

**LOCAL ROAD IMPROVEMENT PROGRAM (LRIP)
GRANT AGREEMENT**

This Agreement between the Minnesota Department of Transportation (“MnDOT”) and the Grantee named below is made pursuant to Minnesota Statutes Section 174.52 and pursuant to Minn. Laws 2023, Chapter 72- H.F. 669 and Minn. Laws 2025, 1st Special Session, Chapter 15- H.F. 18. The provisions in that section and the Exhibits attached hereto and incorporated by reference constitute this Agreement and the persons signing below agree to fully comply with all of the requirements of this Agreement. This Agreement will be effective on the date State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2.

1. Public Entity (Grantee) name, address and contact person:

City of Breezy Point
8319 County Road 11
Breezy Point, MN 56472
Contact: Allie Polsfuss

2. Project(s):

Name of Project & Project Number (See Exhibit C for location)	Amount of LRIP Funds	Amount of Required Matching Funds	Completion Date
SAP 018-594-002	\$1,500,000.00	\$1,920,581.98	December 31, 2030

3. Total Amount of LRIP Grant for all projects under this Agreement: \$1,500,000.00.
4. The following Exhibits for each project are attached and incorporated by reference as part of this Agreement:

Exhibit A	Completed Sources and Uses of Funds Schedule
Exhibit B	Project Schedule, Workforce Certificate, and Equal Pay Certificate
Exhibit C	Bond Financed Property Certification
Exhibit D	Grant Application
Exhibit E	Grantee Resolution Approving Grant Agreement
Exhibit F	General Terms and Conditions

5. Additional requirements, if any: None
6. Any modification of this Agreement must be in writing and signed by both parties.

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PUBLIC ENTITY (GRANTEE)

The Grantee certifies that the appropriate person(s) have executed the grant agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF TRANSPORTATION

Approval and Certifying Encumbrance as required by Minnesota Statutes § 16A.15 and 16C.05

By: _____
State Aid Programs Manager
(with delegated authority)

Date: _____

**DEPARTMENT OF TRANSPORTATION
CONTRACT MANAGEMENT**

By: _____

Date: _____

EXHIBIT A

SOURCES AND USES OF FUNDS SCHEDULE

SOURCES OF FUNDS		USES OF FUNDS	
Entity Supplying Funds	Amount	Expenses	Amount
State Funds:		Items Paid for with LRIP Grant Funds:	
2023 LRIP Funds Grant (SAAS Act 385)	\$1,477,177.51	Roadway, curb and gutter, storm sewer	\$1,500,000.00
2023 LRIP Funds Grant (SAAS Act 435)	\$22,822.49		
Other:			
Subtotal	\$1,500,000.00	Subtotal	\$1,500,000.00
Public Entity Funds:		Items paid for with Non-LRIP Grant Funds:	
Matching Funds		Roadway, curb and gutter, storm sewer	\$1,920,581.98
Local Match	\$1,920,581.98		
Other:			
Subtotal	\$1,920,581.98	Subtotal	\$1,920,581.98
TOTAL FUNDS	\$3,420,581.98	TOTAL PROJECT COSTS	\$3,420,581.98

EXHIBIT B

PROJECT SCHEDULE, WORKFORCE CERTIFICATE, AND EQUAL PAY CERTIFICATE

Award Date: September 14, 2026
Construction Start Date: October, 2026
Construction Substantial Complete Date: August 30, 2027
Contract Final Completion Date : December 31, 2030

WORKFORCE CERTIFICATE OF COMPLIANCE

The Commissioner of the Minnesota Department of Human Rights by the signature below attests that **KERN & TABERY, INC.** is hereby certified as a contractor under the Minnesota Human Rights Act, § 363A.

Certificate start date: **3/13/2023**

Certificate expiration date: **3/12/2027**

Minnesota Department of Human Rights

FOR THE DEPARTMENT BY:

A handwritten signature in black ink, appearing to read 'RL', with a horizontal line extending from the end.

Rebecca Lucero, Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

540 Fairview Ave N, Suite 201 • St. Paul, MN 55104 • Tel 651.539.1100
MN Relay 711 or 1.800.627.3529 • Toll Free 1.800.657.3704 • mn.gov/mdhr

EQUAL PAY CERTIFICATE OF COMPLIANCE

The Commissioner of the Minnesota Department of Human Rights by the signature below attests that **KERN & TABERY, INC.** is hereby certified as a contractor under the Minnesota Human Rights Act, § 363A.44.

Certificate start date: **March 17, 2023**

Certificate expiration date: **March 16, 2027**

Minnesota Department of Human Rights

FOR THE DEPARTMENT BY:



Rebecca Lucero, Commissioner

AN EQUAL OPPORTUNITY EMPLOYER

540 Fairview Ave N, Suite 201 • St. Paul, MN 55104 • Tel 651.539.1100
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Rev 10/26/2021

EXHIBIT C

BOND FINANCED PROPERTY CERTIFICATION

State of Minnesota
General Obligation Bond Financed Property

The undersigned states that it has a fee simple, leasehold and/or easement interest in the real property located in the County(ies) of **Crow Wing**, State of Minnesota that is generally described or illustrated graphically in **Attachment 1** attached hereto and all improvements thereon (the “Restricted Property”) and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- A. The Restricted Property is State bond-financed property under Minn. Stat. Sec. 16A.695, is subject to the requirements imposed by that statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget; and
- B. The Restricted Property is subject to the provisions of the Local Road Improvement Program Grant Agreement between the Minnesota Department of Transportation and the undersigned dated _____, 2026; and
- C. The Restricted Property shall continue to be deemed State bond-financed property for 37.5 years or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: _____, 2026

City of Breezy Point, a political subdivision
of the State of Minnesota

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attachment 1 to Exhibit C

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

S.A.P. 018-594-002 LOCATED ON	<u>RANCHETTE DRIVE</u>	FROM	<u>CHEROKEE TRAIL</u>	TO	<u>BUSCHMANN ROAD</u>
	<u>BUSCHMANN ROAD</u>	FROM	<u>1100' SE OF NELSON RD & AKERSON RD INTERSECTION</u>	TO	<u>CSAH 11 (IN THE CITY OF BREEZY POINT)</u>

AT:



PROJECT LOCATION MAP

EXHIBIT D

GRANT APPLICATION

Attach the grant application for the project

Form Name:	Local Road Improvement Program: 2025 Solicitation Application
Submission Time:	December 12, 2025 11:06 am
Browser:	Chrome 143.0.0.0 / Windows
IP Address:	98.162.209.41
Unique ID:	1413362219
Location:	35.4971, -97.733

