

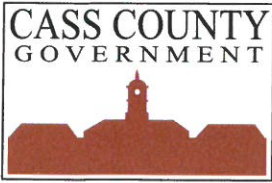
CONTRACT APPROVAL

SUGGESTED MOTION:

Move to approve the following contracts submitted by respective department head, subject to State's Attorney approval, and authorize the Chairman to sign.

Received as of March 3, 2022:

- Gladen Construction, Inc.—reinforced concrete box installation in sections 28/33 Lake Township Drain 46 on the Maple River;
- R.J. Zavoral and Sons, Inc.—grading, cement stabilization, HBP, and incidentals on Cass Highway 9 from Cass Highway 6 to Cass Highway 10 and Cass Highway 6 from Cass Highway 9 North to Cass Highway 9 South.
- Cass County Drug Task Force—Memorandum of Understanding for the Cass County Drug Task Force that includes the City of Fargo Police Department;
- Metro Flood Diversion Authority—Memorandum of Understanding between Cass County and the Metro Flood Diversion Authority for human resource related services beginning January 1, 2022, through December 31, 2026.



Highway Department

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer *pol. Jason Benson*

DATE: February 24, 2022

SUBJECT: Consent Agenda Item for March 7, 2022 Commission Meeting: TB2204 - RCB Installation

Attached are the contract documents with Gladen Construction, Inc. for TB2204 - RCB Installation in sections 28/33 Lake Twp over Drain 46 (Maple River) in Cass County.

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO SIGN PURCHASE ORDER AND CONTRACT DOCUMENTS WITH GLADEN CONSTRUCTION, INC. FOR THE RCB INSTALLATION ON THE TOWNSHIP SECTION STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

J:\Admin-Eng\Commission Corrsp\2022 Commission Correspondence\TB2204 RCB INSTALLATION\Consent Agenda Memo Gladen TB2204.doc.docx

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

Gladen Construction, Inc., 40759 US 71 N, Laporte, MN 56461

DATE OF REQUEST: February 24, 2022

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: March 7, 2022

DEPARTMENT HEAD REQUESTING SIGNATURE: ^{for:} Jason Benson, 701-298-2372 

STATE'S ATTORNEY SIGNATURE: Tracy Peters

STATE'S ATTORNEY COMMENTS: _____

Approved as to form

PORTFOLIO COMMISSIONER SIGNATURE: _____

Request for bids for TB2204 - RCB Installation in sections 28/33 Lake Twp over Drain 46 (Maple River) in Cass County was received.

<u>Engineer's Estimate</u>	<u>TB2204</u>	<u>TOTAL</u>
	\$285,702.50	\$285,702.50

The Bids were received as follows:

	<u>TB2204</u>	<u>TOTAL</u>
Gladen Construction, Inc.	\$320,784.00	\$320,784.00 ✓
Midwest Contracting LLC	\$335,072.00	\$335,072.00
Central Specialties, Inc.	\$338,757.00	\$338,757.00
Riley Bros Construction, Inc	\$352,617.00	\$352,617.00

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO SIGN PURCHASE ORDER AND CONTRACT DOCUMENTS WITH GLADEN CONSTRUCTION, INC. FOR THE RCB INSTALLATION ON THE TOWNSHIP SECTIONS STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

J:\Admin-Eng\Commission Corresp\2022 Commission Correspondence\TB2204 RCB INSTALLATION\Contract Approval Request Gladen TB2204.doc.docx

**CASS COUNTY HIGHWAY DEPARTMENT
CONTRACT**

This agreement made and entered into by Cass County, North Dakota, party of the first part, **Gladen Construction, Inc., 40759 US 71 N, Laporte, MN 56461** party of the second part (hereinafter called Contractor), WITNESSETH:

1. That for and in consideration of the payments to be made by the party of the first part, the contractor promises and agrees to furnish and deliver all labor, equipment, and materials, and to pay or cause to be paid as they become due, all claims for any work, labor, materials, equipment, including equipment rental or repair, and other supplies or insurance premiums, all of which are attributable to or utilized in and about the improvement and construction of **TB2204**. In accordance and in conformity with the provisions of this contract, the project proposal, the standard specification, supplemental specifications, special provisions, and all of which are hereby made a part of this agreement as fully and to the same effect as if the same had been set forth in the body of this agreement. References in the Standard Specifications for Road and Bridge Construction, 2020 edition, to the North Dakota Department of Transportation or Department must be construed as referring to the owner. Likewise, a reference by the same works to engineer or director must be construed as referring to the owner of the project.

2. The party of the first part agrees and promises to pay to the Contractor for said work, when completed and accepted in accordance with the provisions of this contract, the price set forth in the said proposal, amounting approximately to **Three Hundred Twenty Thousand, Seven Hundred Eighty Four Dollars and Zero Cents (\$320,784.00)** payments to be made as provided in said specifications upon presentation of the proper certificates of the County Engineer, or his representatives, and under the terms of this contract.

3. The said work shall be done in accordance with the terms of this contract, and the laws of the State of North Dakota, under direct supervision and to the entire satisfaction of the County Highway Department, subject at all times to the inspection and approval of the engineer.

4. The decision of the engineer upon questions connected with the execution of this agreement or any failure or delay in the prosecution of the work by the Contractor shall be final and conclusive.

5. In the employment of labor, other things being equal, preference shall be given to honorably discharged Veterans of the Armed Forces, and bona fide North Dakota residents, as determined by NDCC Section 43-07-20.

6. The Contractor shall begin construction work when so ordered by the Cass County Highway Department and shall maintain at all times thereon a maximum and efficient working force necessary to complete the work within the time established by this contract.

IN WITNESS THEREOF, the parties to this contract have set their hands and seal this ____ day of _____ 2022.

CASS COUNTY NORTH DAKOTA

Chairperson, Cass County Board of Commissioners

Contractor

WITNESS TO CONTRACTOR'S SIGNATURE

By _____

Title _____

CASS COUNTY HIGHWAY DEPARTMENT
CONTRACT BOND

Project Nos. TB2204

KNOW ALL PERSONS BY THESE PRESENTS, that we Gladen Construction, Inc., 40759 US 71 N, Laporte, MN 56461

as principal, and _____

NAME AND ADDRESS OF SURETY

as surety, are held and firmly bound unto Cass County, North Dakota, as owner in the penal sum of **Three Hundred Twenty Thousand, Seven Hundred Eighty Four Dollars and Zero Cents (\$320,784.00)** for the use of the owner and also for the use of any person having any lawful claim against the principal or any subcontractor on account of labor or supplies or materials as set forth in the conditions hereof; for the payment of which well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors, administrators, and successors, firmly by these presents.

