

**CITY OF BREEZY POINT AND PELICAN TOWNSHIP
COUNTY OF CROW WING
STATE OF MINNESOTA**

PUBLIC WORKS SERVICES JOINT POWERS AGREEMENT

This Public Works Services Joint Powers Agreement (“**Agreement**”) is made by and between the City of Breezy Point (“**Breezy Point**”) and Pelican Township (“**Pelican**”). Breezy Point and Pelican may hereinafter be referred to individually as a “party” and collectively as the “parties.”

Recitals

WHEREAS, the City of Breezy Point and the Town of Pelican adopted a Joint Resolution on December 5 and December 12, 1977 (“1977 Joint Resolution”); and

WHEREAS, the parties share an extensive border across which multiple roads extend, and the parties have determined that it is efficient and cost-effective to allocate and delegate responsibility for providing certain maintenance services and repair services for portions of such roads without regard to jurisdictional boundaries; and

WHEREAS, the roads jointly used or traversing the boundary between the parties include certain sections of Ranchette Drive, Sunset Valley Road, Thrane Road, Edgewater Circle, Navaho Trail, and Dove Street (collectively, the “**Shared Roads**”); and

WHEREAS, the parties desire to establish the terms under which they will divide and furnish Road Services for the Shared Roads and for any other roads addressed in this Agreement which supersede the 1977 Joint Resolution.

Agreement

In consideration of the mutual promises and agreements contained herein, the parties hereby agree as follows:

1. **Purpose:** This Agreement provides the terms and conditions under which each party will perform Road Services on the roads identified in this Agreement. This Agreement is also intended to serve as a line road agreement under Minnesota Statutes, section 164.14, subdivision 2 with respect to those Shared Roads that constitute line roads under the statute. This Agreement supersedes and replaces all road maintenance obligations contained in the 1977 Joint Resolution.
2. **Legal authority:** This Agreement is authorized by Minnesota Statutes, sections 471.59 and 164.14.
3. **Maintenance and Repair Services Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:
 - a. “Road Services” means all services identified in this Agreement.

- b. "Maintenance Services" means the routine, recurring road-maintenance activities delegated among the parties under this Agreement. Maintenance Services consist of the following:
- i. Winter maintenance, such as snow plowing and sanding/salting performed in accordance with each party's standard policies and practices.
 - ii. Summer maintenance, such as roadside mowing, weed control (including the spraying of noxious weeds), and removal of brush and vegetation from road rights-of-way as needed, performed in accordance with each party's standard policies and practices.
- c. "Repair Services" means road-repair activities, excluding Maintenance Services, and consists of providing the following materials or performing the following services as needed:
- i. Providing materials, including the purchase and application of gravel, aggregate, or other materials placed on a roadway for repair or improvement work;
 - ii. Conducting routine repairs, including pothole repairs, crack sealing, asphalt patching, and shouldering work performed; and
 - iii. Conducting tree removal, including the removal of trees from road rights-of-way as needed to prevent interference with travel, visibility, maintenance operations, or roadway safety.
4. **Maintenance Road Identification and Responsibilities:** Attached hereto as Exhibit A is a map of the roads along the boundary between the parties ("**Map**"). The Map designates the roads for which Breezy Point and Pelican are responsible and the scope of such responsibilities, as set forth below:

Road Color	Responsibility
Red	Breezy Point is responsible for Maintenance Services and Repair Services.
Blue	Pelican is responsible for Maintenance Services and Repair Services.
Orange	Pelican is responsible for Maintenance Services. Breezy Point is responsible for Repair Services.
Green	Breezy Point is responsible for Maintenance Services. Pelican is responsible for Repair Services.

All roads not designated on the Map shall be the responsibility of the party within whose jurisdictional boundaries such roads are located, or of the State or County, as applicable.