Local Road Improvement Program: 2025 Solicitation Application

A: Applicant Entity Information

Applicant Name	Allie Polsfuss
Applicant Job Title / Position	City Administrator
Applicant Phone	(218) 569-1001
Applicant Email	apolsfuss@cityofbreezypointmn.us
Applicant Address	8319 County Road 11 Breezy Point, MN 56472
Applicant Entity Name	City of Breezy Point
Applicant Entity Type	Non-State Aid City (Population < 5,000)
As a grant applicant, are you representing a non-state aid city or township? If yes, it is required to have a county project sponsor.	Yes, I am a non-state city or township
Sponsoring County (required if applicant is non-state aid city or township)	Crow Wing
Sponsoring County Engineer name	Timothy Bray, PE, MPA
Sponsoring County Engineer Phone	(218) 824-1110
Sponsoring County Engineer Email	tim.bray@crowwing.us
As a grant applicant, are you serving as the lead entity for a LRIP grant application benefitting multiple jurisdictions (a co-application)?	Yes, LRIP funds requested by this application will fund improvements in other jurisdictions in addition to my own

B: Project Location

MnDOT District	District 3
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County	Crow Wing
City	City of Breezy Point
Township	Ideal Township
Name/Designation of Road	Buschmann Road and CSAH-11
Type of Road	Local Street
Functional Classification of Road	Local
Average Daily Traffic (ADT) Count or Estimate	780 to 945 vehicles per day
Year of ADT Data Collection (If available)	2021
Road Authority Type (entity who has primary jurisdictional ownership of the road)	Non-State Aid City (Population < 5,000)
Road Authority Name	City of Breezy Point/Ideal Township
Project Termini - From	Buschmann Road at CSAH 11
Project Termini - To	750 feet east of Nelson Road
Beginning Point - Latitude	46.61643
Beginning Point - Longitude	-94.21865
General Environment (the general environment that represents the majority of the project)	Rural
Will construction of the proposed improvements impact or disturb the right-of-way of a jurisdiction other than the applicant entity or project sponsor?	No, the project will impact only the right-of-way of my jurisdiction and/or that of my project sponsor (if applicable)

C. LRIP Grant Eligibility Checks

Has the PROJECT received a legislative appropriation (also known as an "earmark") or previous competitive LRIP grant funds?	No
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The applicant must have a signed resolution (not just a letter of support) from their council or governing board approving the project and pledging support to fund engineering, right-of-way, inspection, and other non-LRIP eligible costs, as well as LRIP-eligible items in excess of the LRIP grant amount. The applicant understands this eligibility requirement and has executed the signed resolution for attachment to the application.

Township and Non-State Aid City applicants will need a County to serve as their project sponsor. If a project sponsor is required, the applicant must have a signed resolution (not just a letter of support) from the sponsoring entity's board supporting the project and agreeing to act as the project sponsor. The applicant understands this eligibility requirement and has obtained this signed resolution for attachment to the application.

The applicant must have a signed resolution (not just a letter of support) from all entities other than the applicant entity or project sponsor whose property or right-of-way will be impacted by the proposed project. The applicant understands this eligibility requirement and has obtained, if required, this signed resolution(s) from all impacted entities for attachment to the application.

Projects are required to be ready for construction in 2026, 2027 or 2028. The applicant understands this eligibility requirement and will execute a signed MnDOT grant agreement prior to starting construction and prior to December 31, 2028.

Please select the anticipated construction year

2026

LRIP grant funds cannot be used on trunk highway improvements or on local improvements that are located within trunk highway right-of-way. The applicant understands this eligibility requirement.

Only construction costs are grant eligible for the program. Development of engineering and construction plans are not eligible expenses nor are right-of-way acquisition costs. All selected projects must follow the State Aid process, which includes identifying applicable design standards and developing a construction plan set signed by a licensed professional engineer. The applicant must have the ability to develop this plan set or the funds to pay a consultant to develop the proposed project plan set. Exhibits from engineering studies do not qualify as a construction plan set. The applicant understands this requirement and has the ability or funds to develop the plan set.

LRIP funds cannot be used to pay local entity staff time to construct or install any improvements. Local entity staff time is not an eligible cost for the program. All selected projects must be advertised for bids and awarded to a contractor, consistent with the Uniform Municipal Contracting Law in Statute 471.345 (<https://www.revisor.mn.gov/statutes/cite/471.345>). The applicant understands this program requirement and plans to bid the project out to a contractor.

D: Project Description

Type of Project	Reconstruction
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Provide a description of the proposed project corridor's existing transportation deficiencies, including any current operational or safety concerns. Also, include supporting data (e.g. pavement condition index (PCI) ratings, percentages of heavy truck traffic, etc.). Attaching pictures (via Section I. Attachments) can be helpful supplements yet, are not required.

This LRIP application is a collaborative effort led by the City of Breezy Point, serving as the lead entity, in partnership with Ideal Township. The proposed improvements to Buschmann Road will directly benefit both jurisdictions, as the project area spans right-of-way owned and managed by each entity. Both Breezy Point and Ideal Township have provided approved resolutions and letters of commitment. This segment of Buschmann Road faces several operational and safety challenges.

The pavement is 20-24 feet wide with only 1-2 feet of gravel shoulders, offering limited space for vehicles, especially heavy trucks and no dedicated area for pedestrians or cyclists. Trees and utility poles are often too close to the roadway, and side slopes are steep or non-compliant, increasing run-off-road crash risk. Undulating terrain and tight curves, especially near intersections, restrict visibility and contribute to unsafe conditions. Between 2015 and 2020, four crashes occurred at or near the CSAH 11 intersection and at horizontal curves within this segment, highlighting safety risks. Due to local mining operations, heavy vehicles make up 14-24% of daily traffic, intensifying pavement wear and operational challenges. The 85th percentile speed is 43 mph, exceeding the posted 40 mph limit, indicating a tendency for drivers to travel faster than intended. Soil borings show 2-4 inches of bituminous pavement over 0-4 inches of aggregate base, with underlying sandy soils generally suitable for support. However, frost heaves and drainage issues have been observed, affecting ride quality and durability.

These deficiencies impact safety, efficiency, and comfort for all users. Improvements are needed to widen the roadway, enhance sight lines, provide adequate shoulders, and address crash risks.

Supporting Data:

Cooperative Community Enhancement Project Final Report. Bolton & Menk, Inc., February 2022.