WHEREAS, said principal has entered into a written contract with the owner for: _____

_____ ;
Type of Work: RCB Installation

TB2204, in Cass County, North Dakota, which contract and incorporated plans and specifications are by this reference made a part hereof, and are hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the principal shall: (1) perform all the terms, covenants and conditions of said contract; (2) protect the owner against any loss or damage from any cause arising out of said contract; (3) pay or cause to be paid all bills and claims against the principal or any subcontractor on account of labor or services performed and all materials, equipment or supplies furnished, whether directly or indirectly arising out of the performance of said contract; (4) pay all insurance premiums and all items for which payment under the terms of the contract is to be made or guaranteed by the principal; (5) have made or will make, prior to the commencement of any work by the principal or any subcontractor under such contract, full and true report to the Worker's Compensation Bureau of the payroll expenditures for the employees to be engaged in such work, and that the principal has paid, or will pay, the premium thereon prior to the commencement of such work; (6) pay or cause to be paid all contributions due to the Unemployment Compensation Division; and (7) pay or cause to be paid any and all taxes that may be assessed or levied or to be a charge against such contractor or any subcontractor under such contract by the state or any of its subdivisions; then this obligation shall be null and void; otherwise it will remain in full force and effect.

And the said surety hereby stipulates and agrees that any change, extension, alteration, deduction or addition, with or without notice to the surety, in or to the terms of said contract or the plans or the specifications accompanying the same as provided for therein, shall not in anywise affect the obligation and liability of said surety on this bond.

SIGNED and SEALED this _____ day of _____ 2022.

(SEAL OF PRINCIPAL)

PRINCIPAL

By: _____

Title: _____

SURETY

COMPLETE MAILING ADDRESS

(SEAL OF SURETY)

By: _____

Title: _____

COMPLETE MAILING ADDRESS

IMPORTANT NOTICE

An individual doing business under a firm name must give both names, and the individual shall designate himself as sole owner.

If a partnership, so state, and at least one member of such partnership must sign.

If a corporation, the full corporate name must be used and the execution must be by an officer of the corporation.

Any other person executing for the principal or surety must attach a power of attorney.

NOTICE TO SURETY

Section 26.1-03-01, N.D.C.C. Provides:

"Limitation on risks acceptable by company. An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured."

If excess reinsurance agreements are required on this bond, an affidavit executed by an officer of the surety shall be attached, stating that such reinsurance agreements have been entered into and are in effect at the time the bond is executed, giving the name an address of all companies with whom such agreements have been entered, and that copies of such reinsurance agreements will be furnished to the North Dakota commissioner of insurance.

ACKNOWLEDGMENT OF PRINCIPAL

State of _____

ss.

County of _____

On this _____ day of _____ 2022, before me a notary public in and for the state of

_____, personally appeared _____, known to me to be (title) of the principal described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said principal.

Notary Public, State of _____

(Notary Public must print or type name here.)

(NOTARY SEAL)

My Commission expires _____

ACKNOWLEDGMENT OF SURETY

State of _____

ss.

County of _____

On this _____ day of _____ 2022, before me a notary public in and for the state of _____, personally appeared _____, known to me to be (title) of the surety described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said surety.

Notary Public, State of _____

(Notary Public must print or type name here.)

(NOTARY SEAL)

My commission expires _____

Approved as to form this _____ day of _____ 2022.

Cass County States Attorney

Approved by owner this _____ day of _____ 2022.

By _____
Chairperson, Cass County Board of Commissioners



PURCHASE ORDER

PAGE: 1
 P.O. NO.: 150171
 DATE: 02/24/22

N.D. Sales Tax Exempt No. E-3009

GLADEN CONSTRUCTION, INC.
 40739 US 71
 LAPORTE, MN 56461

SHIP TO: CASS COUNTY GOVERNMENT
 COUNTY ENGINEER
 1201 WEST MAIN AVENUE
 WEST FARGO, ND 58078

VENDOR NO.		6913			
DELIVER BY	SHIP VIA	F.O.B.	TERMS		
02/24/22			NET		
CONFIRM BY		CONFIRM TO			
		HALLAND, SHARI K			
		JASON BENSON			
FREIGHT	CONTRACT NO.	ACCOUNT NO.	PROJECT		
		211-4001-431.45-50	TB2204		
			GLADEN		
			02/24/22		
REQ. NO.	REQ. DATE				
LINE NO.	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
1	320784.00	EA	RCB INSTALLATION IN 28/33 LAKE TWP	1.0000	320784.00
SUB-TOTAL					320784.00
320784.00					



AUTHORIZED BY _____ COUNTY OFFICIAL



Highway Department

Jason Benson, P.E.
County Engineer

Thomas B. Soucy, P.E.
Deputy County Engineer

Blaine Laaveg
Superintendent

MEMORANDUM

TO: Cass County Commission

FROM: Jason Benson, Cass County Engineer *FOR: [Signature]*

DATE: February 24, 2022

SUBJECT: Consent Agenda Item for March 7, 2022 Commission Meeting: CH1801 Grading, Cement Stabilization, HBP, & Incidentals

Attached are the contract documents with R.J. Zavoral and Sons, Inc. for Grading, Cement Stabilization, HBP, & Incidentals on Cass Highway 9 from Cass Highway 6 to Cass Highway 10 and Cass Highway 6 from Cass Highway 9 North to Cass Highway 9 South in Cass County.

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO SIGN PURCHASE ORDER AND CONTRACT DOCUMENTS WITH R.J. ZAVORAL AND SONS, INC. FOR THE GRADING, CEMENT STABILIZATION, HBP, & INCIDENTALS ON THE CASS COUNTY HIGHWAY STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

1201 Main Avenue West
West Fargo, North Dakota
58078-1301

701-298-2370
Fax: 701-298-2395

CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

R.J. Zavoral and Sons, Inc., PO Box 435, East Grand Forks, MN 56721

DATE OF REQUEST: February 24, 2022

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: March 7, 2022

DEPARTMENT HEAD REQUESTING SIGNATURE: ^{FOR:} Jason Benson, 701-298-2372 

STATE'S ATTORNEY SIGNATURE: Tracy Petew

STATE'S ATTORNEY COMMENTS: Approved as to form

PORTFOLIO COMMISSIONER SIGNATURE: _____

Request for bids for Grading, Cement Stabilization, HBP, & Incidentals on Cass Highway 9 from Cass Highway 6 to Cass Highway 10 and Cass Highway 6 from Cass Highway 9 North to Cass Highway 9 South in Cass County was received.

