

**CONSTRUCTION COST SHARE AGREEMENT
BETWEEN CITY OF BREEZY POINT AND IDEAL TOWNSHIP
FOR RECONSTRUCTION OF BUSCHMANN ROAD**

This Agreement is entered into by and between the City of Breezy Point, 8319 Co. Road 11, Breezy Point, Minnesota 56472, and Ideal Township, 35458 Butternut Point Road, Pequot Lakes, Minnesota 56472, effective as of the date of the last signature set forth below.

Recitals

- A. Buschmann Road is a heavily travelled east-west road in the northwest portion of the City.
- B. A portion of Buschmann Road is on the boundary line between the City and the Township. That joint portion consists of approximately 2,800 feet of roadway between Ranchette Drive and Nelson Road (Shared Road). The two governmental entities are jointly responsible for maintenance costs of the Shared Road.
- C. The City and Township participated in a study process called the Cooperative Community Enhancement Project that outlined options for improving the Buschmann Road corridor.
- D. The engineering firm, WSB, was retained by the City to design and reconstruct the City's portion of Buschmann Road, along with related investigation services.
- E. The Township desires to have its portion of Buschmann Road reconstructed as well and prefers to have the City undertake the project, including design and construction, and invoice the Township for its share of the total cost of reconstructing the Shared Road.

Agreement

- 1. **Purpose.** The parties are joining together to design and reconstruct the shared portion of Buschmann Road. This Agreement sets forth the responsibilities of the respective parties.
- 2. **Duties.**
 - a. Property Acquisition. The City shall be responsible for acquiring additional right-of-way needed for the proposed project. This includes identifying the needed right-of-way, overseeing property acquisition, and recording necessary documents. To the extent needed within its jurisdiction, the Township shall cooperate with the City in right-of-way acquisition, including authorization of eminent domain. All costs incurred to acquire right-of-way within the Township, including all out-of-pocket

costs and legal fees, shall be borne solely by the Township. Likewise, all costs incurred to acquire right-of-way within the City, including all out-of-pocket costs and legal fees, shall be borne solely by the City.

- b. Design and Construction. The City, through WSB, shall provide all design engineering services, call for bids and/or quotes in accordance with Minnesota law and provide the Township with an analysis of the bids or quotes received, review and accept all bids and quotes, and enter into construction contracts as the “owner” for purposes of the project. Notwithstanding the above City obligations, the Township shall review and approve the final design of the Shared Road before the project is bid and must approve the bids or quotes before the City may award a contract for the project.
 - c. Inspection and Approval. The City, through WSB, shall oversee construction, inspect the work, and accept the work as it is completed. The Township may inspect any items related to the Shared Road and notify the City of any concerns. Approval of the Shared Road shall be provided by the City and the Township.
 - d. Disputes. In the event disputes arise concerning design or construction of the Shared Road, the City shall undertake reasonable efforts to promptly resolve those disputes. The City shall notify the Township of the disputes as they arise. The cost of resolving disputes concerning the Shared Road, including WSB costs, or legal fees, shall be shared equally between the City and Township.
3. **Costs**. Except as otherwise provided herein, all costs associated with the design, construction and oversight of the Buschmann Road project, to the extent said costs concern the Shared Road, shall be shared equally by the City and Township. The City shall act as the paying agent for all project costs. Payments will be made as the project progresses and when certified by WSB. The City, in turn, shall invoice the Township for its share of the project costs. The City shall provide the Township with invoices showing how the costs are calculated and divided between the parties. Project costs do not include costs associated with the Parties’ employees. Upon presentation of an itemized claim, the Township shall reimburse the City for its share of the costs incurred under this agreement within 30 days from the presentation of the claim. If any portion of an itemized claim is questioned by the Township, the remainder of the claim shall be promptly paid, and accompanied by a written explanation of the amounts in question. Payment of any amounts in dispute will be made following good faith negotiation and documentation of actual costs incurred in carrying out the work.

4. **Ownership.** Each party shall own the portion of the project located within its corporate boundaries.
5. **Change Orders and Supplemental Agreements.** Any change orders or supplemental agreements that affect the project costs payable by the Township and any changes to the approved plans and specifications must be approved by the Township prior to execution of work.
6. **Rules and Regulations.** The City shall abide by Minnesota Department of Transportation standard specifications, rules and contract administration procedures.
7. **Indemnification.** The Township agrees to defend, indemnify, and hold harmless City against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of Township and/or those of Township employees or agents. The City agrees to defend, indemnify, and hold harmless Township against any and all claims, liability, loss, damage, or expense arising under the provisions of this Agreement and caused by or resulting from negligent acts or omissions of City and/or those of City employees or agents. All parties to this Agreement recognize that liability for any claims arising under this Agreement are subject to the provisions of the Minnesota Municipal Tort Claims Law; Minnesota Statutes, Chapter 466. In the event of any claims or actions filed against either party, nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual Parties.
8. **Waiver.** Any and all persons engaged in the work to be performed by the City under this Agreement shall not be considered employees of the Township for any purpose, including Worker's Compensation, or any and all claims that may or might arise out of said employment context on behalf of said employees while so engaged. Any and all claims made by any third party as a consequence of any act or omission on the part of said City employees while so engaged on any of the work contemplated herein shall not be the obligation or responsibility of the Township. The opposite situation shall also apply: the City shall not be responsible under the Worker's Compensation Act for any employees of the Township.
9. **Audits.** Pursuant to Minnesota Statutes § 16C.05, Subd. 5, any books, records, documents, and accounting procedures and practices of the Parties relevant to this Agreement are subject to examination by the Township, the City, and either the

Legislative Auditor or the State Auditor as appropriate. The Township and the City agree to maintain these records for a period of six years from the date of performance of all services covered under this Agreement.

- 10. **Term.** This Agreement shall continue until all obligations of the parties are fulfilled. This Agreement may be terminated prior to said time by either party only for breach of the Agreement or by mutual consent of the parties.
- 11. **Accountability.** An accounting shall be made of all receipts and disbursements upon request by either party.
- 12. **Road Maintenance.** Upon completion of the project, continued maintenance of the Shared Road shall be under the same terms and conditions as existed prior to this Agreement.
- 13. **Entire Agreement.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and all negotiations between the parties relating to the subject matter hereof. Any alterations, variations, or modifications of the provisions of this Agreement shall be valid only when they have been reduced to writing and duly signed by the parties.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized officials.

CITY OF BREEZY POINT

Angel Zierden, Mayor

Dated: May _____, 2023

David Chanski, City Administrator

Dated: May _____, 2023

IDEAL TOWNSHIP

David Peterson, Board Chairman

Dated: May _____, 2023

J. Craig Wallace, Clerk-Treasurer

Dated: May _____, 2023