

**FLOOD SALES TAX COMMITTEE AGENDA**  
**FOR APRIL 15, 2024—12:30 PM**  
Commission Room, Cass County Courthouse

12:30 PM Meeting called to order  
Approve minutes of previous meeting—November 20, 2023

1. Flood sales tax fund update
2. Status of previously approved projects
  - a. 2017 Sheldon Addition Ring Levee
  - b. 2020 Davenport Levee
  - c. 2023 Casselton Industrial Park Improvements
3. Review projects and consider funding
  - a. City of Mapleton Flood Protection Study
4. Other business
5. Adjournment

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SUBJECT: COUNTY SALES TAX FOR FLOOD RISK REDUCTION AND RECOVERY  
PROJECTS

ADOPTED DATE: DECEMBER 4, 2017

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PURPOSE

The purpose of this policy is to provide guidance for the administration and funding of projects with Cass County Flood Control Sales Tax funds.

GENERAL PROVISIONS

As passed during the 2010 election and extended in the 2016 election, the voters approved the following: The Cass County Home Rule Charter be amended to extend the existing flood protection-related sales, use, and gross receipts tax of one-half of one percent (1/2%) to be used solely for the engineering, land purchase, construction, and maintenance of flood control measures including the Metro Flood Diversion Project including associated special assessments and indebtedness, through December 31, 2084, and shall be rescinded when all of the costs, obligations, and debt for said project have been paid in full and satisfied, whichever event occurs first as provide in Resolution #2016-20.

Cass County Commission Policy 38.23 outlines Ordinance #2010-2 Amended (Flood Control Sales Tax) which serves as the ordinance for the establishment and regulation of the Cass County Flood Control Sales Tax.

This policy governs expenditures of funds from a one half percent County sales tax that started in 2011 and will end in 2084 to fund flood risk reduction projects. The primary purpose of the sales tax measure is to fund local costs associated with a planned Fargo Moorhead Area Flood Diversion project in either Minnesota or North Dakota. The planned diversion project will not address all flood damage risks in Cass County. Additional measures are necessary to reduce risk to areas within and outside of the diversion perimeter. Sales tax proceeds may also be expended for the Diversion and other flood risk reduction or recovery projects subject to funding availability and approval by the County Commission. The County sales tax proceeds should be used to leverage other sources of funding when possible.

County sales tax funds expended within incorporated cities: The County Commission through the Flood Sales Tax Committee may consider requests for flood risk reduction and recovery funding from cities within Cass County. The city will be responsible for planning and engineering costs associated with the project. Plans and specifications should be prepared by a professional engineer registered within the State of North Dakota. Projects won't be considered if they are strictly for new city development, especially cases where a developer would be shifting their cost to the County Flood Sales Tax. The city should also be able to demonstrate that other revenue sources for the project have been actively sought out. The preferred funding split is that City funds match the County sales tax proceeds on a 1:1 basis. Other funding splits may be considered by the Commission on a case by case basis to allow consideration to be given to unique circumstances and the ability of the City to pay 50% of the local cost share.

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SUBJECT: COUNTY SALES TAX FOR FLOOD RISK REDUCTION AND RECOVERY  
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County sales tax funds expended outside of incorporated cities: The County Commission, through the Flood Sales Tax Committee, may also consider flood risk reduction and recovery projects recommended by the County Engineer or requested by townships, neighborhood groups, or individuals for areas within and outside of the diversion protected area. Projects won't be considered if they are strictly for new rural development, especially cases where a developer would be shifting their cost to the County Flood Sales Tax. Special assessments may be considered as a local match to County sales tax funds. Funds may be expended for projects that provide benefit to Cass County residents but are physically constructed outside of the County boundaries such as retention projects. Funds may also be spent to assist property owners downstream from the diversion channel in offsetting diversion project impacts.

#### ADMINISTRATION

The Cass County Commission will organize and appoint members to a Flood Sales Tax Committee. This will be a six-member committee made up of the following members:

1. Two members of the Cass County Commission
2. Cass County Auditor
3. Cass County Administrator
4. Cass County Engineer
5. One member from either the Southeast Cass, Maple River, Rush River, or North Cass Water Resource District.

The Flood Sales Tax Committee will solicit project requests on a bi-annual basis. Meetings to review project requests will generally be held with one meeting in the fall (October-November) and one meeting in the spring (March-April). Requests received from political subdivisions and county staff for cost effective projects will be prioritized and considered for funding by the County Commission as funds available allow.

#### FUNDING ELIGIBILITY

Entities eligible for funding: Funding should generally be for flood protection for communities or individuals that live outside of the Diversion protected area or those within the Diversion protected area that do not receive a significant benefit from the Diversion. This includes:

1. Cities
2. Townships
3. Water Resource Districts
4. Farmsteads and Homesteads

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Types of projects eligible for funding:

1. Levee construction or recertification for cities or rural subdivisions. Generally levee projects should be constructed to FEMA and/or US Army Corps of Engineer standards and be able to bring the benefited area out of the 1% chance (100 year) floodplain. These levees would also need to be maintained at that standard by either the city or township that is a member of the National Flood Insurance Program. Rural subdivisions seeking this funding would need to complete an agreement with the township and form an assessment district for the long term maintenance of the levee.
2. Flood control projects.
3. Water retention or detention projects.
4. Dam construction or maintenance.
5. Lift Stations for removing storm water from within a levee protected area.
6. Rural Farmstead Ring Levees (in conjunction with the ND State Water Commission 50% cost share) as outlined on the ND State Water Commission website under "Cost Share" at [http://www.swc.state.nd.us/project\\_development/cost\\_share.html](http://www.swc.state.nd.us/project_development/cost_share.html). Generally levee projects should be constructed to FEMA and/or US Army Corps of Engineer standards. However, individual rural farmsteads cannot be "certified" by FEMA or the US Army Corps of Engineers as they not maintained by either a city or township that is a member of the National Flood Insurance Program.
7. Road Projects that provide infrastructure protection to prevent significant future flood damage. These requests may be standalone projects or in conjunction with post-flood damage repair with or without FEMA cost share.
8. Road access (road raises or other infrastructure improvements that will allow access to a city, subdivision, or rural residence/farmstead).
9. Embankment slumping along the Red River, Wild Rice River, Sheyenne River, Maple River, Rush and Lower Rush Rivers, and Legal Drains. River slumping projects may include road and infrastructure repair, home buyouts, and repair to legal drains.
10. Home buyouts for flooding and bank slumping.
11. Flood Recovery projects to include: Levee repair, road repair, bridge repair, and other infrastructure related repair projects. None infrastructure flood recovery such as debris removal and sandbag cleanup will not be eligible.

Cass County Sales Tax Cost Share:

1. Generally the cost share will be 50% of the "local" share of the non-retention projects, i.e. if a \$100,000 project had a 50% state cost share, the local share would be \$50,000 and the County cost share would be \$25,000.
2. Policy for Retention Projects: Cost share is 75% of the "local" share if they are approved by the Red River Joint Water Resource District.
3. Home buyouts for flooding and bank slumping: Cost share is 90% of the "local" cost with the homeowner paying 10% of the "local" cost.

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4. If significant funds are available compared to the project requests, the County may authorize a cost share above 50% for non-retention projects and above 75% for Retention Projects.

