

**General Obligation Bond Proceeds**

**Grant Agreement**

**Pre-Design or Design Grant**

**for the**

**«1»**

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**Project**

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**General Obligation Bond Proceeds**

**Grant Agreement - Predesign or Design Grant**

**for the**

\_\_\_\_\_ «1» \_\_\_\_\_

**Project**

**THIS AGREEMENT** shall be effective as of \_\_\_\_\_ «2» \_\_\_\_\_, \_\_\_\_\_ «2» \_\_\_\_\_, and is between \_\_\_\_\_ «3» \_\_\_\_\_, a \_\_\_\_\_ «4» \_\_\_\_\_ (the “Public Entity”), and the \_\_\_\_\_ «5» \_\_\_\_\_ (the “State Entity”).

**RECITALS**

A. Under the provisions contained in \_\_\_\_\_ «6» \_\_\_\_\_ (the “G.O. Bonding Legislation), the State of Minnesota has allocated \$ \_\_\_\_\_ «7» \_\_\_\_\_ (the “G.O. Grant”) to the Public Entity as a grant to finance all or a portion of the following activities \_\_\_\_\_ «8» \_\_\_\_\_ (the “Predesign/Design Activities”).

B. The provisions contained in \_\_\_\_\_ «9» \_\_\_\_\_ grant the Public Entity the authority to perform the Predesign/Design Activities.

C. Under the provisions contained in \_\_\_\_\_ «10» \_\_\_\_\_, the Public Entity has been given the authority to \_\_\_\_\_ «11» \_\_\_\_\_; (the “Governmental Program”).

D. The purpose of the Predesign/Design Activities is to provide the Public Entity with information regarding the acquisition of an ownership interest in and betterment of land and structures that could be used by the Public Entity to operate the Governmental Program or such other programs that it has statutory authority to operate and that have been or will be approved by the Minnesota legislature.

E. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized under Article XI, § 5(a) of the Minnesota Constitution.

F. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity.

**IN CONSIDERATION** of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

**Article I - DEFINITIONS**

**Section 1.01 Defined Terms.** As used in this Agreement, 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 the State Entity to the Public Entity and disbursed in accordance with the provisions contained in Article V hereof.

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement Pre-design or Design Grant for the \_\_\_\_\_ «1» \_\_\_\_\_ Project, as such exists on its original date and any amendments, modifications or restatements thereof.

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

“Commissioner of MMB” - means the commissioner of Minnesota Management and Budget, and any designated representatives thereof.

“Commissioner's Order” - means that certain “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended.

“Draw Requisition” - means a draw requisition that the Public Entity, or its designee, will submit to the State Entity when an Advance is requested, and which is referred to in Section 5.02.

“Event of Default” - means those events set forth in Section 4.01.

“G.O. Bonding Legislation” – means the legislation delineated in Recital A above as the G.O. Bonding Legislation.

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

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695, as it may subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“G.O. Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “G.O. Grant” in Recital A to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Governmental Program” – means the operation of any real property or facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“Pre-design/Design Activities” - means the activities identified as the Pre-design/Design Activities in Recital A of this Agreement.

“Public Entity” - means the entity identified as the “Public Entity” in the lead-in paragraph of this Agreement.

“State Entity” - means the entity identified as the “State Entity” in the lead-in paragraph of this Agreement.

## **Article II - GRANT**

**Section 2.01 Grant of Monies.** The State Entity shall make and issue the G.O. Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner of MMB under certain circumstances.

**Section 2.02 Use of Grant Proceeds.** The Public Entity shall use the G.O. Grant solely to perform, complete and pay for the Predesign/Design Activities.

**Section 2.03 Completion of Predesign/Design Activities.** The Public Entity shall diligently pursue and complete, or cause to be completed, the Predesign/Design Activities and pay all of the costs related thereto.

**Section 2.04 Public Entity Representations and Warranties.** The Public Entity covenants with and represents and warrants to the State Entity as follows:

A. It has legal authority to enter into, execute and deliver this Agreement, and it has taken all actions necessary to its execution and delivery of this Agreement.

B. It has legal authority to perform the Predesign/Design Activities.

C. It has legal authority to operate the Governmental Program.

D. This Agreement is a legal, valid and binding obligation of the Public Entity enforceable against the Public Entity in accordance with its terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties contained in this Agreement.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner’s Order, and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all of 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.

H. 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, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority, against or affecting it relating to the Predesign/Design Activities, 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 this Agreement or to perform any of the acts required of it in this Agreement.

I. Neither the execution and delivery of this Agreement nor compliance with any of the terms, conditions, requirements, or provisions contained herein is not prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. It will use the G.O. Grant solely to reimburse itself for expenditures it has already made, or will make, to perform and complete the Predesign/Design Activities or to pay for the completion of the Predesign/Design Activities.

K. The Predesign/Design Activities will be performed and completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Predesign/Design Activities.

L. It has complied with the matching funds requirement, if any, contained in Section 6.20.

M. It will complete and fully pay for the Predesign/Design Activities.

N. It will supply, or cause to be supplied, whatever funds that are needed above and beyond the amount of the G.O. Grant to complete and fully pay for the Predesign/Design Activities.

O. It will furnish to the State Entity as soon as possible and in any event within 7 calendar days after the Public Entity has obtained knowledge of the occurrence of each Event of Default, or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default, or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default, and the action which the Public Entity proposes to take with respect thereto.

