



**MEMORANDUM**

**Highway  
Department**

Jason Benson, P.E.  
County Engineer

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

Blaine Laaveg  
Superintendent

TO: Cass County Commission

FROM: Jason Benson, County Engineer *JJB*

DATE: July 11, 2022

SUBJECT: Agenda topic for July 18, 2022, Commission Meeting: NDSWC Cost-Share Agreement for Cass County Hwy Dept Wild Rice River Bank Stabilization along Cass County Hwy 81

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Attached is the North Dakota State Water Commission Cost-Share Agreement for Cass County Hwy Dept Wild Rice River Bank Stabilization along Cass County Hwy 81

This slide is located on the west of Cass Hwy 81 approximately 300 feet south of 88<sup>th</sup> Ave S along the Wild Rice River. Cass County hired Braun Intertec Corporation to complete Geotech Evaluation Report of this slide area a couple of years ago. An inclinometer was installed which measures the movement and depth of the slide. In the past two years movement has been relatively slow. Unfortunately, this April a significant slide occurred destroying the inclinometers and initiating a repair project that will need to be completed by the fall of 2022.

This slide is directly threatening the west side of Cass 81 along with several utilities parallel the west shoulder between Cass Hwy 81 in the slide area. Century Link has two lines; the first is 2' and the second is 7' from the slide. A force main sewer line that connects the City of Oxbow to the City of Fargo is located 12' from the slide. Cass Rural Water is the furthest away at 17' to the failure location. The shoulder of Cass Highway 81 is 39' from the Slide.

In April 2022, this project was brought to the Cass County Flood Sales Tax Committee for approval of an estimated project of \$1.5 million for Geotech, Design and Construction is the project scope. The Flood Sale Tax Committee requested the Cass County Highway Department seek additional funding from other sources prior to deciding on dedicating any funding. Staff then submitted funding requests to the ND State Water Commission. At the June 7<sup>th</sup>, 2022 State Water Commission meeting, a total of \$732,950 in state funding was approved for this Cass 81 slide project.

Due to the sanitary sewer force main concerns, the City of Fargo indicated they would be able to cost share with the project. Details for this cost share

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West Fargo, North Dakota  
58078-1301

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

agreement are still being worked out based on the recent funding approval by the State Water Commission.

Besides this agreement, future approvals will be brought to the Cass County Commission for this emergency repair project, to include cost share agreements with the City of Fargo, contract agreements for the construction work needed for this repair, and a budget adjustment for this work. This project is expected to be bid in late August and brought to the Cass County Commission for contract approval in September with a construction completion date of November 2022.

Two Preliminary Options have been developed to date. Option 1 – Grading and Rip Rap \$841,920 and Option 2 – Structural Steel Wall \$2,876,004.

The grading option appears to be the best option for repair pending final design and permitting.

**SUGGESTED MOTION: Authorize Chairperson to sign North Dakota State Water Commission Cost-Share Agreement for Cass County Highway Department Wild Rice Riverbank Stabilization along Cass County Highway 81 Subject to State's Attorneys Approval.**

# CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

**North Dakota State Water Commission, 900 East Boulevard, Bismarck, ND 58505**

DATE OF REQUEST: July 11, 2022

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: July 18, 2022

DEPARTMENT HEAD REQUESTING SIGNATURE: **Jason Benson, 701-298-2372**

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_

STATE'S ATTORNEY COMMENTS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PORTFOLIO COMMISSIONER SIGNATURE: \_\_\_\_\_

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J:\Admin-Eng\Commission Corresp\2022 Commission Correspondence\C81 Slide Area\Contract Approval Request NDSWC - Cass 81-88th Ave Slide 071122.docx

CR 81 Bank Stabilization Options  
Preliminary Opinion of Probable Costs  
6/7/2022  
6006-0149

Option 1 (Grading Option)

Bid Item	Unit	Unit Price	Quantity	Total
Clearing and Grubbing	LSUM	\$30,000.00	1	\$30,000.00
Common Excavation	CY	\$18.00	1200	\$21,600.00
Common Excavation - Waste	CY	\$25.00	6500	\$162,500.00
Riprap	CY	\$125.00	3820	\$477,500.00
Mobilization	LSUM	\$10,000.00	1	\$10,000.00
				Sub-Total
				\$701,600.00
				Contingencies (20%)
				\$140,320.00
				Total
				\$841,920.00

Notes: Excludes Utility Relocation

Option 2 (Structural Option)


Bid Item	Unit	Unit Price	Quantity	Total
King Pile/Sheet Pile Wall System Materials	LSUM	\$2,066,670.00	1	\$2,066,670.00
Structural System Installation	LSUM	\$300,000.00	1	\$300,000.00
Mobilization	LSUM	\$30,000.00	1	\$30,000.00
				Sub-Total
				\$2,396,670.00
				Contingencies (20%)
				\$479,334.00
				Total
				\$2,876,004.00

Notes: No Utility Relocation required



Commission Date : 6/7/22  
 Commission Action : Approved (cfitzgerald)  
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 Approved at 50 percent eligible costs ont to exceed \$732,950.

