

BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY

Special Meeting Agenda **Monday, September 17, 2018**

**City Hall
Council Chambers
6:00 P.M. (or shortly thereafter)**



1. CALL TO ORDER

2. HOLD A PUBLIC HEARING ON PROPOSED SALE OF PROPERTY IN THE CITY OF BEMIDJI (Lot 1, Block 6, South Shore Addition – Grimsley Consulting, LLC)
 - Approve Findings

3. ADJOURN

**PROCEEDINGS OF THE
BEMIDJI ECONOMIC DEVELOPMENT AUTHORITY (BEDA)**

In Re: Proposed sale of Southeast Lake Bemidji Redevelopment Project Property (in Plat of South Shore Addition) by the BEDA to Grimsley Consulting, LLC.

BACKGROUND AND FINDINGS

On Monday, September 17, 2018, the Bemidji Economic Development Authority (BEDA) met and considered the proposed sale of BEDA-owned property in the Lake Bemidji Development Project Area and within the Plat of South Shore Addition, to Grimsley Consulting, LLC (hereinafter "Purchaser"). The plat of South Shore Addition is the subject of the approved South Shore Planned Unit Development, and is subject to the General Planned Unit Development Guidelines dated November 6, 2009, as the same have been amended from time to time, administered by the BEDA's Design Review Committee (the "DRC") in conjunction with the Greater Bemidji Area Joint Planning Board (the "JPB").

The BEDA-owned property to be sold is legally described as:

Lot 1, Block 6, SOUTH SHORE ADDITION, according to the recorded plat thereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota (hereinafter the "Development Property").

The BEDA Staff has tentatively negotiated to sell the Development Property to Purchaser for One Hundred Sixty-Four Thousand Seven Hundred Sixty-four and no/100 Dollars (**\$164,764.00**), subject to the terms of that Purchase Agreement dated September 13, 2018, and to the approval of the proposed sale by the BEDA pursuant to the public hearing held herein. Purchaser intends to use the Development Property to construct a retail commercial building development centering on a wellness center theme ("the Development Property").

Pursuant to Minnesota Statutes Chapter 469, the BEDA has conducted a public hearing in order to determine whether the proposed sale of Lot 1, Block 6, SOUTH SHORE ADDITION to Purchaser is in the best interests of the City of Bemidji and its residents and whether the proposed transaction furthers the BEDA's own general plan of economic development. Pursuant to the testimony received at the hearing and, based upon the discussion of Commissioners regarding the sale, the interests of the City and its residents, as well as the Authority's general plan for economic development, the Authority makes the following findings and decision:

FINDINGS

1. That the sale of the Development Property to Grimsley Consulting, LLC will further a priority and goal of the BEDA to redevelop the Lake Bemidji South Shore Development Project Area, in particular, to accomplish a commercial development.
2. That Purchaser's proposed retail commercial/wellness center development use is consistent with the Lake Bemidji South Shore Planned Unit Development (PUD) approved November 19, 2009, as the same has been amended from time to time.
3. That the tentative development concept and unit building designs presented to the BEDA and its DRC by Purchaser, has found general approval of and with BEDA Commissioners;

however, Purchaser must secure approval of the final building plans and specifications from the DRC and JPB before commencement of construction.

4. The respective sale is conditioned upon the sale closing according to and in satisfaction of the terms and conditions set forth in the Purchase Agreement negotiated between the BEDA and Purchaser, a copy of which is attached hereto as Exhibit **A** and incorporated by reference. The sale herein is further conditioned upon the successful negotiation and execution of any Development Agreement between the Purchaser, the BEDA, the City of Bemidji, and the JPB that may be required for construction of Purchaser's proposed retail commercial project, including conditions arising from any and all JPB zoning approvals. Moreover, initiation of construction on the Development Property must begin within one (1) year after the date of conveyance of the Development Property unless Purchaser has sought and obtained an extension from the BEDA for good cause established by Purchaser.
5. It is the consensus of the BEDA Board that it is in the City's financial best interests that the proposed sale close according to and in satisfaction with those terms and conditions set forth in the above-described Purchase Agreement.
6. That the proposed sale to Purchaser will further the Authority's economic development plan for the City generally and the Lake Bemidji South Shore Development Project Area specifically, and will further the aims and purposes of Minn. Stat. §§469.090-.108.
7. That the BEDA had properly published notice of the public hearing as required by Minn. Stat. §469.105, Subd. 2.
8. That the Limited Warranty Deed to be used to convey the Development Property to Purchaser will contain the necessary covenants in compliance with Minn. Stat. §§469.090-.108.
9. That these Findings are adopted and decision(s) respecting the proposed sale is rendered within thirty (30) days of the noticed public hearing herein.

