

**COMPROMISE AGREEMENT
PURSUANT TO MINNESOTA RULES OF EVIDENCE, RULE 408,
FOR THE DISMISSAL OF ASSESSMENT APPEAL**

THIS COMPROMISE AGREEMENT (“Agreement”) is entered into and effective as of the ___ day of _____, 2024 (“Agreement Date”), by and between the City of Baxter, a Minnesota municipal corporation (the “City”), and the City of Brainerd, a Minnesota municipal corporation (the “Property Owner”).

WITNESSETH:

WHEREAS, the Property Owner owns two parcels of real property in the City, identified on the attached Exhibit A (individually and collectively the “Property”); and

WHEREAS, the City authorized and performed roadway reconstruction and roundabout construction on Highland Scenic Road and Cypress Drive as part of the City’s 2023 Cypress Drive and Douglas Fir Drive Improvements Project, City Project No. 4087 (the “Project”); and

WHEREAS, on March 21, 2023, the City held a public assessment hearing, determined that the Property received special benefits from the Project, approved Resolution No. 2023-024 and levied a special assessment against the Property pursuant to Minnesota Statutes Chapter 429; and

WHEREAS, the special assessment amount levied against the Property is \$58,071.10 for parcel identification number 40170621 and \$4,038.89 for parcel identification number 40080712, identified as the Assessment Levy Amount; and

WHEREAS, the Property Owner appealed the City’s special assessment levied against the Property for the Project improvements by filing the present special assessment appeal action in Crow Wing County District Court, Court File No. 18-CV-23-1473 (“Appeal”); and

WHEREAS, this Agreement is intended to resolve the dispute between the parties arising from the Project and the Property Owner’s Appeal; and

WHEREAS, the Property Owner represents and agrees that the filing of the Appeal are the only claims the Property Owner has related to the Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

ARTICLE 1
THE AGREEMENT

Section 1.01 Purpose. The purpose of this Agreement is to memorialize the covenants and agreements between the City and Property Owner with regard to the dispute between the parties arising from the Project and the Property Owner’s Appeal.

Section 1.02 Cooperation. The City and Property Owner will cooperate and use their best efforts to ensure the most expeditious implementation of the various terms of this Agreement.

Section 1.03 Term. The term of this Agreement will start on the Agreement Date and will survive the dismissal of the Appeal.

Section 1.04 Recitals. The above recitals are true as of the Agreement Date and constitute a part of this Agreement.

ARTICLE 2
DEFINITIONS

Section 2.01 Definitions. The following are terms used in this Agreement. Their meanings in this Agreement will be expressly indicated below, unless the context of this Agreement requires otherwise:

- a) **Agreement.** This Agreement is to memorialize the covenants and agreements between the City and Property Owner regarding the dispute between the parties arising from the Project and the Property Owner’s Appeal.
- b) **Agreement Date.** The date written in the first paragraph of the Agreement.
- c) **Assessment Levy Amount.** The amount of the City’s original assessment levy against the Property for the Project improvements as identified in the Recitals as the Assessment Levy Amount.
- d) **City.** The City of Baxter, a Minnesota municipal corporation.
- e) **City Attorney.** Greta L. Bjerkness of LeVander, Gillen & Miller, P.A., 1305 Corporate Center Drive, Suite 300, Eagan, MN 55121.
- f) **Project.** The City’s 2023 Cypress Drive and Douglas Fir Drive Improvements Project, City Project No. 4087.
- g) **Property.** Two parcels of real property in the City of Baxter identified on the attached Exhibit A.
- h) **Property Owner.** The City of Brainerd, a Minnesota municipal corporation, owner of the two parcels of real property identified on the attached Exhibit A.

- i) Property Owner's Attorney. Joseph L. Langel of Ratwik, Roszak & Maloney, P.A., 444 Cedar Street, Suite 2100, St. Paul, MN 55101.
- j) Settlement Stipulation. The Settlement Stipulation, Order and Judgment providing for the dismissal of Crow Wing County District Court File No. 18-CV-23-1473 with prejudice and without costs or attorneys' fees to either party.