<u>Engineer's Estimate</u>	<u>CH1801</u>	<u>Total</u>
	\$5,149,343.65	\$5,149,343.65

The bids were received as follows:

<u>Contractor</u>	<u>CH1801</u>	<u>Total</u>
R.J. Zavoral and Sons, Inc.	\$5,024,696.50	\$5,024,696.50
Gladden Construction, Inc.	\$5,475,857.25	\$5,475,857.25
Central Specialties, Inc.	\$5,676,662.86	\$5,676,662.86
Border States Paving, Inc.	\$5,755,623.43	\$5,755,623.43
Knife River Materials	\$5,756,408.40	\$5,756,408.40
Mark Sand & Gravel Co.	\$6,283,241.19	\$6,283,241.19

SUGGESTED MOTION: AUTHORIZE CHAIRPERSON TO SIGN PURCHASE ORDER AND CONTRACT DOCUMENTS WITH R.J. ZAVORAL AND SONS, INC. FOR GRADING, CEMENT STABILIZATION, HBP, & INCIDENTALS ON THE CASS COUNTY HIGHWAYS STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

**CASS COUNTY HIGHWAY DEPARTMENT
CONTRACT**

This agreement made and entered into by Cass County, North Dakota, party of the first part, and **R.J. Zavoral and Sons, Inc., PO Box 435, East Grand Forks, MN 56721** party of the second part (hereinafter called Contractor), WITNESSETH:

1. That for and in consideration of the payments to be made by the party of the first part, the contractor promises and agrees to furnish and deliver all labor, equipment, and materials, and to pay or cause to be paid as they become due, all claims for any work, labor, materials, equipment, including equipment rental or repair, and other supplies or insurance premiums, all of which are attributable to or utilized in and about the improvement and construction of **Project CH1801**. In accordance and in conformity with the provisions of this contract, the project proposal, the standard specification, supplemental specifications, special provisions, and all of which are hereby made a part of this agreement as fully and to the same effect as if the same had been set forth in the body of this agreement. References in the Standard Specifications for Road and Bridge Construction, 2020 edition, to the North Dakota Department of Transportation or Department must be construed as referring to the owner. Likewise, a reference by the same works to engineer or director must be construed as referring to the owner of the project.

2. The party of the first part agrees and promises to pay to the Contractor for said work, when completed and accepted in accordance with the provisions of this contract, the price set forth in the said proposal, amounting approximately to **Five Million, Twenty Four Thousand, Six Hundred Ninety Six Dollars and Fifty Cents (\$5,024,696.50)** payments to be made as provided in said specifications upon presentation of the proper certificates of the County Engineer, or his representatives, and under the terms of this contract.

3. The said work shall be done in accordance with the terms of this contract, and the laws of the State of North Dakota, under direct supervision and to the entire satisfaction of the County Highway Department, subject at all times to the inspection and approval of the engineer.

4. The decision of the engineer upon questions connected with the execution of this agreement or any failure or delay in the prosecution of the work by the Contractor shall be final and conclusive.

5. In the employment of labor, other things being equal, preference shall be given to honorably discharged Veterans of the Armed Forces, and bona fide North Dakota residents, as determined by NDCC Section 43-07-20.

6. The Contractor shall begin construction work when so ordered by the Cass County Highway Department and shall maintain at all times thereon a maximum and efficient working force necessary to complete the work within the time established by this contract.

IN WITNESS THEREOF, the parties to this contract have set their hands and seal this ____ day of _____ 2022.

CASS COUNTY NORTH DAKOTA

Chairperson, Cass County Board of Commissioners

Contractor

WITNESS TO CONTRACTOR'S SIGNATURE

By _____

Title _____

CASS COUNTY HIGHWAY DEPARTMENT
CONTRACT BOND

Project No. CH1801

KNOW ALL PERSONS BY THESE PRESENTS, that we R.J. Zavoral and Sons, Inc., PO Box 435, East Grand Forks, MN

56721 as principal, and _____
NAME AND ADDRESS OF SURETY

as surety, are held and firmly bound unto Cass County, North Dakota, as owner in the penal sum of **Five Million, Twenty Four Thousand, Six Hundred Ninety Six Dollars and Fifty Cents (\$5,024,696.50)** for the use of the owner and also for the use of any person having any lawful claim against the principal or any subcontractor on account of labor or supplies or materials as set forth in the conditions hereof; for the payment of which well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors, administrators, and successors, firmly by these presents.

WHEREAS, said principal has entered into a written contract with the owner for: _____
_____;

Type of Work: **Grading, Cement Stabilization, HBP, & Incidentals**

CH1801, in Cass County, North Dakota, which contract and incorporated plans and specifications are by this reference made a part hereof, and are hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the principal shall: (1) perform all the terms, covenants and conditions of said contract; (2) protect the owner against any loss or damage from any cause arising out of said contract; (3) pay or cause to be paid all bills and claims against the principal or any subcontractor on account of labor or services performed and all materials, equipment or supplies furnished, whether directly or indirectly arising out of the performance of said contract; (4) pay all insurance premiums and all items for which payment under the terms of the contract is to be made or guaranteed by the principal; (5) have made or will make, prior to the commencement of any work by the principal or any subcontractor under such contract, full and true report to the Worker's Compensation Bureau of the payroll expenditures for the employees to be engaged in such work, and that the principal has paid, or will pay, the premium thereon prior to the commencement of such work; (6) pay or cause to be paid all contributions due to the Unemployment Compensation Division; and (7) pay or cause to be paid any and all taxes that may be assessed or levied or to be a charge against such contractor or any subcontractor under such contract by the state or any of its subdivisions; then this obligation shall be null and void; otherwise it will remain in full force and effect.

And the said surety hereby stipulates and agrees that any change, extension, alteration, deduction or addition, with or without notice to the surety, in or to the terms of said contract or the plans or the specifications accompanying the same as provided for therein, shall not in anywise affect the obligation and liability of said surety on this bond.

SIGNED and SEALED this _____ day of _____ 2022.

(SEAL OF PRINCIPAL)

PRINCIPAL

By: _____

Title: _____

SURETY

COMPLETE MAILING ADDRESS

(SEAL OF SURETY)

By: _____

Title: _____

COMPLETE MAILING ADDRESS

IMPORTANT NOTICE

An individual doing business under a firm name must give both names, and the individual shall designate himself as sole owner.