#### PROJECT PRIORITIES

Priority of projects will be based on the following:

1. Population benefited by the project
2. Distribution of funds by location
3. Disbursement percentage determined by the number of people benefited
4. Cost effectiveness of the project
5. Permanency of the project
6. Effect of the diversion on the project
7. Does the project have long-term merit (benefits extend beyond 10 years)
8. Other sources of funding from local, state, or federal cost share programs.

Evaluation Criteria: The County Commission and/or Flood Sales Tax Committee may use some or all of the following criteria in determining funding priorities:

1. Benefit cost ratio
2. Land area benefited
3. Population benefited
4. Downstream flood reduction
5. Total acre-feet of retention storage

HISTORICAL REFERENCE: AUGUST 2, 2010

**FLOOD SALES TAX COMMITTEE  
NOVEMBER 20, 2023— 1:00 PM**

**1. MEETING TO ORDER**

Commissioner Mary Scherling called a meeting of the Flood Sales Tax Committee to order on Monday, November 20, 2023, at 1:00 PM in the Commission Room of the Cass County Courthouse. The following members were present: County Commissioner Mary Scherling, County Commissioner Duane Breitling, County Administrator Robert Wilson, County Finance Director Brandy Madrigga, and County Engineer Jason Benson. Also present was Assistant County Administrator Tracy Peters and Assistant County Engineer Tom Soucy.

**2. MINUTES APPROVED**

**MOTION, passed**

**Mr. Breitling moved and Mr. Wilson seconded that the minutes of the previous meeting held on April 3, 2023, be approved as written. Motion carried.**

**3. FLOOD SALES TAX FUND UPDATE**

Ms. Madrigga said the Flood Sales Tax Fund has \$10.58 million in approved projects with \$3.76 million in encumbrances and \$7.12 million unencumbered. She said projects being requested today total \$4.4 million. Mr. Breitling asked what the interest rate is on account of the flood sales tax funds are in. Ms. Madrigga said the account is a sweep account through Wells Fargo which has a variable interest rate that fluctuates with the market. She said recently, the interest rate has been around 4%.

**4. STATUS OF PREVIOUSLY APPROVED PROJECTS**

2017 Sheldon Addition Ring Levee Project

Kurt Lysne of Moore Engineering was present and said the Flood Sales Tax Committee approved a 75% cost share for the Sheldon Addition Ring Levee Project. He said the project has been delayed due to the project receiving clay material from the Metro Flood Diversion project. He said due to the delay in the project, the estimated project cost has increased. Mr. Lysne said there will likely be a request at the spring Flood Sales Tax Committee meeting to ask for additional funding for the project. He said the request may be for the Flood Sales Tax Committee to fund up to 84% of the local cost share rather than the approved 75% that was previously approved. Mrs. Scherling said this request would be outside of the Flood Sales Tax policy, however, could be considered once the request has been made. Mrs. Scherling asked if the project will be FEMA certified once it is complete. Mr. Lysne said this project is to build up the road, there is nothing to certify. He said the flood plain map does not map the travel of water.

2020 Davenport Levee update

Mr. Lysne said the Davenport Levee is in the permitting phases. He said FEMA changed the mapping and Davenport is working to get the conditional letter of map provision to remove the city from the flood plain submitted to FEMA. He said since the original cost estimate, the project cost has increased and in the future there will likely be a request from the Flood Sales Tax Committee to increase the local cost share from 75% to 81%. Mrs. Scherling asked if this project will be FEMA certified once it is complete. Mr. Lysne said yes, the project is fully reviewed and approved by FEMA and will remove Davenport from the flood plain. He said the project will likely start in 2024 or 2025.

Updated funding request for 2022 Elm River Dam

Lyndon Pease, Engineer for the Elm River Joint Water Resource District from Moore Engineering was present and said in April 2022, the Flood Sales Tax Committee approved a two thirds cost share for repairing Elm River Dams one and two since much of the water comes from Cass County. He said all

three of the Elm River Dams are in the same assessment district and the maximum amount of funds from the federal assessment district to maintain and repair all three dams each year is \$41,880. He said the State was delayed in approving the permits to repair Dams one and two by eleven months, which led to a delay in the project and had a significant impact on the cost of the project. He said cost of the project to improve Dams one and two increased from \$3,100,000 to \$5,300,000 due to significant material and labor cost increases and a delay in the construction by one year. Mr. Pease said the SWC will be asked to increase their cost share to \$3,114,000 and the Red River Joint Water Resource District will be asked at their meeting this spring to update their cost share to \$1,967,400, leaving the local cost share at \$218,600 and the request today from the Flood Sales Tax Committee to increase funding to \$145,733. The existing funding approved in April 2022 was \$95,267.

Mr. Olson asked if the increase to concrete costs is local or nationwide. Mr. Pease said he has seen the issue statewide where contractors have not bid on projects due to concrete prices and labor costs. He said the FM Diversion project is also using a large amount of concrete. Mr. Benson said there is a lack of concrete in the region which affected county projects and costs this year. He said it is important to note, if there were more staff at the state water resource district department, it could have saved millions of dollars just on the two Elm River Dam projects. He said this information should be relayed to our state partners. Mr. Pease said the project will be bid in December and brought to the SWC for approval.

**MOTION, passed**

**Mr. Breitling moved and Mr. Benson seconded to approve the amended cost share for Elm River Dams No. One and No. Two Improvements at a two thirds cost share not to exceed \$145,733. On a roll call vote, the motion carried with Mr. Olson not voting.**

#### Updated funding request for 2022 Elm River Dam Number 3 Improvements

Mr. Pease said in August of 2022 the Flood Sales Tax Committee approved a 90% local cost share of \$16,830 for a project to improve Elm River Dam three. He said similarly to the improvements to Dams one and two, there was a delay in the project due to state permitting and no bids were placed on the project. He said multiple contractors have recommended improvements to Dams one, two, and three be completed as one project. He said for accounting and tracking purposes the dams will be figured separately, however, will be put as one bid package when it is put out for bid this winter. He said the improvements to dam number three increased from \$400,000 to \$1,000,000, the SWC will be asked to increase their cost share to \$576,000, the Red River Joint Water Resource District will be asked to increase their cost share to \$381,600, leaving the local cost share at \$42,400, and the request from the Flood Sales Tax Committee today is to cost share 90% of the local share at \$38,160.

**MOTION, passed**

**Mr. Breitling moved and Mr. Benson seconded to approve the amended cost share for Elm River Dam Number three improvements at a 90% cost share not to exceed \$38,160. On a roll call vote, the motion carried with Mr. Olson not voting.**

## **5. PROJECT REQUESTS**

### Rochester and Page Township Slope Erosion Repair Project

Mr. Soucy said 138<sup>th</sup> Avenue Southeast is a shared road between Rochester and Page Township. He said a portion of the road is a low basin that causes issues for the townships during high water events. He said the ultimate solution is to widen the road top, flatten, and armor the slopes with rock and gravel, and install a culvert to equalize the water on both sides of the road. Clerk/Treasurer for Rochester Township, Marvin Thorson was present and said the road is not safe or a good road. He said the shoulders are steep, the road is narrow, and two cars cannot meet on the roadway. He said the townships

have applied for state grants, however, have not received funding. Rochester and Page Townships are requesting a 75% cost share of \$70,000 or \$52,500 to complete the project.