P. It will promptly notify both the State Entity and the Commissioner of MMB if and when it acquires an ownership interest in or improves any real property, or acquires an ownership interest in or improves, renovates, rehabilitates, or newly constructs any facility, which are acquired or bettered, in whole or in part, as a result of or that benefits from the Predesign/Design Activities.

Q. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested in writing by either the State Entity or the Commissioner of MMB.

**Section 2.05 Modification and/or Early Termination of Grant.** If the Predesign/Design Activities are not started on or before the date that is 5 years from the effective date of this Agreement, or such later date to which the Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate, and, in such event, (i) if none of the G.O. Grant has been disbursed by such date then the State Entity's

obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date.

In addition, if all of the G.O. Grant has not been disbursed on or before the date that is 4 years from the date on which the Predesign/Design Activities was started, or such later date as the Public Entity and the State Entity may agree to in writing, then the State Entity's obligation to continue to fund the G.O. Grant shall terminate and in such event (y) if none of the G.O. Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (z) if some but not all of the G.O. Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding under the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date.

In the event that the legislation that authorized the G.O. Grant is amended to increase or reduce the amount of the G.O. Grant, or in any other way, then this Agreement shall be deemed to have been automatically modified in accordance with such amendment and the amount of the G.O. Grant shall also be automatically modified in accordance with such amendment.

**Section 2.06 Results of Predesign/Design Activities.** The Public Entity shall be the sole owner of any and all plans, specifications, studies, concepts, ideas, plans, and any other work product that is generated as a result of or emanates from the Predesign/Design Activities, and the Public Entity may not, without the prior written consent of the State Entity and the Commissioner of MMB, sell or transfer any of such items to any other entity or allow any other entity to use any of such items or obtain any benefit therefrom.

**Section 2.07 Excess Funds.** If the full amount of the G.O. Grant and any matching funds referred to in Section 6.20 are not needed to complete the PreDesign/Design Activities, 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 - ACQUISITION, CONSTRUCTION AND USE OF ANY REAL PROPERTY AND FACILITY**

**Section 3.01 Applicability.** *The provisions contained in this Article III are in addition to and not in replacement of the other provisions contained in this Agreement, and shall only apply to any real property or facility in which the Public Entity acquires an ownership interest at some time in the future as a result of, or which benefits from, the Predesign/Design Activities. If the Public Entity never acquires an ownership interest in any such real property or facility, then this Article III shall have no effect and be ignored.*

**Section 3.02 Additional Defined Terms.** The following defined terms apply to the provisions contained in this Article III, are in addition to the defined terms contained in Section

1.01, and shall have the meanings set out respectively after each (such meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the contents hereof specifically indicate otherwise:

“Approved Debt” – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds.

“Counterparty” - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Declaration” - means a declaration or declarations and all amendments thereto, in form and substance acceptable to the Commissioner of MMB, indicating that the Public Entity’s ownership interest in any Real Property and, if applicable, Facility, will be bond financed property within the meaning of the G.O. Compliance Legislation and will be subject to certain restrictions imposed by this Agreement.

“Facility” - means any structure in which the Public Entity acquires an ownership interest that is acquired or bettered as a result of or benefits from the Predesign/Design Activities.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Public Entity’s ownership interest in Real Property and, if applicable, Facility if the Public Entity does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

“Leased/Easement Premises” - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease or granted to the Public Entity under an easement. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if*

it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.

“Lessor/Grantor” – means the fee owner/lessor or grantor of the Leased/Easement Premises. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Outstanding Balance of the G.O. Grant” – means the portion of the G.O. Grant that has been disbursed to or on behalf of the Public Entity minus any portion thereof previously paid back to the Commissioner of MMB.

“Ownership Value”, if any – means the value, if any, of the Public Entity’s ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’s acquisition of such ownership interest. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the State Entity and the Commissioner of MMB.

“Real Property” - means any real property in which the Public Entity acquires an ownership interest that is acquired or bettered as a result of, or benefits from, the Predesign/Design Activities.

“Real Property/Facility Lease” - means a long term lease of the Real Property, the Facility, if applicable, or both by the Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Subsequent Betterment Costs” – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term in used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the State Entity and the Commissioner of MMB.

“Use Contract” - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Useful Life of the Real Property and, if applicable, Facility” – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments completed in conjunction with the original acquisition thereof.

**Section 3.03 Public Ownership.** The Public Entity acknowledges and agrees that the G.O. Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof if and when the Public Entity acquires an ownership interest in any Real Property and, if applicable, Facility, such ownership interest must be by way of:

- A. A fee interest;
- B. A Real Property/Facility Lease that complies with the requirements contained in Section 3.06; or
- C. An easement that complies with the requirements contained in Section 3.06.

**Section 3.04 State Bond Financed Property.** The Public Entity and the State Entity acknowledge and agree that the Public Entity’s ownership interest in any Real Property and, if applicable, Facility will be “state bond financed property”, as such term is used in the G.O. Compliance Legislation and the Commissioner’s Order, and, therefore, the provisions contained in such statute and order will apply to the Public Entity’s ownership interest in any Real Property and, if applicable, Facility and any Use Contracts relating thereto.

**Section 3.05 Execution and Delivery of Declaration.** Promptly upon the Public Entity’s acquisition of an ownership interest in any Real Property and, if applicable, Facility, the Public Entity shall promptly execute, record in the appropriate office, and deliver a Declaration to the State Entity with all of the recording information displayed thereon.