If a partnership, so state, and at least one member of such partnership must sign.

If a corporation, the full corporate name must be used and the execution must be by an officer of the corporation.

Any other person executing for the principal or surety must attach a power of attorney.

NOTICE TO SURETY

Section 26.1-03-01, N.D.C.C. Provides:

"Limitation on risks acceptable by company. An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured."

If excess reinsurance agreements are required on this bond, an affidavit executed by an officer of the surety shall be attached, stating that such reinsurance agreements have been entered into and are in effect at the time the bond is executed, giving the name an address of all companies with whom such agreements have been entered, and that copies of such reinsurance agreements will be furnished to the North Dakota commissioner of insurance.

ACKNOWLEDGMENT OF PRINCIPAL

State of _____

ss.

County of _____

On this _____ day of _____ 2022, before me a notary public in and for the state of

_____, personally appeared _____, known to me to be

(title) of the principal described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said principal.

Notary Public, State of _____

(Notary Public must print or type name here.)

(NOTARY SEAL)

My Commission expires _____

ACKNOWLEDGMENT OF SURETY

State of _____

ss.

County of _____

On this _____ day of _____ 2022, before me a notary public in and for the state of _____, personally appeared _____, known to me to be (title) of the surety described in the within instrument and who executed the same and acknowledged to me that the same was executed for and on behalf of said surety.

Notary Public, State of _____

(Notary Public must print or type name here.)

(NOTARY SEAL)

My commission expires _____

Approved as to form this _____ day of _____ 2022.

Cass County States Attorney

Approved by owner this _____ day of _____ 2022.

By _____
Chairperson, Cass County Board of Commissioners



www.casscountynd.gov

Office of the Sheriff

Jesse Jahner, Sheriff

March 1st, 2022

Rick Steen, Chair

Cass County Commission

211 9th St. S.

Fargo, ND 58103

Chair Steen,

I would like for the commission to review the attached Memorandum of Understanding (MOU) concerning the Cass County Drug Task Force (CCDTF). The MOU has been rewritten to include the City of Fargo Police Department. The Fargo Police Department was not part of the CCDTF in the past. However, the Fargo Police Department is now joining the task force, so the MOU has been rewritten. I have reviewed the MOU as it relates the Cass County Sheriff's Office and am satisfied with the agreement.

Suggested Motion

"Move to approve the Cass County Drug Task Force Memorandum of Understanding."

Sincerely,

Jesse Jahner

Cass County Sheriff

Cass County Sheriff
Law Enforcement Center
1612 23rd Avenue North
P.O. Box 488
Fargo, North Dakota 58107-0488
Phone: 701-241-5800
Fax: 701-241-5806

Cass County Sheriff
Courthouse
211 9th Street South
P.O. Box 488
Fargo, North Dakota 58107-0488
Phone: 701-241-5800
Fax: 701-241-5805

Cass County Jail
450 34th Street South
Fargo, North Dakota 58103
Phone: 701-271-2900
Fax: 701-271-2967

CASS COUNTY, NORTH DAKOTA
DRUG TASK FORCE MEMORANDUM OF UNDERSTANDING

ARTICLE ONE
NAME

The name of this organization shall be the Cass County Drug Task Force, hereinafter referred to as the "CCDTF". The CCDTF is comprised of law enforcement officers from the Cass County Sheriff's Office (CCSO), the Fargo Police Department (FPD), the West Fargo Police Department (WFPD), the North Dakota Bureau of Criminal Investigation (NDBCI), and the Cass County State's Attorney Office (CCSA).

ARTICLE TWO
NOT A SEPARATE POLITICAL SUBDIVISION

This Memorandum of Understanding does not create a joint venture, partnership, or a separate political subdivision.

ARTICLE THREE
PURPOSE

- A. The purpose of this organization shall be:
1. To identify, investigate, and prosecute those individuals who engage or conspire to engage in the criminal possession, production, transfer, or finance of any illegal drug or controlled substance.
 2. To formally structure and jointly coordinate multi-jurisdictional drug investigation activities. All participating agencies will share in the contribution of finances, equipment, personnel, and technical resources necessary for effective investigative operation and prosecution of criminal drug cases.
 3. To promote a unified drug enforcement effort between county, state, municipal, and federal law enforcement agencies to maximize the quality and the quantity of cases presented for prosecution.
 4. To use financial investigative techniques, including tax law enforcement and forfeiture action, in order to identify and convict drug traffickers, and to enable the CCDTF to seize assets and profits derived from unlawful activities.

The CCDTF is organized and operated exclusively for the aforementioned purposes.

ARTICLE FOUR OPERATIONS

- A. Executive Board: An Executive Board will govern the affairs of the CCDTF. The Executive Board shall be comprised of the Cass County Sheriff, the Fargo Police Department Chief of Police, the West Fargo Police Department Chief of Police, the Cass County State's Attorney, and the Director of the North Dakota Bureau of Criminal Investigation. These agencies will be referred to as the "Parent Agencies" for the purpose of this Memorandum of Understanding.

In the event that a member of the Executive Board is unable to attend an Executive Board meeting, a representative will attend in their absence, with full voting privileges.

- B. CCDTF Coordinator: The CCDTF Executive Board will appoint one (1) member of the CCDTF as CCDTF Coordinator. The CCDTF coordinator shall possess a working knowledge of drug and financial investigations, asset forfeiture rules and regulations, and have skills in supervision, management, and statistical crime analysis.
- C. CCDTF Supervisors: The Parent Agencies may assign a supervisor to the CCDTF to assist the CCDTF Coordinator with overall supervisory duties of the CCDTF members, in addition to other roles within their own agencies. Assigned supervisors shall be responsible for any disciplinary actions of their agency members and shall assist with the duties of the CCDTF Coordinator per their request.
- D. Site Location: The CCDTF Coordinator and CCDTF Supervisors, with the approval of the Executive Board, shall determine the location of the CCDTF office.
- E. Structural Command: The Executive Board shall establish supervisory authority over the CCDTF Coordinator, and CCDTF Supervisors assigned to members of the CCDTF with their respective agencies. The CCDTF Coordinator and CCDTF Supervisors will be responsible for the daily operations of the CCDTF and exercise operational authority over CCDTF team members. The CCDTF Coordinator shall establish CCDTF operating procedures, standards, and guidelines which shall be enforceable to all CCDTF members.