-Corridor Study Report (Pages 7-10)

-Soil Boring Report (Appendix A, Pages 23-31)

Provide a robust and specific description of the proposed project, including roadway dimensions, lane configurations and all other associated improvements. Attaching a proposed typical section to the application can be helpful as a supplement to conveying the intent of the proposed project (yet a typical section is not an LRIP application submittal requirement). Address how the proposed project will eliminate transportation deficiencies and improve operations and safety along the corridor. Note, that projects seeking funding from the Rural Road Safety Account will need to provide a more detailed description of safety issues and benefits under the Section E3. Rural Road Safety Account Considerations and Eligibility page of the application.

This LRIP co-application, led by the City of Breezy Point in partnership with Ideal Township, proposes the reconstruction and widening of Buschmann Road from CSAH 11 to 750 feet east of Nelson Road. The project area spans right-of-way owned and managed by both entities, with cost-sharing and maintenance responsibilities defined in supporting documentation.

The new roadway will be 32 feet wide, featuring two 12-foot travel lanes and two 4-foot paved shoulders. This configuration provides safer passage for vehicles, including heavy trucks, and creates dedicated space for pedestrians and cyclists. Centerline striping will improve lane discipline and visibility. Four-foot paved shoulders and expanded 12-foot clear zones will enhance safety for non-motorized users and reduce run-off-road crash risk by removing or relocating trees and utility poles (please see attached typical section and project map for additional detail).

Side slopes will be regraded to 1:3 standards, and new ditches will improve drainage and stormwater management. Intersection improvements at CSAH 11 and Nelson Road will address poor sight lines by adjusting horizontal and vertical alignments. The pavement structure will be upgraded for heavy vehicle loads, addressing frost heaves and durability concerns. Additional signage, pavement markings, and intersection lighting will further improve safety and nighttime visibility.

These improvements directly address documented deficiencies: narrow lanes, inadequate shoulders, poor sight lines, high truck volumes, and crash history. The project will reduce conflicts between vehicles and vulnerable users, lower crash risk at curves and intersections, and improve ride quality and long-term maintenance, resulting in a safer, more reliable corridor for all users.

E: LRIP Account Considerations and Eligibility

Select the LRIP Account requested for funding

Routes of Regional Significance

E2: Routes of Regional Significance Account Considerations and Eligibility

For Routes of Regional Significance projects, which of the following criteria does your project meet (select all that apply)?

Farm to Market route
Part of an economic development plan
Provides capacity or congestion relief to a parallel trunk highway system or county road
Part of a 10-ton route network
Connect to regional tourist destination
Project limits provide a direct connection to the regional system, trunk highway, or a county road

Describe the potential number of persons and multiple local entities who will be positively impacted and how they will benefit by the proposed project.

The proposed improvements will benefit thousands of people and multiple local entities:

Hundreds of residents in Breezy Point, Pequot Lakes, Jenkins Township, and Ideal Township rely on Buschmann Road for daily travel, school commutes, and access to local services. Improved roadway safety, wider lanes, and paved shoulders will reduce risks and make walking and biking safer.

The Anderson Brothers mining operations and other local businesses depend on Buschmann Road for freight and employee access. Upgrading the corridor to 10-ton standards and improving pavement durability will support efficient, year-round heavy truck movement, reduce vehicle wear, and lower transportation costs.

Farmers and resource producers transport goods to market and access gravel pits. Enhanced road capacity and reliability will facilitate timely deliveries and support local economic activity.

Visitors to regional attractions-such as Pelican Lake, Ossawinnamakee Lake, and Breezy Point Sports Center-will benefit from safer, more accessible routes, supporting tourism and local businesses.

The cities of Breezy Point and Pequot Lakes, along with Jenkins and Ideal Townships, will see reduced maintenance costs, improved emergency response times, and enhanced regional connectivity.

The project's approach ensures broad benefits and shared investment. It also creates a safer, more reliable corridor, reduces crashes, supports economic growth, and improves quality of life for all corridor users.

Describe the project's contribution to the local, regional or state economy, including economic development or redevelopment efforts. Specifically reference plans and letters of support addressing anticipated business and community impacts.	The Buschmann Road improvement project will deliver substantial economic benefits for Breezy Point, Ideal Township, and the broader Crow Wing County region. Buschmann Road is a vital corridor for local industry, notably the Anderson Brothers gravel pit and mining operations, which supply gravel, asphalt mix, and other construction materials to the area. Upgrading the roadway to 10-ton standards will support year-round freight movement, reduce transportation costs, and enhance reliability for local businesses. The project aligns with the Crow Wing 2040 County Comprehensive Plan, which identifies increased seasonal traffic volumes, population growth, and economic expansion as key trends driving demand for regional transportation improvements. Both the Breezy Point 2020 Comprehensive Plan and the Ideal Township Comprehensive Plan prioritize economic growth and transportation upgrades along existing roads, with specific goals to build and maintain road systems that support business, tourism, and residential development. Buschmann Road serves as a connector for residents, tourists, and commercial traffic, linking local communities to regional destinations and trunk highways. Improved safety and mobility will benefit thousands of residents, support local tourism (with nearby lakes and resorts), and facilitate emergency response and school transportation. Letters of support and commitment from Anderson Brothers and local governments have been received and will be uploaded with the application, demonstrating broad stakeholder endorsement and recognition of the project's positive business and community impacts. The project's multi-jurisdictional collaboration and alignment with adopted local and county plans further underscore its strategic importance for economic development and regional connectivity.
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F: Project Readiness and Ability to Maintain

Estimated Construction Year	2026
Are there railroad impacts (RR crossing or RR tracks within 600' of the project)?	No RR xings or tracks within 600'

What is the status of the engineering and design work on the project?	Design in progress
Engineering Design	95% Design Completed: Working towards 100% plans for bidding in the Spring of 2026.
Is Right-of-Way (ROW) acquisition required?	ROW has been acquired
Describe the local entity’s ability to adequately provide for the safe operation and maintenance of the facility upon completion.	The City of Breezy Point and Ideal Township are fully committed to the safe operation and long-term maintenance of this segment of Buschmann Road, as documented in their letters of commitment. Both entities have established road maintenance programs, experienced public works staff, and dedicated funding for routine and preventive maintenance activities. Upon project completion, Buschmann Road will be incorporated into regular maintenance schedules, including pavement preservation, snow and ice removal, drainage upkeep, and timely repairs. As a local road that is part of the 10-ton network, Buschmann Road plays a critical role in supporting heavy truck traffic for local industry, as well as providing reliable access for residents, emergency services, and school transportation. Its importance to the local economy and connectivity ensures it will continue to receive priority attention. The project's design emphasizes sustainability and durability, with features such as improved drainage, robust pavement structure, and expanded clear zones to reduce long-term maintenance needs and lifecycle costs. Breezy Point and Ideal Township have a proven track record of matching state and federal funds for roadwork and are prepared to provide the resources necessary to maintain the facility to a high standard for years to come. Their commitment ensures that Buschmann Road will remain a safe, efficient, and sustainable corridor well into the future.

