends \$1.3 million annually on parks and recreation programming which are not expected to make a profit.

Eischens described the following as potential ways the city could define success at the facility:

- Economic impact, estimated at \$24 million last year. Councilor Erickson suggested a clarification on how the economic impact amount was arrived at.
- Quality of life in our community.
- Number of events held on a regular basis.
- Attendance at events.
- Financial results from the event center.

Eischens noted that most event centers are owned by a city, because cities have taxing ability to fund costs. He stated that if event centers were profitable, the private sector would build and own them. He reviewed a handout comparing the City's event center with Duluth, Mankato, Grand Forks and St. Cloud. He noted that the other event centers have larger populations, higher income levels and utilize non-property tax funding.

Eischens then reviewed the current practice utilizing property tax to fund the Sanford Center which includes operational investment, capital replacement fund as well as land and building bonds at a cost of \$903,000 or 17% of the total tax levy.

Mathews stated that representatives from the Chamber and VisitBemidji met with the Work Group to discuss the financial situation and the development of an alternative revenue source to reduce the Sanford Center's reliance on property taxes. A hospitality tax and sales tax were identified and discussed as options for the Council's consideration.

Eischens reviewed the pros and cons of hospitality tax and sales tax. After discussion, it was the Council's consensus to explore alternate funding for the Sanford Center through implementation of a hospitality tax. It was discussed that this option could expand funding to regional visitors and create more of a benefit from the regional visitor spending and help fund tourism related amenities. Council also discussed their desire to have "town" meetings and further discussions with the Chamber and VisitBemidji before bringing to the State for approval.

ADJOURN

There being no further business, motion by Hellquist, seconded by Erickson, to adjourn the meeting. Motion carried. Meeting adjourned at 6:50 p.m.

Respectfully submitted,



Kay M. Murphy
City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Regular Meeting – September 18, 2017

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, September 18, 2017 at 6:00 p.m. in the Council Chambers of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Hellquist, Johnson, Plemel, Erickson, Larson.

Staff Present: City Manager Nate Mathews, City Attorney Alan Felix, Finance Director Ron Eischens, Public Works Director/City Engineer Craig Gray, City Clerk Kay Murphy

AMENDMENTS TO AGENDA

Mayor Albrecht called for any amendments to the agenda. **Motion by Hellquist, seconded by Johnson, to approve the agenda as prepared. Motion carried by unanimous vote.**

MINUTES

The following minutes were presented for approval:

Special Meeting	August 31, 2017
Council Meeting	September 5, 2017
Work Session	September 11, 2017

Motion by Erickson, seconded by Plemel, to approve the minutes as prepared. Motion carried by unanimous vote.

CONSENT AGENDA

The following Consent Agenda items were presented for approval. **Motion by Johnson, seconded by Meehlhause, to approve the Consent Agenda items as follows:**

1. Claims submitted by the Finance Officer in the total amount of \$707,220.29
2. Claims Submitted by VenuWorks for the Sanford Center in the amount of \$65,455
3. **RESOLUTION NO. 6097:** Declaring Costs to be Assessed, Ordering Preparation of Proposed Assessment Rolls & Establishing Public Hearing – 2017 Street Renewals (Project #17-01)
4. **RESOLUTION NO. 6098:** Declaring Costs to be Assessed, Ordering Preparation of Proposed Assessment Rolls & Establishing Public Hearing – 2017 Delton Avenue NW Reconstruction (Project #17-04)
5. Bemidji Volunteer Firefighters' Relief Association (FRA) 2018 Pension Benefit
6. **RESOLUTION NO. 6099:** Authorizing Execution of a Grant Agreement with Minnesota Department of Public Safety for Traffic Safety Enforcement

Motion carried by unanimous vote.

CITIZENS NOT ON AGENDA

Linda Kingery, 23571 Irvine Avenue NW, stated she is a member of the local chapter of the Citizen's Climate Lobby. She provided an overview of a resolution the City Council will consider at an upcoming meeting regarding endorsing support for congressional action for a policy of carbon fee and dividend. Mayor Albrecht asked Ms. Kingery to send more information to the City Clerk.

COMMITTEE REPORTS

Bemidji Youth Advisory Commission

Rachel Munson, BYAC Advisor, reviewed the proposed budget for the Commission. She stated that they are making some changes for 2017-2018, which included elimination of listening lunches. The Commission will do quarterly events to provide a safe environment for students to interact with their peers. Commission members will reach out in the community for additional funds. She has also included a \$100 stipend in the budget for Commission members. Discussion followed regarding applying for grants and additional fundraising to cover expenses. Councilor Erickson stated that the Youth Advisory Funding included in the preliminary levy is contingent upon their application to suggested donors and increasing their own fundraising efforts.

New Employee

Gray introduced the recently hired Assistant City Engineer Sam Anderson.

Recreation Update

Jamie Anderson, Recreation Coordinator, provided an overview of City recreation programs. She indicated that participation has been good.

Sanford Center Work Group

Jeff Kossow, Executive Director, stated that the Sanford Center Work Group made up of Ron Eischens, David Larson, Michael Meehlhause, Nate Mathews and himself began a year ago developing a strategy for success at the Sanford Center. The group developed the following statement of purpose: “the Sanford Center was built with the intent of booking events and activities that generate significant economic impact.” He reviewed factors to consider when scheduling events, which included level of economic impact to the hospitality industry and the community; projected revenues to the Center; potential for repeat bookings.

City Manager Mathews reviewed their recommendation for defining success. The Work Group also recommended a smaller Sanford Center Executive Committee comprised of the Mayor, City Manager, BSU Athletic Director, Visit Bemidji Executive Director and Naming Rights partner designee. The Committee would focus on budget preparation and CIP recommendations; personnel and staffing considerations; facility contract reviews/revision support and guidance; conference/event proposal guidance and City Council recommendations and communications.

Major issues facing the City: 1) management contract with VenuWorks expires 2019; 2) naming rights contract expires in 2020 and 3) re-evaluating the suite and club seats agreement with BSU. Discussion continued regarding management of the facility. The Work Group recommended that the City continue with VenuWorks. Eischens provided information regarding the additional cost to operate the facility if the City managed it.

In conclusion, the Work Group recommended the following:

- Public promotion of the “success pyramid” to guide our community’s understanding of facility success
- General Booking Guidelines and Procedures Policy Approval – October 2017
- Establish a new Sanford Center Executive Committee – December 2017
- Negotiate with VenuWorks in 2018 to extend their management contract (January-March 2018)
- Approval of Suite/Club seating agreement (summer 2018)
- Approval of a 10-year naming rights agreement (1st or 2nd quarter of 2019)

Discussion continued regarding the operation costs, the CSL Study and the next steps to implement the Work Groups’ recommendations including adoption of a General Booking Guidelines & Procedures for the Sanford Center.

Gene Dillon Utility Updates

Mathews reviewed a letter from ISD #31 regarding the division street project. In that letter, Chris Leinen, Director of Business Services, requested the favorable interpretation of Section 2.1 regarding annexation. Mr. Leinen stated that Kraus Anderson had requested the ability to connect to the City water supply as soon as it became available for construction purposes only. Felix reviewed the annexation process and the length of time. Gray stated that the school was told at least six months ago that a petition to annex and connecting to city water could happen at the same time.

OLD BUSINESSCarnegie Project

Felix stated that he has discussed the project and utilizing Historic Tax Credits with the State Historical Society. He recommended that it is appropriate or timely for the City proponents to consider getting a qualified tax attorney/consultant on board to help refine or harden the numbers. Felix has contacted Bill Burns who is willing with a financial consultant develop a proposal. He stated that time is of the essence as that the state grants must be used by January 1, 2019. Funding for the tax attorney will come from the Friends of the Carnegie Library.

Motion by Meehlhause, seconded by Plemel, directing the City Attorney to receive a proposal for legal Historic Tax Credit legal services, and any other services deemed necessary by a tax attorney. Motion carried with the following vote: Ayes: Albrecht, Meehlhause, Johnson, Plemel, Erickson, Larson. Nays: Hellquist.

NEW BUSINESS**2018 Street Renewal Project**

Gray stated that the City has just completed the ninth year of the City's annual street reconstruction program. The street segments that are proposed to be included for study with the 2018 feasibility report are as follows:

Bardwell Drive NW	Anne Street Loop
Richards Ave SE	1 st Street to 4 th Street
24 th Street NE	Irvine Avenue to Bemidji Avenue
23 rd Street NW	Park Avenue to Irvine Avenue
14 th Street NW	Delton Avenue to Park Avenue

Gray stated that the feasibility report is the first step in the Chapter 429 assessment process and will outline the proposed improvements, project costs, preliminary assessments and the feasibility of the proposed project. The Council review the report in December and staff will hold a neighborhood meeting to outline the proposed project to the affected property owners.

RESOLUTION NO. 6100: Authorizing Feasibility Study for 2018 Street Renewal Project was offered by Councilmember Erickson, who moved its adoption, and upon due second by Councilmember Meehlhause, was passed by unanimous vote.

Preliminary Tax Levy

Eischens reviewed the 2018 preliminary tax levy noting that due to the value of new construction and the decertification of a tax increment district, the net levy increase will be 2.6%.

RESOLUTION NO. 6101: Approving Preliminary 2017 Tax Levy Collectible in 2018 in the amount of \$5,752,739 and Setting the Truth in Taxation Hearing Date on December 4, 2017 was offered by Councilmember Erickson, who moved its adoption, and upon due second by Councilmember Meehlhause, was passed by unanimous vote.

UPCOMING COUNCIL MEETINGS

- Monday, Sept. 25 5:30 p.m. Work Session – Liquor Store Financing/Sunday Sales
- Monday, Oct. 2 6:00 p.m. Council Meeting

COUNCIL/STAFF REPORT

- Council members provided updates on current events and meetings.

ADJOURN

There being no further business, motion by Meehlhause, seconded by Larson, to adjourn the meeting. Motion carried. Meeting adjourned at 8:43 p.m.

Respectfully submitted,


Kay M. Murphy
City Clerk



SANFORD CENTER WORKGROUP

MONDAY, SEPTEMBER 18, 2017

RON EISCHENS, JEFF KOSSOW, DAVID LARSON, NATE MATHEWS & MICHAEL MEEHLHAUSE



STATEMENT OF PURPOSE

The Sanford Center was built
with the intent of booking
events and activities that
generate significant economic
impact

FACTORS CONSIDERED WHEN SCHEDULING EVENTS



- Level of economic impact to the hospitality industry and the community
- Projected revenues to the Center
- Potential for repeat bookings
- Time of year
- Event history and the organizer's experience in similar facilities

SCHEDULING PRIORITIES

- First Priority Events
 - Bemidji State University
 - Regional and national events
 - Target of 100 rooms, 200 delegates



SCHEDULING PRIORITIES CONT.

- Second Priority Events
 - Consumer exhibitions, local, corporate, entertainment, and social
 - Reservations: 12 months and in
 - Reservations :Visit Bemidji

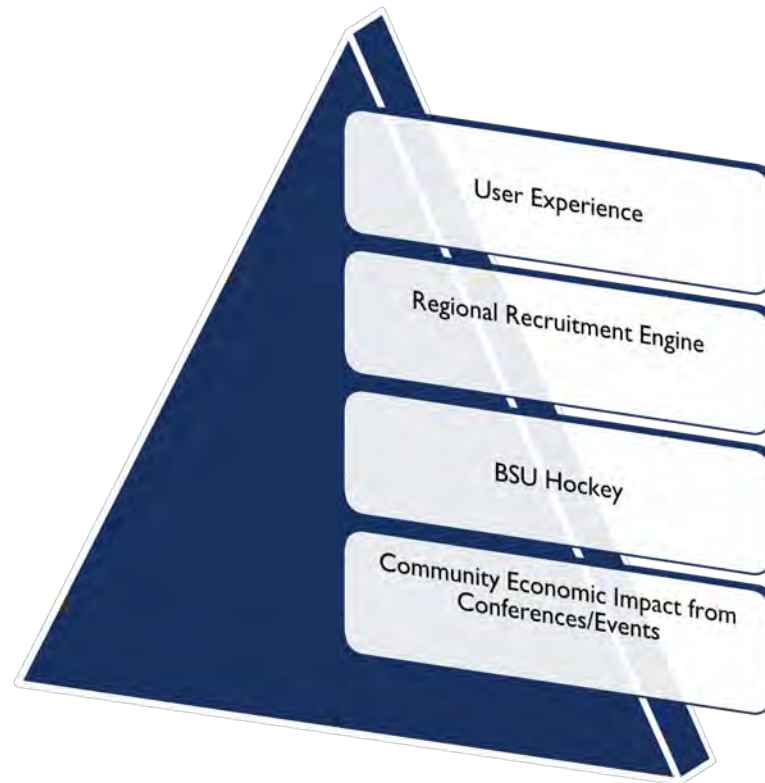


RECOMMENDATION: NEW GENERAL BOOKING GUIDELINES AND PROCEDURES POLICY

- Hard copy document review/discussion

WHAT IS SUCCESS?

RECOMMENDATION: “SUCCESS PYRAMID” IS OUR MEASURE



RECOMMENDATION: NEW SANFORD CENTER EXECUTIVE COMMITTEE

- The Sanford Center Advisory Board should be smaller and more executive in scope, focusing on:
 - Budget preparation and CIP recommendations
 - Personnel and staffing considerations
 - Facility contract review/revision support and guidance
 - Conference/Event proposal guidance
 - City Council recommendations and communication

NEW SANFORD CENTER EXECUTIVE COMMITTEE

Advisory Board (2010 setup)

- Mayor
- Councilmember
- City Manager
- City Finance Director
- BSU Athletic Director
- Visit Bemidji representative
- Chamber of Commerce representative

New Executive Committee (2018)

- Mayor
- City Manager
- BSU Athletic Director
- Visit Bemidji Executive Director
- Naming rights partner designee (Marketing Director, President, etc.)

3 MAJOR ISSUES FACING THE CITY

- Management contract with VenuWorks expires 2019
- Naming rights contract expires 2020
- Suite and club seats agreement has been discussed with BSU and is being re-evaluated

FACILITY MANAGEMENT CONTRACT DISCUSSION IS IMPORTANT OPTIONS CONSIDERED

- Manage the Sanford Center ourselves as a City
- Extend the VenuWorks management contract
- Bid the management contract

MANAGING AS A CITY

- 2016 amount paid to VenuWorks including mgmt. fee and F/B commissions: \$165,000
- Gross cost to convert Sanford Center employees to City staff estimated: \$305,000
 - Estimated 6% increase in full time staff compensation to enter the City pay scale (no pay increase for part time)
 - Increased benefit package costs for full time employee
 - PERA costs for part time staff
 - Human Resource Director position would be necessary with this sudden increase in employees
- Net cost increase expected to be \$140,000 (\$305,000 - \$165,000) if City manages facility

FACILITY MANAGEMENT RECOMMENDATION

- Work group recommends negotiating with VenuWorks in 2018 to extend their management contract.
- Naming Rights and Suite/Club seating agreement work should commence in the summer of 2018.

VENUWORKS RECOMMENDATION FACTORS OF CONSIDERATION

- Relationship with our anchor tenant BSU and naming rights sponsor Sanford Health is excellent.
- Relationship and communication with Visit Bemidji is excellent.
- The facility has limited resources for operations, booking events, and shouldering event risk
- VenuWorks in partnership with Visit Bemidji is delivering better and bigger conferences each year (Explore MN, Lions, GIS, etc.)
- Current Executive Director Kossow is running the facility in a fiscally conservative manner, and has many short term and long term revenue generating plans

VENUWORKS RECOMMENDATION FACTORS OF CONSIDERATION

- VenuWorks understands and works within the Bemidji market extremely well:
 - Limited incomes in Bemidji for ticket pricing/purchasing, making bigger acts difficult to cash flow without substantial risk
 - Pressure from “community events” to have event facility costs underwritten or greatly reduced
 - Local casino bookings create uneven pricing competition
 - BSU hockey schedule creates consistent fall and winter scheduling/booking hurdles
 - Summer concerts are high risk in the industry with the many major outdoor concerts in MN and the Region.
 - Hospitality Community and Chamber have weakly supported the facility. Many hotels view the event center as a competitor and a non-factor to their business.

IN CONCLUSION

- Work Group recommends upcoming council review and approval of the following:
 - Public promotion of the “Success Pyramid” to guide our community’s understanding of facility success
 - New General Booking Guidelines and Procedures Policy approval (October 2017)
 - New Sanford Center Executive Committee establishment (December 2017)
 - New contract extension negotiation with VenuWorks (January-March 2018)
 - Approval of new suite and club seat agreement (goal: summer 2018)
 - Approval of new 10-year naming rights agreement (goal: 1st or 2nd quarter 2019)

MANAGEMENT AGREEMENT

BETWEEN

CITY OF BEMIDJI

AND

VENUWORKS OF BEMIDJI, LLC

**THE SANFORD CENTER
JUNE 2018**

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VenuWorks Management Agreement

THIS MANAGEMENT AGREEMENT ("Agreement"), made and entered into as of June 18, 2018, by and between the City of Bemidji, Minnesota, a municipal corporation under the laws of Minnesota (hereinafter "**CITY**"), and VenuWorks of Bemidji, LLC, an Iowa limited liability corporation, with offices at 4611 Mortensen Road, Suite 111, Ames, Iowa, 50014 (hereinafter "**VENUWORKS**").

RECITALS

WHEREAS, CITY is the Owner of the Sanford Center, a multi-purpose regional sports arena consisting of approximately 4,000 seats, and a conference center with approximately 14,000 square feet of convention and trade show space, located on the South Shore of Lake Bemidji in Bemidji, Minnesota, (hereinafter referred to as the "**Facility**"); and,

WHEREAS, VENUWORKS, a wholly owned subsidiary of VenuWorks, Inc. ("VWI"), is in the business of providing management and operation and marketing services to similar facilities, and possesses the knowledge and expertise to manage and market the Facility, and has been providing such services at the Facility since its opening in 2010; and,

WHEREAS, VENUWORKS enjoys the benefits of a services contract with VWI for on-going support, guidance and consultation to be provided to **VENUWORKS** by VWI in the completion of **VENUWORKS'** responsibilities as defined herein; and,

WHEREAS, CITY and **VENUWORKS** acknowledge herein that the **CITY'S** interest in the Facility and grounds subject of this Agreement, is subject to the General Obligation Bond Proceeds Grant Agreement (Construction Grant) for the Bemidji Regional Event Center (the "Grant Agreement"), a copy of which is attached hereto as **Exhibit B** and incorporated herein; and,

WHEREAS, CITY and **VENUWORKS** further acknowledge herein that the **CITY's** interest in the Facility and grounds subject of this Agreement is by way of a long-term Ground Lease between the **CITY** and the Bemidji Economic Development Authority (**BEDA**), the owner of the underlying property, as described on **Exhibit C**; and,

WHEREAS, CITY and **VENUWORKS** further acknowledge herein that the **CITY's** interest in the Facility is subject to a Lease Agreement between the **CITY** and the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities (MNSCU), on behalf of Bemidji State University (BSU), attached hereto as **Exhibit D**, which lease was entered into to carry out that portion of a "governmental program" consisting of use of the Facility arena and related athletic facilities for BSU men's and women's intercollegiate hockey and/or other University uses consistent with Minnesota Statutes, Section 471.15-471.191 and/or Minnesota Statutes Chapter 136F; and,

WHEREAS, CITY is desirous of having **VENUWORKS** continue to provide said management, operation and marketing services, and **VENUWORKS** desires to accept such continued and renewed engagement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein and other consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE ONE **DEFINITIONS**

Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

CPI: The "Consumer Price Index" for the Midwest Region – West North Central Division.

Facility: Shall have the meaning given to such term in the Recitals to this Agreement, and shall be deemed to include the entire Sanford Center complex, including but not limited to the arena, conference center, suites, locker rooms, meeting rooms, box office, common areas, pedestrian causeway or concourse, lobby areas, executive and other offices, storage and utility facilities, as well as the entrances, grounds, sidewalks and parking areas immediately surrounding the Facility and adjacent thereto, but excluding responsibility for the landscaping and mowing of the grounds.

Facility Board of Directors: Shall mean the Sanford Center Board of Directors established by the City Council to replace the Sanford Center Advisory Board originally established in 2010 with the opening of the Facility. Established as part of the new Board of Directors are three (3) permanent subcommittees (Finance, Operations, and Marketing). The Board shall establish Bylaws to guide its function and operation.

ARTICLE TWO
COMMENCEMENT DATE, TERM, RIGHT TO TERMINATE

2.1 Term. This Agreement shall replace the current Management Agreement which is otherwise scheduled to expire on December 31, 2019, and that this renewal agreement shall be for an initial term of five (5) years, commencing on January 1, 2019 (the "Commencement Date") and expiring on December 31, 2024, unless terminated earlier as set forth herein. The City may in its discretion extend this Agreement following the initial term for two (2) additional five (5) year renewal terms. The initial term plus any such extension is referred to herein as the "Term".

2.2 Right to Terminate. Notwithstanding anything in this Agreement to the contrary, the **CITY** shall have the right, in its sole discretion, without penalty or cause, to terminate the Agreement at any time by giving not less than one hundred eighty (180) days prior written notice of such termination to **VENUWORKS**.

2.3 Optional Term Extension. The Agreement may be extended for each additional, optional Term on the same terms and conditions of the original term and commencing after the initial term or any optional renewal term, as applicable, by the **CITY** giving not less than one hundred fifty (150) days prior written notice of such extension to **VENUWORKS**; provided, however, that the parties shall mutually agree on the amount, terms, and conditions of remuneration for **VENUWORKS** services hereunder during said term extension.

ARTICLE THREE
MANAGEMENT AGREEMENT

3.1 Renewal/Retention of VENUWORKS/Provision of Services. **CITY** hereby renews and retains its contractual relationship with **VENUWORKS** as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, **VENUWORKS** agrees to provide management services in accordance with this Agreement, and consistent with policies approved by **CITY**. **VENUWORKS** agrees to use its best efforts to maximize revenues from use of the Facility, including, without limitation, marketing and sales and event production and promotion and otherwise managing the Facility in accordance with this Agreement. In providing these services **VENUWORKS** shall manage the Facility in accordance with sound business practices and industry standards.

The parties to this agreement acknowledge that the **CITY** will retain title and ownership of the Facility and that **VENUWORKS** will not acquire title to, any security interest in, or any rights of any kind in or to the Facility (or any income, receipts or revenues there from).

During the term and any renewal term of this Agreement, **VENUWORKS** shall provide the services set forth in this Article 3.

3.2 Grant to VENUWORKS. During the term of this Agreement, **CITY** grants to **VENUWORKS** the right to manage, market, promote, operate and maintain the Facility, and, subject to **CITY** approval, **VENUWORKS** may direct food and beverage sales, sponsorship projects and advertising at the Facility, all the proceeds of which shall accrue to **CITY**, subject to **CITY'S** right to terminate this Agreement as provided below.

3.3 VENUWORKS' Responsibilities. Beginning on the Commencement Date, and continuing through the term of the Agreement, **VENUWORKS** shall assume management responsibilities as set forth below. Where **VENUWORKS** is required to direct or arrange for services or material, **VENUWORKS** shall employ all persons performing such services or shall contract with a third party for the performance of such services. Furthermore, **VENUWORKS** agrees that by entering into this Agreement it agrees to enforce and abide by the terms and conditions of, and to assume the applicable duties, obligations and responsibilities of the **CITY** under: 1) the **CITY's** lease agreement with BSU; 2) the **CITY's** existing Ground Lease with the BEDA; and, 3) the Grant Agreements with the State of Minnesota, and its performance under this Agreement will not cause the **CITY** to be in default of any of the terms and conditions of those Agreements.

3.3.1 Marketing and Promotion: **VENUWORKS** shall direct all marketing activities which shall be undertaken so as to maximize the use of the Facility by all persons, including independent promoters and Affiliates of **VENUWORKS** so as to provide maximum Revenue, as defined in Paragraph 6.2 below, for the Facility and accessibility for the community to the Facility. **VENUWORKS** shall be responsible for ensuring that appropriate programs are booked into the Facility and that suitable media coverage is obtained and shall coordinate such efforts with **CITY**.

3.3.2 Scheduling: **VENUWORKS** shall develop and maintain all schedules for events held at the Facility and scheduling shall be accomplished in accordance with applicable law, and in a manner to maximize the use of the Facility so as to provide maximum Revenue for the Facility and accessibility for the community to the Facility. **VENUWORKS** shall use an event rental agreement acceptable in form to **CITY**. The parties understand and agree that **VENUWORKS**

shall be empowered to negotiate event agreements as **CITY'S** agent, subject to **CITY'S** reasonable approval. **VENUWORKS** may deviate from standard rental rates when such negotiation is deemed by both parties to be in the best interests of the Facility.

3.3.3 Additional Duties: **VENUWORKS** shall also be required to provide, on a timely basis, information, data, and solutions to project issues as may be reasonably requested by **CITY**, together with such other services consistent herewith as **CITY** may reasonably require.

3.4 Written Powers Reserved to CITY and Formation of a Facility Board of Directors.

3.4.1 Powers Reserved: **CITY** shall have right of prior written approval in connection with the following:

- (a) The Annual Budget; and,
- (b) The Business Plan, as defined below; and,
- (c) Any expenditure for personnel or equipment in excess of budget; and,
- (d) Any booking of events involving risk of **CITY** funds.

As used herein, the phrase "**CITY** approval", shall mean initial review by the Facility Board of Directors and the ultimate review and approval by the City Council of **CITY**.

3.4.2 Formation of Facility Board of Directors: Consistent with the prior creation and operation of the Sanford Center Advisory Board under the original Agreement, the **CITY** has revised the Advisory Board function to create a Facility Board of Directors, which Board heretofore shall be known as the Sanford Center Board of Directors (hereinafter the "**SCBD**"). The **SCBD** function shall be to oversee operations of the Facility generally, and specifically to meet and work on a regular basis with **VENUWORKS'** Facility management personnel and **CITY** staff to, among other things, prepare and implement policies and procedures governing the booking and scheduling of events in the Facility, review revenue and operating information, and monitor and advise the parties in regards to performance and operational matters as needed.

3.5 Relationship of Parties. **VENUWORKS** is an independent contractor of **CITY** and shall not be deemed to be an employee, joint venture(r), or partner of **CITY** or of the **SCBD** except for those matters which are specifically addressed in this Agreement.

3.6 Business Plan. Annually, before October 31 of each year, **VENUWORKS** shall submit to **CITY** a complete business plan for the ensuing fiscal year (the "Business Plan") to be adopted by

CITY and followed by **VENUWORKS**. The Business Plan shall be subject to the prior written approval of **CITY**. The Business Plan shall be a marketing plan and a projection of Revenues and Operating Expenses for the year and shall include an analysis of the basis and assumptions underlying each line item of Revenues and Operating Expenses. Upon **CITY's** request, **VENUWORKS** shall provide the **CITY** with a copy of the then current relevant portion of **VENUWORKS** Standard HR Practices respecting severance obligations to which **VENUWORKS** employees would be entitled upon termination from employment at the Facility.

VENUWORKS shall thereafter submit a Business Plan on an annual basis and shall deliver the same to **CITY** simultaneously with the delivery of the Annual Budget. The Business Plan shall in no way become a performance obligation for either **CITY** or **VENUWORKS** but serve as a management blueprint to monitor **VENUWORKS** performance.

3.7 Relationship with CITY: **VENUWORKS** shall provide all of its Management Services in a manner which shall ensure full compliance with all **CITY** requirements.

ARTICLE FOUR FOOD AND BEVERAGE

4.1 Food & Beverage/Concessions. **VENUWORKS** shall be responsible for providing the food & beverage services at the Facility. The Director for the catering and concessions will be accountable to **VENUWORKS** Facility Executive Director (or his or her designee) for meeting service, quality and financial standards (including the submission of financial statements and budgets) set by **CITY**.

ARTICLE FIVE FACILITY RELATED SERVICES

5.1 Facility Maintenance. **VENUWORKS** will be responsible for the performance of all facilities maintenance work. **VENUWORKS** will carry out work required of **CITY** which shall be limited to ordinary maintenance and repairs which do not increase the value or extend the life of an asset at the Facility.

5.2 Custodial and Cleaning Services. **VENUWORKS** shall provide or cause to be provided all routine cleaning and janitorial services at the Facility.

5.3 Pest Control. **VENUWORKS** shall direct all necessary pest control services, whether performed by **VENUWORKS** or a pest control service engaged by **VENUWORKS**.

5.4 Snow Removal. **VENUWORKS** shall direct all snow removal services on the pathways and sidewalks adjacent to the Facility.

5.5 Trash Removal. **VENUWORKS** shall direct removal of all trash from the Facility and agrees that it shall not permit any employee, concessionaire or caterer to place refuse outside the buildings on the Facility, except in designated trash containers, the Facility of which shall be approved by **CITY**.

5.6 Event Operational Services **VENUWORKS** shall direct all services required to stage (set up and tear down) the Facility for each event, including but not limited to, services involving the stage area, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. **VENUWORKS** shall hire and manage all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Facility, including but not limited to, ticket taking, novelty sales, program distributions and assistance to patrons generally, including the handicapped.

5.7 Use of **CITY** Equipment. In performance of its obligations hereunder, **VENUWORKS** will use equipment owned by **CITY** and assigned to the Facility.

5.8 Security. **VENUWORKS** shall arrange for proper security for events at the Facility and for general security when events are not in progress. Such security may be provided by **VENUWORKS** or by contract, in its discretion. **VENUWORKS** shall review and coordinate exterior crowd management and traffic control with appropriate local authorities.

5.9 Licenses and Permits. **VENUWORKS** shall obtain and maintain all licenses and permits necessary for management and operation of the Facility, subject to the local procedures for the granting of such licenses and permits.

ARTICLE SIX
TICKETS AND HANDLING INCOME

6.1 Ticket Sales. **VENUWORKS** shall direct all aspects of ticket sales for events and activities including computerized tickets, utilizing its national contract with Ticketmaster to provide state of the art equipment and software to the Facility at no cost to the **CITY**. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Facility, cash, check, and credit card processing, complete auditing and accounting for all events, and providing an accounting of event income and expenses as part of the monthly financial reports provided to the **CITY**. The amounts charged by the ticketing contractor for service charges, and the Facility's participation in revenues from these service charges, will be consistent with regional industry standards.

6.2 Revenues; Bank Accounts and Payment of Operating Expenses. **VENUWORKS** shall be responsible for the collection of all Revenues and payment of Operating Expenses, as defined in **Exhibit A**, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by **VENUWORKS** or any other person or entity operating on **VENUWORKS** behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Facility, including without limitation, transactions for cash, credit and credit card sales, less applicable sales taxes. **VENUWORKS**, in cooperation with **CITY**, shall establish two separate commercial bank accounts and one commercial interest bearing money market savings account. The names of the commercial accounts shall be Event Center Operating Account and Event Center Box Office Account. The money market savings account shall be titled Event Center Savings Account. The Event Center Box Office and Savings Accounts shall be in the name of **VENUWORKS** and signatories on the account shall be those individuals deemed appropriate by **VENUWORKS**. The Event Center Operating Account shall be in the name of the City only, and signatories on the account shall be City employees only as deemed appropriate by the City. Revenues from the sale of tickets to events at the Facility shall be deposited by **VENUWORKS** in the Event Center Box Office and/or Savings Account as warranted by the amount of sales and in light of Federal Deposit Insurance Corporation (FDIC) coverage limits. After payment from such ticket sales Revenues of all event-related expenses, and within twenty-four hours after the end of the event, **VENUWORKS** shall transfer the remaining event ticket sales Revenues to the Event Center Operating Account.

All other Revenues generated by use of the Facility and collected by **VENUWORKS** shall be deposited in the Event Center Operating Account. **VENUWORKS** is authorized to make disbursements from the Event Center Box Office and/or Savings Account(s) to promoters or performers in any amount due the performer or promoter as per contracts with them respecting payment of budgeted Operating Expenses, payment of budgeted Operating Expenses may be made from the Event Center Operating Account upon City Council approval. In the alternative, payment of Operating Expenses may be made directly by VENUWORKS, with subsequent approval and reimbursement by the **CITY**. From time to time, **VENUWORKS** may, request the **CITY** to transfer funds from the **CITY** to the Event Center Operating Account to accommodate anticipated cash flow needs of the Facility. **CITY** shall be authorized at any time, to obtain information and records from the bank concerning VENUWORKS Event Center Box Office and Savings Accounts and to inspect the same. It shall be an Event of Default, as defined below, entitling **CITY** to terminate this Agreement, if **VENUWORKS** withdraws any money or has money withdrawn from the Event Center Operating Account, the Event Center Box Office Account or the Event Center Savings Account except in accordance with this Agreement. Interest accrued in these accounts shall be revenue to the Facility and belong to **CITY**.

6.3 Petty Cash and Change Funds. **VENUWORKS** and **CITY** agree that any and all petty cash and change funds shall belong to the **CITY**. These funds will be returned to the **CITY** at the end of the Agreement term.

6.4 Cash Discrepancies. **VENUWORKS** will be responsible for any cash discrepancies resulting from errors made in making change at cash sale points.

6.5 Payment to Subcontractors. **VENUWORKS** shall not enter into subcontracts for services provided under this Agreement except as noted in the Agreement, without the approval of the **CITY**. **VENUWORKS** shall comply with Minnesota Statutes Section 471.425 respecting payment of subcontractors involved in the performance of this Agreement. A subcontractor who prevails in a civil action brought under §471.425 against **VENUWORKS**, and is awarded costs and disbursements, including attorney's fees, incurred in bringing the action, such costs and disbursements shall not be considered reimbursable operating expenses and shall be the sole financial responsibility of **VENUWORKS**.

ARTICLE SEVEN

ANNUAL BUDGET

7.1 Delivery of Budget. On a date to be determined by **CITY** each year during the term, **VENUWORKS** shall submit to **CITY** a proposed annual operating budget for the ensuing year, listing all projected Revenues and Operating Expenses by category. The proposed annual budget shall include a proposed rent structure for events proposed to take place in the Facility for the ensuing year.

7.2 Review of Budget. The proposed annual budget shall be reviewed by **CITY** in accordance with **CITY'S** budget development schedule. Upon approval by **CITY**, the proposed annual budget shall become the final annual budget (the "Annual Budget") for the year. If **CITY** objects to the proposed annual budget or any part thereof, **VENUWORKS** shall be obligated to promptly respond to each such objection and revise the proposed annual budget in connection therewith.

7.3 Revision of Annual Budget. **VENUWORKS** and **CITY** may revise the Annual Budget at any time by mutual written agreement.

7.4 Certified Statements. **VENUWORKS** shall deliver to **CITY**, within thirty (30) days after the end of each calendar month and within sixty (60) days after the end of each fiscal year, a true and correct statement, certified as true and correct by **VENUWORKS** Facility Executive Director, of all Revenues and Operating Expenses of the preceding calendar month and fiscal year, together with any reasonable supporting documentation requested by **CITY**. **VENUWORKS** shall provide an accounting of each event held at the Facility in said monthly reports for the preceding calendar month.

7.5 Schedule of Capital Expenditures Over \$5,000.00. **VENUWORKS** shall annually, at the time of submission of the annual Operation Budget and Business Plan to the **CITY**, provide to the **CITY** a schedule of proposed capital improvements to be made at the Sanford Center.

7.6 Responsibility for Capital Expenditures. **CITY** shall be solely responsible for all capital expenditures at the Facility; provided, however, the **CITY** shall be under no obligation to make any capital expenditures proposed by **VENUWORKS**.

ARTICLE EIGHT
MANAGEMENT FEES

8.1 Base Management Fee. For the period beginning with the Commencement Date, and continuing through year one of the Agreement, **CITY** shall pay **VENUWORKS** a base management fee of \$9,500 per month. In subsequent years, the base fee amount shall be increased by a percentage equal to the increase in the Consumer Price Index for the previous year as established for the regional area (West North Central Division, Midwest Region), not to exceed three percent (3%). In no event shall a negative CPI adjustment be applied to the base management fee. Payments for Base Management Fees will be due to **VENUWORKS** by the 15th day of the month for which the management fee is earned.

8.2 Variable Management Fee. **CITY** shall pay to **VENUWORKS** a Variable Management Fee, over and above the Base Management Fee. The variable fee is a commission on gross food and beverage sales, net of sales tax, third party commissions, and service charges, according to the following schedule:

ANNUAL GROSS SALES	COMMISSION %
Up to \$700,000	5.75%
\$700,000 to \$900,000	6.5%
\$900,000 to \$1,100,000	7.75%
Over \$1,100,000	8.00%

Total annual variable fees shall not exceed the base fee in any given year.

The Variable Management Fee will be due to **VENUWORKS** by the 15th day of the month following the month in which the Revenues were realized.

8.3 VENUWORKS Investment. **VENUWORKS** will invest up to \$130,000.00 to enhance the operations and revenue earning potential of the Facility. The investment will consist of the following:

- * An investment in the purchase and installation of a new point of sale system for concessions and catering sales at the Facility, in an amount not to exceed \$80,000.00.
- * The creation of an event risk fund of \$50,000.00, to be held and managed by **VENUWORKS**, to be used to bring more commercial, revenue producing events to the Facility.

The original \$80,000 Facility Improvement investment balance will be amortized over the first five-year term of the renewal, calculated on a straight line, non-interest bearing basis. In the event this Agreement is terminated for any reason prior to the end of the five-year term, the **CITY** will reimburse **VENUWORKS** the unamortized balance of the Facility Improvement investment.

ARTICLE NINE

PAYMENT OF MANAGEMENT FEES AND OPERATING EXPENSES

9.1 Deposit of Funds. In accordance with a schedule to be mutually agreed upon during the five-year term and any renewal term of this Agreement, **CITY** will deposit the following sums into the Event Center Operating Account:

- (a) an amount equal to the estimated deficit, if any, as defined below, for such budget period as set forth in the Annual Budget; and
- (b) the Base Management Fee and Variable Management Fee, payable with respect to the budget period.

9.2 Management Fees Invoice. **VENUWORKS** will invoice **CITY** and **CITY** will, within fifteen (15) days, pay **VENUWORKS** all management fees payable with respect to the current calendar month.

9.3 Insufficient Funds. In the event that the Event Center Operating Account is insufficient to cover the Operating Expenses plus the Base Management Fee and any Variable Fee, if any, due and payable during a month (the "Monthly Deficiency"), then the Monthly Deficiency shall be paid by **CITY** into the Event Center Operating Account not later than five (5) working days after **CITY'S** receipt of the Monthly Statement. If the amounts deposited by **CITY** in the Event Center Operating Account exceeded the amounts required to pay the Operating Expenses plus the Fees in any month such positive balance shall be credited against **CITY'S** obligation to make future deposits into the Event Center Operating Account. In no event shall **VENUWORKS** be responsible for forward funding of operating expenses due to insufficient funds.

9.4 Monthly Meetings. Representatives of **VENUWORKS'** on-site management and the **CITY** Finance/Administration staff shall meet each month to review revenues and operating expenses for the prior calendar month. **VENUWORKS** corporate representatives shall meet quarterly with the **CITY** to monitor performance and discuss operations.

ARTICLE TEN
GENERAL REPRESENTATIONS, TERMS AND CONDITIONS

10.1 Representation of CITY. **CITY** hereby represents and warrants to **VENUWORKS**, as an inducement to **VENUWORKS** entering into this Agreement; (1) that it is **CITY'S** intent that the Facility will be permitted to be open to the paying public on a daily basis in a manner consistent with industry practices, (2) that the **CITY** (City Council) has sufficient authority to enter into this Agreement; and (3) that **CITY** possess the resources and fundraising capabilities to ensure the on-going financial support of the Facility operation.

10.2 Representation of VENUWORKS. **VENUWORKS** hereby represents and warrants to **CITY** on its own behalf and on behalf of its shareholders, officers, directors and employees, that **VENUWORKS** is fully capable of providing services as outlined in this Agreement.

10.3 Standard of Operation. **VENUWORKS** represents and warrants to **CITY** that it shall maintain an efficient and high quality operation at the Facility comparable to other similar facilities and containing facilities similar to those of the Facility.

10.4 Accounting Records, Reports and Practices.

10.4.1 Maintain Records: **VENUWORKS** shall maintain accounting records relating to the Facility using accounting practices in accordance with generally accepted accounting principles consistently applied.

10.4.2 Internal Financial Controls: **VENUWORKS** shall establish internal financial control policies and practices which are in accordance with generally accepted standards in the industry and reasonably acceptable to **CITY**.

10.4.3 CITY Access: **CITY** shall have unlimited access to all accounting records and supporting documentation of **VENUWORKS** relating to the Facility during the term and any renewal term of this Agreement and for a period of six (6) years thereafter. Such right to access shall be exercised in a reasonable manner.

10.4.4 Audit Disclosure and Records Retention: Pursuant to Minn. Stat. Section 16C.05, subd. 5, to the extent applicable, **VENUWORKS** agrees that the **CITY** and either the Legislative Auditor or the State Auditor, or any of their duly authorized representatives at any time during

normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of **VENUWORKS** and involve transactions relating to this Agreement. **VENUWORKS** agrees to maintain these records for a period of six (6) years from and after the date of termination of this Agreement.

10.5 Use of Facility by the CITY. Subject to availability, the **CITY** shall have the right to use the Facility or any part thereof rent-free for meetings, seminars, training classes or other non-commercial uses, provided that the **CITY** shall promptly reimburse **VENUWORKS**, for deposit into the Operating Account, for any out-of-pocket expenses by **VENUWORKS** (such as the cost of ushers, ticket-taker, set-up and take-down personnel, security expenses and other expenses) in connection with such use. Such non-commercial use of the Facility by the **CITY** shall (i) not compete or conflict with the dates previously booked by **VENUWORKS** for paying events, (ii) not consist of normally touring attractions (such as concerts and family shows), and (iii) be booked in advance upon reasonable notice to **VENUWORKS** pursuant to the Facilities' approved booking policies. Upon request of the **CITY**, **VENUWORKS** shall provide to the **CITY** a list of available dates for **CITY** use of the Facility. To the extent **VENUWORKS** has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by the **CITY**, **VENUWORKS** may propose alternative dates for the **CITY'S** event, and the **CITY** shall use best efforts to reschedule its event to allow **VENUWORKS** to book the revenue-producing event.

ARTICLE ELEVEN

EVENT OF DEFAULT, TERMINATION AND DISPUTE RESOLUTION

11.1 Default, Right to Cure. It shall be an event of default ("Event of Default") hereunder if either party hereto:

- (a) fails to pay or deposit sums due by one party to the other within seven (7) days after written notice by the other of such failure, or (ii) fails to perform or comply with any other obligation of such party hereunder within thirty (30) days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within thirty (30) days, then the defaulting party shall not be deemed in default hereunder if it commences to

cure the default within ten (10) days after the effective date of the notice of such default and diligently proceeds to cure such default within ninety (90) days after the effective date of notice.

11.2 Availability of Facility. **VENUWORKS** agrees that, except as a result of full or partial destruction of the Facility, the Facility will be made available for all events scheduled therein and **VENUWORKS** agrees to defend, indemnify and save **CITY** harmless from and against any and all claims, causes of action, expenses (including attorneys' fees) losses, costs and damages arising from the failure of the Facility to be available in the condition necessary for the conduct of such events for scheduled events due to the negligence or willful misconduct of **VENUWORKS**, its agents, servants, employees or contractors of any tier, and in such case, **VENUWORKS** shall pay to **CITY** the estimated Revenues, less Operating Expenses, for such event within five (5) days after the event was to have taken place.

11.3 No Payment by CITY. Notwithstanding anything in this Agreement or exhibits hereto to the contrary, **CITY** shall not be obligated to reimburse **VENUWORKS** as Operating Expenses or otherwise for costs and expenses (including **Board of Directors** attorney's fees) for litigation which is covered by **VENUWORKS'** defense and indemnification obligations set forth in Section 6.5, 11.2, 13.2.3, and 14.1.

11.4 Termination. Notwithstanding Paragraph 2.2 herein, either party may terminate this Agreement if the other is in default, and has not met the deadlines for curing, or undertaking steps to cure the default, as described in Section 11.1 of this Agreement. In the event of such uncured default, the non-defaulting party shall provide the defaulting party with thirty (30) days written notice of its intention to terminate the Agreement due to the uncured default. In the event of early termination for any reason, **CITY** shall pay to **VENUWORKS** all amounts owing hereunder and accrued through the date of termination.

11.5 Effect of Termination. Upon termination, **VENUWORKS** may be entitled to reimbursement for all fees due it up to the date of termination or expiration and the amounts, if any, as defined under **Exhibit A** hereto, and including all operating expenses incurred through the date of termination that have not previously been paid, including costs of accrued vacation time and other end of employment payments due **VENUWORKS** employees whose employment is being terminated.

11.6 Dispute Resolution. No claim, dispute, or other matter in question between the parties hereto, arising out of this Agreement, as the same may be amended from time to time, or the breach thereof, shall be submitted to arbitration except upon the written agreement of the parties hereto. Moreover, prior to the initiation of any litigation between the parties concerning any dispute, and as a condition precedent to such initiation, it is agreed that there shall be a meeting of the parties, and if needed, mediation. At such meeting, **VENUWORKS'** designated representative, and the City Manager, or his/her designee, will hear all arguments concerning the merits of any dispute. After the presentations, **VENUWORKS'** designated representative and City Manager and/or their designees shall discuss and attempt to resolve the dispute. If they are not successful in resolving the dispute, the parties shall participate in a mediation with a mutually agreed upon mediator. Each party shall share equally in the cost of any such mediation. If the dispute remains unresolved, the parties may litigate the matter in accordance with the Agreement. **VENUWORKS** will continue to perform under this Agreement pending the resolution of any dispute.

ARTICLE TWELVE

INSURANCE AND INDEMNIFICATION

12.1 Types and Amount of Insurance Coverage/Periodic Review. **VENUWORKS** agrees to obtain insurance coverage in the manner and amounts as set forth in this Article Twelve, and shall provide to the **CITY** a certificate or certificates of insurance evidencing such coverage. The **CITY** and **VENUWORKS** shall meet as needed and no less than annually to review and reevaluate the insurance coverages and other matters addressed under this Agreement in order to maintain compliance with laws, rules, and other agreements governing the Facility and its operations, and to allow for amendment of insurance requirements as well as agreement terms generally to maintain the economic feasibility of and for each party's performance under this Agreement.

12.2 Employment Matters. In connection with the employment of its employees, **VENUWORKS** shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation. **VENUWORKS** shall indemnify and hold harmless the **CITY** from all costs, expenses, claims or damages resulting from any failure of **VENUWORKS** to comply with this Section.

12.3 Insurance Requirements.

12.3.1 Workers Compensation Insurance: **VENUWORKS** shall purchase and maintain during this contract, workers' compensation insurance in accordance with state statutory requirements and employer's liability insurance with limits of not less than \$500,000 per accident and per employee for bodily injury.

12.3.2 General Liability Insurance: **VENUWORKS** shall purchase and maintain during this contract, commercial general liability insurance including liquor liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence / \$2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Premises and Operations, Products and Completed Operations, less inclusive and no more restrictive than the coverage provided by a standard Commercial General Liability Policy form (ISO CG 00 01 96) with standard Bodily Injury and Property Damage exclusions, and standard Personal and Advertising Injury exclusions. Any additional exclusion shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of **CITY** and **VENUWORKS**. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Minnesota and currently rated "A" or better by the A.M. Best Company.