DECISION

NOW, THEREFORE, based upon the above Findings, it is the decision of the BEDA that the sale of the Development Property to Grimsley Consulting, LLC, as described herein, is in the best interests of the City of Bemidji and its residents and that the proposed sale does further the Authority's general plan of economic development. Therefore, it is recommended that the BEDA complete the proposed sale to Purchaser, and that BEDA and its staff take all necessary administrative steps and actions leading to completion of the sale in accordance herewith and including Minn. Stat. §§469.090-.108.

Dated: September 17, 2018

Rita C. Albrecht, President

ATTEST:

Michelle R. Miller, Secretary

PURCHASE AGREEMENT

This Real Estate Purchase Agreement is made this _____ day of _____, 2018 by and between the Bemidji Economic Development Authority, a public body corporate and politic organized under the laws of Minnesota (hereinafter the "BEDA") and Grimsley Consulting, LLC, a limited liability company organized under the laws of North Dakota, (hereinafter "Purchaser").

WITNESSETH:

WHEREAS, the BEDA is the owner of a tract of land situated in the City of Bemidji, County of Beltrami, State of Minnesota, legally described as follows:

Lot One (1), Block Six (6), SOUTH SHORE ADDITION, according to the recorded plat hereof, on file and of record in the office of the County Recorder, Beltrami County, Minnesota,

as shown on *Exhibit A* attached hereto (hereinafter the "Development Property"); and

WHEREAS, Purchaser desires to purchase the Development Property to construct a retail commercial building development centering on a Wellness Center theme (the "Development Project").

NOW, THEREFORE, the parties hereto agree as follows:

1. **Sale of Property.** Purchaser offers and agrees to purchase from BEDA and BEDA accepts such offer and agrees to sell and convey to Purchaser, all of the BEDA's right, title and interest in and to the Development Property, subject to the terms and conditions hereinafter stated, which BEDA agrees to convey at closing by Limited Warranty Deed.

2. **Earnest Money and Purchase Price for Development Property.** That in consideration of the mutual agreements herein contained and the sum of **Eight Thousand Five Hundred and no/100 Dollars (\$8,500.00)** earnest money to be paid by Purchaser to the BEDA **within five (5) business days** after the execution of this Purchase Agreement, the BEDA grants unto Purchaser the exclusive right to purchase the Development Property legally described above for the sum of **One Hundred Sixty-four Thousand Seven Hundred Sixty-four and no/100 Dollars (\$164,764.00) (approximately .89 acres or 38,768 sq. ft. at the rate of \$4.25 per square feet)** to be paid as follows: the earnest money shall be deposited with and placed by the BEDA in an interest bearing account, and the sum of **One Hundred Fifty-six Thousand Two Hundred Sixty-four and no/100 Dollars (\$156,264.00)** paid in cash or by certified check payable to BEDA on or before the date of closing or such other date as the parties may agree.

The earnest money and all interest thereon shall be applied against the purchase price at Closing. The earnest money deposit shall be non-refundable to Purchaser, except as provided in this Paragraph 2 and Paragraph 5 herein, such that should the BEDA either fail to approve the sale, or as a result of the public hearing described therein, thereafter impose additional conditions not otherwise stated herein that Purchaser will not agree to, in which event(s) Purchaser may elect to terminate this Purchase Agreement and have the escrowed earnest money and any interest earned thereon returned to it.

