

## 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 15, 2023:

- Houston Engineering, Inc.—agreements for bridge replacement on Cass Highway 32 and bridge removal in Hill Township;
- 2023 gravel supply—agreements with Mark Sand and Gravel and KRB Gravel LTD;
- Cass County Weed Control—weed control work order for various county owned properties;
- Flood lot lease renewal for 2023.



**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, Cass County Engineer *JPB*

DATE: March 10, 2023

SUBJECT: Consent Agenda Item for March 20, 2023 Commission Meeting: Project CB2302 – County Highway 32 – 22/27 Amenia Township – Rush River & Project TB2404 – 28/33 Hill Township – Maple River – Engineering Design Services.

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Attached is an Engineering Service Agreement with Houston Engineering, Inc., for the following plan production and environmental documents:

CB2302 – Bridge Replacement – County Highway 32 – 22/27 Amenia Township – Rush River

TB2404 – Bridge Removal – 28/33 Hill Township – Maple River

Project CB2302 was already designed back in 2021, and we just received the news that this bridge was selected for federal funding during the 2024 construction year. Part of the bundle we proposed during the federal funding application was that we would also remove the structure at 28/33 Hill Township if federal funding were received.

This proposal includes completing the environmental documentation for projects CB2302 & TB2404 as well as including the bridge removal portion of the project in the already completed set of plans. The estimated cost of this work is \$28,052.00.

**SUGGESTED MOTION:** Authorize chairperson to sign the Engineering Service Agreement with Houston Engineering, Inc., to complete plan production and environmental documents for Projects CB2302 & TB2404.

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

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

J:\Admin-Eng\Commission Corrsp\2023 Commission Correspondence\C32 BRIDGE REPLACEMENT\Consent Agenda Memo Houston Engineering CB2302 031023.docx

## CASS COUNTY GOVERNMENT ENGINEERING SERVICES AGREEMENT

Project Number and Location: CB2302 – County Highway 32 – 22/27 Amenia Township – Rush River  
TB2404 – 28/33 Hill Township – Maple River

Type of Project: Plan Production and Environmental Documents

Type of Construction: Structure Replacement & Structure Removal

**THIS AGREEMENT** is entered into by and between Cass County, herein after known as the County, and Houston Engineering, Inc., of Fargo, North Dakota hereinafter known as Engineer.

### I.

The Engineer shall perform the needed detailed construction design services only per Request for Proposal.

### II.

The County will pay the Engineer as follows:

A. Maximum Payment: The total contract cost not to exceed \$28,052.00 unless changed according to Section VI.

### III.

The work under this agreement shall be performed as required to meet the project requirements and the contractor's work schedule.

### IV.

Duly authorized representatives of the County, North Dakota Department of Transportation, and Federal Highway Administration (FHWA) shall have right to inspect and copy the Engineer's plans, files, and records relating to the work included in this agreement.

All books, documents, papers, accounting records, and other evidence pertaining to the cost incurred under the agreement shall be retained by the Engineer and available for inspection by the County, North Dakota Department of Transportation, or FHWA for a period of three years after the date of final payment.

The files and records shall be available in the Engineer's office located at Houston Engineering, Inc.

### V.

The Engineer warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Engineer, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the County and North Dakota Department of Transportation shall have the right to annul this agreement without liability, or to deduct from the agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## VI.

No change in the type or extent of the work to be performed by the Engineer shall be made except by supplemental agreement in writing between the County and the Engineer. The supplemental agreement shall set forth the proposed changes of work, extension of time for preparation of the plans, and adjustment to the fee to be paid by the County to the Engineer, if any. On federal aid participating projects any supplemental agreement must be approved by the North Dakota Department of Transportation.

## VII.

This agreement may be terminated by the County and North Dakota Department of Transportation at any time upon written notice to the Engineer. In the event that such termination should take place before the completion of the total work to be performed hereunder the County will pay the Engineer for the completed hourly work not to exceed the total work to be performed under this contract.

In the event that the termination of this agreement is not the fault of the Engineer the County shall compensate the Engineer for services performed prior to the termination, along with reimbursable expenses then due.

The original copies of all drawing, prints, plans, and field notes prepared by the Engineer prior to termination shall become the property of the County. Such termination shall not affect any legal right of the County against the Engineer for any breach of this agreement.

The design services done as a result of this agreement are intended for use only on the project that is the subject of this agreement. The design services are not intended to be used on other projects. In the event that the County uses the design services that are the subject of this agreement on another project the use of the design services will be at the County's own risk.