The participating agencies will maintain supervisors at the rank of Sergeant, or another law enforcement officer from their agency, that will supervise their respective agency's team members on the CCDTF. These Sergeants will assist the CCDTF Coordinator with supervisory duties of the CCDTF. It is understood these positions will also have responsibilities within their respective departments that fall outside the scope of the CCDTF purpose. These Sergeants will also continue to fall within their parent agency's chain of command.

- F. Case Initiation: The initiation of cases shall be at the discretion of the CCDTF Coordinator or the CCDTF Supervisors. Areas of discretion in the determination of priorities will include, but not be limited to: the extent of the criminal enterprise, the impact on the community, current caseload, available personnel and/or equipment, and material investigative information.
- G. Personnel/Equipment: Parent agencies shall meet minimum CCDTF staffing requirements as established by the Executive Board. CCDTF personnel may be recalled by their Parent Agency to meet the Parent Agency's operational requirements. CCDTF personnel shall be approved for appointment to or removal from the CCDTF upon consensus of the Executive Board. Each law enforcement agency shall also provide a vehicle for each officer assigned, which is equipped with the necessary equipment and items to conduct drug investigations. The Cass County State's Attorney's office shall supply personnel in sufficient numbers to aid CCDTF personnel in the prosecution of persons committing drug related crimes and the forfeiture of assets obtained through criminal acts.
- H. Operating Standards: All matters governing the operating procedures, standards and guidelines will be designed to balance the rights of citizens and the needs of law enforcement to detect, arrest, and prosecute those persons engaged in drug related criminal activity. All personnel of the CCDTF will be governed by their Parent Agency's policies and procedures.
- I. Disciplinary Action: An officer assigned to the CCDTF who violates their Parent Agency policy; CCDTF procedures, standards, or guidelines; or generally accepted police practices, shall be referred to that officer's Parent Agency for disciplinary action.

**ARTICLE FIVE
MEETINGS OF THE CCDTF**

- A. Regular Meetings. The CCDTF shall meet on a regular basis each and every month that this Memorandum of Understanding is in effect, and a schedule of regular meetings, which may include multiple regular meetings each month, shall be adopted by the Executive Board and thereafter each and every year.
- B. Special Meetings. Special meetings of the CCDTF may be called by the Executive Board upon written request of any of the Parent Agencies, who must identify the business matters to be discussed at such special meeting. Business at a special meeting is limited to matters contained in the notice of the special meeting.
- C. Emergency Meetings. In accordance with applicable law, an emergency meeting may be called by the Executive Board due to circumstances that in the judgment of the Executive Board require immediate consideration.

- D. Executive Sessions. The Executive Board may hold an executive session to consider or discuss confidential records or other matters as authorized by Chapter 44-04 of the North Dakota Century Code. CCDTF officers may be excluded from an executive session in the event that the Parent Agency from which they are appointed is an adverse party to the CCDTF in ongoing or pending litigation, which is the subject of the executive session and/or the CCDTF officer has disclosed a conflict of interest that is related to or related to the subject of the executive session.
- E. Open Records Laws. The CCDTF shall comply with the North Dakota Open Records Law in regard to all data collected, created, received, maintained, or disseminated.
- F. Open Records Request. Public record requests shall be submitted to the Executive Board. The Executive Board shall direct all public record requests to the appropriate Parent Agency which shall be handled in accordance with North Dakota law and the standard process established by the Parent Agency.

**ARTICLE SIX
FISCAL PROCEDURE**

- A. Fiscal Officer: The Fiscal Officer shall be appointed by the Executive Board and shall be responsible for requesting reimbursement funds from the State of North Dakota. This shall be done on a quarterly basis. The Fiscal Officer will be a member of the implementing agency. The implementing agency is defined as the political subdivision that is responsible for the receiving, expending, and reporting of the grant project.
- B. Payroll: All personnel assigned to the CCDTF shall be paid by their Parent Agencies.
- C. Overtime Compensation: It shall be the responsibility of the CCDTF Coordinator to assist the Parent Agency in monitoring work hours completed by the CCDTF officers. CCDTF officers shall submit time sheets and/or a daily activity log to the Parent Agency. The CCDTF Coordinator, or a respective CCDTF Supervisor, shall be notified by a CCDTF officer prior to overtime hours being worked. Overtime compensation shall be approved by the Parent Agency.
- D. Expenditure of Funds: The implementing agency shall be responsible for the control and expending of the CCDTF budget. The implementing agency will appoint the Fiscal Officer for the grant project.

**ARTICLE SEVEN
ASSET FORFEITURE**

During the course of an investigation the CCDTF shall identify assets to determine eligibility for seizure and forfeiture proceedings. The use of both civil and criminal forfeiture statutes will be explored in every circumstance.

- A. Any and all assets seized by and forfeited to the CCDTF will be placed in the CCDTF Asset Forfeiture Account. The County of Cass through the Sheriff's Office and the Cass County Finance Director will maintain an accounting of this account.
- B. Circumstances may arise whereby an investigation is conducted as the result of information and/or participation by an agency that is not a member of the CCDTF. If this situation occurs, the Executive Board maintains the right to review the information and determine the percentage of the forfeited assets the non-member agency shall receive. This agreement makes the 2003 Asset Forfeiture Memorandum of Agreement null and void.
- C. Any state assets forfeited to the CCDTF shall be distributed to the parent agencies of the CCDTF according to the recommendations of the CCDTF Executive Board. These funds may also be held and used to finance the operations of the CCDTF at the discretion of the Executive Board.
- D. Any requests for seized federal assets, on behalf of the CCDTF, will be reviewed by the Executive Board to include the agencies requesting the seized assets and the percentage of seized asset being requested per requesting agency. Any federal assets forfeited will be distributed to the parent agency as per the seizure request. Each Parent Agency will be responsible for annual federal reporting, if required.
- E. In the event the CCDTF is dissolved any forfeited assets and equipment, or equipment purchased with forfeited assets, shall be distributed equally between the Parent Agencies. Equipment may be sold, and the proceeds divided equally between the Parent Agencies.

**ARTICLE EIGHT
PARTICIPATION AND TERMINATION**

Each agency participating in the CCDTF shall be obligated to participate. Each grant project is one (1) year. If an agency wishes to terminate their participation in the CCDTF, prior to the end of the grant project period, that agency must give written notice to the Executive Board thirty (30) days prior to terminating their participation. At the end of the grant project period, any Parent Agency may terminate their participation by submitting a written notice to the Executive Board.

**ARTICLE NINE
LIABILITY**

Each Parent Agency agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this Memorandum of Understanding.