Mrs. Scherling asked if this is a retention project. Mr. Benson said this project under the flood sales tax policy would qualify for a 50% cost share, however, the township is requesting a 75% cost share as allowed if significant funds are available. Mrs. Scherling asked if there is any opportunity for other funding sources. Mr. Benson said this project would not qualify for SWC funds and there are no funding sources for this type of issue.

**MOTION, passed**

**Mr. Benson moved and Mr. Breitling seconded to approve the Rochester and Page Township Slope Erosion Repair project request at a cost share of 75% in an amount not to exceed \$52,500. On a roll call vote, the motion carried unanimously.**

#### City of Mapleton 2<sup>nd</sup> Street Storm Water Lift Station Replacement

Brandon Oye of Moore Engineering and City Engineer for the City of Mapleton was present and said the City of Mapleton brought a request to the Flood Sales Tax Committee in December of 2022 to replace the existing flood control lift station on 2<sup>nd</sup> Street and County Road 11 in Mapleton. He said at that time the Committee was supportive of the project, however, requested Mapleton go to the SWC to seek funding. Mr. Oye said the project is not eligible for SWC funding. He said the current lift station is severely undersized. He said the request today if for the Flood Sales Tax Committee to approve a 75% cost share of \$870,815 or \$870,815. He said the flood sales tax policy falls under the 50% cost share, however, in the past similar projects have been funded at 75% as excess funds have been available.

Mrs. Scherling asked if this project benefits any new development. Mr. Oye said no, this lift station replacement would only benefit existing development. Ms. Madrigga asked if the lift station is in a levy protected area. Mr. Oye said yes, the lift station only operates during flood events.

**MOTION, passed**

**Mr. Breitling moved and Mr. Benson seconded to approve the City of Mapleton 2<sup>nd</sup> Street Storm Water Lift Station project request at a cost share of 75% in an amount not to exceed \$870,815. On a roll call vote, the motion carried unanimously.**

#### City of Mapleton Flood Protection Study

Mr. Oye said the City of Mapleton is proposing a flood protection study. He said the study will identify alternatives as the city grows and will help with long term planning. Mr. Oye said parts of Mapleton will not be flood protected. He said with the planning started on a west metro loop highway just east of Mapleton, there are significant potential economic development opportunities in the near future that may be completely stymied by the current floodplains surrounding Mapleton. He said another factor that weighs on the future of Mapleton is impact that the FM Diversion will have on the ability to attract new businesses and development, when many sections of land near Mapleton will be removed from the floodplain within the protected area of the diversion. Mrs. Scherling asked if Mapleton asked to be included in the FM Diversion. Mr. Benson said the Corps of Engineers likely never looked to move the project as far west towards Mapleton due to flood plain considerations and population.

Mrs. Scherling asked if the work to determine where the bypass will be located should be completed before this flood study is completed. Mr. Benson said the bypass study will be completed in the next twelve months. Mr. Breitling asked what the total project cost is. Mr. Oye said the total project cost is \$156,500, \$86,000 will be requested by the SWC, leaving the local cost share at \$70,500 of which the City of Mapleton is requesting the Flood Sales Tax Committee approve a 90% cost share of \$63,450.



Mrs. Scherling said she appreciates the City of Mapleton conducting planning initiatives. She said the consistent message from the Flood Sales Tax Committee and in the flood sales tax policy states funds are not to be used for new development. Ms. Madrigga said she has the same concern. Mr. Oye said in this scenario, the FM Diversion has an impact and therefore is a unique request. He said the funds will not be used for a certain developer; it is for the benefit of the community. Mrs. Scherling said she does not support utilizing these funds for future development. Mr. Benson asked what the outcomes of this study are on the flood plain for existing fold control. He said there are other funding sources through Metro COG for development studies. Mr. Oye said it may be that future growth in Mapleton will not be flood protected.

#### City of Casselton Industrial Park Flood Improvements

Mr. Oye said the City of Casselton is proposing a flood improvement project for Casselton's Industrial Park. He said the current detention pond and pump station are undersized during flood events. He said new developments have a large retention pond, however, when this area was developed in 1995, retention needed today was not standard. He said the total project cost is \$4,050,000 and the City of Casselton is requesting a 75% cost share of \$3,037,500.

Mrs. Scherling asked if this project is eligible for other funding. Mr. Benson said this is not a type of project the SWC funds. He said there is an existing flood issues in this area for internal and external flood waters. He said he believes this is a project that falls within the flood sales tax policy and would be one of the largest cost share projects the Flood Sales Tax Committee has funded. Ms. Madrigga said she supports a 50% cost share as outlined in policy. Mrs. Scherling said she also supports a 50% cost share.

#### **MOTION, passed**

**Mr. Benson moved and Mr. Breitling seconded to approve the City of Casselton Industrial Park Flood Improvements project request at a cost share of 50% not to exceed \$2,025,000. On a roll call vote, the motion carried unanimously.**

#### City of Kindred Storm Water Detention Pond Project

Mr. Oye said the City of Kindred is proposing a storm water detention pond project for the existing Newport Ridge residential development. He said when the development was built, detention ponds were not standard as they are today and the project would reduce the risk of flooding impacts internally and downstream into Legal Drain 60. He said the request today is for a 75% cost share of \$493,570 at \$370,177.50.

Mrs. Scherling asked if any of the homes are currently in the flood plain. He said some of the homes may be in the flood plain, however, will be addressed through the other improvements in the project that are not being asked for flood sales tax funding. Mr. Benson said he believes this project fits within the flood sales tax policy and supports funding the project up to 50%.

#### **MOTION, passed**

**Mr. Benson moved and Mr. Breitling seconded to approve the City of Kindred Storm Water Detention Pond project request at a cost share of 50% not to exceed \$246,785. Discussion: Mr. Olson said developments and developers need to provide retention ponds when they are being built and should not rely on flood sales tax funding later to offset their costs. My. Oye said when the development was built in 2009, retention ponds were not standard, however, they are today and are part of new developments. On a roll call vote, the motion carried unanimously.**

**6. OTHER BUSINESS**

Mrs. Scherling said additional time is needed for the Flood Sales Tax Committee meetings in the future.

**7. ADJOURNMENT**

There being no further business, the meeting was adjourned at 2:40 PM.