## VIII.

The Engineer shall indemnify, save, and hold harmless the County and/or North Dakota Department of Transportation and employees thereof, from any and all claims, demands, actions arising out of the negligent acts, errors, or omissions of the Engineer, his employees, or agent, in the performance of the agreement, or matters incidental thereto.

Any and all persons employed directly or indirectly by the Engineer who are engaged in the performance of any work or services required of the Engineer under this agreement shall be considered employees of the Engineer only and not of the County or North Dakota Department of Transportation.

The Engineer shall comply with applicable federal state and local laws together with all applicable ordinances and regulations applicable to the work. He shall procure all licenses, permits, and other rights necessary for the fulfillment of his obligations under this agreement.

The appropriate professional engineer (P.E.) and/or land surveyor (L.S.) endorsement shall be placed on all documents, plans, or plats.

The Engineer shall comply with Title VI of the Civil Rights Act of 1964, Executive Order 112246 and Executive Order 11375. In accordance with the aforementioned act, no person in the United States shall, on the grounds of race, color, religion, sex, age, handicap, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement.

## IX.

The services of the Engineer to be performed hereunder are personal and shall not be assigned, sublet, or transferred, except specialized services or additional work items. If the specialized services or additional work exceeds \$10,000.00, the contract with the agency or firm doing the work shall contain all the provisions of this agreement. The Engineer shall not engage, on a full-or part-time or other basis during the period of this agreement, any professional or technical personnel who are or have been at any time during the period of the agreement in the employment of the FHWA, the

North Dakota Department of Transportation, or the County, without the written consent of the public employer of such person.

**X.**

The Engineer shall obtain all risk record protection insurance to cover the loss of all survey notes or all other records or data obtained in connection with the work.

**XI.**

The Engineer is advised that his or her signature on this contract and/or agreement certifies that the company or any person associated with it is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction on any matter involving fraud or official misconduct within the past three years.

**ATTESTED:**

**COUNTY OF CASS**

\_\_\_\_\_  
Finance Director

\_\_\_\_\_  
Chairperson, Board of County Commissioners

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeremy L. McLaughlin, Houston Engineering, Inc

\_\_\_\_\_  
Date



# PURCHASE ORDER

PAGE: 1  
 P.O. NO.: 154409  
 DATE: 03/10/23

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

HOUSTON ENGINEERING  
 1401 21ST AVENUE NORTH  
 FARGO, ND 58102

SHIP TO:

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

VENDOR NO.		879								
DELIVER BY		SHIP VIA		F.O.B.		TERMS				
03/10/23						NET				
CONFIRM BY			CONFIRM TO			REQUISITIONED BY				
			HALLAND, SHARI K			JASON BENSON				
FREIGHT		CONTRACT NO.		ACCOUNT NO.		PROJECT		REQ. NO.		REQ. DATE
				211-4001-431.33-01		CB2302		HOUSTON		03/10/23
LINE NO.	QUANTITY	UOM	ITEM NO. AND DESCRIPTION				UNIT COST	EXTENDED COST		
1	14026.00	EA	PLAN PRODUCTION/ENVIRONMENTAL DOCUMENTS				1.0000	14026.00		
							SUB-TOTAL		14026.00	
14026.00										

AUTHORIZED BY \_\_\_\_\_ COUNTY OFFICIAL



# PURCHASE ORDER

PAGE: 1  
 P.O. NO.: 154410  
 DATE: 03/10/23

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

HOUSTON ENGINEERING  
 1401 21ST AVENUE NORTH  
 FARGO, ND 58102

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

VENDOR NO.		879							
DELIVER BY		SHIP VIA		F.O.B.		TERMS			
03/10/23						NET			
CONFIRM BY			CONFIRM TO			REQUISITIONED BY			
			HALLAND, SHARI K			JASON BENSON			
FREIGHT		CONTRACT NO.		ACCOUNT NO.		PROJECT		REQ. NO.	REQ. DATE
				211-4001-431.33-01		TB2404		HOUSTON	03/10/23
LINE NO.	QUANTITY	UOM	ITEM NO. AND DESCRIPTION			UNIT COST	EXTENDED COST		
1	14026.00	EA	PLAN PRODUCTION/ENVIRONEMENTAL DOCUMENTS			1.0000	14026.00		
						SUB-TOTAL		14026.00	
								14026.00	

AUTHORIZED BY \_\_\_\_\_ COUNTY OFFICIAL



**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 *JFB*

DATE: March 10, 2023

SUBJECT: Consent agenda topic for March 20, 2023 Commission Meeting: 2023 Gravel Supply Bid Results

Bids were opened on February 23, 2023 for the 2023 Gravel Supply.