**ARTICLE TEN
INSURANCE**

The political subdivision Parent Agencies shall maintain liability coverage with the North Dakota Insurance Reserve Fund with a minimum limit equal to the maximum liability limit in N.D.C.C. § 32-12.1-03. The North Dakota Attorney General Bureau of Criminal Investigation's liability shall be determined in accordance with N.D.C.C. chapter 32-12.2 and is subject to the conditions and limitations contained therein. Under no circumstances shall a party be required to pay on behalf of itself and other participating parties, any amounts in excess of the limits on liability established in North Dakota Century Code Chapters 32-12.1 and 32-12.2, applicable to any one (1) party. The limits of liability for some or all of the other Parent Agencies may not be added together to determine the maximum amount of liability for each Parent Agency.

**ARTICLE ELEVEN
AMENDMENTS**

The Executive Board may amend any article of this Memorandum of Understanding by a two-thirds (2/3) vote of the members of the Executive Board.

**ARTICLE TWELVE
MISCELLANEOUS**

- A. Notice. All notices required under this Memorandum of Understanding will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to CCSO: Cass County Sheriff's Office
 Attn: Cass County Sheriff
 1612 23rd Ave. N.
 Fargo, ND 58102

If to FPD: Fargo Police Department
 Attn: Chief of Police
 105 25th St. N.
 Fargo, ND 58102

If to WFPD: West Fargo Police Department
Attn: Chief of Police
800 4th Ave E #2
West Fargo, ND 58078

If to NDBCI: North Dakota Bureau of Criminal Investigation
Attn: Director
1720 Burlington Drive
Bismarck ND 58504

If to CCSA: Cass County State's Attorney
Attn: State's Attorney
211 9th St. S.
Fargo, ND 58103

- B. Governing Law. This Memorandum of Understanding shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Memorandum of Understanding must be brought in an appropriate venue in the State of North Dakota.
- C. Entire Agreement. This Memorandum of Understanding contains the entire understanding of the participating parties.
- D. Binding Effect. This Memorandum of Understanding will inure to the benefit of and will be binding upon the participating parties, and their respective successors and assigns.
- E. Severability. If any court of competent jurisdiction finds any provision of this Memorandum of Understanding is invalid, illegal, or unenforceable, that portion will be deemed severed from this Memorandum of Understanding, and all remaining terms and provisions of this Memorandum of Understanding will remain binding and enforceable. The participating parties, however, agree that this Memorandum of Understanding will be reformed to replace any invalid, illegal, or unenforceable provision or portion of this Memorandum of Understanding with an alternative provision that is enforceable and bears as close a resemblance as possible to any provision determined to be invalid, illegal, or unenforceable.
- F. Cooperation. The participating parties agree to cooperate fully, to execute any and all additional documents, and to take any and all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Memorandum of Understanding and to accomplish the purposes of this Memorandum of Understanding.

G. Electronic Signatures. The participating parties acknowledge and agree that this Memorandum of Understanding may be executed by electronic signature, which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.

(Signatures appear on the following pages.)

MEMORANDUM OF UNDERSTANDING FOR THE CCDTF

We, the undersigned, do hereby agree to the conditions set forth in this Memorandum of Understanding.

Jesse Jahner
Sheriff, Cass County

Date

David Zibolski
Chief, Fargo Police Department

Date

Denis Otterness
Chief, West Fargo Police Department

Date

Lonnie Grabowska
Director, North Dakota Bureau of Criminal Investigation

Date

Birch Burdick
State's Attorney, Cass County

Date

MEMORANDUM OF UNDERSTANDING
BETWEEN CASS COUNTY AND METRO FLOOD DIVERSION AUTHORITY

SUGGESTED MOTION:

Move to approve a Memorandum of Understanding between Cass County and the Metro Flood Diversion Authority for human resource related services beginning January 1, 2022, through December 31, 2026.

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

CASS COUNTY, NORTH DAKOTA

AND

THE METRO FLOOD DIVERSION AUTHORITY

Dated as of January 1, 2022

Relating to:

An agreement outlining the relationship and responsibilities of Cass County and the Metro Flood Diversion Authority with regard to human resource related services.

This instrument was drafted by:
Ohnstad Twichell, P.C. (JTS)
P.O. Box 458
West Fargo, North Dakota 58078

TABLE OF CONTENTS

ARTICLE I. DEFINITIONS	1
SECTION 1.01 DEFINITIONS	1
SECTION 1.02 INTERPRETATION	3
ARTICLE II. INTENT	3
SECTION 2.01 INTENT	3
ARTICLE III. RIGHTS, DUTIES, AND OBLIGATIONS OF THE COUNTY	3
SECTION 3.01 RIGHTS, DUTIES, AND OBLIGATIONS OF THE COUNTY	3
ARTICLE IV. RIGHTS, DUTIES, AND OBLIGATIONS OF THE AUTHORITY	4
SECTION 4.01 RIGHTS, DUTIES, AND OBLIGATIONS OF THE AUTHORITY	4
ARTICLE V. TERM AND TERMINATION	5
SECTION 5.01 TERM	5
SECTION 5.02 TERMINATION	5
SECTION 5.03 NOTICE	5
ARTICLE VI. DISPUTE RESOLUTION	5
SECTION 6.01 INTENT AND PROCEDURE	5
SECTION 6.02 MEDIATION	6
SECTION 6.03 LITIGATION	6
SECTION 6.04 VENUE	6
SECTION 6.05 WAIVER OF JURY TRIAL	6
ARTICLE VII. MISCELLANEOUS	6
SECTION 7.01 ASSIGNMENT	6
SECTION 7.02 MODIFICATION	6
SECTION 7.03 GOVERNING LAW	6
SECTION 7.04 SEVERABILITY	6
SECTION 7.05 WAIVER	7
SECTION 7.06 ACKNOWLEDGMENT	7
SECTION 7.07 THIRD PARTY BENEFICIARIES	7
SECTION 7.08 ENTIRE AGREEMENT	7
SECTION 7.09 SURVIVAL	7
SECTION 7.10 FORCE MAJEURE	7
SECTION 7.11 COUNTERPARTS; ELECTRONIC SIGNATURES	7
SIGNATURE PAGES	S-1 THROUGH S-2
EXHIBIT A – CASS COUNTY EMPLOYEE HANDBOOK	

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “Agreement”) is effective as of the 1st day of January, 2022 (the “Effective Date”), by and between Cass County, North Dakota, a North Dakota Home Rule County and political subdivision of the State of North Dakota (the “County”) and the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota (the “Authority”) (collectively referred to as the “Parties”).