Minutes prepared by Taylor Kaushagen, Commission Assistant

Cass County Sales Tax Activity (420)			
Cash Basis - 2024			
4/10/2024			
Date	Description	Amount	Balance
	Balance Forward		11,005,681.86
2024	Sales Tax	6,231,114.27	17,236,796.13
2024	Interest	277,331.49	17,514,127.62
1/1/2024	Diversion Board of Authority	(1,465,747.26)	16,048,380.36
1/1/2024	Diversion Board of Authority	(2,614,247.55)	13,434,132.81
1/1/2024	Misc Revenue	39,716.46	13,473,849.27
3/7/2024	County Projects	(1,178.95)	13,472,670.32
3/7/2024	County Projects	(946.67)	13,471,723.65
3/22/2024	Diversion Board of Authority	(1,777,252.60)	11,694,471.05
3/25/2024	County Projects	(1,341.74)	11,693,129.31
3/25/2024	County Projects	(2,375.61)	11,690,753.70
			11,690,753.70
			11,690,753.70

Reserved for County Projects - Cash	11,690,753.70	
Reserved for Diversion Project	-	11,690,753.70

**Summary**

**Receipts**

Transfer	-
Sales Tax Revenue	6,231,114.27
Interest Revenue	277,331.49
Misc Revenue	39,716.46
Total Receipts	<u>6,548,162.22</u>

**Expenditures**

Diversion Board of Authority	(5,857,247.41)
City of Fargo - Cash Flow Other Sources	-
County Projects	(5,842.97)
Land Purchase	-
Total Expenditures	<u>(5,863,090.38)</u>

Receipts over Expenditures 685,071.84

Balance from Prior Year 11,005,681.86

Balance Current Year 11,690,753.70

<b>Current County Projects</b>			
4/10/2024			
Project	Total Approved	Paid	Left to Pay
Closed Projects	\$ 5,925,851.77	\$ 5,925,851.77	\$ -
2015 Upper Maple River Detention Study Phase II 50%	45,500.00	37,068.77	8,431.23
2015 Rush River Detention Study Phase II 50%	45,500.00	34,422.58	11,077.42
2017 Sheldon Addition Ring Levee Project 75%	462,750.00	-	462,750.00
2018 City of Hunter Dam Projects 75%	23,582.80	11,527.09	12,055.71
2019 T-180 Dam Safety Improvements 75%	24,765.89	-	24,765.89
2020 Hofer Property 90%	512,281.80	496,455.85	15,825.95
2020 Davenport Levee 75%	1,425,000.00	-	1,425,000.00
2021 Gill Township Road	14,250.00	-	14,250.00
2021 Maple River Township Road	64,970.00	-	64,970.00
2022 Normanna Township Bank Stabilization 90%	187,137.87	-	187,137.87
2022 Elm River Dam 1 and 2 at 2/3-of local share	145,733.00	9,898.08	135,834.92
2022 Fill Township Slide Repair 75%	27,063.00	-	27,063.00
2022 Everest Township Slide Repair 75%	21,000.00	13,689.17	7,310.83
2022 Maple River Township Slide Repair 75%	45,000.00	-	45,000.00
2022 Mapleton Flap Gate - Storm Sewer Outfalls 75%	60,000.00	48,413.93	11,586.07
2022 Highway 81 Slide Repair 75%	950,287.00	-	950,287.00
2022 Reed Township Sheyenne Riverbank Stabilization 50%	8,650.00	7,861.44	788.56
2022 Elm River Dam Number 3 Improvements 90%	38,160.00	14,777.79	23,382.21
2022 Casselton Lagoon Slide Repair 75%	525,000.00	448,873.78	76,126.22
2022 Upper Maple River Detention Study Phase II Part 2 90%	27,720.00	-	27,720.00
2023 Rush River Amenia Flood Control Project 75%	73,125.00	-	73,125.00
2023 Rochester/Page Township Slope Erosion Repair 75%	52,500.00	-	52,500.00
2023 Mapleton 2nd St Storm Lift Station Replacement 75%	870,815.00	-	870,815.00
2023 Casselton Industrial Park Improvements 50%	2,025,000.00	-	2,025,000.00
2023 Kindred Storm Water Detention Pond Project 50%	246,785.00	-	246,785.00
Total	\$ 13,848,428.13	\$ 7,048,840.25	\$ 6,799,587.88

**Reserve for County Projects Activity**

Balance of Cash Carried forward from Prior Year	\$ 11,005,681.86
Current Year Reserves	690,914.81
Total	<u>11,696,596.67</u>
Paid in Current Year	5,842.97
Encumbrances	6,799,587.88
Un-encumbered Balance	<u><u>\$ 4,891,165.82</u></u>



SENT VIA EMAIL

April 9, 2024

**Cass County  
Joint Water  
Resource  
District**

Rodger Olson  
Chairman  
Leonard, North Dakota

Ken Lougheed  
Manager  
Gardner, North Dakota

Keith Weston  
Manager  
Fargo, North Dakota

Jacob Gust  
Manager  
Fargo, North Dakota

Rick Steen  
Manager  
Fargo, North Dakota

Melissa Hinkemeyer  
Director, Secretary

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Chad Peterson  
Cass County Commission  
211 9th Street South  
Fargo, ND, 58103

Dear Chair Peterson:

RE: Sheldon Subdivision Levee Status Update  
Cass County, North Dakota

The Cass County Joint Water Resource District (the "District") has a cost-share agreement with the Cass County Flood Sales Tax Committee for the Sheldon Subdivision Levee, as approved on October 2, 2017. The proposed project includes a ring levee for the 14 homes in the addition, which will be on the unprotected side of the F-M Diversion.

A substantial amount of work has been completed since the signing of the cost-share agreement. The cost-share agreement includes the following items (with current status):

- Permitting
  - North Dakota Department of Water Resources (DWR) Construction Permit – Application was submitted in March 2023. We are awaiting a response from DWR.
- Right-of-way acquisition
  - Offer letters sent in March 2023. All but one landowner has signed. Negotiations are ongoing with a goal of completing acquisition by summer 2024.
- Final plans
  - Complete. Changes may be made based on Construction Permit comments. Contract documents will need to be finalized at bidding.
- Clay material
  - An agreement has been made with the F-M Diversion P3 Developer to provide the clay required to construct the levee. The material has been excavated and placed in a stockpile adjacent to the Subdivision.
- Construction
  - Will begin upon completion of land acquisition and DWR Construction Permit.

Chair Chad Peterson  
Cass County Commission  
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April 9, 2024

Project costs have increased from the amount approved in 2017. This is due to a combination of factors, including inflation and land values.

An assessment district was approved by the residents of Sheldon Subdivision for \$61,700. Cost-share was approved by the North Dakota State Water Commission in 2018, but they will not execute the agreement until a construction permit is secured. The Cass County Flood Sales Tax Committee cost-share was approved to provide 75% funding of all items after SWC cost-share, up to a maximum of \$462,750. With the SWC funding in place, the expected Cass County Flood Sales Tax Committee cost-share is approximately \$300,000.

The Cass County Joint Water Resource District respectfully requests participation from the Cass County Flood Sales Tax Committee for local costs above the voted upon assessment district amount (\$61,700), but not to exceed the maximum approved amount of \$462,750. We will present detailed cost information during the meeting on April 15th and look forward to the discussion.

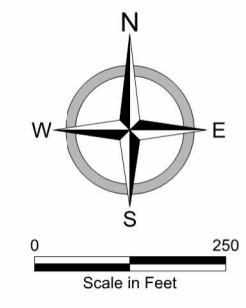
We are very thankful for the support from the Cass County Flood Sales Tax Committee and look forward to continued partnership.