**Section 3.06 Ownership by Leasehold or Easement.** *This Section shall only apply if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease or an easement. For all other circumstances this Section is not needed and should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.*

- A. A Real Property/Facility Lease or easement must comply with the following provisions:
  - 1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Public Entity, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 3.08.

6. It must not contain any provisions that would limit or impair the Public Entity's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 3.08.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor's/Grantor's ownership interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its ownership interest therein, and allow such ownership interest to be transferred to the purchaser of such ownership interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12. The Public Entity must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Public Entity from including additional provisions in the Real Property/Facility Lease or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Public Entity to reimburse the State Entity for any portion of the G.O. Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

Section 3.07 **Public Entity Representations and Warranties.** With respect to the Public Entity's acquisition of an ownership interest in any Real Property or, if applicable, Facility the Public Entity covenants with and represents and warrants to the State Entity as follows:

A. As of the date of this Agreement it has legal authority to enter into, execute, record, and deliver a Declaration, and it will not take any action that will revoke or impair such authority or impair its ability to enter into, record, or deliver a Declaration.

B. As of the date of this Agreement it has legal authority to operate the Real Property and, if applicable, the Facility in accordance with the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, the G.O. Bonding Legislation, and the Governmental Program.

C. It will promptly take all actions necessary to its execution, recording, and delivery of a Declaration.

D. After a Declaration has been executed it will be a legal, valid, and binding obligation of the Public Entity enforceable against the Public Entity in accordance with its terms.

E. Its acquisition of an ownership interest in and, if applicable, improvement of any Real Property and, if applicable, acquisition of an ownership interest in, improvement, renovation, rehabilitation, or new construction of any Facility will be performed in full and complete compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over any Real Property or, if applicable, Facility.

F. It will obtain all applicable licenses, permits, and bonds required for its acquisition of an ownership interest in and, if applicable, improvement of any Real Property and, in addition and if applicable, its acquisition, improvement, renovation, rehabilitation, or new construction of any Facility.

G. Its use of any Real Property and, if applicable, Facility will be in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the use of such Real Property and, if applicable, Facility.

H. It will obtain all licenses, permits, and bonds required for its use of any Real Property and, if applicable, Facility.

I. In its acquisition of an ownership interest in and, if applicable, improvement of any Real Property and, in addition and if applicable, its acquisition of an ownership interest in, improvement, renovation, rehabilitation, or new construction of any Facility it will comply with all of the terms contained in and imposed by this Agreement, a Declaration, the G.O. Compliance Legislation, the Commissioner's Order, the G.O. Bonding Legislation, and the Governmental Program.

J. It will fully enforce the terms and conditions contained in any Use Contract.

K. It will not allow any lien or encumbrance that is prior and superior to a Declaration to be created or imposed upon any Real Property and, if applicable, Facility whether such lien or encumbrance is voluntary or involuntary and including, but not limited to, a mechanic's lien or a mortgage lien, without the prior written consent of both the State Entity and the Commissioner of MMB.

L. As of the date of this Agreement it is not in violation of any of the provisions of its charter or of the laws of the State of Minnesota that would (i) prohibit it from entering into, recording, and delivering a Declaration, (ii) affect its ability to acquire an ownership interest in and better any Real Property or operate any Real Property for the purpose delineated in Section 3.08, or (iii) affect its ability to acquire an ownership interest in, improve, renovate, rehabilitate, or newly construct any Facility or operate any Facility for the purpose delineated in Section 3.08. In addition, it will not take any action that would be in violation of such charter or laws that would prohibit or prevent it from performing such acts.

M. As of the date of this Agreement there are no actions, suits, or proceedings pending, or to its knowledge threatened, before or by any judicial body or governmental authority, against, or affecting it that would (i) prohibit it from entering into, recording, and

delivering a Declaration, (ii) affect its ability to acquire an ownership interest in and, if applicable, improve any Real Property or operate any Real Property for the purpose delineated in Section 3.08, or (iii) if applicable, affect its ability to acquire, improve, renovate, rehabilitate, or newly construct any Facility or operate any Facility for the purpose delineated in Section 3.08.

N. As of the date of this Agreement it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would prohibit it from (i) executing, recording, and delivering a Declaration, (ii) acquiring an ownership interest in and, if applicable, improving any Real Property or operating any Real Property for the purpose delineated in Section 3.08, or (iii) acquiring an ownership interest in, improving, renovating, rehabilitating, or newly constructing any Facility or operating any Facility for the purpose delineated in Section 3.08. In addition, it will not take any action that would cause a default under any such order, writ, injunction, decree, or demand of any court or any governmental authority to occur that would prevent the performance of such acts.

O. As of the date of this Agreement, neither (i) its execution, recording, or delivery of a Declaration, (ii) its ability to acquire an ownership interest in and, if applicable, improve any Real Property or operate any Real Property for the purpose delineated in Section 3.08, or (iii) its ability to acquire an ownership interest in, improve, renovate, rehabilitate, or newly construct any Facility and operate any Facility for the purpose delineated in Section 3.08, is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is a party or by which it is bound. In addition, it will not enter into any agreement or document that would prevent the performance of such acts.

P. As of the date of this Agreement (i) its acquisition of an ownership interest in and, if applicable, improvement of any Real Property or operation of any Real Property for the purpose delineated in Section 3.08, and (ii) its acquisition of an ownership interest in, improvement, renovation, rehabilitation, or new construction of any Facility or operation of any Facility for the purpose delineated in Section 3.08 does not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record. In addition, it will not take any action that would cause such a violation.