12.3.3 Automobile Liability Insurance: **VENUWORKS** shall purchase and maintain during this contract, automobile liability insurance on a per occurrence basis with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this contract by **VENUWORKS** or its employees. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Minnesota and currently rated "A" or better by the A.M. Best Company.

12.3.4 Umbrella and Excess Liability Insurance: **VENUWORKS** shall purchase and maintain during this Agreement an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than \$5 million per occurrence / \$5 million in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies.

12.3.5 Professional Liability/Errors and Omissions Insurance: **VENUWORKS** shall purchase and maintain professional liability/errors and omissions insurance coverage, at its expense, throughout the term of this Agreement and any renewal period(s), and for Twelve (12) months after termination of this Agreement, in the amount of \$1,000,000, and written on a claims made basis.

12.3.6 Property Insurance: **CITY** will maintain property insurance coverage on the Facility itself. **VENUWORKS** shall assume all risks for loss of or damage to its own property at the Facility and **VENUWORKS** may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.

12.3.7 Subcontractors: **VENUWORKS** shall require all its subcontractors who perform work and/or services under this contract to meet appropriate insurance requirements as reasonably required by **CITY**.

12.3.8 Deductibles and Self-Insured Retention: Any policy deductible or self-insured retention must be declared on the Certificate of Insurance and shall be subject to the approval of the **CITY**.

12.3.9 Proof of Insurance: **VENUWORKS** shall furnish **CITY** with Certificates of Insurance and a copy of the policies if requested by **CITY**. The name of the project or contract shall be listed on the certificates of insurance along with any deductible or self-insured retention. Before commencing any performance under this Contract, **VENUWORKS** shall deliver all the Certificates of Insurance to **CITY** certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the life of the contract.

12.3.10 Insurance Cancellation or Material Change Notice: The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice will be sent to the **CITY**, via certified mail.

12.3.11 Cooperation: Each party agrees to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtaining and maintaining the insurance described herein. The parties further agree to

cooperate with the insurance companies and agents by responding promptly to their reasonable requests.

12.3.12 Releases: **VENUWORKS** and **CITY** expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the operation at the Facility caused by fire or other perils, but only to the extent covered by insurance. Each insurance policy procured by **VENUWORKS** and **CITY** shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

12.3.13 Crime Insurance: During the term of this Agreement **VENUWORKS** shall maintain Crime Insurance, with an insurer acceptable to **CITY** (such acceptance by **CITY** not to be unreasonably withheld or delayed), providing at least the following coverage in at least the amounts set forth below for each coverage:

- (a) Employee Dishonesty: \$500,000;
- (b) Depositor's Forgery: \$500,000;
- (c) Money & Securities: \$500,000 (each, "Inside" and "Outside")
- (d) Computer Theft: \$500,000;
- (e) Wire Transfer Fraud: \$500,000;

provided, however, that if such coverage is provided on a "blanket" limit basis, a blanket limit of \$500,000 shall be considered to be sufficient to comply with this provision. The policy shall include an endorsement providing that any "employee" of **VENUWORKS** shall not be deemed to also be an "employee" of **CITY** for purposes of the coverage afforded under the Employee Dishonesty coverage part.

CITY shall be both a Loss Payee (as its interests may appear) and an Additional Insured under such policy, which policy shall be written to apply to the Crime exposures arising under or in connection with this Agreement, and not to any other unrelated Crime exposures incurred by **VENUWORKS** or **CITY** under any other similar agreements or otherwise.

12.3.14 Insurance Cost: The cost of providing insurance hereunder shall be an Operating Expense, regardless of which party procures the coverage.

12.3.15 Insurance Terms: Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

12.3.16 Tort Liability Limit: **VENUWORKS** Insurance policies referenced in this Agreement shall be primary insurance and non-contributory to any other valid and collectible insurance available to the **CITY** with respect to any claim arising out of **VENUWORKS** performance under this Agreement. Furthermore, **VENUWORKS** insurance policies referenced in this Agreement, except Workers Compensation/Employers Liability and Professional Liability, shall list **CITY** as an additional insured. The **CITY's** liability, if any, shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Chapter 466.

12.4 Indemnification. To the fullest extent permitted by law, **VENUWORKS** shall defend, indemnify and save harmless **CITY**, its elected officials, officers, employees, agents, representatives and any affiliated or related entities, from and against all liability, claims, losses, demands, causes of actions, judgments, costs or expenses, including reasonable attorney's fees and other costs and expenses of litigation, arising out of **VENUWORKS** activities or resulting from the performance of services or the delivery of goods provided by **VENUWORKS** and/or its officers, employees, representatives, agents, contractors, subcontractors, and any affiliated or related entities, under this Agreement (including without limitation professional errors or omissions), but excepting those which arise solely from the negligence, willful misconduct, or other fault of **CITY** or any affiliated or related entities. This indemnification obligation shall survive the termination of this Agreement.

12.5 Damage to and Destruction of the Facility. If all or part of the Facility is rendered unusable by damage from fire and other casualty which, in the reasonable opinion of **CITY**, cannot be substantially repaired under applicable laws and governmental regulations within 180 days from the date of such casualty (employing normal construction methods without overtime or other premium), then **CITY** shall notify **VENUWORKS** thereof. In such case, either **CITY** or **VENUWORKS** may elect to terminate this Agreement as of the date of such casualty by written notice delivered to the other not more than 60 days after receipt by **VENUWORKS** of **CITY'S** notice concerning the reconstruction.

ARTICLE THIRTEEN

PERSONNEL

13.1 Staffing. **VENUWORKS** shall be responsible for supervision and direction of all personnel staffing at the Facility. All Facility staff will be in the employment of **VENUWORKS**. All expenses associated with the employment of staff will be considered operating expenses of the Facility.

Pre-employment and relocation expenses must be pre-approved by **CITY** Administration. **CITY** has the right to participate in the recruitment, interviewing and hiring of the Executive Director of the Facility, including the creation of a recruiting task force to work with **VENUWORKS** in the hiring process.

13.2 Employees.

13.2.1 Employees of VENUWORKS: All persons engaged at the Facility in operating any of the services hereunder shall be the sole and exclusive employees of **VENUWORKS** and shall be paid by **VENUWORKS**, except for those individuals employed or utilized by subcontractors of **VENUWORKS**, as provided for in this Agreement but in no event deemed an employee of **CITY**. **VENUWORKS** shall comply with all applicable laws, ordinances and regulations including, without limitation, those pertaining to its employee-related human rights and non-discrimination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be canceled or terminated by **CITY** for a violation of this paragraph.

13.2.2 Employee Expense: All costs of employment of Facility employees incurred by **VENUWORKS** shall be an operating expense of the Facility.

13.2.3 Employee Standards: **VENUWORKS** will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Any dismissal shall be in accordance with **VENUWORKS'** corporate policy and applicable federal, state or local laws which may be in effect and, further, shall be in compliance with applicable union or labor organizational agreements which may be in effect at the time of said dismissal and **VENUWORKS** shall defend, indemnify and save **CITY** harmless from any claim, cause of action, expense (including attorneys' fees) lost, cost or damage of any kind or nature arising there from, except in the case of express written direction from **CITY**.

13.2.4 Employee Non-Compete Clause Waiver: **VENUWORKS** shall not have a non-compete agreement and/or clause in its employment contract or relationship with the employees hired or appointed by it to manage the Facility pursuant to the terms and conditions of the Agreement, except for the Executive Director, whom **VENUWORKS** may appoint as its onsite manager, with **CITY** approval. A non-compete restriction as the term is used in this Agreement, is a restriction prohibiting **VENUWORKS** employees from performing in the same or similar management or operational capacity at this Facility but under the employment of the **CITY** or

another entity other than **VENUWORKS**. With regard to the **VENUWORKS** Executive Director, **VENUWORKS** may invoke a non-compete restriction during the term of employment. Subsequent non-compete restrictions may limit the Executive Director from working for a competing management company in the operation of the Facility but shall not limit the Executive Director's ability to work directly for the **CITY**.

ARTICLE FOURTEEN MISCELLANEOUS

14.1 Compliance with Laws. **VENUWORKS** will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Facility. **VENUWORKS'** failure to comply with such ordinances, statutes, rules and regulations relating to the Facility shall be an Event of Default under this Agreement and shall entitle **CITY** to terminate this Agreement pursuant to the provisions of Section 7.5 hereof. **VENUWORKS** agrees that it shall not be entitled to claim litigation costs (including attorneys' fees) as Operating Expenses pursuant to Subparagraph (I) of **Exhibit A** with regard to its rules and obligation to comply with ordinances, statutes, and regulations as set forth herein.

14.2 Non-waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

14.3 Amendment. The parties may amend this Agreement only by written agreement executed by the parties and consented to, in writing, by the Commissioner of Minnesota Management and Budget pursuant to the City's obligations under its Grant Agreement with the State of Minnesota and as derived from Minnesota Statutes Chapter 16B.

14.4 Venue and Governing Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Minnesota, without regard to its conflict of laws principles. Venue of any action or proceeding arising out of or related to this Agreement lies in Beltrami County, Minnesota, exclusively, where the Agreement was executed and will be performed.

14.5 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement.

14.6 Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight air courier, fees prepaid, to **VENUWORKS** or **CITY** at the following addresses:

If to **CITY**: City of Bemidji
Attn: City Manager
317 4th Street NW
Bemidji, MN 56601

If to **VENUWORKS**: VenuWorks of Bemidji, LLC
4611 Mortensen Road, Suite 111
Ames, IA 50014
Attention: President

Either party may designate an additional or another representative or address for notices upon giving notice to the other party pursuant to this paragraph. For the purposes of this Agreement, "business day" shall mean a day which is not a Saturday, a Sunday or a legal holiday of the United States of America.

14.7 Representatives. **CITY'S** representative to **VENUWORKS** in connection with Facility operations shall be the City Manager, and the **VENUWORKS** representative shall be **VENUWORKS'** on-site Executive Director at the Facility.

14.8 Force Majeure. Neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Facility, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, or war, provided that the party claiming failure or inability to perform provides written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure.

Furthermore, in the event of a labor dispute which results in a strike, picket or boycott affecting the Facility or the services described in this Agreement, **VENUWORKS** shall not be deemed to be in default or to have breached any part of this Agreement; however, **VENUWORKS**

shall immediately remedy such labor dispute by all appropriate legal means after consultation with the **CITY**.

Notwithstanding the foregoing, in no event shall a party's failure to make payment due hereunder be excusable due to an Event of Force Majeure.

14.9 Assignment. Neither party may assign this Agreement without the prior written consent of the other. Any purported assignment in contravention of this Section shall be void. This Agreement is binding on and shall inure to the benefit of the heirs, successors and permitted assigns of the parties.

14.10 No Third Party Benefit. No provision of this Agreement creates a third party claim against the **CITY** or **VENUWORKS** beyond that which may legally exist in the absence of any such provision.

14.11 Non-Discrimination. During the performance of this Agreement, **VENUWORKS** shall not discriminate against any employee or applicants for employment by reason of any characteristic or classification protected by local, state or federal law. **VENUWORKS** shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for work under this Agreement, and will require all of its subcontractors for such work in turn to incorporate the same requirements in all of their subcontracts for such work. **VENUWORKS** further agrees to comply with all aspects of the Minnesota Human rights Act, Minnesota Statutes Section 363.01, 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.

14.12 Government Data Practices/Privacy. **VENUWORKS** agrees to abide by the applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, HIPPA requirements and all other applicable state or federal rules, regulations or order pertaining to privacy or confidentiality. **VENUWORKS** understands that all the data created, collected, received, stored, used, maintained, or disseminated by **VENUWORKS** in performing those functions that the **CITY** would perform is subject to the requirements of Chapter 13, and that it must comply with those requirements as if it were a government entity. This does not create a duty on the part of **VENUWORKS** to provide the public with access to public data if the public data is available from the **CITY**, except as required by the terms of this Agreement.

14.13 Intellectual Property Rights. Except for intellectual property rights owned by **VENUWORKS** prior to entering into this Agreement and that it brings to this Agreement in its performance for the benefit of the **CITY**, the **CITY** shall share all rights, title and interest in all of those intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives/digital storage, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by **VENUWORKS** employees employed at the Facility in the performance of this Agreement. Works includes "Documents", and Documents are the originals of any of the above listed Works, whether in tangible or electronic forms, prepared by **VENUWORKS**, its employees, agents or subcontractors employed at the Facility, in the performance of this Agreement. **CITY** shall be provided a copy of such Works and Documents created under this Agreement. Any use of such Works and Documents beyond the scope of the Agreement by either party is without liability to the other, and any party using such Works or Documents agrees to defend and indemnify the other from claims or liability to the extent caused by such use.

14.14 Integration. This Agreement and all appendices and exhibits hereto embody the entire agreement of the parties relating to the services to be provided hereunder. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Exhibits hereby integrated hereto are:

- Exhibit A: Operating Expenses
- Exhibit B: State Grant Agreement
- Exhibit C: Ground Lease
- Exhibit D: Anchor Tenant Lease

With the exception of Exhibits B, C and D, if the terms of this Agreement and Exhibits A are inconsistent, the terms of the Agreement shall control.

14.15 Section Headings. Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

City of Bemidji

By 
Rita C. Albrecht, Its Mayor

By 
Nathan Mathews, Its City Manager

VenuWorks of Bemidji, LLC

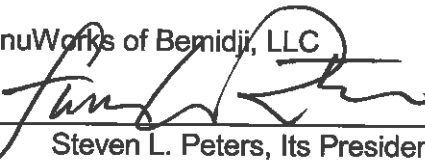
By 
Steven L. Peters, Its President

Exhibit A

Operating Expenses

The term "Operating Expenses" shall mean the following and shall be, in all cases, subject to the Annual Budget:

- (a) on-the-job payroll cost, including wages, bonuses and severance paid to employees and the cost of paid holidays, vacations, severance benefits, sick leave, employment practices liability, work compensation and other compensation and benefits, consistent with law and **VENUWORKS** standard HR practices; cost of training; payroll processing costs; note that severance obligations may exceed the term of the Agreement if termination of the Agreement results in the termination of staff who may be entitled to severance pay. However, in the matter of payment of severance benefits for staff terminated by **VENUWORKS** during the term of the agreement, once a **VENUWORKS**' decision to pay such benefit(s) has been made, and payment in fact is made, **VENUWORKS** agrees to consult with the **CITY** to determine the payment's eligibility as an Operating Expense under this Agreement.
- (b) employer contribution cost, in relation to employees carried on the on-the-job payroll mentioned in the foregoing clause (a), of every nature whatsoever, including but not limited to, social security, reemployment insurance, benefits for medical and hospital care, disability, death, termination, retirement or pensions, or insurance or annuity contracts to provide any of the foregoing, and all payments, other than those referred to in the foregoing clause (a), required under any collective bargaining agreement to which **VENUWORKS** is a party, or under any state or federal law or any regulations promulgated there under;
- (c) cost of medical and security examination for employees on the on-the-job payroll;
- (d) cost of purchasing, renting, maintaining and cleaning uniforms;
- (e) cost of equipment, materials and supplies, including the cost of installation thereof;
- (f) cost of insurance, permits, licenses and fees;
- (g) cost of property, business, privilege, sales and all taxes other than taxes based on net income, provided that any penalties or fines for failure to collect and remit sales taxes shall not be an Operating Expenses but shall be borne by **VENUWORKS**;
- (h) cost of marketing, promotions and advertising; cost of travel on behalf of Facility;
- (i) cost of necessary outside professional services, upon prior written approval by the **CITY**;
- (j) cost of the Commodities, (i.e. food purchased for resale to the public);
- (k) cost of utilities;
- (l) except for those litigation costs in connection with **VENUWORKS** obligations under Sections 6.5, 13.2.3, 11.2, and 14.1, litigation expenses or other costs (including attorneys'

fees) incurred by **VENUWORKS** in connection with any proceeding; provided however that **CITY** shall not be obligated to pay any such fees or costs (including attorneys' fees) unless prior to incurring any legal expense (including attorneys' fees), **VENUWORKS** shall consult with the **CITY**, and **CITY** and **VENUWORKS** shall jointly determine the course of action (including payment obligations thereof) to be taken with regard to any claim made against **VENUWORKS** or **CITY** (concerning the Facility) or to be made by **VENUWORKS** or **CITY**;

- (m) cost of new or replacement equipment and the installation of that equipment;
- (n) cost of replacements of pots, pans, dishes, linens, uniforms, silverware and glassware necessary for the operation of the Concessions;
- (o) cost of ordinary maintenance and repair of the Facility and the equipment, Additional Equipment and replacements thereof;
- (p) cost of ordinary housekeeping of the Facility;
- (q) all costs related to **VENUWORKS** corporate staff travel, lodging, and supply costs incurred in connection with servicing **CITY'S** needs at Facility, such costs not to exceed \$15,000 annually, excluding staffing costs associated with supporting events or filling staff vacancies.
- (r) all other expenses not specifically set forth in this Exhibit but not including the cost of home office overhead relating to the services provided by **VENUWORKS** hereunder, subject to **CITY'S** prior written approval of any such expense, which approval shall not be unreasonably withheld or denied.
- (s) Base management fees paid to **VENUWORKS**.
- (t) Variable management fees paid to **VENUWORKS**.

Special Use Tax



Sanford Center Built For...



Economic Impact

- ▶ **BSU Hockey**
 - ▶ Men and Women
- ▶ **Jobs**
 - ▶ 14 Full-time and 200 Part-time Positions
- ▶ **Community Recruitment**
 - ▶ Conferences, Activities, Events and Concerts
- ▶ **Paul Bunyan Trail**
 - ▶ Completion of Trail Connection
- ▶ **Public Benefit**
 - ▶ Preserve Lakeshore and Create New Park

\$18 Million Economic Benefit

- ▶ Certain Businesses Benefit More than Others
 - ▶ Restaurants and Lodging
- ▶ Visitor Impacts Add Costs to City Budget
 - ▶ Parks, Streets, Utilities and Infrastructure

Other City Assets Benefit Residents and Tourists

- ▶ Parks & Trails
- ▶ Library
- ▶ Arena
- ▶ Streets
- ▶ Utilities

Parks and Recreation Programming

- ▶ Bemidji Invests \$1.3 Million Annually
 - ▶ Similar to amount spent on Event Center
- ▶ Parks not expected to make a profit
 - ▶ “Quality of life”

What determines Bemidji Success?



Most Events Centers Owned by Government Units

► Why?

- Serve a community good
- Increase economic activity
- Not profitable
- Costs shared through taxing authority

How do other City Event Centers Compare?

	<u>Audited 2017</u>			
	<u>Operating</u>		<u>Median</u>	<u>Special Taxes**</u>
	<u>Profit/(Loss)</u>	<u>Population</u>	<u>Income</u>	
	<u>before deprec</u>			
► Fargo*	\$ 339,000	125,000	53,000	\$ None
► Bemidji	\$ (477,000)	15,000	31,000	\$ 2,364,000
► St. Cloud	\$ (823,000)	67,000	43,000	\$ 2,173,000
► Grand Forks	\$ (862,000)	58,000	47,000	\$ 8,536,000
► Rochester	\$(1,642,000)	113,000	68,000	\$ 1,768,000
► Duluth	\$(1,704,000)	86,000	48,000	\$ 1,709,000
► Mankato	\$(1,931,000)	41,000	60,000	\$ 6,179,000

* Unique scenario with NDSU football attendance, parking fees and utility system connected to NDSU, reducing utility costs.

** Per audit. Bemidji sales tax pays 100% of construction debt

Cities represent competition as well as regional centers desiring this amenity

Duluth, Mankato, Rochester Grand Forks, St. Cloud

- ▶ Larger Populations to Draw From
- ▶ Higher Median Income Levels
- ▶ Non-Property Tax Funding Methods
 - ▶ Food & Beverage
 - ▶ Entertainment Tax – (Tickets)
 - ▶ Sales Tax
 - ▶ Lodging Taxes

Special Taxes Implemented by Other Cities

<u>Type of Tax</u>	<u>Bemidji</u>	<u>Saint Cloud</u>	<u>Grand Forks</u>	<u>Rochester</u>	<u>Duluth</u>	<u>Mankato</u>
Sales	.5%	.5%	2.25%	.75%	1.0%	.5%
Restaurant		1.0%	.25%		2.25%	.5%
Ticket						.5%
Lodging – Base	3.0%	5.0%	.25%	7.0%	3.0%	3.0%
Lodging > 30 units					5.5%	
State Sales Tax	6.88%	6.88%	5.00%	6.88%	6.88%	6.88%
Total	10.38%	13.38%	7.75%	14.63%	15.63%	11.38%

Notes:

- Not all of the above taxes are used for Event Center purposes
- Duluth uses 65% of their lodging tax, \$1.8 million for debt service and operations
- St Cloud uses 40% of lodging tax, \$649,000 for marketing
- Mankato sales tax is authorized for operational needs

2019 Annual Property Tax Funding for Sanford Center and South Shore Development

▶ \$450,000	Operational Subsidy
▶ <u>\$230,000</u>	Capital Replacement/Repair*
▶ \$680,000	Sanford Center Related
▶ <u>\$324,000</u>	South Shore Land Bonds**
\$1,004,000	TOTAL

- ▶ 17% of City Tax Levy
- ▶ *Projected need exceeds budgeted amount by \$500,000. Increased funding necessary to keep building current.
- ▶ **Bonds paid off in 2023, levy amount and duration depends on amounts received for remaining lots.

Property Taxes Support Sanford Center

- ▶ 47% of City Property Value is Tax Exempt
- ▶ Is Funding a Regional Asset with City Property Taxes an Equitable Strategy?
 - ▶ Other Cities utilize special taxes to capture majority of dollars from visitors to pay Event Center costs
- ▶ Taxable property value increase since 2010 = 24%
 - ▶ \$167 million
 - ▶ \$25 million on South Shore

Alternative(s)

▶ Hospitality and/or Sales Tax

- ▶ Expand funding to regional visitors versus City taxpayers
- ▶ Tax **paid** by consumer, **collected** by business

▶ Leave as is

- ▶ Property owners continue to be sole source of funding

Hospitality and Local Sales Tax Differences

<u>Issue</u>	<u>Hospitality Tax</u>	<u>Sales Tax</u>
Time frame	No sunset	Sunset
Proceeds used for	Any purpose	Capital projects*
Process to approve	Legislative approval	Referendum vote and legislative approval
Applies to	Restaurants and/or lodging	Taxable purchases

* Unless special legislative language allows for other uses

Hospitality and Sales Tax Projections

Projected revenue generated by these taxes summarized below:

Hospitality Tax

<u>Tax Rate</u>	<u>Restaurants</u>	<u>Lodging</u>	<u>Total</u>
1.0%	\$ 584,000	\$ 132,000	\$ 716,000
1.5%	\$ 876,000	\$ 198,000	\$1,074,000
2.0%	\$1,168,000	\$ 264,000	\$1,432,000

Sales Tax

1/8%	\$ 600,000
1/4%	\$1,200,000
1/2%	\$2,400,000

Anticipated Requests for Special Use Tax

- ▶ Property tax reduction – assumed component
 - ▶ Even if no economic impact, property tax reduction is a positive result of a special use tax, visitors helping to reduce City property taxes
- ▶ Possible additional sheet of ice
- ▶ Neilson Reise Arena improvement or repurposing
- ▶ Sanford Center capital repair and improvements
- ▶ Other City amenities

Moving forward.....a community discussion about:

- ▶ Special use tax – sales or hospitality
 - ▶ Combination of both?
- ▶ Tax Rate/Revenue Level
- ▶ Tax applies to – restaurants, lodging and/or taxable items
- ▶ How special use tax is utilized
- ▶ Questions?

Sanford Center Talking Points



Why was the Sanford Center Built?



Economic Impact!

- ▶ **BSU Hockey**
 - ▶ Men and Women
- ▶ **Jobs**
 - ▶ 14 Full-time and 200 Part-time Positions
- ▶ **Community Recruitment**
 - ▶ Conferences, Activities, Events and Concerts
- ▶ **Paul Bunyan Trail**
 - ▶ Completion of Trail Connection
- ▶ **Public Benefit**
 - ▶ Preserve Lakeshore and Create New Park

\$19 Million Economic Benefit

- ▶ Some Businesses Benefit More than Others
- ▶ Visitor Impacts Add Costs for City Budget
 - ▶ Parks, Streets, Utilities and Infrastructure

Sanford Center Economic Impact Calculation

Annual Event Attendance	131,945
Daily average spending for meals, retail, entertainment and travel @ \$60 per day	7,916,700
Overnight daily average spending for meals, retail, entertainment and travel \$100 per room night (2% annual attendance)	263,900
Employee wages full & part time	1,660,271
Costs of food and beverages	327,603
Contracted services, repairs, maintenance and supplies purchased	224,728
Advertising of third party events	94,795
Sub-total	10,487,997
Multiplier effect on local economy	1.8
TOTAL ESTIMATED ECONOMIC IMPACT	\$18,878,394

Other City Assets Benefit Residents and Tourists

- ▶ Parks & Trails
- ▶ Library
- ▶ Arena
- ▶ Streets
- ▶ Utilities

Parks and Recreation Programming

- ▶ Bemidji Spends \$1.3 Million Annually
- ▶ Parks are not expected to make a profit

How Should Bemidji Measure Success?

- ▶ Determines How the Facility is Managed
 - ▶ Economic Impact
 - ▶ Quality of Life
 - ▶ Diversity of Events
 - ▶ Attendance
 - ▶ Financial Results

Most Events Centers are Owned by a City

- ▶ Because Cities have taxing ability to fund costs
- ▶ If profitable, private sector would build and own

How do other City Event Centers Compare Financially?

► Operating Losses Before Depreciation

	<u>2015</u>	<u>2016</u>
► Mankato	\$3,222,000	\$2,259,000
► Duluth	\$ 977,000	\$1,300,000
► Rochester	\$ 965,000	\$1,293,000
► Bemidji	\$ 328,000	\$ 763,000
► St. Cloud	\$ 499,000	\$ 552,000
► Grand Forks	\$ 209,000	\$ 409,000

Duluth, Mankato, Rochester Grand Forks, St. Cloud

- ▶ Larger Populations to Draw From
- ▶ Higher Income Levels
- ▶ Non-Property Tax Funding
 - ▶ Food & Beverage
 - ▶ Sales
 - ▶ Lodging Taxes

Annual Property Tax Funding for Sanford Center

- ▶ \$ 450,000 Operational Investment
- ▶ \$ 230,000 Capital Replacement Fund
 - ▶ Not Enough
- ▶ \$ 323,000 Land and Building Bonds
- \$1,003,000 Total
 - ▶ 17% of Total Tax Levy

Property Taxes are Primary Support of Sanford Center

- ▶ 47% of Property in the City is Tax Exempt
- ▶ Is Funding a Regional Asset with Local Property Taxes an Equitable Strategy?
 - ▶ Other Cities Don't

An Alternative Solution

► Hospitality Tax

- Increase **Equity** of Sanford Center Funding
- Expand Sanford Center Funding to Regional Visitors
- Benefit from Regional Spending
- Tax **Paid** by Consumer, **Collected** by Business Owner
- **Sales tax** not allowed for operational costs, capital only (bricks and mortar)

Property Tax v. Hospitality Tax

17% Property Tax Reduction

	<u>Annual Savings</u>
Home Value	
\$150,000	\$ 107
\$300,000	\$ 266
Business Value	
\$500,000	\$ 850
\$1 million	\$ 1,769
\$5 million	\$ 9,119
\$10 million	\$18,308

1.5% Hospitality Tax*

	<u>Annual Cost</u>
Food/Beverage Expenses	
\$100 month/\$23 week	\$18
\$200 month/\$46 week	\$36
\$300 month/\$69 week	\$54

*Includes Food, Beverage and Lodging

Conclusion

Hospitality tax saves City taxpayers money and expands the financial responsibility of the Sanford Center to visitors.

**CITY OF BEMIDJI
SPECIAL USE/HOSPITALITY TAX PROJECTIONS**

Description	Taxable Sales per MN Dept of Revenue		
	Food & Beverage	Lodging	Total
2019	78,615,000	14,557,000	93,172,000

2022 Hospitality tax projections
assuming 10% growth from 2019 taxable sales

Tax Rate	Food & Beverage	Lodging	Total
0.5%	432,383	80,064	512,446
1%	864,765	160,127	1,024,892
1.50%	1,297,148	240,191	1,537,338
2%	1,729,530	320,254	2,049,784

2022 Sales tax projections
assuming 10% growth from 2019 taxable sales

0.5%	<u>2,696,245</u>
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CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Work Session – Monday, January 14, 2019

Pursuant to due call and notice, a special work session of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Monday, January 14, 2019, at 5:30 p.m. in the Conference Room of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Beard, Johnson, Rivera, Erickson, Thompson

Staff Present: City Manager Nate Mathews, City Attorney Al Felix, Finance Director Ron Eischens, Public Works Director/City Engineer Craig Gray, City Clerk Michelle Miller

Mayor Albrecht stated the purpose of the work session was to discuss forming a hospitality tax task force, the community development director position and priorities for legislative action day.

Hospitality Tax

Mathews stated that with the information recently received the capital improvement needs for the Sanford Center, having those costs being paid by property taxes is not an advisable or sustainable course for the City. In 2016-2017, the council discussed the importance and relevance of implementing a hospitality tax to replace the property taxes that currently fund the Sanford Center. Eischens provided an example of a 1% tax using 2016 Sales Tax information which would generate approximately \$560,000 on food and beverage and \$126,000 on lodging. Council can direct what percentage it wants to implement. Albrecht stated that a tax on food and beverage might be easier to attain. Erickson stated if this tax is implemented Erickson believes that this will only prevent further tax increases and not necessarily lower the property tax.

The potential members of this committee includes council members, residential tax payers and business owners. It would also be beneficial to include someone with a marketing background to help with the message to the public. It will also be important to have a unified approach with a positive narrative regarding the Sanford Center. In 2013 the legislature did not support the request because the City did not have support from VisitBemidji and the Chamber. Consensus was to create a hospitality tax committee and direct the manager to provide a recommendation of potential committee members at a future council meeting.

Community Development Director

Mathews provided a proposed job description as well as the proposed organizational chart if this position is approved. Mathews stated that this position will be a conduit for the business development community as well as the building and planning and zoning community. This position will help with the flow of the process for developers for building in the city limits. This person could also help with the housing discussion and race relations. Albrecht feels that the job description could be more refined with a focus on priorities. Eischens stated that council still needs to approve a budget modification to pay for this position.

Motion by Meehlhause, seconded by Rivera to refine the job description and implement the timeline for hiring a community development director. Motion carried.

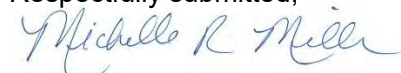
Legislative Action Day

The CGMC Legislative Action Day is scheduled for January 30 with a strong Bemidji presence schedule. Albrecht wanted to start thinking about what issues members would like to focus on or what legislators they would like to meet with. Mathews stated that he would be willing to call and set up any appointments. Johnson suggested meeting with both Eichorn and Persell and perhaps both tax chairs. Possible topics include the hospitality tax, wells and waste water treatment capacity infrastructure issues. The CGMC will also be releasing an agenda that the City can use. Mathews will work on a possible agenda.

Adjourn

There being no further business, motion by Erickson, seconded by Meehlhause, to adjourn the meeting. Motion carried. Meeting adjourned at 6:50 p.m.

Respectfully submitted,



Michelle R. Miller
City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Regular Meeting – February 4, 2019

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, February 4, 2019 at 6:00 p.m. in the Council Chambers of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Beard, Johnson, Rivera, Erickson, Thompson

Staff Present: City Manager Nate Mathews, Finance Director Ron Eischens, City Attorney Alan Felix, Public Works Director/City Engineer Craig Gray, City Clerk Michelle Miller

AMENDMENTS TO AGENDA

Mayor Albrecht called for any amendments to the agenda. **Motion by Meehlhause, seconded by Johnson to approve the agenda as presented. Motion carried by unanimous vote.**

MINUTES

The following minutes were presented for approval:

Work Session: January 14, 2019
Council Meeting: January 22, 2019

Motion by Meehlhause, seconded by Beard, to approve the minutes as presented. Motion carried by unanimous vote.

CONSENT AGENDA

The following Consent Agenda items were presented for approval. **Motion by Meehlhause, seconded by Erickson, to approve the Consent Agenda items as follows:**

1. Claims Submitted by Finance Officer in the amount of \$729,162.72
2. Claims Submitted by VenuWorks for the Sanford Center in the amount of \$100,553.60
3. General Business License Approvals for 2019
4. Approve Appointment of Heidi Bruder to the HRA
5. Purchase of John Deere 444 Loader from State Purchasing Contract (\$117,000)
6. Rescind Approval to Purchase 2019 Police Vehicles
7. Approval of Industrial Park Replatting Request to JPB (Bemidji Development Corp)

Motion carried by unanimous vote.

CITIZENS NOT ON AGENDA

No appearance

REPORTS

Bemidji Youth Advisory Commission – No appearance.

Citizen Animal Initiative – Brandon Mustful, Great River Rescue, provided a history of the relationship between the city and the committee working to change the animal ordinance as it pertains to feral cats. He stated that several mandates within the current ordinance are not enforced and that the ordinance should conform to current laws and best practices. The committee supports the Trap/Neuter/Return (TNR) approach for managing feral cat populations. The committee provided a draft ordinance with suggested changes for council review. The committee is asking the council to take steps to help move this initiative toward the goal of improving the current ordinance. There was no consensus of the council and no action was taken on this matter.

NEW BUSINESS

City Special Use Tax/Hospitality Tax Committee

The Council identified in January the desire to create a Hospitality Tax Committee to help study and guide this issue and to provide recommendations and support to the City Council in lobbying our State Legislature to approve a special use tax/hospitality tax to help off the local city property taxes currently financing the operational, debt service and capital improvement costs of the Sanford Center. The intent of this committee and issue is to be led by the community. Mathews suggests the committee be represented by the following:

- Mayor and Two (2) Councilmembers
- Three (3) Community Members/Residents
- Greater Bemidji Board Member
- Chamber of Commerce Board Member
- Sanford Board of Directors Representative

- BSU Representative
- Food and Beverage Representative
- Innkeeper Representative

Motion by Meehlhause, seconded by Thompson, to approve the Hospitality Tax Committee as outlined above. Motion carried by unanimous vote.

Discuss Appointments to Joint Planning Agreement Renewal Committee

Albrecht stated that at the January 9, 2019 meeting with Northern Township both LGUs conveyed that they are interested in continuing the joint planning relationship and that the joint planning renewal committee should begin meeting to discuss the terms of that agreement. In the past, Albrecht and Erickson sat on that committee and it is recommended that they continue. Consensus of the Council was to appoint Albrecht and Erickson to the Joint Planning Agreement Renewal Committee.

Change Order No. 3 – Carnegie Construction – City Project 18-07

This change order would be for the renovation and build out of the lower level so that the spaces can be leased to two tenants. The Bemidji Jaycees and Great North Counseling Services have submitted letters of intent with initial lease terms identified in those letters. They have also provided input in the design of the spaces so that it meets their needs. The cost for the basement renovation is \$112,775.73. This would result in a total project shortfall of \$294,922 (increase from \$211,804), which is currently being funded by the general fund undesignated reserves. Erickson stated that she does not feel that this cost should be borne by the Friends of the Carnegie committee with regards to their continued fundraising efforts.

Motion by Meehlhause, seconded by Rivera approving Change Order No. 3 – Carnegie Reconstruction – City Project 18-07 for the basement renovation with Bradbury Stamm in the amount of \$112,775.73. Motion carried with the following vote: Ayes: Meehlhause, Beard, Johnson, Rivera, Erickson, Thompson, Albrecht.

ORDINANCES

Ordinance - Alley Vacations (Lot 9, Finseth's 2nd Addition to Nymore)

Pursuant to published notice, a Public Hearing was held to receive input regarding an Ordinance Amending an Uncoded Section of Bemidji City Code Pertaining to Alley Vacations (Lot 9, Finseth's 2nd Addition to Nymore). Mayor Albrecht opened the Public Hearing at 7:19 p.m., hearing no comments, closed the Public Hearing at 7:21 p.m.

AN ORDINANCE Amending an Uncoded Section of Bemidji City Code Pertaining to Alley Vacations (Lot 9, Finseth's 2nd Addition to Nymore) was given a second reading.

ORDINANCE NO. 156, 3RD SERIES, AN ORDINANCE Amending Chapter 14, Article II, Section 35 of the Bemidji City Code Entitled, "Rules and Regulations Governing Public Parks" was given a final reading and passed by unanimous vote.

Motion by Erickson, seconded by Meehlhause, approving publication of a summary of Ordinance No. 156, 3rd Series. Motion carried unanimously.

UPCOMING COUNCIL MEETINGS

- | | | |
|--------------------------------|-----------|---|
| • Monday, February 11 | 5:30 p.m. | Work Session – Snow Removal/Sidewalks
Community Visioning/Engagement |
| • <u>Tuesday</u> , February 19 | 5:30 p.m. | State of the City Address |
| • <u>Tuesday</u> , February 19 | 6:00 p.m. | Council Meeting |
| • Monday, February 25 | 5:30 p.m. | Sp Work Session – Railroad Corridor |

COUNCIL/STAFF REPORT

- Council members and staff provided updates on current issues and meetings.

ADJOURN

There being no further business, motion by Meehlhause, seconded by Johnson, to adjourn the meeting. Motion carried. Meeting adjourned at 7:48 p.m.

Respectfully submitted,



Michelle R. Miller
City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Work Session – Monday, September 9, 2019

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, September 9, 2019, at 5:30 p.m. in the Chambers of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Beard, Johnson, Rivera, Erickson, Thompson.

Staff Present: City Manager Nate Mathews, Finance Director Ron Eischens, City Attorney Alan Felix, City Engineer Craig Gray, Parks & Recreation Director Marcia Larson, Assistant City Attorney Katie Nolting, Community Development Director Steven Jones, City Clerk Michelle Miller

Mayor Albrecht stated the purpose of the work session was to discuss the 2020 Budget, 2020 Sales Tax Proposal and convene in closed session.

2020 Budget (FMP)

Eischens stated that since the June 24 Work Session, items were clarified or added to the proposed budget as follows:

- Receipt of Auto Theft Grant
- Receipt of Toward Zero Death Grant
- Additional legal secretary for misdemeanor prosecution services due, in part, to 2020 annexation
- Youth Advisory Commission will be reallocated to the recreation department

Eischens stated that staff needs direction regarding the Neilson Reise Arena. Staff has proposed two rate increase options: (1) single rate increase of \$148/hour; or (2) tiered increased by \$38/hour. Staff recognizes the impact any increase will have on the users. Council and staff discussed various types of rate increases and expressed concern of the \$38/hour increase. Erickson proposed phasing-in the total increase over two years. Eischens stated that the levy could stay as proposed, while phasing-in the increase, by paying for the difference with arena reserves.

Motion by Erickson, seconded by Rivera to increase the tiered rate structure by \$25.00/hour per group. Motion carried by the following vote: Yeas: Meehlhause, Beard, Rivera, Erickson, Thompson, Albrecht. Nays: Johnson.

Eischens reported on a ruling by the Federal Communications Commission which may affect the Cable Franchise Fees Revenue. Eischens also reported on a potential conversation with the County regarding the county road sales tax for City street reconstruction.

Eischens stated that at the last budget meeting with council, it discussed the need to increase the Parks Capital Improvement Budget. Erickson questioned the City's \$30,000 contribution to Greater Bemidji that could go to the Parks Budget.

Motion by Erickson to rescind the \$30,000 annual contribution to Greater Bemidji to better allocate the funds beginning in 2020. Motion failed for lack of a second.

Council discussed public support of non-profit organizations versus quasi government organizations. The question of a contract was discussed between the City and Greater Bemidji regarding what is expected from Greater Bemidji. Felix stated that under Minnesota Statutes the city can allocate up to \$50,000 of general funds to support economic development. Council requested that a formal contract be drafted with Greater Bemidji.

Motion by Meehlhause, seconded by Thompson to increase the Parks Capital Improvement Funding by \$25,000. Motion carried by the following vote: Yeas: Erickson, Beard, Johnson, Rivera, Albrecht, Thompson, Meehlhause. Nays: None.

With council's decision increasing the Parks Capital Improvement Budget by \$25,000 - Eischens stated that the proposed total net levy increase will be 3.6%.

2020 Sales Tax Proposal

Eischens stated that the Special Use Sales Tax committee met last winter and spring to discuss issues related to a special use tax. In the end, the committee did not make a

recommendation or decision. Staff recommends that the council think about how it would like to approach this topic for the 2020 Legislative Session. The committee and staff discussed possible uses for a special use tax could be Sanford Center operations and capital, water treatment plant and the wastewater treatment plant. Eischens stated that if the city does not receive state bonding dollars or other funding for either of the water related projects, significant rate increases will need to be addressed. An October work session will be scheduled for further discussion.

Albrecht recessed the meeting at 7:13 p.m. and will reconvene in the conference room for closed session at 7:25.

Preliminary Consideration of Allegations Against a City of Bemidji Employee Under Minnesota Statutes, Section 13D.05, Subd. 2(b) – Tabled from September 3, 2019 Council Meeting

Council reconvened in the conference room at 7:27 p.m. It was noted that all members were present.

Staff Present: City Attorney, Al Felix

Others Present: Special Legal Counsel, Brandon Fitzsimmons

Motion by Meehlhause, seconded by Thompson to take from the table the agenda item of preliminary consideration of allegations against a City of Bemidji Employee under Minnesota Statutes, Section 13D.05, Subd. 2(b) which was tabled at the September 3, 2019 Council meeting. Motion carried.

Albrecht stated that the agenda item is the preliminary consideration of allegations against a City of Bemidji Employee under Minnesota Statutes, Section 13D.05, Subd. 2(b). The employee is Nate Mathews.

Motion by Erickson, seconded by Meehlhause, to close the meeting in accordance with Minnesota Statute Section 13D.05, Subd. 2(b) for the purpose of preliminary consideration of allegations against a City of Bemidji Employee. Motion carried unanimously. Meeting closed at 7:28 p.m.

The Council discussed preliminary consideration of allegations against the City of Bemidji employee in closed session.

The meeting was reopened and recessed at 8:55 p.m. The meeting reopened at 8:59 p.m. and then reconvened in closed session.

The Council continued discussion of the preliminary consideration of allegations against the City of Bemidji employee in closed session.

The meeting was reopened and recessed at 9:33 p.m. The meeting reopened at 9:57 p.m. and then reconvened in closed session.

The Council continued discussion of preliminary consideration of allegations against the City of Bemidji employee in closed session.

The meeting was reopened at 10:15 p.m.

Motion by Erickson, seconded by Meehlhause as follows:

1. That the City Council finds and concludes after serious consideration and deliberation that the pending allegations against City Manager Nate Mathews underlying this meeting are not sustained and disposed of in their entirety.
2. That no action be taken against City Manager Nate Mathews related to the allegations.
3. That Mayor Rita Albrecht consult with legal counsel to draft and provide City Manager Mathews or any other party with any appropriate notice related to this decision.
4. That Mayor Rita Albrecht consult with legal counsel to:
 - a. Submit formal communications to each member of the Bemidji Alliance Leadership Council stating that the Bemidji Alliance Leadership Council did not directly respond to the City Council's request of August 14, 2019 to participate in a collaborative process

and that the City Council requests again that they participate in such process and respond accordingly by no later than September 23, 2019.

- b. To notify City Manager Nate Mathews of such action.
- c. If the Bemidji Alliance Leadership Council agrees to participate in such process, facilitate the City of Bemidji retaining a third-party to facilitate a collaborative process to attempt to resolve the issues related to the issues underlying the allegations against City Manager Nate Mathews.

Motion carried by the following roll-call vote: Yeas: Albrecht, Erickson, Thompson, Meehlhause, Rivera. Nays: Beard, Johnson.

Motion by Beard, seconded by Johnson as follows:

- 1. That Mayor Rita Albrecht consult with legal counsel to retain and authorize a third-party investigator to investigate the allegations underlying this meeting.
- 2. That the City Council finds that it did not conclude whether discipline may be warranted as a result of the allegations. Instead, the City Council is investigating the allegations to primarily determine the facts related to the allegations and obtain an assessment of related matters from a third party neutral fact-finder.
- 3. That Mayor Rita Albrecht consult with legal counsel to draft and provide City Manager Nate Mathews with any appropriate notices and directives related to this decision.

Motion failed by the following roll-call vote: Yeas: Thompson, Johnson, Beard. Nays: Erickson, Albrecht, Rivera, Meehlhause.

Motion by Meehlhause, seconded by Rivera as follows:

- 1. The City Council reaffirms its support of Nate Mathews as City Manager.
- 2. That Mayor Rita Albrecht consult with legal counsel to draft and provide City Manager Nate Mathews with any appropriate notice related to this decision.

Motion carried by the following roll-call vote: Yeas: Albrecht, Thompson, Meehlhause, Rivera, Erickson. Nays: None. Abstain: Johnson, Beard.

Adjourn

There being no further business, motion by Meehlhause, seconded by Rivera, to adjourn the meeting. Motion carried. Meeting adjourned at 10:22 p.m.

Respectfully submitted,


Michelle R. Miller
City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Work Session – Tuesday, October 15, 2019

Pursuant to due call and notice, a work session of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Tuesday, October 15, 2019, at 5:30 p.m. in the Chambers of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause, Beard, Johnson, Rivera, Erickson, Thompson.

Staff Present: City Manager Nate Mathews, Finance Director Ron Eischens, City Engineer Craig Gray, Community Development Director Steven Jones, City Clerk Michelle Miller

Mayor Albrecht stated the purpose of the work session was to consider special use/sales tax for the 2020 legislative session.

2020 Special Use/Sales Tax Proposal

Eischens presented the information that was discussed by the special use/sales tax committee last winter and spring. Eischens provided information of special taxes implemented by other cities with large entertainment venues; including sales tax, restaurant tax and lodging tax. Council and staff discussed the differences between hospitality and local sales taxes, including time frame, use, process to approve and what it applies to. Under new legislation, cities are required to submit a resolution of support to legislators for approval before going to a referendum. Eischens provided estimated revenue from different tax rates. Council discussed infrastructure priorities of street improvement projects, water treatment and wastewater treatment plant improvements; as well as Sanford Center capital improvement purchases.

Council discussed the following:

- Erickson stressed the importance of maintaining the Event Center, updating technology and to be able to host more conferences.
- Beard stated that he could support a food and beverage tax to support the Sanford Center capital improvement needs and sales tax for the water and wastewater projects. Since a hospitality tax does not require a referendum vote, support from VisitBemidji, the Chamber of Commerce and the Downtown Business Alliance would be essential in obtaining legislative approval.
- Johnson presented a potential opportunity whereby the management company could be a part of the solution regarding the Sanford Center operations deficit. Johnson also suggested seeking sales tax for street improvement projects.