Purchaser also shall have a period of **one-hundred eighty (180) days**, after receipt of a fully executed duplicate original of this Purchase Agreement, within which to conduct such due diligence investigation as Purchaser deems appropriate. Purchaser may cancel this Purchase Agreement for any reason during the due diligence period and receive a refund of all earnest money.

Moreover, in the event Purchaser should satisfactorily perform all actions and obligations required under this Purchase Agreement, once executed, and such performance satisfaction is adjudged adequate by the BEDA, but the BEDA nonetheless fails to close on the sale of the Development Property, Purchaser may elect to terminate this Purchase Agreement and have the escrowed earnest money and any interest earned thereon returned to it.

Purchaser is further granted the opportunity to extend the due diligence period for two (2) additional one (1) month periods beyond the original 180 day period, each such extension subject to the same purchase agreement conditions imposed with respect to the original period, and including the added condition that Purchaser deposit an additional \$2,500.00 escrow down payment with and at the commencement of each such extension, which additional down payment increment(s) shall be nonrefundable.

3. **Closing**. The closing of the sale of the Development Property shall take place no sooner than **thirty (30) days** after the conclusion of the BEDA's approval process for the sale as provided in Paragraph 5 herein, and may occur at such date as may be mutually agreed upon in writing by the BEDA and Purchaser. The closing may be held at City Hall, 317 4th Street NW, Bemidji, MN, or at the offices of Sathre Title & Abstract, Inc., 315 5th St. NW #2, Bemidji, MN 56601, the BEDA's closing agent.

4. **Development Agreement**. As a potential BEDA condition of the sale of the Development Property, the Purchaser may be required to enter into a Development Agreement with the BEDA, the City of Bemidji, and/or the Greater Bemidji Area Joint Planning Board (hereinafter the "JPB"), for construction of the Development Project being proposed by Purchaser. If so required, the terms and conditions of the Development Agreement may be finally negotiated and agreed to subsequent to the execution of this Purchase Agreement.

5. **Sale Conditioned on BEDA Approval and Other Approvals**. The sale of the Development Property is conditioned upon the BEDA's approval in accordance with the requirements of Minnesota Statutes Sections 469.090 to 469.108, including being subject to the results of a public hearing pursuant to Minnesota Statutes Section 469.105. Within 30 days of such hearing, the BEDA shall make written findings and decision whether sale of the Development Property is advisable. The sale is further conditioned upon there being no taxpayer appeal of the BEDA's decision within 20 days after the BEDA decision is entered. Terms and conditions of the proposed sale (this Purchase Agreement) shall be made available for review by the public prior to the hearing. Furthermore, the sale described herein may be conditioned upon the BEDA's review and approval of written plans and specifications for the retail commercial construction components of the Development Project, which review and approval shall also include consideration of the recommendation(s) of the BEDA's Design and Review Committee (the "DRC"). The BEDA may require preparation of said plans and specifications prior to the hearing.

Additionally, as provided in Paragraph 4 above, the BEDA's sale and conveyance of the Development Property may be conditioned upon the successful negotiation and execution of a Development Agreement between the Purchaser, the BEDA, the City of Bemidji, and the JPB for construction of the Development Project, should such agreement be required.

A decision by the BEDA not to approve a sale shall not result in any claim, cause of action, or other recourse by Purchaser against the BEDA, nor by any third party claiming an interest by or through the Purchaser. However, a decision by the BEDA not to approve the sale of the Development Property shall result in this entire Purchase Agreement being null and void, in which event all Earnest Money, excepting any additional extension down payment(s), and any interest earned thereon shall be returned to Purchaser.

Purchaser shall be responsible for securing all land use, zoning or subdivision approvals necessary or required under the JPB's Land Use and Zoning Ordinance for the use(s) proposed herein.