Q. The Public Entity shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

R. It will not use the Real Property or, if applicable, Facility, or use or invest the G.O. 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 Section 148 of the Code.

**Section 3.08 Operation of any Real Property and Facility.** Any Real Property and, if applicable, Facility, shall be used by the Public Entity or the Public Entity shall cause such Real Property and, if applicable, Facility to be used for the operation of the Governmental Program, or for such other purposes and uses as the Minnesota legislature may from time to time designate, and for no other purpose. The Public Entity may enter into Use Contracts with a Counterparty to so operate any Real Property and, if applicable, Facility; provided that such Use Contracts have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Section 3.09. The Public Entity shall also annually determine that any Real Property and, if applicable, Facility are being so used and shall supply a statement, sworn to before a notary public, to such effect to both the State Entity and the Commissioner of MMB.

If the Public Entity will directly operate the Governmental Program on or in the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will, as of the time of acquisition of an ownership interest in such Real Property and, if applicable, Facility, have the ability and a plan to fund such program, (ii) it will, as of the time of acquisition of such ownership demonstrate such ability by way of a plan that it will submit to the State Entity, and (iii) it will annually adopt, by resolution, a budget for the operation of such program that clearly shows that forecast program revenues along with any other funds available for the operation of such program will be equal to or greater than forecast program expenses for the next fiscal year, and will supply to the State Entity and Commissioner of MMB certified copies of such resolution and budget.

If the Governmental Program that will be operated on or in the Real Property and, if applicable, Facility, by a Counterparty under a Use Contract, then the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for the next fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for the next fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to both the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

**Section 3.09 Use Contracts.** The Public Entity may only enter into a Use Contract if it has the statutory authority to do so. Each and every Use Contract that the Public Entity enters into must comply with the following requirements:

A. The purpose for which the Use Contract will be entered into must be to operate the Governmental Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into the Use Contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that the Use Contract is being entered into in order for the Counterparty to operate the Governmental Program and must describe such program.

D. It must be for a term, including any renewals that are solely at the option of the Counterparty, that is, if applicable, substantially less than the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, but may allow for renewals beyond the original term upon a determination by the Public Entity that the use continues to carry out the Governmental Program. A term that is equal to or shorter than 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract will meet the requirement that it be for a time period that is substantially less than the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

E. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the current fiscal year, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental Program on any Real Property and, if applicable, in any Facility will equal or exceed expenses for such operation for succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using any Real Property and, if applicable, Facility to operate the Governmental Program.

F. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

G. It must terminate upon the termination of the statutory authority under which the Public Entity entered into the Use Contract or is operating the Governmental Program.

H. It must require the Counterparty to pay all costs of operation and maintenance of any Real Property and, if applicable, any Facility that is the subject of the Use Contract, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

I. If any monies are to be paid to the Public Entity under the Use Contract, then it must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the

Commissioner of MMB as the commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

J. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the State Entity and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Public Entity's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the State Entity and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 3.08 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 3.08 and will be included in and as part of the Public Entity's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 3.08.

L. If the cumulative amount of the G.O. Grant and any other grant funded with the proceeds of state general obligation bonds, issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers, as required by Minn. Stat. § 116L.66, Subd. 1, as it may subsequently be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Contract beyond the original term thereof, and that the Public Entity may, at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the Governmental Program in the Real Property and, if applicable, Facility or contract with some other entity to operate the Governmental Program in the Real Property and, if applicable, Facility.

N. It may contain renewal options that will extend the term of the Use Contract and, at the sole option and discretion of the Public Entity, a provision that will require the Public Entity to reimburse the Counterparty for those amounts that the Counterparty contributed to the Real Property and, if applicable, Facility in the event that the Counterparty has notified the Public Entity that it wishes to renew the Use Contract and the Public Entity elects to not renew the Use Contract.

**Section 3.10 Receipt of Monies Under a Use Contract.** The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract, then a portion of such monies in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of any Real Property and, if applicable, any Facility that is the subject of the Use Contract, or to pay the principal, interest, redemption premiums, and other expenses on debt related to such Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds and debt for which the Public Entity has no financial liability, must be paid by the Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity shall pay to the Commissioner of MMB shall be determined by the Commissioner of MMB and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess amount by a fraction the numerator of which is the amount of G.O. Bonds and the denominator of which is the total principal amount of all public debt financing incurred with respect to any Real Property and, if applicable, Facility other than public debt issued by a public entity for which it has no financial liability.

**Section 3.11 Sale.** The Public Entity shall not sell any part of its ownership interest in any Real Property or, if applicable, Facility unless all of the following provisions have been complied with fully.

- A. The Public Entity determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.
- B. The sale is made as authorized by law.
- C. The sale is for Fair Market Value.
- D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Public Entity's ownership interest in any Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Public Entity's ownership interest in or betterment of such Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the Governmental Program and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in any Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 3.12.

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if

it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

**Section 3.12 Proceeds of a Sale.** Upon the sale of the Public Entity's ownership interest in any Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt associated with the Public Entity's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order:

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 3.12.A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) to reimburse the Public Entity for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the State Entity under Section 3.12.A and the holders of Approved Debt paid under this Section 3.12.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 3.12.A & B, shall be divided and distributed to the State Entity, the Public Entity, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the State Entity, the Public Entity, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the State Entity shall be made to the Commissioner of MMB, and the Public Entity may direct its distribution to be made any other entity including, but not limited to, a Counterparty.