WHEREAS, under the terms of the Joint Powers Agreement dated June 11, 2016, (the “JPA”), the Authority may enter contracts and employ personnel related to the Fargo-Moorhead Area Diversion Project (the “Project”); and

WHEREAS, under the terms of the JPA, the Authority employed an Executive Director to function as the chief administrative officer of the Authority on September 1, 2019; and

WHEREAS, on August 22, 2019, the County and the Authority entered into an Interim Memorandum of Understanding whereby the County’s human resource department provided human resource services related to payroll and benefits to the Authority’s Executive Director and future employees at no cost to the Authority; and

WHEREAS, the Interim Memorandum of Understanding expired on December 31, 2019, and the County and the Authority entered into a more complete agreement regarding the provisions of personnel services; and

WHEREAS, under the terms of the subsequent agreement, the County’s human resource department provided human resource services related to payroll and benefits to the Authority’s Executive Director and employees at no cost to the Authority, beginning January 1, 2020, through December 31, 2021; and

WHEREAS, the Parties desire to lengthen the term and continue the relationship by memorializing the terms, rights, and responsibilities in writing under this new Agreement, which supersedes all previous agreements between the parties related to this matter.

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 DEFINITIONS. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Agreement and as defined in this Section unless a different meaning clearly applies from the context.

“Agreement” means this Memorandum of Understanding dated January 1, 2022.

“Applicable Law” means, collectively, the Constitutions of the United States and the State, all common law and principles of equity, and all federal, State, and local laws including, without limitation, all environmental laws, statutes, treaties, codes, acts, rules, regulations,

guidelines, ordinances, resolutions, orders, judgments, decrees, injunctions, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental authority charged with the enforcement, interpretation, or administration thereof, all governmental approvals, and all administrative orders, awards, directed duties, requests, licenses, certificates, authorizations and permits of, and agreements with, any governmental authority, and, with respect to any person, the articles of incorporation, bylaws, or other organizational or governing documents of such person, in each case whether or not having the force of law, that are applicable now or are applicable at any time hereafter to the Authority or the County.

“Authority” means the Metro Flood Diversion Authority, a political subdivision of the State of North Dakota and a permanent, joint powers entity formed through the Joint Powers Agreement to provide the Fargo-Moorhead metropolitan area with permanent and comprehensive flood protection.

“Best Efforts” means an entity will act in Good Faith, act in accordance with generally accepted commercial practices, and use reasonable due diligence to undertake all action contemplated by this Agreement, in accordance with Applicable Law.

“County” means Cass County, North Dakota, a North Dakota Home Rule County and political subdivision of the State of North Dakota.

“Effective Date” means January 1, 2022.

“Employee Handbook” means the Cass County Employee Handbook which describes workplace policies and employee guidelines for Cass County Employees.

“Executive Director” means the person hired by the Authority pursuant to an Employment Agreement dated September 1, 2019, to serve as the Executive Director of the Authority pursuant to the terms and conditions of the Joint Powers Agreement.

“Good Faith” means the observance of reasonable commercial standards of fair dealing in a given trade or business.

“Joint Powers Agreement” means the agreement entered into by and between the City of Moorhead, the City of Fargo, Clay County, Cass County, and the Cass County Joint Water Resource District, dated as of June 1, 2016, to create the Authority.

“Metro Flood Diversion Authority” or **“Authority”** means the political subdivision created by the Joint Powers Agreement consisting of the communities of Fargo, North Dakota and Moorhead, Minnesota, along with Cass County, North Dakota, Clay County, Minnesota, and the Cass County Joint Water Resources District.

“Party” means either the Authority or the County, as the context may require, and their respective legal representatives, successors, and permitted assigns, and wherever a reference in this Agreement is made to any Parties hereto, **“Parties”** means the Authority and the County, collectively, and their respective legal representatives, successors, and permitted assigns.

“Project” means the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-

Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the US Army Corps of Engineers, District Engineer, St. Paul District on September 19, 2013, the Final Supplemental Environmental Assessment #2, Fargo Moorhead Metropolitan Area Flood Risk Management Project, dated February 2019 and approved by the District Engineer, St. Paul District on February 28, 2019, and as amended by the Governors' Task Force and applicable permit requirements.

Section 1.02 INTERPRETATION. The headings of Articles and Sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. Any and all exhibits to this Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (b) any reference herein to any person shall be construed to include such person's permitted assigns, (c) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement, and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights.

ARTICLE II. INTENT

Section 2.01 INTENT. The Authority has hired and may hire a small number of additional staff in the future. Given the County's large human resource department and the small number of employees hired and to be hired by the Authority in the future, the County offered to provide human resource services related to benefits and payroll services to Authority employees. The County's human resource department will provide human resource services related to payroll and benefits to the Authority's Executive Director and employees at no cost to the Authority, beginning January 1, 2022, through December 31, 2026.

ARTICLE III. RIGHTS, DUTIES, AND OBLIGATIONS OF THE COUNTY

Section 3.01 RIGHTS, DUTIES, AND OBLIGATIONS OF THE COUNTY. It is hereby acknowledged and agreed upon between the Parties that the County will:

1. Provide human resource services related to payroll to the Executive Director and any employee hired by the Authority. The County shall administer payroll to the

Executive Director and any employee hired by the Authority in accordance with the provisions and guidelines set forth in the Cass County Employee Handbook (“Employee Handbook”), “Timekeeping/Payroll” Sections 401-406 as may be amended from time to time, attached as **Exhibit A**;

2. Provide retirement and health benefits to the Executive Director and any employees of the Authority through the County’s sponsored plans, in compliance with applicable federal and state laws, and subject to eligibility requirements. The County shall provide benefit services in accordance with “Employee Benefits” Section 301 as may be amended from time to time, of the the Employee Handbook;
3. Conduct individual meetings with the Executive Director and any employees hired by the Authority to address any questions, suggestions, or concerns in relation to County human resource policies;
4. Provide the Executive Director and any employee hired by the Authority with sections of the Employee Handbook referenced above. The County agrees that it will ensure these sections of the Employee Handbook are timely updated, as necessary, due to changes in federal and state law, or as might otherwise be deemed appropriate by the County;
5. Make Best Efforts and work cooperatively in Good Faith with the Executive Director, employees, contractors, consultants, and staff of the Authority;
6. Invoice the Authority for any and all employment related costs associated with the Executive Director or and other Authority employees, including salary, benefits and reimbursements provided in accordance with the Executive Director’s Employment Agreement and in accordance with the salary and benefits schedule established by the Authority for other Authority employees at the end of each month;
7. Recognize the Authority’s exclusive right to direct and control the day-to-day activity of the Executive Director and future employees hired by the Authority as is necessary to conduct business related to the construction of the Project;
8. Recognize the Authority’s exclusive right to hire, discipline, and terminate the Executive Director and any employee hired by the Authority as may be necessary to fulfill the Authority’s responsibilities; and
9. Provide the services to the Authority, at no cost.