5. **Capital Improvement Definition:** “Capital Improvement Repair” is defined as the following:

- i. “Full Depth Reconstruction” means the full removal of the existing street infrastructure, including bituminous and underlying base materials and replacing with new base. This method may include improvements to underlying utilities.
- ii. “Full Depth Reclamation” means the reclamation of the existing pavement and base materials in place to create a new, stabilized base layer. This recycled material is then compacted and overlaid with new asphalt or concrete.
- iii. “Mill and Overlay” mean the removal of the top portion of bituminous and replacement of a new mat of bituminous.
- iv. “Basic Overlay” means the overlay of existing bituminous roads with adequate drainage and requiring no engineering

6. **Capital Improvement Responsibilities**

- a. Capital Improvement Repairs to Shared Roads shall be undertaken only upon the mutual written agreement of the parties. No Capital Improvement Repair may be initiated, scheduled, or performed by either party without such mutual written agreement, regardless of jurisdictional location or cost-sharing formulas contained in this Agreement.
- b. Unless otherwise provided in a separate, written joint agreement, the cost of capital improvements to Shared Roads shall be divided between the parties in proportion to their respective ownership of the entire Shared Road, as calculated by linear feet of the Shared Road within the jurisdiction of each party divided by the entire length of the Shared Road. The Parties responsibilities for Capital Improvement Repairs is set out below on two exemplar roads:

- Road A is a 2-mile Shared Road. One mile of Road A lies directly along the common municipal boundary and is therefore jointly owned by Breezy Point and Pelican in equal shares. The remaining one mile lies entirely within the jurisdictions of the parties, with 0.75 miles located within Breezy Point and 0.25 miles located within Pelican.

For purposes of allocating the cost of capital improvements under this Agreement, each party’s ownership share is calculated by adding (a) its one-half ownership of the boundary segment (0.50 miles each), and (b) the portion of the remaining mile located within its jurisdiction. Under this calculation,

Breezy Point owns 1.25 miles of Road A ($0.50 + 0.75$), and Pelican Township owns 0.75 miles ($0.50 + 0.25$).

Accordingly, Breezy Point is responsible for 62.5% of the capital-improvement costs ($1.25 \div 2.00$), and Pelican Township is responsible for 37.5% ($0.75 \div 2.00$). If a capital improvement to Road A costs \$500,000, Breezy Point shall pay \$312,500 (62.5%), and Pelican Township shall pay \$187,500 (37.5%).

- Road B is a 4-mile Shared Road. Two miles of Road B lie directly along the common municipal boundary and are therefore jointly owned by Breezy Point and Pelican Township in equal shares. The remaining two miles lie entirely within the jurisdictions of the parties, with 1.1 miles located within Breezy Point and 0.9 miles located within Pelican.

For purposes of allocating the cost of capital improvements under this Agreement, each party's ownership share is calculated by adding (a) its one-half ownership of the boundary segment (1.0 mile each), and (b) the portion of the remaining two miles located within its jurisdiction. Under this calculation, Breezy Point owns 2.1 miles of Road B ($1.0 + 1.1$), and Pelican Township owns 1.9 miles ($1.0 + 0.9$).

Accordingly, Breezy Point is responsible for 52.5% of the capital-improvement costs ($2.1 \div 4.0$), and Pelican Township is responsible for 47.5% ($1.9 \div 4.0$). If a capital improvement to Road B costs \$450,000, Breezy Point shall pay \$236,250 (52.5%), and Pelican Township shall pay \$213,750 (47.5%).

7. **Scope of Capital Improvement Repairs**

- a. Any Capital Improvement Repair undertaken on a Shared Road shall apply to the entire length of that Shared Road, including the portions within both parties' jurisdictions. Partial or segment-specific Capital Improvement Repairs may be performed only if both parties mutually agree in writing to limit the scope of the project.
 - b. The parties may, by separate written agreement, approve a Capital Improvement Repair that is limited to a defined segment of a Shared Road and allocate costs for that segment in accordance with such agreement.
8. **Administration and Services:** The administration of Road Services under this Agreement shall be the sole responsibility of the appropriate officials of Breezy Point and Pelican. It is further agreed that the Pelican Board Chair, or his or her designee, shall confer with the Breezy Point Mayor, or his or her designee, when requested by either party on any matter relating to public works services being provided pursuant to this Agreement.
 9. **Maintenance Employees:** Each party is responsible for their own employees engaged in performing any of the Road Services under this Agreement. Nothing in this Agreement shall constitute, or be construed as, either party agreeing to accept responsibility for the other party or the other party's employees.