**ALL AMOUNTS TO BE DISBURSED UNDER THIS SECTION 3.12 MUST BE CONSENTED TO, IN WRITING, BY THE COMMISSIONER OF MMB, AND NO SUCH DISBURSEMENTS SHALL BE MADE WITHOUT SUCH CONSENT.**

The Public Entity shall not be required to pay or reimburse the State Entity for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the G.O. Grant actually disbursed.

**Section 3.13 Effect of Sale.** Upon the occurrence of a sale that is made in conformance with the provisions contained in Sections 3.11 and 3.12, this Agreement shall terminate and any Real Property and, if applicable, Facility shall be released from any Declaration.

**Section 3.14 Insurance.** The Public Entity shall, upon acquisition of an ownership interest in a Facility, insure the Facility in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 3.11.

If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 3.12 as if the Public Entity's ownership interest in any Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.12 upon the ultimate sale of the Public Entity's ownership interest in any Real Property and Facility. If the Public Entity elects to sell its ownership interest in any Real Property and damaged Facility, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 3.12, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As loss payee under the insurance required herein the State Entity agrees to and will assign or pay over to the Public Entity all insurance proceeds it receives so that the Public Entity can comply with the requirements that this Section 3.14 imposes upon the Public Entity as to the use of such insurance proceeds.

If the Public Entity elects to maintain general comprehensive liability insurance regarding any Real Property and Facility, if such exists, then the Public Entity shall have the State Entity named as an additional named insured therein.

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either the State Entity or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to maintain, or cause to be maintained, the insurance required under this Section 3.14, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section 3.14, shall require the State Entity to obtain or maintain such insurance.

**Section 3.15 Condemnation.** If all or any portion of any Real Property and, if applicable, Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 3.08, then the Public Entity shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an ownership interest in additional real property needed for the Public Entity to continue to comply with the provisions contained in Section 3.08 and, if applicable, to fully or partially restore any Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in any Real Property and, if applicable, Facility in accordance with the provisions contained in Section 3.11. Any condemnation proceeds which are not used to acquire an ownership interest in additional real property or to restore, if applicable, Facility shall be applied in accordance with the provisions contained in Section 3.12 as if the Public Entity's ownership interest in any Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.12 upon the ultimate sale of the Public Entity's ownership interest in any Real Property and, if applicable, Facility. If the Public Entity elects to sell its ownership interest in the portion of any Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 3.12, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As recipient of any of condemnation awards or proceeds referred to herein, the State Entity agrees to and will disclaim, assign or pay over to the Public Entity all of such condemnation awards or proceeds it receives so that the Public Entity can comply with the requirements which this Section 3.15 imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

**Section 3.16 Use, Maintenance, Repair and Alterations.** The Public Entity shall: (i) keep any Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on any Real Property and promptly restore in like manner any portion of any Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting any Real Property and, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any lease if the Public Entity's ownership interest in any Real

Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if any Real Property and, if applicable, Facility, is part of a condominium regime.

The Public Entity shall not, without the written consent of both the State Entity and the Commissioner of MMB, (a) permit or suffer the use of any portion of any Real Property and, if applicable, Facility, for any purpose other than the Governmental Program, (b) remove, demolish or substantially alter any Real Property and, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property and, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of any Real Property and, if applicable, Facility, (d) abandon any Real Property and, if applicable, Facility, (e) commit or permit any waste or deterioration of any Real Property and, if applicable, Facility, (f) remove any fixtures or personal property from any Real Property and, if applicable, Facility, that benefited from the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon any Real Property and, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Public Entity fails to maintain any Real Property and, if applicable, Facility in accordance with the provisions contained in this Section 3.16, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain any Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon such Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain such Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section 3.16, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may be necessary to so maintain such Real Property and, if applicable, Facility; shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year.

**Section 3.17 Inspection by State Entity.** Upon reasonable request by the State Entity and without interfering with the normal use of any Facility, the Public Entity shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of any Real Property and, if applicable, Facility to allow, the State Entity to inspect any Real Property and, if applicable, Facility.

**Section 3.18 Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's future ownership interest in any Real Property and, if applicable, Facility. The term "if applicable" appearing before the term "Facility" is meant to indicate that the this

Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's ownership interest in any Real Property.

#### **Article IV - EVENTS OF DEFAULT AND REMEDIES**

**Section 4.01 Event(s) of Default.** The following events shall, unless waived in writing by both the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and 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 6 months unless otherwise consented to, in writing, by the State Entity and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the G.O. 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, term, condition, covenant, or warranty contained in this Agreement or any other document referred to herein.

C. If the Public Entity fails to comply with any provision, term, condition, covenant, or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

D. If the Public Entity fails to provide and expend the full amount of the matching funds, if any, required under Section 6.20 for the Predesign/Design Activities.

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

**Section 4.02 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 the State Entity, the State Entity or the Commissioner of MMB may enforce any or all of the following remedies:

A. The State Entity may refrain from disbursing the G.O. Grant; provided, however, the State Entity may make such a disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions contained in Sections 3.11 or 3.12, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the

Outstanding Balance of the G.O. Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions contained in Sections 3.11 or 3.12, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Public Entity pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the State Entity or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

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

If the Public Entity does not repay the amounts required to be paid under this Section 4.02 or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB 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 the State Entity and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

**Section 4.03 Notification of Event of Default.** The Public Entity shall furnish to both the State Entity and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

**Section 4.04 Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.05 and at the end of its term in accordance with the provisions contained in Section 6.27.