Sincerely,

CASS COUNTY JOINT WATER RESOURCE DISTRICT



Melissa Hinkemeyer  
Director, Secretary



PROJECT LAYOUTS  
 SHELDON SUB-DIVISION RING LEVEE  
 CASS COUNTY JOINT WATER RESOURCE DISTRICT  
 CASS COUNTY, NORTH DAKOTA  
 ALIGNMENT AND SURVEY CONTROL LAYOUT

**HORIZONTAL CONTROL**

NORTH DAKOTA COORDINATE SYSTEM OF 1983, NAD83, SOUTH ZONE  
 COMBINATION FACTOR (cf) = .9998875  
 ALL COORDINATES ARE CASS COUNTY GROUND COORDINATES

**VERTICAL CONTROL**

NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88)

**BENCHMARKS/SURVEY CONTROL**

PRIOR TO PROJECT START, OWNER WILL SET AND ESTABLISH  
 BENCHMARKS AND SURVEY CONTROL FOR THE PROJECT, AND  
 CLEARLY MARK RIGHT-OF-WAY.

**ISSUED FOR PERMITTING  
 NOT FOR CONSTRUCTION**

DATE:	05.18.23
REV DATE:	---
REV NUM:	---
RECORD:	---
PROJECT No.	19739
MANAGER:	KRL
DESIGNER:	BOB
DRAFTER:	RJK
REVIEWER:	JMH



SENT VIA EMAIL

April 9, 2024

## Maple River Water Resource District

Rodger Olson  
Chairman  
Leonard, North Dakota

Gerald Melvin  
Manager  
Buffalo, North Dakota

Chad Miller  
Manager  
Buffalo, North Dakota

Melissa Hinkemeyer  
Director, Secretary

1201 Main Avenue West  
West Fargo, ND 58078-1301

701-298-2381  
FAX 701-298-2397  
[wrđ@casscountynđ.gov](mailto:wrđ@casscountynđ.gov)  
[www.casscountynđ.gov](http://www.casscountynđ.gov)

Chad Peterson  
Cass County Commission  
211 9th Street South  
Fargo, ND, 58103

Dear Chair Peterson:

RE: Davenport Flood Risk Reduction Project Status Update  
Cass County, North Dakota

The Maple River Water Resource District (the "District") has a cost-share agreement with the Cass County Flood Sales Tax Committee for the Davenport Flood Risk Reduction Project, as approved on October 1, 2018. A substantial amount of work has been completed since the signing of the cost-share agreement. The cost-share agreement includes the following items (with current status):

- Geotechnical work
  - Drilling and design report complete.
- Permitting
  - Section 404 – Approved. Was submitted to the U.S. Army Corps of Engineers on February 16, 2023, and finalized on June 22, 2023.
  - Conditional Letter of Map Revision (CLOMR) was submitted to FEMA on May 16, 2023. We have received two rounds of comments and believe the responses have been accepted by FEMA. We anticipate an approved CLOMR any day.
  - Railroad – RR/VW and BNSF agreements nearly complete.
  - North Dakota Department of Water Resources (DWR) Construction Permit – Application was submitted in July 2023. We are awaiting a response from DWR.
- Design and modeling/mapping
  - Complete. Changes will only be made based on CLOMR and Construction Permit comments.
- Right-of-way acquisition
  - Offer letters sent in March 2023. Negotiations ongoing with the goal of completing acquisition by summer 2024.
- Final plans
  - Complete. Contract documents will need to be finalized at bidding.
- Construction
  - Will begin upon approval of CLOMR, land acquisition, and DWR Construction Permit.



Chair Chad Peterson  
Cass County Commission  
Page 2  
April 9, 2024

As presented at previous meetings, the project timeline has been dependent on the progress of the Western Cass Flood Insurance Study (FIS). The City of Davenport is not currently mapped into a FEMA floodplain; however, the Western Cass FIS preliminary maps place a majority of the city within Zone AE. FEMA released preliminary maps in 2016 and 2018. The flood risk reduction project will ultimately remove the federal requirement for residents with federally-backed mortgages to obtain flood insurance, while also reducing the effort to fight overland flooding like what they experienced in 2009 and 2011.

FEMA has indicated to us that the Western Cass FIS effective date has been delayed to 2025.

Project costs have increased from the amount approved in 2018. This is due to a combination of factors, including:

- Modeling updates
  - FIS unsteady-state HEC-RAS model updates in coordination with FEMA and the Fargo-Moorhead Metro Diversion model, which resulted in changing design water surface elevations. These modifications also resulted in re-designs of new exterior culvert installation to mitigate water surface increases the project will cause.
- Railroad negotiations
  - These have gone well, but the process of getting six temporary rail closures was a very iterative process.
- Inflation
  - Construction cost
  - Land values

Our latest cost estimate indicates the project will need an increase in the cost-share agreement of approximately \$300,000. A formal cost-share request will be submitted prior to bidding with a more exact amount.

We are very thankful for the support from the Cass County Flood Sales Tax Committee and look forward to continued cooperation as we work to construct this vital infrastructure for Cass County.

Sincerely,

MAPLE RIVER WATER RESOURCE DISTRICT



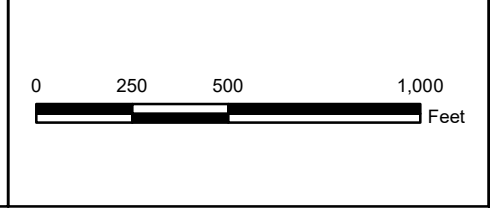
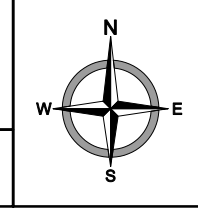
Melissa Hinkemeyer  
Director, Secretary



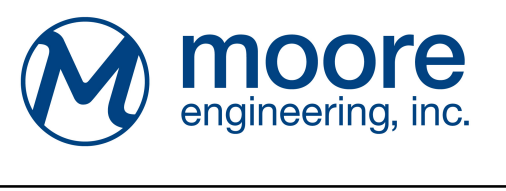
- Proposed Culverts
- Exterior Drainage Ditch
- Proposed Levee Foot Print
- Proposed Pond

**Proposed Project Features**  
**DAVENPORT, NORTH DAKOTA**

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North Dakota state agencies and the ND GIS Hub



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# Memorandum

Date: April 8, 2024  
Prepared By: Brandon Oye, Casselton City Engineer  
Project: City of Casselton – Industrial Park Flood Improvements  
Subject: Project Update – Amended Cost-Share Request