<u>Supplier</u>	<u>Price per CY</u>	<u>Location</u>	<u>Hauling Per Mile</u>
Mark Sand & Gravel	\$17.05	Stockpiled at Durbin	
Mark Sand & Gravel	\$8.65	Lisbon Pit	
KRB Gravel, LTD	\$20.75	Stockpiled at Gardner	
KRB Gravel, LTD	\$8.50	Hope Pit	\$0.27
KRB Gravel, LTD	\$18.75	Placed on County Road 12	

Please accept bids from Mark Sand & Gravel Dakota Co. and KRB Gravel LTD for the 2023 gravel supply, to be used in the best interest of the County. Attached are the contracts from each supplier.

J:\Admin-Eng\Commission Corrsp\2023 Commission Correspondence\Gravel\Consent Memo for Purchase of 2023 Gravel Supply.docx

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

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



**CASS COUNTY HIGHWAY DEPARTMENT  
CONTRACT**

This agreement made and entered into by Cass County, North Dakota, party of the first part, **Mark Sand & Gravel Dakota Co, PO Box 458, Fergus Falls, MN 56538** 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 road repair operations on and adjacent to County and Township Highways within Cass County. The contractor shall furnish Class 13 gravel only and as directed. In accordance and in conformity with the provisions of this contract and the Standard Specifications for Road and Bridge Construction 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, 2022 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:

- Class 13 gravel at \$17.05 per cubic yard, stockpiled at Durbin.
- Class 13 gravel at \$8.65 per cubic yard, Lisbon, ND.

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

Date \_\_\_\_\_

Mark Sand & Gravel Dakota Co.  
Contractor

By \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_  
Corporate Executive

# CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

**Mark Sand & Gravel Dakota Co, 525 Kennedy Park Road, PO Box 458, Fergus Falls, MN 56538**

DATE OF REQUEST: March 10, 2023

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: March 17, 2023

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

Bids for the 2022 gravel supply. Please accept all bids to be used in the best interest of the County. The bid results for Mark Sand & Gravel Dakota Co. is listed below:

<u>Supplier</u>	<u>Price per CY</u>	<u>Location</u>	<u>Hauling Per Mile</u>
Mark Sand & Gravel	\$8.65	Lisbon Pit	
Mark Sand & Gravel	\$17.05	Stockpiled at Durbin	

**SUGGESTED MOTION:** AUTHORIZE CHAIRMAN TO SIGN CONTRACT WITH MARK SAND & GRAVEL DAKOTA CO. FOR THE 2023 GRAVEL SUPPLY, SUBJECT TO STATE'S ATTORNEY APPROVAL.

**CASS COUNTY HIGHWAY DEPARTMENT  
CONTRACT**

This agreement made and entered into by Cass County, North Dakota, party of the first part, **KRB Gravel LTD, 823 Main Street West, Mayville, ND 58257** 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 road repair operations on and adjacent to County and Township Highways within Cass County. The contractor shall furnish Class 13 gravel only and as directed. In accordance and in conformity with the provisions of this contract and the Standard Specifications for Road and Bridge Construction 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, 2022 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:

- Class 13 gravel at \$20.75 per cubic yard, stockpiled at Gardner.
- Class 13 gravel at \$8.50 per cubic yard, Hauling Cost .27 per mile at Hope Pit.
- Class 13 gravel at \$18.75 per cubic yard, Placed on County Road 12.
- 12"-18" Riprap at \$27.00 per ton, Hauling Cost .35 per mile from Sibley Pit.
- 12"-36" Riprap at \$27.00 per ton, Hauling Cost .35 per mile from Dazey Pit.

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 \_\_\_\_\_ 2023.

CASS COUNTY NORTH DAKOTA

\_\_\_\_\_  
Chairperson, Cass County Board of Commissioners

Date \_\_\_\_\_

KRB Gravel LTD  
Contractor

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_  
Corporate Executive

# CONTRACT APPROVAL REQUEST

COMPANY REQUESTING CONTRACT:

**KRB Gravel LTD, 823 Main Street West, Mayville, ND 58257**

DATE OF REQUEST: March 10, 2023

DATE OF EXPECTED RETURN TO THE COMMISSION OFFICE: March 17, 2023

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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

Bids for the 2023 gravel supply. Please accept all bids to be used in the best interest of the County. The bid results for KRB Gravel LTD is listed below:

<u>Supplier</u>	<u>Price per CY</u>	<u>Location</u>	<u>Hauling Per Mile</u>
KRB Gravel	\$20.75	Stockpiled at Gardner (Hope Pit)	
KRB Gravel	\$8.50	Hope Pit	\$0.270
KRB Gravel	\$18.75	Placed on County Road 12 (Hope Pit)	
KRB Gravel	\$27.00/ton (Riprap)	Sibley Pit	\$0.350
KRB Gravel	\$27.00/ton (Riprap)	Dazey Pit	\$0.350

**SUGGESTED MOTION:** AUTHORIZE CHAIRMAN TO SIGN CONTRACT WITH KRB GRAVEL LTD FOR THE 2023 GRAVEL SUPPLY, SUBJECT TO STATE'S ATTORNEY APPROVAL.

# Cass County Weed Control

## Weed Control Work Order

This agreement for noxious or troublesome weed spraying is made between Cass County Commission hereinafter CLIENT and Cass County Weed Control hereinafter WEED CONTROL, for the control of noxious and troublesome weeds on land with the legal description being various county owned flood buy out lots and other county owned properties.

THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

- 1) WEED CONTROL will use only approved herbicides and apply as per herbicide label instructions. Herbicides to be used Tordon, Overdrive, 2,4-D, Milestone, Mec Amine-D, glyphosate
- 2) WEED CONTROL will notify the North Dakota Department of Health of intent to apply herbicides on or in water and provide a copy of the notice to CLIENT.
- 3) WEED CONTROL agrees to take steps to control noxious or troublesome weeds with WEED CONTROL available resources. WEED CONTROL may hire commercial spray applicators if deemed necessary upon approval of CLIENT.
- 4) WEED CONTROL will bill CLIENT for services rendered as per the following rates:
  - a. ATV sprayer and labor \$55.00/hr.
  - b. Labor with hand sprayer \$30.00/hr.
  - c. Mileage \$0.90/mile
  - d. Mileage – pickup \$0.655/mile
  - e. Herbicides and additives at cost
  - f. Commercial applicator at cost
- 5) CLIENT will pay within 30 days of receipt of bill.
- 6) CLIENT will notify Weed Control of any issues that may affect the application of control measures i.e. timing of public gatherings in or near application site, property lines, flower beds, vegetable gardens, soft or muddy ground etc.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CLIENT (Authorized signature and title) \_\_\_\_\_

CLIENT Point of Contact (please print name) \_\_\_\_\_

CLIENT Phone number(s) \_\_\_\_\_

WEED CONTROL (signature and title) \_\_\_\_\_

## LEASE OF PROPERTY

THIS LEASE is made by and between Cass County, North Dakota (hereinafter "County") and Corey and Sherri Smith, 7604 Brink Drive, Horace ND 58047-9543 (hereinafter "Lessee").

THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

1. Property: The County hereby offers to lease, and the Lessee agrees to lease, the property situated in the Township of Pleasant, County of Cass, State of North Dakota, described as: Lot 13 Block 2 of River Shore Subdivision **also known as 4966 Klitzke Drive** (hereinafter "property").
2. Term: The term of this lease shall commence on January 1, 2023, and expire at midnight on December 31, 2023.
3. Rent: Rent shall be \$10 dollars per year or part thereof, payable in advance of the commencement day, to the County by and through the Cass County Auditor at the address given in the section herein entitled Notices.
4. Use: The property shall only be used for purposes consistent with those contained in Exhibit 1 (attached). Furthermore, the property shall not be used for, among other purposes, parking vehicles; building any kind of structure without prior written approval of the County; storage of any kind of equipment or personal property; placement of any signs; or disposal of any kind of materials, whether hazardous or not.

The keeping of horses within portable fencing for grazing purposes is allowed. The determination of compliance with these limitations on use of the property shall be at the County's sole discretion.

5. Delivery of Possession: Lessee acknowledges that Lessee has inspected the property and accepts it as suitable for the purpose and use described in this Lease and that the property then complies with the use limitations.
6. Insurance: At all times during the term of this Lease, Lessee shall maintain at Lessee's sole expense, public liability and property damage liability insurance in an amount not less than \$500,000. Lessee shall deliver to County a copy of the certificate of insurance prior to the commencement, and renewal if applicable, of this Lease. County makes no representation that the limits of liability specified herein are adequate to protect Lessee.
7. Indemnification: County shall not be liable for any damage to Lessee, or any other person, or to any property, occurring on the premises or any part thereof, unless such damage is the proximate result of the negligence of an unlawful act of the County. Lessee agrees to hold the County harmless from any claims for damages occurring on the property, no matter how caused, except for injury damages for which County is legally responsible.