Consensus of council is to pursue a food and beverage tax for Sanford Center Capital Improvement purchases and a sales tax request for public infrastructure which could include streets, water treatment and wastewater treatment plant improvements. Council will meet at a future work session for further discussion.

Adjourn

There being no further business, motion by Meehlhause, seconded by Erickson, to adjourn the meeting. Motion carried. Meeting adjourned at 7:15 p.m.

Respectfully submitted,



Michelle R. Miller
City Clerk

CITY COUNCIL PROCEEDINGS

BEMIDJI, MINNESOTA

Work Session – Monday, November 25, 2019

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 25, 2019, at 5:30 p.m. in the Chambers of City Hall, Mayor Albrecht presiding.

Upon roll call, the following Councilmembers were declared present: Albrecht, Meehlhause (arrived 5:32), Beard, Johnson, Rivera, Erickson, Thompson.

Staff Present: City Manager Nate Mathews, Finance Director Ron Eischens, City Attorney Alan Felix, City Engineer Craig Gray, Community Development Director Steve Jones, City Clerk Michelle Miller

Mayor Albrecht stated the purpose of the work session was to discuss special use tax.

Special Use Tax

Mathews stated that with the City's bonding bill request as well as the possible request to the legislators for sales tax, it was recommended that the City hire a lobbying firm to help with those initiatives. Benefits of having a lobbyist could help with all of the different timelines, especially since we do not know what the MPCA mandates will be for the wastewater treatment facility. Other benefits of having a lobbyist is having that person in St. Paul that can attend hearings and advise city officials of those hearings. Consensus of council was to gather proposals from lobbying firms for future consideration.

Food & Beverage Tax

Albrecht invited Pat Welle, a local economist, as well as being a member of the Sanford Center Board of Directors, to speak about the importance of creating a different revenue stream, either food & beverage tax, hospitality tax or lodging tax in order to help pay for capital improvement projects and help reduce the demand on property taxes to pay for the Sanford Center. Welle also participated in the Special Use Tax Committee meetings. He stated that Bemidji is performing more like a midsize regional center, which are closer to the metro area. He described the factors that are causing the Sanford Center to underperform, including the pressures on the city budget are worse than projected and the burden is falling on the property taxpayers. Welle suggests a mid-course adjustment by seeking a special use tax revenue stream. An increase in lodging tax could help draw in more conventions. While his message is appreciated by the council, the audience that needs convincing are those groups that have opposed increasing lodging taxes and implementing a hospitality tax.

Beard suggested a food and beverage tax that could possibly be shared between the Sanford Center and the Neilson Reise Arena. The message to skeptics could be that since Bemidji is growing in population and workforce because of its success as a regional center, growth at hospitality related businesses may be more due to those factors rather than attracting new visitors. The question posed to council was does it want to pursue a 1% food and beverage tax in 2021. A lobbyist could also help the council with this question.

Motion by Meehlhause, seconded by Beard to recess the meeting. Motion carried. Meeting recessed at 6:53 p.m.; Albrecht stated the council will reconvene in the conference room for closed session at 7:00.

Council reconvened in the conference room at 7:00 p.m. It was noted that all council members and staff noted above were present.

Motion by Meehlhause, seconded by Rivera, to close the meeting in accordance with Minnesota Statute Section 13D.05, Subd. 3(b) for the purpose of discussing with the City Attorney Threatened and Pending Litigation. Motion carried unanimously. Meeting closed at 7:01 p.m.

The Council discussed threatened and pending litigation with the City Attorney in closed session.

Motion by Meehlhause, seconded by Beard to reopen the meeting. The meeting reopened at 8:05 p.m.

Adjourn

There being no further business, motion by Rivera, seconded by Meehlhause, to adjourn the meeting. Motion carried. Meeting adjourned at 8:06 p.m.

Respectfully submitted,

A handwritten signature in blue ink that reads "Michelle R. Miller". The signature is written in a cursive, flowing style.

Michelle R. Miller
City Clerk

Hospitality Tax Committee
Meeting minutes
February 28, 2019

Mayor Rita Albrecht called the meeting of the committee at 5:05 p.m.

Members present: Kevin Johnson, Jake Robinson, Chris Vacek, Ann Campbell, Nancy Erickson, Rita Albrecht, Ron Johnson, Pat Welle, Tracy Dill, Jess Frenzel.

Staff/other present: Ron Eischens, Nate Mathews, Jeff Kossow.

Committee members introduced themselves and Albrecht facilitated a conversation regarding the meeting objectives and overall committee/team values. The team values chosen by the committee were: Transparency, Honesty, and Respect.

Eischens presented financial information and a formal presentation on special use taxes, regional event center comparisons, and other relevant data. The committee members held a general discussion regarding the information presented and discussed the historical use of sales tax and lodging taxes in Bemidji. In addition, the economic impact of regional event centers was discussed, as were various options and routes for the City to consider regarding the implementation of a new special use tax.

Albrecht requested the committee members to think about additional voices/participants that would be important to include into the Committee makeup. No specific action was taken by the committee. The next meeting was scheduled for March 14 at 5:30 p.m. to be held at City Hall.

Meeting was adjourned at 7:10 p.m.

Respectfully submitted,
Nate Mathews

Hospitality Tax Committee
Meeting minutes
March 14, 2019

Mayor Rita Albrecht called the meeting of the committee at 5:30 p.m.

Members present: Rita Albrecht, Ann Campbell, Nancy Erickson, Jess Frenzel, Kevin Johnson, Ron Johnson, Mark Ricci, Chris Vacek, Pat Welle, Jake Robinson.

Staff/other present: Ron Eischens, Nate Mathews, Tiffany Vickaryous.

Mayor Albrecht provided a recap of the 2/28 meeting. Vickaryous distributed a summary of events/types from 2010-2018 outlining the various types of events, days of use, and attendance at the Sanford Center.

The committee identified the following as additional information for city staff to research:

- What other event center facilities were constructed without operational or capital funding plans, and/or did they need to implement them after opening.
- Above the 3% tax allowed on lodging, is there flexibility in other uses of lodging tax funds.

The committee discussed and outlined various tax options and identified specific uses of the funds. The following were identified:

- Property tax reduction and/or offset
- Sanford Center Capital investment/reinvestment
- Funds for the VCB, e.g. sports commission/sports tourism
- Creation of a “Harvest” fund to buy conventions/concerts for economic impact
- Operational subsidy offset
- Second sheet of ice at Sanford Center
- Funds to help assist community organization & nonprofit organization rent/contract with the Sanford Center for private events and fundraisers.
- New WWTP, Wells/PFC water plant utility costs
- General public infrastructure costs, such as streets

Each committee member identified his or her top three choices, and the following top three special tax uses were identified as follows:

1. Property tax reduction and/or offset
2. Sanford Center Capital investment/reinvestment
3. Funds for the VCB, e.g. sports commission/sports tourism

Welle noted that transparency of the use of tax funds will be pivotal for this committee moving forward. Ricci stated that providing a specific list of uses to the public will help people understand the need and generate support, and that the Sanford Center and the entertainment business requires continual upgrades to the facility and equipment to maintain an attractive facility to prospective users. Frenzel noted that a

food and beverage tax alone provides insufficient funds to the city, in that a 1% tax would only cover a portion of current capital needs.

Albrecht noted the committee would pick up the remaining items on the agenda at the next meeting, due to time constraints. Those items are

- Reframing the discussion: the “Power of Positive Messages”
- Community outreach: Identify opportunities for listening to the community

The next meeting was scheduled for April 11 at 5:30 p.m. to be held at City Hall.

Meeting was adjourned at 7:10 p.m.

Respectfully submitted,
Nate Mathews

Special Use Tax Committee
Meeting minutes
May 9, 2019

Mayor Rita Albrecht called the meeting of the committee at 5:30 p.m.

Members present: Rita Albrecht, Ann Campbell, Jess Frenzel, Kevin Johnson, Ron Johnson, Mark Ricci, Pat Welle, Jake Robinson.

Staff/others present: Ron Eischens, Nate Mathews, Steve Jones.

Mayor Albrecht provided a recap of the 3/14 meeting. The committee discussed two follow-up questions from the March meeting: 1) when did other cities implement their special use taxes, and 2) is there flexibility in using the lodging tax? Mathews presented MN Department of Revenue summary fact sheets 164 and 164S that indicate the various special use taxes, date of implementation, and other information for every MN City that has a special use tax and lodging tax in place. Eischens noted that cities with event facilities previously had their use taxes in place prior to construction. It was also discussed that cities that are grandfathered because of their use of a lodging tax prior to State Statute (such as Rochester, Mankato), have greater flexibility in their use of lodging tax.

The letter from the “Headwaters Hospitality Association” was reviewed and the committee discussed the questions posed. A letter from the Mayor with responses to the questions will be drafted and sent back to the Association.

The Committee discussed how to offer advice to the City Council on a new special use tax. The committee stated it believes it is important for the City to be cautious on implementing any new sales taxes as there are further costs for public infrastructure facing the city and those are still developing. Additionally, there were questions raised on the current spending of the \$450,000 of lodging tax collected and managed by the VCB, if that may be better utilized for convention center business to help provide more revenue to the community and also the facility.

The Committee believes though sales taxes generate larger revenues, a new Bemidji food and beverage tax would be a characteristic way to assist the City in offsetting the current property taxes needed to finance operational and capital needs at the Event Center. However, this topic needs to go back to the Council for prioritization in lieu of the large potentially sales tax/public infrastructure projects on the horizon and current questions about the effective use of Bemidji lodging taxes.

There was no further meeting scheduled for this committee.

Meeting adjourned at 7:15 p.m.

Respectfully submitted,
Nate Mathews

RESOLUTION NO. 6281

RESOLUTION IN SUPPORT OF REQUEST FOR LEGISLATIVE AUTHORITY TO IMPOSE AN ADDITIONAL HALF CENT LOCAL SALES TAX TO FUND SPECIFIC CAPITAL IMPROVEMEMNTS PROVIDING REGIONAL BENEFIT, TO ESTABLISH THE DURATION OF THE TAX AND THE REVENUE TO BE RAISED BY THE TAX, AND TO AUTHORIZE THE CITY TO ISSUE BONDS SUPPORTED BY THE SALES TAX REVENUE

WHEREAS, the City of Bemidji, the First City at the Headwaters of the Mississippi River, and a regional center in Northwestern Minnesota, through its experience with groundwater contamination and waste water facility capacity issues, as well as through engagement with community and regional residents and businesses, has identified the following locally and regionally beneficial projects:

1. Upgrade to Municipal Water Treatment Plant – in order to treat Per- and Polyfluoroalkyl Substances (PFAS) contamination, known as “forever chemicals”, in its municipal well field, a new, upgraded water treatment plant is necessary, with an estimated cost of \$16 million. An underlying assumption is that \$8 million may be funded by the State of Minnesota via a concurrent 2020 Legislative Bonding Request, leaving an \$8 million balance proposed to be funded with the requested sales tax.
2. Upgrade to Municipal Waste Water Treatment Plant (WWTP) Expansion/Improvements – the existing municipal WWTP plant is at processing capacity, requiring a new clarifier at an estimated cost of \$5 million. In addition, new Minnesota Pollution Control Agency (MPCA) licensing and discharge requirements will require treatment of nitrogen/ammonia, requiring an additional \$5 million WWTP plant improvement, for total WWTP improvement of \$10 million.
3. Regional Sanford Event Center Capital Rehabilitation Improvements – the Sanford Regional Event Center was completed in 2010 with funding from state bonding and local debt repaid with the current ½% local sales tax. Capital repair and replacement needs to maintain the Regional venue are estimated at \$9 million over ten (10) years; and,

WHEREAS, the three (3) aforementioned Projects will result in benefits to the residents and businesses of the City and the Greater Bemidji Area, as well as to non-resident visitors and businesses in the NW Region of the State; and,

WHEREAS, the City desires local sales tax funding due to its limited ability to raise property taxes because:

- 48% of City property value is exempt from property taxes, one of the highest levels in the state;
- Higher education facilities, health care institutions, regional event center, as well as retail industry, draw large numbers of visitors to the City who utilize various city services and infrastructure but would also pay sales tax, providing a more equitable funding source for these regional amenities;
- Other Cities with Regional Event Centers have special use, lodging or sales tax to pay operational and capital costs, while Bemidji to date has solely relied on local property taxes;
- Sanford Regional Event Center generates annual economic impact of nearly \$20 million;
- City provides municipal services to tax-exempt regional educational institutions Bemidji State University and Northwest Technical College which also combine to contribute \$320 million and 2,700 jobs to Minnesota’s economy annually;
- Wastewater treatment expansion is a necessary and critical component in attracting business and economic growth to the region. Without it, this development will locate elsewhere;
- Waste water treatment facility is located on the shores of Lake Bemidji and discharges into the Mississippi River, the first city and regional center on the Mississippi River;
- The financial magnitude of these projects would require unrealistic utility rate and property tax increases to fund solely locally; and,

WHEREAS, funding the Projects with a local sales tax will more closely distribute the cost of the Projects to the users of the facilities; and,

WHEREAS, the total cost for all three (3) Projects are estimated to be approximately \$27 million plus \$3 million in interest financing costs; and,

WHEREAS, the City estimates that a local sales tax of ½% would generate \$30 million over 10 years; and,

WHEREAS, the City has provided documentation of the regional significance of each Project, including the share of the economic benefit to or use of each Project by persons residing and businesses located within the Greater Bemidji Area and the State generally; and,

WHEREAS, the estimated local sales tax revenue and estimated 10 year time-period needed to raise that amount of revenue for each Project is as follows:

- **Water Treatment Plant** - \$8 million plus \$1.3 million in interest financing costs
- **Waste Water Treatment Plant** - \$10 million plus \$1.7 million in interest financing costs
- **Sanford Center Capital Repair and Maintenance** - \$9 million with no interest financing costs

WHEREAS, Minn. Stat. §297A.99 authorizes the imposition of a general sales tax if permitted by special law of the Minnesota Legislature; and,

WHEREAS, Minn. Stat. §297A.99 requires the City to pass a resolution authorizing such a local tax and to obtain Legislative approval prior to approval by the local voters to enact the local tax.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council supports the authority to impose an additional general local sales tax of ½% for a period of 10 years to fund the three (3) aforementioned Projects;
2. Upon approval of this Resolution, the City will submit the adopted resolution and documentation of regional significance to the Chairs and Ranking Minority Members of the House and Senate Taxes Committees for approval and passage of a special law authorizing the tax, by January 31 of the year that it is seeking the special law.
3. Upon Legislative approval and passage of the special law authorizing the tax, the City will adopt a resolution accepting the new law, which will be filed with a local approval certificate to the Office of the Secretary of State before the following Legislative session.
4. The City will put a detailed ballot question(s), which includes separate questions for each Project, on a general election ballot for local voter approval. This will be done within two (2) years of receiving legislative authority.
5. If one or more ballot questions pass, the City will also pass an ordinance imposing the tax and notify the Commissioner of Revenue at least 90 days before the first day of the calendar quarter that the tax will be imposed.
6. Upon completion of the aforementioned requirements, the local sales tax will commence and run until approximately 2030 or until a sum sufficient to fund the voter approved project(s), including related debt costs, is raised, whichever comes first.

The foregoing resolution was offered by Councilmember Erickson, who moved its adoption, and on due second by Councilmember Rivera, was passed by the following vote:

Yeas: Albrecht, Meehlhause, Beard, Johnson, Rivera, Erickson
Nays: None
Absent: Thompson

Passed: January 21, 2020

ATTEST:

Michelle R. Miller, City Clerk

APPROVED:

Rita C. Albrecht, Mayor

**CITY OF BEMIDJI
SANFORD CENTER
BOND REPAYMENT**

Description	Principal	Interest	Total
2010		1,980,000	1,980,000
2011		2,404,132	2,404,132
2012		2,357,813	2,357,813
2013		2,357,813	2,357,813
2014		2,357,813	2,357,813
2015		2,357,813	2,357,813
2016		2,356,313	2,356,313
2017		2,601,305	2,601,305
2018	900,000	1,151,309	2,051,309
2019	800,000	1,681,162	2,481,162
2020	900,000	1,638,662	2,538,662
2021	1,000,000	1,591,162	2,591,162
2022	1,100,000	1,538,663	2,638,663
2023	1,200,000	1,481,164	2,681,164
2024	1,350,000	1,417,412	2,767,412
2025	1,570,000	1,344,412	2,914,412
2026	1,700,000	1,262,664	2,962,664
2027	1,800,000	1,175,162	2,975,162
2028	1,920,000	1,082,162	3,002,162
2029	2,105,000	992,063	3,097,063
2030	2,185,000	917,188	3,102,188
2031	2,255,000	850,587	3,105,587
2032	2,320,000	781,963	3,101,963
2033	2,390,000	711,312	3,101,312
2034	2,460,000	638,562	3,098,562
2035	2,535,000	563,638	3,098,638
2036	2,610,000	486,462	3,096,462
2037	2,690,000	406,963	3,096,963
2038	2,770,000	323,331	3,093,331
2039	2,855,000	235,441	3,090,441
2040	2,945,000	144,815	3,089,815
2041	3,040,000	49,400	3,089,400
Total	47,400,000	41,238,661	88,638,661

Advanced refinanced original \$44 million bonds
with \$47.4 million of new lower rate debt

SANFORD CENTER 5 YEAR CIP

Expenditure Items	Total	2020	2021	2022	2023	2024
Administrative Offices						
Payroll System, Time Management	5,000				5,000	
Admin Computers/Printers	81,822	15,822	15,000	21,000	15,000	15,000
Basketball Floor	25,000			25,000		
BUILDING, EXTERIOR						
Asphalt, Parking Lots	306,200	-	286,200	5,000	5,000	10,000
Masonry, Repair/Landscaping	95,000	15,000	10,000	10,000	10,000	50,000
Roof Flat	-					
Windows	30,000	10,000		10,000		10,000
BUILDING, INTERIOR	-					
Flooring	260,000	8,000	164,000	45,000	8,000	35,000
Interior Finishes	330,416	55,416	100,000	50,000	50,000	75,000
BSU WING/Office/Locker Rooms/Hallways/Green Room	125,000	65,000	20,000	5,000	20,000	15,000
Electrical/AV/Sound/Technology Systems/Security Systems	541,655	156,655	190,000	25,000	120,000	50,000
Utility Vehicles	85,000		50,000			35,000
Hockey Equipment	-					
Condenser & Chillers	80,000		25,000	15,000	25,000	15,000
Dashboards & Plexiglas	50,000		25,000	10,000		15,000
ProDeck Cover	49,000	12,000	15,000		12,000	10,000
Ice Floor	-					
ZamBoni	25,000		10,000		10,000	5,000
Ice Resurface Equipment	30,000	10,000		10,000		10,000
Interior Equipment	-					
ADA Upgrades	22,756		10,756			12,000
Furniture/Tables/Chairs/Ect.	132,497	47,497	35,000	25,000	5,000	20,000
Seating	85,000		20,000	50,000		15,000
Suite Improvements	45,000	10,000			25,000	10,000
Mechanical systems	-					
Air Handlers/Controls systems	250,000		75,000	75,000	50,000	50,000
Boilers	10,000					10,000
Chilled Water Pumps	32,500			25,000		7,500
Chillers	47,500	15,000		25,000		7,500
Condensate Pumps	15,000				15,000	
Condenser Water Pumps	7,500					7,500
Condensers	15,000					15,000
Cooling Towers	25,000	15,000			10,000	
Exhaust Fans	10,000					10,000
Glycol/ Water Pumps	25,000				25,000	
Heating Water Pumps	15,000				15,000	
Video Signage/Stationary Signage	-					
Signage	105,781	45,781		35,000		25,000
Outside Marquee	100,000		75,000			25,000
Operations Equipment	250,000	50,000	50,000	50,000	50,000	50,000
Concession Equipment	272,626	52,626	20,000	50,000	100,000	50,000
Catering/Kitchen Equipment	181,294	21,294	50,000	20,000	50,000	40,000
Grand Total	3,766,546	605,090	1,245,956	586,000	625,000	704,500

5763
753,309

MANAGEMENT AGREEMENT

BETWEEN

THE CITY OF BEMIDJI

AND

ASM GLOBAL ARENA MANAGEMENT, LLC

Dated as of March 7, 2022

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this “Agreement”) dated as of the 7th day of March, 2022, by and between the City of Bemidji, Minnesota, a municipal corporation organized and existing pursuant to the laws of the State of Minnesota (the “City”), and ASM Global Arena Management, LLC, a Delaware limited liability company, whose current address is 800 Olympic Boulevard, 3rd Floor, Los Angeles, CA 90015 (“ASM Global”).

RECITALS

WHEREAS, The City is the owner of Sanford Center (the “Facility”) a multi-purpose regional sports arena consisting of approximately 4,000 seats, and a conference center with approximately 14,000 square feet of convention and trade show space, located on the South Shore of Lake Bemidji in Bemidji, Minnesota: and

WHEREAS, the City currently has a management agreement with another company for the Facility, which agreement is set to expire March 6, 2022, and which will not be renewed or extended; and

WHEREAS, ASM Global is engaged, among other things, in the business of providing pre-management services, including operations and marketing services, for public assembly facilities, and possesses the knowledge and expertise to manage and market the Facility: and

WHEREAS, The City desires to engage ASM Global, and ASM Global desires to accept such engagement, to provide management services for the Facility on the terms and conditions set forth herein; and

WHEREAS, City and ASM Global acknowledge herein that the City’s interest in the Facility and grounds subject of this Agreement, is subject to the General Obligation Bond Proceeds Grant Agreement (Construction Grant) for the Bemidji Regional Event Center (the “Grant Agreement”), a copy of which is attached hereto as Exhibit B and incorporated herein; and,

WHEREAS, City and ASM Global further acknowledge herein that the City’s interest in the Facility and grounds subject of this Agreement is by way of a long-term Ground Lease between the City and the Bemidji Economic Development Authority (BEDA), the owner of the underlying property, as described on Exhibit C; and,

WHEREAS, City and ASM Global further acknowledge herein that the City’s interest in the Facility is subject to a Lease Agreement between the City and the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities (MNSCU), on behalf of Bemidji State University (BSU), attached hereto as Exhibit D, which lease was entered into to carry out that portion of a “governmental program” consisting of use of the Facility arena and related athletic facilities for BSU men’s and women’s intercollegiate hockey and/or other University uses consistent with the previously mentioned Grant Agreement as well as Minnesota Statutes, Section 471.15-471.191 and/or Minnesota Statutes Chapter 136F; and

WHEREAS, City and ASM Global further acknowledge herein that certain existing Naming Rights Agreement for the Facility, between the City and Sanford Health (and all of their subsidiaries and affiliates), which agreement is attached hereto as Exhibit E; and

WHEREAS, The City intends to work in mutual accord with ASM Global no matter the unique conditions or impacts created by the aforementioned Recitals, to in order to ensure provision of high-quality management services, thereby enhancing the use and enjoyment of the Facility.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

“ADA” – the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation.

“Affiliate” – a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, “control” means ownership of equity securities or other ownership interests which represent more than 50% of the voting power in the controlled Person.

“Approved Budget” – any budget submitted by ASM Global, as approved by the City pursuant to Section 5 hereof.

“ASM Global” – as defined in the first paragraph of this Agreement.

“Benchmark Net Operating Loss” – as defined in Section 4.2 of this Agreement.

“CERCLA” – the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act.

“CPI” – as defined in Section 4.1 hereof.

“Capital Equipment” – any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$5,000 or more or an expected useful life of more than one year.

“Capital Improvements” – any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$5,000 per project.

“City” – as defined in this first paragraph of this Agreement.

“City Manager” – the City Manager of the City as from time to time appointed by the City, or such individual person as may from time to time be authorized in writing by the City Manager such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

“Council Appointed Governance Team” - currently means the Sanford Center Board of Directors established by the Bemidji City Council (replacing the Sanford Center Advisory Board originally established in 2010 with the opening of the Facility). Established as part of the Board of Directors are three (3) permanent subcommittees (Finance, Operations, and Marketing). The Board has established Bylaws to guide its function and operation.

“Event Expenses – any and all expenses incurred or payments made by ASM Global in connection with the occurrence of events at the Facility, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

“Facility” – as defined in the first paragraph of the Recitals section of this Agreement

“Fiscal Year” – a one year period beginning January 1st and ending December 31st.

“Food and Beverage Services” – all catering and concession services, including the sale of beverages including alcoholic beverages.

“Laws” – all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.

“Liquor License” - An onsale liquor license issued by City to ASM Global for the Facility.

“Losses” – any and all losses, liabilities, claims, demands, causes of action, damages, and costs or expenses (including reasonable attorney’s fees).

“Management Term” – as defined in Section 3.1 hereof.

“Net Operating Loss/Profit – with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

“Operating Expenses” – (a) expenses paid or incurred by ASM Global in connection with the performance of its obligations under this Agreement, including, but not limited to: (i) all expenses incurred by ASM Global in the operation of the Facility at any time during the Term; (ii) all Facility personnel costs incurred by ASM Global or any of its Affiliates; (iii) all costs of ASM Global corporate personnel to the extent engaged solely in activities solely for the benefit of the Facility; (iv) the reasonable and equitable *per diem* charge for personnel of ASM Global or any of its Affiliates assigned to special projects for the Facility; (v) all costs

incurred by ASM Global or any of its Affiliates in performing its services under this Agreement, including without limitation air and ground transportation, meals, lodging, taxis, gratuities, document reproduction, printing, promotional materials, stationery, postage, long distance telephone calls and facsimiles; (vi) payments made or incurred by ASM Global or any of its Affiliates, or their respective employees to any third party for goods and services in the ordinary course of business in the operation of the Facility; (vii) insurance premiums and insurance broker fees, insurance retentions/deductibles, insurance adjusting fees and related expenses, and the costs of procuring, administering and maintaining the insurance referred to in Sections 8.2 – 8.4; (viii) the cost of compliance with laws and regulations, and legal and accounting expenses (including, without limitation, audits) and attorneys' fees and costs (including insurance retentions/deductibles) and (ix) all taxes imposed by any Governmental Authority against any reimbursements payable to ASM Global under this Agreement for expenses incurred for Owner's account, including the other Operating Expenses listed in this definition. The Base Fee shall be included in Operating Expenses for purposes of any Projected Budget or Approved Budget. The City shall retain reasonable per unit, Facility-specific cost benefits from any national buying contracts, discounts, rebates, and other such financial benefit as a result of any applicable ASM Global corporate-level supply or service provider contracts.

Notwithstanding anything herein to the contrary, Operating Expenses shall exclude the following, which Owner shall be solely responsible for: (A) property taxes or similar charges levied on the Facility; (B) the cost of any Capital Equipment and Capital Improvements; (C) any reserve for (x) the replacement of furniture, fixtures and equipment or (y) any future capital expenditures; (D) principal, interest or any other amounts payable by Owner in connection with any financing secured by or in connection with the Facility; (E) depreciation and amortization expenses (determined in accordance with GAAP); (F) emergency repairs, as set forth in Section 5.10; (G) pre-existing obligations, including legal liabilities, pending or future liabilities that arose from claims occurring prior to the Effective Date; (H) costs and expenses incurred by Owner for legal and accounting services in the ordinary course of business; (I) costs and expenses associated with any improvement, alteration, addition or change to the Facility; and (J) any other costs and expenses of Owner that are not directly related to ASM Global's operation of the Facility. Notwithstanding anything herein to the contrary, to the extent that any Affiliate of ASM Global provides certain corporate overhead-type services on behalf of ASM Global and its Affiliates, including without limitation services related to IT, finance, legal, payroll or human resources, ASM Global shall be permitted to include within the definition of "Operating Expenses" an expense equal to the reasonable cost of such expenses incurred by ASM Global or its Affiliates in their respective reasonable discretion after consultation with the City. Except to the extent contrary to the express terms of such definition, Operating Expenses shall be determined in accordance with GAAP.

"Operating Revenues" – (a) any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facility, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising and sponsorship sales and renewals (including without limitation revenues from the sale of naming rights), event sponsorship revenues, equipment rentals, utility revenues, box office revenues, ticket surcharges (if any), ticket service fees, parking revenues, food service and concession revenues, including alcoholic beverage sales (however, if such revenues are collected in the first

instance by and retained by the concessionaire, the amount of such revenues owed by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues owed by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with ASM Global Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles (GAAP) and recognized on a full accrual basis. For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead revenues of the promoter and/or performer of each such event. To the extent that ASM Global collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which ASM Global collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder.

“Person” – any individual, general partnership, limited partnership, limited liability partnership, partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa

“Renewal Term” – the additional period for which this Agreement may be renewed at the option of the City in accordance with Section 3.1 hereof beyond the Management Term.

2. Engagement of ASM Global; Scope of Services.

2.1 Engagement.

(a) General Scope. The City hereby engages ASM Global to promote, operate and manage the Facility during the Management Term and the Renewal Term, if any, upon the terms and conditions hereinafter set forth, and ASM Global hereby accepts such engagement.

(b) Manager of the Facility. Subject to the terms of this Agreement, ASM Global shall be the sole and exclusive manager of the City to manage, operate and promote the Facility during the Management Term and the Renewal Term, if any. In such capacity, ASM Global shall have exclusive authority over the day-to-day operation of the Facility and all activities therein; provided that ASM Global shall follow all policies and guidelines of the City hereafter established or modified by the City that the City notifies ASM Global in writing are applicable to the Facility (including without limitation any methodology pertaining to the allocation of any costs and expenses by the City to the Facility as permitted herein); provided further that to the extent that such policies or guidelines hereafter established or modified by the City adversely affect revenues or expenses at the Facility, then and in that event, the incentive fee formula set forth in Section 4.2 below may be appropriately adjusted so that it reflects the additional costs or reduced revenues resulting from such established or modified policies or guidelines

(c) Approval of the City. To the extent that the approval of the City is required under the terms of this Agreement, the approval of the City Manager shall constitute the approval of the City, except to the extent the approval of another party is expressly required by the terms of this Agreement.

2.2 Scope of Services -- Generally.

ASM Global shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facility in a manner consistent with industry standards and ASM Global's policies and procedures and the operations of other similar first-class facilities.

2.3 Specific Services.

Without limiting the generality of the foregoing, ASM Global shall have, without (except as otherwise expressly noted below) any prior approval by the City, sole right and authority to:

(a) employ, supervise and direct employees and personnel consistent with the provisions of this Agreement; however, the City shall participate in the selection of the General Manager;

(b) negotiate, execute in ASM Global's name as agent for the City, deliver and administer any and all licenses (including procurement or transfer of the Facility's onsale liquor license), occupancy agreements, rental agreements (in a form acceptable to the City), booking commitments, advertising agreements, local food and beverage concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facility, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract may be approved and executed by the City (which approval shall not be unreasonably withheld). In connection with any licenses, agreements, commitments or contracts for the Facility, ASM Global will use best efforts to include in such documents the right of ASM Global to assign all of its rights and obligations under such licenses, agreements, commitments and contracts to the City (or to any successor management company retained by the City) upon the expiration or termination of this Agreement, and upon such expiration or termination, such assignment and assumption shall automatically occur as provided in Section 12.3 hereof.;

(c) maintain the Facility in the condition received, reasonable wear and tear excepted; provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

- (d) rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facility, provided that the City shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8;
- (e) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by ASM Global in the course of its management, operation and promotion of the Facility. In determining such prices and rate schedules, ASM Global shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with the Contract Administrator about any adjustments to the rate schedules at the Facility to be made by ASM Global;
- (f) pay, when due, on behalf of the City, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;
- (g) after consultation with the City Attorney or his or her designee, institute as agent for the City and at the reasonable expense of the City, with counsel selected by ASM Global, such legal actions or proceedings as ASM Global shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;
- (h) maintain a master set of all booking records and schedules for the Facility;
- (i) provide day-to-day administrative services in support of its management activities pursuant to the Approved Budget and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;
- (j) engage in such advertising, solicitation, and promotional activities as ASM Global deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). ASM Global shall work with the City's Visitor's and Convention Bureau to market the Facility for conventions, trade shows and public entertainment shows. In connection with its activities under this Agreement, including without limitation advertising relating to the Facility, ASM Global shall be permitted to use the facility marks and logos, subject to the approval of the City. The use of any Affiliate's name, symbols, logos, or pictures, including but not limited to Bemidji State University, Sanford Health and/or Visit Bemidji, shall only be used with the express permission and authorization of the Affiliate; and
- (k) exclusively provide all Food and Beverage Services, including via subcontracting with local food and beverage concessionaires.

2.4 Right of Entry Reserved.

Representatives of the City designated in writing by the City Manager, including Police, Fire and Building Officials shall have the right, upon reasonable notice to ASM Global and at appropriate times, to enter all portions of the Facility to inspect same, to observe the performance of ASM Global of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement. The City shall not interfere with the activities of ASM Global hereunder, and the City's actions shall be conducted such that disruption of ASM Global's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Confidentiality/Nondisclosure.

(a) Confidentiality/Nondisclosure. In connection with the performance of ASM Global's services hereunder, the City acknowledges that ASM Global may provide the City and its employees, agents and subcontractors (including without limitation the architectural and engineering firm retained for the Facility) with Confidential Information. In addition, in connection with the performance of the services hereunder, ASM Global may provide to the City and its employees, agents and subcontractors with materials that are protected by copyright of ASM Global.

(b) MN Government Data Practices Act. ASM Global understands and agrees that by this Agreement it is subject to and must abide by the applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), all requirements of The Health Insurance Portability and Accountability Act of 1996 (HIPAA), and all other applicable state or federal rules, regulations or order pertaining to privacy or confidentiality. ASM Global understands that all the data created, collected, received, stored, used, maintained, or disseminated by ASM Global in performing those functions that the City would otherwise perform if the City managed the Facility itself, is subject to the requirements of the MGDPA, and that it must comply with those requirements as if it were a government entity. This does not create a duty on the part of ASM Global to provide the public with access to public data if the public data is available directly from the CITY, except as required by the terms of this Agreement.

(i) The City agrees that it shall keep confidential any and all information deemed Private or Confidential under the MGDPA, and the City shall not divulge any such information, in whole or in part, to any third party except as is expressly permitted below by the MGDPA in this Section 2.5.

(ii) The City shall not use any such private or confidential information, except for the express purpose of utilizing it in connection with the management of the Facility. The City shall not directly or indirectly disclose or discuss any such information with any

Person, other than employees, agents and subcontractors of the City who are directly concerned with the management of the Facility.

(iii) “Confidential Information” means any and all information disclosed (orally, in writing, by inspection or otherwise) to the City by ASM Global pursuant to this Agreement and any information developed by the City and based upon the information disclosed to the City pursuant to this Agreement deemed private or confidential pursuant to the MGDPA .

3. Term and Renewal.

3.1 Management Term and Renewal Term.

The Management Term of this Agreement shall commence on March 7, 2022 and end five (5) years thereafter, unless earlier terminated pursuant to the provisions of this Agreement. The City may, in its sole discretion, extend the Management Term on the same terms and conditions for an additional five-year period, subject to renegotiation of fees and other terms as mutually deemed appropriate by the parties.

3.2 New Contract.

If (i) the City intends, upon termination of the Management or Renewal Term to continue to provide management at the Facility through a private provider and (ii) this Agreement has not been terminated upon a default by ASM Global, then the City will during the final year of the Management Term (unless the City exercises its option to renew under Section 3.1) or Renewal Term, as the case may be, negotiate and discuss in good faith a new contract or arrangement with ASM Global for the provision of such services following the completion of such term. The obligation to negotiate with ASM Global is not intended to guarantee any contract rights for a future contract with ASM Global or any specific terms of a new contract.

4. ASM Global’s Compensation.

4.1 Fixed Fee.

As base compensation to ASM Global for providing the services herein specified during the Management Term and any Renewal Term, the City shall pay ASM Global during the Management Term and the Renewal Term, if any, an annual fixed fee of \$120,000, which amount shall be adjusted upward on the first day of each Fiscal Year, other than the first Fiscal Year ending December 31, 2022, during the term hereof by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, during the one year period ending in December 31st immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions (“CPI”). However, any annual CPI adjustment shall not exceed three percent (3%). Moreover, in no event shall a negative CPI adjustment be applied to the base annual fixed compensation. The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of

each month during such Fiscal Year, and ASM Global shall be entitled to draw such amounts from the account described in Section 5.6.

4.2 Incentive Fee.

(a) Amount. ASM Global shall be entitled to an annual Incentive Fee with respect to each Fiscal Year during the Management Term or Renewal Term. The amount of the Incentive Fee shall be equal to the amount calculated in accordance with the following:

The Incentive Fee paid to ASM Global shall equal a percentage of the amount by which actual Net Operating Loss/Profit (“NOL/P”) is better (e.g., a smaller loss) than Benchmark Net Operating Loss. Benchmark Net Operating Loss shall be a loss of \$420,000. The applicable percentage amounts shall be as follows:

Actual NOL/P	Percentage of amount of actual NOL/P better than Benchmark NOL paid as Quantitative Incentive Fee
-\$420,000 to 0	30%
0 and above	40%

(b) Payment. The incentive fee determined pursuant to Section 4.2(a) above shall be payable to ASM Global within 30 days after the availability of the audited annual financial statements described in Section 6.1 hereof for a Fiscal Year. ASM Global shall recalculate the incentive fee payable for that Fiscal Year; in the event that in a subsequent audit pursuant to Section 6.1 the amount of the incentive fee which was paid based on ASM Global’s invoice differs from such audited amount, ASM Global shall promptly remit to the City any excess amount which was paid, or the City shall promptly pay the shortfall, as the case may be.

4.3 Meetings and Contractual Evaluations. ASM Global’s General Manager and City Administrative staff shall endeavor to meet monthly to review revenues and operating expenses for the prior month. Additionally, ASM Global corporate representatives shall meet with their City counterparts as needed and no less than annually, remotely, to monitor performance, discuss operations, consider and implement qualitative evaluation efforts such as Customer Satisfaction Surveys, Community Engagement Programs, and Key Local Partner cooperation and collaboration initiatives. The parties may also meet to discuss proposed amendments to this Agreement wherein each will extend reasonable efforts to mutually accommodate the other to effect necessary modifications, including, by way of example, the effect of community use policies on operating revenues and base incentive fees. Periodic meetings would also serve to permit periodic review and re-evaluation of other financial terms, including those related to operational responsibilities and corresponding expense and fee impacts, and allow generally for mutual renegotiation of financial terms to maintain economic feasibility of and for each party’s performance under the Agreement.

5. Funding; Budget; Bank Accounts.

5.1 Operating Funds.

Subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the City shall make available to ASM Global all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. To the extent that Operating Revenues during a calendar quarter period are insufficient, or expected to be insufficient, to cover Operating Expenses plus, with respect to the first quarter of a Fiscal Year, the amount of the projected incentive fee payable pursuant to Section 4.2 for the prior Fiscal Year (“Cash Flow Shortfall”) for such period, the City shall advance funds to ASM Global as follows. Thirty (30) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, ASM Global will submit to the City an invoice for the projected Cash Flow Shortfall for such quarter and the City will transfer such funds to ASM Global within five (5) days after the start of such calendar quarter. Such funds shall be deposited by ASM Global in the operating or payroll account(s) established pursuant to Section 5.6 and used to pay Operating Expenses.

5.2 Non-Funding.

(a) The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date ASM Global receives written notice (an “Appropriation Deficiency Notice”) of the fact that insufficient funds or no funds have been appropriated for the Facility.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for after such date which are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The City shall pay all Operating Expenses incurred or committed for prior to the date ASM Global receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after ASM Global receives an Appropriations Deficiency Notice shall not be a breach of or default under this Agreement by the City. Any failure by ASM Global to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the City’s failure to appropriate sufficient funds for the management, operation and promotion of the Facility.

(c) If the City appropriates funds at (or reduces appropriated funds to) a level that, in ASM Global’s judgment, renders the management of the Facility not feasible, then subject to the Mediation procedure set forth at Exhibit A, section (g), ASM Global may, at its option, either (i) continue management of the Facility at a reduced level consistent with anticipated Operating Revenues and available funding or (ii) terminate this Agreement with the effect set forth in Section 12.3. Following such termination, ASM Global shall have the right to resume management of the Facility at such time as the City shall first restore appropriated funds to reasonable levels.

5.3 Annual Budget.

(a) As part of the annual plan described in Section 6.2 herein, on or before ninety (90) days prior to the end of each Fiscal Year, and in any event no later than October 1st of every year of the Agreement, ASM Global will prepare a proposed annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus.

(b) The annual budget referred to in subparagraph (a) above shall be reviewed and is subject to approval by the City. On or before thirty (30) days prior to the end of each Fiscal Year, the City shall notify ASM Global of any changes to the annual operating budget for the succeeding Fiscal Year proposed by ASM Global and with such changes, if any, as are made by the City on or before thirty (30) days prior to the end of each Fiscal Year, such budget shall be the Approved Budget for the following Fiscal Year, provided that if the annual operating budget as proposed by ASM Global is modified by the City in a manner which, in ASM Global's judgment, could materially interfere, impede or impair the ability of ASM Global to manage, operate or promote the Facility, then subject to the Mediation procedure set forth at Exhibit A, section (g), ASM Global shall have the right to terminate this Agreement with the effect set forth in Section 12.3, and provided further that if the approved annual operating budget departs from the budget proposed by ASM Global, ASM Global shall not be construed to have breached its obligations under this Agreement if the alleged breach has been caused by the limitations in the Fiscal Year's budget.

(c) On or prior to the date hereof, ASM Global has given the City its comments and observations on the preliminary operating budget for the first Fiscal Year hereof prepared by the City. On or prior to October 1st, ASM Global will submit to the City Manager its proposed operating budget for the first Fiscal Year hereof; such proposed budget shall be treated in the same manner and create the same rights as obtain following the submission of the annual budget as described in subparagraph (b) above, provided that the City shall notify ASM Global of any changes to such proposed budget by October 31st.

5.4 Budget Modifications Initiated by ASM Global.

ASM Global may submit to the City Manager at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget for such Fiscal Year. Upon the approval of the City of such supplemental or revised budget, the Approved Budget for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budget may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that ASM Global shall have the right to amend the Approved Budget as may be necessary or appropriate as the result of the scheduling by ASM Global of additional events or activities at the Facility (and the incurrence of additional Operating Expenses arising from the scheduling of additional events or activities at the Facility) as long as prior to the scheduling of such events or activities, ASM Global had a good faith belief that the projected Net Operating Loss/Profit for the Fiscal Year as set forth in the Approved Budget would not be increased as a result of such additional events or activities.

5.5 Budget Modifications Initiated by the City.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Loss/Profit for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, the City may request from ASM Global a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount. ASM Global shall forthwith comply with any such expense reduction requested by the City and the approved budget for such Fiscal Year shall be modified accordingly, provided that if the annual operating budget is modified in a manner which, in ASM Global's judgment, could materially interfere, impede or impair the ability of ASM Global to manage, operate or promote the Facility, then subject to the Mediation procedure set forth at Exhibit A, section (g), ASM Global shall have the right to terminate this Agreement with the effect set forth in Section 12.3 and provided further that ASM Global shall not be construed to have breached its obligations under this Agreement if such alleged breach has been caused by the limitations in the Fiscal Year's budget.

5.6 Receipts and Disbursements.

ASM Global shall establish and maintain in one or more depositories designated by the City one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility. The Operating Account shall be in the name and Federal identification number of the City, with signature authority of designated City employees. All revenues collected by ASM Global from the operation of the Facility shall be deposited into such accounts and Operating Expenses shall be paid by ASM Global from the Operating Account with approval by the City Council. Other bank accounts may be established in ASM's name with signatories as determined by ASM. (i.e., Box Office, payroll, etc.) All revenues collected by ASM Global arising from operation of the Facility, including revenues from box office sales, facility or equipment rentals, utility rental agreements, food and beverage concessions, or any other source, are the sole property of the City, held in trust by ASM Global for the City for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by ASM Global to the City.

5.7 Ticket Sales Revenues.

ASM Global shall hold in a separate interest-bearing account in a banking institution depository in the locale in which the Facility is located any ticket sale revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the City and ASM Global, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, ASM Global shall make a deposit into the operating account established pursuant to Section 5.6 above of the amount in such account and shall pay from the operating account Event Expenses and such other amounts that are due. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket account referred to above shall be considered Operating Revenues.

5.8 Capital Improvements; Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the City and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 shall include ASM Global's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the City budget funds therefor. The City shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility.

5.9 Limitation of ASM Global Liability.

Notwithstanding any provision herein to the contrary and except for ASM Global's express indemnification undertakings in Section 8.1 and its express reimbursement undertakings in Section 6.1(b), ASM Global shall have no obligation to fund any cost, expense or liability with respect to the operation, management or promotion of the Facility. Notwithstanding anything to the contrary set forth in this Agreement, the City recognizes and agrees that performance by ASM Global of its responsibilities under this Agreement is in all respects subject to and conditioned upon the timely provision of funds to ASM Global for such purposes as hereinafter provided.

5.10 Pre-Existing Conditions and External Events.

Notwithstanding anything to the contrary in this Agreement, unless agreed to in writing in advance by the Parties, ASM Global shall have no responsibility whatsoever for the remediation, abatement, correction, cure or administration of any environmental, construction, personnel, real property or other problems that arise at the Facility during the Term that (a) relate to the operation or condition of the Facility, or activities undertaken at the Facility or on the underlying real property, prior to the Management Term, or (b) are caused by or arise from sources outside of the Facility, and the City shall retain full managerial and financial responsibility and liability for and control over the remediation, abatement, correction, cure and administration of such problems, and shall take such actions in a timely manner with as little disturbance or interruption of the use and enjoyment of the Facility as practicable. Notwithstanding the foregoing, if agreed to by the Parties, ASM Global shall take appropriate steps, at the City's expense, to (i) comply with, or cure or prevent the violation of, any applicable Laws and (ii) avoid or minimize any actual or potential injury to persons or damage to the Facility or other property.

5.11 ASM Global Capital Contribution.

(a) Promptly upon execution of this Agreement, ASM Global shall provide to the City the sum of Two Hundred Thousand Dollars (\$200,000) to be used at the discretion of the City to fund projects or improvements (including Capital Improvements) intended to increase revenues or enhance the customer experience of the Facility.

(b) Amortization of the ASM Capital Contribution. The amount of the ASM Global Capital Contribution shall be amortized over a period of 10 years during on a straight-line, non-interest-bearing basis. In the event of the expiration or termination of this Agreement for any reason, the City shall pay, or cause any successor management company to pay, to ASM Global unconditionally and without set-off the unamortized amount of the ASM Global Capital Contribution existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to ASM Global no later than sixty (60) days following the effective date of such expiration or termination.

5.12 Marketing Fund.

ASM Global will make available \$100,000 to establish an Event Marketing Fund (the "Fund"), which ASM Global will use to attract, promote, develop and market events for the Facilities. The Fund shall be held by ASM Global and applied by mutual agreement of the parties. Upon termination or expiration of this Agreement, any remaining money in the Fund shall belong to ASM Global. If monies from the Fund were used to promote an ASM Event which results in a net profit after all revenue and expenses from the ASM Event are reconciled, the Fund shall be replenished with such net profit up to \$100,000.