**MEMORANDUM**

**TO:** Governor Doug Burgum  
 Members of the State Water Commission  
**FROM:** Andrea Travnicek, Ph.D., Secretary   
**SUBJECT:** NDSWC Cost-Share Request – Cass County Highway Department  
 Wild Rice River Bank Stabilization  
**DATE:** May 24, 2022

***Background & Description***

The Cass County Highway Department (Sponsor) is requesting cost-share for their Wild Rice River Bank Stabilization (Project). The Project is preconstruction and construction costs for repair of a slope failure on the left bank of the Wild Rice River that is impacting two sewer forcemains servicing the City of Oxbow, a Cass rural water line, and other utilities within the Cass County Highway 81 right-of-way, as well as threatening the integrity of the highway. The Project is located approximately one mile south of the City of Fargo in Cass County, North Dakota.

***Supplemental Information***

Water Development Plan (Priority / Page)	-
Benefit-Cost Ratio	1.08

***Schedule***

Task	Dates
Study	May 2022
Design	Jun. 2022
Bid	Jul. 2022
Construction	Aug. 2022
Completion	Nov. 2022

***Cost-Share Funding Summary***

	Preconstruction	Construction	Total	Approved	Recommend
Noneligible Cost	\$0	\$34,100	\$34,100		
Eligible Cost	\$110,000	\$1,355,900	\$1,465,900		
Total	\$110,000	\$1,390,000	\$1,500,000		
Cost-Share 50% (Requested)	<b>\$55,000</b>	<b>\$677,950</b>	<b>\$732,950</b>		<b>\$732,950</b>

**This project meets requirements of the Water Commission's cost-share policy. Therefore, I recommend approval of this request by the Cass County Highway Department for state cost participation in the Wild Rice River Bank Stabilization project at 50 percent of eligible costs not to exceed \$732,950. This approval is contingent on available funding.**

AT:jsp/2178

**Agreement for Cost-Share Reimbursement  
Cass County Highway Department  
Wild Rice River Bank Stabilization**

**1. PARTIES.** This agreement is between the State of North Dakota (State), by and through the State Water Commission (Commission), and the Cass County Highway Department (Sponsor).

**2. COMMISSION'S RESPONSIBILITY AND INTENT.** Commission will provide Sponsor with cost-share, not to exceed \$732,950, as approved by the Commission on June 7, 2022, to reimburse 50 percent of the actual eligible costs incurred in Sponsor's Wild Rice River Bank Stabilization (Project), contingent on availability of funds and conditions of this agreement. Commission's intent in providing this funding to Sponsor is merely to help Sponsor financially afford Project. Sponsor retains sole and absolute discretion in the manner and means of carrying out Project, except to the extent specified in this agreement.

**3. SPONSOR'S RESPONSIBILITIES.** Sponsor must:

- a. Complete Project.
- b. Provide continued maintenance for Project.
- c. Ensure all applicable permits (federal, state, and local) are obtained.
- d. Acquire all title to land and easements for Project.
- e. Comply with all North Dakota laws governing the requirements for competitive bids, advertising, and awarding of contracts for construction of Project.
- f. Maintain a Project file containing relevant documents and correspondence generated during the course of Project. State is not responsible for maintaining a Project file.
- g. Provide a progress report to Commission at least every four years if the term of Project exceeds four years. If a progress report is not timely received, or if after a review of a progress report Commission determines Project has not made sufficient progress, Commission may terminate the agreement for Project funding.
- h. Prior to signature, inform Commission and any other relevant party regarding Project of any errors, misinterpretations, changes, modifications, miscalculations, incorrect Project descriptions, or any other information stated herein that is inaccurate.

**4. PROJECT DESCRIPTION AND LOCATION.** Project is preconstruction and construction costs for repair of a slope failure on the left bank of the Wild Rice River. Project is located approximately one mile south of the City of Fargo in Cass County, North Dakota.

**5. ELIGIBLE COSTS.** Commission has sole discretion to determine eligible costs and availability of Commission funds. Additional information is outlined in Commission's cost-share policy.