G: Multimodal/Complete Streets

Identify infrastructure improvements for non-motorized, multi-modal, and/or transit users on this project and how they align with elements of Complete Streets. (Adoption of a Complete Streets policy is not required for grant eligibility).

The Buschmann Road project incorporates several infrastructure improvements to enhance safety and accessibility for non-motorized and multi-modal users, aligning with Complete Streets principles. The roadway will be widened from 24 feet to 36 feet, providing two 12-foot travel lanes and two 6-foot paved shoulders. These paved shoulders will offer a safer, dedicated space for pedestrians, bicyclists, and other non-motorized users, reducing conflicts with vehicular traffic.

Sightlines will be significantly improved through the realignment of vertical and horizontal curves, increasing visibility for all users. In select locations, curbing will be added to enhance pedestrian safety and manage stormwater. Drainage improvements, including new ditches, will further support a safer and more sustainable corridor.

Additionally, the project corridor runs adjacent to established 4-wheeler and snowmobile trails, supporting year-round recreational and alternative transportation options. By integrating these features, the project not only improves safety and comfort for motorists but also creates a more inclusive, multimodal corridor that supports walking, biking, and recreational trail use. These enhancements reflect a commitment to Complete Streets, ensuring Buschmann Road serves the needs of all users, regardless of mode.

H: Estimated Project Construction Cost (only include construction costs)

Has this project been selected for federal funding? No

LRIP Request	1500000
Federal Funds	0
County State Aid Funds	0
Municipal State Aid Funds	0
Local Township Funds	465545
Local City Funds	2343012
Total Project Cost	4308557
Are funds from all sources committed?	Yes

Is this project concurrently applying for competitive funding from any other sources in addition to this program?

No

I. Attachments

Approved applicant entity resolution of support (PDF)

<https://www.formstack.com/admin/download/file/18893876382>

Approved resolution(s) of support from any entities benefitting from or impacted by the project (if applicable) (PDF)

<https://www.formstack.com/admin/download/file/18893876390>

Approved resolution of support from Project Sponsor (if applicable) (PDF)

<https://www.formstack.com/admin/download/file/18893876391>

Engineering or planning-based cost estimate (Excel preferred but not required)

<https://www.formstack.com/admin/download/file/18893876392>

Timeline indicating major milestones and their anticipated completion date (PDF)

<https://www.formstack.com/admin/download/file/18893876393>

County Road Safety Plan (CRSP) or study that identifies the proposed project or improvements (PDF) - or - a link to the documents if publicly available elsewhere

<https://www.formstack.com/admin/download/file/18893876394>

Any updates, addendums or public engagement surveys updating the above listed documents (PDF)

<https://www.formstack.com/admin/download/file/18893876411>

At least one location map with project routes or improvements identified. If you choose to include project photos, please make sure the project location map is the first page in this attachment. (PDF)

<https://www.formstack.com/admin/download/file/18893876412>

Letters of concurrence or support. Please merge multiple letters into a single file.

<https://www.formstack.com/admin/download/file/18893876418>

J. Conflict of Interest Disclosure

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the applicant hereby indicates that it has, to the best of its knowledge and belief:	Determined that no potential organization conflict of interest exists
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K. Affirmation of Non-Collusion

The Applicant affirms that this solicitation response has been submitted without collusion.	Yes
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L. 2025 LRIP Application Submittal

The applicant affirms to the best of their current knowledge and belief that this grant application submittal is accurate and complete.	Yes
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EXHIBIT E

GRANTEE RESOLUTION APPROVING GRANT AGREEMENT

RESOLUTION

**Local Road Improvement Program Grant Agreement
Grant Terms and Conditions
SAP No. 018-594-002**

Date:

WHEREAS, **the City of Breezy Point** has applied to the Commissioner of Transportation for a grant from the Local Road Improvement Fund; and

WHEREAS, the Commissioner of Transportation has given notice that funding for this project is available; and

WHEREAS, the amount of the grant has been determined to be **\$1,500,000.00** by reason of the lowest responsible bid;

NOW THEREFORE, be it resolved that *the City of Breezy Point* does hereby agree to the terms and conditions of the grant consistent with Minnesota Statutes, section 174.52, and will pay any additional amount by which the cost exceeds the estimate and will return to the Local Road Improvement Fund any amount appropriated for the project but not required. The proper City officers are authorized to execute a grant agreement and any amendments thereto with the Commissioner of Transportation concerning the above-referenced grant.

Signatures

EXHIBIT F

GENERAL TERMS AND CONDITIONS FOR LOCAL ROAD IMPROVEMENT PROGRAM (LRIP) GRANTS

Article I DEFINITIONS

Section 1.01 **Defined Terms.** The following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined) unless the context specifically indicates otherwise:

“Advance(s)” - means an advance made or to be made by MnDOT to the Public Entity and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means the Local Road Improvement Program Grant Agreement between the Public Entity and the Minnesota Department of Transportation to which this Exhibit is attached.

“Certification” - means the certification, in the form attached as **Exhibit C**, in which the Public Entity acknowledges that its interest in the Real Property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695 and is subject to certain restrictions imposed thereby.

“Code” - means the Internal Revenue Code of 1986, as amended, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner” - means the Commissioner of Minnesota Management & Budget.

“Commissioner’s Order” - means the “Fourth Order Amending Order of the Commissioner of Minnesota Management & Budget Relating to Use and Sale of State Bond Financed Property” dated July 30, 2012, as it may be amended or supplemented.

“Completion Date” - means the projected date for completion of the Project as indicated in the Agreement.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to MnDOT, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Public Entity and the Contractor(s) for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” - means the work to be performed under the Construction Contract Documents.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Draw Requisition” - means a draw requisition that the Public Entity, or its designee, submits to MnDOT when an Advance is requested, as referred to in Section 4.02.