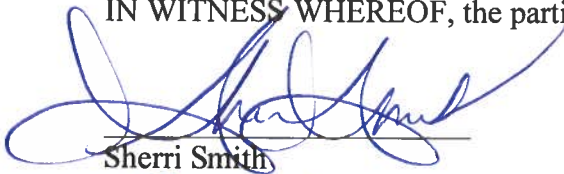
8. Ordinances and Statutes: Lessee shall comply with all statutes, ordinances and requirements of municipal, state and federal authorities.
9. Assignment and Subletting: Lessee shall not assign this Lease or sublet any portion of the property without prior written consent of the County.
10. Entry/Inspection of Property: Lessee shall permit County or County's agents to enter and inspect the property at any reasonable time for the purpose of verifying compliance with the terms of this Lease.
11. Maintenance: Lessee shall, at his/her own expense, and at all times, remove snow from any sidewalks, keep the property clear of rubbish or weeds, regularly mow the grass, irrigate or water the property in a manner sufficient to maintain the property but not in a manner inconsistent with governing statutes, ordinances or rules.
12. Default - Event: Lessee will be in default of this Lease for failure to timely pay any rent, or failure to abide by any material terms or conditions of this Lease including, but not limited to, the limitations on use of the property, and such default continues for ten (10) days after written notice from County.
13. Default – County's Remedies: If any one or more of the default events set forth herein occurs, then the County may, in its sole discretion, do one or more of the following:
  1. Give Lessee written notice of its intention to terminate this Lease on the date of such notice, or on any later date that the County may specify in such notice. On the date so specified in such notice, Lessee's right to use of the property will cease and the Lease will be terminated.
  2. Remove personal property and/or other materials that reflect an inappropriate use of the property, and charge Lessee a reasonable sum for removal, storage or/and disposal of such items.
  3. Collect all reasonable attorney fees, costs and disbursements that may arise as a result of any suit filed as a result of Lessee's default.
  4. Exercise such rights or remedies that may be provided by law.
14. Notices: Any notice which either party may or is required to give, may be given by mailing the same, postage prepaid, to the Lessee or County at the respective addresses given below, or at such other places as may be designated by the parties in writing from time-to-time, or may be delivered in person.

County: P.O. Box 2806, 211 9<sup>th</sup> Street So., Fargo, ND 58108.

Lessee: 7604 Brink Drive, Horace ND 58047-9543

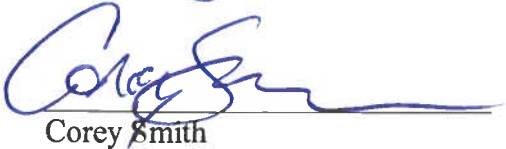
15. Binding Effect: All the provisions hereof shall extend to and be binding upon, and in favor of or against (as the case may be), the heirs, executors, administrators, guardians, assigns and successors in interest of the parties hereto.
16. Severability: If any provision of this Lease should be found invalid or unenforceable, then the rest and remainder of the provisions shall remain valid and enforceable.
17. Entire Agreement: This Lease represents the entire agreement between the parties and there are no collateral or oral agreements or understandings and any executory agreement hereafter made shall be made ineffective to change, modify or discharge this lease, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.
18. Construction: All provisions hereof and words and phrases used herein shall be governed and construed under the laws of the State of North Dakota.
19. Time is of the Essence: Time is of the essence for each term and provision of this lease.
20. Effective Date: The effective date of this lease is January 1, 2023, regardless of the day that the parties may have signed this agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures:



\_\_\_\_\_

Sherri Smith



\_\_\_\_\_

Corey Smith

\_\_\_\_\_  
Chair  
Cass County Commission



## EXHIBIT 1

### Additional Lease Terms and Conditions

WHEREAS, Cass County North Dakota became the rightful owner of certain real property, more fully described in the attached Lease, through the use of certain disaster relief funds under Section 404 of the Stafford Act; and

WHEREAS, the terms of the Stafford Act, and related regulations and agreements (e.g., FEMA-State Agreement) require that Cass County agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural flood plain values;

NOW, THEREFORE, the attached Lease is made subject to the following additional terms and conditions:

21. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44-C.F.R. 206-434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply to the leased property:
  - (a) Compatible Uses. The land shall be used for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved previous parking lots and other uses described in 44 C.F.R. Section 206-434, as it reads now and may be amended in the future.
  - (b) Structures. No new structures shall be erected on the property other than:
    - (1) a public facility that is open on all sides and functionally related to the open space use;
    - (2) a restroom; or
    - (3) a structure that is compatible with the uses described in Paragraph 1(a), above, and approved by Cass County in writing prior to the commencement of the construction of the structure.
2. Inspection. FEMA, its representatives, and assigns, including Cass County, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the above terms.
3. Enforcement. Any violation of these terms may, at Cass County's sole discretion, be deemed a default with all the rights and remedies available under the attached Lease.