ARTICLE 3
COVENANTS AND AGREEMENTS

Section 3.01 Covenants and Agreements of the City. The City covenants and agrees with the Property Owner that:

- a) City Execution of This Agreement. In consideration of this Agreement, the City agrees to execute this Agreement and implement its terms as they relate to the Property.
- b) City Reduction of Property Assessment Principal Balance. On March 21, 2023, the City passed Resolution No. 2023-024 which approved the Assessment Levy Amount against the Property for the Project improvements. The City agrees that the City shall reduce the Assessment Levy Amount against the Property to a total amount of \$13,000.00. This assessment principal reduction shall be made by the City certifying removal of the special assessments to Crow Wing County upon receipt of payment in the amount of \$13,000 from Property Owner to City. Said certification shall be effectuated by the City within thirty (30) days following full execution of this Agreement and receipt of payment in the amount of \$13,000 from Property Owner.
- c) Settlement Stipulation. The City agrees that the City Attorney will execute a copy of the Settlement Stipulation, Order and Judgment attached hereto as Exhibit B. The parties hereto agree that said Settlement Stipulation, Order and Judgment shall be executed contemporaneously with this Agreement, and the City Attorney shall proceed with the filing of the executed Settlement Stipulation, Order and Judgment with the Crow Wing County District Court.

Section 3.02 Covenants and Agreements of the Property Owner. Property Owner agrees with the City that:

- a) Title and Agreement Execution and Processing. Property Owner warrants that Property Owner has good right, title and interest to enter into this Agreement and Property Owner agrees to execute this Agreement and deliver said executed copy to the City Attorney for the City's processing thereof pursuant to Section 3.01 above.
- b) Property Owner Execution of Settlement Stipulation, Order and Judgment Pleading. In consideration of this Agreement, the Property Owner hereby agrees

that the Property Owner's Attorney will execute the Settlement Stipulation, Order and Judgment, attached hereto as Exhibit B, contemporaneously with this Agreement and deliver the executed copy to the City Attorney for the City's processing thereof pursuant to Section 3.01 above.

- c) Property Owner Payment of Assessment Principal Reduction Amount. Property Owner hereby agrees to pay the Reduction of Property Assessment Levy Amount of \$13,000 for the Property to the City pursuant to this Agreement within thirty (30) days following full execution of this Agreement or May 15, 2024, whichever occurs first. City Resolution No. 2023-024 approved the Assessment Levy Amount against the Property with interest accruing from March 21, 2023, at a rate of 5.55%. Property Owner acknowledges and agrees that upon receipt of the payment of \$13,000 for the Assessment Principal Reduction Amount, the City shall instruct Crow Wing County to revise the Property's 2024 property tax statements for taxes payable 2024 to remove the special assessments related to the Project.
- d) Assessment Waiver. Property Owner hereby waives all rights to assessment notices, hearings and appeals, and all other rights pursuant to Minn. Stat. § 429.061, §429.071 and § 429.081 for the special assessment against the Property up to the Reduction of Property Assessment Levy Amount of \$13,000.00 as certified by the City pursuant to this Agreement. The Property Owner also hereby waives any and all procedural and substantive objections to the City's special assessment of the Property for Project improvements pursuant to City Resolution No. 2023-024, including, but not limited to, notice and hearing requirements and any claim that any or all of the Reduction of Property Assessment Levy Amount of \$13,000.00 as certified by the City exceeds the benefit to the Property for the Project.

ARTICLE 4 **GENERAL PROVISIONS**

Section 4.01 Non-Assignability. Neither party hereto shall assign any interest in this Agreement nor shall either party transfer any interest in the same without the prior written consent of the other party.

Section 4.02 Binding Effect. This Agreement and the terms, conditions and covenants contained herein and the transaction contemplated hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, personal representatives, and permitted assigns. This Agreement shall further be binding on subsequent purchasers of the Property and shall run with the Property herein described.