**6. PAYMENT.** Commission will make partial payments upon receipt and approval of Sponsor's written request. Sponsor must provide Commission verification of actual costs and a Project status report with each payment request. A Commission representative may inspect Project to determine whether the work satisfies Commission's cost share requirements before Commission makes payment(s) to Sponsor. Request for final payment must include a copy of Project.

**7. INDEMNIFICATION.** Sponsor must require all subcontractors, other than state employed subcontractors, before commencement of an agreement between Sponsor and the subcontractor, to defend, indemnify, and hold harmless State, from and against claims based on the vicarious liability of State or its agents, but not against claims based on State's negligence or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by subcontractor to State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary. Subcontractor also agrees to reimburse State for all costs, expenses, and attorneys' fees incurred if State prevails in an action against subcontractor in establishing and litigating the indemnification coverage required herein. This obligation continues after the termination of this agreement.

**8. INSURANCE.** State and Sponsor each must secure and keep in force during the term of this agreement, from an insurance company, government self-insurance pool, or government self-retention fund authorized to do business in North Dakota, commercial general liability with minimum limits of liability of \$500,000 per person and \$2,000,000 per occurrence.

In addition, Sponsor must require all subcontractors, other than state employed subcontractors, before commencement of an agreement between Sponsor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies authorized to do business in North Dakota, the following insurance coverages:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- b. Automobile liability, including Owned (if any), Hired, and Non-owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- c. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this contract.
- d. If subcontractor is domiciled outside State, employer's liability or



“stop gap” insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- e. Any deductible or other similar obligation under the policies is the sole responsibility of the subcontractor. The amount of any deductible is subject to approval by State.
- f. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated “A-” or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an “A-” rating must be approved by the State. The policies must be in form and terms approved by the State.
- g. State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the subcontractor in excess of the minimum requirements set forth above. The duty to defend, indemnify, and hold harmless State under this agreement is not limited by the insurance required in this agreement.
- h. State must be endorsed on the commercial general liability policy, including any excess policies, as additional insured. State must have all the benefits, rights, and coverages of an additional insured under these policies that are not limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of Sponsor.
- i. The insurance required in this agreement, through a policy or endorsement, must include:
  - (1) A “Waiver of Subrogation” waiving any right to recovery the insurance company may have against State;
  - (2) A provision that subcontractor’s insurance coverage is primary (i.e., pay first) as respects any insurance, self-insurance, or self-retention maintained by State and that any insurance, self-insurance, or self-retention maintained by State must be in excess of the subcontractor’s insurance and must not contribute with it;
  - (3) Cross liability/severability of interest for all policies and endorsements;
  - (4) The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary;
  - (5) The insolvency or bankruptcy of the insured subcontractor must not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured subcontractor from meeting the retention limit under the policy.

- j. Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.

**9. BREACH.** Violation of any provision of this agreement by Sponsor constitutes breach of this agreement. A breach obligates Sponsor to reimburse Commission for all funds paid to Sponsor and relieves Commission of all obligations under this agreement.

**10. AGREEMENT BECOMES VOID.** This agreement is void if not signed and returned by Sponsor within 60 days of Commission's signature.

**11. TERMINATION.**

- a. Commission may terminate this agreement effective upon delivery of written notice to Sponsor, or a later date as may be stated in the notice, under any of the following conditions:
  - (1) If Commission determines an emergency exists.
  - (2) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to provide the funds necessary to comply with this agreement. The parties may modify this agreement to accommodate a reduction in funds.
  - (3) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - (4) If any license, permit, or certificate required by law, rule, or this agreement is denied, revoked, suspended, or not renewed.
  - (5) If Commission determines that continuing the agreement is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.
- b. Any termination of this agreement is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- c. The rights and remedies of any party provided in this agreement are not exclusive.

**12. APPLICABLE LAW AND VENUE.** This agreement is governed by and construed under the laws of State. Any action to enforce this agreement must be adjudicated exclusively in the District Court of Burleigh County, North Dakota.

**13. SEVERABILITY.** If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected,

and if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement did not contain that term.

**14. SPOILIATION – PRESERVATION OF EVIDENCE.** Sponsor agrees to promptly notify Commission of all potential claims that arise or result from this agreement. Sponsor must also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Commission the opportunity to review and inspect the evidence, including the scene of an accident.

**15. MERGER AND MODIFICATION.** This agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this agreement. This agreement may not be modified, supplemented, or amended in any manner, except by written agreement signed by both parties.

**NORTH DAKOTA STATE WATER COMMISSION**

By:



ANDREA TRAVNICEK, PH.D.  
Secretary

Date: 06/10/2022

**CASS COUNTY COMMISSION**

By:

RICK STEEN  
Chairman

Date: \_\_\_\_\_