6. **Additional Conditions of Sale.** The sale is further conditioned on the following:

a. **Use Condition.** Purchaser, its successors and assigns, must use the Development Property for construction of the proposed "Wellness Theme" commercial development as shown and described in the preliminary plans and specifications provided to the BEDA's Design and Review Committee, including such related accessory uses as are consistent with the JPB's Lake Oriented Development District (LD) zoning regulations, as the same may be amended from time to time, as well as with the General Planned Unit Development Guidelines dated November 6, 2009, as the same have been amended from time to time (the "PUD Guidelines"), which PUD Guidelines are administered by the BEDA's DRC and the JPB.

Notwithstanding the foregoing, neither Purchaser nor its successors or assigns may use the Development Property for casino or casino-type gambling purposes.

b. **Transfer Restriction.** Excepting a transfer to an entity or affiliate owned by Purchaser, or for purposes of conveying a security interest in the Development Property for mortgage or lease financing or other purposes relative to the construction and continuing operation of the proposed Wellness Theme commercial development, the Purchaser may not transfer title to the Development Property nor assign its interest in the construction or use of the proposed development within one (1) year after the date of conveyance of the Development Property without the written consent of the BEDA. Written consent shall be in the form of a resolution of the BEDA, which consent shall not be unreasonably withheld.

c. **Commencement of Use.** Within one (1) year from the Closing Date, Purchaser shall devote the Development Property to its intended use or begin work on the proposed use improvements to devote it to that use. If the Purchaser fails to do so within that one (1) year period, the BEDA may cancel the sale and rescind this Purchase Agreement and full title to the Development Property shall revert or be restored to the BEDA upon repayment to Purchaser of the Purchase Price paid for the Development Property, less the earnest money and any interest earned thereon which shall be retained by BEDA. BEDA may extend the time to so comply for good cause shown by the Purchaser.

Deed restrictions stating the foregoing conditions in 6.a., 6.b., and 6.c. above shall be included in the Limited Warranty Deed conveying the Development Property from BEDA to Purchaser at Closing and in any subsequent conveyance of the Development Property.

d. **MPCA VIC Program Participation.** BEDA has previously included the Development Property in the enrollment of its greater South Shore holdings in the Minnesota Pollution Control Agency (MPCA) Owner's Voluntary Inspection and Cleanup (VIC) Program. Purchaser is not required to continue the Development Property's enrollment in the VIC

Program, but in buying the property on an “as-is” basis, Purchaser may, at its option and expense elect to apply to and participate itself in the VIC Program. Moreover, with respect to the Development Property’s current enrollment in the VIC Program, prior to closing the BEDA will draft a letter advisory or an affidavit (for recording against) regarding the Development Property, which letter advisory or affidavit notifies potential purchasers of BEDA’s activities conducted with respect to the Development Property under the VIC Program and the status of the Development Property as a result of those activities.

e. As-Is/Waiver of Conditions. The Purchaser acknowledges that the BEDA makes no representations or warranties as to the conditions of the soils on the Development Property, or the fitness of the Development Property for construction of the proposed Development Project or any other purpose for which the Purchaser may make use of such property. Purchaser has been offered, and will continue to have the opportunity to inspect the Development Property offered herein and to review title to said property, and is responsible for acquiring sufficient knowledge as to the past use of the Development Property. By closing on the sale of the Development Property subject of this Purchase Agreement, and except as otherwise provide in this Paragraph 6, Purchaser acknowledges that they are satisfied with the condition of the Development Property and satisfied with the condition of the BEDA’s title to the Development Property and, as such, accepts the condition of BEDA’s title to the Development Property. BEDA shall not be responsible for any title corrections or physical conditions of the Development Property being sold pursuant to this Purchase Agreement.