6. Records, Audits and Reports.

6.1 Records and Audits.

(a) ASM Global shall keep full and accurate accounting records relating to its activities at the Facility in accordance with generally accepted United States accounting principles, and establish or otherwise maintain internal financial control policies and practices at the Facility consistent therewith. ASM Global shall maintain a system of bookkeeping adequate for its operations hereunder. Pursuant to Minn. Stat. Section 16C.05, subd. 5, to the extent applicable, ASM Global shall give the City's authorized representatives, including either the Legislative Auditor or the MN State Auditor, or any of their duly authorized representatives, access to such books and records maintained at the Facility during reasonable business hours and upon reasonable advance notice. ASM Global shall keep and preserve for at least six (6) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period.

(b) In addition, on or before ninety (90) days following each Fiscal Year for which ASM Global is managing the Facility hereunder, ASM Global shall furnish to the City a balance sheet, and a statement of profit or loss for the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles and shall be completed by the same accounting firm that performs the City's annual audit for that year as part of the City's annual audit. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by ASM Global and of amounts due to the City. The audit shall also provide a certification of Operating Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The audit shall be conducted by a reputable firm selected by ASM Global with City approval. The City shall not withhold or delay such consent or

approval unreasonably. Notwithstanding anything to the contrary herein, the costs of such audit shall be deemed Operating Expenses.

(c) The City shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of ASM Global relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No Costs incurred by the City in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by ASM Global and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by more than five percent (5%), ASM Global shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the incentive fee paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The City's right to have such an audit made with respect to any Fiscal Year and ASM Global's obligation to retain the above records shall expire six (6) years after ASM Global's statement for such Fiscal Year has been delivered to the City.

6.2 Annual Plan.

(a) ASM Global shall provide to the City on or before ninety (90) days prior to the end of each Fiscal Year, and in any event no later than October 1st of every year of the Agreement, an annual management plan, which shall include the annual operating budget described in Section 5.3 for the next Fiscal Year. The annual plan shall include information regarding ASM Global's anticipated operations for such Fiscal Year, including planned operating maintenance activities by ASM Global, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the City. Following review and revision by the City, ASM Global shall have thirty (30) days to incorporate the City's revisions into its plan. Upon approval by the City, such annual plan shall constitute the operating program for ASM Global for the following Fiscal Year.

6.3 Monthly Reports.

By the twenty-fifth day of each month, ASM Global shall provide to the City a written monthly report in a form approved by the City and similar to that used in other ASM Global-managed facilities setting out the Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances. ASM Global shall include in such report a balance sheet, income statement, and other financial reports (such as a departmental expense report and event accounting).

7. Employees.

7.1 ASM Global Employees.

(a) ASM Global shall select, train and employ at the Facility such number of employees as

ASM Global deems necessary or appropriate to satisfy its responsibilities hereunder; ASM Global shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and ASM Global shall have authority to hire, terminate and discipline any and all personnel working at the Facility.

(b) ASM Global shall assign to the Facility a competent, full-time general manager. From time to time the general manager may provide assistance in connection with the management services provided by ASM Global or any of its Affiliates at other facilities managed, owned or leased by ASM Global or any of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the general manager to the Facility and (ii) the cost of the salary and benefits of the general manager for the time spent in connection with providing such assistance shall be reimbursed by ASM Global to the operating account of the Facility. Prior to ASM Global's appointment of such general manager, ASM Global shall consult with the City Manager with respect to the qualifications of the general manager proposed by ASM Global, and also allow City representatives to participate in the ASM's selection process for the general manager, including recruitment, interviewing and hiring, including the creation of a recruiting task force to work with ASM Global in the hiring. The City must approve the employee chosen to be the Facility's general manager prior to the hiring.

(c) ASM Global employees at the Facility shall not for any purpose be considered to be employees of the City, and ASM Global shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

(d) Upon City's request, ASM Global shall also provide the City with a copy of the then current relevant portion of ASM Global's policy respecting severance obligations to which ASM Global employees would be entitled upon termination from employment at the Facility.

7.2 Solicitation or Employment by City.

ASM Global shall not have a non-compete agreement or clause in its employment contract or relationship with the personnel hired or appointed by it to manage the Facility pursuant to the terms and conditions of the Agreement, except for the Executive Director (i.e., General Manager). With regard to its Executive Director, ASM Global may invoke a non-compete restriction during the term of this Agreement regarding the Executive Director's employment. However, subsequent non-compete restrictions may limit the Executive Director from working for a competing management company in the operation of the Facility but shall not limit the Executive Director's ability to work directly for the City at the Facility.

8. Indemnification and Insurance.

8.1 Indemnification.

(a) To the fullest permitted by law, ASM Global shall indemnify, defend and hold harmless the City, its elected officers, agents, and employees and any affiliated or related entities, from and against any and all Losses, arising out of ASM Global's activities or resulting from the

performance of services or the delivery of goods provided by ASM Global, or arising from any material default or breach by ASM Global of its obligations specified herein (including without limitation professional errors or omissions); provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the City of its obligations under Sections 8.1(b) or 11.2 below, (ii) are of the type that are or would normally be covered by commercial insurance covering (A) the Facility and its premises for physical damage or other Loss and (B) business interruption and extra expenses, irrespective of the decision of the City to carry or not to carry such insurance, or (iii) are caused by or arise out of the services provided by the architects, engineers and other agents (other than ASM Global) retained by the City in connection with Capital Improvements or Capital Equipment purchases at the Facility. This indemnification obligation shall survive the termination of this Agreement.

(b) The City shall indemnify, defend and hold harmless ASM Global, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the City of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the commencement of the Management Term hereunder the Facility has not been operated, or the Facility and its premises are not or have not been, in compliance with all Laws, including, but not limited to, the ADA, (iii) the fact that prior to, as of, or after the commencement of the Management Term hereunder there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any “response,” “removal” or “remedial action” (as such terms are defined under CERCLA), (iv) any structural defect with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the Management Term hereunder, or (v) any non-compliance with any Pre-Existing Agreement on or prior to the commencement of the Management Term, or (vi) any act or omission carried out by ASM Global at or pursuant to the direction or instruction of the City, its agents or employees, or the City’s failure to provide sufficient funding; provided, however, that the foregoing indemnification under clauses (i) and (ii) above shall not extend to Losses to the extent such Losses arise from any default or breach by ASM Global of its obligations specified herein.

(c) The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that except for indemnification based upon Section 8.1(b) (ii), (iii), (iv), (v) or (vi) above, a claim for indemnification pursuant to Section 8.1 shall be valid only if the party entitled to such indemnification provides written notice thereof to the other party prior to the longer of either the applicable Statute of Limitations period for such claim or a period of three (3) years following the date of termination of this Agreement.

(d) The terms of all insurance referred to in Section 8, including without limitation the policies of any independent contractors retained by the City or hired by ASM Global, shall preclude subrogation claims against ASM Global, its partners, the City and their respective officers, directors, employees and agents, but only to the extent covered by insurance.

(e) Tort Liability Limit. The City’s liability, if any, shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Chapter 466.

(f) The foregoing indemnification rights shall be the exclusive remedies of each party hereto (other than any right to terminate this Agreement pursuant to Section 12) arising from any breach of, default under or performance pursuant to this Agreement.

(g) IN NO EVENT SHALL EITHER PARTY BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), WHETHER BASED UPON BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT TORT LIABILITY OR OTHERWISE, AND EACH PARTY'S LIABILITY FOR DAMAGES OR LOSSES HEREUNDER SHALL BE STRICTLY LIMITED TO DIRECT DAMAGES THAT ARE ACTUALLY INCURRED BY THE OTHER PARTY.

8.2 Liability Insurance.

(a) ASM Global shall secure prior to the commencement of the Management Term hereunder and shall keep in force at all times during the term of this Agreement, commercial liability insurance, including public liability and property damage, covering premises liability, and ASM Global operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations. ASM Global shall also maintain Umbrella liability insurance with a limit of Five Million Dollars (\$5,000,000).

(b) ASM Global shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by ASM Global officers, agents and employees in connection with the Facility, whether owned by ASM Global, the City, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) Commencing with the Management Term and continuing thereafter during the term hereof, ASM Global shall also maintain:

(i) professional liability insurance with coverage of at least One Million Dollars \$1,000,000.00) for claims of negligent errors, acts or omissions by ASM Global; and

(ii) employment practices liability insurance with coverage of at least One Million Dollars \$1,000,000.00) for claims relating to the employment practices of ASM Global at the Facility pertaining to its employees.

(iii) Cyber Liability Insurance in an amount two million dollars (\$2,000,000) per claim covering actual or alleged acts, errors or omissions committed by the Operator, its agents or employees.

(d) ASM Global shall be the named insured under all such insurance. The City shall be an additional insured under the insurance described in Sections 8.2(a) and (b), as its interests may appear, and such insurance in Sections 8.2(a) and (b) shall contain a provision covering the parties' indemnification liabilities to each other.

(e) Certificates evidencing the existence of the above insurance shall be delivered to the City Manager prior to the commencement of the Management Term. Notwithstanding the provisions of this Section 8.2, the parties hereto acknowledge that the above insurance may contain exclusions from coverage which are reasonable and customary for insurance of such type.

(f) With respect to insurance procured by it, ASM Global shall deliver to the City Manager satisfactory evidence of such renewal of such insurance within at least twenty (20) days after such insurance's expiration date except for any insurance expiring on the termination date of this Agreement or thereafter. Certificates of Insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage limits. The notice will be sent to the City, via certified mail.

(g) Except as provided in Section 8.5, all insurance procured by ASM Global in accordance with the requirements of this Agreement shall be primary over any insurance carried by the City and not require contribution by the City.

(h) The City and ASM Global representatives shall meet as needed and no less than annually to review and evaluate the insurance coverages and other matters in order to maintain compliance with laws, rules and other agreements governing the Facility and its operations, and to allow for amendment of insurance requirements as well as agreement terms generally to maintain the economic feasibility of and for each party's performance under this Agreement.

8.3 Workers Compensation Insurance.

ASM Global shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the Minnesota State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of Minnesota, insuring its employees at the Facility in amounts equal to or greater than required under law.

8.4 Fidelity Insurance.

ASM Global shall maintain during the term of this Agreement Fidelity Insurance covering all of ASM Global's personnel under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss in connection with this Agreement, to reimburse the City for losses experienced due to the dishonest acts of ASM Global's employees. City shall be both a Loss Payee (as its interests may appear) and as an additional insured under such policy.

8.5 Certain Other Insurance.

If any of the Pre-Existing Agreements consist of agreements with independent contractors to provide services in respect of the Facility, the City shall use its best efforts to cause such contractors to name ASM Global as an additional insured under any insurance maintained by such contractors pursuant to the terms of such Pre-Existing Agreements and in such event to deliver to ASM Global promptly after request therefor a certificate of such insurance evidencing the existence thereof. In addition, if ASM Global enters into any

agreements during the term of this Agreement with any independent contractors for the provision of services hereunder, ASM Global shall have the right to require such contractors to carry coverage types and limits as recommended by the City and to name ASM Global as an additional insured under any insurance required by ASM Global thereunder.

9. Ownership of Assets.

9.1 Ownership.

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility shall remain with the City. Ownership of and title to all intellectual property rights of whatsoever value, held in the City's name shall remain in the name of the City. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or City funds shall remain with the City, but such assets may be utilized and consumed by ASM Global in the performance of services under this Agreement. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and Software owned by ASM Global shall remain with ASM Global. ASM Global shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the City for the use of the Facility, unless written consent is granted by the City. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by ASM Global with City funds for use at and for the Facility shall vest in the City automatically and immediately upon purchase or acquisition. The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned other than in the ordinary course of business of the Facility without the prior approval of the City. City shall share all the rights, title and interest in all of those intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Work and Documents created and paid for under and in the performance of this Agreement. City shall be provided a copy of such Works and Documents created under this Agreement.

9.2 City Obligations.

The City shall repair and maintain the Facility in such order and condition as necessary to avoid any limitation on the normal operation of the Facility or any interruption or interference with the operation of the Facility or safety issue in connection with the operation of the Facility, and in compliance with all present and future laws, statutes, ordinances, orders, judgments, regulations, administrative or judicial determinations, even if unforeseen or extraordinary, of every Governmental or quasi-Governmental Authority, court or agency having jurisdiction over the Facility now or hereafter enacted or in effect (including, but not limited to, laws relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Facility, at its sole cost and expense. The City shall be responsible for funding and making all Capital Expenditures and Capital Improvements. No expenditures made by the City pursuant to this Section shall be deducted as an Operating Expense or otherwise deducted in determining Net Operating Profit or Event Income.

10. Assignment.

10.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto. Notwithstanding the foregoing, ASM Global may assign all or any part of its rights hereunder to an Affiliate, provided that (i) such Affiliate possesses substantially the same degree of expertise and quality of personnel as originally provided under this Agreement, and (ii) such assignment shall be at no increased cost to the City. For sake of clarity, the parties acknowledge that the foregoing does not preclude the assignment by ASM Global of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for ASM Global's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover ASM Global's rights to manage, promote or operate the Facility hereunder.

10.2 ASM Global Transactions with Affiliates.

In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and services for the Facility, ASM Global shall have the right, but not the obligation, to purchase and/or procure from, or otherwise transact business with, an Affiliate of ASM Global on commercially reasonable terms.

11. Laws and Permits.

11.1 Permits, Licenses, Taxes and Liens.

ASM Global shall use reasonable efforts to procure any permits and licenses required for the business to be conducted by it hereunder. The City shall cooperate with ASM Global in applying for such permits and licenses. ASM Global shall deliver copies of all such permits and licenses to the City Manager. ASM Global shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. ASM Global shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at ASM Global's direction and the City has supplied funds for the payment of charges therefor in accordance with this Agreement.

11.2 Governmental Compliance.

The City shall have the obligation to provide such funding as necessary for ASM Global, its officers, agents and employees to comply with Laws applicable to ASM Global's management of the Facility hereunder, and to the extent of such funding, ASM Global, its officers, agents and employees shall comply with Laws applicable to ASM Global's management of the Facility hereunder. Without limiting the foregoing, with respect to the ADA,

ASM Global will comply with Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require ASM Global to undertake any of the foregoing compliance activity, nor shall ASM Global have any liability under this Agreement therefor, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the City provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof, or (b) any Pre-Existing Agreement fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. Furthermore, ASM Global shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facility to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facility.

11.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, ASM Global shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any Person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability, or other classification protected by local, state or federal law. ASM Global shall incorporate the foregoing requirements of this section in all of its subcontracts for work under this Agreement, and will require all of its subcontractors for such work in turn to incorporate the same requirements in all of their subcontracts for such work. ASM Global further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes Section 363.01, et. seq., Title VI of the Civil Rights Act of 1964, and the ADA, as the same may be amended from time to time.

11.4 Prompt Payment to Subcontractors.

With respect to subcontracts for services provided under this Agreement, ASM Global shall comply with Minnesota Statutes Section 471.425, requiring prompt payment of such subcontractors. A subcontractor who prevails in a civil action brought under §471.425 against ASM Global, and is awarded costs and disbursements, including attorney's fees, incurred in bringing the action, such costs and disbursements shall not be considered reimbursable operating expenses and shall be the sole financial responsibility of ASM Global.

12. Termination.

12.1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of

money) is not reasonably susceptible to being cured within the sixty (60) day period, the defaulting party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

12.2 Termination Other than Upon Default.

(a) In the event that the actual Net Operating Loss for both of the first and second full Fiscal Years fails to meet or exceed the applicable benchmark for such Fiscal Year plus the greater of (i) 25% of the benchmark for such Fiscal Year, or (ii) \$50,000, the City shall have the right, within 60 days after completion of the second full Fiscal Year, to initiate the mediation procedure described in Exhibit A, section (g). For purposes of this Section 12.2, the benchmarks shall be as follows: first full Fiscal Year (2023): NOL of (\$190,349), second full fiscal year (2024): NOL of (\$6,735). In the event that the mediation does not result in an understanding between the parties, the City shall then have the right within 30 days after the close of the mediation, in its sole discretion without penalty or cause, to elect that the Management Term shall expire 30 days after the date of such election.

(b) Either party shall have the right to terminate this Agreement under the circumstances specified in Exhibit "A", paragraph (d).

12.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or committed for prior to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the City shall pay all such Operating Expenses and shall indemnify and hold ASM Global harmless therefrom, (ii) the City shall promptly pay ASM Global all fees earned to the date of expiration or termination (the fixed and incentive fees described in Section 4 hereof being subject to proration), provided that the City shall be entitled to offset against such unpaid fees any damages (actual, not consequential) directly incurred by the City in remedying any default by ASM Global hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility), and (iii) without any further action on the part of ASM Global or the City, the City shall, or shall endeavor to cause another management company retained by it to, accept the assignment of ASM Global's rights, and assume and perform all of ASM Global's obligations, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facility which have been executed by ASM Global hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by ASM Global in violation of any of the restrictions applicable to ASM Global's right to execute such licenses, agreements, commitments or contracts contained in this Agreement and (B) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, ASM Global will use commercially reasonable efforts to obtain such consent and the City will cooperate in any reasonable manner with ASM Global to obtain such consent).. Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties

hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 7.2, 7.3, 8.1 and 12.4; provided, however, that if such termination is the result of a willful default, the non-defaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default.

12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), ASM Global shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the City in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the City. All reports, records, including financial records, and documents maintained by ASM Global at the Facility relating to this Agreement other than materials containing ASM Global's proprietary information shall be immediately surrendered to the City by ASM Global upon termination.

13. **Miscellaneous.**

13.1 Use of Facility at Direction of City.

(a) At the direction of the City Manager, or by agreement with the City or its Facility Appointed Governance Team, upon reasonable advance notice and subject to availability, ASM Global shall provide use of the Facility or any part thereof to civic and nonprofit organizations located in the locale of the Facility at reduced rates. All event-related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Facility by such organizations, if not reimbursed to ASM Global by the organization using the Facility, shall be reimbursed by the City to ASM Global for deposit into the operating accounts specified in Section 5.6.

(b) The City shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee (or at a reduced fee), except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City and deposited into the operating accounts specified in Section 5.6.

(c) The City shall not schedule use of the Facility pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by ASM Global, including scheduled hockey games pursuant to the lease with Bemidji State University (BSU), and shall in all instances be subordinate thereto in terms of priority of use of the Facility. In all instances when the Facility, or part thereof, is to be used at the City's request or by the City pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues for the purpose of calculating ASM Global's incentive fee pursuant to Section 4.2 above.

13.2 Cooperation/Mediation.

Any dispute arising under or in connection with this Agreement will be resolved by the parties in accordance with the procedures set forth on Exhibit "A" attached hereto.

13.3 No Partnership or Joint Venture:

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the City and ASM Global. None of the officers, agents or employees of ASM Global shall be or be deemed to be employees of the City for any purpose whatsoever.

13.4 Entire Agreement and Written Amendments.

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written between the parties hereto, will be deemed to bind the parties hereto with respect to the subject matter hereof.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

13.5 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, epidemics, pandemics, executive orders from the Governor of the State of Minnesota or the President of the United States, landslides, earthquakes, floods, storms, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment, terrorist acts, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to ASM Global shall be claimed by the City or charged against ASM Global, nor shall ASM Global be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business

or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

(d) In the event of damage to or destruction of the Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility materially untenable, notwithstanding the City's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the City at the request of ASM Global of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other. In the event that the Facility becomes either wholly or partially untenable as a result of any of the foregoing, appropriate adjustments to the entire compensation shall be made.

(e) ASM Global may suspend performance required under this Agreement, without any further liability, in the event of any act of God or other occurrence, which act or occurrence is of such effect and duration as to effectively curtail the use of the Facility so as effect a substantial reduction in the need for the services provided by ASM Global for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, ASM Global shall have the right to suspend performance retroactively effective as of the date of the use of the Facility was effectively curtailed. "Substantial reduction in the need for these services provided by ASM Global" shall mean such a reduction as shall make the provision of any services by ASM Global economically impractical. No payments of the management fees otherwise due and payable to ASM Global shall be made by the City during the period of suspension. In lieu thereof, the City and ASM Global may agree to a reduced management fee payment for the period of reduction in services required.

(f) In the event of a material increase in any Operating Expense not reasonably within the control of either party (including, by way of example and not by limitation, an increase in the cost of insurance or utilities) caused by an event of Force Majeure, the parties shall mutually negotiate and agree upon in good faith an adjustment to the Base Management Fee and/or incentive fee formula set forth in Section 4.2 above to take into account such increased cost.

13.6 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any Person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other Person.

13.7 Notices.

Any notice, consent or other communication given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the City:

City of Bemidji Attn: City Manager
317 4th Street NW
Bemidji, MN 56601

To ASM Global:

ASM Global
800 West Olympic Blvd., 3rd Floor
Los Angeles, CA 90015
Attn: President

With a copy (which shall not constitute notice) to:

ASM Global
300 Conshohocken State Rd., Suite 770
West Conshohocken, PA 19428
Attn: General Counsel

13.8 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

13.9 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.10 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.11 Non-Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

13.12 Consent.

Wherever the consent or approval of a party is required under the terms of this Agreement, the party whose consent or approval is required shall not unreasonably withhold or delay such consent or approval

13.13 Certain Representations, Warranties, and Responsibilities.

(a) The City represents and warrants to ASM Global the following: (i) all required approvals have been obtained, and the City has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) ASM Global represents and warrants to the City the following: (i) all required approvals have been obtained, and ASM Global has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by ASM Global and constitutes a valid and binding obligation of ASM Global, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(c) ASM Global further agrees that by entering into this Agreement it agrees to enforce and abide by the applicable duties, obligations and responsibilities of the City under: 1) the City's lease agreement with BSU; 2) the City's existing Ground Lease with the BEDA; 3) the City's

naming rights Agreement with Sanford Health; and, 4) the City's Grant Agreements with the State of Minnesota, and its performance under this Agreement will not cause the City to be in default of any of the terms and conditions of those Agreements.

13.14 Venue and Governing Law.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Minnesota, without giving effect to otherwise applicable principles of conflicts of law. Venue of any action or proceeding arising out of or related to this Agreement lies in Beltrami County, Minnesota, exclusively, where the Agreement was executed and will be performed.

13.15 Integration.

This Agreement and all appendices and exhibits hereto embody the entire Agreement of the parties relating to the services to be provided hereunder. Exhibits hereby integrated hereto are:

Exhibit A: Cooperation/Mediation

Exhibit B: State Grant Agreement

Exhibit C: Ground Lease

Exhibit D: Anchor Tenant Lease

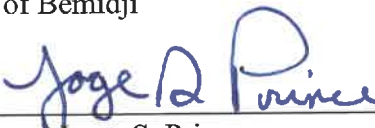
Exhibit E: Sanford Naming Rights Agreement

With the exception of Exhibits B, C D and E, if the terms of this Agreement and Exhibits A are inconsistent, the terms of the Agreement shall control.

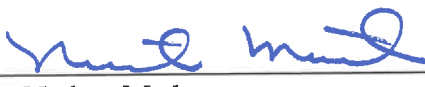
[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

City of Bemidji

By: 
Name: George S. Prince
Title: Mayor

City of Bemidji

By: 
Name: Nathan Mathews
Title: City Manager

ASM Global Arena Management, LLC

By: _____
Name: Mark Rozells
Title: CFO

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City of Bemidji

By: _____
Name: Jorge S. Prince
Title: Mayor

City of Bemidji

By: _____
Name: Nathan Mathews
Title: City Manager

ASM Global Arena Management, LLC

By:  _____
Name: Bruce Hanson
Title: Secretary

EXHIBIT “A”
COOPERATION/MEDIATION

(a) The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred to the parties’ respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to paragraphs (b) and (c) below.

(b) If any dispute between the parties has not been resolved pursuant to paragraph (a) above, the parties will endeavor to settle the dispute by participating in a mediation with a mutually agreed upon independent mediator who has no unwaived conflict of interest with respect to either Party. Each party shall bear their own cost of mediation; provided however, the cost charged by any independent third-party mediator will be borne equally by the parties. In the mediation, each Party may be represented by their own counsel.

(c) The parties agree that any mediation proceeding (as well as any discussion pursuant to paragraph (a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

(d) The parties agree that this mediation procedure will be obligatory and participation therein legally binding upon each of them.

(e) The parties’ efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties, or (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefor in the event such proceeding continues for more than forty-five (45) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in paragraph (b).

(f) If any dispute has not been resolved pursuant to the foregoing, either party may terminate this Agreement as provided in Section 12 hereof and each is free to file suit in a court of competent jurisdiction to enforce its rights hereunder.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the mediation proceedings specified in this Exhibit “A” are pending. The parties will take such action, if any, required to effectuate such tolling. Each party shall be required to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances.

(g) Notwithstanding the foregoing, with respect to any decision to terminate or cause the early expiration of the agreement under Sections 5.2(c), 5.3(b), 5.5 or 12.2, the parties shall engage in the following mediation procedure: the parties shall designate a representative to negotiate a resolution to the issue giving rise to a potential right to terminate or cause expiry, and such representatives shall negotiate for a period of not less than 14 days in an attempt to mutually resolve the issue. In the event that the issue has not been resolved through such negotiation with 14 days or such longer time as may be agreed by the representatives, the parties may proceed with their potential right to terminate or cause expiry under the foregoing provisions.

EXHIBIT B
STATE GRANT AGREEMENT

58 Pages

EXHIBIT C
GROUND LEASE

26 Pages

EXHIBIT D

ANCHOR TENANT LEASE

87 Pages

EXHIBIT E

SANFORD NAMING RIGHTS AGREEMENT

15 Pages

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SANFORD/BEMIDJI AGREEMENT

THIS AGREEMENT is made this 6th day of December, 2010, by and between the CITY OF BEMIDJI, MINNESOTA ("Bemidji") and SANFORD (collectively SANFORD, SANFORD NORTH, SANFORD MEDICAL CENTER FARGO, SANFORD CLINIC NORTH, and all of their subsidiaries and affiliates, "Sanford").

WHEREAS, Bemidji has recently completed construction of the Bemidji Regional Event Center, a multi-purpose facility consisting of approximately 185,000 square feet located at 1111 Event Center Drive and utilized primarily for BSU Hockey, conventions, conferences and arena events (the "Event Center"); and

WHEREAS, Bemidji is seeking to raise third-party funds to assist in the financing and on-going operational support of the Events Center; and

WHEREAS, Bemidji believes contributions to the Event Center can be solicited by granting donor recognition in the form of exclusive Event Center naming rights along with certain other recognitions; and

WHEREAS, Sanford and Bemidji agree that adequate funding and support for the Event Center would further the health, fitness and economic development infrastructure for the betterment of the Bemidji community; and

WHEREAS, Sanford desires to assist the Bemidji community in its health and fitness endeavors and economic development, and agrees to contribute to Bemidji the sum of \$2 million to help finance the Event Center and its ongoing operational support; and

WHEREAS, the Event Center is owned by Bemidji. The property where the Event Center is located, is owned by the Bemidji Economic Development Association ("BEDA"). Bemidji leases the land from BEDA for the Event Center. Bemidji has obtained a State grant in the form of bond financing in order to assist with the funding of the Event Center; and

WHEREAS, in consideration for Sanford's \$2 million contribution, Bemidji desires to provide Sanford with certain exclusive recognition, including the naming of the Event Center as "The Sanford Center" and other exclusive Signage Rights and Sponsorship rights as more particularly described herein.

NOW, THEREFORE, Bemidji and Sanford, in consideration of the mutual promises and covenants set forth herein, do hereby agree as follows:

1. Payments. Subject to the terms and conditions hereof, Sanford agrees to deliver certain cash Installment Payments to Bemidji in accordance with the following.

- A. First Installment Payment. Subject to the terms and conditions of this Agreement, Sanford hereby agrees to deliver a cash payment (the "First Installment Payment") of Two Hundred Thousand and no/100 Dollars (\$200,000.00) to Bemidji on or about November 1, 2010. All obligations of Sanford, including without limitation, the Second through Tenth Installment Payments (defined below), are subject to the condition precedent that Sanford shall have received, on or prior to the delivery of the First Installment Payment, all of the following (unless waived in writing by Sanford), each in form and substance satisfactory to Sanford:
- (i) Resolutions. Resolutions of the Board of Trustees of Sanford approving the terms and conditions of this Agreement;
 - (ii) Approval of Bemidji City Council. Authorization in writing of the approval of this Agreement by the Bemidji City Council or any other governmental entity required by law or policy to approve the terms and conditions of this Agreement;
 - (iii) Opinion of Bemidji's Counsel. A favorable opinion of legal counsel to Bemidji that all necessary approvals, including without limitation the Minnesota Department of Employment and Economic Development (DEED) and the Bemidji Economic Development Authority (BEDA), have been received by Bemidji; and
 - (iv) Lien/Title Search. Sanford shall have received the results of a Uniform Commercial Code lien search and a title search of the Event Center property showing all liens on file against Bemidji or encumbering the Event Center property, with lien release documentation satisfactory to Sanford with respect to those secured parties with liens or security interests impairing any rights granted to Sanford hereunder.
- B. Second through Tenth Installment Payments. Subject to the terms and conditions of this Agreement, Sanford hereby agrees to deliver a cash payment (the "Second Installment Payment") of Two Hundred Thousand and no/100 Dollars (\$200,000.00) to Bemidji on or about November 1, 2011 and eight subsequent Installment Payments each in the amount of Two Hundred Thousand and no/100 Dollars (\$200,000.00) to be made on each of the Third through Tenth anniversary dates of the Effective Date (each, an "Installment"). The obligation of Sanford to make the Second through Tenth Installment Payments is subject to the conditions precedent that:
- (i) Compliance with Agreement. Bemidji is not in material breach of any term or condition of this Agreement;

- (ii) Formal Evaluation. The parties agree to engage in a formal evaluation of their relationship at least annually, such evaluation to be attended by the Bemidji City Manager, Sanford's CEO and Sanford's Vice President of National Orthopedic and Sports Medicine Practice and/or their designees or invitees; and,
- (iii) Board Approval. Resolutions of the Board of Trustees of Sanford confirming that the conditions set forth in Section 1(B)(i) and (ii) have occurred.

- C. Annual Statements from Bemidji. Bemidji will send out a statement annually to Sanford thirty (30) days prior to the payment dates set forth above. All bills will be addressed as follows:

Sanford
Public Affairs Corporate Office
801 Broadway North
PO Box 2010
Fargo, ND 58122-0404

- 2. Exclusive Recognition. In recognition of Sanford's contributions to the funding of the Event Center, Bemidji hereby grants to Sanford, the following exclusive recognitions:

- A. Exclusive Naming Recognition. Bemidji hereby covenants and agrees that Sanford shall have naming rights on the exterior of the Event Center and Bemidji irrevocably transfers, sets over and assigns to Sanford, exclusive naming recognition with respect to the exterior of the Event Center, including the exterior entrance for the Bemidji State University ("BSU") athletics (the "Naming Recognition"). The Event Center, shall be referred to as: "The Sanford Center". All announced, displayed or broadcast references to the Event Center or departments or facilities therein shall refer to the Event Center using The Sanford Center name. Sanford acknowledges and agrees that certain naming recognition with respect to other interior areas within the Event Center may be provided naming recognition by Bemidji to others; provided, however, that Bemidji will be in compliance with Sanford's recognition as the exclusive health care presence in the Event Center as provided in Section 2.C herein. The other areas where Bemidji may grant secondary naming recognition shall include all other areas except the exterior of the Event Center and the exterior entrance for BSU athletics. Such named areas shall always be referenced as a component of the Sanford Center using The Sanford Center name, e.g. XZY Corporation court at The Sanford Center. Sanford reserves the right to subsequently change the name of the Event Center provided that (i) Sanford first consults with Bemidji to ensure the new name does not violate any naming restrictions contained in any Event Center agreements in place prior to the Effective Date of this Agreement; and (ii) Sanford shall be responsible for costs associated with

changes of Event Center signage and logos that result from any such name change by Sanford. The parties acknowledge that consumables that are impacted by any name change by Sanford will be made as new consumables are ordered and the costs associated therewith will be the responsibility of the party responsible to pay for the consumables.

B. Exclusive Signage Recognition. Bemidji hereby covenants and agrees that Sanford shall have, and Bemidji irrevocably transfers, sets over and assigns to Sanford, exclusive signage recognition (the "Signage Recognition") with respect to the Event Center, as such Signage Recognition is described below.

(i) Bemidji agrees that Sanford shall be allocated exclusive signage rights at the main entrance of the Event Center and the exterior entrance for BSU athletics. Sanford shall be responsible for the cost of construction and installation of such signage; provided, however, Bemidji agrees to be responsible for fifty percent (50%) of the cost for the exterior signage at the main entrance, up to a maximum of Twenty-five Thousand Dollars (\$25,000). Signage, or any changes to the signage, at the main entrance of the Event Center and the exterior entrance for BSU athletics's, shall require prior approval by Bemidji, which approval shall not be unreasonably withheld. Any subsequent changes to the signage at the entrance of the Event Center or the BSU athletic entrance shall be at Sanford's cost. Bemidji agrees to reasonably maintain backlighting, electrical service, etc. in connection with continued operation or display of such signage. In addition, Bemidji agrees to perform maintenance of such signage, when reasonably necessary, in the event of wear and tear; provided, however, Sanford shall reimburse Bemidji for such maintenance in the event of ordinary wear and tear (unless such wear and tear is caused by the gross negligence or intentional misconduct of Bemidji).

C. Exclusive With Respect to Advertising of Health Care Products/Services. Bemidji hereby agrees, covenants and promises during the term or any renewal or extension of any term of this Agreement that it shall not, without the prior written consent of Sanford, which consent may be granted or withheld in the exercise of Sanford's sole discretion, directly or indirectly sell or lease, or solicit or market to sell or lease, or permit any naming or other advertising in any medium in, on or from the Event Center or any Event Center's marquee signage, to any person or entity substantially engaged in the provision of health care services or products, with the exception of temporary signage of and for exhibitors and vendors at conventions and trade shows being held at the Event Center. For purposes hereof "temporary signage" shall mean non-permanent signage installed by exhibitors and vendors in direct connection with their participation in an active trade show or convention, and in no event shall such temporary

signage be installed and visible for a period of time exceeding seven (7) days. Notwithstanding the foregoing, Bemidji has disclosed, and Sanford acknowledges, that specified entities disclosed by Bemidji in a separate letter to Sanford are presently advertising at or on the Event Center and shall be permitted to continue to advertise for the respective periods set forth in the disclosure letter to Sanford. Said disclosure letter is incorporated herein by reference.

For the purposes of this Agreement, "health care services and products" shall include: businesses and/or entities that operate a hospital and/or physician clinic, including without limitation a clinic such as a "walkup", "rapid care", or "urgent care" clinic, which provide health care services and/or for the provision of dialysis, physical therapy, chiropractic care, occupational therapy, occupational health, oral surgery, audiology, psychiatry, dietetics, optometry, ophthalmology, laser surgery, plastic surgery, maxial facial surgery services and/or for the sale of health care accessories, the sale or operation of health care plans and/or as a pharmacy. Notwithstanding the foregoing, traditional dentistry, massage, and orthodontics are not restricted. Bemidji acknowledges that at the time of the execution of this agreement, no agreements or informal arrangements exist that would conflict with Sanford's exclusive advertising rights as set forth in this paragraph, except as disclosed or exempted pursuant to this Agreement.

In addition, Bemidji covenants and agrees to include said exclusive health care advertising rights requirement in each of its own facility use agreements or leases and in any agreement or lease it may enter into with owners or operators of adjacent facilities to the extent such facilities may reasonably be considered part of, or affiliated with the Event Center (meaning owned by the BEDA or the City of Bemidji). For purposes of the requirement that Bemidji include the exclusive health care advertising rights requirement in each of its own facility use agreements or leases, a hotel which will be connected to the Event Center is not affiliated with Bemidji. Sanford may, upon the written request of Bemidji and in the exercise of Sanford's sole discretion, waive the foregoing exclusive health care advertising rights with respect to lessees/users of the Sanford Event Center on an event-specific basis, unless said lessees/users are otherwise exempt under the terms of this Agreement.

- D. Termination. At the end of the term of this Agreement, Sanford shall transfer and assign to Bemidji all of its right, title and interest in and to the foregoing interior Signage Rights referenced under paragraph 2 of this Agreement, without recourse and without representation or warranty.

3. Sponsorship Recognition and Obligations. Bemidji hereby ensures access to Sanford and reasonably facilitates for the period beginning on the 1st day of November, 2010 and ending on the 31st of July, 2021, the following:

- A. Promotion of Future Events. Bemidji will work cooperatively with Sanford on promoting future events in the Bemidji market. Support may include sponsorship, cross-promotion, financial assistance, etc.
- B. Skybox/Suite Usage. Use of Event Center skybox/suite for each BSU hockey game and other events for which Sanford has purchased tickets.
- C. Designated Contacts. Operational contact persons to administer this agreement including operation oversight and all contractual responsibilities shall be the Bemidji City Manager and Sanford's Vice President of National Orthopedic and Sports Medicine Practice.
- D. Formal Evaluation. The parties agree to engage in a formal evaluation of their relationship at least annually, such evaluation to be attended by the Bemidji City Manager, Sanford's CEO, Vice President of National Orthopedic and Sports Medicine Practice and/or their designees or invitees.
- E. Concession Advertising. Bemidji will use its best efforts to have Sanford's logo featured on drinking cups and other concession media along with other sponsors. However, Sanford shall be the exclusive health care provider/service on any concession media.
- F. Other Advertising. The parties agree that Sanford shall have exclusive health care or health service logo/advertising rights including but not limited to:
 - (i) Staff uniforms;
 - (ii) All external correspondence (i.e. Stationery, Letterhead, Press Releases, Email blasts);
 - (iii) Bemidji will use its best efforts to have all future event tickets conform to the exclusive rights provided to Sanford under this Agreement (however Sanford acknowledges that BSU season tickets for 2010-2011 have already been printed);
 - (iv) Event promotional materials (posters, flyers, radio/tv advertisements);
 - (v) Facility website;
 - (vi) All National Trade Publications (i.e. Pollstar, Venues Today, etc.);
 - (vii) Potential promotional giveaway items (i.e. mugs, pens, etc.); and

(viii) Bemidji will use its best efforts to assure that over the air broadcasts for BSU Men's Hockey on Lakeland Public TV and the Minnesota Public Television Network ("Live from The Sanford Center").

G. Sanford Logo. The parties agree that Sanford will have sole discretion of the branding of the Sanford logo to be used in the Event Center. However, Bemidji will be required to provide consent to the form and use of the logo in the Event Center which approval shall not be unreasonably withheld.

H. Use of Logo. The Sanford logo shall be displayed in numerous area around the Event Center including the marque, concessions, internal advertising, LED scoreboard, the LED ring immediately below the scoreboard, and all other locations as mutually agreed to between the parties.

4. Material Breach, Ceasing of Use, Impairment of Rights.

A. Default by Bemidji. Upon (a) a material impairment of any exclusive recognition-related rights granted by Bemidji hereunder which is not cured by Bemidji within thirty (30) days' written notice thereof, (b) a material breach of any other of Bemidji's obligations hereunder, which breach is not cured by Bemidji within thirty (30) days' written notice thereof, or (c) the ceasing of usage of the Event Center entirely, a permanent and material decrease in usage of the Event Center for events (unless such decrease is caused by elements outside of Bemidji's reasonable control), or the relocation to another venue of significant spectator activities to be held in the Event Center, Sanford shall have the right to terminate any future Installments set forth in this Agreement which become due and payable, including any past due payments. Upon any condemnation, abandonment, action or omission to act of Bemidji which results in a temporary material decrease in the usage of the Event Center, ("Impairment"), Bemidji shall promptly expand the term of this agreement for a period reasonably equivalent to the duration of such impairment. Upon any condemnation, abandonment, action or omission to act of Bemidji which results in a temporary material decrease in the useage of the Event Center, Sanford shall have the right to delay future payments that become due until the date of the first event held in the fully repaired or rebuilt Event Center. If all payments have been made by Sanford and a default by Bemidji as defined in this paragraph has occurred and has not been remedied within the timeline set forth in this paragraph, Sanford shall have the right to elect any and all remedies available under the law, equitable or legal, including but not limited to specific performance of this Agreement.

B. Default by Sanford. Upon Sanford's default in making any Installment due hereunder within thirty (30) days of its receipt of written notice that such Installment is delinquent (except to the extent such payment by Sanford is disputed in good faith hereunder or payments are delayed as a result of a

condemnation, abandonment, action or omission to act of Bemidji as set forth under paragraph 3 A. above), Bemidji may declare this Agreement cancelled, forfeited and determined by giving to Sanford thirty (30) days' notice in writing of its intention to cancel and determine this Agreement and/or Bemidji shall have the right to elect any and all remedies available under the law, equitable or legal, including but limited to specific performance of this Agreement.

5. Term; Right of Refusal. The exclusive naming, advertising and sponsorship rights of this Agreement shall commence on November 1, 2010 and continue through July 31, 2011. Sanford shall have the right to extend this agreement with the same identical rights and obligations of the parties for an additional five (5) year term by providing Bemidji at least twelve (12) months advance notice of its right to extend the Agreement. For the avoidance of doubt, in the event Sanford exercises its right to extend this Agreement for an additional five (5) year period, Sanford shall continue to make its annual Two Hundred Thousand and no/100 Dollars (\$200,000.00) Installment payment on each anniversary of the Effective Date, with the first renewal term Installment being due and payable on or about November 1, 2020 and the fifth and final renewal term Installment being due and payable on or about November 1, 2024. In addition, at least six (6) months prior to the end of the term or end of any term of extension of this Agreement, the parties shall in good faith commence discussions as to terms and conditions of a proposed extension. Upon expiration of the term, or any renewal term (if exercised), of this Agreement, (a) the exclusive signage and advertising rights granted to Sanford hereunder shall cease and terminate at the end of the term or renewal or extension of any term hereof and (b) Sanford shall, for an additional five (5) year period, have a right of first refusal with respect to any of the exclusive advertising or signage rights granted to Sanford hereunder. If at any time during said five (5) year period Bemidji receives a bona fide offer from a third party for the grant, sale, transfer or other disposition of any such exclusive advertising or signage rights, Bemidji shall give Sanford a first right of refusal with respect to such offer. Upon receipt of written notice and a copy of said offer from Bemidji that Bemidji has received an offer it is willing to accept, Sanford shall, within thirty (30) days after receipt of said notice, give written notice to Bemidji as to whether Sanford has elected to exercise its right to accept the same terms and conditions as contained in said offer. In the event Sanford does not exercise the right within said thirty day period, Sanford's rights of refusal under this Section shall terminate. The foregoing rights of first refusal shall survive termination of this Agreement for the period described above.

6. Operation of Event Center by Bemidji. Bemidji agrees to operate the Event Center in a manner which does not reflect adversely upon Sanford and its affiliation with Bemidji hereunder.

7. No Joint Venture. Nothing herein contained shall be construed to place the parties in a relationship of partners or joint venturers and neither party shall have the power to obligate or bind the other in any manner whatsoever.

8. Indemnity.

- A. To the extent permitted by the laws of the State of Minnesota, Bemidji shall save and hold harmless Sanford from any liability for damages and litigation costs, including attorney's fees arising from Bemidji's activity under this agreement or operation of the Event Center, except for damages due to the acts or omissions of Sanford, its sub-contractors, officers, employees or agents. Nothing herein shall preclude Bemidji from asserting against third parties any defenses to liability it may have under Minnesota law.
- B. Except to the extent arising as a result of any act or omission of Sanford, its employees, agents or officers, Sanford shall not be liable for and Bemidji hereby waives, indemnifies and holds Sanford harmless, relating to all claims for damage to person or property sustained by Bemidji or Bemidji's employees and agents, contractors, servants, lessees, assignees, concessionaires customers, licensees or invitees, resulting from the Event Center or Event Center operations; or any equipment, vehicle, appurtenances or apparatus located there being operated, used, repaired or being out of repair; or resulting from any accident or injury in or about the Event Center. Bemidji also waives indemnifies and holds Sanford harmless from any and all claims against Sanford resulting directly or indirectly from any act or negligence of any renter/user of the Event Center except for those claims resulting from the acts or omissions of Sanford.
- C. Bemidji's obligations under Parts A and B of this Section are subject to its liability limits under Minnesota Statutes, Chapter 466, and nothing in this Agreement will be construed to waive such limits.
- D. Sanford agrees to defend and hold harmless Bemidji, its subsidiary and affiliates and their respective officers, directors, agents, attorneys and employees harmless from and against any and all claims, actions, damages, liability and expenses, including attorneys' fees, in connection with any breach or default on the part of Sanford under this Agreement; and from any act or omission of Sanford or any of its agents, contractors, invitees, servants, employees, lessees, assignees, concessionaires, customers and licensees, in or about the Event Center.

9. Representations and Warranties of Bemidji. Bemidji hereby represents and warrants to Sanford the following:

- A. The execution, delivery and performance by Bemidji of this Agreement and the assignment of rights effectuated hereby have been duly authorized by all necessary entity action and do not and will not (i) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent,

approval, registration, declaration, filing or notice as has been disclosed by Bemidji in writing contemporaneously herewith and which has or have been obtained prior to the date hereof; (ii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to Bemidji; and (iii) result in a breach of or constitute a default under any material agreement, lease or instrument to which Bemidji is a party or by which it or its properties may be bound or affected.

- B. No material agreement, lease or instrument to which Bemidji is a party or by which its properties are bound or affected imposes upon the rights granted to Sanford hereunder any express or implied limitations on the exercise of such rights, except as disclosed by Bemidji in writing contemporaneously herewith. In relation to said agreements, leases or instruments, Bemidji and Sanford shall also endeavor to obtain a common letter of consent signed by all parties to said agreements, leases or instruments.
- C. Bemidji owns the Rights associated with the Naming, and upon the assignment of such rights to Sanford hereunder, such Naming Rights shall be free and clear of all claims, liens, security interests or encumbrances whatsoever.
- D. There is no litigation, proceeding or other investigation pending or, to the knowledge of Bemidji, threatened against Bemidji which would prevent consummation of the transaction contemplated by this Agreement.

10. Representations and Warranties of Sanford. Sanford hereby represents and warrants to Bemidji the following:

- A. Sanford is a non-profit corporation duly organized, existing and in good standing under the laws of the State of North Dakota.
- B. The execution, delivery and performance by Sanford of this Agreement has been duly authorized by all necessary corporate action and does not and will not (i) require any consent or approval of Sanford's Board of Trustees to enter into said Agreement; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to Sanford or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which Sanford is a party or by which it or its properties may be bound or affected.

11. Injunctive Relief. The parties acknowledge that breach or nonperformance with respect to certain of the covenants of this Agreement could cause irreparable harm and significant injury which may be difficult to estimate or ascertain. Accordingly, the parties agree that they each shall have, in addition to any other rights or remedies afforded by law, the right to seek immediate injunctive relief or specific performance due to any existing or threatened breach of this Agreement.

12. Risk of Loss. The parties acknowledge and agree that Bemidji will have title to the Event Center (subject to the rights granted to Sanford hereunder) and Bemidji shall bear the risk of damage, loss, theft, or condemnation of any and all portions of, or personal property located at, the Event Center, regardless of cause, and any and all repairs and replacements thereof shall be at the expense of Bemidji. Bemidji shall at all times during the term of this Agreement maintain physical damage insurance insuring against loss or damage to the Event Center in an amount not less than the full replacement value thereof. In the event of material casualty to the Event Center, Bemidji shall promptly repair the Event Center.