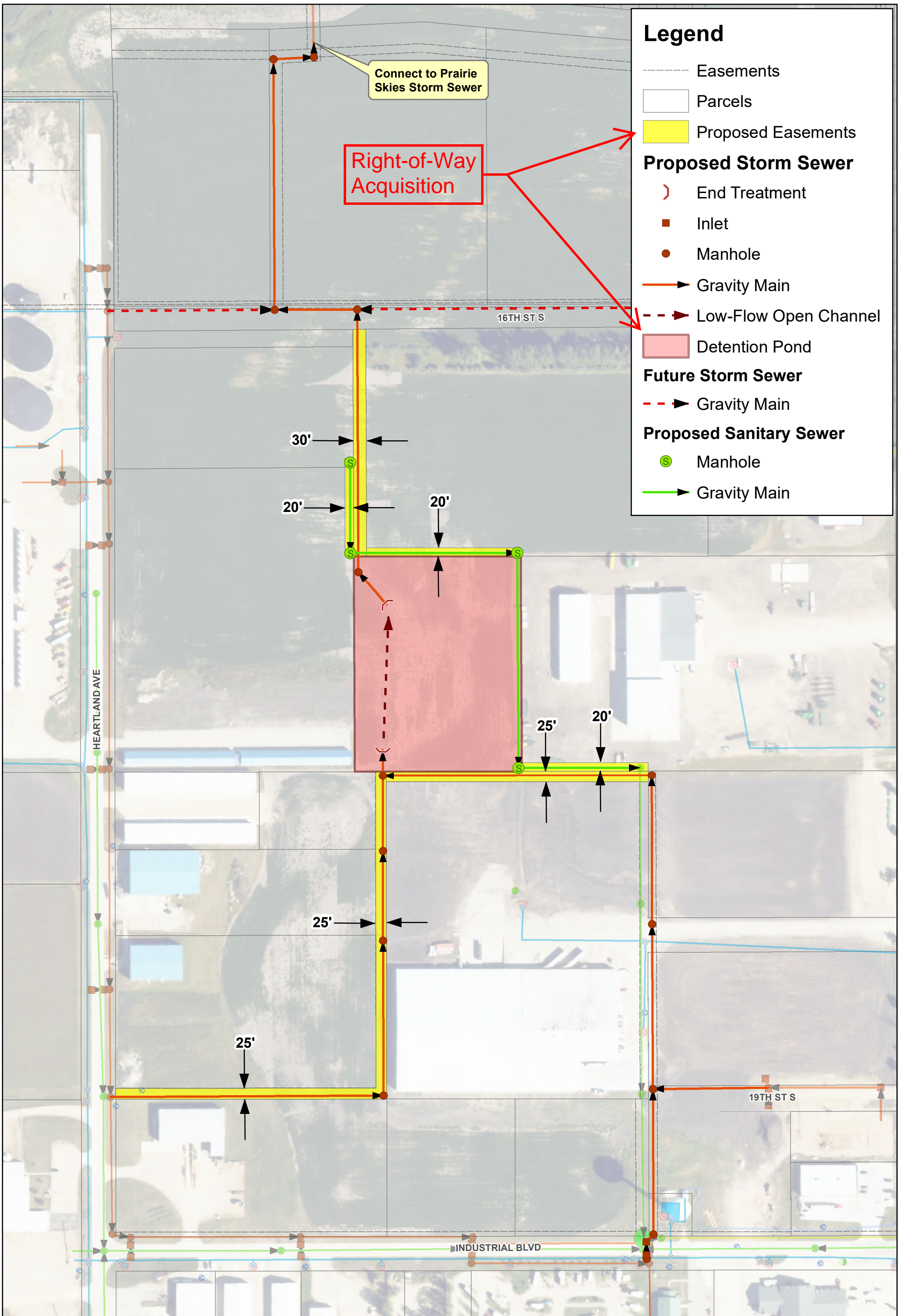
The City of Casselton held a public input meeting with the business owners in the Industrial Park on February 12<sup>th</sup>, 2024. The project and updated costs were presented and discussed. There were concerns voiced on the cost and timing of the project. Based on the input from that meeting, the City has decided to only acquire the necessary easements for the storm sewer pipe and purchase the land for the detention pond. The full construction of the project will be rescheduled to a future year in the city's Capital Improvement Plan.

It will be critical to at least secure the necessary right-of-way so that the project can be constructed as designed in the future. Without the necessary right-of-way, the project cost would increase in the future, or possibly become unfeasible due to structures constructed along and over the project alignment. Attached is an exhibit that shows the easements and property to be purchased for the project.

There may be a possibility that the City still constructs a smaller portion of the main storm sewer trunk line to address some immediate flooding issues. That decision should be made in the next 6 months.

With this knowledge, it would be appropriate to reduce the approved cost-share amount, which was 50% cost-share, up to \$2.0 million maximum. At this time, we believe reducing the cost share down to \$1.0 million maximum is appropriate. We will provide an update at the Committee meeting in the Fall if those amounts can be reduced further yet, pending the actual right-of-way acquisition costs and potential for a smaller phase of construction.

I will attend the Committee meeting on April 15<sup>th</sup> to answer any questions.



### Legend

- Easements
- ▭ Parcels
- ▭ Proposed Easements

#### Proposed Storm Sewer

- ) End Treatment
- Inlet
- Manhole
- Gravity Main
- - -> Low-Flow Open Channel
- ▭ Detention Pond

#### Future Storm Sewer

- - -> Gravity Main

#### Proposed Sanitary Sewer

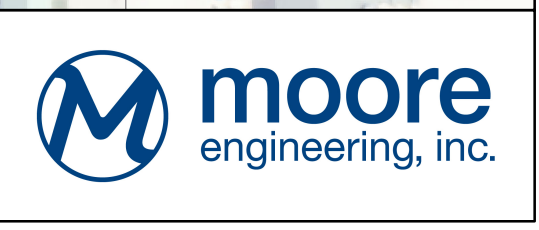
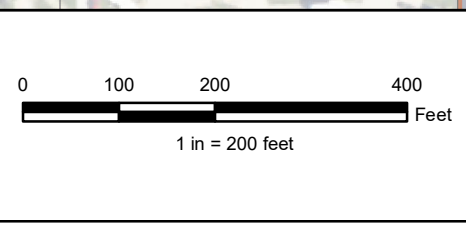
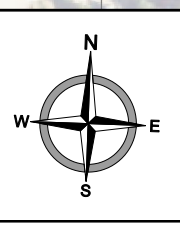
- ⊙ Manhole
- Gravity Main

Right-of-Way Acquisition

Connect to Prairie Skies Storm Sewer

**PROPOSED IMPROVEMENTS MAP**  
**FLOOD AND STORM IMPROVEMENT DISTRICT NO. 2024-3**  
**INDUSTRIAL PARK FLOOD AND STORM IMPROVEMENTS**  
**CASSELTON, NORTH DAKOTA**

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# City of Mapleton

PO Box 9 - 651 2<sup>nd</sup> Street, Mapleton, ND 58059  
p-(701) 282-6992 f-(701) 282-0080  
auditor@mapletonnd.com  
www.mapletonnd.com



November 13, 2023

Chad Peterson, Chairman  
Cass County Commission  
P.O. Box 2806  
Fargo, ND 58108-2806

Re: Mapleton Flood Protection Study  
Mapleton, ND

Dear Chairman Peterson:

We are respectfully requesting flood risk reduction funding assistance for a Flood Protection Study for our community. This study will identify alternatives for the City to continue its growth into the future. As noted in further detail in the application, this study is critical for the future of our community.

As requested in the application, the City respectfully requests a motion from the Cass County Flood Sales Tax Committee to approve cost-share in the amount of \$63,450.00 for the study, which is 90% of the remaining local share after applying the State Water Commission cost-share. We appreciate your time and consideration in this request.

If you have any questions, please feel free to contact me or our City Engineer, Brandon Oye, at 701-282-4692 or [brandon.oye@mooreengineeringinc.com](mailto:brandon.oye@mooreengineeringinc.com).

Sincerely,

City of Mapleton

A handwritten signature in blue ink, appearing to read "A. Draeger", written over a horizontal line.