Purchaser has been advised of the risk that hazardous substances and contaminants may be present on the Development Property. In addition to Purchaser’s indemnification obligations for pre-closing/site-related activities as described in Paragraph 10 of this Purchase Agreement, Purchaser, upon completing the purchase of the Development Property, shall indemnify and hold harmless the BEDA and hereby waives, releases and discharges forever the BEDA, from any and all present or future claims or demands, and any all damages, loss, injury, liability, claims or costs, including fines, penalties and judgments, and attorney’s fees (collectively “losses”), arising from or in any way related to the condition of the Development Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any hazardous substances or contaminants in, on or under the Development Property. “Losses” shall include without limitation (a) the cost of any investigation, removal, remedial or other response action that is required by any environmental law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, (c) losses arising under any environmental law enacted after transfer, (d) losses sustained as a result of the physical condition of the property. The rights of the BEDA under this paragraph shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this purchase agreement or otherwise. This indemnity specifically includes the obligation of Purchaser to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any hazardous substances or contaminants on the Development Property, or take such action as are required by the physical condition of the Development Property. “BEDA” as the term is used herein shall be given its broadest meaning and shall include but not be limited to BEDA, the City of Bemidji, and their respective officers, directors, shareholders, governors, members, managers, employees or agents.

f. WAC and SAC Charges. It is the mutual understanding and agreement of the parties hereto that as anticipated commercial building construction takes place on the Development Property, Purchaser shall pay Water Access Charges and Sanitary Sewer Access Charges to the City of Bemidji in the usual practice of collection that currently exists within the City fee collection procedure process. Collection of applicable WAC and/or SAC charges shall

not otherwise be delayed, postponed or waived as a condition of Purchaser's agreement herein to purchase the Development Property.

g. Street Access Limitations. The Development Property is bordered on the west by Central Avenue, and on the north by Lakeshore Drive. However, both street right-of-ways have medians which prevent full two-way vehicular traffic access. As such, vehicular traffic access to the Development Property may be limited either to right-in and right-out access or by development of a single main driveway entrance access to the Development Property from Central Avenue, the final decision to be approved by the City of Bemidji Engineering Department.

h. Parking Lot Use and Access. As required by the General Planned Unit Development (PUD) Guidelines for the Lake Bemidji South Shore Development, the Development Property will need to meet a minimum of 50 percent of its parking requirement within the property boundaries. For the remaining 50 percent, Purchaser may consider the use of City Sanford Center parking lots located in adjacent Outlots E, F and G. These public parking lots may be available for short-term parking as well as long-term parking by permit. Furthermore, in light of the storm water swale and easement situated along the eastern boundary of the Development Property, Purchaser may be permitted to construct a "pedestrian only access" over and across the swale to allow patrons direct access to the Sanford Center parking lots. However, the pedestrian access can be no greater than a ten (10) foot path built in accordance with design and construction plans approved by the City Engineering Department.

i. Minnesota Hockey Day 2019. During the Due diligence period under this Purchase Agreement, the parties mutually agree that the Development Property may be used, in part, for the site of the proposed 2019 Minnesota Hockey Day Event, including all associated activities that may occur on the Development Property and on other BEDA property adjacent thereto. Those event activities are scheduled to occur in January 2019, after which the condition of the Development Property will be returned to the conditions that existed prior to event activities and improvements.

7. **Warranties, Representations and Disclaimers.** The parties warrant:

a. Unless otherwise specifically agreed upon in writing in this Purchase Agreement, the Development Property is conveyed on an "as is, where is" and "with all faults" basis with any and all patent and latent defects, including those relating to the physical condition, and environmental condition of the property, and that Purchaser is not relying on any representation or warranties, express or implied, of any kind whatsoever from the BEDA as to any matters concerning the Development Property, except as otherwise made in the Purchase Agreement, including the physical condition of the property and any defects thereof, the presence of any hazardous substances, wastes or contaminants in, on or under the property, the condition or existence of any of the above ground or underground structures or improvements in, on or under the property, the condition of title to the property, and the existence of any zoning permits, easements or other agreements affecting the property.

b. Notwithstanding Paragraph 6e. herein, the BEDA, except as revealed in any letter advisory or affidavit submitted by it under the VIC program, is unaware of any hazardous substance or violation of environmental regulation, arising in any manner whatsoever out of or associated with the BEDA's past and present use of the Development Property.