13. Insurance. During the term of this Agreement, Bemidji shall maintain, at its sole cost and expense, self insured comprehensive general liability insurance through the League of Minnesota Cities Insurance Trust with liability limits of not less than the limits currently maintained at the time of execution of this Agreement. Said coverage shall also include coverage for workers' compensation insurance (in accordance with Minnesota law) against any liability arising out of injuries to or death of any person or damage to tangible property in any way connected with the ownership or operation of the Event Center. Bemidji shall provide to Sanford a certificate evidencing such coverage, and naming Sanford as an additional insured.

During the term of this Agreement, Sanford shall maintain, at its sole cost and expense, professional liability, comprehensive general liability with minimum limits of \$1,000,000 per claim/\$3,000,000 annual aggregate (subject to applicable self-insured retention/deductibles) against any liability arising out of injuries to or death of any person or damage to tangible property in any way connected with Sanford's use of the Event Center for events as described in this Agreement. Sanford shall provide Bemidji a certificate evidencing such coverage upon request. Sanford shall maintain worker's compensation insurance as required by Minnesota law.

14. Dispute Resolution. In the event of a dispute concerning compliance with this Agreement, the Parties or their authorized representatives shall meet in Bemidji, Minnesota, at a mutually agreed location within seven (7) days of receipt of a written request from any of the Parties to do so, in a good faith effort to resolve such differences prior to instituting any further action.

If the good faith attempts to resolve the dispute referred to in the preceding paragraph are unsuccessful, after thirty (30) days of the initial meeting the Parties shall have the right to pursue any and all remedies in this Agreement or available under law.

15. Assignment. Bemidji may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Sanford, which consent may be granted or withheld in the exercise of Sanford's sole discretion. Sanford may not assign or transfer its rights or

obligations under this Agreement without the prior written consent of Bemidji, which consent may be granted or withheld in the exercise of Bemidji's sole discretion; provided, however, (i) Sanford may, without the necessity of consent, assign or transfer its rights or obligations under this Agreement to any parent, subsidiary or affiliate corporation or entity, any corporation resulting in the consolidation or merger of Sanford into or with any other entity, or any person, firm, entity or corporation acquiring all or substantially all of Sanford's assets. Any assignment or transfer prohibited by this provision will be void. Nothing in this Section will require Bemidji to obtain consent from Sanford in order to convey Bemidji's interest in the Event Center to any other governmental entity, so long as the transferee assumes all rights and obligations of the Bemidji under this Agreement.

16. Notices. Wherever in this Agreement it shall be required or permitted that notice or demand be given or served, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by registered or certified mail, postage prepaid, addressed as follows:

To Sanford:	Sanford Health PO Box 5039 Sioux Falls, SD 57117 Attn: Mike Begeman, Vice President-Public Affairs
To Bemidji:	City of Bemidji 317 4 th Street NW Bemidji, MN 56601 Attn: City Manager

Such addresses may be changed from time to time by serving notices as above provided

17. Miscellaneous.

- A. This Agreement shall be interpreted under and governed by the laws of the State of Minnesota. Any action arising out of or related to this Agreement, whether at law or in equity, shall be instituted in and litigated solely and exclusively in the state or federal courts in Beltrami County, State of Minnesota.
- B. This Agreement constitutes the entire agreement between the parties and supersedes all prior proposals and agreements, both written and oral, and all other written and oral communications between the parties.
- C. This Agreement may not be amended or altered in any manner except in a writing signed by both parties.
- D. No forbearance to exercise any rights or privileges under this Agreement or waiver of any breach of any of its terms shall be construed as a waiver of any such terms, rights, or privileges, but the same shall continue and remain in

full force and effect the same as if no such forbearance or waiver had occurred.

- E. The parties agree that if any part, term, paragraph, or provision of this Agreement is in any manner held to be invalid, illegal, void, or in any manner unenforceable, or to be in conflict with any law, then the validity of the remaining portions or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

SANFORD

Bill Markette
By: Kelby Krabbenhoft Bill Markette
Its: President and CEO of Sanford
Treasurer

CITY OF BEMIDJI, MINNESOTA

John M. Chattin
By: John M. Chattin
Its: City Manager

Tuesday, September 24, 2019

Via Certified Mail, Return Receipt Requested

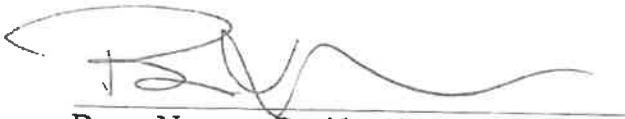
City of Bemidji
317 4th Street NW
Bemidji, MN 56601
Attn: City Manager

Re: SANFORD/BEMIDJI AGREEMENT

Dear Sir or Madam:

Pursuant to Section 5 of the SANFORD/BEMIDJI AGREEMENT dated December 6, 2010 by and between City of Bemidji, MN and Sanford (the "Agreement"), Sanford hereby provides at least twelve (12) months advanced notice of its right to extend the Agreement for an additional five (5) year period. For the avoidance of doubt, Sanford shall continue to make its annual Two Hundred Thousand and no/100 Dollar Installment payment on each anniversary of the effective date with the first renewal term Installment being due on or about November 1, 2020 and the fifth and final renewal term Installment being due and payable on or about November 1, 2024

Sincerely,



Bryan Nermoe, President Sanford Bemidji Medical Center

General Obligation Bond Proceeds

Grant Agreement - Construction Grant
for the
BEMIDJI REGIONAL EVENTS
CENTER
Project

SPAP-08-0005-P-FY08

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General Obligation Bond Proceeds
Grant Agreement - Construction Grant
for the
Bemidji Regional Events Center
Project

THIS AGREEMENT shall be effective as of April 7, 2008, and is between City of Bemidji, a Home Rule City (the "Public Entity"), and the MN Dept. of Employment & Economic Development (the "State Entity").

RECITALS

A. Under the provisions contained in M.S. 471.15 - 471.191, the Public Entity has been given the authority to acquire land, predesign, design, construct, furnish and equip a regional events center; and

B. Under the provisions contained in MN Statutes, Chapter 179, Section 21, Subd. 5, (the "GO Bonding Legislation") the State of Minnesota has allocated \$ 20,000,000 (the "Grant"), which is to be given to the Public Entity as a grant to assist it in acquiring land, predesigning, designing, constructing, furnishing, and equipping a regional events center, as authorized by such legislation; and

C. Under the provisions contained in M.S. 471.15 - 471.191, the Public Entity has been given the authority to operate a recreational facility (the "Governmental Program"); and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity's receipt and use of the Grant to acquire and/or improve real property (the "Real Property") and, if applicable, structures situated thereon (the "Facility") will cause all of such real property and structures to become "state bond financed property", as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the then Commissioner of Finance on July 20, 1995 (the "Commissioner's Order"), even though such funds may only be a portion of the funds being used to acquire and/or improve the Real Property and, if applicable, Facility and that such funds may be used to only acquire and/or improve a part of the Real Property and/or, if applicable, Facility.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

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

Article I DEFINITIONS

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

“Advance(s)” – means an advance made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Bemidji Regional Events Center Project.

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

“Architect”, if any - means Leo A. Daly, which will administer the Construction Contract Documents on behalf of the Public Entity.

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

“Commissioner” - means the commissioner of the Minnesota Department Finance and Employee Relations, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the then Commissioner of Finance on July 20, 1995.

“Completion Date” – means January 31, 2011 the date of projected completion of the Project.

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

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

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

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

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

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

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

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

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

“GO Bonding Legislation” – means the legislation delineated in Recital B hereinabove.

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

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

“Governmental Program” – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “Grant” in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained in Sections 2.11 and 6.01.

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

“Inspecting Engineer”, if any - means the State Entity's construction inspector, or its designated consulting engineer.

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

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

“Outstanding Balance of the Grant” – means the portion of the Grant that has been disbursed to or on behalf of the Public Entity minus any amounts received by the Commissioner under Section 2.08.B.

“Ownership Value”, if any – means the value of the Public Entity’s ownership interest, if any, in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the

Commissioner. The parties hereto agree and acknowledge that such value is \$ _____ or X Not Applicable; provided, however, the Commissioner is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank "Not Applicable" should only be selected and checked when a portion of the funds delineated in Attachment III attached hereto are to be used to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in Attachment III and not in this definition for Ownership Value).*

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03 herein. *(If the Public Entity is not using any portion of the Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in Attachment III hereto and instead shall be included in the definition for Ownership Value under this Section 1.01.)*

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

"Real Property" - means the real property located in the County of Beltrami, State of Minnesota, legally described in **Attachment II** to this Agreement.

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

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

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

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the

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

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

Article II GRANT

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

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

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

Ownership Interest in the Real Property.

☐

Fee simple ownership of the Real Property.

☒

A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.

[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point
_____.]

- ☐ An easement for the Real Property (i) that is in form and substance acceptable to the State Entity and the Commissioner, (ii) that is for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or for a term authorized by a Minnesota statute, rule or session law, and (iii) which cannot be modified, restated, amended, changed in any other way, or prematurely cancelled or terminated without the prior written consent of the State Entity and the Commissioner.
[If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]

Ownership Interest in, if applicable, the Facility.

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

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

(Check all appropriate boxes.)

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



(Describe other or additional purposes.)

Section 2.04 Operation of the Real Property and Facility. The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

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

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised

program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner certified copies of such resolution and budget.

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

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

B. It has legal authority to use the Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

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

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

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

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

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

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach

of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

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

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

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

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

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

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

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

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

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

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

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

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

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

W. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner.

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

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

1. It must be in form and contents acceptable to the State Entity and the Commissioner, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the State Entity and the Commissioner.

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

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

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

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

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

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

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

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

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

C. The expiration of the term of a Real Property/Facility Lease shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the Grant, and upon such expiration the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

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

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

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

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

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

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

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

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

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

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

B. If the Event of Default does not involve a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner.

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

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

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

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

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

Section 2.10 Effect of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only be terminated upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or in accordance with the provisions contained in Section 2.11.

Section 2.11 Termination/Modification of Grant. If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the Grant has not

been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the Grant shall terminate. In such event, (i) if none of the Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

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

Article III USE CONTRACTS

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

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

- A. The purpose for which it was entered into must be to operate the Governmental Program.
- B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.
- C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

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

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

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

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

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

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

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

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair

or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

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

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

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

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

Section 3.04 Receipt of Monies Under a Use Contract. If the Public Entity receives any monies under a Use Contract in excess of the amount the Public Entity needs and is

authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner shall be determined by the Commissioner, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Grant and the denominator of which is sum of the Grant and the Approved Debt.

Article IV **SALE**

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

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

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

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

The acquisition of the Public Entity's interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

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

Section 4.02 Proceeds of Sale. Upon the sale of the Public Entity's interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale, but not including the repayment of any

debt associated with the Public Entity's interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

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

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to pay in full any outstanding Approved Debt in the order of priority of such debt.

C. The remaining portion, after the distributions specified in Sections 4.02A and B, shall be distributed to (i) reimburse the Public Entity for its Ownership Value, and (ii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution, the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing.

D. The remaining portion, after the distributions specified in Sections 4.02.A, B and C, shall be divided and distributed to the State Entity and the Public Entity in proportion to the contributions that the State Entity and the Public Entity made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

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

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

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

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

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

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

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

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

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

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either; (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should

take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner's Order.

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

Article VI

DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 The Advances. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the Grant. If the amount of Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature delineated in **Attachment III** to this Agreement, (ii) accrued no earlier than the effective date of the GO Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the Commissioner.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances $\leq$ (Grant) x (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Advances $\leq$ (Grant) x (percentage of Project completed)

Section 6.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to; (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

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

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

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

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

Section 6.03 Additional Funds. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State Entity

may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 6.04 **Condition Precedent to Any Advance.** The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

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

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

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

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

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

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

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

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future

date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

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

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

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

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

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

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

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the

amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

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

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

Section 6.05 **Construction Inspections.** The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

Article VII MISCELLANEOUS

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

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

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

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

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

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

Section 7.02 Condemnation. If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the

Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

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

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's interest in the Real Property and, if applicable, Facility, is a leasehold interest, and (vi) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

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

utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

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

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

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

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

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

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

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

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

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

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

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways

and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

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

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

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

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

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

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of

Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

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

Section 7.12 Liability. The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

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

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of

any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

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

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

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with either the State Entity, the Commissioner, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

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

To the Public Entity at:

City of Bemidji
317 4th Street NW
Bemidji, MN 56601
Attention: John Chattin

To the State Entity at:

MN Dept. of Employment & Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
Attention: Bart Bevins

To the Commissioner at:

Minnesota Department of Finance and Employee Relations
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

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

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

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

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

and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

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

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

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

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project:

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

\$25,000,000 in non-state resources

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

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner that **Attachment III** to this Agreement is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

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

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

(i) State funds including the Grant, identifying the source and amount of such funds.

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

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

Previously paid project expenses may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner.

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

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

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

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

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

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

Section 7.28 State Entity and Commissioner Required Acts and Approvals. The State Entity and the Commissioner shall not (i) perform any act herein required or authorized by

it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

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

Section 7.30 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

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

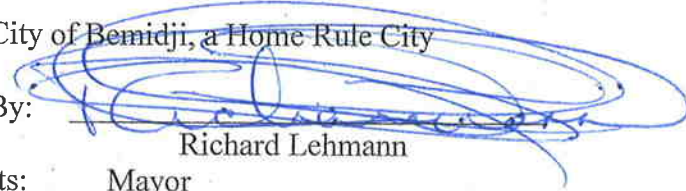
NONE

(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK)

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Bemidji Regional Events Center Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

City of Bemidji, a Home Rule City

By: 

Richard Lehmann

Its: Mayor

Dated: January 22, 2009

And: 

John Chattin

Its: City Manager

Dated: JANUARY 22, 2009

STATE ENTITY:

MN Dept. of Employment & Economic Development,

By: 

Its:

Dated: 1-29, 2009


B22-14353 1/20/09

Attachment I DECLARATION

The undersigned has the following interest in the real property legally described in **Exhibit A** attached and all facilities situated thereon (cumulatively referred to as the "Restricted Property"):

(Check the appropriate box.)

☐ a fee simple title,

☒ a lease, or

☐ an easement,

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

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in B hereinbelow, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the commissioner of the Minnesota Department of Finance and Employee Relations, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain «Insert the name of the grant agreement at this point exactly as it appears on the title page of the grant agreement» between City of Bemidji and the MN Dept. of Employment & Economic Development, dated April 7, 2008.

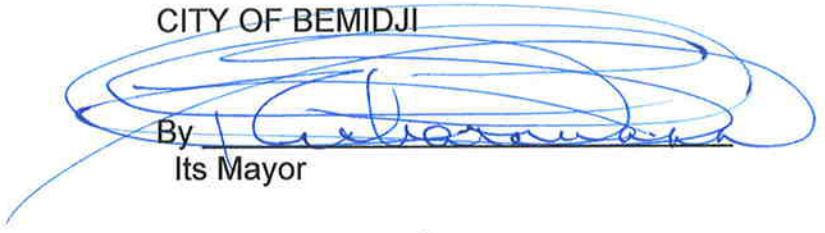
The Restricted Property shall remain subject to such restrictions and encumbrances until it is released therefrom by way of a written release in recordable form signed by both the MN Dept. of Employment & Economic Development and the commissioner of the Minnesota Department of Finance and Employee Relations, and such written release is recorded in the real estate records relating to the Restricted Property.

This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the commissioner of the Minnesota Department of Finance and Employee Relations.

Address:

City of Bemidji
317 4th Street NW
Bemidji, MN 56601

CITY OF BEMIDJI

By 
Its Mayor

By 
Its City Manager

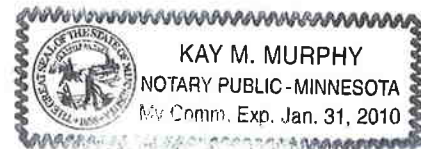
STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing Declaration was acknowledged before me this 22nd day of January, 2009, by Richard Lehmann and John M. Chattin, the Mayor and City Manager of City of Bemidji, a home rule charter city of the State of Minnesota, on behalf of said entity.


Notary Public



This Instrument was drafted by:
Alan R. Felix, City Attorney
317 4th Street NW
Bemidji, MN 56601
Phone: (218)759-3575

Attachment II
LEGAL DESCRIPTION OF REAL PROPERTY
SEE ATTACHED DESCRIPTIONS

Attachment III
SOURCE AND USE OF FUNDS FOR THE PROJECT

Source of Funds

Entity Supplying Funds	Amount
State Funds	
State GO Grant	\$ 20,000,000
State GF Grant	\$-----
Other	
2006 State Bond Funds	\$ 3,000,000
-----	\$-----
-----	\$-----
Sub-Total	\$ 23,000,000
Matching Funds	
-----	\$-----
-----	\$-----
Sub-Total	\$-----
Other Public Entity Funds	
Sales Tax Revenue Bonds	\$ 44,000,000
City Utility Funds	\$ 1,100,000
Sub-Total	
Loans	
-----	\$-----
Sub-Total	\$-----
Other Funds	
-----	\$-----
Sub-Total	\$-----
Prepaid Project Expenses	
-----	\$-----
Sub-Total	\$-----
TOTAL FUNDS	\$ 68,100,000

Use of Funds

Identity of Items	Amount
Ownership Acquisition and Other Items Paid for with GO Grant Funds	
Purchase of Ownership	\$-----
Interest	
Other Items of a Capital	
Nature	
Building Construction	\$ 20,000,000
-----	\$-----
-----	\$-----
Sub-total	\$ 20,000,000
Items Paid for with Non-GO Grant Funds	
Building Construction	\$ 26,473,000
FF&E	\$ 2,259,125
Site Correction	\$ 1,397,600
BREC Improvement	\$ 4,901,104
Design	\$ 6,442,065
Contingency	\$ 5,547,300
Construction Admin.	\$ 1,079,806
Sub-total	\$ 48,100,000
TOTAL PROJECT COSTS	\$ 68,100,000

Attachment IV **PROJECT COMPLETION SCHEDULE**

Activity		Date Complete
Design Development Phase	6 Weeks	
Design Development Kickoff		08/04/08
Submit DD for Owner's review		09/01/08
Review for Owner's comments		09/15/08
Owner approves DD documents		09/15/08
Construction Documents	15 Weeks	
Authorize A/E start –CDs		09/15/08
A/E submit 50% CDs for Owner's review		TBD
Joint review for Owner's comments		TBD
A/E submit 95% for review		TBD
Joint review for Owner's comments		TBD
A/E submit 100% CDs for review		TBD
Joint review for Owner's comments 1		2/22/08
Owner approved 100% construction documents		TBD
Bidding Phase	7 Weeks	
Phase I		TBD
Phase II		
Bidding Period		01/06/09 to 02/17/09
Contract Award		02/28/09
Construction Phase (Phase I & II)		
Start of Phase I Site Preparation		TBD
<i>Documents developed after</i>		09/15/08
Start of Phase II General Construction (22 months)		03/09
Project Substantial Completion		12/10/10
Owner Installed FF&E		12/10/10 to 01/11/11
Final Completion		01/11/11

No delinquent taxes and transfer entered;
Certificate of Real Estate Value
(☒) filed (☐) not required
Certificate of Real Estate Value No. 16962
March 3, 2008
KAY L. MACK AUDITOR-TREASURER
Beltrami County Auditor-Treasurer
by 80.0029400 *JM*
Deputy

OFFICE OF COUNTY RECORDER
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
THAT THIS INSTRUMENT
WAS FILED IN THIS
OFFICE ON 03/03/2008 AT
01:36:12PM BY DOCUMENT NUMBER

Paula A. Coons 0000481743
DEPUTY

CHARLENE D. STURK
COUNTY RECORDER

PAGES: 1

**WARRANTY DEED
LLC to Individual**

STATE DEED TAX DUE HEREON: \$2,846.25

Date: February 29, 2008

Beltrami County, MN

Deed Tax Paid 2846.25

Deed Tax Receipt No. 131428 jm

FOR VALUABLE CONSIDERATION, NORTH CENTRAL DOOR COMPANY, LLC, a limited liability company under the laws of Minnesota, Grantor, hereby conveys and warrants to BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

That part of Government Lot Two (2), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Commencing at a point on the East-West Quarter section line 1916.5 feet east of the southwest corner of Government Lot Three (3) in said Section 15; thence North parallel with the North-South Quarter section line a distance of 40 feet to the point of beginning; thence north parallel with the North-South Quarter section line a distance of 542.78 feet; thence west parallel with the East-West Quarter section line a distance of 33 feet; thence north parallel with the North-South Quarter section line a distance of 108.62 feet; thence east parallel with the East-West Quarter section line to the intersection with the east boundary line of said Lot 2; thence south on the east boundary line of said Lot 2 to a point 208 feet north of the southeast corner of said Lot 2; thence west parallel with the East-West Quarter section line a distance of 208 feet; thence south parallel with the North-South Quarter section line a distance of 168 feet; thence west parallel with the East-West Quarter section line to the point of beginning, less the following described parcel: That part of Government Lot 2, Section 15, Township 146, Range 33, described as follows: The West 62 feet of the North 240 feet of the South 280 feet lying easterly of a line described as beginning at a point on the East-West Quarter section line 1,916.5 feet east of the southwest corner of Government Lot 3 in said Section 15; thence North parallel with the North-South one quarter section line of said Section 15;

together with all hereditaments and appurtenances belonging thereto, and subject to any prior conveyances of minerals or mineral rights, any prior reservations, restrictions, easements, rights of way and any zoning and use regulations, and subject also to the lien of any unpaid special assessments and interest thereon.

Check if applicable:

- ☐ Grantor certifies that Grantor does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☒ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

OFFICE OF COUNTY RECORDER
BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

NORTH CENTRAL DOOR COMPANY, LLC

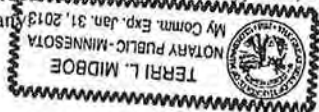
By *Steve Holley*
Steve Holley, President

STATE OF MINNESOTA

ss.

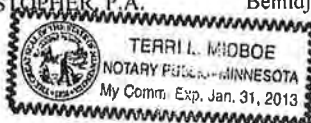
COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 29th day of February, 2008, by Steve Holley, the President of North Central Door Company, LLC, a limited liability company under the laws of Minnesota, Grantor, on behalf of the company.



Notary Public

THIS INSTRUMENT DRAFTED BY:
DRAHOS KIESON & CHRISTOPHER, P.A.
Attorneys at Law
502 - 24th Street N.W.
Bemidji, MN 56601
(218) 444-1750



TAX STATEMENTS SHOULD BE SENT TO:
Bemidji Economic Development Authority

317 444 57 NW
BEMIDJI, MN 56601

PAD Y KISAVEDOCS\ree08\FR-NCD-BEDA-WD.wpd (ajp)

No delinquent taxes and transfer entered;
Certificate of Real Estate Value
() filed () not required
Certificate of Real Estate Value No. 16897
January 30, 2008
KAY L. MACK AUDITOR-TREASURER
Beltrami County Auditor-Treasurer
1) 80.00239, 01, 9281.01, 290.03
by 290.03, 290.04, 290.05, 00
5) 331.01, 4) 290.01, 291, 818; 818.01 Deputy
819, 820, 821, 286,
8) 4900, 4901, 4902

OFFICE OF COUNTY RECORDER
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
THAT THIS INSTRUMENT
WAS FILED IN THIS
OFFICE ON 01/30/2008 AT
11:42:59AM BY DOCUMENT NUMBER

Paula W. Stork DEPUTY
0000481023

CHARLENE D. STURK
COUNTY RECORDER

PAGES: 6

LIMITED WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ 37,191.00

Date: January 25, 2008

FOR VALUABLE CONSIDERATION, ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto. Grantor covenants and represents that Grantor has not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter, shall or may be imperiled, charged or encumbered in any manner, and Grantor will warrant the title to the above-described property against all persons claiming the same from or through Grantor as a result of any such act or thing,

EXCEPT: NONE

- ☐ The Seller certifies that the Seller does not know of any wells on the described property.
☐ A well disclosure certificate accompanies this document.
☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

OFFICE OF COUNTY RECORDER
BELTRAMI COUNTY, MN

- ☐ Well Certificate Received
☒ Well Certificate Not Required

Beltrami County, MN

Deed Tax Paid \$ 37,191.00

Deed Tax Receipt No. 130313CW

ShoreQuest, L.L.C.

By

John Zacher

Its

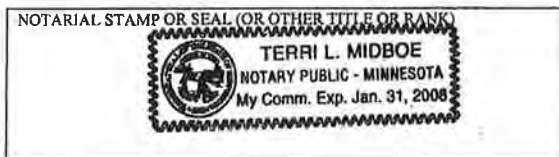
Chief Manager

STATE OF MINNESOTA

COUNTY OF BELTRAMI

ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the Chief Manager of ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, on behalf of the Grantor.



Deiell
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

[CONTINUED ON BACK]

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Mark Wangberg
CARPENTER & WANGBERG, P.A.
Attorney at Law
201 Seventh Street
Bemidji, MN 56601
218-444-7564

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

Bemidji Economic Development
Authority
317 4th Street NW
Bemidji, MN 56601

Scanned
Indexed
Tracked
Verified

EXHIBIT "A"

LEGAL DESCRIPTIONS

Parcel 1:

A strip of land 100 feet in width, being 50 feet on each side of the center line of the main track of the Minnesota & International Railway Company as constructed through and upon Government Lot 2, Section 10, Township 146, Range 33, and lying Southwesterly of a line drawn at right angles to said main track centerline distant 1680.0 feet Southwesterly of the East line of Government Lot 1, Section 10, Township 146, Range 33, as measured along said main track centerline.

AND

An additional 20.0 foot wide strip of right of way lying adjacent to and Southeasterly of the hereinabove described 100.0 foot wide right of way situated in the W $\frac{1}{2}$ of Government Lot 2, Section 10, Township 146, Range 33, lying between two lines drawn parallel with and distant respectively 50.0 feet and 70.0 feet Southeasterly of, as measured at right angles to said main track centerline, and lying Southwesterly of a line drawn at right angles to said main track centerline distant 1680.0 feet Southwesterly of the East line of said Section 10, as measured along said main track centerline.

Parcel 2:

All that portion of Government Lot 1 and of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33, lying on the Westerly side of a line lying parallel to and 175 feet distant, Easterly from the main track centerline of the Minnesota and International Railway Company right of way as constructed through and upon said Government Lot 1 and the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33. Less that portion of said right of way situated in the East 30.0 feet of Government Lot 1, Section 15, Township 146, Range 33, lying between two lines drawn parallel with and distant respectively 70.0 feet and 175.0 feet Southeasterly of, as measured at right angles to, said main tract centerline.

AND

That part of the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33, lying Northwesternly of a line drawn parallel to and distant 70 feet Southeasterly from the main track centerline of the Minnesota and International Railway Company as constructed through and upon Government Lot 1 and the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33.

Parcel 3:

The East 825.00 feet of Government Lot 2, Section 15, Township 146, Range 33, less the South 691.4 feet thereof.

Parcel 4:

That part of Government Lots 2 and 3, Section 15, Township 146, Range 33, described as follows: Beginning at the Southwest corner of said Government Lot 3, Section 15; thence North $01^{\circ}33'57''$ East along the West line of said Government Lot 3, Section 15, a distance of 89.26 feet to the Northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North $63^{\circ}00'57''$ East, along said Northwesterly right-of-way line, a distance of 1917.29 feet to a point which is 891.00 feet West of the East line of Government Lot 2, said Section 15; thence South $00^{\circ}04'38''$ East along said 891 feet line a distance of 282.50 feet to a point on the North line of the South 691.37 feet of said Government Lot 2, said point also being the Southerly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North $89^{\circ}30'27''$ West along said 691.37 foot line a distance of 275.08 feet; thence South $63^{\circ}00'57''$ along said right-of-way line a distance of 303.03 feet; thence South $69^{\circ}47'17''$ West along said right-of-way a distance of 212.00 feet; thence South $63^{\circ}00'57''$ West along said right-of-way a distance of 1017.34 feet, more or less, to the South line of said Government Lot 3; thence West along the South boundary line of Government Lot 3, said Section 15, a distance of 47.6 feet, more or less, to the point of beginning.

Parcel 5:

That part of the NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 15, Township 146, Range 33, lying Northwesterly of a line drawn parallel to and distant 50 feet Southeasterly from the main track center line of the Minnesota and International Railway Company as re-located and constructed through and upon Government Lot 3, Section 15, and Government Lot 4, Section 16, Township 146, Range 33, in 1902.

Parcel 6:

That part of Government Lot 4, Section 16 and Government Lots 2 and 3, Section 15, All in Township 146 North, Range 33 West of the Fifth Principal Meridian, described as follows: Commencing at the southeast corner of said Government Lot 4, said southeast corner being at coordinates 117657.8880 North and 496628.1602 East, bearings and coordinates based on NAD83 (1986) Beltrami County South Zone; thence North 01°33'57" East along the East line of said Government Lot 4, Section 16, a distance of 89.26 feet to the northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway and the point of beginning of the land to be described; thence continuing North 01°33'57" East, along the east line of said Government Lot 4, a distance of 45.70 feet; thence South 63°00'57" West along said northwesterly right-of-way line a distance of 97.33 feet; thence southwesterly along said northwesterly right-of-way line a distance of 143.04 feet along a tangential curve concave to the northwest having a radius of 626.77 feet and a central angle of 13°04'33", to the north right-of-way line of First Street East which is 40.00 feet north as measured at a right angle from the south line of said Government Lot 4; thence North 89°45'15" West, along said north right-of-way line, a distance of 80.78 feet to the northeasterly right-of-way line of Trunk Highway Number 197 as shown on Minnesota Department of Transportation Right-of-Way Plat No. 04-26; thence North 36°56'47" West along said northeasterly right-of-way line a distance of 596.22 feet; thence South 53°03'13" West along said northeasterly right-of-way line a distance of 50.00 feet; thence North 37°33'58" West along said northeasterly right-of-way line a distance of 121.81 feet; thence northwesterly along said northeasterly right-of-way line a distance of 89.96 feet along a curve not tangential with the last described line to a point having coordinates 118314.5104 North and 495804.6338 East, said curve is concave to the southwest, has a radius 1959.87 feet, a central angle of 02°37'47" and the chord of said curve is 89.95 feet in length and bears North 36°24'08" West; thence North 24°18'00" East a distance of 545.14 feet to an iron monument at coordinates 118811.3596 North and 496028.9561 East; thence North 86°53'50" East a distance of 544.20 feet to an iron monument at coordinates 118840.8157 North and 496572.3583 East; thence continuing North 86°53'50" East a distance of 20.00 feet; thence North a distance of about 5 feet to the shoreline of Lake Bemidji; thence easterly along said shoreline to the intersection with the west line of the East 825.00 feet of said Government Lot 2, Section 15; thence South 00°04'38" East along said west line a distance of about 583 feet to a point on the north line of the South 691.37 feet of said Government Lot 2, said point being at coordinates 118334.0056 North and 498405.5371 East; thence South 89°30'27" East, parallel with the east-west quarter line of said Section 15, a distance of 105.13 feet; thence South 00°04'38" East parallel with the north-south quarter line of said Section 15, a distance of 108.62 feet; thence South 89°30'27" East, parallel with said east-west quarter line, a distance of 33.00 feet; thence South 00°04'38" East, parallel with said north-south quarter line, a distance of 392.78 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 200.00 feet; thence South

00°04'38" East, parallel with said north-south quarter line a distance of 150.00 feet to the north right-of-way line of First Street East which is 40.00 feet north as measured at a right angle from said east-west quarter line; thence North 89°30'27" West along said north right-of-way line a distance of 214.22 feet; thence North 00°44'40" East, parallel with the east line of said Government Lot 3, Section 15 a distance of 200.00 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 200.00 feet to the intersection with the east line of said Government Lot 3; thence South 00°44'40" West along said east line a distance of 200.00 feet to said north right-of-way line; thence North 89°30'27" West along said north right-of-way line, a distance of 168.13 feet; thence North 01°33'57" East parallel with the west line of said Government Lot 3, a distance of 104.02 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 620.00 feet; thence North 01°33'57" East parallel with the west line of said Government Lot 3, a distance of 100.85 feet to the southeasterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 63°00'57" East, along said southeasterly right-of-way line, a distance of 502.34 feet; thence North 69°47'17" East along said southeasterly right-of-way, a distance of 212.00 feet; thence North 63°00'57" East along said southeasterly right-of-way line, a distance of 303.03 feet to the north line of the South 691.37 feet of said Government Lot 2; thence South 89°30'27" East along said north line a distance of 275.08 feet to the west line of the East 891.00 feet of said Government Lot 2; thence North 00°04'38" West along said west line a distance of 282.50 feet to the northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence South 63°00'57" West, along said northwesterly right-of-way line, a distance of 1917.29 feet to the point of beginning.

Parcel 7:

That part of the Southwest Quarter of the Northeast Quarter of Section 15, Township 146 North, Range 33 West of the 5th Principal Meridian described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Northeast Quarter, thence North 00 degrees 34 minutes 21 seconds West (assumed bearing) along the west line of said Southwest Quarter of Northeast Quarter a distance of 33.00 feet to the northerly right of way line of First Street South; thence North 89 degrees 59 minutes 35 seconds East along said northerly right of way line of First Street South a distance of 20 feet to the point of beginning of the land to be described; thence North 00 degrees 34 minutes 21 seconds West parallel with said West line a distance of 298.54 feet; thence North 89 degrees 59 minutes 35 seconds East parallel with the South line of said Southwest Quarter of Northeast Quarter a distance of 565.80 feet; thence South 00 degrees 34 minutes 21 seconds East parallel with said West line a distance of 298.54 feet to said Northerly right of way line of First Street South; thence South 89 degrees 59 minutes 35 seconds West along said Northerly right of way line of First Street South a distance of 565.80 feet to the point of beginning and there terminating.

Parcel 8:

Lots 6, 7 and 8, Block 1, Jackpine Acres, according to the recorded plat thereof, Bemidji, Beltrami County, Minnesota.

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (☒) filed () not required
 Certificate of Real Estate Value No. 16895
January 30, 2008
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by 80.00279.00 + 282 cw
 Deputy

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 01/30/2008 AT
 11:42:59AM BY DOCUMENT NUMBER

Paula Sturk
 20080481020 DEPUTY

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 3

LIMITED WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ 1,650.00

Date: January 25, 2008 (2)
SAI - 4306A

FOR VALUABLE CONSIDERATION, LeisureTime Land Co., a corporation under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto. Grantor covenants and represents that Grantor has not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter, shall or may be imperiled, charged or encumbered in any manner, and Grantor will warrant the title to the above-described property against all persons claiming the same from or through Grantor as a result of any such act or thing,
 EXCEPT: NONE

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN

☐ Well Certificate Received
☒ Well Certificate Not Required

- ☐ The Seller certifies that the Seller does not know of any wells on the described property.
☐ A well disclosure certificate accompanies this document.
☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Beltrami County, MN

Deed Tax Paid 1650.00

Deed Tax Receipt No. 130311 cw

LeisureTime Land Co.

By John Zacher
 Its President

STATE OF MINNESOTA

COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the President of LeisureTime Land Co., a corporation under the laws of Minnesota, on behalf of the Grantor.



John Zacher
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

[CONTINUED ON BACK]

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Mark Wangberg
CARPENTER & WANGBERG, P.A.
Attorney at Law
201 Seventh Street
Bemidji, MN 56601
218-444-7564

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

Bemidji Economic Development

Authority

~~314~~ 317-4th St. NW
Bemidji, mn
56601

EXHIBIT "A"

That part or portion of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Beginning at a point on the center line of said Section 15, Township 146, Range 33, 691.4 feet north of the center of said Section 15; thence East on a line parallel with the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, a distance of 371 feet; thence South 20 feet; thence West on a line parallel with the North line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, a distance of 371 feet; thence North 20 feet to the place of beginning.

AND

That part or portion of the Southwest Quarter of Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) and Government Lot One (1), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: The East 400 feet of the West 771 feet of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the said Government Lot One (1), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), lying South of the right-of-way of the Northern Pacific Railway Company (formerly the Minnesota and International Railway Company), and excepting therefrom the South 671.4 feet of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, Township 146, Range 33.

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (☒) filed () not required
 Certificate of Real Estate Value No. 16791
December 14, 2007
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by Jan Deputy
80.00280.00 + 281.00

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 12/14/2007 AT
 02:20:51PM BY DOCUMENT NUMBER

4000479982

Charlene D. Sturk DEPUTY

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 1

LIMITED WARRANTY DEED

Individual to Municipal Corporation

SAI-4323

STATE DEED TAX DUE HEREON: \$412.50

Date: December 7, 2007

FOR VALUABLE CONSIDERATION, JOSEPH S. WASLASKI and KRISTI M. KLASSEN, husband and wife, Grantors, hereby convey and quit claim to CITY OF BEMIDJI, Minnesota, a municipal corporation under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

The West 371 feet of the Southwest Quarter of the Northeast Quarter (SW¼ of NE¼), less the South 691.4 feet thereof and less railroad right-of-way (Minnesota and International Railway), and the West 371 feet of Government Lot One (1), less railroad right-of-way, all in Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33);

together with all hereditaments and appurtenances belonging thereto. Grantors covenant and represent that:

- (1) This deed conveys after-acquired title; and
- (2) Grantors have not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter shall or may be imperiled, charged or encumbered in any manner, and Grantors will warrant the title to the above-described property against all persons claiming the same from or through Grantors as a result of any such act or thing.

Check if applicable:

- ☒ Grantor certifies that Grantor does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☐ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Beltrami County, MN

Deed Tax Paid 412.50

Deed Tax Receipt No. 128994 jn

Joseph S. Waslaski
 Joseph S. Waslaski

Kristi M. Klassen
 Kristi M. Klassen

STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 7th day of December, 2007, by Joseph S. Waslaski and Kristi M. Klassen, husband and wife, Grantors.



Terri L. Midboe
 Notary Public

THIS INSTRUMENT DRAFTED BY:
 DRAHOS KIESON & CHRISTOPHER, P.A.
 Attorneys at Law
 502 - 24th Street N.W.
 Bemidji, MN 56601
 (218) 444-1750

TAX STATEMENTS SHOULD BE SENT TO:
 City of Bemidji, Minnesota
 317 Fourth Street NW
 Bemidji, MN 56601

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN

☐ Well Certificate Received
☒ Well Certificate Not Required

F:\D Y K\SAVEDOCs\ree07\Waslaski&Klassen-CityBemidji-LWD.wpd (ajp)

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 () filed (☒) not required
 Certificate of Real Estate Value No. January 30, 2008
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by 80.60280.004281 Deputy cu

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 01/30/2008 AT
 11:42:59AM BY DOCUMENT NUMBER

Paula D. Sturk DEPUTY
 0000481024

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 2

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: \$ 1.65

Date: January 25, 2008 (6)
SAI-4306

FOR VALUABLE CONSIDERATION, ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto.

THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS LESS THAN \$500.00

Beltrami County, MN

Deed Tax Paid 1.65 cu

Deed Tax Receipt No. 130314

ShoreQuest, L.L.C.

By John Zacher
 Its Chief Manager

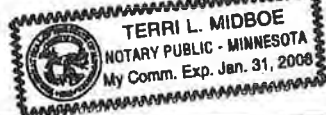
STATE OF MINNESOTA

COUNTY OF BELTRAMI

ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the Chief Manager of ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, on behalf of the Grantor.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



[Signature]
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Mark Wangberg
 CARPENTER & WANGBERG, P.A.
 Attorney at Law
 201 Seventh Street NW
 Bemidji, MN 56601
 218-444-7564

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

Bemidji Economic Development
 Authority
317 - 4th St. NW.
Bemidji, MN
56601

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

EXHIBIT "A"

That part of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and Government Lot 1, Section 15, Township 146, Range 33, described as follows: Beginning at a point on the North and South center line of said Section 15, 691.4 feet North of the center of said Section 15, measured along said center line; thence Easterly, parallel to the East and West center line of said Section 371 feet; thence Northerly parallel to the North and South center line of said Section 693 feet, more or less, to the intersection with the South line of the right of way of the Minnesota and International Railway Company, (which line is 175 feet Southerly from the center line of the main track measured at right angles); thence in a Southwesterly direction, along said South line of said right of way 431 feet, more or less, to the intersection with the North and South center line of said Section; thence Southerly, along said North and South center line 481 feet, more or less, to the place of beginning. (It being the intention to convey the strip of land 371 feet wide, lying along and on the East side of the North and South center line of said Section 15, beginning 691.4 feet North of the center of said Section and extending Northerly to the property of the Minnesota and International Railway Company).

GROUND LEASE

**BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY,
AS LESSOR**

AND

CITY OF BEMIDJI, AS LESSEE

**BEMIDJI REGIONAL EVENT CENTER
GROUND LEASE**

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GROUND LEASE
Bemidji Regional Event Center

This Ground Lease (this "Lease") is made and entered into as of the 24th day of November, 2008, by and between the BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY, a municipal body, politic and corporate, under the laws of Minnesota ("Lessor") and the CITY OF BEMIDJI, a Minnesota municipal corporation ("Lessee" or "City").

RECITALS

Lessor is the owner of certain real property located in the City of Bemidji, County of Beltrami, State of Minnesota.

Lessee desires to lease such land from Lessor on which Lessee will construct the Bemidji Regional Event Center and related improvements (hereinafter "BREC").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Lessor and Lessee hereby agree as follows:

1. Definitions.

The following terms shall have the meanings set forth below:

Commencement Date. As defined in Section 2.2.

Declaration. As defined in Section 2.1.

Event of Default. As defined in Section 11.1.

G.O. Compliance Legislation. As defined in the Grant Agreement.

Grant Agreement. As defined in Section 2.1.

Improvements. All buildings, structures, landscaping, sidewalks, driveways, parking areas, and other improvements that are constructed, placed or located on the Premises during the Term, as the same may from time to time exist.

Permitted Encumbrances. The liens and encumbrances set forth on **Exhibit D** attached hereto.

Premises. That certain parcel of real property legally described on **Exhibit A** attached hereto, together with all improvements constructed and to be constructed thereon, all located in the City of Bemidji, Minnesota, as amended from time to time.

State. Minnesota Department of Employment and Economic Development.

State Grant Proceeds. A state grant in the amount of \$20,000,000 made to Lessee pursuant to the terms of the Grant Agreement.

Taxes. As defined in Article 5.

Use Agreement. As defined in Section 2.1.

Use Agreement Tenant. As defined in Section 2.1, or its successor or assigns approved by the City under the Use Agreement.

2. Demise, Term, Title and Conditions Precedent.

2.1 Demise. Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, for the consideration and upon the terms and conditions hereinafter set forth, the Premises.

Lessor and Lessee acknowledge that Lessee's interest in the Premises under this Lease will be subject to the General Obligation Bond Proceeds Grant Agreement Construction Grant for the Bemidji Regional Event Center (the "Grant Agreement") dated of even date herewith between Lessee and the State, and the Declaration dated of even date herewith by Lessee in favor of the State (the "Declaration").

Lessor and Lessee acknowledge that Lessee intends to enter into a lease ("Use Agreement") with Bemidji State University (hereinafter "BSU"), by and through the Minnesota State Colleges and Universities (hereinafter "MNSCU"), as tenant (the "Use Agreement Tenant"), for the Premises, for an initial term of Twenty (20) years.

Lessor and Lessee acknowledge that Lessee in the future may enter into an Operator's Use Agreement for on-going operation of the Bemidji Regional Events Center.

2.2 Term. TO HAVE AND TO HOLD the Premises for a term (the "Term") commencing on the date hereof (the "Commencement Date") and continuing for **fifty (50) years** thereafter. Lessor and Lessee hereby agree, for the benefit of the State, that this Lease shall not be sooner terminated except with the prior written consent of the State and the Commissioner of the Minnesota Department of Finance.

2.3 Covenant of Quiet Possession. Lessor represents, warrants and covenants that, subject to Lessor's remedies under Article 11 due to breach of this Lease by Lessee, Lessee shall have and enjoy quiet and undisturbed possession of the Premises during the Term.

2.4 Conditions Precedent. This Lease shall not be valid or of any effect until the occurrence of each and every one of the following conditions precedent:

2.4.1 Construction Grant Agreement. The mutual execution and delivery of the Grant Agreement between the State and the City.

2.4.2 Use Agreement. The mutual execution and delivery of the Use Agreement between BSU, as Use Agreement Tenant, and Lessee, as landlord, and consent in writing has been given by the Commissioner of the Minnesota Department of Finance.

3. Rent. No rent is required to be paid by Lessee to Lessor for the Term of this Lease.
4. Permitted Use. Lessee may use the Premises for a regional event center, known as the Bemidji Regional Event Center (hereinafter the "BREC"), for college hockey, athletic events, convention and event center, and including but not limited to events such as concerts, sports, tradeshows, graduations and other entertainment traveling shows.
5. Taxes, Other Charges. "Taxes" shall mean and include all ad valorem taxes and special assessments with respect to the Premises and the Improvements. Lessor acknowledges that Lessee intends to require the Use Agreement Tenant to pay its relevant portion of all Taxes, if any, with respect to the Premises and the Improvements used and or occupied by the Use Agreement Tenant.
6. Insurance; Indemnity; Limitation on Liability.

6.1 Insurance. Lessor acknowledges that Lessee intends to require the Use Agreement Tenant to maintain, in full force, the insurance required under **Section 11** of the Use Agreement.

6.2 Limitation of Liability. Notwithstanding anything to the contrary in this Lease (except as otherwise provide in Sections 11.3 and 13 herein), it is specifically understood and agreed by Lessor and Lessee, such agreement being a primary consideration for the execution of this Lease by Lessee, that no covenant, provision or agreement of Lessee herein, or any obligation herein or therein imposed upon Lessee for breach thereof, shall give rise to a pecuniary liability of Lessee, its officers, employees, or agents, or a charge against Lessee's general credit or taxing powers or shall obligate Lessee, its officers, employees or agents, financially in any way. No failure of Lessee to comply with any term, condition, covenant, or agreement therein shall subject Lessee, its officers, employees, or agents, to liability for any claim for damages, costs, or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Lease or revenues therefrom. No execution on any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or taxing powers of Lessee. In making the agreements, provisions, and covenants set forth herein, Lessee has not obligated itself except with respect to the application of revenues under the Use Agreement as therein provided, including the obligation to request the State Grant Proceeds from the State and apply the State Grant Proceeds to the construction of the Regional Event Center Improvements. If, notwithstanding the provisions of this Section, Lessee, its officers, employees, or agents, incur any expense, or suffer any losses, claims, or damages, or incur any expense, or suffer any losses, claims, or damages, or incur any liabilities, Lessor will indemnify and hold harmless Lessee, its officers, employees, or agents, from the same and will reimburse Lessee, its officers, employees, or agents, for any legal or other expenses incurred by Lessee, its

officers, employees, or agents, in relation thereto, and this covenant to indemnify, hold harmless, and reimburse Lessee, its officers, employees, or agents shall survive the termination of this Lease.