## LEASE OF PROPERTY

THIS LEASE is made by and between Cass County, North Dakota (hereinafter "County") and Corey and Sherri Smith, 7604 Brink Drive, Horace ND 58047-9543 (hereinafter "Lessee").

THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

1. Property: The County hereby offers to lease, and the Lessee agrees to lease, the property situated in the Township of Pleasant, County of Cass, State of North Dakota, described as: Lot 14 and Lot 15 Block 2 of River Shore Subdivision **also known as 4972 Klitzke Drive** (hereinafter "property").
2. Term: The term of this lease shall commence on January 1, 2023, and expire at midnight on December 31, 2023.
3. Rent: Rent shall be \$10 dollars per year or part thereof, payable in advance of the commencement day, to the County by and through the Cass County Auditor at the address given in the section herein entitled Notices.
4. Use: The property shall only be used for purposes consistent with those contained in Exhibit 1 (attached). Furthermore, the property shall not be used for, among other purposes, parking vehicles; building any kind of structure without prior written approval of the County; storage of any kind of equipment or personal property; placement of any signs; or disposal of any kind of materials, whether hazardous or not.

The keeping of horses within portable fencing for grazing purposes is allowed. The determination of compliance with these limitations on use of the property shall be at the County's sole discretion.

5. Delivery of Possession: Lessee acknowledges that Lessee has inspected the property and accepts it as suitable for the purpose and use described in this Lease and that the property then complies with the use limitations.
6. Insurance: At all times during the term of this Lease, Lessee shall maintain at Lessee's sole expense, public liability and property damage liability insurance in an amount not less than \$500,000. Lessee shall deliver to County a copy of the certificate of insurance prior to the commencement, and renewal if applicable, of this Lease. County makes no representation that the limits of liability specified herein are adequate to protect Lessee.
7. Indemnification: County shall not be liable for any damage to Lessee, or any other person, or to any property, occurring on the premises or any part thereof, unless such damage is the proximate result of the negligence of an unlawful act of the County. Lessee agrees to hold the County harmless from any claims for damages occurring on the property, no matter how caused, except for injury damages for which County is legally responsible.

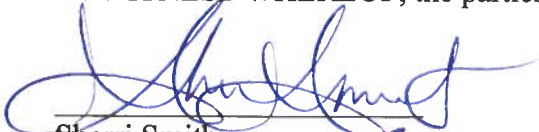
8. Ordinances and Statutes: Lessee shall comply with all statutes, ordinances and requirements of municipal, state and federal authorities.
9. Assignment and Subletting: Lessee shall not assign this Lease or sublet any portion of the property without prior written consent of the County.
10. Entry/Inspection of Property: Lessee shall permit County or County's agents to enter and inspect the property at any reasonable time for the purpose of verifying compliance with the terms of this Lease.
11. Maintenance: Lessee shall, at his/her own expense, and at all times, remove snow from any sidewalks, keep the property clear of rubbish or weeds, regularly mow the grass, irrigate or water the property in a manner sufficient to maintain the property but not in a manner inconsistent with governing statutes, ordinances or rules.
12. Default - Event: Lessee will be in default of this Lease for failure to timely pay any rent, or failure to abide by any material terms or conditions of this Lease including, but not limited to, the limitations on use of the property, and such default continues for ten (10) days after written notice from County.
13. Default – County's Remedies: If any one or more of the default events set forth herein occurs, then the County may, in its sole discretion, do one or more of the following:
  1. Give Lessee written notice of its intention to terminate this Lease on the date of such notice, or on any later date that the County may specify in such notice. On the date so specified in such notice, Lessee's right to use of the property will cease and the Lease will be terminated.
  2. Remove personal property and/or other materials that reflect an inappropriate use of the property, and charge Lessee a reasonable sum for removal, storage or/and disposal of such items.
  3. Collect all reasonable attorney fees, costs and disbursements that may arise as a result of any suit filed as a result of Lessee's default.
  4. Exercise such rights or remedies that may be provided by law.
14. Notices: Any notice which either party may or is required to give, may be given by mailing the same, postage prepaid, to the Lessee or County at the respective addresses given below, or at such other places as may be designated by the parties in writing from time-to-time, or may be delivered in person.

