

## **MEDIATED SETTLEMENT AGREEMENT**

THIS MEDIATED SETTLEMENT AGREEMENT (“Agreement”) is made between Bemidji Township and the City of Bemidji.

### **I. RECITALS**

- A. The parties are involved in a lawsuit in the Beltrami County District Court, Court File No. 04-CV-12-2601.
- B. The parties heretofore have submitted the matters in dispute to mediation pursuant to an Agreement and Acknowledgment of Mediation Ground Rules dated May 1, 2013
- C. The parties have settled all outstanding claims between them on the following terms and conditions, as a mediated settlement.
- D. All parties have been represented by counsel in these proceedings and the Mediation, except: None.

### **II. AGREEMENT**

The parties mutually agree as follows:

A. Binding Agreement. This Mediated Settlement Agreement is acknowledged and it is agreed by each party. Each party knowingly and voluntarily has entered into this Agreement with the advice of their attorney. This Agreement is binding upon each party. Each party also acknowledges that they have been informed and advised by the Mediator as follows:

- (1) The Mediator has no duty to protect any of the parties’ interests or provide them with information about their legal rights;
- (2) Signing a Mediated Settlement Agreement may adversely affect each parties’ legal rights;
- (3) Each party should consult with an attorney before signing this Mediated Settlement Agreement; and
- (4) A written Mediated Settlement Agreement is not binding unless it contains a provision that it is binding and a provision stating substantially that the parties were advised in writing of (a) through (c) above.

B. Settlement Terms.

1. Subject to the approvals noted below, the Orderly Annexation Agreement and the Joint Powers Agreement will be amended to release Bemidji Township as a party.

2. Subject to approval by the Municipal Boundary Adjustments Unit-Office of Administrative Hearings, Phase I properties not currently served by municipal sanitary sewer and water may be detached from the City of Bemidji to Bemidji Township. The City and Township will mutually agree on which Phase I properties may be so detached. Property owner consent to detachment will be required. In that case, the City will not contest the detachment. The City and the Township will equally share costs imposed by the Office of Administrative Hearings associated with the detachment proceeding.
3. Until June 1, 2018, the City of Bemidji will not initiate any annexation of Bemidji Township property unless initiated by a property owner petition and the property must be contiguous to the City at the time of the Petition. Consent by Bemidji Township is not required.
4. This Mediated Settlement Agreement is conditioned on approval by the Bemidji City Council and Bemidji Town Board.
5. Any approvals needed by Northern Township to effectuate this Mediated Settlement Agreement must be obtained in order for this agreement to be effectuated.
6. Any property taxes received by the City of Bemidji in 2013 from Phase 1 properties shall be paid to Bemidji Township.
7. Properties previously detached from the City as part of Phase 1 Annexation shall remain under the jurisdiction of Bemidji Township.

C. Non-Liability. Nothing in this Mediated Settlement Agreement is intended to be, nor will be deemed to be, an admission of liability by any party that it or any of its officers, directors, shareholders, agents, representatives, or employees has violated any state or federal statute, local ordinance, or principle of common law, or that it has engaged in any wrongdoing. The parties understand that this Mediated Settlement Agreement is a compromise of doubtful and disputed claims and that the execution of this Mediated Settlement Agreement is not to be construed as an admission of liability on the part of any of the parties hereto, and that such parties expressly deny liability therefor, and intend merely to avoid litigation with respect to such claims.

D. Entire Agreement. This Mediated Settlement Agreement constitutes the entire agreement between the parties with respect to the matters which have been the subject of the mediation, and it supersedes any and all prior agreements, oral or written, with respect hereto.

E. Invalidity. In case any one or more of the provisions of this Mediated Settlement Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Mediated Settlement Agreement will not in any way be affected or impaired thereby.

F. Voluntary and Knowing Action. Each party acknowledges that the party has had an opportunity to consult with an attorney prior to signing this Mediated Settlement Agreement, has read and understands the terms of this Mediated Settlement Agreement, and that the party has voluntarily entered into this Mediated Settlement Agreement to resolve their disputes.

G. Governing Law. This Mediated Settlement Agreement will be construed and interpreted in accordance with the laws of the State of Minnesota.

H. Dismissal of Action. Each party's attorney shall promptly file with all courts and agencies having jurisdiction, an executed copy of this Agreement or otherwise cause all claims, charges and matters to be dismissed or withdrawn with prejudice, and each party shall execute and deliver in addition all other forms of separate written dismissal and withdrawal as may be required.

I. Complete Release. It is the specific intent of the parties to release and discharge the other from any and all claims and causes of action of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, and whether specifically mentioned herein or not, which may exist or might be claimed to exist, at, prior to or subsequent to the date hereof by reason of any matter or thing arising out of or in connection with the claims in this mediation, and any matter relating thereto. The parties specifically waive any right to assert that any claim has been, through oversight or error, or intentionally or unintentionally omitted from this Mediated Settlement Agreement.

J. Counterpart Copies. This Mediated Settlement Agreement shall be executed in counterpart copies, each of which shall constitute and be effective as an original hereof.

K. The May 1, 2013 Mediated Settlement Agreement is hereby vacated.

**III.  
ARBITRATION**

Any dispute(s) and/or questions of any kind or nature regarding this Settlement shall be decided by Binding Arbitration before the Mediator, who shall be the sole Arbitrator.

**PARTIES:**

**BEMIDJI TOWNSHIP**

By [Signature]

Its Chair

Dated: May 31, 2013

By [Signature]

Its Board Member  
Dated: May 31, 2013

**CITY OF BEMIDJI**

By [Signature]

Its Mayor

Dated: 5-31, 2013

By [Signature]

Its Council Member  
Dated: 5-31, 2013

By Brian K. Meschman  
Its Board Member  
Dated: May 31, 2013

By J.P. Thompson  
Its Council Member  
Dated: 5-31, 2013

By \_\_\_\_\_  
Its Board Member  
Dated: \_\_\_\_\_, 2013

By Michael Mullhans  
Its Council Member  
Dated: 5-31, 2013

By \_\_\_\_\_  
Its Board Member  
Dated: \_\_\_\_\_, 2013

By \_\_\_\_\_  
Its Council Member  
Dated: \_\_\_\_\_, 2013

DK  
David J. Meyers, Mediator

**ATTORNEYS**

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Dated: May 31, 2013

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Dated: 5-31, 2013