7. Assignment and Subletting.

7.1 General. Except as provided in Section 13.1, Lessee may not transfer or assign this Lease or any interest in this Lease or sublet the Premises or any portion thereof without the prior written consent of Lessor and Lessor's mortgagee (if required). Notwithstanding the foregoing, Lessor consents to the Use Agreement, the Grant Agreement, the Declaration, and any future Operator's Use Agreement, as provided in Section 2.1; provided, however, that only Lessee's interest in this Lease is subject to the Grant Agreement and the Declaration and Lessor's interest in the Premises is not subject to the Grant Agreement and the Declaration. Further notwithstanding the foregoing, Lessor acknowledges that Lessee may enter into license agreements with eligible organizations to provide the types of uses (governmental program) contemplated under this Lease.

7.2 Lessor's Right to Encumber. Lessor may mortgage or otherwise encumber its estate and interest in this Lease and in the Premises, provided the State and the Commissioner of the Minnesota Department of Finance have consented in advance and in writing. Any such mortgage or other encumbrance shall be, and shall expressly provide, that it is subject to and subordinate to (i) this Lease (subject to such mortgagee being entitled to receive the sums set forth in Section 13 upon a sale as defined herein) and all rights hereunder as this Lease may be amended, modified or supplemented from time to time with mortgagee's consent if required by such mortgagee, and (ii) the Declaration. Upon the recordation of such a mortgage or encumbrance, Lessor shall notify Lessee of same, including the address of Lessor's mortgagee.

8. Lessor's Warranties. Lessor represents and warrants to, and covenants with, Lessee that:

8.1 Authority. Lessor has full right and authority to enter into this Lease and perform Lessor's obligations under this Lease as of the commencement of the term hereof and, except for the Permitted Encumbrances, has good, marketable and insurable title to the Premises in fee simple, free and clear of all restrictions, leases, tenancies, and easements.

8.2 Subdivision. Lessor shall at all times comply with all applicable laws, ordinances, rules, and regulations governing the division or platting of real property for purposes of lease, sale, or financing, so that this Lease shall constitute a lawful conveyance to Lessee of a leasehold estate in the Premises.

8.3 Condemnation; Dedication. Lessor has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Premises, nor has Lessor agreed or committed to dedicate any part of the Premises.

8.4 Violations. To the best of Lessor's knowledge, the Premises is not in material violation of any local governmental rule, ordinance, regulation, or building code, nor is there a pending or threatened investigation regarding a possible violation of any of the foregoing.

8.5 Breach of Other Agreements. The execution and delivery of this Lease by Lessor will not constitute a violation of any provisions of its articles of incorporation or by-laws, or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to the actual knowledge of the undersigned officers of Lessor, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Lease or to perform any of the terms, covenants, and conditions to be performed by Lessor under this Lease.

9. Lessee's Warranties. Lessee represents and warrants to, and covenants with, Lessor that:

9.1 Authority. Lessee has full right and authority to enter into this Lease and perform Lessee's obligations under this Lease as of the commencement of the term hereof.

9.2 Breach of Other Agreements. The execution and delivery of this Lease by Lessee will not constitute a violation of any laws of the State of Minnesota, and there are no actions, suits, or proceedings pending before or by any judicial body or governmental authority against or affecting it relating to the Premises, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Lease or to perform any of the terms, covenants and conditions to be performed by Lessee under this Lease.

10. Non-Surrender. Upon the expiration or earlier termination of this Lease, Lessee shall retain possession of the Premises and the Improvements (to the extent then existing) in their then as-is condition.

11. Default.

11.1 Default. It shall be an "Event of Default" for purposes of this Article if Lessee shall fail to perform any of the terms, covenants or conditions of this Lease to be performed by Lessee and such failure shall continue for ten (10) days following receipt of written notice from Lessor to Lessee, specifying such failure, or, with respect to those failures which cannot with due diligence be cured within ten (10) days, then if Lessee fails to proceed within such ten (10) days to commence to cure the same and thereafter continues to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not susceptible of being cured with reasonable diligence within ten (10) days that the time of Lessee within which to cure the same shall be

extended for such period as may be necessary to complete the same with reasonable diligence).

11.2 Remedy. If an Event of Default has occurred, Lessor's sole remedies shall be to institute an action for specific performance and an Event of Default or Lessee's failure to comply with any order for specific performance shall not be grounds for termination of this Lease.

11.3 Lessee's Default. In the event of any breach or default by Lessee under this Lease, which continues for a period often (10) days after notice thereof from Lessor, then in addition to all other rights and remedies of Lessor under this Lease, Lessor may (but shall not be obligated to) cure such breach on behalf of Lessee and upon demand by Lessor, Lessee shall promptly pay to Lessor the costs and expenses of such cure. When Lessor makes demand for payment, Lessor shall furnish Lessee an itemized statement of the costs and expenses incurred for cure. Lessor and Lessee acknowledge that Lessee is requiring that certain of its obligations under this Lease be performed by Use Agreement Tenant and that so long as Use Agreement Tenant is Bemidji State University, Lessee shall not be in default of this Lease if Lessee's default is caused solely by the failure of Use Agreement Tenant to perform those certain obligations required under this Lease and the Use Agreement.

11.4 Lessor's Default. In the event that (i) Lessor fails to observe, perform or comply with any provision, term, condition, covenant, agreement or warranty required to be observed, performed or complied with by Lessor under this Lease and (ii) Lessor fails to cure such Default within ten (10) days of written notice of default from Lessee, then a Lessor Event of Default shall exist under this Lease. Upon the occurrence and during the continuance of a Lessor Event of Default, Lessee may commence an action in equity to compel the performance by Lessor of those actions or inactions which serve as the basis of a Lessor Event of Default or take such other actions and seek such other remedies as may be available to Lessee in law or equity, provided, however, that Lessee's damages shall be limited to actual damages incurred by Lessee and shall not include any consequential or punitive damages, and further provided, that such actual damages shall be limited to Lessor's interest in the Premises.

11.5 Delay; Waiver. No delay or omission by either party to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Lease shall impair any such right or power to be construed to be a waiver thereof, except as otherwise herein provided. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

11.6 Mortgagee's Rights. In the event that Lessor shall default in the performance of any of its covenants contained in this Lease, and such Event of Default shall not be cured by Lessor within the time provided herein, Lessee shall not have the right to exercise any remedies under this Lease unless Lessee shall first give any mortgagee described in Section 7.2 above (i) a notice of its intent to exercise its rights

hereunder (the "Remedies Notice") containing a statement of all existing Defaults under this Lease, and (ii) the opportunity to cure such Default(s), as follows: mortgagee shall be entitled to cure any stated monetary default for a period of fifteen (15) days after receipt of such Remedies Notice; mortgagee shall be entitled to cure any stated non-monetary default for a period of thirty (30) days after receipt of such Remedies Notice, provided however, that if mortgagee requires additional time to complete the curing of any such non-monetary default, then, provided mortgagee has commenced to cure such Event of Default within such 30-day period and thereafter prosecutes the same to completion with reasonable diligence, mortgagee shall be entitled to such additional time as is reasonably necessary to cure such Event of Default. Lessee shall not deliver any such Remedies Notice until the cure rights available to Lessor under this Lease have expired. If mortgagee cures all stated Events of Default in accordance with the foregoing provisions, then both the notice of default given to Lessor (with a copy to mortgagee) and the Remedies Notice shall be null and void and of no effect. Lessee agrees to accept performance of Lessor's obligations hereunder by mortgagee with the same force and effect as though observed or performed by Lessor.

12. Ownership of Improvements. Subject to Lessor's rights under this Lease, title to all Improvements shall be owned by Lessee, regardless of who placed such buildings or improvements thereon, together with any and all fixtures related to any of the buildings located on the Premises.

13. Early Termination of Use Agreement.

13.1 Sale. In the event that (a) the Use Agreement is terminated prior to the end of the Term or is not renewed pursuant to **Section 3** of the Use Agreement, (b) the Premises are subject to the Grant Agreement, the Declaration, and the G.O. Compliance Legislation, and (c) the Lessee determines by City Council action that the Premises are no longer usable or needed to carry out the Governmental Program (as defined in the Use Agreement), then, the Lessee may sell the Lessee's interest in the Premises, on the conditions that such sale is for fair market value upon terms authorized by law and approved by the Commissioner of the Minnesota Department of Finance in its reasonable discretion. For purposes of this Lease, "fair market value" shall mean (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal which assumes that any and all mortgage liens or encumbrances on the property being sold, which negatively effect the value of the Premises, will be released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice with the proviso that any and all mortgage liens or encumbrances on the Premises, which negatively effect the value of the Premises, will be released at the time of acquisition by such purchaser. The City shall not sell its interest in the Premises until it has first offered to sell its interest in the Premises to Lessor, as hereinafter provided, and Lessor has elected in writing to not purchase the City's interest in the Premises.

The City hereby grants to Lessor a right of first option to purchase the City's interest in the Premises. Upon exercise of such purchase option, Lessor shall pay to the City the sums to be paid to the Commissioner of the Minnesota Department of Finance in accordance with Sections 4.01 and 4.02 of the Grant Agreement (or such lesser amount permitted under Minnesota law or the Grant Agreement) determined by appraisal in accordance with subsection 13.3 herein. Upon receipt of such sums, (i) the City shall promptly pay such sums to the Commissioner of the Minnesota Department of Finance in full satisfaction of the Grant Agreement, (ii) the Premises shall be released from the Grant Agreement and the Declaration and shall no longer be considered state bond financed property or subject to the G.O. Compliance Legislation, and (iii) this Lease shall terminate. Lessor shall have **485 days** after exercise of the option to purchase to make said payment to the City. Said option to purchase the City's interest in the Premises shall be exercised by written notice to the City within thirty (30) days after receipt of written notice by the City to Lessor of the City's intent to sell its interest in the Premises.

In the event of a sale of the City's interest in the Premises (a "Sale") to Lessor or a third party after deducting the City's reasonable and customary costs incurred in such Sale, the net proceeds of such Sale must be applied as follows: (aa) first, to pay to the Commissioner of the Minnesota Department of Finance the amount of State Grant Proceeds actually disbursed and used to better the Premises in accordance with the Grant Agreement, less any payments that have been made pursuant to Section 2.08.B of the Grant Agreement; (bb) second, to pay in full any approved and outstanding public or private debt incurred to acquire or better the City's interest in the Premises; (cc) third, to pay to Lessor the value of the City's interest in the Premises and the amount of money contributed initially and subsequently to the acquisition or betterment of the Premises; and (dd) fourth, any excess over those amounts must be divided in proportion to the shares contributed initially as set forth in **Exhibit B** and subsequently to acquisition and betterment of the Premises, other than any public and private lenders already paid in full, and the City's share shall be paid to Lessor. **Exhibit B** and subsection (dd) in the preceding sentence shall be adjusted to include the amount of money or like kind contributions made by Lessor subsequently to acquire additional real estate that is included in the Ground Lease, and to pay for capital improvements to the Premises or Bemidji Regional Event Center Improvements. Upon receipt of such sums, the Premises shall be released from the Grant Agreement and the Declaration and shall no longer be considered bond financed property or subject to the G.O. Compliance Legislation. Nothing in this or any other agreement shall be construed as requiring the City to sell its interest in the Premises.

To the extent, but only to the extent, disposition of the sale proceeds is not controlled by the G.O. Compliance Legislation, the proceeds of the sale will be shared by Lessor and the Lessee (City) in accordance with the percentages set forth on **Exhibit C**; provided that all public and private indebtedness incurred to acquire or better the City's interest in the Premises shall first be paid in full.

13.2 Payment Based on Appraisal. Fair market value as determined by appraisal shall be established in accordance with the following procedure. Lessor and the Lessee will mutually select an MAI or comparable certified appraiser. The appraiser will

perform and complete an appraisal within sixty (60) days of being retained for their services. The appraiser will determine fair market value for the purposes of Sections 13 and 14 of this Lease. The cost of any appraisal under this subsection will be paid by Lessor.

13.3 Sale Costs. In the event of a sale of the City's interest in the Premises pursuant to subsection 13.1, Lessee shall pay for the reasonable and customary costs incurred by the City in such Sale that are not allowed by the State to be deducted first from the gross proceeds from such Sale (by way of example to the extent not allowed by the State, the City's costs for interim property management, relocation, appraisal, marketing, staff administration, legal fees, survey, and title work). Lessee shall be responsible for payment of any outstanding debt incurred by Lessee to acquire or better the City's interest in the Premises that is not paid in accordance with subsection 13.1, and the Lessor shall not be responsible for such payment unless such outstanding debt is incurred by the Lessee.

14. Purchase Option by City. In the event that (a) the Use Agreement is terminated prior to the end of the Term or is not renewed pursuant to **Section 3** of the Use Agreement, (b) the Premises are subject to the Grant Agreement, the Declaration and G.O. Compliance Legislation, and (c) the City has determined to continue to carry out the remainder of the Governmental Program (as defined in Article 4 hereof) in the Premises, then, the City may elect to purchase the interest of the Lessor in the Premises and upon such election, shall pay Lessor the fair market value of the Premises determined by appraisal, less payments made to Lessor for its investment in the Premises as provided in subsection 13.1. All such sums to be paid by the City to Lessor shall be due and payable at the time of the City's election to purchase the interest of the Lessor in the Premises. In the event of an election to purchase Lessor's interest in the Premises and payment of sums required herein, Lessor hereby agrees that upon receipt of sums due to it as provided herein, it will convey its fee estate in the Premises and its interest in this Lease to the City or to the purchaser of the City's interest in this Lease, subject to such encumbrances and liens as are then existing (other than mortgage liens and encumbrances that can be removed by the mere payment of money) and Lessor shall be released from this Lease.

15. Condemnation.

15.1 Total Taking. In the event of a condemnation of all or substantially all of the Premises, this Lease shall terminate as of the date of such taking, and all proceeds shall be payable in the same manner as if the Premises were sold pursuant to Article 13 hereof.

15.2 Termination on Partial Taking. In the event of a condemnation of less than all of the Premises and the Use Agreement is terminated and treated as a Sale in accordance with Article 13 hereof, then this Lease shall also be terminated and such partial condemnation shall be treated as a Sale, in which event the proceeds of the condemnation shall be applied pursuant to Article 13 hereof.

15.3 Partial Taking. In the event of a condemnation of a part of the Premises for which the Use Agreement is not terminated in accordance with its provisions, this Lease shall continue in full force as to the part of the Premises not thus taken, and the condemnation award for the Premises will be applied by Lessor in accordance with the provisions of Article _____ of the Use Agreement.

15.4 Conflict with Grant Agreement. Whenever there shall exist a conflict between Section 15 of this Lease and Section 7.02 of the Grant Agreement, the provisions of the Grant Agreement shall prevail.

16. Ground Lease for State Bond Financed Property. The City, as Lessee, is leasing the Premises to be improved with state bond proceeds. The parties acknowledge that this Lease is for a Term equal to 125 percent of the useful life of the Improvements. The expiration of this Lease upon the end of the Term does not require that the State be repaid the State Grant Proceeds or that the Premises be sold. Upon the expiration of the Term the Premises will no longer be state bond financed property and no longer subject to the Grant Agreement, the Declaration, and G.O. Compliance Legislation, and the State shall release the Declaration.

17. Alterations; Maintenance of Improvements. As needed, Lessee shall make any alterations, improvements, and changes to any building or improvement which may from time to time be constructed on the Premises. Lessee shall, throughout the term of this Lease, at its own cost and without any expense to Lessor, keep and maintain the Premises, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, including public and private sidewalks located thereon and adjacent thereto, in good, sanitary, lawful, and neat order, condition, and repair and shall restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever, which restoration and rehabilitation shall be approved by Lessor in its sole and arbitrary discretion. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any buildings or improvements thereon unless Lessor is or becomes a Use Agreement Tenant.

18. Notice. All notices, demands and requests ("notice") required or permitted to be given under this Lease must be in writing and shall be deemed to have been properly given or served either on the date of hand delivery or two (2) days after the date such notice is deposited with the United States Mail, addressed to Lessor or Lessee, as the case may be, prepaid and registered or certified mail or delivery charges prepaid, return receipt requested, at the following addresses:

To Lessor: Bemidji Economic Development Authority
Attention:

To Lessee: City of Bemidji
Attention: John Chattin, City Manager
317 Fourth Street NW
Bemidji, MN 56601

Rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request. Any party may change its address by giving notice in writing, stating its new address, to any other party as provided in the foregoing manner: Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Lease.

19. Amendment, Modification and Waiver. No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the State and the Commissioner of the Minnesota Department of Finance, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

20. Short Form Recordable Lease. The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Lease, setting forth a description of the Premises, the Term of this Lease, and any other portions hereof, excepting the rent provisions, as either party may request.

21. Estoppel Certificates. In addition to any other information which may be reasonably requested, either party shall without charge at any time and from time to time hereafter, within ten (10) days after written request, certify by written instrument duly executed and acknowledged to any person, firm, or corporation specified in such request:

- a. Whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;
- b. The validity and force and effect of this Lease, in accordance with its tenor as then constituted;
- c. The existence of any default known thereunder;
- d. The existence of any offsets, counterclaims, or defenses thereto known by such other party; and
- e. The commencement and expiration dates of the Term of this Lease.

Any such certificate may be relied on by the party who requested it and any other person, firm, or corporation to whom it may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it.

22. Grant Agreement Prevails. Whenever there shall exist a conflict between the provisions of this Lease and the Grant Agreement, the Grant Agreement shall prevail. Lessee shall not amend or otherwise modify the Grant Agreement without the prior written consent of Lessor.

23. Miscellaneous. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. Time is declared to be of the essence of this Lease. Except as expressly set forth herein, no third party beneficiary rights are created by this Lease. The Article headings contained in this Lease are for purposes of reference only and shall not limit or define the meaning of any of the terms of provisions hereof. All approvals required hereunder shall also be in writing. This Lease shall be governed by and construed in accordance with the laws of the State of Minnesota. Whenever, in this Lease, anything is to be done or performed by Lessee or Lessor, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Lessee or Lessor as the case may be. Any prevention, delay or stoppage due to strikes, labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations of either Lessor or Lessee with regard to the payment of monies. Except as otherwise expressly provided herein, any consent or approval required in this Lease may not be unreasonably withheld or delayed. Unless provision is made for a specific time period, consent or approval shall be given or withheld within thirty (30) days of the request for such consent or approval. If a disapproval is not given within the required time period, the requested party shall be deemed to have given its approval.

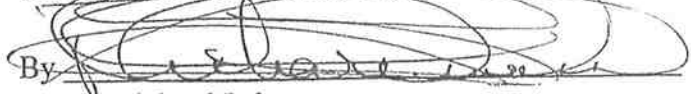
IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

LESSOR:

Lessor's Address:

BEDA
317 Fourth Street NW
Bemidji, MN 56601

BEMIDJI ECONOMIC
DEVELOPMENT AUTHORITY

By 
Richard Lehmann
Its President

By 
John Chattin
Its Executive Director

LESSEE:

Lessee's Address:

City of Bemidji
317 Fourth Street NW
Bemidji, MN 56601

CITY OF BEMIDJI

By

Richard Lehmann
Its Mayor

By

John Chatten
Its City Manager

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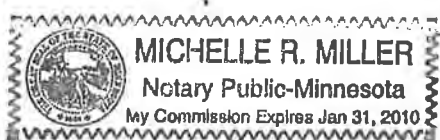
The foregoing instrument was acknowledged before this 24th day of November, 2008, by Richard Lehmann, the President of the Bemidji Economic Development Authority, a Body Politic & Corporate, on behalf of the BEDA.



Michelle R Miller
Notary Public

[illegible]

The foregoing instrument was acknowledged before this 24th day of November, 2008, by John Chattin, the Executive Director of the Bemidji Economic Development Authority, a Body politic & Corporate, on behalf of the BEDA.



Michelle R. Miller
Notary Public

[illegible]

The foregoing instrument was acknowledged before this 24th day of November, 2008, by Richard Lehmann, Mayor of the City of Bemidji, a Municipal Corporation, on behalf of the Corporation.



Michelle Mello
Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF BELTRAMI)

The foregoing instrument was acknowledged before this 24th day of November, 2008, by John Chattin, City Manager of the City of Bemidji, a Municipal Corporation, on behalf of the Corporation.

Michelle R. Miller
Notary Public

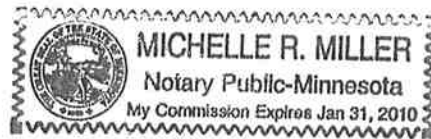


EXHIBIT A-1 Legal Description of the Hamdji Regional
Event Center

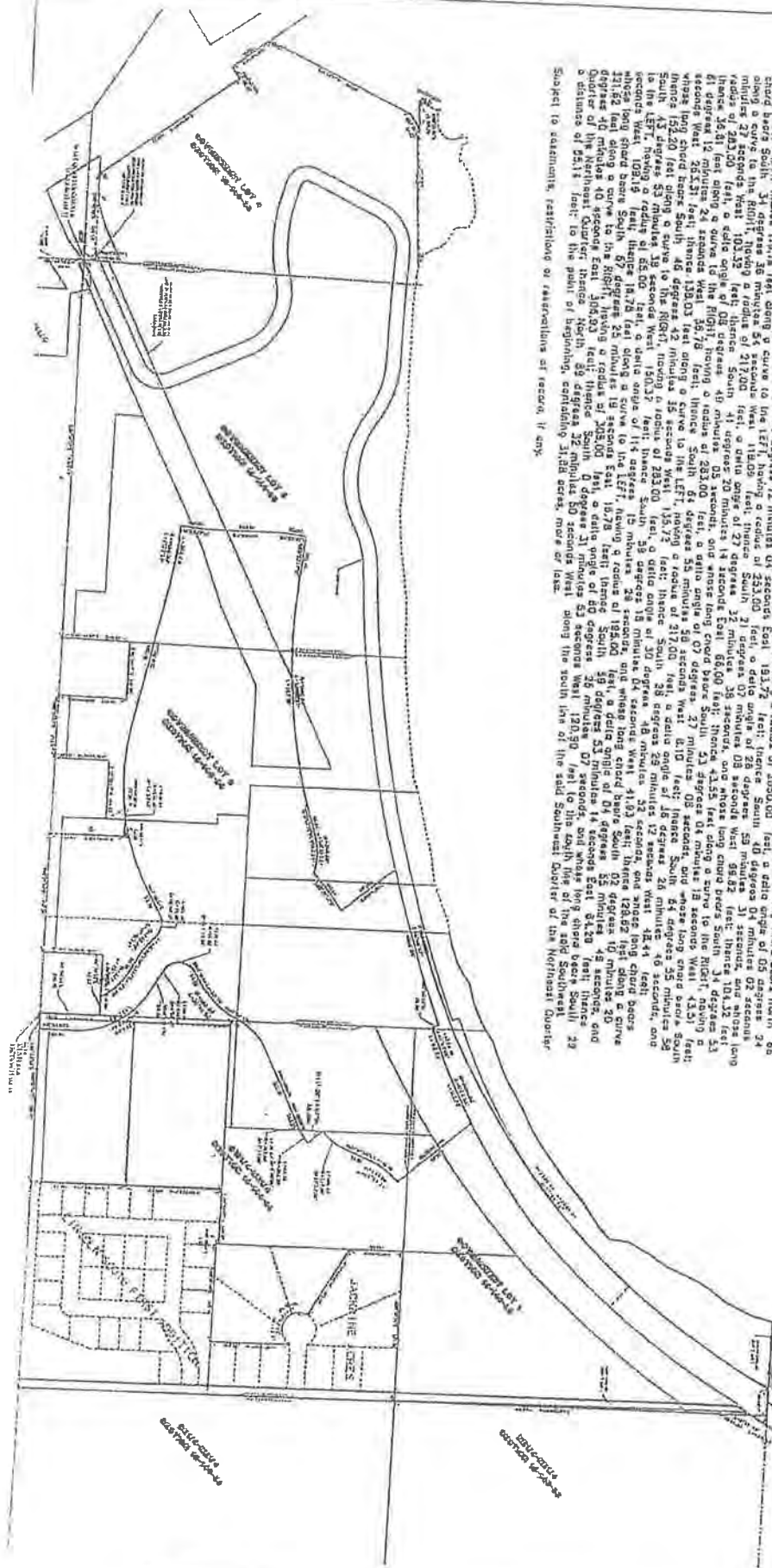
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EXHIBIT B

Bemidji Regional Event Center

<u>SOURCES OF PROJECT FUNDS</u>	<u>AMOUNT</u>	<u>PERCENTAGE ALLOCATION</u>
Bemidji Economic Development Authority (BEDA)	\$13,000,000	14%
State of Minnesota	\$20,000,000	22%
City of Bemidji	<u>\$57,683,669</u>	<u>64%</u>
	\$90,683,669	100%

EXHIBIT C

Bemidji Regional Event Center

	<u>Percentage of Allocation</u>
Bemidji Economic Development Authority	100%
City of Bemidji	0%
BSU (Use Agreement Tenant)	0%

EXHIBIT D

Permitted Encumbrances

1. Real estate taxes and installments of special assessments not currently due and payable.
2. Subject to Mineral Reservations, Restrictions or Easements of record, if any.
3. Subject to any future encumbrances that are consented to, in writing, by both the Minnesota Department of Employment and Economic Development and Minnesota Department of Finance.

G. O. Compliance Checklist for

GROUND LEASES



Development Name: Bemidji Regional Event Center
Location of Development: Bemidji, Minnesota
Identity of Lessor: Bemidji Economic Development Authority
Identity of Public Entity/Lessee: City of Bemidji
Ground Lease: Bemidji Regional Event Center

This G.O. Compliance Checklist for Ground Leases is intended to merely be a mechanism to assist the Commissioner of the Minnesota Department of Finance and Employee Relations in his/her evaluation of Ground Leases relating to GO Bond Financed Property, and for no other purpose.

The following definitions apply for the purpose of this checklist:

Commissioner - means the Commissioner of the Minnesota Department of Finance and Employee Relations, or its designee.

Facility - means all structures that will be owned by the Lessor and leased to the Lessee under a Ground Lease.

GO Grant Agreement - means the General Obligation Grant Agreement under which the State Entity is providing the grant to the Public Entity.

Governmental Program - means a governmental program established or authorized by law and established by official action of Lessor, for which the Leased Premises will be used.

Ground Lease - means the above identified ground lease of the Leased Premises under which the Public Entity acquires from the Lessor the right to use and operate the Leased Premises.

Leased Premises - means the Real Property and, if applicable, Facility that will be owned by the Lessor and leased to the Public Entity under the Ground Lease.

Lessor - means the entity that will be the fee owner/lessor of the Leased Premises.

Public Entity - means the public entity that will be the tenant/lessee under the Ground Lease.

Real Property - means all of the real estate that will be owned by the Lessor and leased to the Public Entity under the Ground Lease.

State Entity - means the state entity that is the issuer of the grant.

Ground Lease Provisions

The following delineates the provisions that must be included in all ground leases. All of the following questions (i.e. requirements) must be answered "Yes" in order for the ground lease to be acceptable to the Minnesota Department of Finance and Employee Relations.

NOTE: In the following questions "N/A" means not applicable.

I. DESCRIPTION OF LEASED PREMISES

Does the Ground Lease clearly specify and describe the Leased Premises? Yes X
No

* Section or paragraph numbers in Ground Lease that satisfy this requirement: Exh.A, Pg.1

II. LESSEE

Is the Public Entity the lessee under the Ground Lease? Yes X
No

III. MODIFICATION/TERMINATION

Is the Ground Lease structured so that it cannot be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the State Entity and the Commissioner? Yes X
No

* Section or paragraph numbers in Ground Lease that satisfy this requirement: 2.2

IV. TERM OF GROUND LEASE.

Is one of the following two provisions satisfied (i.e. one of the following two questions must be answered "Yes")? Yes X
No

A. If the Ground Lease is only for the lease of Real Property, is the original term of the Ground Lease greater than 37.5 years, or such other period of time specifically authorized by a Minnesota statute, rule or session law? Yes X
No
N/A

* Section or paragraph numbers in Ground Lease that satisfy this requirement:

B. If the Ground Lease is for the lease of Real Property and Facilities, is the original term of the Ground Lease greater than 125% of the useful life of the Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law? Yes X
No
N/A

* Section or paragraph numbers in Ground Lease that satisfy this requirement: 2.2

V. PAYMENTS DUE UNDER GROUND LEASE:

Is the Ground Lease structured so that there are no payments due thereunder or that all payments due thereunder are due as a single lump sum on the date that the Ground Lease is first made and entered into? Yes X
No

* Section or paragraph numbers in Ground Lease that satisfy this requirement: 3

VI. TERMINATION OF GROUND LEASE:

Is the Ground Lease structured so that it does not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination of the Ground Lease? Yes X
No

NOTE: The Ground Lease may contain requirements and obligations to be complied with by the Public Entity as long as the sole remedy for non-compliance by the Public Entity is an order for specific performance.

VII. OPERATION OF GOVERNMENTAL PROGRAM

A. Do the provisions of the Ground Lease clearly allow and permit the Leased Premises to be used for the operation of the Governmental Program? Yes X
No

* Section or paragraph numbers in Ground Lease that satisfy this requirement: 4

B. Is the Ground Lease structured so that it does not contain any provisions that would limit or impair the use of the Leased Premises for the operation of the Governmental Program? Yes X
No

VIII. LIENS AND ENCUMBRANCES

Is the Ground Lease structured so that it prohibits the Lessor from creating or allowing, without the prior written consent of both the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased Premises or the Lessor's interest in the Ground Lease? Yes X
No

IX. USE RESTRICTIONS.

Is one of the following two provisions satisfied (i.e. one of the following two questions must be answered "Yes")? Yes X
No

A. Is the Ground Lease free of any use restrictions? Yes X

NOTE: Provisions that restrict any material changes to the physical characteristics of the Facility are acceptable and are not deemed to be a prohibited use restriction. No

B. If the Ground Lease contains use restrictions, do the Use Restrictions only apply as long as the Public Entity is the lessee under the Ground Lease, and that such use restrictions will terminate and not apply to any successor lessee who purchases the Public Entity's interest in the Ground Lease? Yes
No
N/A

NOTE: Provisions that restrict any material changes to the physical characteristics of the Facility are acceptable and are not deemed to be a prohibited use restriction.

X. ACKNOWLEDGEMENT OF GO GRANT AGREEMENT:

Does the Ground Lease contain a provision acknowledging the existence of the GO Grant Agreement and that the terms, conditions and provisions of the GO Grant Agreement control over any inconsistent provisions in the Ground Lease? Yes X
No

* Section or paragraph numbers in Ground Lease that satisfy this requirement: 2.1

Summary

Have all of the following questions contained herein been answered "Yes"? Yes X

[If the answer to this question is "No" then the Ground Lease is not acceptable in its submitted form.] No

[Please note that even if all of the following questions are answered "Yes", there still may be provisions contained in the submitted Ground Lease that may make it unacceptable to the Commissioner.]

I.	Yes	<u>X</u>	No	<u> </u>
II	Yes	<u>X</u>	No	<u> </u>
III	Yes	<u>X</u>	No	<u> </u>
IV.	Yes	<u>X</u>	No	<u> </u>
V.	Yes	<u>X</u>	No	<u> </u>
VI	Yes	<u>X</u>	No	<u> </u>
VII.A	Yes	<u>X</u>	No	<u> </u>

VII.B
VIII.
IX.
X.

Yes	<u>X</u>	No	_____
Yes	<u>X</u>	No	_____
Yes	<u>X</u>	No	_____
Yes	<u>X</u>	No	_____

Preparation of Checklist

This G.O. Compliance Checklist for Ground Leases was prepared by and is submitted to the Commissioner by the Public Entity, and by preparing and submitting this checklist to the Commissioner, the Public Entity hereby certifies that the information contained in this checklist is true and correct and that it accurately reflects the contents of the referenced Ground Lease.

PUBLIC ENTITY

CITY OF REMIDJI

By: _____

Alan R. Felix.

Its: Attorney

Date: _____

11/24/08

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FOR USE ONLY BY STATE OF MINNESOTA

This G.O. Compliance Checklist for Ground Leases was reviewed by the following individual:

Name _____

Title _____

Department or Agency _____

Date _____

APPROVAL OF GROUND LEASE BY COMMISSIONER

Based upon the information contained in this G.O. Compliance Checklist for Ground Leases and the certification by the Public Entity that the information contained in this checklist is true and correct and that it accurately reflects the contents of the referenced Ground Lease, the Commissioner consents to the use of the referenced Ground Lease.

**COMMISSIONER OF MINNESOTA
DEPARTMENT OF FINANCE AND
EMPLOYEE RELATIONS**

By: _____

Date: _____

LEASE AGREEMENT

CITY OF BEMIDJI, AS LESSOR

AND

**STATE OF MINNESOTA, BY AND THROUGH THE BOARD OF TRUSTEES OF
Minnesota State Colleges & Universities, ON BEHALF OF BEMIDJI STATE
UNIVERSITY**

Dated as of:

January 26, 2009

**BEMIDJI REGIONAL EVENTS CENTER
LEASE**

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LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement") is entered into by and between the City of Bemidji, a municipal corporation under the laws of Minnesota, (hereinafter referred to as "City") and the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges & Universities (MnSCU), on behalf of Bemidji State University (hereinafter collectively referred to as "University").

WHEREAS, MnSCU is an agency of the State, and a "Public Officer or Agency" for purposes of Minnesota Statutes, Section 16A.695, Subd.1(c), with all the powers and duties granted under Minnesota Statutes Chapter 136F, to govern the state colleges and universities and all related property, including entering into contracts and agreements for and on behalf of member state universities and their students; and

WHEREAS, Bemidji State University (BSU) is a state university governed by MnSCU under Minnesota Statutes Chapter 136F; and

WHEREAS, the City of Bemidji is a Home Rule Charter City under the laws of the State of Minnesota, vested with all the powers and authority inherent in or incidental to Municipal Government not expressly limited or restricted by the Constitution or laws of the State of Minnesota, and including, but not limited to, the authority to construct, own and operate a regional event center and to provide for all lawful uses consistent with such public facility and, particularly, with reference to Minnesota Statutes, Section 471.15-471.191 and Minnesota Statutes, Chapter 136F; and

WHEREAS, Chapter 179, Section 21, Subdivision 5, Minnesota Laws of 2008 (the "State Bonding Authorization"), appropriated \$20,000,000 for a grant to the City of Bemidji to acquire land, pre-design, design, construct, furnish and equip the Bemidji Regional Event Center (the "BREC"); and

WHEREAS, this State Bonding Authorization shall be made available when the Commissioner of Finance or successor agency head determines that at least \$25,000,000 has been committed to the project from nonstate sources; and

WHEREAS, Chapter 154, Article 5, Section 3, Minnesota Laws of 2008 (the "Sales Tax Authorization"), authorized the City to impose a sales and use tax to pay all or part of the City's share of costs for acquisition, design and construction of the BREC, plus any associated costs and debt service on bonds or other obligations issued to finance the BREC. Authorized expenses include, but are not limited to, acquiring property, construction expenses, improving associated infrastructure, and purchasing furniture, fixtures and equipment for the BREC; and

WHEREAS, the State Bonding and Sales Tax Authorizations were premised in part on the BREC benefitting BSU, primarily the hockey arena and related facilities for use by BSU's men's and women's intercollegiate hockey programs, where the teams will play their home games; and

WHEREAS, the BREC will serve as a regional entertainment and convention center and hockey arena (collectively the “Events Center”); and

WHEREAS, the University values the long-standing relationship between the University and City, recognizes the importance of the Events Center to the City of Bemidji and to the University’s plans to be a member of the Western Collegiate Hockey Association (WCHA), and desires to become the anchor tenant of the Events Center; and

WHEREAS, the City will recognize the University as the anchor tenant in the Events Center arena (“New Arena”); and

WHEREAS, the City has included University representatives in the Events Center design and planning process in order to ensure that the New Arena design and improvements reflect that it is the home of Bemidji State University Hockey; and

WHEREAS, the Board of Trustees of Minnesota State Colleges and Universities approved the lease during their meeting November 19, 2008, subject to the Chancellor agreeing to the final lease terms; and

WHEREAS, University has agreed to lease the Events Center from the City upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and other good and valuable consideration, University and City agree as follows:

Section 1. Definitions.

The following terms shall have the meanings set forth below:

Bemidji Economic Development Authority (BEDA). The owner and ground lessor of the underlying real property, which includes the Leased Premises.

Bemidji Regional Events Center – Shall mean the project developed by the City of Bemidji which includes convention and meeting space, a collegiate hockey arena, parking, and related amenities as approved by the City and financially supported by state general bonding appropriation authorized by the Minnesota Legislature. Plans for the Center are attached **Exhibit A-1 and A-2**.

City of Bemidji. The developer, ground lessee and Landlord of the Events Center.

G.O. Compliance Legislation. Minnesota Statute 16A.695, as amended.

Governmental Program. The property leased herein is State Bond Financed Property, operated by the City to provide a forum for public uses and activities consistent with a regional event center, including the provision of a hockey arena and related athletic

facilities for Bemidji State University men's and women's intercollegiate hockey teams, as well as other Bemidji State University uses consistent with Minnesota Statutes Chapter 136F and Minnesota Statutes, Section 471.15-471.191.

Grant Agreement. An agreement between the City of Bemidji and the Department of Employment and Economic Development governing the grant of general obligation bond proceeds to the City of Bemidji for the development of the Bemidji Regional Events Center, as further referenced in Section 2 herein.

Landlord. The City of Bemidji, a municipal corporation and body politic.

Leased Premises. That portion of real property legally described on **Exhibit A** attached hereto, associated with the Event Center improvements to be constructed thereon, all located in the City of Bemidji, Minnesota, as amended from time to time, which premises more specifically include use of the Events Center Arena and those exclusive areas as set forth on **Exhibit B**, attached and incorporated herein.

Order. Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property dated July 13, 1995.

State. Minnesota Department of Employment and Economic Development (DEED).

State Grant Proceeds. The State Grant in the amount of \$20,000,000 made to the City pursuant to the terms of the Grant Agreement.

Tenant. State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities, on behalf of Bemidji State University.

Section 2. Acknowledgment of State Bond Financed Properties/Ground Lease/Governmental Program/Condition Precedent.

The City and University acknowledge herein that the City's interest in the premises leased hereunder, will be subject to the General Obligation Bond Proceeds Grant Agreement Construction Grant for the Bemidji Regional Event Center (the "Grant Agreement"), a copy of which is attached hereto as **Exhibit D** and incorporated herein, and the Declaration by City in favor of the State (the "Declaration").

The City and University further acknowledge herein that the City's interest in the premises leased hereunder is by way of a long-term Ground Lease between the City and the Bemidji Economic Development Authority (BEDA), the owner of the underlying real property, as described on **Exhibit A**.

This Lease Agreement is entered into in order to carry out that portion of the governmental program consisting of use of the BREC arena and related athletic facilities for men's and women's intercollegiate hockey and/or other University uses consistent with Minnesota Statutes, Section 471.15-471.191 and/or Minnesota Statutes Chapter 136F.

This Lease Agreement is conditioned upon consent in writing given by the Commissioner of the Minnesota Department of Management and Budget (formerly Finance).

Section 3. Financing and Construction of the New Arena.

The Event Center Arena (hereinafter the "New Arena"), which shall provide hockey seating for 4,000 fans, a 200 foot by 85 foot ice hockey rink that meets the standards of the National Collegiate Athletic Association (NCAA) and the Western Collegiate Hockey Association (WCHA), not fewer than 25 private suites, and 250 club seats, all of the associated improvements customarily constructed as part of a Division I hockey facility, shall be constructed at the City's expense substantially in accordance with the program, plans and specifications identified in the attached **Exhibits A1 and A2** and incorporated in this Lease Agreement (collectively, the "2008 Plan") or with such revisions as may be made from time to time after consultation with the University. During the planning and construction period, University shall continue to have the right to be advised in advance of all material meetings between the City and its architect and Construction Manager, to promptly receive minutes of project meetings, to participate in meetings between the City and its project team for the purpose of assuring University that the completed facility will conform to the 2008 Plan and will otherwise be suitable for University's permitted uses, and to periodically and for its sole benefit visit the site and make observations as to the progress of construction. The New Arena shall include a scoreboard acquired and installed by the City. The University shall be consulted in the selection of an appropriate scoreboard, which shall meet or exceed any necessary requirements of the NCAA or WCHA. The City shall cooperate with the University, as needed, to ensure the facility's design supports the University's efforts to gain admission to the WCHA men's conference.

Section 4. Completion Date.

Time is of the essence. The City expects to complete the Events Center by January 11, 2011. For purposes of this Lease Agreement, the New Arena shall be deemed to be completed and ready when a certificate of occupancy for the New Arena has been issued by the Bemidji building official and the New Arena is ready for full occupancy by the University which includes the ice being available for practice and play, all exclusive University spaces are completed, and all public areas including concourses, seating and concession areas are completed (the "Completion Date").

Section 5. Term.

The term of this Lease Agreement shall be 20 years, commencing on the Completion Date and ending on the 20th anniversary of such date, unless terminated as provided hereinafter. The University shall begin paying rent at the end of the University's first month of occupancy. ("Rent Commencement Date").

Section 6. Periodic Review and Evaluation.

The City and University shall meet as needed and no less than annually to review lease matters such as the University's initial implementation plan for provision of intercollegiate hockey programs and, thereafter, University's annual "evaluation report and budget" of and for governmental programs implemented under this Lease Agreement as required under Paragraph 36 herein. The parties may also meet to discuss proposed amendments to the Lease Agreement wherein each will extend reasonable efforts to mutually accommodate the other to effect necessary modifications, including, by way of example, the University's compliance with the rules of the NCAA and WCHA as may from time to time be enacted and which impact the University's performance under the Lease Agreement, or the City's potential procurement of a Facility Operator to assume the City's operational functions under the Lease Agreement. Also, per the signed Memorandum of Understanding between the City and BSU, the parties will periodically re-evaluate financial terms, including revenue sharing and/or operational responsibilities, in order to maintain compliance with laws, rules and other agreements governing the Events Center and its operations, and to allow for renegotiation of financial terms to maintain economic feasibility of and for each party's performance under the Lease Agreement.

Section 7. University Use of the New Arena.

- A. University shall have the right to use the New Arena for men's and women's inter-collegiate pre-season, regular season (both conference and nonconference), and post-season and tournament hockey games, as well as for practice sessions.
 1. University Priority Use During Hockey Games. The University shall have priority use of the New Arena for scheduled home hockey games between October 1 - March 31 (the "Hockey Season") each year during the Term of the Lease Agreement. The University shall notify City by February 1 of each year (or later if WCHA conference schedules are not completed by February 1) during the term of the dates of all regular, post-season, and tournament games that will be played in the New Arena in the upcoming Hockey Season. A schedule of University practice sessions will be mutually agreed upon by July 1 of each year for the upcoming season, and shall be incorporated by reference into this Lease Agreement. The City reserves authority over final scheduling of events provided that no events shall conflict with the University's home hockey game schedule.
 2. Ice Sheet. The ice sheet of the New Arena shall be set up by the City in accordance with the rules of the National Collegiate Athletic Association and the Western Collegiate Hockey Association as may from time to time be in force, if any, for the entire BSU Beavers Hockey Season, unless the City notifies the University at least 90 days in advance of the Hockey Season that the New Arena is required for another event. The BSU

Beavers logo provided by the University to the City shall be prominently placed in the center of the New Arena ice sheet.

3. Exclusive University Areas. University shall have exclusive use of the following areas in the New Arena 24 hours a day, 7 days a week, year-round, all identified on the 2008 Plan shown on **Exhibit B**:

- i. Two locker rooms, dressing rooms, and a uniform storage and drying room.
- ii. 12 offices totaling approximately 2,000 usable sq. ft.
- iii. Weight room for student athletes of approximately 2,000 usable sq. ft.
- iv. At least 500 square feet of a larger retail store front shared with the City and located on the concourse level, which designated area and operation is dedicated to selling only University merchandise.
- v. Any other areas designated in the 2008 Plan as exclusive BSU Areas.

4. Post-Season Tournaments. Notwithstanding anything in this Lease Agreement to the contrary, City shall have the right to manage and use the New Arena in connection with the Men's WCHA Final Five games, Men's NCAA tournament games, and Women's NCAA tournament games that do not involve Bemidji State University as a tournament participant, and the City shall have the right to enter into separate rental agreements in connection with such tournament games.

- B. Alternative Governmental Program Use. In the event the University no longer has Division I men's and women's intercollegiate hockey programs or operates any other intercollegiate hockey program that would otherwise use facilities provided by the New Arena, the University shall continue to have the right to use the New Arena for Commencement at least twice a year, for training facilities, office uses, and for other University-sponsored events as may be identified by February 1 in advance of an upcoming Lease Year. Rent for such alternative use shall be as provided under Section 10D. herein.
- C. All other uses shall be subject to charges based on a schedule of charges prepared by the City, amended from time to time, and provided to University annually.

Section 8. University's Rights.

- A. Sponsorships and Signage.

1. Advertising in the Arena. Except as set forth in Section 8(A)(2), University shall have the right to enter into and retain revenue from sponsorship and advertising agreements with third parties for advertising displays and signs (whether fixed or electronic) on the ice, dasher boards, time clocks, the space behind both team's benches, and the penalty box areas during the term of this Lease Agreement.
 2. Interior Signage. The University shall have the right to signage outside all areas of the New Arena designated for University's exclusive use, designated concourse areas where BSU Hockey History can be displayed, and shall be subject to the City's approval of the size of the sign and display, which shall not be unreasonably withheld or delayed.
 3. All university advertising shall be subject to NCAA rules and regulations, federal, state or municipal statutes, laws, regulations, and policies and procedures of Minnesota State Colleges and Universities.
- B. Tickets. The University shall have the right to sell advertising on all hockey tickets produced during the hockey season. The University shall reimburse the City for any additional printing costs incurred to accommodate such advertising on hockey tickets.
- C. Public Address Announcements. University shall have the right to enter into agreements with third parties for the broadcast of sponsorship and advertising messages over the public address of the New Arena during University hockey games and other University events at the Events Center. University shall retain any revenues generated from such sponsorship or advertisement agreements, and shall pay the cost of producing all such messages.
- D. Naming Opportunities. University shall have the exclusive right to designate the name of all spaces that are University exclusive spaces or used exclusively for the University's hockey program, and to retain all monies paid in connection with such designation. The City shall have exclusive rights to all other areas.
- E. Media Broadcast. University shall have the right, without payment to the City, to film, record, televise, broadcast and otherwise make available to the public University hockey games and other University events occurring at the New Arena and use the broadcast booths and other facilities of the New Arena in connection with such activities. This right includes the right to broadcast events over the internet or via new technologies not specifically named herein. In connection with University's exercise of this right, City shall reasonably cooperate with University and with those parties actually producing any such broadcasts and productions. City shall make available for use, without charge, parking space for mobile units and similar equipment in television production parking areas in close proximity to the New Arena.

