

BEMIDJI CITY COUNCIL ***CITY OF BEMIDJI***

NOTICE OF REGULAR MEETING PURSUANT TO MINNESOTA STATUTES SECTIONS 13D.04 AND 13D.021

NOTICE OF REGULAR COUNCIL MEETING BY TELEPHONE OR OTHER ELECTRONIC MEANS

NOTICE IS HEREBY GIVEN that the City Council of the City of Bemidji will hold a Public Affairs Committee Meeting, Council Meeting and BEDA Meeting on Tuesday, September 8, 2020 to begin at 5:15 p.m. at Bemidji City Hall.

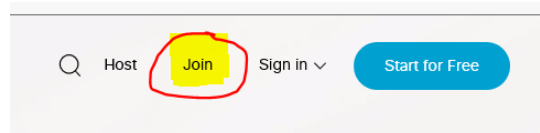
In accordance with the requirements of Minn. Stat. Sections 13D.04 and 13D.021, Mayor Rita C. Albrecht, has determined that an in person meeting is not practical or prudent because of a health pandemic and Peace Time State of Emergency, declared under Chapter 12 of the Minnesota Statutes.

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.

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 5:00 p.m. and remain open until the conclusion of the BEDA Meeting):



- Enter meeting number: 126 871 5291
- Enter meeting password: PjedVdER299 (75338337 from phones and video systems)
 - Click Join Meeting

To join by phone, dial: +1-408-418-9388. Enter meeting number (access will open at 5:00 p.m. and remain open until the conclusion of the BEDA Meeting):

- Password: 126 871 5291 #
- Press # for no attendee ID number

PUBLIC AFFAIRS COMMITTEE AGENDA

***September 8, 2020 ~ 5:15 p.m.
City Hall***

(Administration, Personnel, Legal, Finance, PEG Access, Municipal Liquor, Police & Fire)

1. CALL TO ORDER
2. REVIEW TOURIST INFORMATION CENTER LEASE WITH VISITBEMIDJI
3. ADJOURN

MISSION STATEMENT

Provide leadership and coordination for the City Council in public policy areas related to:

- *Internal council policies and procedures*
- *External relations to other units of government and service providers*
- *Community governance and civic relations*
- *Advisory boards and commissions*

Tourist Information Center Lease Agreement (Southwest Section)

THIS LEASE AGREEMENT is entered into on _____, 2020 (“Effective Date”) by and between the **City of Bemidji, Minnesota**, a municipal corporation, hereinafter referred to as CITY, and **Visit Bemidji**, a Visitor & Convention Bureau, hereinafter referred to as TENANT.

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

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

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

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

2. **INITIAL TERM.** The term of this Lease shall be five (5) years and three (3) months, commencing on October 1, 2020 and ending at 12:00 noon on December 31, 2022, upon the condition that Tenant pays rent therefore, and otherwise performs as provided in the Lease.

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

4. **RENT-INITIAL TERM.** TENANT agrees to pay CITY at the Bemidji City Hall, or at such other place or manner designated by CITY, without any prior demand therefore and without any deduction or setoff whatsoever, fixed rent at the rate of **\$757.50 (909 ft² x \$10/ft² divided by 12 months)** per month starting on October 1, 2020, and on the first of each succeeding calendar month thereafter during the initial term of this Lease. The rent shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

15. UTILITIES, MAINTENANCE AND REPAIR.

A. UTILITIES.

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

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

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

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

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

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

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

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

20. INSURANCE.

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

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

B. TENANT'S policy(s) shall name CITY as additional insured and the cancellation provision of said policy(ies) must provide for a thirty (30) day notice of cancellation by the issuing company to the CITY should the policy be cancelled for any reason before its expiration date. TENANT shall at the beginning of the initial Lease Term and annually thereafter provide proof (Certificate) of such insurance coverage to CITY. TENANT will not do or omit the doing of any act which would vitiate any insurance, or increase the insurance rates in force upon the real estate improvements on the Leased Premises.

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

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

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

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

23. **LANDLORD'S LIEN.** CITY shall have a lien for security for the rent and other amounts due from TENANT'S on all of TENANT'S goods, chattels, fixtures, furniture, tools and other personal property kept and used by TENANT on the Leased Premises. This lien shall be in addition to any lien provided by law, and shall, in addition, be considered a security interest under the Minnesota Uniform Commercial Code.

24. **MECHANIC'S LIEN.** Neither the TENANT nor anyone claiming by, thru, or under the TENANT, shall have the right to file or place any mechanic's lien or other lien of any kind of character whatsoever, upon the Leased Premises or upon the Tourist Information Center Building or improvement thereon, or upon the leasehold interest of the TENANT therein. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for the Leased Premises or the Tourist Information Center Building, improvements, alterations, repairs or any part thereof, shall at any time be or become entitled to any lien thereon, and for the further security of the CITY, the TENANT covenants and agrees to give actual notice thereof in advance, to any and all contractors and subcontractors who may furnish or agree to furnish any such material, service or labor.

25. **RIGHT TO ENTER/INSPECTION OF PREMISES.** CITY or its authorized agents may enter upon the Leased Premises at all reasonable times for the purpose of examining or inspecting the condition thereof, in order to exercise any right of power reserved to CITY within the scope of and under the terms and conditions of this Lease Agreement, or to perform any duties placed upon CITY under this Lease Agreement.

