PUBLIC WORKS & UTILITIES COMMITTEE

13-0560R

RESOLUTION AMENDING RESOLUTION 13-0341 AUTHORIZING THE 2012 ROAD AND BRIDGE DISASTER RELIEF BOND GRANT AGREEMENT 02227 AND ACCEPTING A GRANT FROM THE MINNESOTA STATE TRANSPORTATION FUND FOR ENGINEERING AND RECONSTRUCTION OF 27TH AVENUE WEST BETWEEN THIRD STREET AND 11TH STREET, INCREASING THE GRANT AMOUNT BY $45,497.07 FOR A NEW TOTAL OF $138,180.37.

CITY PROPOSAL:

RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the reconstruction of 27th Avenue West between Third Street and 11th Street, city project no. 1156.

FURTHER RESOLVED, that the grant has been approved and that the amount of the grant is $138,180.37.

FURTHER RESOLVED, that the city of Duluth agrees to the terms and conditions of the grant consistent with Minnesota Statutes, Section 174.50, subdivision 5, clause (3), and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota state transportation fund any amount appropriated for the project but not required. The proper city officials are hereby authorized to execute a grant agreement, on file in the office of the city clerk as Public Document No. _____, concerning the above referenced grant. Grant monies shall be deposited into Disaster Recovery Fund 225, Department 125 (Finance), Organization 1808 (Disaster Aid & Revenues),

Source 4220-05 (State of Minnesota Flood Bonds, city project no. 1156, S.P. 118-115-008.

Approved:

Department Director

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

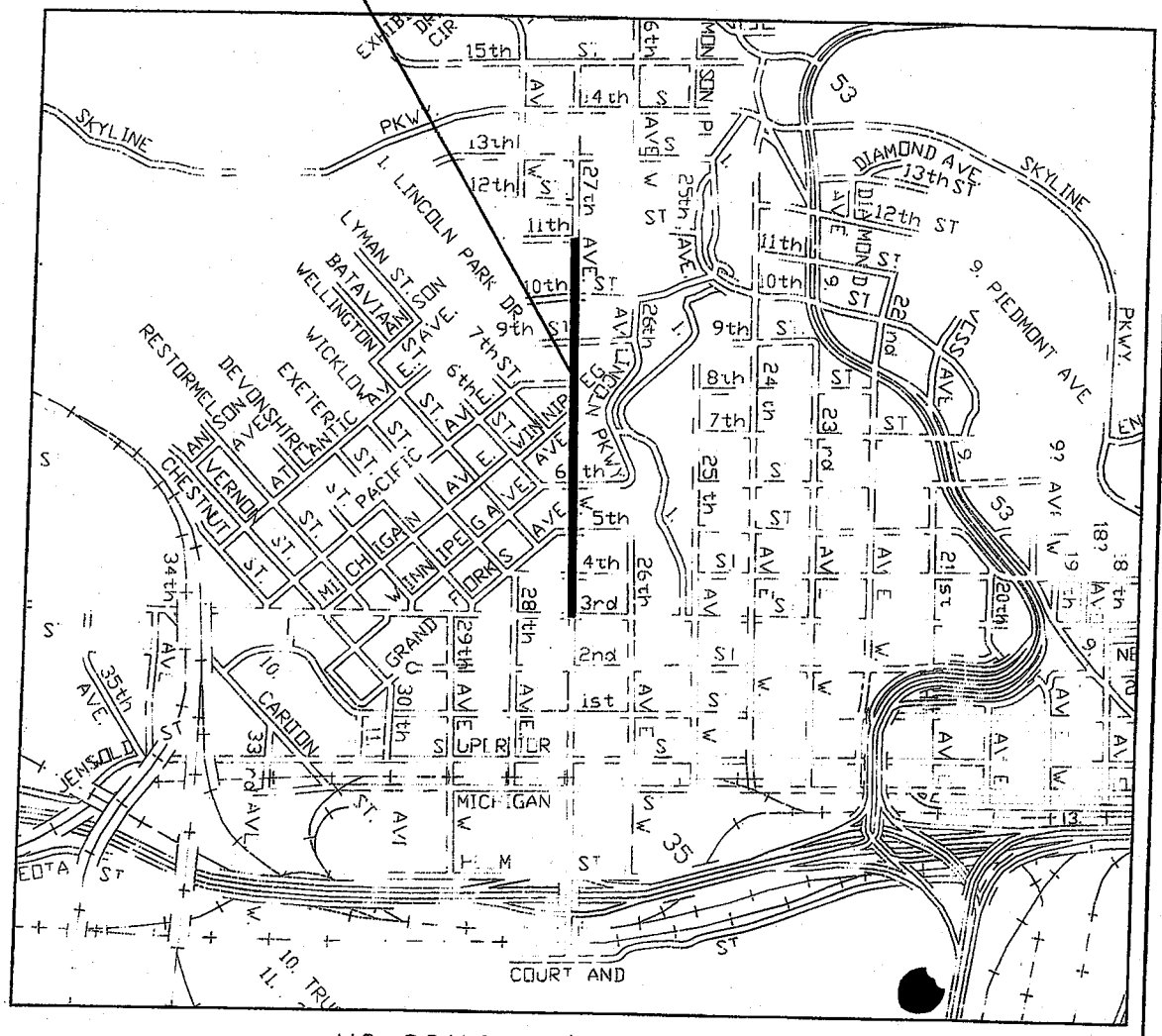
Auditor

ENG PFL:jh 11/1/2013

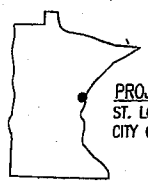
STATEMENT OF PURPOSE: This resolution will amend a grant agreement with the Minnesota Department of Transportation for a construction grant to be increased by $45,497.07 for a new total of $138,180.37 for the reconstruction of 27th Avenue West between Third Street and 11th Street, city project no. 1156, S.P. 118-115-008. Bids for this project were opened on April 23, 2013, and the project was awarded to Northland Constructors of Duluth, LLC on May 13, 2013. This project was bid together with Vinland Street (city project 1155) for a combined bid of $467,333.60. In accordance with the terms and conditions of the grant, the city agrees to pay any amount by which the cost exceeds the estimate.

# MAP

27TH AVE W FROM GRAND AVE TO 11TH ST LOCATION




NO SCALE 3,000 FT.



PROJECT LOCATION
ST. LOUIS COUNTY
CITY OF DULUTH

# 2012 LOCAL ROAD AND BRIDGE DISASTER RELIEF (LRBDR)
# GRANT AGREEMENT

**This Agreement** between the Minnesota Department of Transportation ("MnDOT") and the Grantee named below is made pursuant to H.F. 1 (2012 1st Special Session) dated August 24th, 2012. 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.

1. Effective date of this Agreement: _____, 2013

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

City of Duluth Engineering Division
411 W. 1st Street, Room 211 City Hall
Duluth, MN 55802

Contact: Patrick Loomis, Project Engineer

3. Project(s):

| Project Number (See Exhibit C for location) | Amount of LRBDR Funds | Amount of Required Matching Funds | Completion Date |
|---|---|---|---|
| 27th Ave. W. 118-115-008 | $138,180.37 | $182,613.09 | November, 2013 |
| | | | |
| | | | |
| | | | |

4. Total Amount of LRBDR Grant for all projects under this Agreement: $138,180.37

5. 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 Completion Schedule |
| Exhibit C | Bond Financed Property Certification |
| Exhibit D | Grant Application |
| Exhibit E | Grantee Resolution Approving Grant Agreement |
| Exhibit F | General Terms and Conditions |

**PUBLIC ENTITY (GRANTEE)**

By: _____

Its: Mayor

Date: _____

By: _____

Its: City Clerk

Date: _____

By: _____

Its: City Attorney

Date: _____

By: _____

Its: City Auditor

Date: _____

**DEPARTMENT OF TRANSPORTATION**

By: _____

Its: State Aid Programs Engineer

Date: _____

**OFFICE CONTRACT MANAGEMENT**

By: _____

Date: _____

# EXHIBIT A

## SOURCES AND USES OF FUNDS SCHEDULE

(Complete a different schedule for each project. For the first project label it A-1; for the second project label it A-2; etc.)

### SOURCES OF FUNDS

| Entity Supplying Funds | Amount |
|---|---|
| **State Funds:** | |
| LRBDR Grant | $ 138,180.37 |
| Other: | |
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |
| Subtotal | $138,180.37 |
| **Public Entity Funds:** | |
| Matching Funds | $_____ |
| Other: | |
| Federal ER | $182,613.09 |
| Local | $_____ |
| _____ | $_____ |
| Subtotal | $ 182,613.09 |

### USES OF FUNDS

| Expenses | Amount |
|---|---|
| **Items Paid for with LRBDR Grant Funds:** | |
| Construction | $ 106,180.37 |
| PE & CE | $ 32,000.00 |
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |
| Subtotal | $ 138,180.37 |
| **Items paid for with Non-LRBDR Grant Funds:** | |
| Construction | $182,613.09 |
| _____ | $_____ |
| _____ | $_____ |
| _____ | $_____ |
| Subtotal | $182,613.09 |

**TOTAL FUNDS** $ 320,793.46 = **TOTAL PROJECT COSTS** $ 320,793.46

# EXHIBIT B

## PROJECT COMPLETION SCHEDULE

(Provide a different schedule for each project. Label each project to correspond with the project as listed in Exhibit A; e.g., B-1, B-2, etc.)