- F. Programs, Yearbooks, Media Guides, Merchandise and Novelties. University shall have the exclusive right to produce and sell game programs, yearbooks and media guides at the BSU hockey games. University shall have the exclusive right to sell BSU-branded apparel and novelties, including without limitation jerseys, t-shirts, hats, pennants, and pins, at BSU hockey games.
- G. Parking. Included in the rent paid by the University to the City, the City shall provide the University with designated parking for men's and women's hockey staff, coaches, and players in the parking lot east of the BREC.
- H. Commemorative Signage. At the University's request, the City will install and maintain banners and signs that commemorate the achievements of the hockey teams and players (including championship and runner-up banners and retired numbers). University shall pay the cost of preparing any such banners and signs. City shall have the right to approve all such banners and signs, which approval shall not be unreasonably denied.
- I. New Arena Interior Design. The University shall have the ability to participate through the BREC Design Review Committee in the selection of the New Arena color schemes including seat colors, artwork selected for the New Arena walls, and other interior design aspects.

Section 9. City's Rights.

- A. Arena Naming Rights. The City shall have the exclusive right to designate the name of the New Arena and to retain all monies paid in connection with such designation, excluding any suite revenues due the University under this Lease Agreement in the event the naming rights includes suite usage. The New Arena will not have a name that includes (i) the name or nickname of, or a name confusingly similar to, the name or nickname of any other Division I hockey team, any professional sports team, or any college or university; (ii) the name of any intoxicating or non-intoxicating alcoholic beverage or the maker of any such beverage; or (iii) the name of any tobacco product or the maker of any such product.
- B. Sponsorship and Signage. The City shall retain the rights to enter into sponsorship and advertising agreements with third parties not specifically granted to the University in Section 8 and **Exhibits B and C** herein, and including specifically the rights for advertising displays and signs on its ice-scraping machines (or other machines serving the same purpose).
- C. Parking. City shall have exclusive control over Event Center parking. All parking rights and privileges, including the placement of any pamphlet, notice, sticker, or other type of advertising upon any vehicle parked in parking lots controlled and operated by City, shall be controlled or managed by City. City shall have the right to collect all parking fees and charges related to an event at the New Arena.

Section 10. Payments by University to City.

- A. Rent. To reimburse the City for ordinary and necessary expenses related to the City's operation and maintenance of the premises leased hereunder, as well as to defray in part the City's debt service on bonds or other obligations issued to finance the BREC and improvements related hereto, the University shall pay Rent in the amount of \$9,500 per men's home hockey game with a minimum annual amount of \$190,000, payable within thirty 30 days of such home game. Additional amounts due to meet the minimum annual payment shall be due by the end of the University's fiscal year, June 30th. Beginning on the July 1 that follows completion of the first full Lease Year, and on each subsequent July 1 during the term, rent shall increase by three percent (3%) annually of the amount paid in the prior Lease Year.
- B. The University shall fulfill its obligation to pay all Rent due to the City as required. Its lease obligations contained herein shall be absolute and unconditional, except as and otherwise provided for in this Lease Agreement, and University will not, during the Lease Term suspend or discontinue any payments of Rent, and shall not withhold any payment of Rent pending resolution of any dispute or assert any right of set-off or counterclaim against its obligation to make such payment of Rent, except as otherwise set out in this Lease Agreement. Notwithstanding the foregoing, the rent payments shall be met solely from the revenues generated by home hockey games or amounts budgeted and encumbered by the University for such purposes in the University's annual budget, and shall constitute a current expense of the University for the fiscal year then in effect. It shall not constitute an indebtedness of the University or the State of Minnesota, by and through the Board of Trustees of Minnesota State Colleges and Universities within the meaning of the Constitution and laws of the state of Minnesota.
- C. This Lease Agreement is subject to Minnesota Statute Section 16B.24, subdivision 6. The University shall encumber funds necessary to pay the rent due under this Lease Agreement on a fiscal year basis. If the University lacks sufficient funds which can be budgeted and encumbered to pay the Rent due under this Lease Agreement in the next fiscal year, as determined by the University's budget for the fiscal year in question, then the University shall request sufficient funds from MnSCU prior to effecting non-budgeting of this Lease Agreement. In such event, the University shall also notify the City as soon as possible of the budget funding deficit and of its solicitation to MnSCU. Moreover, upon such decision, and with notice to the City, the University and MnSCU shall make best efforts to fulfill the annual rental obligations of the Lease Agreement up to and including a budget request to the Board of Trustees to include the request for funds in the biennial operating budget request that the Board requests of the Governor and Legislature, with such request including appropriations sufficient to pay the University's financial obligations under this Lease Agreement in an amount at least equal to the Rent which is to become due during the upcoming biennium. Upon exhaustion of

University's best efforts to secure funding for the Rent payment hereunder, University shall notify City, and this Lease Agreement shall terminate for lack of funds. Notwithstanding the foregoing, in the event that the Minnesota State Legislature does not appropriate to the Board of Trustees of the Minnesota State Colleges and Universities funds necessary for the continuation of this Lease Agreement at any time during the term of this Lease Agreement or in the event the Governor unallots funds from the Board during a Lease year that either obligates the University or greatly influences a decision by it to terminate this Lease Agreement, the University shall provide City with notice as soon as practical prior to any expected unallotment of operating funds or other actions influencing the University to terminate this Lease Agreement for lack of funds. Moreover, in that rent payments are expected to be met in whole or in large part from revenues generated by home hockey games, the notice of any expected unallotment of operating funds shall be cause for the University and City to meet pursuant to Section 6 herein, in order to re-evaluate and enable possible re-negotiation of the Lease Agreement's financial terms in an attempt to maintain financial feasibility for both to continue their performance under the Lease Agreement and avoid termination.

Upon such notice to the City of such non-appropriation or unallotment of funds, and the parties' failure to avoid termination through re-negotiation of revised financial terms pursuant to Section 6 herein, this Lease Agreement shall terminate and be of no further force and effect. Before such termination, the University shall pay any rent which is due in the then current fiscal year which has not been paid.

- D. Alternative Governmental Program Payment Use. In the event the University no longer has Division I men's and women's intercollegiate hockey or operates any other intercollegiate hockey program(s) that would otherwise use facilities provided by the New Arena, and commences to use the New Arena for the Alternative Governmental Program Uses provided under Section 7B. herein, the University shall pay rent adjusted to \$230,000 annually to reflect the change in use. The Rent shall be payable in equal monthly installments in arrears. Additionally, beginning on each subsequent July 1 during the term after the University has stopped using the facility for intercollegiate hockey program purposes, Rent shall increase by three percent (3%) of the amount paid in the prior Lease Year.
- E. Surrender and Title Upon Termination. In the event this Lease Agreement is terminated, University shall remove its personal property and vacate and surrender possession of the Leased Premises to the City in as good condition as when the University took possession, ordinary wear and damage excepted. Furthermore, upon termination, University shall quit and surrender the Leased Premises, and all right, title and interest in and to all improvements and equipment constructed or installed on the Leased Premises shall vest in the City free and clear of any and all liens and encumbrances created.
- F. Taxes, Governmental Charges and Other Charges. The site of the New Arena is currently tax exempt real property, and the real property and BREC improvements

are expected to remain tax exempt during the term of this Lease Agreement. The City shall take all reasonable steps to ensure that the entire Events Center, including the New Arena, maintains its property tax exempt status. Notwithstanding the foregoing, in the event that portion of the New Arena property leased exclusively by University becomes subject to taxation or special assessments, the University shall pay, as the same respectively become due but only to the extent the same would be payable if the State were the owner of the such property leased exclusively hereunder, all taxes, special assessments, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the property exclusively leased hereunder (or the City's interest therein) or to any furnishings, equipment or other property installed or brought by the University therein or thereon, including ad valorem, sales, use and other excise taxes, and all claims for rent, royalties, labor, materials, supplies, private utilities and other charges incurred by the University's in its individual operation, maintenance, use, occupancy and/or upkeep of the property exclusively leased hereunder.

Section 11. Ticketing and Arena Operations.

- A. Ticket Sales. City shall sell tickets, including tickets associated with suites and club seating for Hockey Games, at prices established in coordination with the University. Receipts from any such sales shall be turned over to University within fifteen (15) days of the date of the event, except for presold suite and club seat revenues, which shall be remitted to University within fifteen (15) days after payment by the suite or club seat licensee. City shall determine by the Completion Date whether it will operate the facility itself or whether it will engage the services of an operator for the facility that will manage ticketing and arena operations. In any event, City reserves the right to collect a ticket surcharge ("Ticket Surcharge") toward the cost of maintenance and toward the establishment of a reserve fund for purposes of capital upkeep and improvements. The City also reserves the right to charge a per ticket fee to recoup certain operational expenses, such as credit card charges, arena operator costs and similar expenses. ("Operational Expense Fees"). The City shall have the right to adjust the Ticket Charges and Fees during the lease term.
- B. Suite and Club Licenses.
1. Suites. All suites shall include in its charge the cost of season hockey tickets for all BSU men's and women's hockey games and other University events at the New Arena for the seating capacity of such licensee's suite. The rental for each suite shall not be less than the cost of the tickets for the seating capacity in that suite.
 2. Suite Rental and Revenue Sharing. All suite rental agreements for Hockey Season occupancy shall be between suite renters and the City, and the University shall not be a party to such agreements. City shall pay to University ninety percent (90%) of the total revenue derived from the suites, exclusive of payments made for concessions which the City shall

retain, and exclusive of payment for BSU Hockey ticket sales, which University shall retain (less Ticket or Operational surcharges). The City shall have the right to rent the suites for all other non-University events, with hockey suite and club seat holders having first right of refusal, and shall retain one hundred percent (100%) of such non-University events revenues, including suite rentals.

3. Priority List; Season Ticket Prices. City shall have the right, and shall make reasonable efforts in collaboration with the University, to market the use of the suites and the Club Seats in the New Arena in accordance with any priority or pre-sale list prepared by the University and initially delivered to the City not later than the Completion Date. Any amendments to the priority or pre-sale list and the price of suite season tickets, which the University intends to charge a premium over regular-priced, bowl season tickets for, shall be delivered by the University to the City not later than six (6) months prior to the beginning of the hockey season for which it will be applicable. The University shall have the right to market directly to Suite Licensees and Club Seat Licensees to participate in BSU fundraising and hockey booster activities, and City shall provide University with a list of such licensees, as may be requested from time to time.
4. Complimentary Suites. Before the Completion Date, University shall select for its own use two (2) suites for all BSU men's and women's hockey games, which the University, at its discretion, can make available for sale on a game by game basis. Revenues from these complimentary suites shall be allocated the same as for all other suites.

C. Arena Operations. The City shall provide the following:

1. Utilities. All utilities, excepting telephone and telecommunication services generally, but including heat, light, ventilation, air conditioning, ice making equipment for the hockey rink, hot and cold running water, and sewer service required for University's comfortable use and occupancy, including, but not limited to training, practice and game events, of the New Arena and the operation of the New Arena as a hockey and entertainment venue;
2. Janitorial. All janitorial service for all parts of the New Arena (except the retail shop) after each University event including, but not limited to the University locker rooms and the suites after each use, and regular cleaning of offices and other daily occupancy space;
3. Maintain and keep in repair and useable condition the entire New Arena, including the ice equipment and the facility, both inside and out;

4. Provide security for the New Arena, except for additional necessary game day security (which additional security shall either be provided by the University or the cost for which shall be reimbursed to the City.)
5. Provide University keys to all areas as required.

D. Game Day Expenses.

1. The University shall pay the costs of all Game Day Expenses. The University shall provide staffing for a public address announcer, scorekeeper, timekeeper, goal judges, penalty box attendants, video replay staff, and medical and first aid personnel assigned to care for players and referees for game-days; staff for the retail kiosks and/or stores located in the New Arena; and other personnel not normally staffed by the City on a non-game day basis.
2. The City shall provide: normal, non-game day personnel, including but not limited to ticket sellers, minimal security personnel, maintenance workers to ensure the ice is prepared for games, concession workers, ice-scraper drivers, and personnel normally required for the day-to-day operation and maintenance of the New Arena. Other available City Staff may be used by the University per the City's established rate schedule (to be developed).

Section 12. Revenue Sharing and Payments between the Parties.

- A. The parties have agreed to a revenue sharing scheme as outlined on a percentage basis as shown on **Exhibit C**, attached and incorporated herein.
- B. City agrees to pay to University the University's share of all ticketing, suites, club seats, advertising, and all other revenue events due to University described within this Lease Agreement within fifteen (15) after the end of each month of the Lease Year, if not otherwise provided for in this Lease Agreement.
- C. City agrees (i) that not later than sixty (60) days after the end of each Lease Year it will deliver to University a statement signed by City or by an authorized officer or agent of City showing the Gross Ticket, Suites and Club Seat Sales, and all other revenue ("Gross Sales") subject to this Lease Agreement made in the preceding Lease Year, and the net revenues remitted to University ("University's Share"); and (ii) that not later than sixty (60) days after the close of each Lease Year it will deliver to University a statement of Gross Sales for the preceding Lease Year accompanied by the signed opinion of an independent Certified Public Accountant stating specifically that he or she has examined the report of Gross Sales of the preceding Lease Year, that his or her examination included such tests of City's books and records as he or she considered necessary under the circumstances, and that such report presents fairly the Gross Sales of the preceding Lease Year. If City shall fail to deliver the foregoing to University within said sixty (60) day period, University shall

have the right thereafter to employ an independent Certified Public Accountant to examine such books and records as may be necessary to certify the amount of City's Gross Sales for such Lease Year, and City shall promptly pay to University the cost thereof.

- D. University shall have the right at any time and from time to time to have its employees or outside auditors, including Legislative Auditors, to make a special audit of City's records pertaining to Sales on or in connection with the Premises. If any audit provided for herein shall disclose that the Gross Sales payable pursuant to audited Gross Sales records exceeds the amount paid pursuant to City's statement by more than two percent (2%), City shall promptly pay to University the cost of said audit in addition to the deficiency in Sales due, which shall be payable in any event. University shall have the right to audit City's books and records for the three (3) Sales Years prior to the Sales Year of the most recent audited statement received by University pursuant to Section 8(b) above.

Section 13. Concessions and Catering.

- A. All concession, food and beverage, and catering rights and proceeds shall be retained by the City, except for revenues from BSU-branded apparel and novelties, and programs, yearbooks and media guides exclusively sold in the BSU Hockey Shop operated by University. Catering packages shall be selected as part of the Suite Packages. These packages are in addition to and separate from the cost of the Suite. City concession rights shall include selling, delivering, servicing and otherwise hawking food stuffs and beverages. The City agrees that it will offer concessions at all University events in the New Arena and that the concessions sold at University events will be of at least the same quality, variety, and dependability as provided in comparable facilities. The City shall have the same rights to sell food and beverages in the BSU Lounge as it otherwise enjoys in the New Arena.
- B. Notwithstanding the foregoing, but subject to NCAA requirements, state, city, or county statutes, and Minnesota State Colleges & Universities policies and procedures, and any other applicable laws, regulations and rules, alcoholic beverages may be sold during University events. The City intends to sell alcoholic beverages during hockey games.
- C. University shall pay no commission to City in connection with sales of apparel, novelties, or programs.

Section 14. Insurance.

- A. Physical Property Damage. It shall be the duty of University and City to maintain insurance or self-insurance on their own property, both real and personal.
- B. Worker's Compensation. Throughout the Lease Term, the University and City shall each maintain Worker's Compensation Coverage to the extent required by law.

- C. Liability insurance. City and University agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Each shall maintain their own liability insurance covering their respective liability(s). University's liability shall be otherwise governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law. City's liability shall be governed by Minnesota Statutes, Chapter 466.

Section 15. Liability.

(See also 11.C. above) During the Lease Term, the University assumes all risks and liabilities to the extent authorized by law for loss or damage to the Leased Property and for injury to or death of any person or damage to any property proximately caused by the negligent conduct of the University, its officers or employees, whether such injury or death be with respect to agents or employees of the University or to third parties, and whether such property damage be to the University's property or the property of others. The City assumes all risks and liabilities to the extent authorized by law for loss or damage to the Leased Property and for injury to or death of any person or damage to any property proximately caused by the negligent conduct of the City, its officers or employees, whether such injury or death be with respect to agents or employees of the City or to third parties, and whether such property damage be to City's property or the property of others. The City and University shall cooperate fully in the handling and conduct of any such claim, suit or proceeding. As noted above, the University's obligations to pay moneys hereunder shall be subject to the Minnesota State Tort Claims Act and other applicable law. Notwithstanding the University's obligations hereunder, the City does not waive any immunities it may have under Minnesota Statutes, Chapter 466.

Section 16. Damage, Destruction or Condemnation.

- A. Damage or Destruction. If the New Arena is totally or in material part damaged or destroyed, either party may elect to terminate this Lease Agreement by written notice to the other party given within forty-five (45) days of such damage or destruction. If City does not elect to terminate the Lease Agreement, the City shall use insurance proceeds, if any, and repair, rebuild or restore the New Arena to a condition at least as good as that which existed immediately prior to such damage or destruction. Additionally, City shall within forty-five (45) business days of the damage or destruction notify University, in writing, of its estimate of the time period in which restoration will be complete. If the New Arena is totally or in material part damaged or destroyed, University may terminate this Lease Agreement by written notice to City as stated above, or by written notice to the City given within thirty (30) days of either of the following: (a) notification by the City that it cannot restore the New Arena and improvements and alterations to the same or better condition as existed immediately before such destruction or damage; or (b) after the expiration of the time estimated by City in its notice to University for the completion of the

restoration, if by such date the restoration has not been substantially completed. If the New Arena is totally or in material part damaged or destroyed, then regardless of whether either party has terminated the Lease Agreement as provided above, City shall refund any rent and advertising fees University has pre-paid for the period during which the New Arena is expected to be unusable. Rent and advertising fees payable by University shall be abated commencing on the date of damage or destruction and continuing during the restoration period. For purposes of this Lease Agreement, damage that can with reasonable diligence be repaired in fewer than ninety (90) days shall not be the basis for termination by either party.

- B. Condemnation. If at any time during the term of this Lease Agreement title to all or substantially all of the New Arena property shall be taken in any Proceeding involving exercise of the right of eminent domain, this Lease Agreement may be terminated at such time as title vests pursuant to said Proceeding, and the City shall be entitled to receive the Net Proceeds of the award not made for damage to or the taking of University property or the interference with the University's right to possess, use or occupy the New Arena property. For purposes herein, "all or substantially all of the New Arena property" shall be deemed to have been taken if the proposed taking described in the Condemnor's Petition in the Proceeding shall involve such an area, or such impairment of public access to the New Arena, that the University cannot in its opinion based upon the described proposed taking, and evidenced by written notice to the City given within thirty (30) days after the commencement of the Proceeding, reasonably maintain its activities or operations in the remainder of the New Arena after the taking substantially in the same manner and as satisfactorily as before.

If, during the term of this Lease Agreement, title to less than all or substantially all of the New Arena property shall be taken in any Proceeding, neither the terms of this Lease Agreement nor any of the obligations of either party under this Lease Agreement shall be reduced or affected in any way, unless the partial taking renders the property unusable to the University, in which case rent and advertising fees shall be abated to the extent of the interference and commencing from the date of the taking. The City shall to the extent of available Net Proceeds promptly repair, rebuild or restore the New Arena property to the extent necessary to render the property a complete architectural unit. The City will cause its portion of the Net Proceeds received from any award made in such proceeding to be applied to any such repair, rebuilding or restoration.

The City and University shall cooperate fully in the handling and conduct of any prospective or pending Proceeding with respect to the New Arena property.

- C. Proceeds of Insurance or Condemnation of Event Center Property. The University shall also be entitled to the Net Proceeds of any condemnation award or portion thereof made for damages to or taking of its own property or for damages on account of the taking of or interference with the University's right to possession, use of or occupancy of the New Arena property. Similarly, the University shall also be

entitled to the Net Proceeds of any fire and extended coverage or similar insurance on its own property not constituting part of the property leased under this Lease Agreement.

Section 17. Miscellaneous Provisions Related to University's Use.

- A. University warrants that all copyrighted material to be performed by University in the New Arena has been duly licensed or authorized by the copyright owners or their representatives.
- B. University shall not stage any act or performance in which fire or flame is involved without first seeking written permission from the City and the City of Bemidji Fire Department.
- C. University shall not use any decorative material prohibited by Bemidji ordinances or the State Uniform Building and Fire Codes including, but not limited to, crepe paper (flameproof or not), cellophane (shredded or not), confetti, cotton, corn stalks, leaves, evergreen bough, sheaves of grain, streamers, straw paper, vines, moss, coniferous foliage or any similar flammable or combustible materials in or about the New Arena.
- D. University shall not cause or permit others to cause the New Arena to be damaged, marred, or defaced, and will not without approval of the City drive or permit to be driven, nails, hooks, tacks, or screws into any part of the New Arena or the Event Center, and will not make or allow to be made any alterations of any kind.
- E. Erection of special platforms, water tanks, scaffolding, rigging and other apparatus may be undertaken by University but, in order to ensure the safety to performers and the public, all of the foregoing shall be installed according to specifications provided by the City of Bemidji Building Inspector and City.
- F. If University requests equipment and/or staging from the City that the City must rent from third parties, University will be charged for actual rental cost plus other costs related thereto incurred by the City. University agrees that it will not use City's equipment, tools, or furnishings, located in or about the New Arena, without the prior consent of City, which approval shall not be unreasonably withheld.
- G. University shall comply with all laws, ordinances and rules applicable to the use of the New Arena.
- H. City agrees to ensure that University's men's and women's ice hockey teams receive equivalent treatment and benefits, consistent with 20 U.S.C. 5 1681 et seq. and its implementing regulations.
- I. University will not sell or dispose of, or permit to be sold or dispose of tickets in excess of seating capacity or admit a larger number of persons that can safely and

freely move about in the space contracted for, and the decision of the City in this respect shall be final.

- J. University understands and agrees that during the term of this Lease Agreement other events may be held in other parts of the Event Center not included in this Lease Agreement and University shall so conduct its activities so as not to unreasonably interfere with such other events. Similarly, City agrees that it will conduct these other events so as not to interfere with University's activities.
- K. University shall allow access to the exclusive areas leased under this Lease Agreement by City or its authorized representatives at any reasonable time during the life of this Lease Agreement for purposes of maintaining, repairing or otherwise within the scope of this Lease Agreement.
- L. University agrees to observe reasonable precautions to prevent waste of heat, electricity, water, air conditioning, and other utility or any service, whether such is furnished by the City or obtained and paid for by University.
- M. Pursuant to Minnesota Statute Section 16B.24, Subd. 9, and the City's own smoke-free environment policy, occupants of the Event Center shall not smoke nor permit smoking in any areas of the Events Center.
- N. University will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, charge, lien encumbrance or claim, except the respective rights of the City and University as herein provided, to be established or remain on the premises leased herein, including any mechanic's liens for labor or materials furnished in connection with any modifications, repairs, improvements or replacements. University will promptly, at its own expense, take such action as may be necessary to duly discharge any such charge, lien or claim if the same shall arise at any time.
- O. University shall at all times conduct its activities with full regard to public safety, and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety and with the City to ensure such safety. City retains the right to cause the interruption of any activity in the interest of public safety, and to likewise cause, the termination of such activity when, in the sole judgment of the City, after exercising reasonable discretion, such act is determined to be necessary in the interest of public safety.
- P. Assignment. University shall not assign or transfer this Lease Agreement or sublet any portion of the New Arena without the prior written consent of City, whose consent shall not be unreasonably withheld.

Section 18. Default and Termination.

The failure of a party to perform any obligation required by this Agreement, which default continues for more than thirty (30) days after written notice from the non-defaulting party to the defaulting party specifying the nature of the default, shall constitute an event of default entitling the non-defaulting party to exercise the remedies conferred upon the non-defaulting party by law or this Agreement. If a default reasonably requires more than thirty (30) days to cure, then the defaulting party shall have such additional time as is required to cure the default provided that the defaulting party immediately commences and diligently pursues to completion the curing of the default.

In the event that either party fails to observe, perform or comply in the provision or operation of eligible Governmental Programs by, on behalf, or for the benefit of the University, and that party fails to cure such failure within thirty (30) days of written notice of default from the non-defaulting party, then an event of default shall exist under this Lease.

In the event of a default, whatever the reason or basis, in addition to any remedy available by law or otherwise under this Lease Agreement, either party may commence an action in equity to compel the performance by the other party or take such other action and seek such other remedy as may be available to that party in law and equity, provided, however, that failure to compel the provision or operation of an eligible governmental program by, on behalf, or for the benefit of the University shall result in termination of this Lease.

Section 19. Remedies.

If a default is not cured within the time specified in Section 18 above, the non-defaulting party's remedies shall include the following:

- A. Terminate the Lease Agreement; or
- B. If a default can be cured by the expenditure of less than \$100,000, the nondefaulting party's sole remedy is to cure the default and charge such cost to the defaulting Party.

If the Lease Agreement is terminated or the non-defaulting party cures a default pursuant to Subparagraph B. above, within thirty (30) days after either the effective date of termination, or in the case of Subparagraph B, after the non-defaulting party's expenditure to cure a default, the defaulting party shall reimburse the non-defaulting party its cost for curing the default, or in the case of termination, the defaulting party shall pay the non-defaulting party all revenues and fees due but as yet unpaid to the non-defaulting party, including but not limited to either payment of rent or, in the alternative, the refund of rent and/or advertising fees pre-paid for the remainder of the fiscal year in which termination occurs.

Section 20. Remedies Cumulative; Waiver of Rights.

All remedies conferred on City or University shall be deemed cumulative and no one exclusive of any other, or of any other remedy conferred by law or in equity. The failure of either party to insist on any one or more cases upon the strict performance of any of the covenants of this Lease Agreement or to exercise any option contained in this Lease Agreement shall not be construed as a waiver or relinquishment for the future of such covenant or right. Receipt by City of any payment due with knowledge of the breach of any covenant shall not be deemed a waiver of such breach. No waiver by City or University of any of the provisions of this Lease Agreement shall be deemed to have been made unless expressed in writing and signed by the party expressing such waiver.

Section 21. Notices.

All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally or by facsimile, electronic mail (provided such delivery is confirmed), a recognized overnight courier service, or United States mail, first class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

City: Bemidji Regional Events Center
C/O City Hall,
317 4th Street NW
Bemidji, MN 56601
Attn: City Manager

University: Bemidji State University
1500 Birchmont Drive NE
Bemidji MN 56601-2699
Attn: Finance and Administration

With a copy to: Minnesota State Colleges & Universities
350 Wells Fargo Place
30 E. 7th Street
St. Paul MN 55101
Attn: Real Estate Services

Section 22. Relationship of the Parties.

Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, partnership, joint venture, or of any other association whatsoever between City and University, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease Agreement nor any act or acts of the parties shall be deemed to create any relationship between City and University other than the relationship of licensor and licensee.

Section 23. Covenant of Quiet Enjoyment.

City covenants that it has the right to make this Lease Agreement for the term aforesaid and covenants that if the University shall pay the rent and perform all of the covenants, terms and conditions of this Lease Agreement to be performed by University, then University shall, during the Term, freely, peaceably and quietly occupy and enjoy the full possession of those portions of the Event Center leased herein.

Section 24. Audit and Retention of Books and Records.

University shall ~~have~~ the right to inspect and copy such books, records, and documents (in whatever medium they exist) to verify all expenses submitted by City to University pursuant to the terms of this Lease Agreement. City shall make such items available for inspection during normal business hours at City's place of business. All such items shall be retained by City for a period of three (3) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Lease Agreement shall be retained by City, its agents and subcontractors, if any, until the claim has been resolved. Similarly, University books, records, and documents relevant to this Lease Agreement shall be subject to examination by the City and/or its auditor during normal business hours and after reasonable notice to University.

Section 25. Use of Names and/or Logos.

City and University each agree not to use the other's name, logo, or any other marks (including, but not limited to, colors and music) in any sales promotion work or advertising, or any form of publicity, without the other's written permission, which permission shall not be unreasonably denied.

Section 26. Amendment.

No amendment, modification, or waiver of any condition, provision or term of the Lease Agreement shall be valid unless in writing, signed by both University and City, and approved in writing by the Commissioner of Minnesota Management and Budget.

Section 27. Entire Agreement.

This Lease Agreement (including all addenda, exhibits and schedules) is intended by the parties to be the final and binding expression of their agreement with respect to the transaction contemplated herein and supersedes all prior agreements and understandings between the parties with respect to the subject matter of this Lease Agreement.

Section 28. Counterparts.

This Lease Agreement may be executed in two counterparts, each of which shall be deemed an original, and both of which shall constitute one Lease Agreement.

Section 29. Headings.

The headings of the sections of this Lease Agreement are used for convenience only and do not form a substantive part of the Lease Agreement.

Section 30. Governing Law; Jurisdiction.

The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Lease Agreement. All suits, actions, claims, and causes of action relating to the construction, validity, performance, and enforcement of this Lease Agreement shall be venued in Beltrami County District Court.

Section 31. Copyright.

The parties acknowledge and agree that University shall own all rights, titles, and interests in and to the University events (including all rights to reproduce, telecast, distribute or otherwise use the events, and all copyrights therein) taking place in the New Arena.

Section 32. Force Majeure.

Neither party shall be considered to be in default of its delay or failure to perform its obligations herein when such delay or failure arises out of causes beyond the reasonable control of the party. Such causes may include, but are not restricted to, acts of God or the public enemy, acts of state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather; but in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the party.

Section 33. Human Rights.

If applicable, City certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, Section 363A.36. University agrees not to discriminate against any employee or any applicant for employment because of race, religion, sex, marital status, age or national origin and further agrees to likewise not discriminate for those same reasons against any persons relative to admission, services or privileges offered to or enjoyed by the general public.

Section 34. Short Form Lease.

At the request of either party hereto, a short form lease shall be prepared in form and substance reasonably satisfactory to each of the parties and shall be executed by each of

the parties in duplicate, such short form lease to be filed for record in Beltrami County, Minnesota.

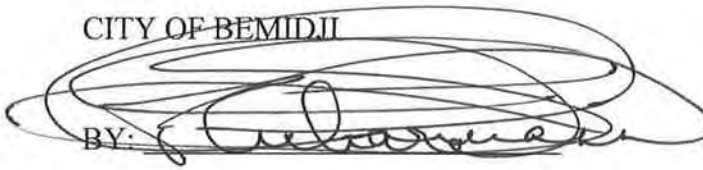
Section 35. Effective Date.

This Lease Agreement is effective on the date that is the last date on which this Lease Agreement is fully executed by all the necessary parties.

Section 36. Program Evaluation Reports and Budget.

In satisfaction of the requirements pursuant to the Grant Agreement and G.O. Compliance Legislation, the University shall provide the City with an initial governmental program implementation plan regarding execution of its responsibilities under the Lease Agreement, and at least annually on or before the anniversary date of the Lease Agreement, an evaluation report and a budget showing revenues and expenses, all such plans, reports and budgets relating to provision of eligible governmental program uses or such documentation required to satisfy the City's reporting obligations. The City, as the operator of the facility, shall cooperate with University in providing any required annual financial details, such as ticket sales and expenses, related to the operation of the New Arena to assist in the compliance requirements.

CITY OF BEMIDJI

BY: 

ITS: MAYOR

Date: 01-26-09

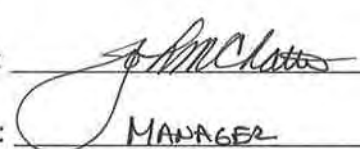
STATE OF MINNESOTA, BY AND
THROUGH THE BOARD OF
TRUSTEES OF MINNESOTA STATE
COLLEGES AND UNIVERSITIES

BY: 
Laura M. King

ITS: Vice Chancellor- CFO

Date: 1/22/09

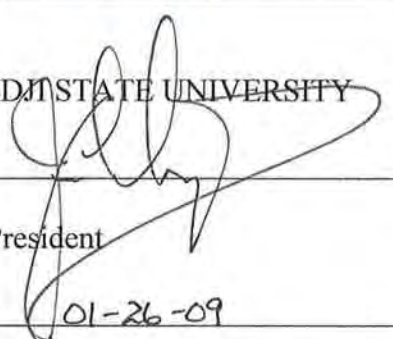
CITY OF BEMIDJI

BY: 

ITS: MANAGER

Date: 01-26-09

BEMIDJI STATE UNIVERSITY

BY: 

ITS: President

Date: 01-26-09

CONSENT OF COMMISSIONER OF
MANAGEMENT AND BUDGET IN
SATISFACTION OF MINN. STAT.
§16A.695 AS AMENDED:

By: _____

Its: _____

Date: _____

EXHIBIT LIST

EXHIBIT A: Leased Premises

EXHIBIT A1 and A2: 2008 Plans – BREC

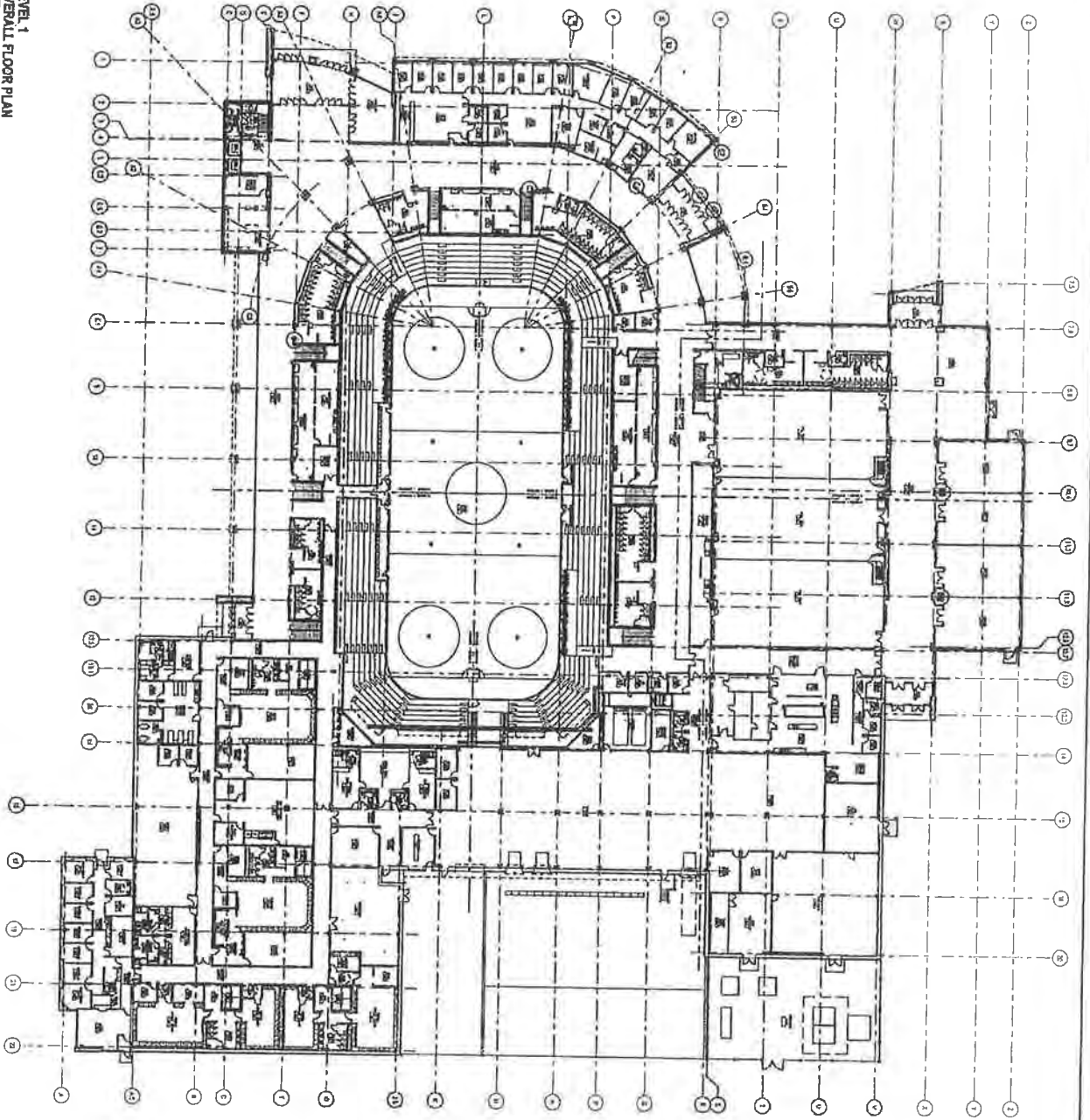
EXHIBIT B: Exclusive University Space

EXHIBIT C: Revenue Sharing

EXHIBIT D: Grant Agreement between State and City for BREC

EXHIBIT A1

LEVEL 1
OVERALL FLOOR PLAN



Directly from

U.S. DEPT. OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

2. 2017年11月11日 10:00 7

2. **REPORT OF ACTION TAKEN:** ACTION TAKEN TO CORRECT DEFICIENCY

Small group activity for all the students.

6. FIELD 20 mg MCI 9:00 AM FOR CLARITY

UNIT 10

1. **What is the main purpose of the text?**

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18. CHURCH OF THE HOLY TRINITY
19. CHURCH OF THE HOLY TRINITY

11. THE HOPE WAVE CARRYING LOCATIONS ARE LISTED IN THIS FORM TO BE USED BY THE HOPE WAVE CARRYING LOCATIONS.

...the ... of ...

STATION

卷之四

Year	1990	1991	1992
Wetland	100	100	100
Wetland	100	100	100
Wetland	100	100	100
Wetland	100	100	100

Year	1990	1991	1992
1990	1990	1991	1992

2. JUNE 2000 (MAY 2001)

0853
1985
PRINTED IN THE
UNITED STATES
OF AMERICA

RE: 8/10/1968
1. THE SOURCE Wrote TO ME CONCERNING
MATTERS TO EFFECT OF MATTERS.

18" x 60" BLANKET STAINING
20" x 60" MICA STAINING

71. **NOT LISTED IN SOURCE**

10

10

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1

1

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1

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A110

At least 500 square feet of store space
Exclusive to BSU merchandise – Balance
Shared with City for their merchandise

Exclusive BSU areas

[illegible]

**BEEMIDJI REGIONAL
EVENT CENTER**
BEEMIDJI, MINNESOTA

CITY OF BEEMIDJI
1000 1ST AVENUE
BEEMIDJI, MN 55004
BEEMIDJI, MN 55004

LEO A DALRY
1000 1ST AVENUE
BEEMIDJI, MN 55004

SETTING: INTERVIEW

1. DATA SOURCES ARE IDENTIFIED AND
OBTAINED FOR BIDDING COMPANIES. DATA
SOURCES FOR BIDDING COMPANIES ARE AS
FOLLOWS: COMPANY NAME, ADDRESS, PHONE
NUMBER, E-MAIL, WEBSITE, AND
ALSO COMPANY TYPE

NO.	COMPANY NAME	ADDRESS	PHONE NO.	E-MAIL	WEBSITE	COMPANY TYPE
1	ABC	1234	5678	9101	2345	GENERAL CONTRACTOR
2	DEF	5678	9101	2345	6789	GENERAL CONTRACTOR
3	GHI	9101	2345	6789	0123	GENERAL CONTRACTOR
4	JKL	2345	6789	0123	4567	GENERAL CONTRACTOR
5	MNO	6789	0123	4567	8901	GENERAL CONTRACTOR

2. BIDDING COMPANY (LOCALITY) TYPE:

TYPE	NO.	NAME	ADDRESS	PHONE NO.	E-MAIL	WEBSITE	COMPANY TYPE
1	1	ABC	1234	5678	9101	2345	GENERAL CONTRACTOR
2	2	DEF	5678	9101	2345	6789	GENERAL CONTRACTOR
3	3	GHI	9101	2345	6789	0123	GENERAL CONTRACTOR
4	4	JKL	2345	6789	0123	4567	GENERAL CONTRACTOR
5	5	MNO	6789	0123	4567	8901	GENERAL CONTRACTOR

3. THE BIDDING COMPANY IS IN CONTACT OF
ANALYST TO GATHER THE DATA OF
ANALYST TO GATHER OF ANALYST:







[illegible]

EXHIBIT C

Revenue and Expense Terms

	<u>BSU</u>	<u>City</u>
Gate Receipts – BSU Hockey games	100%	0%
Gate Receipts – Non-BSU Games/Events	0%	100%
Ticket Surcharges	0%	100%
Parking	0%	100%
Concessions	0%	100%
BSU Merchandise	100%	0%
Naming Rights – Arena & Non-Exclusive BSU Areas	0%	100%
Naming Rights – Exclusive BSU Areas	100%	0%
Ice/Dasher Board Temporary Advertising	100%	0%
Permanent Advertising – Not sold by BSU	0%	100%
Permanent Advertising – Sold by BSU	10%	90%
Suites and Club Seat Revenues – Hockey Season	90%	10%
Suites and Club Seat Revenues – Non-University Events	0%	100%
Game Day Expenses	100%	0%
Facility Maintenance & Repairs	0%	100%
Arena Operations	0%	100%

Per Men's Game Fee - \$9,500 with a minimum of \$190,000 annually

Guaranteed annual payment without BSU Hockey - \$230,000

General Obligation Bond Proceeds

Grant Agreement - Construction Grant
for the
BEMIDJI REGIONAL EVENTS
CENTER
Project

SPAP-08-0005-P-FY08

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General Obligation Bond Proceeds

**Grant Agreement - Construction Grant
for the
Bemidji Regional Events Center
Project**

THIS AGREEMENT shall be effective as of April 7, 2008, and is between City of Bemidji, a Home Rule City (the "Public Entity"), and the MN Dept. of Employment & Economic Development (the "State Entity").

RECITALS

A. Under the provisions contained in M.S. 471.15 - 471.191, the Public Entity has been given the authority to acquire land, predesign, design, construct, furnish and equip a regional events center; and

B. Under the provisions contained in MN Statutes, Chapter 179, Section 21, Subd. 5, (the "GO Bonding Legislation") the State of Minnesota has allocated \$ 20,000,000 (the "Grant"), which is to be given to the Public Entity as a grant to assist it in acquiring land, predesigning, designing, constructing, furnishing, and equipping a regional events center, as authorized by such legislation; and

C. Under the provisions contained in M.S. 471.15 - 471.191, the Public Entity has been given the authority to operate a recreational facility (the "Governmental Program"); and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity's receipt and use of the Grant to acquire and/or improve real property (the "Real Property") and, if applicable, structures situated thereon (the "Facility") will cause all of such real property and structures to become "state bond financed property", as such term is used in Minn. Stat. § 16A.695 (the "G.O. Compliance Legislation") and in that certain "Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the then Commissioner of Finance on July 20, 1995 (the "Commissioner's Order"), even though such funds may only be a portion of the funds being used to acquire and/or improve the Real Property and, if applicable, Facility and that such funds may be used to only acquire and/or improve a part of the Real Property and/or, if applicable, Facility.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, and the operation of the Real Property and, if applicable, Facility.

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

Article I DEFINITIONS

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

“Advance(s)” – means an advance made or to be made by the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Bemidji Regional Events Center Project.

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

“Architect”, if any - means Leo A. Daly, which will administer the Construction Contract Documents on behalf of the Public Entity.

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

“Commissioner” - means the commissioner of the Minnesota Department Finance and Employee Relations, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the then Commissioner of Finance on July 20, 1995.

“Completion Date” – means January 31, 2011 the date of projected completion of the Project.

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

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

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

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

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

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

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

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

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

“GO Bonding Legislation” – means the legislation delineated in Recital B hereinabove.

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

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

“Governmental Program” – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “Grant” in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained in Sections 2.11 and 6.01.

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

“Inspecting Engineer”, if any - means the State Entity's construction inspector, or its designated consulting engineer.

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

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

“Outstanding Balance of the Grant” – means the portion of the Grant that has been disbursed to or on behalf of the Public Entity minus any amounts received by the Commissioner under Section 2.08.B.

“Ownership Value”, if any – means the value of the Public Entity’s ownership interest, if any, in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the

Commissioner. The parties hereto agree and acknowledge that such value is \$ _____ or X Not Applicable; provided, however, the Commissioner is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank "Not Applicable" is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank "Not Applicable" should only be selected and checked when a portion of the funds delineated in Attachment III attached hereto are to be used to acquire the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in Attachment III and not in this definition for Ownership Value).*

"Project" - means the Public Entity's acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03 herein. *(If the Public Entity is not using any portion of the Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in Attachment III hereto and instead shall be included in the definition for Ownership Value under this Section 1.01.)*

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

"Real Property" - means the real property located in the County of Beltrami, State of Minnesota, legally described in **Attachment II** to this Agreement.

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

"State Entity" - means the entity identified as the "State Entity" in the lead-in paragraph of this Agreement.

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

"Use Contract" - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the

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

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

Article II GRANT

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

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

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

Ownership Interest in the Real Property.

☐ Fee simple ownership of the Real Property.

☒ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06.

[If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point
_____.]

- ☐ An easement for the Real Property (i) that is in form and substance acceptable to the State Entity and the Commissioner, (ii) that is for a term that is equal to or greater than 125% of the Useful Life of the Real Estate and, if applicable, Facility, or for a term authorized by a Minnesota statute, rule or session law, and (iii) which cannot be modified, restated, amended, changed in any other way, or prematurely cancelled or terminated without the prior written consent of the State Entity and the Commissioner.
[If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation at this point _____.]

Ownership Interest in, if applicable, the Facility.

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

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

(Check all appropriate boxes.)

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



(Describe other or additional purposes.)

Section 2.04 Operation of the Real Property and Facility. The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

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

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the State Entity and the Commissioner certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that; (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised

program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner certified copies of such resolution and budget.

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

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

B. It has legal authority to use the Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

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

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

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

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

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

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach

of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

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

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

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

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

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

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

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

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

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

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

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

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

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

W. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the State Entity or the Commissioner.

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

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

1. It must be in form and contents acceptable to the State Entity and the Commissioner, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the State Entity and the Commissioner.

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

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

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.
 5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.
 6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.
 7. It must contain a provision that prohibits the Lessor from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased Premises or the Lessor's interest in the Real Property/Facility Lease, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease as if such holder had been an original Lessor under the Real Property/Facility Lease.
 8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms; conditions and provisions contained in the Real Property/Facility Lease.
 9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease, and that such use restrictions will terminate and not apply to any successor lessee who purchases the Public Entity's interest in the Real Property/Facility Lease.
- B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease that are not inconsistent with or contrary to the requirements contained in this Section.
- C. The expiration of the term of a Real Property/Facility Lease shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the Grant, and upon such expiration the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

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

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

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

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

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

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

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

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

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

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

B. If the Event of Default does not involve a failure to comply with the provisions contained in Sections 4.01 or 4.02, then the Commissioner, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner.

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

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

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

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

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

Section 2.10 Effect of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only be terminated upon the Public Entity's sale of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner in compliance with the provisions contained in Section 4.02, or in accordance with the provisions contained in Section 2.11.

Section 2.11 Termination/Modification of Grant. If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the Grant has not

been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the Grant shall terminate. In such event, (i) if none of the Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity's obligation to complete the Project by the Completion Date.

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

Article III USE CONTRACTS

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

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

A. The purpose for which it was entered into must be to operate the Governmental Program.

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

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

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

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

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

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

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

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

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

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair

or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Public Entity's interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

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

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

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

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

Section 3.04 Receipt of Monies Under a Use Contract. If the Public Entity receives any monies under a Use Contract in excess of the amount the Public Entity needs and is

authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Public Entity to the Commissioner. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner shall be determined by the Commissioner, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Grant and the denominator of which is sum of the Grant and the Approved Debt.