c. BEDA certifies that the Development Property is serviceable by municipal water and sewer utilities, and that BEDA does not know of any individual wells or sewage treatment systems on the Development Property.

d. The Development Property has legal access to Central Avenue and Lakeshore Drive NE, both being public streets. (***But see Paragraph 6.g. above***)

e. BEDA otherwise represents that the Development Property is currently tax exempt and may become taxable in the hands of Purchaser, including mandatory annual assessments for solid waste management and storm-water utility. There are no outstanding assessments for past public improvements benefitting the Development Property, nor will there be special assessments levied for public improvements related to the construction of the Sanford Center or the improvement of roads and infrastructure constructed to date and currently serving the South Shore Plat. However, future public improvements unrelated to the BEDA's development of the Sanford Center within the South Shore Plat, may become the basis for future special assessments levied against the Development Property, if the same is benefited by those future improvements.

f. To the best of its knowledge, BEDA is unaware of any clandestine drug lab(s), for methamphetamine or any other controlled substance production, ever having occurred or existed on the Development Property.

g. BEDA has no knowledge that the Development Property has any conditions that are protected by federal or state law (such as American Indian burial grounds, other human burial grounds, historic structures, or archeological sites).

h. BEDA warrants that it has not received any notice from any government authorities as to violations of any laws, ordinances, or regulations with respect to the Development Property. Additionally, BEDA asserts that except as otherwise disclosed herein, neither the execution or delivery of this Purchase Agreement nor the consummation of the transaction contemplated hereby will result in any breach or violation of, or default under, any judgment, decree, order, lease, agreement, indenture or other instrument or document to which it is a party or by which the Development Property or any part thereof is bound.

i. Waiver of Disclosure. The written disclosure required under Minnesota Statutes Sections 513.52 to 513.60, if any, may be waived if the BEDA and prospective buyer agree in writing. BEDA and Purchaser each hereby waive the written disclosure required under Sections 513.52 to 513.60. Waiver of the disclosure under Sections 513.52 to 513.60 does not waive, limit, or abridge any obligation for disclosure as a BEDA created by any other law.

j. Mechanic's Lien. There has been no labor or material furnished to the Development Property on behalf of the BEDA for which payment has not been made. In the event that any such lien or charges placed against the Development Property or any part thereof subsequent to closing, and the same had as its basic work or materials furnished to the Development Property prior to closing, BEDA agrees to promptly cause the same to be removed and take such other actions as may be appropriate in order to satisfy the same of record.

k. Unrecorded Interests. BEDA has no knowledge of any unrecorded easements, rights of way or interest, express or implied, written or oral, whether at law or in equity, which exists to benefit or burden the Development Property, except as previously mentioned herein.

l. Authority. Except as conditioned herein, each of the undersigned parties warrants that it has the full authority to exercise this Purchase Agreement, and each individual signing this Purchase Agreement on behalf of a corporation or limited liability company hereby

warrants that he or she has full authority to sign on behalf of the corporation or limited liability company that he or she represents and to bind such corporation or company thereby.

8. **Marketability of Title.** Notwithstanding Paragraph 6 herein, BEDA shall provide to Purchaser upon request, copies of any surveys, abstracts and title information that BEDA may have in its possession respecting the Development Property under this Purchase Agreement.

The BEDA shall also within twenty-five (25) days after acceptance of this Purchase Agreement furnish to Purchaser a current title commitment for an Owner's Title Insurance Policy ("Commitment") issued by Sathre Title and Abstract, Inc., 315 5th Street NW, Bemidji, Minnesota (the "Title Company") naming the Purchaser as the proposed insured. The Commitment shall show the status of title of the Development Property, and all encumbrances and exceptions, including easements, restrictions, rights-of-way, covenants, reservations and other conditions, if any, affecting the Development Property which would appear in a Title Policy, if issued, and committing to issue such Title Policy to Purchaser for the full amount of the Purchase Price for the Development Property at the Closing, together with such endorsements as are deemed necessary by Purchaser, at no additional cost to BEDA. The cost of obtaining the Commitment shall be paid by BEDA. The cost of obtaining title insurance shall be paid by Purchaser.