## **Article V - DISBURSEMENT OF GRANT PROCEEDS**

**Section 5.01 The Advances.** The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.05, the State Entity's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for items involving the Predesign/Design Activities delineated in **Attachment II**, (ii) accrued no earlier than the effective date of the G.O. Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

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 Predesign/Design Activities or the rate of disbursement of the matching funds required, if any, under Section 6.20. Therefore, the cumulative amount of all Advances disbursed by the State Entity at any point in time shall not exceed the portion of the Predesign/Design Activities that have been completed and the percentage of the matching funds required, if any, under Section 6.20 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  $\leq$  (G.O. Grant)  $\times$  (percentage of matching funds, if any, required under Section 6.20 that have been disbursed)

Formula #2

Cumulative Advances  $\leq$  (G.O. Grant)  $\times$  (percentage of Predesign/Design Activities completed)

**Section 5.02 Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the G.O. Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1<sup>st</sup> day and the 15<sup>th</sup> day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition shall be limited to amounts equal to the portion of the Predesign/Design Activities that has been completed since the submittal of the last prior Draw Requisition.

At the time of submission of each Draw Requisition the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments that are to be made out of the relevant Draw Requisition.

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

**Section 5.03 Additional Funds.** If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the G.O. Grant plus the amount of all other funds committed to the completion of the Predesign/Design Activities is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Predesign/Design Activities, then the State Entity 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 Predesign/Design Activities. 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 the State Entity's notice.

**Section 5.04 Conditions Precedent to Any Advance.** The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The State Entity 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 G.O. Grant delineated in Section 1.01.

B. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity has legal authority to and has taken all actions necessary to enter into this Agreement, and (ii) this Agreement is binding on and enforceable against the Public Entity.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the Public Entity has sufficient funds to fully and completely pay for the Predesign/Design Activities and all other expenses that may occur in conjunction therewith.

D. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with the matching funds requirements, if any, contained in Section 6.20.

E. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity is in compliance with those provisions contained in **Attachment I** attached hereto and incorporated herein by reference.

F. No determination shall have been made by the State Entity that the amount of funds committed to the completion of the Predesign/Design Activities is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Predesign/Design Activities, or if such a determination has been made and notice thereof sent to the Public Entity then the Public Entity has supplied or has caused some other entity to supply the necessary funds in accordance with Section 5.03 or has provided evidence acceptable to the State Entity that sufficient funds are available.

G. 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.

H. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

## Article VI - MISCELLANEOUS

### **Section 6.01 Changes to G.O. Compliance Legislation or the Commissioner's Order.**

In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner which reduces any requirement imposed against the Public Entity, or if the Predesign/Design Activities or any Real Property and, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Predesign/Design Activities or any Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

**Section 6.02 Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees that during the time period that any G.O. Bonds are outstanding and unpaid:

A. It will not use or invest any proceeds of the G.O. 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 Section 148 of the Code.

B. It will deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Predesign/Design Activities in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof.

D. It will, upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB 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 either: (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedures 93-19 and 97-13, or (iii) compliance with Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the G.O. Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor omit to take any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

F. In the event that the Public Entity eventually acquires an ownership interest in any Real Property and, if applicable, Facility, then it will not use such Real Property and, if applicable, Facility in such a manner as to cause the G.O. Bonds to be classified as “arbitrage bonds” under Section 148 of the Code.

**Section 6.03 Records Keeping and Reporting.** The Public Entity shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility, and the contemplated use of any Real Property and, if applicable, Facility, and compliance with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, 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 or cause the entity that is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained: (i) all of such items that relate to the Predesign/Design Activities for a period of 6 years from the date that the Predesign/Design Activities is fully completed, (ii) all of such items that relate to the Public Entity’s acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility for a period of 6 years from the date that such acquisition and completion of such improvement, renovation, rehabilitation, or new construction is fully completed, and (iii) all of such items that relate to the operation of any Real Property and, if applicable, Facility for a period of 6 years from the date such books, records, documents and other evidence are initially created.

**Section 6.04 Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. Grant, the Predesign/Design Activities, and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility, or contemplated use of any Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes, as such may be amended, modified or replaced from time to time.

**Section 6.05 Non-Discrimination.** The Public Entity agrees to not engage in discriminatory employment practices in the completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use, management or operation of any Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Minn. Stat. Chapters 363A and 181, as they may be amended, modified or replaced from time to time.

**Section 6.06 Worker's Compensation.** The Public Entity agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181, subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use, management or operation of any Facility.

**Section 6.07 Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for overcharges as to goods or services provided in its completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility, which arise under the antitrust laws of the State of Minnesota or of the United States of America.

**Section 6.08 Prevailing Wages.** The Public Entity agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time, with respect to the completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility or contemplated use, management or operation of any Real Property and, if applicable, Facility.

**Section 6.09 Liability.** The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of both the State Entity and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a "municipality" as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

**Section 6.10 Indemnification by the Public Entity.** The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, from all claims, demands and judgments made or recovered against the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages

to property of the State Entity, the State of Minnesota or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the completion of the Predesign/Design Activities and, if accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Public Entity or any Contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of MMB, and the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Public Entity, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 6.04.