Article IV SALE

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

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

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

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

The acquisition of the Public Entity's interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

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

Section 4.02 Proceeds of Sale. Upon the sale of the Public Entity's interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale, but not including the repayment of any

debt associated with the Public Entity's interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

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

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to pay in full any outstanding Approved Debt in the order of priority of such debt.

C. The remaining portion, after the distributions specified in Sections 4.02A and B, shall be distributed to (i) reimburse the Public Entity for its Ownership Value, and (ii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution, the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing.

D. The remaining portion, after the distributions specified in Sections 4.02.A, B and C, shall be divided and distributed to the State Entity and the Public Entity in proportion to the contributions that the State Entity and the Public Entity made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

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

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

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

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

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

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

- A. It will not use the Real Property or, if applicable, Facility, or use or invest the Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.
- B. It will deposit into and hold all of the Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.
- C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the GO Bonds.
- D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either; (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.
- E. It will not otherwise use any of the Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should

take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner's Order.

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

Article VI

DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 The Advances. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the Grant. If the amount of Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature delineated in **Attachment III** to this Agreement, (ii) accrued no earlier than the effective date of the GO Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the Commissioner.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances $\leq$ (Grant) x (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Advances $\leq$ (Grant) x (percentage of Project completed)

Section 6.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to; (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

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

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

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

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

Section 6.03 Additional Funds. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the State Entity

may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the State Entity's notice.

Section 6.04 Condition Precedent to Any Advance. The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

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

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

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

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

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

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

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

H. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future

date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

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

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

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

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

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

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

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the

amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

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

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

Section 6.05 **Construction Inspections.** The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

Article VII MISCELLANEOUS

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

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

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

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

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

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

Section 7.02 Condemnation. If after the Public Entity has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the

Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Public Entity's interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Public Entity's interest in the remaining Real Property and, if applicable, Facility. If the Public Entity elects to sell its interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

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

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Public Entity's interest in the Real Property and, if applicable, Facility, is a leasehold interest, and (vi) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

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

utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

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

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

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

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

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

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

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

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

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

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

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways

and Means Committee and the chairs have made their recommendations, and it has notified the Chair of the Minnesota House of Representatives Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

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

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

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

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

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

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of

Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

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

Section 7.12 Liability. The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

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

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of

any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

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

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

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with either the State Entity, the Commissioner, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of either the State Entity, the Commissioner, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

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

To the Public Entity at:

City of Bemidji
317 4th Street NW
Bemidji, MN 56601
Attention: John Chattin

To the State Entity at:

MN Dept. of Employment & Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101-1351
Attention: Bart Bevins

To the Commissioner at:

Minnesota Department of Finance and Employee Relations
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

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

Section 7.17 Waiver. Neither the failure by the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Public Entity, the State Entity, or the Commissioner, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

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

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

and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

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

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

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

Section 7.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the Project:

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

\$25,000,000 in non-state resources

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

Section 7.24 **Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner that **Attachment III** to this Agreement is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

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

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

(i) State funds including the Grant, identifying the source and amount of such funds.

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

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

Previously paid project expenses may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner.

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

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

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

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

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

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

Section 7.28 State Entity and Commissioner Required Acts and Approvals. The State Entity and the Commissioner shall not (i) perform any act herein required or authorized by

it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

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

Section 7.30 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

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

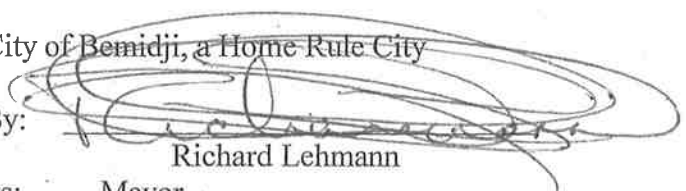
NONE

(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK)

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Bemidji Regional Events Center Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

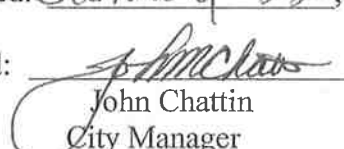
City of Bemidji, a Home Rule City

By: 

Richard Lehmann

Its: Mayor

Dated: January 22, 2009

And: 

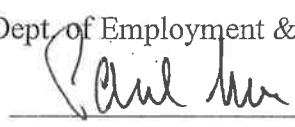
John Chattin

Its: City Manager

Dated: JANUARY 22, 2009

STATE ENTITY:

MN Dept of Employment & Economic Development,

By: 

Its:

Dated: 1-29, 2009


B22 14353 1/20/09

**Attachment I
DECLARATION**

The undersigned has the following interest in the real property legally described in **Exhibit A** attached and all facilities situated thereon (cumulatively referred to as the "Restricted Property"):

(Check the appropriate box.)

☐ a fee simple title,

☒ a lease, or

☐ an easement,

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

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in B hereinbelow, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the commissioner of the Minnesota Department of Finance and Employee Relations, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain «Insert the name of the grant agreement at this point exactly as it appears on the title page of the grant agreement» between City of Bemidji and the MN Dept. of Employment & Economic Development, dated April 7, 2008.

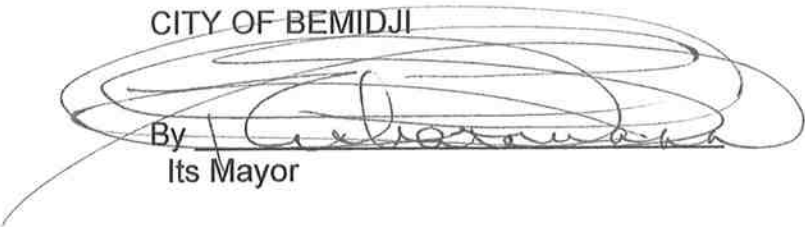
The Restricted Property shall remain subject to such restrictions and encumbrances until it is released therefrom by way of a written release in recordable form signed by both the MN Dept. of Employment & Economic Development and the commissioner of the Minnesota Department of Finance and Employee Relations, and such written release is recorded in the real estate records relating to the Restricted Property.

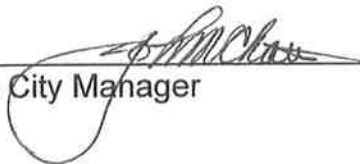
This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the commissioner of the Minnesota Department of Finance and Employee Relations.

Address:

City of Bemidji
317 4th Street NW
Bemidji, MN 56601

CITY OF BEMIDJI

By 
Its Mayor

By 
Its City Manager

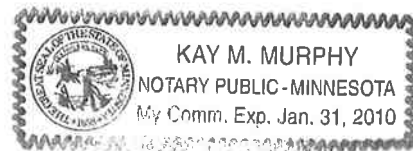
STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing Declaration was acknowledged before me this 22nd day of January, 2009, by Richard Lehmann and John M. Chattin, the Mayor and City Manager of City of Bemidji, a home rule charter city of the State of Minnesota, on behalf of said entity.


Notary Public



This Instrument was drafted by:
Alan R. Felix, City Attorney
317 4th Street NW
Bemidji, MN 56601
Phone: (218)759-3575

Attachment II
LEGAL DESCRIPTION OF REAL PROPERTY
SEE ATTACHED DESCRIPTIONS

Attachment III
SOURCE AND USE OF FUNDS FOR THE PROJECT

Source of Funds

Entity Supplying Funds	Amount
State Funds	
State GO Grant	\$ 20,000,000
State GF Grant	\$-----
Other	
2006 State Bond Funds	\$ 3,000,000
-----	\$-----
-----	\$-----
Sub-Total	\$ 23,000,000
Matching Funds	
-----	\$-----
-----	\$-----
Sub-Total	\$-----
Other Public Entity Funds	
Sales Tax Revenue Bonds	\$ 44,000,000
City Utility Funds	\$ 1,100,000
Sub-Total	
Loans	
-----	\$-----
Sub-Total	\$-----
Other Funds	
-----	\$-----
Sub-Total	\$-----
Prepaid Project Expenses	
-----	\$-----
Sub-Total	\$-----
TOTAL FUNDS	\$ 68,100,000

Use of Funds

Identity of Items	Amount
Ownership Acquisition and Other Items Paid for with GO Grant Funds	
Purchase of Ownership	\$-----
Interest	
Other Items of a Capital Nature	
Building Construction	\$ 20,000,000
-----	\$-----
-----	\$-----
Sub-total	\$ 20,000,000
Items Paid for with Non-GO Grant Funds	
Building Construction	\$ 26,473,000
FF&E	\$ 2,259,125
Site Correction	\$ 1,397,600
BREC Improvement	\$ 4,901,104
Design	\$ 6,442,065
Contingency	\$ 5,547,300
Construction Admin.	\$ 1,079,806
Sub-total	\$ 48,100,000
TOTAL PROJECT COSTS	\$ 68,100,000

**Attachment IV
PROJECT COMPLETION SCHEDULE**

Activity		Date Complete
Design Development Phase	6 Weeks	
Design Development Kickoff		08/04/08
Submit DD for Owner's review		09/01/08
Review for Owner's comments		09/15/08
Owner approves DD documents		09/15/08
Construction Documents	15 Weeks	
Authorize A/E start –CDs		09/15/08
A/E submit 50% CDs for Owner's review		TBD
Joint review for Owner's comments		TBD
A/E submit 95% for review		TBD
Joint review for Owner's comments		TBD
A/E submit 100% CDs for review		TBD
Joint review for Owner's comments 1		2/22/08
Owner approved 100% construction documents		TBD
Bidding Phase	7 Weeks	
Phase I		TBD
Phase II		
Bidding Period		01/06/09 to 02/17/09
Contract Award		02/28/09
Construction Phase (Phase I & II)		
Start of Phase I Site Preparation		TBD
<i>Documents developed after</i>		09/15/08
Start of Phase II General Construction (22 months)		03/09
Project Substantial Completion		12/10/10
Owner Installed FF&E		12/10/10 to 01/11/11
Final Completion		01/11/11

No delinquent taxes and transfer entered;
Certificate of Real Estate Value
(☒) filed (☐) not required
Certificate of Real Estate Value No. 16962
March 3, 2008
KAY L. MACK AUDITOR-TREASURER
Beltrami County Auditor-Treasurer
by 80.0029400 JAM Deputy

OFFICE OF COUNTY RECORDER
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
THAT THIS INSTRUMENT
WAS FILED IN THIS
OFFICE ON 03/03/2008 AT
11:06:12PM BY DOCUMENT NUMBER

Paula L. Coons
COUNTY RECORDER

CHARLENE A. STURK
COUNTY RECORDER

PAGES: 1

WARRANTY DEED
LLC to Individual

SAI-4355

STATE DEED TAX DUE HEREON: \$2,846.25

Date: February 29, 2008

Beltrami County, MN

Deed Tax Paid 2846.25

Deed Tax Receipt No. 131428 jm

FOR VALUABLE CONSIDERATION, NORTH CENTRAL DOOR COMPANY, LLC, a limited liability company under the laws of Minnesota, Grantor, hereby conveys and warrants to BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

That part of Government Lot Two (2), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Commencing at a point on the East-West Quarter section line 1916.5 feet east of the southwest corner of Government Lot Three (3) in said Section 15; thence North parallel with the North-South Quarter section line a distance of 40 feet to the point of beginning; thence north parallel with the North-South Quarter section line a distance of 542.78 feet; thence west parallel with the East-West Quarter section line a distance of 33 feet; thence north parallel with the North-South Quarter section line a distance of 108.62 feet; thence east parallel with the East-West Quarter section line to the intersection with the east boundary line of said Lot 2; thence south on the east boundary line of said Lot 2 to a point 208 feet north of the southeast corner of said Lot 2; thence west parallel with the East-West Quarter section line a distance of 208 feet; thence south parallel with the North-South Quarter section line a distance of 168 feet; thence west parallel with the East-West Quarter section line to the point of beginning, less the following described parcel: That part of Government Lot 2, Section 15, Township 146, Range 33, described as follows: The West 62 feet of the North 240 feet of the South 280 feet lying easterly of a line described as beginning at a point on the East-West Quarter section line 1,916.5 feet east of the southwest corner of Government Lot 3 in said Section 15; thence North parallel with the North-South one quarter section line of said Section 15;

together with all hereditaments and appurtenances belonging thereto, and subject to any prior conveyances of minerals or mineral rights, any prior reservations, restrictions, easements, rights of way and any zoning and use regulations, and subject also to the lien of any unpaid special assessments and interest thereon.

Check if applicable:

- ☐ Grantor certifies that Grantor does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☒ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

OFFICE OF COUNTY RECORDER
BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

NORTH CENTRAL DOOR COMPANY, LLC

By Steve Holley
Steve Holley, President

STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 29th day of February, 2008, by Steve Holley, the President of North Central Door Company, LLC, a limited liability company under the laws of Minnesota, Grantor, on behalf of the company

TERRI L. MIDBOE
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2013

Notary Public

THIS INSTRUMENT DRAFTED BY:
DRAHOS KIESON & CHRISTOPHER, P.A.
Attorneys at Law
502 - 24th Street N.W.
Bemidji, MN 56601
(218) 444-1750

TAX STATEMENTS SHOULD BE SENT TO:
Bemidji Economic Development Authority

TERRI L. MIDBOE
NOTARY PUBLIC - MINNESOTA
My Comm. Exp. Jan. 31, 2013

317 4th St NW
BEMIDJI, MN 56601

F:\D Y K\SAVEDOC\free08\FR-NCD-BEDA-WD.wpd (njp)

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (✓) filed () not required
 Certificate of Real Estate Value No: 16897
January 30, 2008
KARL MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 180.00 239.01 2281.01 290.02
 by 290.03 290.04 290.05 0.00
 5 331.01 6 290.01 291.818 818.01 Deputy
 819, 820, 821, 826,
 8) 4900, 4901, 4902

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 01/30/2008 AT
 11:42:59AM BY DOCUMENT NUMBER

Paula D. Sturk
 CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 6

LIMITED WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ 37,191.00

Date: January 25, 2008

SAI-4306

FOR VALUABLE CONSIDERATION, ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto. Grantor covenants and represents that Grantor has not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter, shall or may be imperiled, charged or encumbered in any manner, and Grantor will warrant the title to the above-described property against all persons claiming the same from or through Grantor as a result of any such act or thing,

EXCEPT: NONE

- ☐ The Seller certifies that the Seller does not know of any wells on the described property
- ☐ A well disclosure certificate accompanies this document.
- ☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN

☐ Well Certificate Received
☒ Well Certificate Not Required

Beltrami County, MN

Deed Tax Paid \$ 37,191.00

Deed Tax Receipt No. 130313CW

ShoreQuest, L.L.C.

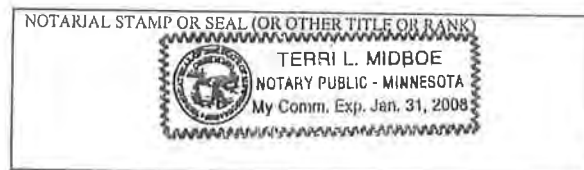
By *John Zacher*
 John Zacher
 Its Chief Manager

STATE OF MINNESOTA

COUNTY OF BELTRAMI

ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the Chief Manager of ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, on behalf of the Grantor.



Terri L. Midboe
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

[CONTINUED ON BACK]

LEGAL DESCRIPTIONS

Parcel 1:

A strip of land 100 feet in width, being 50 feet on each side of the center line of the main track of the Minnesota & International Railway Company as constructed through and upon Government Lot 2, Section 10, Township 146, Range 33, and lying Southwesterly of a line drawn at right angles to said main track centerline distant 1680.0 feet Southwesterly of the East line of Government Lot 1, Section 10, Township 146, Range 33, as measured along said main track centerline.

AND

An additional 20.0 foot wide strip of right of way lying adjacent to and Southeasterly of the hereinabove described 100.0 foot wide right of way situated in the W $\frac{1}{2}$ of Government Lot 2, Section 10, Township 146, Range 33, lying between two lines drawn parallel with and distant respectively 50.0 feet and 70.0 feet Southeasterly of, as measured at right angles to said main track centerline, and lying Southwesterly of a line drawn at right angles to said main track centerline distant 1680.0 feet Southwesterly of the East line of said Section 10, as measured along said main track centerline.

Parcel 2:

All that portion of Government Lot 1 and of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33, lying on the Westerly side of a line lying parallel to and 175 feet distant, Easterly from the main track centerline of the Minnesota and International Railway Company right of way as constructed through and upon said Government Lot 1 and the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33. Less that portion of said right of way situated in the East 30.0 feet of Government Lot 1, Section 15, Township 146, Range 33, lying between two lines drawn parallel with and distant respectively 70.0 feet and 175.0 feet Southeasterly of, as measured at right angles to, said main track centerline.

AND

That part of the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33, lying Northwesterly of a line drawn parallel to and distant 70 feet Southeasterly from the main track centerline of the Minnesota and International Railway Company as constructed through and upon Government Lot 1 and the NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 15, Township 146, Range 33.

Parcel 3:

The East 825.00 feet of Government Lot 2, Section 15, Township 146, Range 33, less the South 691.4 feet thereof.

Parcel 4:

That part of Government Lots 2 and 3, Section 15, Township 146, Range 33, described as follows: Beginning at the Southwest corner of said Government Lot 3, Section 15; thence North 01°33' 57" East along the West line of said Government Lot 3, Section 15, a distance of 89.26 feet to the Northwestern right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 63°00'57" East, along said Northwestern right-of-way line, a distance of 1917.29 feet to a point which is 891.00 feet West of the East line of Government Lot 2, said Section 15; thence South 00°04'38" East along said 891 feet line a distance of 282.50 feet to a point on the North line of the South 691.37 feet of said Government Lot 2, said point also being the Southerly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 89°30'27" West along said 691.37 foot line a distance of 275.08 feet; thence South 63°00'57" along said right-of-way line a distance of 303.03 feet; thence South 69°47'17" West along said right-of-way a distance of 212.00 feet; thence South 63°00'57" West along said right-of-way a distance of 1017.34 feet, more or less, to the South line of said Government Lot 3; thence West along the South boundary line of Government Lot 3, said Section 15, a distance of 47.6 feet, more or less, to the point of beginning.

Parcel 5:

That part of the NW ¼ of SW ¼, Section 15, Township 146, Range 33, lying Northwesternly of a line drawn parallel to and distant 50 feet Southeasterly from the main track center line of the Minnesota and International Railway Company as re-located and constructed through and upon Government Lot 3, Section 15, and Government Lot 4, Section 16, Township 146, Range 33, in 1902.

Parcel 6:

That part of Government Lot 4, Section 16 and Government Lots 2 and 3, Section 15, All in Township 146 North, Range 33 West of the Fifth Principal Meridian, described as follows: Commencing at the southeast corner of said Government Lot 4, said southeast corner being at coordinates 117657.8880 North and 496628.1602 East, bearings and coordinates based on NAD83 (1986) Beltrami County South Zone; thence North 01°33'57" East along the East line of said Government Lot 4, Section 16, a distance of 89.26 feet to the northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway and the point of beginning of the land to be described; thence continuing North 01°33'57" East, along the east line of said Government Lot 4, a distance of 45.70 feet; thence South 63°00'57" West along said northwesterly right-of-way line a distance of 97.33 feet; thence southwesterly along said northwesterly right-of-way line a distance of 143.04 feet along a tangential curve concave to the northwest having a radius of 626.77 feet and a central angle of 13°04'33", to the north right-of-way line of First Street East which is 40.00 feet north as measured at a right angle from the south line of said Government Lot 4; thence North 89°45'15" West, along said north right-of-way line, a distance of 80.78 feet to the northeasterly right-of-way line of Trunk Highway Number 197 as shown on Minnesota Department of Transportation Right-of-Way Plat No. 04-26; thence North 36°56'47" West along said northeasterly right-of-way line a distance of 596.22 feet; thence South 53°03'13" West along said northeasterly right-of-way line a distance of 50.00 feet; thence North 37°33'58" West along said northeasterly right-of-way line a distance of 121.81 feet; thence northwesterly along said northeasterly right-of-way line a distance of 89.96 feet along a curve not tangential with the last described line to a point having coordinates 118314.5104 North and 495804.6338 East, said curve is concave to the southwest, has a radius 1959.87 feet, a central angle of 02°37'47" and the chord of said curve is 89.95 feet in length and bears North 36°24'08" West; thence North 24°18'00" East a distance of 545.14 feet to an iron monument at coordinates 118811.3596 North and 496028.9561 East; thence North 86°53'50" East a distance of 544.20 feet to an iron monument at coordinates 118840.8157 North and 496572.3583 East; thence continuing North 86°53'50" East a distance of 20.00 feet; thence North a distance of about 5 feet to the shoreline of Lake Bemidji; thence easterly along said shoreline to the intersection with the west line of the East 825.00 feet of said Government Lot 2, Section 15; thence South 00°04'38" East along said west line a distance of about 583 feet to a point on the north line of the South 691.37 feet of said Government Lot 2, said point being at coordinates 118334.0056 North and 498405.5371 East; thence South 89°30'27" East, parallel with the east-west quarter line of said Section 15, a distance of 105.13 feet; thence South 00°04'38" East parallel with the north-south quarter line of said Section 15, a distance of 108.62 feet; thence South 89°30'27" East, parallel with said east-west quarter line, a distance of 33.00 feet; thence South 00°04'38" East, parallel with said north-south quarter line, a distance of 392.78 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 200.00 feet; thence South

00°04'38" East, parallel with said north-south quarter line a distance of 150.00 feet to the north right-of-way line of First Street East which is 40.00 feet north as measured at a right angle from said east-west quarter line; thence North 89°30'27" West along said north right-of-way line a distance of 214.22 feet; thence North 00°44'40" East, parallel with the east line of said Government Lot 3, Section 15 a distance of 200.00 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 200.00 feet to the intersection with the east line of said Government Lot 3; thence South 00°44'40" West along said east line a distance of 200.00 feet to said north right-of-way line; thence North 89°30'27" West along said north right-of-way line, a distance of 168.13 feet; thence North 01°33'57" East parallel with the west line of said Government Lot 3, a distance of 104.02 feet; thence North 89°30'27" West, parallel with said east-west quarter line, a distance of 620.00 feet; thence North 01°33'57" East parallel with the west line of said Government Lot 3, a distance of 100.85 feet to the southeasterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence North 63°00'57" East, along said southeasterly right-of-way line, a distance of 502.34 feet; thence North 69°47'17" East along said southeasterly right-of-way, a distance of 212.00 feet; thence North 63°00'57" East along said southeasterly right-of-way line, a distance of 303.03 feet to the north line of the South 691.37 feet of said Government Lot 2; thence South 89°30'27" East along said north line a distance of 275.08 feet to the west line of the East 891.00 feet of said Government Lot 2; thence North 00°04'38" West along said west line a distance of 282.50 feet to the northwesterly right-of-way line of the Burlington Northern and Santa Fe Railway; thence South 63°00'57" West, along said northwesterly right-of-way line, a distance of 1917.29 feet to the point of beginning.

Parcel 7:

That part of the Southwest Quarter of the Northeast Quarter of Section 15, Township 146 North, Range 33 West of the 5th Principal Meridian described as follows:

Commencing at the Southwest corner of said Southwest Quarter of Northeast Quarter, thence North 00 degrees 34 minutes 21 seconds West (assumed bearing) along the west line of said Southwest Quarter of Northeast Quarter a distance of 33.00 feet to the northerly right of way line of First Street South; thence North 89 degrees 59 minutes 35 seconds East along said northerly right of way line of First Street South a distance of 20 feet to the point of beginning of the land to be described; thence North 00 degrees 34 minutes 21 seconds West parallel with said West line a distance of 298.54 feet; thence North 89 degrees 59 minutes 35 seconds East parallel with the South line of said Southwest Quarter of Northeast Quarter a distance of 565.80 feet; thence South 00 degrees 34 minutes 21 seconds East parallel with said West line a distance of 298.54 feet to said Northerly right of way line of First Street South; thence South 89 degrees 59 minutes 35 seconds West along said Northerly right of way line of First Street South a distance of 565.80 feet to the point of beginning and there terminating.

Parcel 8:

Lots 6, 7 and 8, Block 1, Jackpine Acres, according to the recorded plat thereof, Bemidji, Beltrami County, Minnesota.

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (☒) filed () not required
 Certificate of Real Estate Value No. 16895
January 30, 2008
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by CW
80.00279.00 + 282 Deputy

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 01/30/2008 AT
11:42:33AM BY DOCUMENT NUMBER

Paula R. Coons DEPUTY

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 3

LIMITED WARRANTY DEED

STATE DEED TAX DUE HEREON: \$ 1,650.00

Date: January 25, 2008

SAI - 4306A

FOR VALUABLE CONSIDERATION, LeisureTime Land Co., a corporation under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto. Grantor covenants and represents that Grantor has not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter, shall or may be imperiled, charged or encumbered in any manner, and Grantor will warrant the title to the above-described property against all persons claiming the same from or through Grantor as a result of any such act or thing,

EXCEPT: NONE

- ☐ The Seller certifies that the Seller does not know of any wells on the described property.
☐ A well disclosure certificate accompanies this document.
☒ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Beltrami County, MN

Deed Tax Paid 1650.00

Deed Tax Receipt No. 130311 CW

LeisureTime Land Co.

By John Zacher
 Its President

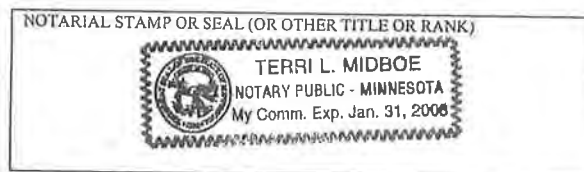
OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

STATE OF MINNESOTA

COUNTY OF BELTRAMI

ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the President of LeisureTime Land Co., a corporation under the laws of Minnesota, on behalf of the Grantor.



John Zacher
 SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

[CONTINUED ON BACK]

That part or portion of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: Beginning at a point on the center line of said Section 15, Township 146, Range 33, 691.4 feet north of the center of said Section 15; thence East on a line parallel with the north line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, a distance of 371 feet; thence South 20 feet; thence West on a line parallel with the North line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, a distance of 371 feet; thence North 20 feet to the place of beginning.

AND

That part or portion of the Southwest Quarter of Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) and Government Lot One (1), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), described as follows: The East 400 feet of the West 771 feet of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the said Government Lot One (1), Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33), lying South of the right-of-way of the Northern Pacific Railway Company (formerly the Minnesota and International Railway Company), and excepting therefrom the South 671.4 feet of the said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 15, Township 146, Range 33.

No delinquent taxes and transfer entered;
 Certificate of Real Estate Value
 (☒) filed () not required
 Certificate of Real Estate Value No. 16791
December 14, 2007
KAY L. MACK AUDITOR-TREASURER
 Beltrami County Auditor-Treasurer
 by jm Deputy
80.00280.00 + 281.00

OFFICE OF COUNTY RECORDER
 COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
 THAT THIS INSTRUMENT
 WAS FILED IN THIS
 OFFICE ON 12/14/2007 AT
 02:28:51PM BY DOCUMENT NUMBER

Charlene D. Sturk DEPUTY

CHARLENE D. STURK
 COUNTY RECORDER

PAGES: 1

LIMITED WARRANTY DEED

Individual to Municipal Corporation

SAI-4323

STATE DEED TAX DUE HEREON: \$412.50

Date: December 7, 2007

FOR VALUABLE CONSIDERATION, JOSEPH S. WASLASKI and KRISTI M. KLASEN, husband and wife, Grantors, hereby convey and quit claim to CITY OF BEMIDJI, Minnesota, a municipal corporation under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

The West 371 feet of the Southwest Quarter of the Northeast Quarter (SW¼ of NE¼), less the South 691.4 feet thereof and less railroad right-of-way (Minnesota and International Railway), and the West 371 feet of Government Lot One (1), less railroad right-of-way, all in Section Fifteen (15), Township One Hundred Forty-six (146), Range Thirty-three (33);

together with all hereditaments and appurtenances belonging thereto. Grantors covenant and represent that:

- (1) This deed conveys after-acquired title; and
- (2) Grantors have not made, done, executed or suffered any act or thing whereby the above-described property or any part thereof, now or at any time hereafter shall or may be imperiled, charged or encumbered in any manner, and Grantors will warrant the title to the above-described property against all persons claiming the same from or through Grantors as a result of any such act or thing.

Check if applicable:

- ☒ Grantor certifies that Grantor does not know of any wells on the described real property.
☐ A well disclosure certificate accompanies this document.
☐ Grantor is familiar with the property described in this instrument and certifies that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Beltrami County, MN

Deed Tax Paid 412.50

Deed Tax Receipt No. 128994 jm

Joseph S. Waslaski
 Joseph S. Waslaski

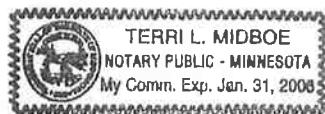
Kristi M. Klasen
 Kristi M. Klasen

STATE OF MINNESOTA

ss.

COUNTY OF BELTRAMI

The foregoing instrument was acknowledged before me this 7th day of December, 2007, by Joseph S. Waslaski and Kristi M. Klasen, husband and wife, Grantors.



Terri L. Midboe
 Notary Public

THIS INSTRUMENT DRAFTED BY:
 DRAHOS KIESON & CHRISTOPHER, P.A.
 Attorneys at Law
 502 - 24th Street N.W.
 Bemidji, MN 56601
 (218) 444-1750

TAX STATEMENTS SHOULD BE SENT TO:
 City of Bemidji, Minnesota
 317 Fourth Street NW
 Bemidji, MN 56601

OFFICE OF COUNTY RECORDER
 BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

F:\D Y K\SAVED\DOCS\ree071Waslaski&Klasen-CityBemidji-LWD.wpd (ajp)

No delinquent taxes and transfer entered;
Certificate of Real Estate Value
() filed (☒) not required
Certificate of Real Estate Value No. January 30, 2008
KAY L. MACK AUDITOR-TREASURER
Beltrami County Auditor-Treasurer
by 80.60280.00 + 281 *cu* Deputy

OFFICE OF COUNTY RECORDER
COUNTY OF BELTRAMI, MINNESOTA

THIS IS TO CERTIFY
THAT THIS INSTRUMENT
WAS FILED IN THIS
OFFICE ON 01/30/2008 AT
11:42:59AM BY DOCUMENT NUMBER

Paula R. Stora
CHARLENE D. STORA
COUNTY RECORDER

PAGES: 2

QUIT CLAIM DEED

STATE DEED TAX DUE HEREON: \$ 1.65

Date: January 25, 2008 (6)

SAI-4306

FOR VALUABLE CONSIDERATION, ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, Grantor, hereby conveys and quitclaims to Bemidji Economic Development Authority, a public body corporate and politic under the laws of Minnesota, Grantee, real property in Beltrami County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT "A"

together with all hereditaments and appurtenances belonging thereto.

THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS LESS THAN \$500.00

Beltrami County, MN

Deed Tax Paid 1.65 cu

Deed Tax Receipt No. 130314

ShoreQuest, L.L.C.

By *John Zacher*
John Zacher
Its Chief Manager

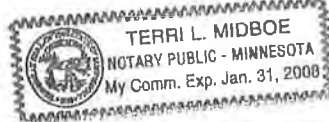
STATE OF MINNESOTA

COUNTY OF BELTRAMI

} ss.

The foregoing instrument was acknowledged before me this 25th day of January, 2008, by John Zacher, the Chief Manager of ShoreQuest, L.L.C., a limited liability company under the laws of Minnesota, on behalf of the Grantor.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)



[Signature]
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS)

Mark Wangberg
CARPENTER & WANGBERG, P.A.
Attorney at Law
201 Seventh Street NW
Bemidji, MN 56601
218-444-7564

Tax Statements for the real property described in this instrument should be sent to (Include name and address of Grantee):

Bemidji Economic Development
Authority
317 - 4th St. NW.
Bemidji, mn
56601

OFFICE OF COUNTY RECORDER
BELTRAMI COUNTY, MN
☐ Well Certificate Received
☒ Well Certificate Not Required

That part of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and Government Lot 1, Section 15, Township 146, Range 33, described as follows: Beginning at a point on the North and South center line of said Section 15, 691.4 feet North of the center of said Section 15, measured along said center line; thence Easterly, parallel to the East and West center line of said Section 371 feet; thence Northerly parallel to the North and South center line of said Section 693 feet, more or less, to the intersection with the South line of the right of way of the Minnesota and International Railway Company, (which line is 175 feet Southerly from the center line of the main track measured at right angles); thence in a Southwesterly direction, along said South line of said right of way 431 feet, more or less, to the intersection with the North and South center line of said Section; thence Southerly, along said North and South center line 481 feet, more or less, to the place of beginning. (It being the intention to convey the strip of land 371 feet wide, lying along and on the East side of the North and South center line of said Section 15, beginning 691.4 feet North of the center of said Section and extending Northerly to the property of the Minnesota and International Railway Company).

Alan R. Felix

To: Bruce Hanson
Cc: Katie Nolting; Bill Krueger - CSLINTL; Nate Mathews; Harry Cann; Ron Eischens
Subject: RE: ASM Global Contract Draft for Sanford Center 2 24 22 clean copy with City Changes

Bruce,

The Transition Team met this morning and formulated a response or counter proposal on the issue of the City having an ability to seek termination based upon ASM's performance or failure thereof.

In a nutshell, the City proposes a benchmark or measure based upon the three-year pro forma(s) presented in ASM's initial Proposal, i.e., the 1st full calendar year (\$190,349) operating deficit projection, 2nd year (\$6,735) deficit projection, and 3rd year \$158,441 profit projection. Specifically, if for both of the first two full calendar years of the Agreement ASM fails by a margin of greater than 25% to meet their pro forma projection(s), the City could invoke a mediation focused discussion that in turn could ultimately result in the City's ability (and decision) under Section 12 to unilaterally terminate the Agreement. Because 2022 is a partial calendar year, the first full calendar year would correspond to 2023, the second to 2024, and so forth. Everyone understands and appreciates that 2022 will be, for lack of a better label, a learning curve period.

Of course, hand in hand with the above proposal would be the corresponding provision for a remediation focused process/discussion for the circumstances under Section 5, wherein ASM in turn could invoke such in lieu of immediate unilateral termination, i.e., respecting budget and funding disputes, etc. As would be the case for the City above, a failed remediation process could then result in ASM terminating under Section 12.

In light of the above, as well as what we are proposing in the following paragraph, perhaps we can mutually agree to modify Section 2.1 (b) by simply changing the word "shall" to "may" in the last sentence of that provision respecting adjustment of the incentive Fee.

Obviously, the desired relationship is one wherein we all are openly communicating and collaborating to address issues as they arise or as we gain operational experience together that is reason for periodic, concerted discussion to resolve those issues, and, if need be, modify or amend our agreement. Hence, the Transition Team also looked at beefing up "Section 4.3 Meetings" as a means of creating the process and method for us to facilitate that assessment and evolution of the contractual relationship. I've taken a stab below at how a revised Section 4.3 might look:

4.3 Meetings and Contractual Evaluations. ASM Global's General Manager and City Administrative staff shall endeavor to meet monthly to review revenues and operating expenses for the prior month. Additionally, ASM Global corporate representatives shall meet with their City counterparts as needed and no less than annually, remotely, to monitor performance, discuss operations, consider and implement qualitative evaluation efforts such as Customer Satisfaction Surveys, Community Engagement Programs, and Key Local Partner cooperation and collaboration initiatives. The parties may also meet to discuss proposed amendments to this Agreement wherein each will extend reasonable efforts to mutually accommodate the other to effect necessary modifications, including, by way of example, the effect of community use policies on operating revenues and base incentive fees. Periodic meetings would also serve to permit periodic review and re-evaluation of other financial terms, including those related to operational responsibilities and corresponding expense and fee impacts, and allow generally for mutual renegotiation of financial terms to maintain economic feasibility of and for each party's performance under the Agreement.

If the above language is conceptually agreeable to ASM, we obviously can refine it further to better state what we mutually understand it to mean.

Addressing next the modification of Section 4.2 Incentive Fee, particularly the backing out of the “qualitative fee” criteria, I’ve attached a scanned copy of Section 4.2 showing what I understand to be the language we’re mutually agreeing to keep or otherwise restore from the previous draft!? Let me know if I’m in error in that understanding.

Before concluding, I’d also ask if you’ve had an opportunity to review my proposed deletion of what is now Section 8.1(f)? Again, don’t hesitate to email me to discuss.

Also, I continue to presume that you’re preparing a final text amendment for Section 5.6 (and 5.1 account names), based upon your review of the MN State Auditor’s Report. Again, let me know if you, Ron E., and I need to visit further before you touch pen to paper. And, of course, we’re looking for your proposed language for the Cyber Insurance coverage section.

Lastly, I’m pulling together scanned copies of the various Exhibits (agreements), several of which include as attached exhibits some of the very same other agreements. In other words, I’ll try to reduce the redundancy and repetitive copies!!

Look forward to hearing your and ASM’s response(s).

Al

From: Alan R. Felix <alanfelix@ci.bemidji.mn.us>

Sent: Tuesday, March 01, 2022 10:44 PM

To: Bruce Hanson <bhanson@asmglobal.com>

Cc: Katie Nolting <Katie.Nolting@ci.bemidji.mn.us>; Bill Krueger - CSLINTL <BKrueger@cslintl.com>; Nate Mathews <Nate.Mathews@ci.bemidji.mn.us>; Harry Cann <hcann@asmglobal.com>; Ron Eischens <Ron.Eischens@ci.bemidji.mn.us>

Subject: Re: ASM Global Contract Draft for Sanford Center 2 24 22 clean copy with City Changes

Bruce,

Thank you for getting us your (ASM’s) thoughts on termination based upon this morning’s discussion. I forwarded your email on to the Transition Team members, but have not received back any comment from them as yet.

That said, I do appreciate the shared agreement on a focused mediation procedure for the various subsections of Section 5, as opposed to a unilateral ASM termination upon 60 days notice.

Likewise, I also think you’re on track with a shared review or focused mediation procedure in the scenario of ASM’s failure to achieve benchmark operating loss(es) for three consecutive fiscal years.

We’ll (I’ll) certainly learn, and be able to quickly convey, the Team’s reaction to that proposal at or after their morning meeting tomorrow.

Have a good rest of your evening should this email find you still awake and trying to wind down from the day’s trials and tribulations!

Al

Sent from my iPhone

On Mar 1, 2022, at 5:24 PM, Bruce Hanson <bhanson@asmglobal.com> wrote:

[EXTERNAL]

Hello, Felix—I haven't had time to draft this into the agreement yet, but our thoughts on the termination provisions are as follows:

ASM Termination per various provisions of part 5: we agree that a focused mediation procedure is appropriate.

Additional City termination right: Commencing with the first full Fiscal Year, if ASM fails to achieve the Benchmark Operating Loss for three consecutive Fiscal Years, then the parties will engage in a focused mediation procedure (as above), following which and upon failure to agree on a path to continue with the Agreement, the City may elect to accelerate expiration of the Management Term.

I will be able to get these written into the agreement in the morning, but welcome your comments in the meantime and also would be happy to get on a call to discuss.

From: Alan R. Felix <alanfelix@ci.bemidji.mn.us>

Sent: Monday, February 28, 2022 1:49 PM

To: Bruce Hanson <bhanson@asmglobal.com>; Katie Nolting <Katie.Nolting@ci.bemidji.mn.us>; Bill Krueger - CSLINTL <BKrueger@cslintl.com>

Cc: Nate Mathews <Nate.Mathews@ci.bemidji.mn.us>; Harry Cann <hcann@asmglobal.com>; Ron Eischens <Ron.Eischens@ci.bemidji.mn.us>

Subject: RE: ASM Global Contract Draft for Sanford Center 2 24 22 clean copy with City Changes

CAUTION:EXTERNAL EMAIL

Bruce and all,

I've attempted to provide an updated version based upon Friday's meeting discussions. Bruce, I've used your ASM Red-line Draft to do so. Obviously, some terms need further discussion between the City's Transition Team members and ASM, i.e., yourself and Harry, particularly the Incentive Fee and Termination related terms. I've not tried to completely "clean" the agreement format as yet, because I think it worthwhile to see how many things we have been able to resolve! With that in mind, the following bullet points reflect the comments and changes that I've incorporated into the attached draft:

- Added a recital reflecting the Sanford Naming Rights Agreement.
- Note indicating need for further discussion to resolve Paragraph 2.1(b), respecting "adjustment" of incentive fee.
- Restoration of CPI language, i.e., limiting to no more than 3% annually, and no adjustment for negative CPI.
- Note indicating need for further discussion respecting final resolution of Incentive Fee under Paragraph 4.2.
- Proposed modifications to 5.2, 5.3(b), and 5.5 respecting termination.
- Note indicating need for clarification of terminology in 5.1 and 5.6, based upon review and application of MN State Auditor's Report recommendation(s). (Bruce and Ron E. to resolve?)
- Deletion of paragraph 7.2 ("Multi Employer Pension Plan" term) based upon discussions at Friday's meeting (2/250).

- Restoration of 8.1(e) provision respecting City's Statutory Tort Liability Limit.
- Proposed deletion of 8.1(f), respecting "exclusive remedies" term (*Bruce, you and I can discuss).
- Note indicating Bruce's provision of Cyber Coverage Term language.
- Note indicating need for further discussion and resolution of 12.2 Termination. And, suggested a discussion of reinstating a termination clause providing "mutual" ability to terminate without cause upon timely notice to the other party.
- Modifications to Sections 13.13(c) and 13.15, respecting inclusion of reference to Sanford Naming Rights Agreement and, correspondingly, a new Exhibit E.

The above is the list of things yet to resolve from my perspective. My intention is to also forward this email and modified draft to the City Transition Team members yet this afternoon, for their meeting this evening.

Don't hesitate to call or email with questions, etc.

Alan

From: Bruce Hanson <bhanson@asmglobal.com>

Sent: Friday, February 25, 2022 10:45 AM

To: Katie Nolting <Katie.Nolting@ci.bemidji.mn.us>; Bill Krueger - CSLINTL <BKrueger@cslintl.com>

Cc: Nate Mathews <Nate.Mathews@ci.bemidji.mn.us>; Alan R. Felix <alanfelix@ci.bemidji.mn.us>; Harry Cann <hcann@asmglobal.com>

Subject: RE: ASM Global Contract Draft for Sanford Center 2 24 22 clean copy with City Changes

[EXTERNAL]

Thank you, Katie—see attached redline showing edits to yours of yesterday, apologies for the delayed turnaround.

We can walk through these on our upcoming call, and please distribute to other members of your team not included on this email.

BRUCE HANSON

Senior Vice President and General Counsel

ASM GLOBAL

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300 Conshohocken State Rd., Suite 770
West Conshohocken, PA 19428 (USA)

From: Katie Nolting <Katie.Nolting@ci.bemidji.mn.us>

Sent: Thursday, February 24, 2022 11:44 AM

To: Bruce Hanson <bhanson@asmglobal.com>; Bill Krueger - CSLINTL <BKrueger@cslintl.com>

Cc: Nate Mathews <Nate.Mathews@ci.bemidji.mn.us>; Alan R. Felix <alanfelix@ci.bemidji.mn.us>
Subject: ASM Global Contract Draft for Sanford Center 2 24 22 clean copy with City Changes

CAUTION:EXTERNAL EMAIL

Good morning Bruce,

Sorry this took me so long to get to you. Attached is a clean copy of the changes the City proposed. Let me know if you need anything else.

Katie Nolting
Assistant Bemidji City Attorney

successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions ("CPI"). However, any annual CPI adjustment shall not exceed three percent (3%). Moreover, in no event shall a negative CPI adjustment be applied to the Base Management Fee. The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and ASM Global shall be entitled to draw such amounts from the account described in Section [5.6].

4.2 - Incentive Fee

(a) Amount. ASM Global shall be entitled to an annual Incentive Fee with respect to each Fiscal Year during the Management Term or Renewal Term. The Incentive Fee paid to ASM Global in each Fiscal Year involves a share of the incremental improvements in Benchmark NOI (net operating income), ~~adjusted for final scoring by the City of ASM Global's performance according to specific Qualitative Criteria.~~ The amount of the Incentive Fee shall be equal to the amount calculated in accordance with the following:

Benchmark NOI relates to the average NOI associated with the three (3) most recent pre-pandemic years of Sanford Center full-year operations. The Benchmark NOI includes consideration of all operating revenues and expenses related to Sanford Center operations, including all fixed and incentive management fees paid, but excludes non-operating items such as debt service and depreciation. Pursuant to this definition, the Benchmark NOI shall be (\$420,000).

~~At the end of each fiscal year, the City will have the exclusive right to evaluate and score ASM Global's performance under this agreement according to the following Qualitative Criteria:~~

- Customer Satisfaction Surveys (40 percent weight)
- Cooperation/Collaboration with Key Local Partners (30 percent weight)
- Community Engagement (30 percent weight)

~~The combined Qualitative Criteria evaluation and scoring by the City will result in an Adjustment Factor, represented in terms of a percentage, with a total range of between zero percent (0%) and one hundred percent (100%), with 100% representing the highest and most favorable score.~~

The Incentive Fee paid to ASM Global shall equal thirty-five percent (35%) of the end of Fiscal Year improvement in Benchmark NOI multiplied by the final calculated Adjustment Factor.

(b) Payment. The incentive fee determined pursuant to Section [4.2(a)] above shall be payable to ASM Global within 30 days after the availability of the audited annual financial statements described in Section [6.1] hereof for a Fiscal Year; ASM Global shall



MEMORANDUM

TO: City Council
FROM: Rich Spiczka, City Manager
DATE: December 18th, 2023
RE: Sanford Center Summary

The following is a brief summary of operations/budget impacts regarding the Sanford Center.

2022

After finally receiving audited financial numbers, the Sanford Center operated in 2022 at a \$298,000 loss. This deficit was still on the positive side of the \$308,000 projection.

2023

The current projection for 2023 is a loss of \$723,000. Our budgeted amount for to cover a Sanford Center loss for 2023 is \$300,000 . Please note that this is an **income statement loss**, not a cash loss. This loss is due to some incorrect accounting that initially showed a much better position for 2023. These errors have been corrected. We believe it will take approximately \$150,000 increase in subsidy to cover costs for the remainder of the year.

2024

The projected subsidy needed for 2024 is estimated and currently budgeted at \$350,000. We were able to adjust this line item in the 2024 levy budget due to some adjustments with the CIP.

ASM will be providing thoughts, answering questions and laying groundwork for how this can be avoided in the future at the December 18th, 2023 council meeting during their presentation.

MEMORANDUM



TO: City Council
FROM: Rich Spiczka, City Manager
DATE: September 16th, 2024
RE: Sanford Center Working Capital

The Sanford Center is experiencing a working capital deficit state. Due to the seasonal fluctuations at the Center, ASM has informed us that center will require an approximately \$350,000 cash influx to meet its current and projected cash requirements. This is not to be confused with the budgeted annual deficit. Per the recommendation of council, from the Monday September 9th, 2024 work session, staff was to attempt to find a solution that included ASM providing the working capital, but that attempt was not successful.

STAFF REQUEST

Council motion approving staff to use \$350,000 for City reserves to provide working capital to the Sanford Center.