26. **EVENTS OF DEFAULT OR BREACH.** Each of the following events shall constitute a default or breach of this Lease Agreement:

A. In the event either party shall default in the performance of any of the terms or provisions of this Lease Agreement, the non-defaulting party shall promptly so notify the defaulting party in writing. If the defaulting party shall fail to cure such default within thirty (30) days after receipt of such notice, or if the default is of such character as to require more than thirty (30) days to cure, and the defaulting party shall fail to commence to do so within the thirty (30) days after receipt of such notice and thereafter diligently proceed to cure such default, than in either event, the non-defaulting party may either cure such default itself or elect to immediately terminate this Lease Agreement subject to **Paragraph 27**.

B. If TENANT shall file or have filed against it a petition in bankruptcy or insolvency or for reorganization under any Bankruptcy Act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

C. If TENANT shall vacate or abandon the Leased Premises.

D. If this Lease Agreement becomes part of the estate of TENANT hereunder and shall be transferred to or shall pass to or devolve on any other person or party, except in the manner permitted by this Lease Agreement.

27. EFFECT OF DEFAULT OR BREACH. In the event of a default by TENANT and its failure to timely cure the same, CITY may re-enter the Leased Premises immediately and remove the property of TENANT, and store the property in a public warehouse or at a place selected by CITY, at the expense of TENANT. CITY may recover from TENANT all damages proximately resulting from the breach, including the cost of recovering the Leased Premises (including reasonable attorney's fees). After re-entry, CITY also may re-let the Leased Premises at the rent and on the terms as CITY may choose.

This provision in no way limits a party's other remedies for breach under common law or this Lease Agreement.

28. CANCELLATION.

A. **By Mutual Consent.** This Lease Agreement may be terminated at any time by mutual consent of CITY and TENANT.

B. **BY TENANT.** In addition to any rights of cancellation or any other rights herein given to the TENANT, the TENANT may cancel this Lease Agreement in its entirety and terminate its obligations hereunder at any time, by six (6) months written notice to the CITY. Notice shall be given as provided in **Paragraph 31**.

C. **BY CITY.** In addition to any rights of cancellation or any other rights herein given to the CITY, the CITY may cancel this Lease Agreement in its entirety and terminate all or any of its obligations hereunder as follows:

i. upon six (6) months written notice to the TENANT. Notice shall be given as provided in **Paragraph 31**.

ii. in the event that TENANT shall default in the performance of any terms or provision of this Lease Agreement and is not corrected by the TENANT within thirty (30) days of delivery by CITY to TENANT of written notice of the default, then the CITY shall have the right and option to terminate this Lease Agreement; provided, however, that before any such right of termination is exercised, the CITY shall give reasonable notice to the TENANT and extend it an opportunity to be heard before the City Council. The decision of the City Council shall be final.

Acceptance of rent by the CITY for any period or periods after the default of any of the terms and conditions contained herein to be performed by TENANT shall not be deemed a waiver of any right on the part of the CITY to cancel the Lease Agreement for such default.

29. ALTERATIONS, ADDITIONS AND IMPROVEMENTS. No Alterations, Additions or Improvements shall be made to the Leased Premises during the Term of this Lease Agreement

without first securing the prior written approval of CITY. Any Alterations, Additions or Improvements built, constructed or placed on the Leased Premises, with the exception of fixtures removable without damage to the Leased Premises and TENANT'S personal property, shall become the property of CITY.

30. WAIVERS. The failure of CITY or TENANT to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the right or remedies that CITY or TENANT may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

31. NOTICES. All notices to be given with respect to this Lease Agreement shall be deemed sufficiently given or rendered if in writing and delivered to either party personally or sent by registered or certified mail, postage prepaid, addressed as set forth below or at such other address as either party may from time to time designate in writing:

TO CITY:

City Manager
Bemidji City Hall
317 4th Street NW
Bemidji, MN 56601

TO TENANT:

Executive Director
Visit Bemidji
P.O. Box 66
Bemidji, MN 56619

32. AUDIT. The books, records, documents and accounting procedures and practices of TENANT relevant to this Lease Agreement are subject to examination by the CITY during normal business hours and after reasonable notice to the TENANT for a period of three (3) years after the creation or, in the case of procedures and practices, the year in which performed.

33. MINNESOTA GOVERNMENT DATA PRACTICES COMPLIANCE. TENANT shall at all times abide by Minnesota Statutes Sections 13.01 et seq., the Minnesota Government Data Practices Act, to the extent that the Act is applicable to data and documents in the possession of TENANT.

34. NON-DISCRIMINATION. During the performance of this Lease Agreement, TENANT shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age. TENANT further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes Section 363A.02, et seq., Title VI of the Civil Rights Act of 1964, and the American with Disabilities Act of 1990, as the same may be amended from time to time.

35. RELATIONSHIP OF PARTIES. TENANT is an independent contractor of CITY and shall not be deemed to be an employee, joint venture, or partner of the CITY.

36. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

37. **EXHIBITS.** Exhibits to this Lease Agreement shall form a part hereof, and are incorporated into this agreement.

38. **MERGER; AMENDMENTS.** It is understood and agree that the entire agreement of the parties is contained herein and that this Lease Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this Lease Agreement are incorporated or attached and deemed to be part of this Lease Agreement. Any waiver, alteration or modification of this Lease Agreement or any agreements in connection herewith shall be reduced to writing as an amendment and signed by each of the parties.

39. **SEVERABILITY.** If any term or provision of this Lease Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement or the application of such term or provision to persons with circumstances other than those as to which it is felt invalid or unenforceable, shall not be affected thereby.

40. **COUNTERPARTS.** This Lease Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterpart shall constitute one and the same instrument.

Dated: _____

Dated: _____

CITY OF BEMIDJI

VISIT BEMIDJI

By _____
Rita C. Albrecht, Mayor

By _____

Nathan Mathews, City Manager