10. **Communication Regarding Needed Repairs:** In situations where a party is responsible for providing Maintenance Services on a roadway under this Agreement but is not responsible for performing Repair Services on that roadway, the party performing the Maintenance Services shall notify the other party when it becomes aware that Repair Services are reasonably necessary to maintain safe and passable conditions. Such notice shall be provided within a reasonable time after the condition is identified and shall include a description of the observed issue sufficient to allow the other party to evaluate and address the repairs. Nothing in this section shall be construed to obligate either party to perform Repair Services except as otherwise provided in this Agreement or in a separate written agreement.
11. **Insurance:** Each party agrees to maintain general liability insurance during the entire term of this Agreement. The package insurance policies offered by the self-insurance pools established by their respective local government membership organizations shall constitute sufficient insurance coverage for the purposes of this Agreement.
12. **Indemnification:** Breezy Point agrees to indemnify and defend Pelican, its officers, and employees from any claim or suit, and resulting costs (including defense costs) arising out of or related to the alleged negligent act or failure to act by Breezy Point, its officers, or employees in its performance of Road Services pursuant to this Agreement. Pelican agrees to indemnify and defend Breezy Point, its officers, and employees from any claim or suit, and resulting costs (including defense costs) arising out of or related to the alleged negligent act or failure to act by Pelican, its officers, or employees in its performance of Road Services pursuant to this Agreement.

To the extent a court considers this Agreement to constitute a joint venture or joint enterprise between the parties, any liability arising from or related to the activities contemplated by this Agreement shall be considered as against a single entity and shall not exceed the limit for a single entity as provided in Minnesota Statutes, section 471.59, subdivision 1a. Nothing in this Agreement shall be construed as a waiver of any liability limits or immunities contained in Minnesota Statutes, Chapter 466, nor as the acceptance by either party of the other party's liability for the purposes of Minnesota Statutes, section 471.59, subdivision 1a or otherwise.

13. **Delegation.** Each party hereby delegates to the other party such authority as may be needed for the designated party to perform Road Services in accordance with the terms of this Agreement.
14. **Disputes.** The parties mutually agree the terms of this Agreement constitute an equitable agreement for the purposes of Minnesota Statutes, section 164.14. However, if either party determines this Agreement has become inequitable, or if any other dispute arises regarding this Agreement, the parties will first meet to discuss the issues and use good faith efforts to resolve the disagreement. In the event the parties are not able to resolve the disagreement, and if the dispute involves the fairness of the division of costs or responsibilities under the Agreement, either party may submit the issue to the county board for a determination in accordance with Minnesota Statutes, section 164.14, subdivision 4. For any Shared Road that does not constitute a line road, the parties may mutually agree to submit the dispute to

mediation for resolution, but if the parties do not agree to mediation, or some other form of alternative dispute resolution, either party may seek relief in district court.

15. **No Guarantee:** The parties understand and agree that, given varying weather conditions and availability of resources, they will endeavor to provide the Road Services indicated herein, but they do not represent, warrant, or guarantee that their work will meet any particular criteria or standards, or that it will be delivered within any particular time. The parties will include the roads identified in this Agreement as being under their respective responsibility in their maintenance schedules and will provide the identified Road Services in accordance with their usual policies and procedures.
16. **Term and Termination:** This Agreement shall remain in effect unless terminated by either party as provided herein. Termination of the remaining provisions of this Agreement shall be effective by providing the other party with written notice of termination not less than ninety (90) days prior to the date of termination. Either party, at its option, may terminate the Agreement upon thirty (30) days' written notice if the other party fails to cure a material breach of this Agreement within a reasonable cure period identified in the written notice of default.
17. **Modifications:** Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by each party.
18. **Governing Law:** This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.
19. **No Third Party Rights:** This Agreement is solely for the benefit of the parties. This agreement shall not create or establish any rights in or for the benefit of any third party.
20. **Executed in Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.
21. **Effective date:** This Agreement is effective on the date of the last party to execute it.

CITY OF BREEZY POINT

PELICAN TOWNSHIP

By: _____
Its: Mayor

By: _____
Its: Town Board Chair

By: _____
Its: City Clerk

By: _____
Its: Clerk

Date: _____

Date: _____

Exhibit A

Road Map