After execution of the Purchase Agreement and upon receipt of the Commitment, Purchaser shall have fifteen (15) days to examine title under the Commitment and, upon examining said Commitment, Purchaser shall have the right to rescind this Purchase Agreement or to waive any objections and close on the Property per the terms of the Purchase Agreement.

BEDA agrees to satisfy any recorded or unrecorded contracts for deed, mortgages or liens incurred by the BEDA against the Development Property which are curable solely by the payment of money either prior to Closing or simultaneously with Closing. Except as provided under this Purchase Agreement, BEDA is not required to cure any title defect respecting the Development Property.

BEDA shall not permit any encumbrances to be made upon the Development Property subject of this Purchase Agreement between the date of this Purchase Agreement and Closing.

Any objections approved or waived by Purchaser under this paragraph shall be "Permitted Exceptions".

9. **Other exceptions to Marketable Title.** In addition to "Permitted Exceptions", Seller shall convey Marketable Title to the Property to the Purchaser subject only to the following exceptions:

- a. Building and zoning laws, ordinances, State and Federal regulations;
- b. Restrictions of record relating to use or improvement of premises without effective forfeiture provisions.
- c. Reservation of any minerals or mineral rights to the State of Minnesota;
- d. Utility, drainage and highway easements which do not interfere with the Property; and
- e. Easements, conditions, covenants, declarations and restrictions which are now of record.

10. **Pre-Closing Site-related Activities.**

a. **Inspections and Reviews.** Up to the Date of Closing herein, Purchaser or its agents, during normal business hours and after reasonable advance written notice, may have access to the Development Property to make any inspections, surveys, tests, audits or reviews of the Development Property, all at Purchaser's sole cost and expense. Inspections and tests may include invasive Phase II environmental inspections or other invasive inspections or sampling of soil or ground water. BEDA will deliver to Purchaser (at no cost to Purchaser) copies of all environmental or soil reports prepared by or for the BEDA.

b. **Costs, Liens and Indemnity.** Purchaser will not suffer or permit any mechanic's liens to attach to or be filed against or upon the Development Property, or any part thereof by reason of any of the foregoing inspections, tests, reviews, or audit activities. Purchaser agrees to indemnify, defend, and hold the BEDA harmless from any and all losses, damages, professional fees, and all related liabilities, costs and expenses (including all attorneys' fees), and any liens filed in connection therewith, suffered, incurred or paid by Purchaser arising out of its conducting any tests, inspections, reviews, or audit activities with respect to the Development Property, and from all claims of third parties relating thereto. Such indemnity by Purchaser shall survive any termination of this Purchase Agreement. Purchaser also agrees not to permit any mechanic's lien to attach or be filed against or upon the Development Property or any part thereof for which payment has not or will not be made by Purchaser prior to Closing.

11. **Closing Related.**

a. **Date of Closing.** The closing of the sale of the Development Property shall take place as provided in Paragraph 3 herein. The closing may be held at the offices of Sathre Title & Abstract Inc., 315 5th St NW, Bemidji, MN, the Title Insurance and Closing Agent for the BEDA, or at such other location as is mutually acceptable.

b. **Deed Delivered at Closing.** Subject to the previously stated conditions and "Permitted Exceptions", BEDA agrees to give good and marketable title to the Development Property in fee-simple, together with all improvements, hereditaments and appurtenances thereunto belonging, and to convey the same by Limited Warranty Deed joined in by all individuals known collectively as the BEDA and in a form acceptable to counsel for Purchaser.

c. **Other BEDA Documents.** The Limited Warranty Deed shall be accompanied by the appropriate BEDA organizational authorization or resolution authorizing the sale and conveyance, and any and all other documentation reasonably required or necessary to carry out the provisions of this Purchase Agreement.