| | |
|---|---|
| Letting Date: | April 23, 2013 |
| Construction Start Date: | May 28, 2013 |
| Construction Completion Date: | July 12, 2013 |
| Project Final Done: | December 31, 2013 |

# EXHIBIT C

BOND FINANCED PROPERTY CERTIFICATION
(Complete only one Certification for all projects)
Project Number **118-115-008**

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 of St. Louis, 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 2012 Local Road and Bridge Disaster Relief Grant Agreement between the Minnesota Department of Transportation and the undersigned dated _____, 20___; 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: _____, 20____

City of Duluth
*[name of Public Entity grantee]*, a political subdivision of the State of Minnesota

By: _____
Name: _____
Title: City Clerk

Notary

By: _____
Name: _____

Title: Mayor

## Attachment 1 to Exhibit C

GENERAL DESCRIPTION OF RESTRICTED PROPERTY

(Insert a narrative or graphic description of the Restricted Property for each project. Label each project to correspond with the project as listed in Exhibit A; e.g., C-1, C-2, etc. It need not be a legal description if a legal description is unavailable.)

2nd Street Right-of-Way between 6th Avenue East and 8th Avenue East.27th Ave. West Right-of Way between 3rd Street and 11th Street.

# EXHIBIT D

GRANT APPLICATION

(Attach the grant application for each project and label each application to correspond with the projects listed in Exhibit A; e.g., D-1, D-2, etc.)

# EXHIBIT E

GRANTEE RESOLUTION APPROVING GRANT AGREEMENT

# EXHIBIT F

GENERAL TERMS AND CONDITIONS FOR
2012 LOCAL ROAD AND BRIDGE DISASTER RELIEF (LRBDR) GRANTS
*(Applicable to each project)*

## 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 2012 Local Road and Bridge Disaster Relief 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 "Third Order Amending Order of the Commissioner of Minnesota Management & Budget Relating to Use and Sale of State Bond Financed Property" dated August 26, 2010, 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 LRBDR 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**.

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

"LRBDR" - means 2012 Flood Disaster Relief pursuant to 2012 Special Session, Chapter 1—H.F.No.1.

"MnDOT" - means the Minnesota Department of Transportation.

"Outstanding Balance of the LRBDR Grant" - means the portion of the LRBDR 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 LRBDR grant.

"Public Entity" - means the grantee of the LRBDR 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 LRBDR 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 LRBDR 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 LRBDR Grant solely to reimburse itself for expenditures it has already made, or will make, to pay the costs of one or more of the following purposes: reconstruction and replacement (including necessary demolition and design costs) of local roads and bridges damaged or destroyed by storms or flooding on or after August 18, 2007 within the area designated under Presidential Declaration of a Major Disaster FEMA-1717-DR, whether included in the original declarations or added later by federal government action, and any other activities related thereto permitted by Minn. Stat. Section 12A.16, subdiv. 3, and Section 174.50. The Public Entity

shall not use the LRBDR 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 may 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 LRBDR.

E. All of the information it has submitted or will submit to MnDOT or the Commissioner relating to the LRBDR Grant or the disbursement of the LRBDR 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 LRBDR 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.

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 LRBDR 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 Laws 2012, 1st Special Session, CH. 1, H.F.No.1.

D. If the Public Entity fails to use the proceeds of the LRBDR Grant for the purposes set forth in Section 2.03, the Grant Application, and in accordance with the LRBDR.

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 LRBDR 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 LRBDR 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 LRBDR Grant, and shall only be terminated under the circumstances set forth in Section 2.11.

Section 2.11 **Termination of Agreement and Modification of LRBDR Grant.**

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

## Article III
## COMPLIANCE WITH MINN. STAT. 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 LRBDR 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 LRBDR 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 LRBDR 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 LRBDR 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 LRBDR Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the LRBDR Grant. If the amount of LRBDR Grant that MnDOT cumulatively disburses hereunder to the Public Entity is less than the amount of the LRBDR 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 LRBDR 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 LRBDR 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 LRBDR 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:
Cumulative Advances ≤ (Program Grant) × (percentage of matching funds, if any, required under Section 5.13 that have been disbursed)

Formula #2:
Cumulative Advances ≤ (Program Grant) × (percentage of Project completed)

Section 4.02 **Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the LRBDR 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 LRBDR 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 LRBDR 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 Public Entity has supplied to MnDOT all other items that MnDOT 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 Session Laws 2012, 1st Special Session, CH 1, H.F.No.1, 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: Patti Loken, 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 **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 5.17 **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 5.18 **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 5.19 **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 5.20 **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 5.21 **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. Secs. 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 5.22 **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 5.23 **E-Verification.** The Public Entity agrees and acknowledges that it is aware of Governor's Executive Order 08-01 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.