Section 4.03 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 4.04 Amendments and Modifications. This Agreement may be amended or any of its terms modified or changed only by a written amendment authorized and executed by the

parties hereto.

Section 4.05 Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.06 Entire Agreement. This Agreement shall constitute the entire agreement between the parties and shall supersede all prior oral or written negotiations.

Section 4.07 Applicable Law. This Agreement will be governed by and construed under the laws of the State of Minnesota.

Section 4.08 Captions. The captions and the headings in this Agreement are for convenience only and do not define, limit, or describe the scope or intent of any provision or section of this Agreement.

Section 4.09 Governmental Immunity. Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Property Owner, its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statutes, Chapter 466.

Section 4.10 Release. The City and the Property Owner, their representatives, officers, directors, employees, agents, partners, principals, successors, subrogees, and assigns, completely and irrevocably release each other from all claims, known or unknown, that they asserted or could have asserted in Crow Wing County District Court File No. 18-CV-23-1473 or related to the Project.

Section 4.11 Legal Representation. The City and the Property Owner acknowledge that each has been represented in this appeal and in negotiations for this Agreement by counsel of their choice, that each has read this Agreement and had it explained by counsel, that each understands that it is aware of the contents and legal effect, and that each is voluntarily entering into this Agreement.

Section 4.12 Compromise Agreement. The City and the Property Owner agree that this Agreement is a compromise agreement under Minnesota Rules of Evidence Rule 408. Evidence of conduct or statements made during the compromise negotiations is not admissible evidence. The execution of this Agreement will not be deemed or construed as an admission of liability or fault by the City or the Property Owner. This Agreement is entered by The City and the Property Owner to avoid further litigation, expense, disruption, and delay.

EXHIBIT A

The City of Brainerd owns real property in the City of Baxter, parcel identification numbers 40170621 and 40080712, individually and collectively referred to as the “Property” and legally described as follows:

PID: 40170621

Lot 1, Block 1, Brainerd Public Utilities

PID: 40080712

Outlot A, Norway Hills.

EXHIBIT B

STATE OF MINNESOTA
COUNTY OF CROW WING

DISTRICT COURT
NINTH JUDICIAL DISTRICT
COURT FILE NO. 18-CV-23-1473
Case Type: Assessment Appeal
Judicial Officer: Kristine R. DeMay

City of Brainerd,

Appellant,

**SETTLEMENT STIPULATION,
ORDER AND JUDGMENT**

v.

City of Baxter,

Respondent.

WHEREAS, Appellant and Respondent have resolved this special assessment dispute pursuant to a separate agreement.

WHEREAS, Appellant and Respondent desire to have the above-entitled action dismissed with prejudice and without an award of any litigation costs, expenses and/or attorneys' fees to any party.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. That Appellant and Respondent agree the above-entitled action shall be dismissed with prejudice and without an award of any litigation costs, expenses and/or attorneys' fees to any party.
2. That it is further agreed that Respondent shall cause judgment of dismissal with prejudice and on the merits to be entered herein.

ATTORNEY FOR APPELLANT

Dated: _____

By: _____

Joseph J. Langel, No. 0249403
Ratwik, Roszak & Maloney, P.A.
444 Cedar Street South, Suite 2100
St. Paul, MN 55101
(612) 339-0060
jjl@ratwiklaw.com

ATTORNEYS FOR RESPONDENT

Dated: _____

By: _____

Greta L. Bjerkness, No. 0390575
David L. Sienko, No. 0391910
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
(651) 451-1831
gberkness@levander.com
dsienko@levander.com

ORDER

Pursuant to the foregoing Stipulation, the above-entitled action is hereby dismissed with prejudice and without an award of any litigation costs, expenses and/or attorneys' fees to any party.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: _____, 2024.

BY THE COURT:

Judge Kristine R. DeMay
Judge of District Court

JUDGMENT

I hereby certify that the above Order constitutes a judgment of the Court.

Dated: _____, 2024.

COURT ADMINISTRATOR:

By: _____

Its: _____