“G.O. Bonds” - means the state general obligation bonds issued under the authority granted in Article XI, Sec. 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the LRIP Grant, and any bonds issued to refund or replace such bonds.

“Grant Application” - means the grant application that the Public Entity submitted to MnDOT which is attached as **Exhibit D**.

“LRIP Grant” - means a grant from MnDOT to the Public Entity under the LRIP in the amount specified in the Agreement, as such amount may be modified under the provisions hereof.

“LRIP” - means the Local Road Improvement Program pursuant to Minn. Stat. Sec. 174.52 and rules relating thereto.

“MnDOT” - means the Minnesota Department of Transportation.

“Outstanding Balance of the LRIP Grant” - means the portion of the LRIP Grant that has been disbursed to the Public Entity minus any amounts returned to the Commissioner.

“Project” - means the Project identified in the Agreement to be totally or partially funded with a LRIP grant.

“Public Entity” - means the grantee of the LRIP Grant and identified as the Public Entity in the Agreement.

“Real Property” - means the real property identified in the Agreement on which the Project is located.

Article II

GRANT

Section 2.01 **Grant of Monies.** MnDOT shall make the LRIP Grant to the Public Entity, and disburse the proceeds in accordance with the terms and conditions herein.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the LRIP Grant is being funded with the proceeds of G.O. Bonds, and as a result all of the Real Property must be owned by one or more public entities. The Public Entity represents and warrants to MnDOT that it has one or more of the following ownership interests in the Real Property: (i) fee simple ownership, (ii) an easement that is for a term that extends beyond the date that is 37.5 years from the Agreement effective date, or such shorter term as authorized by statute, and which cannot be modified or terminated early without the prior written consent of MnDOT and the Commissioner; and/or (iii) a prescriptive easement for a term that extends beyond the date that is 37.5 years from the Agreement effective date.

Section 2.03 **Use of Grant Proceeds.** The Public Entity shall use the LRIP Grant solely to reimburse itself for expenditures it has already made, or will make, to pay the costs of one of the following applicable activities: (i) preliminary, final construction and engineering and administration (ii) constructing or reconstructing city streets, county highways, or town roads with statewide or regional significance that have not been fully funded through other state, federal, or local funding sources; or (iii) capital improvement projects on county state-aid highways that are intended primarily to reduce traffic crashes, deaths, injuries, and property damage. The Public Entity shall not use the LRIP Grant for any other purpose, including but not limited to, any work to be done on a state trunk highway or within a trunk highway easement.

Section 2.04 Operation of the Real Property. The Real Property must be used by the Public Entity in conjunction with or for the operation of a county highway, county state-aid highway, town road, or city street and for other uses customarily associated therewith, such as trails and utility corridors, and for no other purposes or uses. The Public Entity shall have no intention on the effective date of the Agreement to use the Real Property as a trunk highway or any part of a trunk highway. The Public Entity must annually determine that the Real Property is being used for the purposes specified in this Section and, upon written request by either MnDOT or the Commissioner, shall supply a notarized statement to that effect.

Section 2.05 Sale or Lease of Real Property. The Public Entity shall not (i) sell or transfer any part of its ownership interest in the Real Property, or (ii) lease out or enter into any contract that would allow another entity to use or operate the Real Property without the written consent of both MnDOT and the Commissioner. The sale or transfer of any part of the Public Entity's ownership interest in the Real Property, or any lease or contract that would allow another entity to use or operate the Real Property, must comply with the requirements imposed by Minn. Stat. Sec. 16A.695 and the Commissioner's Order regarding such sale or lease.

Section 2.06 Public Entity's Representations and Warranties. The Public Entity represents and warrants to MnDOT that:

- A. It has legal authority to execute, deliver and perform the Agreement and all documents referred to therein, and it has taken all actions necessary to its execution and delivery of such documents.
- B. It has the ability and a plan to fund the operation of the Real Property for the purposes specified in Section 2.04, and will include in its annual budget all funds necessary for the operation of the Real Property for such purposes.
- C. The Agreement and all other documents referred to therein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity in accordance with their respective terms.
- D. It will comply with all of the provisions of Minn. Stat. Sec. 16A.695, the Commissioner's Order and the LRIP. It has legal authority to use the G.O. Grant for the purpose or purposes described in this Agreement.
- E. All of the information it has submitted or will submit to MnDOT or the Commissioner relating to the LRIP Grant or the disbursement of the LRIP Grant is and will be true and correct.
- F. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into the Agreement or any document referred to herein, or to perform any of the acts required of it in such documents.
- G. Neither the execution and delivery of the Agreement or any document referred to herein nor compliance with any of the provisions or requirements of any of such documents is prevented by, is a breach of, or will result in a breach of, any provision of any agreement or document to which it is now a party or by which it is bound.

- H. The contemplated use of the Real Property will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.
- I. The Project will be completed and the Real Property will be operated in full compliance with all applicable laws, rules, ordinances, and regulations of any federal, state, or local political subdivision having jurisdiction over the Project and the Real Property.
- J. All applicable licenses, permits and bonds required for the performance and completion of the Project and for the operation of the Real Property as specified in Section 2.04 have been, or will be, obtained.
- K. It reasonably expects to possess its ownership interest in the Real Property described in Section 2.02 for at least 37.5 years, and it does not expect to sell such ownership interest.
- L. It does not expect to lease out or enter into any contract that would allow another entity to use or operate the Real Property.
- M. It will supply whatever funds are needed in addition to the LRIP Grant to complete and fully pay for the Project.
- N. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date and all such items will be situated entirely on the Real Property.
- O. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.
- P. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either MnDOT or the Commissioner.
- Q. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by MnDOT and the Commissioner, constitute an Event of Default under the Agreement upon either MnDOT or the Commissioner giving the Public Entity 30 days' written notice of such event and the Public Entity's failure to cure such event during such 30-day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Public Entity is using its best efforts to cure and is making reasonable progress in curing such Events of Default; however, in no event shall the time period to cure any Event of Default exceed six (6) months unless otherwise consented to, in writing, by MnDOT and the Commissioner.