County: P.O. Box 2806, 211 9<sup>th</sup> Street So., Fargo, ND 58108.

Lessee: 7604 Brink Drive, Horace ND 58047-9543

15. Binding Effect: All the provisions hereof shall extend to and be binding upon, and in favor of or against (as the case may be), the heirs, executors, administrators, guardians, assigns and successors in interest of the parties hereto.
16. Severability: If any provision of this Lease should be found invalid or unenforceable, then the rest and remainder of the provisions shall remain valid and enforceable.
17. Entire Agreement: This Lease represents the entire agreement between the parties and there are no collateral or oral agreements or understandings and any executory agreement hereafter made shall be made ineffective to change, modify or discharge this lease, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.
18. Construction: All provisions hereof and words and phrases used herein shall be governed and construed under the laws of the State of North Dakota.
19. Time is of the Essence: Time is of the essence for each term and provision of this lease.
20. Effective Date: The effective date of this lease is January 1, 2023, regardless of the day that the parties may have signed this agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures:



\_\_\_\_\_  
Sherri Smith

\_\_\_\_\_  
Chair  
Cass County Commission



\_\_\_\_\_  
Corey Smith

## EXHIBIT 1

### Additional Lease Terms and Conditions

WHEREAS, Cass County North Dakota became the rightful owner of certain real property, more fully described in the attached Lease, through the use of certain disaster relief funds under Section 404 of the Stafford Act; and

WHEREAS, the terms of the Stafford Act, and related regulations and agreements (e.g., FEMA-State Agreement) require that Cass County agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural flood plain values;

NOW, THEREFORE, the attached Lease is made subject to the following additional terms and conditions:

21. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44-C.F.R. 206-434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply to the leased property:
  - (a) Compatible Uses. The land shall be used for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved previous parking lots and other uses described in 44 C.F.R. Section 206-434, as it reads now and may be amended in the future.
  - (b) Structures. No new structures shall be erected on the property other than:
    - (1) a public facility that is open on all sides and functionally related to the open space use;
    - (2) a restroom; or
    - (3) a structure that is compatible with the uses described in Paragraph 1(a), above, and approved by Cass County in writing prior to the commencement of the construction of the structure.
2. Inspection. FEMA, its representatives, and assigns, including Cass County, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the above terms.
3. Enforcement. Any violation of these terms may, at Cass County's sole discretion, be deemed a default with all the rights and remedies available under the attached Lease.

## LEASE OF PROPERTY

THIS LEASE is made by and between Cass County, North Dakota (hereinafter "County") and Corey and Sherri Smith, 7604 Brink Drive, Horace ND 58047-9543 (hereinafter "Lessee").

THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

1. Property: The County hereby offers to lease, and the Lessee agrees to lease, the property situated in the Township of Pleasant, County of Cass, State of North Dakota, described as: Lot 16 Block 2 of River Shore Subdivision **also known as 4978 Klitzke Drive** (hereinafter "property").
2. Term: The term of this lease shall commence on January 1, 2023, and expire at midnight on December 31, 2023.
3. Rent: Rent shall be \$10 dollars per year or part thereof, payable in advance of the commencement day, to the County by and through the Cass County Auditor at the address given in the section herein entitled Notices.
4. Use: The property shall only be used for purposes consistent with those contained in Exhibit 1 (attached). Furthermore, the property shall not be used for, among other purposes, parking vehicles; building any kind of structure without prior written approval of the County; storage of any kind of equipment or personal property; placement of any signs; or disposal of any kind of materials, whether hazardous or not.

The keeping of horses within portable fencing for grazing purposes is allowed. The determination of compliance with these limitations on use of the property shall be at the County's sole discretion.

5. Delivery of Possession: Lessee acknowledges that Lessee has inspected the property and accepts it as suitable for the purpose and use described in this Lease and that the property then complies with the use limitations.
6. Insurance: At all times during the term of this Lease, Lessee shall maintain at Lessee's sole expense, public liability and property damage liability insurance in an amount not less than \$500,000. Lessee shall deliver to County a copy of the certificate of insurance prior to the commencement, and renewal if applicable, of this Lease. County makes no representation that the limits of liability specified herein are adequate to protect Lessee.
7. Indemnification: County shall not be liable for any damage to Lessee, or any other person, or to any property, occurring on the premises or any part thereof, unless such damage is the proximate result of the negligence of an unlawful act of the County. Lessee agrees to hold the County harmless from any claims for damages occurring on the property, no matter how caused, except for injury damages for which County is legally responsible.