**ARTICLE IV.
RIGHTS, DUTIES, AND OBLIGATIONS OF THE AUTHORITY**

Section 4.01 RIGHTS, DUTIES, AND OBLIGATIONS OF THE AUTHORITY. It is hereby acknowledged and agreed upon between the Parties that the Authority will:

1. Retain the exclusive right to direct and control the day-to-day activity of the Executive Director and employees hired by the Authority as is necessary to conduct business related to the construction of the Project;

2. Retain the exclusive right to hire, discipline, and terminate the Executive Director and any employee hired by the Authority as may be necessary to fulfill the Authority’s responsibilities;
3. Report to the County any Authority employees hired, promoted, or terminated;
4. Provide any other pertinent information requested by the County’s human resource department in a timely manner; and
5. Promptly pay all County invoices for any and all Authority employment-related costs as prepared by the County in accordance with Section 3.01(6) of this Agreement.

**ARTICLE V.
TERM AND TERMINATION**

Section 5.01 TERM. The term of this Agreement shall commence on the Effective Date and shall remain in effect for five (5) years until termination on December 31, 2026 (the “Initial Term”). After the Initial Term, the parties may enter into a new or amended agreement.

Section 5.02 TERMINATION. In addition to the provisions of Section 5.01, this Agreement may terminate for any of the following reasons:

1. Either Party may terminate this Agreement without termination fee, penalty, or liquidated damages if the other Party commits a breach of any material obligation under this Agreement; provided that if a Party shall by any act or omission, be in breach of any material obligation under this Agreement and such breach shall continue for a period of fourteen (14) days after written notice thereof has been given by the Party to the offending Party, the Party shall have the right to terminate this Agreement with immediate effect by notice to the offending Party.
2. The Parties may mutually agree in writing to terminate this Agreement, at any time, without termination fee, penalty, or liquidated damages.

Section 5.03 NOTICE. Written notice shall be addressed to the following addresses:

Authority: Chair
 Metro Flood Diversion Authority Board
 207 4th St. N, Suite A
 Fargo, ND 58102

County: Cass County Finance Director
 P.O. Box 2806
 Fargo, ND 58108-2806

**ARTICLE VI.
DISPUTE RESOLUTION**

Section 6.01 INTENT AND PROCEDURE. The Parties will cooperate and use their Best Efforts to ensure that the various provisions of this Agreement are fulfilled. The Parties agree to act in Good Faith to undertake resolution of disputes in an equitable and timely manner and in

accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the Parties will use the following procedure.

Section 6.02 MEDIATION. If there is a failure between the Parties to resolve a dispute on their own, the Parties will first attempt to mediate the dispute. The Parties will agree upon a single mediator or, if an agreement cannot be reached within ten (10) calendar days, each Party will propose two (2) potential individuals to serve as mediator, for a total of four (4) individuals. The Parties will then select a mediator by alternatively striking the names of the proposed individuals, with the County striking first, followed by the Authority.

Section 6.03 LITIGATION. If the dispute is not resolved within forty-five (45) calendar days after the selection of the mediator pursuant to the prior Section, the Parties may litigate the matter.

Section 6.04 VENUE. All litigation between the Parties arising out of or pertaining to this Agreement or its breach will be filed, heard, and decided in the District Court of Cass County, North Dakota, which will have exclusive jurisdiction and venue.

Section 6.05 WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED UPON THIS AGREEMENT, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES AND DOES NOT APPLY TO THIRD PARTY CLAIMS OR SUITS.

ARTICLE VII. MISCELLANEOUS

Section 7.01 ASSIGNMENT. Neither Party may assign this Agreement without the prior written consent of the other Party. The Parties' rights and obligations under this Agreement will be passed to the assignees to which those rights and obligations have been permissibly assigned.

Section 7.02 MODIFICATION. This Agreement may be amended or modified only by mutual consent of both Parties, unless otherwise provided for herein.

Section 7.03 GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of North Dakota.

Section 7.04 SEVERABILITY. In case any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

Section 7.05 WAIVER. No waiver of any Party of any right or remedy pursuant to this Agreement will be deemed to be a waiver of any other or subsequent right or remedy pursuant to this Agreement. The consent of one Party to any act by the other Party requiring such consent will not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Section 7.06 ACKNOWLEDGMENT. Each of the Parties affirm and acknowledge that it has fully read and appreciates, and understands the words, terms, conditions, and provisions of this Agreement and is fully satisfied with the same. Each Party affirms and acknowledges that it has been, or had the opportunity to be represented by legal counsel of its choice.

Section 7.07 THIRD PARTY BENEFICIARIES. This Agreement was created for the benefit of the Executive Director and/or any employees hired by the Authority as third party beneficiaries.

Section 7.08 ENTIRE AGREEMENT. This Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof and supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to their subject matter, except as otherwise provided herein.

Section 7.09 SURVIVAL. The indemnifications, limitations, releases, obligations, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement will survive the expiration or earlier termination of this Agreement.

Section 7.10 FORCE MAJEURE. Neither Party will be liable to the other during any period in which its performance is delayed or prevented, in whole or in part, by any of the following circumstances including, but are not limited to: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party claiming the delay must undertake reasonable action to notify the other Party of the same.

Section 7.11 COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page was an original thereof.

IN WITNESS WHEREOF, the Parties caused this Agreement to be executed.

(Remainder of page intentionally left blank)

Signature Page for Cass County

The Governing Body of Cass County, North Dakota approved this Agreement on the 7th of March, 2022.

Cass County, North Dakota
Board of Commissioners

By: _____
Chad Peterson, Vice Chair

ATTEST:

Brandy Madrigga, County Finance Director

Signature Page for the Metro Flood Diversion Authority

The Governing Body of the Metro Flood Diversion Authority approved this Agreement on the _____ of _____, 2022.

Metro Flood Diversion Authority

By: _____
Chad Peterson, Chair

ATTEST:

Dawn Lindblom, Secretary

EXHIBIT A
CASS COUNTY EMPLOYEE HANDBOOK

[See Following Pages]