- A. If any representation, covenant, or warranty made by the Public Entity herein or in any other document furnished pursuant to the Agreement, or to induce MnDOT to disburse the LRIP Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

- B. If the Public Entity fails to fully comply with any provision, covenant, or warranty contained herein.
- C. If the Public Entity fails to fully comply with any provision, covenant or warranty contained in Minn. Stat. Sec. 16A.695, the Commissioner's Order, or Minn. Stat. Sec. 174.52 and all rules related thereto.
- D. If the Public Entity fails to use the proceeds of the LRIP Grant for the purposes set forth in Section 2.03, the Grant Application, and in accordance with the LRIP.
- E. If the Public Entity fails to operate the Real Property for the purposes specified in Section 2.04.
- F. If the Public Entity fails to complete the Project by the Completion Date.
- G. If the Public Entity sells or transfers any portion of its ownership interest in the Real Property without first obtaining the written consent of both MnDOT and the Commissioner.
- H. If the Public Entity fails to provide any additional funds needed to fully pay for the Project.
- I. If the Public Entity fails to supply the funds needed to operate the Real Property in the manner specified in Section 2.04.

Notwithstanding the foregoing, any of the above events that cannot be cured shall, unless waived in writing by MnDOT and the Commissioner, constitute an Event of Default under the Agreement immediately upon either MnDOT or the Commissioner giving the Public Entity written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of MnDOT, MnDOT or the Commissioner may enforce any or all of the following remedies.

- A. MnDOT may refrain from disbursing the LRIP Grant; provided, however, MnDOT may make such disbursements after the occurrence of an Event of Default without waiving its rights and remedies hereunder.
- B. If the Event of Default involves a sale of the Public Entity's interest in the Real Property in violation of Minn. Stat. Sec. 16A.695 or the Commissioner's Order, the Commissioner, as a third party beneficiary of the Agreement, may require that the Public Entity pay the amounts that would have been paid if there had been compliance with such provisions. For other Events of Default, the Commissioner may require that the Outstanding Balance of the LRIP Grant be returned to it.
- C. Either MnDOT or the Commissioner, as a third party beneficiary of the Agreement, may enforce any additional remedies it may have in law or equity.

The rights and remedies specified herein are cumulative and not exclusive of any rights or remedies that MnDOT or the Commissioner would otherwise possess.

If the Public Entity does not repay the amounts required to be paid under this Section or under any other provision contained herein within 30 days of demand by the Commissioner, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Public Entity and in favor

of MnDOT and/or the Commissioner, then such amount may, unless precluded by law, be offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to MnDOT and the Commissioner, as soon as possible and in any event within seven (7) days after it has obtained knowledge of the occurrence of each Event of Default, a statement setting forth details of each Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.10 Effect of Event of Default. The Agreement shall survive Events of Default and remain in full force and effect, even upon full disbursement of the LRIP Grant, and shall only be terminated under the circumstances set forth in Section 2.11.

Section 2.11 Termination of Agreement and Modification of LRIP Grant.

A. If the Project is not started within five (5) years after the effective date of the Agreement or the LRIP Grant has not been disbursed within four (4) years after the date the Project was started, MnDOT's obligation to fund the LRIP Grant shall terminate. In such event, (i) if none of the LRIP Grant has been disbursed by such date, MnDOT shall have no obligation to fund the LRIP Grant and the Agreement will terminate, and (ii) if some but not all of the LRIP Grant has been disbursed by such date, MnDOT shall have no further obligation to provide any additional funding for the LRIP Grant and the Agreement shall remain in force but shall be modified to reflect the amount of the LRIP Grant that was actually disbursed and the Public Entity is still obligated to complete the Project by the Completion Date.

B. The Agreement shall terminate upon the Public Entity's sale of its interest in the Real Property and transmittal of the required portion of the proceeds of the sale to the Commissioner in compliance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order, or upon the termination of the Public Entity's ownership interest in the Real Property if such ownership interest is an easement.

Section 2.12 Excess Funds. If the full amount of the G.O. Grant and any matching funds referred to in Section 5.13 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant shall be reduced by the amount not needed.

Article III

**COMPLIANCE WITH MINNESOTA STATUTE, SEC. 16A.695
AND THE COMMISSIONER'S ORDER**

Section 3.01 State Bond Financed Property. The Public Entity acknowledges that its interest in the Real Property is, or when acquired by it will be, "state bond financed property", as such term is used in Minn. Stat. Sec. 16A.695 and the Commissioner's Order and, therefore, the provisions contained in such statute and order apply, or will apply, to its interest in the Real Property, even if the LRIP Grant will only pay for a portion of the Project.

Section 3.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees as follows:

A. It will not use the Real Property or use or invest the LRIP Grant or any other sums treated as "bond proceeds" under Section 148 of the Code (including "investment proceeds," "invested sinking funds" and "replacement proceeds") in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Code Section 148.

- B. It will deposit and hold the LRIP Grant in a segregated non-interest-bearing account until such funds are used for payments for the Project.
- C. It will, upon written request, provide the Commissioner all information required to satisfy the informational requirements set forth in the Code, including Sections 103 and 148, with respect to the G.O. Bonds.
- D. It will, upon the occurrence of any act or omission by the Public Entity that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner, take such actions and furnish such documents as the Commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include: (i) compliance with proceedings intended to classify the G.O. Bonds as a “qualified bond” within the meaning of Code Section 141(e), or (ii) changing the nature of the use of the Real Property so that none of the net proceeds of the G.O. Bonds will be deemed to be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” within the meaning of Code Sections 141(b) and 145(a).
- E. It will not otherwise use any of the LRIP Grant or take, permit or cause to be taken, or omit to take, any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, and if it should take, permit or cause to be taken, or omit to take, as appropriate, any such action, it shall take all lawful actions necessary to correct such actions or omissions promptly upon obtaining knowledge thereof.

Section 3.03 **Changes to G.O. Compliance Legislation or the Commissioner’s Order.** If Minn. Stat. Sec. 16A.695 or the Commissioner’s Order is amended in a manner that reduces any requirement imposed against the Public Entity, or if the Public Entity’s interest in the Real Property becomes exempted from Minn. Stat. Sec. 16A.695 and the Commissioner’s Order, then upon written request by the Public Entity, MnDOT shall execute an amendment to the Agreement to implement such amendment or exempt the Public Entity’s interest in the Real Property from Minn. Stat. Sec. 16A.695 and the Commissioner’s Order.