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 exclusions from coverage in any insurance policy.

**Section 6.11 Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Public Entity, the State Entity, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of the State Entity, the Commissioner of MMB, or the State of Minnesota, in the performance of this Agreement, the completion of the Predesign/Design Activities, or, if and when accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility.

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement, the completion of the Predesign/Design Activities, and, if and when accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the completion of the Predesign/Design Activities, or, if and when accomplished, the acquisition of an ownership interest in and, if applicable, the improvement of any Real Property and, in addition and if applicable, the acquisition, improvement, renovation, rehabilitation, or new construction of any Facility or contemplated use of any Real Property and, if applicable, Facility, shall not have any contractual relationship with the State Entity, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged

employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the State Entity, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the State Entity, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

**Section 6.12 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 shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity at:

\_\_\_\_\_ <12>  
\_\_\_\_\_ <12>  
\_\_\_\_\_ <12> \_\_\_\_\_, MN <12>  
Attention: \_\_\_\_\_ <12>

To the State Entity at:

\_\_\_\_\_ <13>  
\_\_\_\_\_ <13>  
\_\_\_\_\_ <13> \_\_\_\_\_, MN <13>  
Attention: \_\_\_\_\_ <13>

To the Commissioner of MMB at:

Minnesota Management and Budget  
400 Centennial Office Bldg.  
658 Cedar St.  
St. Paul, MN 55155  
Attention: Commissioner of MMB

**Section 6.13 Binding Effect and Assignment or Modification.** This Agreement shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement shall be binding on either the Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

**Section 6.14 Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision

hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, 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 6.15 Entire Agreement.** This Agreement and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity on the subject matter hereof.

**Section 6.16 Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

**Section 6.17 Severability.** If any provision of this 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 6.18 Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

**Section 6.19 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

**Section 6.20 Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the completion of the Predesign/Design Activities:

(If there are no matching funds requirements then insert the word “NONE”.)

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Any matching funds which are intended to meet the above requirements 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 complete or pay for the Predesign/Design Activities. The Public Entity shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

**Section 6.21 Source and Use of Funds.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment II** is intended to be and is a source and use of funds statement showing the total cost of the Predesign/Design Activities and all of the funds that are available for the completion of the Predesign/Design Activities, and that the information contained in such **Attachment II** correctly and accurately delineates the following information.

A. The total cost of the Predesign/Design Activities detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Predesign/Design Activities broken down among the following categories:

- i. State funds including the G.O. Grant, identifying the source and amount of such funds.
- ii. Matching funds, identifying the source and amount of such funds.
- iii. Other funds supplied by the Public Entity, identifying the source and amount of such funds.
- iv. Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- v. Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Predesign/Design Activities the source of such funds and the expected use of such funds.

Previously paid expenses that are to be reimbursed and paid from proceeds of the G.O. Grant may only be included as a source of funds and included in **Attachment II** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Public Entity must provide to the State Entity and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Public Entity shall also supply whatever other information and documentation that the State Entity or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment II**.

**Section 6.22 Predesign/Design Activities Completion Schedule.** The Public Entity represents to the State Entity and the Commissioner of MMB that **Attachment III** correctly and accurately delineates the projected schedule for the completion of the Project.

**Section 6.23 Third-Party Beneficiary.** The Public Entity and the State Entity agree that the completion of the Predesign/Design Activities 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 6.24 Public Entity Tasks.** Any tasks that this 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 6.25 State Entity and Commissioner of MMB Required Acts and Approvals.** The State Entity shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

**Section 6.26 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 statute and impose a similar requirement in any Use Contract to which it is a party.

**Section 6.27 Jobs Reporting Requirements.** Pursuant to Minn. Stat. § 16A.633, Subd. 4, the Public Entity shall collect, maintain and, upon completion of the Project, provide the information indicated in **Attachment IV** of this Agreement, to the Commissioner of MMB. The information must include, but is not limited to, the following: the number and types of jobs created by the Project, whether the jobs are new or retained, where the jobs are located and the pay ranges of the jobs.

**Section 6.28 Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date of this Agreement and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Public Entity first acquires an ownership interest in the Real Property and, if applicable, Facility and puts such property into use for the operation of the Governmental Program. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

**Section 6.29 Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

(If there are no additional requirements then insert the word “NONE”.)

**American-Made Steel.** Minnesota Laws 2014, Chapter 294, Article 2, Section 22, requires public entities receiving an appropriation of public money for a project in that act to ensure those facilities are built with American-made steel, to the extent practicable. The Public Entity shall comply with this requirement, and shall furnish any documentation pursuant thereto reasonably requested by the State Entity.

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THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.)

**IN TESTIMONY HEREOF**, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Predesign or Design Grant for the \_\_\_\_  
\_\_\_\_«1»\_\_\_\_ Project on the day and date indicated immediately below their respective signatures.