d. **Taxes and Special Assessments.** With respect to the Development Property, real estate taxes and special assessments due and payable in the years prior to the year of Closing, if any, including any deferred real estate taxes, will be the responsibility of the BEDA. Real estate taxes and special assessments due and payable in the year of Closing, if any, shall be prorated to date of Closing. Real estate taxes and special assessments due and payable in the years following Closing, if any, attributable to Purchaser's use of the Development Property shall be paid or assumed by the Purchaser.

e. **Closing Costs.** The following costs and expenses will be paid as follows in connection with the Closing:

- i. As to BEDA as BEDA, BEDA will pay:
 - Preparation of Title Commitment.
 - Cost of preparation of the Deed and documents of conveyance.
 - State Deed Tax upon delivery of the Deed to Purchaser.
 - BEDA's attorney's fees, if any.
 - Fees for recording of any Satisfaction(s) of Mortgage and/or other liens affecting the Property.
 - Such other costs allocated to BEDA under this Purchase Agreement.
- ii. As to Purchaser as Buyer, Purchaser will pay:
 - Fees for filing and recording of the Deed from BEDA.
 - Purchaser's attorney's fees.
 - Premium for title insurance policy obtained as a Purchaser.
 - Such other costs allocated to Purchaser under this Purchase Agreement.

*Each party shall pay one-half of the Closing fee charged by the Title/Closing Agent.

12. **Commission.** Each party shall be responsible for payment of their own real estate brokerage commission or fees.

13. **Possession and Insurance.** Notwithstanding Purchaser's right of entry and access to the Development Property as provided in Paragraph 10 herein, the Purchaser shall be entitled to possession of the Development Property upon the Date of Closing. Risk of loss from casualty or any liability incurred by or as a result of the Purchaser's use, contact or activities associated with the Development Property prior to Closing shall be the Purchaser's. Risk of loss attributable to Purchaser's use, contact or activities associated with the Development Property after delivery of possession at Closing shall be Purchaser's.

14. **No Merger.** The warranties, representations and covenants of Purchaser and the BEDA contained in this Purchase Agreement shall survive the conveyance of the Development Property and shall not be merged with the Limited Warranty Deed.

15. **Time is of The Essence.** Time is of the essence in this Purchase Agreement.

16. **Entire Agreement; Amendments.** This Purchase Agreement constitutes the entire agreement between the parties and no other agreement prior to this Purchase Agreement or contemporaneous herewith shall be effective except as expressly set forth or incorporated herein. Any purported amendment hereto shall not be effective unless it shall be set forth in writing and executed by both parties hereto.

17. **Binding Effect; No Assignment.** This Purchase Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns. Neither Purchaser nor the BEDA may assign or transfer all or any part of its respective rights under this Purchase Agreement without the written consent of the other.

18. **Notice.** Any notice, demand, request or other communication which may or shall be given or served by each party to the other shall be deemed to have been given or served on the date the same is deposited in the United States mail, postage prepaid and addressed as follows:

a. To BEDA: Bemidji Economic Development Authority
Attn: Nate Mathews, Executive Director
317 4th Street NW
Bemidji, MN 56601

b. To Purchaser: Grimsley Consulting, LLC

19. **Governing Law.** This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and any cause of action arising out of this Purchase Agreement shall be venued in Beltrami County District Court.

20. **Counterparts.** This Purchase Agreement may be executed in any number of counterparts, each of which will be an original, but such counterparts together will constitute one and the same instrument.

21. **Severability.** In the event any one or more of the provisions of this Purchase Agreement, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions or any application thereof shall not in any way be affected or impaired thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands, the day and year first printed above.

**BEMIDJI ECONOMIC DEVELOPMENT
AUTHORITY**

By _____
Rita C. Albrecht
Its President

By _____
Nathan Mathews
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF BELTRAMI)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Rita C. Albrecht and Nathan Mathews, the President and Executive Director, respectively, of the Bemidji Economic Development Authority (BEDA), a body politic and corporate duly organized under the laws of the State of Minnesota, on behalf of the BEDA.

Notary Public

EXHIBIT A
DEVELOPMENT PROPERTY