Article IV **DISBURSEMENT OF GRANT PROCEEDS**

Section 4.01 **The Advances.** MnDOT agrees, on the terms and subject to the conditions set forth herein, to make Advances of the LRIP Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the LRIP Grant. If the amount of LRIP Grant that MnDOT cumulatively disburses hereunder to the Public Entity is less than the amount of the LRIP Grant delineated in Section 1.01, then MnDOT and the Public Entity shall enter into and execute whatever documents MnDOT may request in order to amend or modify this Agreement to reduce the amount of the LRIP Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, MnDOT’s obligation to make Advances shall terminate as of the dates specified in Section 2.11 even if the entire LRIP Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature delineated in Source and Use of Funds that is attached as **Exhibit A**, (ii) accrued no earlier than the effective date of the legislation that appropriated the funds that are used to fund the LRIP Grant, or (iii) have otherwise been consented to, in writing, by the Commissioner.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate

of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 5.13. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 5.13 that have been disbursed as of such point in time. This requirement is expressed by way of the following two formulas:

Formula #1:

$$\text{Cumulative Advances} \leq (\text{Program Grant}) \times (\text{percentage of matching funds, if any, required under Section 5.13 that have been disbursed})$$

Formula #2:

$$\text{Cumulative Advances} \leq (\text{Program Grant}) \times (\text{percentage of Project completed})$$

Section 4.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the LRIP Grant the Public Entity shall submit to MnDOT a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and MnDOT, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to MnDOT, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by MnDOT unless the Public Entity shall advise MnDOT, in writing, of its intention to so store materials prior to their delivery and MnDOT has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to MnDOT such supporting evidence as may be requested by MnDOT to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

The final Draw Requisition shall not be submitted before completion of the Project, including any correction of material defects in workmanship or materials (other than the completion of punch list items). At the time of submission of the final Draw Requisition the Public Entity shall submit to MnDOT: (I) such supporting evidence as may be requested by MnDOT to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and that all requisite certificates and other approvals have been issued.

If on the date an Advance is desired the Public Entity has complied with all requirements of this Agreement and MnDOT approves the relevant Draw Requisition, then MnDOT shall disburse the amount of the requested Advance to the Public Entity.

Section 4.03 Additional Funds. If MnDOT shall at any time in good faith determine that the sum of the undisbursed amount of the LRIP Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then MnDOT may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in MnDOT's notice.

Section 4.04 **Condition Precedent to Any Advance.** The obligation of MnDOT to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

- A. MnDOT shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the amount of the LRIP Grant set forth in Section 1.01.
- B. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.
- C. No determination shall have been made by MnDOT that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Public Entity under Section 4.03, then the Public Entity has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to MnDOT that sufficient funds are available.
- D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.
- E. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require

Section 4.05 **Processing and Disbursement of Advances.** The Public Entity acknowledges and agrees as follows:

- A. Advances are not made prior to completion of work performed on the Project.
- B. All Advances are processed on a reimbursement basis.
- C. The Public Entity must first document expenditures to obtain an Advance.
- D. Reimbursement requests are made on a partial payment basis or when the Project is completed.
- E. All payments are made following the “Delegated Contract Process or State Aid Payment Request” as requested and approved by the appropriate district state aid engineer.

Section 4.06 **Construction Inspections.** The Public Entity shall be responsible for making its own inspections and observations regarding the completion of the Project, and shall determine to its own satisfaction that all work done or materials supplied have been properly done or supplied in accordance with all contracts that the Public Entity has entered into regarding the completion of the Project.

Article V MISCELLANEOUS

Section 5.01 **Insurance.** If the Public Entity elects to maintain general comprehensive liability insurance regarding the Real Property, then the Public Entity shall have MnDOT named as an additional named insured therein.

Section 5.02 Condemnation. If, after the Public Entity has acquired the ownership interest set forth in Section 2.02, all or any portion of the Real Property is condemned to an extent that the Public Entity can no longer comply with Section 2.04, then the Public Entity shall, at its sole option, either: (i) use the condemnation proceeds to acquire an interest in additional real property needed for the Public Entity to continue to comply with Section 2.04 and to provide whatever additional funds that may be needed for such purposes, or (ii) submit a request to MnDOT and the Commissioner to allow it to sell the remaining portion of its interest in the Real Property. Any condemnation proceeds which are not used to acquire an interest in additional real property shall be applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order as if the Public Entity's interest in the Real Property had been sold. If the Public Entity elects to sell its interest in the portion of the Real Property that remains after the condemnation, such sale must occur within a reasonable time period after the date the condemnation occurred and the cumulative sum of the condemnation and sale proceeds applied in accordance with Minn. Stat. Sec. 16A.695 and the Commissioner's Order.

If MnDOT receives any condemnation proceeds referred to herein, MnDOT agrees to or pay over to the Public Entity all of such condemnation proceeds so that the Public Entity can comply with the requirements of this Section.

Section 5.03 Use, Maintenance, Repair and Alterations. The Public Entity shall not, without the written consent of MnDOT and the Commissioner, (i) permit or allow the use of any of the Real Property for any purpose other than the purposes specified in Section 2.04, (ii) substantially alter any of the Real Property except such alterations as may be required by laws, ordinances or regulations, or such other alterations as may improve the Real Property by increasing its value or which improve its ability to be used for the purposes set forth in Section 2.04, (iii) take any action which would unduly impair or depreciate the value of the Real Property, (iv) abandon the Real Property, or (v) commit or permit any act to be done in or on the Real Property in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain the Real Property in accordance with this Section, MnDOT may perform whatever acts and expend whatever funds necessary to so maintain the Real Property, and the Public Entity irrevocably authorizes MnDOT to enter upon the Real Property to perform such acts as may be necessary to so maintain the Real Property. Any actions taken or funds expended by MnDOT shall be at its sole discretion, and nothing contained herein shall require MnDOT to take any action or incur any expense and MnDOT shall not be responsible, or liable to the Public Entity or any other entity, for any such acts that are performed in good faith and not in a negligent manner. Any funds expended by MnDOT pursuant to this Section shall be due and payable on demand by MnDOT and will bear interest from the date of payment by MnDOT at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per year based upon a 365-day year.

Section 5.04 Recordkeeping and Reporting. The Public Entity shall maintain books and records pertaining to Project costs and expenses needed to comply with the requirements contained herein, Minn. Stat. Sec. 16A.695, the Commissioner's Order, and Minn. Stat. Sec. 174.52 and all rules related thereto, and upon request shall allow MnDOT, its auditors, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract all of such items. The Public Entity shall use generally accepted accounting principles in the maintenance of such items, and shall retain all of such books and records for a period of six years after the date that the Project is fully completed and placed into operation.

Section 5.05 Inspections by MnDOT. The Public Entity shall allow MnDOT to inspect the Real Property upon reasonable request by MnDOT and without interfering with the normal use of the Real Property.