8. Ordinances and Statutes: Lessee shall comply with all statutes, ordinances and requirements of municipal, state and federal authorities.
9. Assignment and Subletting: Lessee shall not assign this Lease or sublet any portion of the property without prior written consent of the County.
10. Entry/Inspection of Property: Lessee shall permit County or County's agents to enter and inspect the property at any reasonable time for the purpose of verifying compliance with the terms of this Lease.
11. Maintenance: Lessee shall, at his/her own expense, and at all times, remove snow from any sidewalks, keep the property clear of rubbish or weeds, regularly mow the grass, irrigate or water the property in a manner sufficient to maintain the property but not in a manner inconsistent with governing statutes, ordinances or rules.
12. Default - Event: Lessee will be in default of this Lease for failure to timely pay any rent, or failure to abide by any material terms or conditions of this Lease including, but not limited to, the limitations on use of the property, and such default continues for ten (10) days after written notice from County.
13. Default – County's Remedies: If any one or more of the default events set forth herein occurs, then the County may, in its sole discretion, do one or more of the following:
  1. Give Lessee written notice of its intention to terminate this Lease on the date of such notice, or on any later date that the County may specify in such notice. On the date so specified in such notice, Lessee's right to use of the property will cease and the Lease will be terminated.
  2. Remove personal property and/or other materials that reflect an inappropriate use of the property, and charge Lessee a reasonable sum for removal, storage or/and disposal of such items.
  3. Collect all reasonable attorney fees, costs and disbursements that may arise as a result of any suit filed as a result of Lessee's default.
  4. Exercise such rights or remedies that may be provided by law.
14. Notices: Any notice which either party may or is required to give, may be given by mailing the same, postage prepaid, to the Lessee or County at the respective addresses given below, or at such other places as may be designated by the parties in writing from time-to-time, or may be delivered in person.

County: P.O. Box 2806, 211 9<sup>th</sup> Street So., Fargo, ND 58108.

Lessee: 7604 Brink Drive, Horace ND 58047-9543

15. Binding Effect: All the provisions hereof shall extend to and be binding upon, and in favor of or against (as the case may be), the heirs, executors, administrators, guardians, assigns and successors in interest of the parties hereto.
16. Severability: If any provision of this Lease should be found invalid or unenforceable, then the rest and remainder of the provisions shall remain valid and enforceable.
17. Entire Agreement: This Lease represents the entire agreement between the parties and there are no collateral or oral agreements or understandings and any executory agreement hereafter made shall be made ineffective to change, modify or discharge this lease, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.
18. Construction: All provisions hereof and words and phrases used herein shall be governed and construed under the laws of the State of North Dakota.
19. Time is of the Essence: Time is of the essence for each term and provision of this lease.
20. Effective Date: The effective date of this lease is January 1, 2023, regardless of the day that the parties may have signed this agreement.


IN WITNESS WHEREOF, the parties hereto affix their signatures:



\_\_\_\_\_

Sherri Smith

\_\_\_\_\_  
Chair  
Cass County Commission



\_\_\_\_\_

Corey Smith



## EXHIBIT 1

### Additional Lease Terms and Conditions

WHEREAS, Cass County North Dakota became the rightful owner of certain real property, more fully described in the attached Lease, through the use of certain disaster relief funds under Section 404 of the Stafford Act; and

WHEREAS, the terms of the Stafford Act, and related regulations and agreements (e.g., FEMA-State Agreement) require that Cass County agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural flood plain values;

NOW, THEREFORE, the attached Lease is made subject to the following additional terms and conditions:

21. Terms. Pursuant to the terms of the Stafford Act, regulations promulgated thereunder (44-C.F.R. 206-434), as they read now and may be amended in the future, and the FEMA-State Agreement, the following conditions and restrictions shall apply to the leased property:
  - (a) Compatible Uses. The land shall be used for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved previous parking lots and other uses described in 44 C.F.R. Section 206-434, as it reads now and may be amended in the future.
  - (b) Structures. No new structures shall be erected on the property other than:
    - (1) a public facility that is open on all sides and functionally related to the open space use;
    - (2) a restroom; or
    - (3) a structure that is compatible with the uses described in Paragraph 1(a), above, and approved by Cass County in writing prior to the commencement of the construction of the structure.
2. Inspection. FEMA, its representatives, and assigns, including Cass County, shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the above terms.
3. Enforcement. Any violation of these terms may, at Cass County's sole discretion, be deemed a default with all the rights and remedies available under the attached Lease.