**PUBLIC ENTITY:**

\_\_\_\_«3»\_\_\_\_,  
a \_\_\_\_«4»\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_«16»\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_«17»\_\_\_\_

And: \_\_\_\_\_

\_\_\_\_«18»\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_«19»\_\_\_\_

Dated: \_\_\_\_\_

**STATE ENTITY:**

\_\_\_\_«5»\_\_\_\_,

By: \_\_\_\_\_

\_\_\_\_«20»\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_«21»\_\_\_\_

Dated: \_\_\_\_\_

**Attachment I -  
DISBURSEMENT REQUIREMENTS AND SCHEDULE**

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**Attachment II -  
SOURCE AND USE OF FUNDS FOR THE PROJECT**

**Source of Funds**

**Use of Funds**

<u>Identify Source of Funds</u>	<u>Amount</u>	<u>Identify Items</u>	<u>Amount</u>
<b>State G.O. Funds</b>		<b>Items Paid for with</b>	
G.O. Grant	\$ _____	<b>G.O. Grant Funds</b>	
		_____	\$ _____
<b>Other State Funds</b>		_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	Subtotal	\$ _____
_____	\$ _____		
Subtotal	\$ _____	<b>Items Paid for with</b>	
		<b>Non- G.O. Grant Funds</b>	
<b>Matching Funds</b>		_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
Subtotal	\$ _____	Subtotal	\$ _____
<b>Other Public Entity Funds</b>			
_____	\$ _____		
_____	\$ _____		
Subtotal			
<b>Loans</b>			
_____	\$ _____		
_____	\$ _____		
Subtotal	\$ _____		
<b>Other Funds</b>			
_____	\$ _____		
_____	\$ _____		
Subtotal	\$ _____		-
<b>Prepaid Project Expenses</b>			
_____	\$ _____		
_____	\$ _____		
Subtotal	\$ _____		
<b>TOTAL FUNDS</b>	\$ _____	<b>TOTAL PREDESIGN/ DESIGN COSTS</b>	\$ _____

**Attachment III -  
PREDESIGN/DESIGN ACTIVITIES COMPLETION SCHEDULE**

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## **Attachment IV - JOBS REPORTING**

(a) Pursuant to Minn. Stat. Sec. 16A.633, subd. 4, State Entity is required to report the number of jobs created or retained by the Project. To enable State Entity to comply with Minn. Stat. Sec. 16A.633, subd. 4, the Public Entity is required to report the number of jobs created or retained by the Project to State Entity as set forth below.

(b) The Public Entity shall require all of its contractors to report the information below to the Public Entity. The Public Entity shall then report to State Entity. Information can be recorded by State Entity in an Excel document that can be downloaded into the report by Minnesota Management and Budget. Each report must contain the following:

- (1) The name of the Project.
- (2) The State Entity's contract number, if applicable.
- (3) Reporting Period. The appropriate biennium is to be selected.
- (4) The Agency Number. This will complete the next column with Agency Name.
- (5) Legal Citation for the Authorization.
- (6) Department ID responsible for the Project.
- (7) The Appropriation for the Project.
- (8) The Appropriation Amount.
- (9) Project Start Date.
- (10) Project Completion Date.
- (11) The County where the Project is located or, if it is located in more than one county, where it is primarily located.
- (12) Funding Source for Project. The selection will be Trunk Highway Bonds, General Obligation Bonds or General Fund.
- (13) Job Type. Jobs should be classified as either (i) engineering/professional, (ii) construction, or (iii) other. Manager and supervisor jobs shall be classified as category (i), (ii) or (iii) based on the nature of the work those individuals spent the majority of their time overseeing.
- (14) Hourly Wages. Jobs should be classified according to the hourly pay ranges below. Overhead or indirect costs or the value of pensions or other benefits should not be included in wages.
  - (i) less than \$10.00,
  - (ii) \$10.01 to \$15.00,
  - (iii) \$15.01 to \$20.00,
  - (iv) \$20.01 to \$25.00,
  - (v) \$25.01 to \$30.00,
  - (vi) \$30.01 to \$35.00,
  - (vii) \$35.01 to \$40.00, or
  - (viii) more than \$40.00.

(15) Jobs.

- a. Jobs should be classified as either (i) jobs created or (ii) jobs retained; they will not be counted as both. A “job created” is a new position created and filled, or an existing unfilled position that is filled, because of the Project. A “job retained” means a job at a specific wage level that existed prior to beginning the Project that would have been lost but for the Project. Only jobs in Minnesota should be counted.
- b. Jobs should be expressed in “full-time equivalents” (FTE). In calculating an FTE, the number of hours worked during the Reporting Period should be divided by 2,080 (the number of hours representing a full work schedule in a Reporting Period). Jobs should be reported regardless of when the Project or an individual’s employment began or ended. Jobs are to be calculated based on hours worked in the current Reporting Period only, so that reporting is not cumulative.
- c. Jobs should not be separated into full-time, part-time, temporary, seasonal, etc. Instead, all hours should be totaled and converted into FTEs as indicated above.

(c) Each contractor will report its workforce and the workforce of its subcontractors active during the Reporting Period. This includes employees actively engaged in the Project who work on the jobsite, in the Project office, in the home office or telecommute from home or other alternative office location. This includes, but is not limited to, any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the Project. This does not include material suppliers such as steel, culverts, guardrail and tool suppliers. Only hours that relate to time spent on the Project should be reported.

(d) The Public Entity must incorporate these reporting requirements into its contracts with its contractors (in part so that contractors can add the requirements to their contracts with subcontractors and impose deadlines on reporting by subcontractors).

(e) To distinguish the jobs reported by contractors that were funded by the Grant, the Public Entity must multiply the job numbers reported by each contractor in each category above by the percentage of total Project costs funded by the Grant (e.g., if the Grant was 40% of total Project costs, the Public Entity should multiply the jobs numbers given in each category by 40% to arrive at the number of jobs funded by the Grant) and it is those numbers that should be reported to State Entity.