Section 5.06 Liability. The Public Entity and MnDOT agree that each will be responsible for its own acts and the results thereof to the extent authorized by law, and neither shall be responsible for the acts of the other party and the results thereof. The liability of MnDOT and the Commissioner is governed by the provisions of Minn. Stat. Sec. 3.736. If the Public Entity is a “municipality” as that term is used in Minn. Stat. Chapter 466, then the liability of the Public Entity is governed by the provisions of Chapter 466. The Public Entity’s liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, or subject to any exclusion from coverage in any insurance policy.

Section 5.07 Relationship of the Parties. Nothing contained in the Agreement is to be construed as establishing a relationship of co-partners or joint venture among the Public Entity, MnDOT, or the Commissioner, nor shall the Public Entity be considered to be an agent, representative, or employee of MnDOT, the Commissioner, or the State of Minnesota in the performance of the Agreement or the Project.

No employee of the Public Entity or other person engaging in the performance of the Agreement or the Project shall be deemed have any contractual relationship with MnDOT, the Commissioner, or the State of Minnesota and shall not be considered an employee of any of those entities. Any claims that may arise on behalf of said employees or other persons out of employment or alleged employment, including claims under the Workers’ Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity or its officers, agents, contractors, or employees shall in no way be the responsibility of MnDOT, the Commissioner, or the State of Minnesota. Such employees or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from MnDOT, the Commissioner, or the State of Minnesota, including tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 5.08 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the address of the party specified below or to such different address as may in the future be specified by a party by written notice to the others:

To the Public Entity: At the address indicated on the first page of the Agreement.

To MnDOT at: Minnesota Department of Transportation
Office of State Aid
395 John Ireland Blvd., MS 500
Saint Paul, MN 55155
Attention: Marc Briesse, State Aid Programs Engineer

To the Commissioner at: Minnesota Management & Budget
400 Centennial Office Bldg.
658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 5.09 Assignment or Modification. Neither the Public Entity nor MnDOT may assign any of its rights or obligations under the Agreement without the prior written consent of the other party.

Section 5.10 Waiver. Neither the failure by the Public Entity, MnDOT, or the Commissioner, as a third party beneficiary of the Agreement, in one or more instances to insist upon the complete observance or performance of any provision hereof, nor the failure of the Public Entity, MnDOT, or the Commissioner to exercise any right or remedy conferred hereunder or afforded by law shall be construed as waiving any

breach of such provision or the right to exercise such right or remedy thereafter. In addition, no delay by any of the Public Entity, MnDOT, or the Commissioner in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 5.11 Choice of Law and Venue. All matters relating to the validity, interpretation, performance, or enforcement of the Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions arising from any provision of the Agreement shall be initiated and venued in the State of Minnesota District Court located in St. Paul, Minnesota.

Section 5.12 Severability. If any provision of the Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 5.13 Matching Funds. Any matching funds as shown on Page 1 of the Grant Agreement that are required to be obtained and supplied by the Public Entity must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Public Entity shall supply to MnDOT whatever documentation MnDOT may request to substantiate the availability and source of any matching funds.

Section 5.14 Sources and Uses of Funds. The Public Entity represents to MnDOT and the Commissioner that the Sources and Uses of Funds Schedule attached as **Exhibit A** accurately shows the total cost of the Project and all of the funds that are available for the completion of the Project. The Public Entity will supply any other information and documentation that MnDOT or the Commissioner may request to support or explain any of the information contained in the Sources and Uses of Funds Schedule. If any of the funds shown in the Sources and Uses of Funds Schedule have conditions precedent to the release of such funds, the Public Entity must provide to MnDOT a detailed description of such conditions and what is being done to satisfy such conditions.

Section 5.15 Project Completion Schedule. The Public Entity represents to MnDOT and the Commissioner that the Project Completion Schedule attached as **Exhibit B** correctly and accurately sets forth the projected schedule for the completion of the Project.

Section 5.16 Third-Party Beneficiary. The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 5.17 Public Entity Tasks. Any tasks that the Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Public Entity.

Section 5.18 Data Practices. The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant or the Project to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Minnesota Statutes Chapter 13, as such may subsequently be amended or replaced from time to time.

Section 5.19 Non-Discrimination. The Public Entity agrees to not engage in discriminatory employment practices regarding the Project and it shall fully comply with all of the provisions contained in

Minnesota Statutes Chapters 363A and 181, as such may subsequently be amended or replaced from time to time.

Section 5.20 Worker's Compensation. The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. Secs. 176.181 subd. 2 and 176.182, as they may be amended or replaced from time to time with respect to the Project.

Section 5.21 Antitrust Claims. The Public Entity hereby assigns to MnDOT and the Commissioner of MMB all claims it may have for over charges as to goods or services provided with respect to the Project that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 5.22 Prevailing Wages. The Public Entity agrees to comply with all of the applicable provisions contained in Minnesota Statutes Chapter 177, and specifically those provisions contained in Minn. Stat. §. 177.41 through 177.435 as they may be amended or replaced from time to time with respect to the Project. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project.

Section 5.23 Entire Agreement. The Agreement and all of the exhibits attached thereto embody the entire agreement between the Public Entity and MnDOT, and there are no other agreements, either oral or written, between the Public Entity and MnDOT on the subject matter hereof.

Section 5.24 E-Verification. The Public Entity agrees and acknowledges that it is aware of Minn.Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order.

Section 5.25 Telecommunications Certification. If federal funds are included in **Exhibit A**, by signing this agreement, Contractor certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018), and 2 CFR 200.216, Contractor will not use funding covered by this agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Contractor will include this certification as a flow down clause in any contract related to this agreement.

Section 5.26 Title VI/Non-discrimination Assurances. Public Entity agrees to comply with all applicable US DOT Standard Title VI/Non-Discrimination Assurances contained in DOT Order No. 1050.2A, and in particular Appendices A and E, which can be found at: https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=11149035. If federal funds are included in **Exhibit A**, Public Entity will ensure the appendices and solicitation language within the assurances are inserted into contracts as required. MnDOT may conduct a review of the Public Entity's compliance with this provision. The Public Entity must cooperate with MnDOT throughout the review process by supplying all requested information and documentation to MnDOT, making Public Entity staff and officials available for meetings as requested, and correcting any areas of non-compliance as determined by MnDOT.

Section 5.27 Electronic Records and Signatures. The parties agree to contract by electronic means. This includes using electronic signatures and converting original documents to electronic records.

Section 5.28 Certification. By signing this Agreement, the Grantee certifies that it is not suspended or debarred from receiving federal or state awards.