Andrew Draeger  
Mayor

Enclosures:

- Application for Funding
- Study Location Map



## Application for Funding from the Cass County Flood Sales Tax Committee

Project Name:					
Date:					
Funding Requested:		Cost Share %	50%	75%	90%
Location (Provide a brief discription):					
Name of Owner(s)/Applicant			Engineer Name		
Owner(s)/Applicants Address			Engineer Firm Name		
Owner(s)/Applicants Email			Engineer Email		
Owner(s) Phone Number			Engineer Phone Number		
Owner/Applicant's Signature				Date:	
Representative's Signature				Date:	

**Proposal: Brief Narrative Description of Reason(s) for Application**

<b>Breakdown of Project Funding</b>		\$ Dollar Amount
Total Project Cost		\$
Additional Funding Source #1 (Name)		\$
Additional Funding Source #2 (Name)		\$
Additional Funding Source #3 (Name)		\$
Additional Funding Source #4 (Name)		\$
Local Project Cost (Total Cost – Additional Funding)		\$
Flood Sales Tax Requested Amount		
Applicant/Requesting Entity Cost		

**Application and Funding Eligibility**

(see criteria in the Cass County Policy 13.72 Amended County Sales Tax For Flood Risk Reduction and Recovery Projects Adopted December 4, 2017 at [www.casscountynod.gov/floodsalestaxcommittee](http://www.casscountynod.gov/floodsalestaxcommittee))

Describe why you are an Eligible Entity: (County, City, Township, Water Resource District, or Home/Landowner)

**Project Eligibility: (Outline what provision of the Policy provides eligibility to fund this project based on the criteria listed below)**

X	1. Levee construction or recertification for cities or rural subdivisions. Generally levee projects should be constructed to FEMA and/or US Army Corps of Engineer standards and be able to bring the benefited area out of the 1% chance (100 year) floodplain. These levees would also need to be maintained at that standard by either the city or township that is a member of the National Flood Insurance Program. Rural subdivisions seeking this funding would need to complete an agreement with the township and form an assessment district for the long term maintenance of the levee.
X	2. Flood control projects.
	3. Water retention or detention projects.
	4. Dam construction or maintenance.
	5. Lift Stations for removing storm water from within a levee protected area.
	6. Rural Farmstead Ring Levees (in conjunction with the ND State Water Commission 50% cost share) as outlined on the ND State Water Commission website under "Cost Share"
	7. Road Projects that provide infrastructure protection to prevent significant future flood damage. These requests may be standalone projects or in conjunction with post-flood damage repair with or without FEMA cost share.
	8. Road access (road raises or other infrastructure improvements that will allow access to a city, subdivision, or rural residence/farmstead).
	9. Embankment slumping along the Red River, Wild Rice River, Sheyenne River, Maple River, Rush and Lower Rush Rivers, and Legal Drains. River slumping projects may include road and infrastructure repair, home buyouts, and repair to legal drains.
	10. Home buyouts for flooding and bank slumping.
	11. Flood Recovery projects to include: Levee repair, road repair, bridge repair, and other infrastructure related repair projects. None infrastructure flood recovery such as debris removal and sandbag cleanup will not be eligible.

**Cost Share Eligibility: (What % of cost share and provision of the Policy provides cost share % eligible for this project)**

This project meets the funding cost share eligibility of \_\_\_\_\_% based which of the following criteria (select all that apply):

	1. Generally the cost share will be 50% of the “local” share of the non-retention projects, i.e. if a \$100,000 project had a 50% state cost share, the local share would be \$50,000 and the County
	2. Policy for Retention Projects: Cost share is 75% of the “local” share if they are approved by the Red River Joint Water Resource District.
	3. Home buyouts for flooding and bank slumping: Cost share is 90% of the “local” cost with the homeowner paying 10% of the “local” cost.

**Project Priority: (Explain any provisions of the Policy that provides a higher priority for this project)**

This project should be a higher priority based on the following criteria (select all that apply and provide a narrative on why the criteria applies):

	1. Population benefited by the project
	2. Distribution of funds by location
	3. Disbursement percentage determined by the number of people benefited
	4. Cost effectiveness of the project
	5. Permanency of the project
	6. Effect of the diversion on the project
	7. Does the project have long-term merit (benefits extend beyond 10 years)
	8. Other sources of funding from local, state, or federal cost share programs.

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**Evaluation Criteria: (Describe any specific Evaluation Criteria used to prioritize funding of this project)**

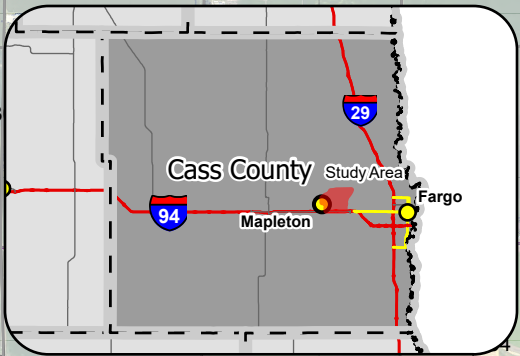
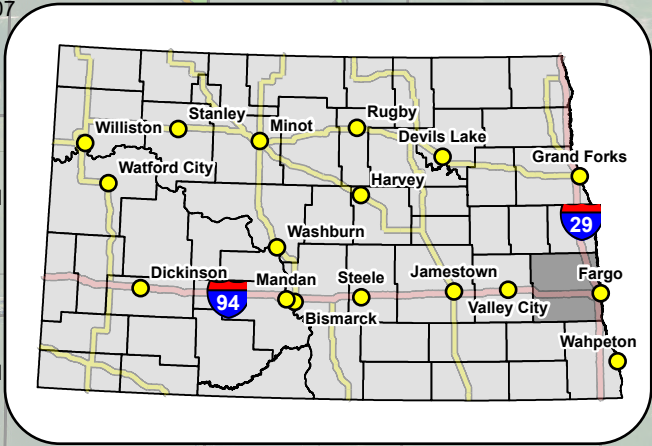
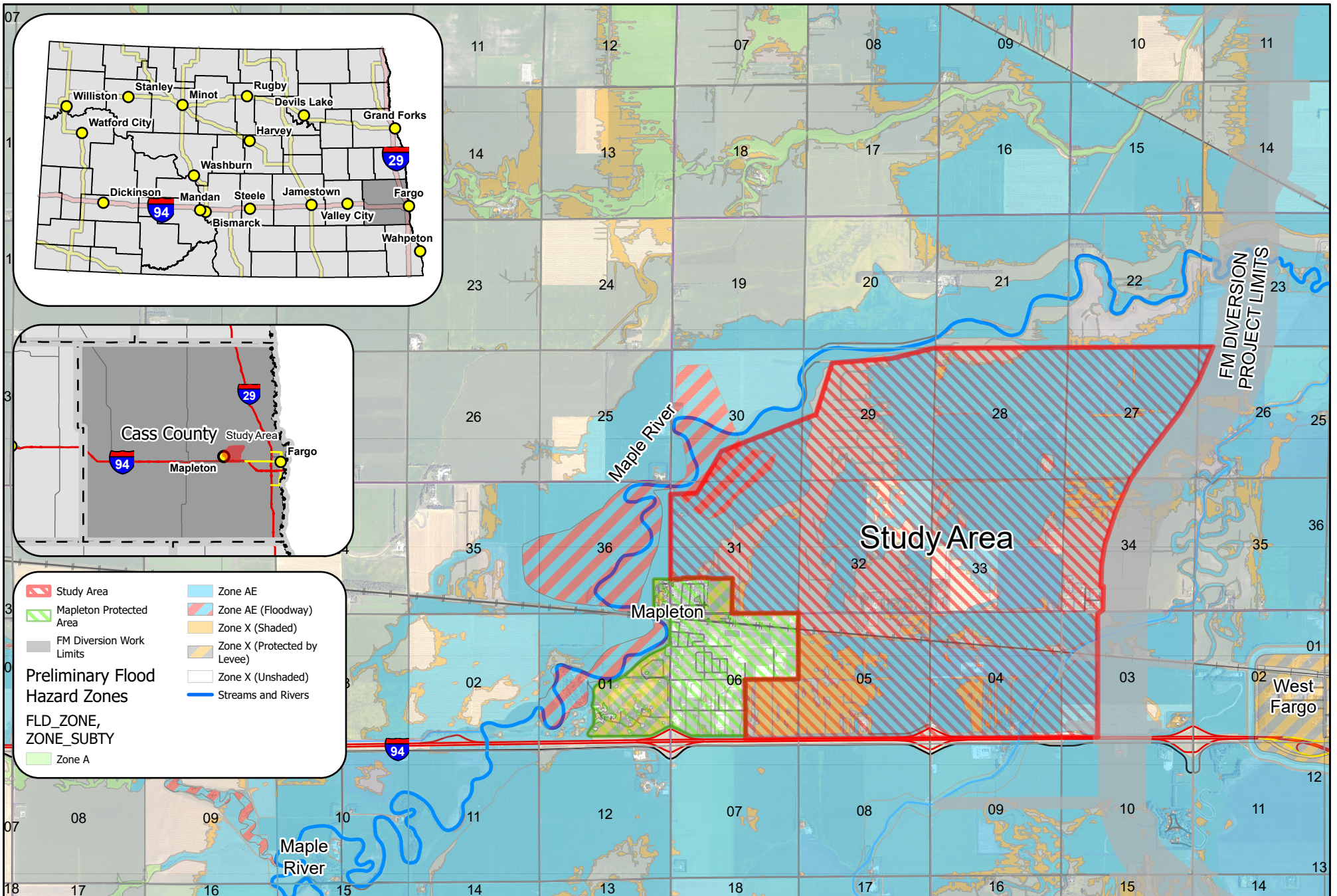
This project should be a higher priority based on the following criteria (select all that apply and provide a narrative on why the criteria applies):

	1. Benefit cost ratio
	2. Land area benefited
	3. Population benefited
	4. Downstream flood reduction
	5. Total acre-feet of retention storage

**Attachments**

	1. Funding Request Memo from the Project Owner With Suggested Motion
	2. Location Map



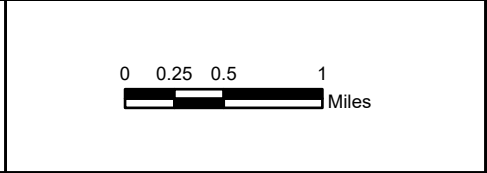
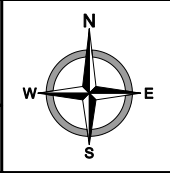


	Study Area		Zone AE
	Mapleton Protected Area		Zone AE (Floodway)
	FM Diversion Work Limits		Zone X (Shaded)
			Zone X (Protected by Levee)
			Zone X (Unshaded)
			Streams and Rivers

**Preliminary Flood Hazard Zones**  
 FLD\_ZONE,  
 ZONE\_SUBTY  
 Zone A

**23718 - MAPLETON, ND - FLOOD PROTECTION STUDY  
 COST SHARE REQUEST  
 CASS COUNTY, NORTH DAKOTA**

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# INTEROFFICE MEMORANDUM

**TO:** Andrea Travnicek, Ph.D., Secretary  
Patrick Fridgen, Planning and Education Division Director  
Sarah Felchle, Accountant, Administrative Services

**FROM:** Abigail Franklund, Cost-Share Manager

**SUBJECT:** NDSWC Cost-Share Request – City of Mapleton  
Mapleton Flood Protection Study

**DATE:** December 15, 2023

**Background & Description**

The City of Mapleton (Sponsor) requests cost-share for their Mapleton Flood Protection Study (Project). Currently, the City of Mapleton’s flood protection only provides protection to existing developed properties and a small number of properties beyond those developed areas. The city has experienced growth and wants to attract economic development opportunities. The project will determine if affordable flood protection can be provided to future growth areas. The study will evaluate flood protection alternatives and provide preliminary cost estimates. The project is east of Mapleton in Cass County, North Dakota.

**Supplemental Information**

Water Development Plan (Priority)	No
Benefit-Cost Ratio	NR

(NR) Not Required

**Schedule**

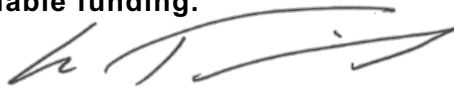
Task	Dates
Study	Dec. 1, 2024
Design	Dec. 1, 2026
Bid	Feb. 1, 2027
Construction	April 1, 2027
Completion	Oct. 1, 2028

**Cost-Share Funding Summary**

	Preconstruction	Construction	Total	Recommend
Noneligible Cost	\$12,655	-	\$12,655	
Eligible Cost	\$143,473	-	\$143,473	
Total	\$156,128	-	\$156,128	
Cost-Share 60% (Requested)	<b>\$86,084</b>	-	-	<b>\$86,084</b>

**This project meets requirements of the Water Commission’s cost-share policy. Therefore, I recommend approval of this request by the City of Mapleton for state cost participation in the Mapleton Flood Protection Study at 60 percent of eligible costs not to exceed \$86,084. This approval is contingent on available funding.**

Approval Signature and Date \_\_\_\_\_



12/18/2023

AT:bn/af/2213

**Agreement for Cost-Share Reimbursement  
City of Mapleton  
Mapleton Flood Protection Study**

**1. PARTIES.** This agreement is between the State of North Dakota (State), by and through the State Water Commission (Commission), and the City of Mapleton (Sponsor).

**2. COMMISSION'S RESPONSIBILITY AND INTENT.** Commission will provide Sponsor with cost-share, not to exceed \$86,084, as approved by Secretary in December 2023, to reimburse 60 percent of the actual eligible costs incurred in Sponsor's Mapleton Flood Protection Study (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. Commission 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. Notify Commission of any changes to Project funding, including additional funding or funding sources. Cost-share may be modified based on the revised local share.
- i. 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.
- j. Notify Commission of litigation related to the Project. If a Project becomes the subject of litigation before all funds have been

disbursed, the Secretary may withhold funds until the litigation is concluded.

**4. PROJECT DESCRIPTION AND LOCATION.** Project is pre-construction costs for a flood protection study of the area surrounding Mapleton. Project is located east of Mapleton 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. Commission will not cost-share in litigation costs unless there has been a separate authorization.

**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.** Sponsor 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 recover 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. NONDISCRIMINATION.** Sponsor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), N.D.C.C. title 34, and all applicable federal and state laws, rules, and policies relating to nondiscrimination, accessibility, and civil rights.

**16. 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: 12/18/2023

**CITY OF MAPLETON**

By:

ANDREW DRAEGER  
Mayor

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