

## 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 June 13, 2024:

- North Dakota Department of Rehabilitation— contract amendment for state prisoners rate;
- Edward O. Samuelson Revocable Living Trust—cost share agreement for work on County Highway 14;
- Alcohol Monitoring Systems, Inc.—contract for purchase of data collection software and services in support of the Community Supervision Unit;
- Robert R Schroeder Construction contract documents for bridge project on Cass Highway 32.



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# Office of the Sheriff

Jesse Jahner, Sheriff

June 6, 2024

Mr. Chad Peterson, Chair  
Cass County Commission  
Via email

Chair Peterson,

The attached contract amendment is submitted by the ND Dept of Corrections and Rehabilitation, and I am requesting consideration for approval at the next meeting of the Cass County Commission.

This amendment renews the existing contract through June 30, 2025 to coincide with the state's fiscal year, and includes amendments to the contract rate for state prisoners to match Commission action taken last year retroactive to January 1, 2024.

For context, this contract has not been used yet in 2024, and exists per century code requirements to establish rates in the event that DOCR does need to delay entry of prisoners into the state system, or hold state prisoners in the Cass County Jail.

I can be available for any questions the commission may have if you wish to make this a regular agenda item, but I have no objections to including this amendment on the consent agenda.

Capt. Andrew Frobig  
Jail Administrator

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

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

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



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Sheriff's Office DATE OF REQUEST: 06-13-2024

COMPANY REQUESTING CONTRACT: North Dakota Department of Corrections and Rehabilitation

BRIEF PROJECT DESCRIPTION: Contract amendment and renewal

       NEW CONTRACT OR   x   CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

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

STATE'S ATTORNEY COMMENTS:

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**CONTRACT AMENDMENT**

**CONTRACT NAME AND NUMBER:** [Cass County & AC00793](#)

**AMENDMENT NUMBER:** **1**

This amendment is made to [AC00793](#) (Contract) between the State of North Dakota, acting through its [Department of Corrections & Rehabilitation](#) (STATE), and [Cass County](#) (CONTRACTOR).

The parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions conflict with any of the terms and conditions of the Contract, then, notwithstanding any term in the Contract, the following terms and conditions govern and control the rights and obligations of the parties.

The parties agree to amend the Contract as follows:

**Contract Section 1, Term of Contract.** The Contract commenced on October 18, 2021 for a period of **20 months** with 3 options to renew the contract for up to **24 months each**.

The parties have agreed to renew the contract for an additional 24 months; therefore, the contract is amended to change the expiration date to June 30, 2025. The contract has 0 renewal(s) remaining.

**Contract Section 3, Compensation.** The first sentence in the Compensation Section is hereby deleted in its entirety and replaced with the following:

DOCR shall pay for services provided by CONTRACTOR under this contract an amount not to exceed \$85.00 per offender per day, from July 1, 2023 through December 31, 2023 and not to exceed \$120.00 per offender per day, from January 1, 2024 through June 30, 2025.

**Contract Section 17, Notice.** Reference to Joseph Joyce is updated to Lance Anderson and his contact information is [lwander@nd.gov](mailto:lwander@nd.gov) and 701-328-6039.

All other terms of the Contract remain in effect. This Contract Amendment is not effective until fully executed by all parties.

**EXECUTION**

| <b>CONTRACTOR</b>                           | <b>STATE OF NORTH DAKOTA</b>  |
|---|---|
| <a href="#">Cass County Jail</a>            | Acting through its <a href="#">Department of Corrections &amp; Rehabilitation</a> |
| BY:   | BY:   |
| Printed Name: <a href="#">Chad Peterson</a> | <b>Michele Zander</b>   |
| Title: <a href="#">Commission Chair</a>     | Title: <b>Chief Financial Officer</b>   |
| Date:                                       | Date:   |



## Highway Department


Telephone: 701-298-2370

Fax: 701-298-2395

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### MEMORANDUM

TO: Cass County Commission

FROM: Thomas Soucy, County Engineer 

DATE: June 6, 2024

SUBJECT: Consent Agenda Item for June 17, 2024 Commission Meeting: Cost Share Agreement - Edward O. Samuelson Revocable Living Trust – County Highway at Intersections of 7<sup>th</sup> St E and 57<sup>th</sup> St S.

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Attached are the Cost Share Agreement Docs with Edward O. Samuelson Revocable Living Trust to complete intersection improvements required by the signed access permit for the intersection of 7<sup>th</sup> St E and 57<sup>th</sup> St S along County Highway 14.

Edward O. Samuelson Revocable Living Trust expressed their desire to have a cost share on a proposed Cass County project happening during the 2024 construction season on County Highway 14. They proposed to add the necessary intersection improvements to our project to save costs and minimize construction on this corridor in the future.

The proposed improvements required by the signed access permit were to construct dedicated LT and RT turnlanes for south bound traffic at each intersection location. The Cass County Highway Department used this opportunity to instead construct full intersections at both locations with dedicated LT and RT turnlanes for north and south bound traffic.

**SUGGESTED MOTION:** AUTHORIZE CHAIRPERSON TO SIGN COST SHARE AGREEMENT WITH EDWARD O. SAMUELSON REVOCABLE LIVING TRUST FOR THE INTERSECTION IMPROVEMENTS ON THE CASS COUNTY HIGHWAYS STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

J:\Admin-Eng\FORMS\Letterhead\_Memos\_2023\Memo - Template Hwy Dept.docx



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway Department      DATE OF REQUEST: 06-13-2024

COMPANY REQUESTING CONTRACT: Edward O. Samuelson Revocable Living Trust

BRIEF PROJECT DESCRIPTION: Cost share agreement for County Highway 14

X NEW CONTRACT    OR    CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

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

STATE'S ATTORNEY COMMENTS:

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## COST SHARE AGREEMENT

THIS COST SHARE AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (hereinafter referred to as the “effective date”) by and between the Edward O. Samuelson Revocable Living Trust Agreement dated June 27, 2010, whose post office address is 5302 51<sup>st</sup> Ave S, STE D, Fargo, ND 58104 (hereinafter referred to as the “Developer”), and Cass County, North Dakota, a North Dakota political subdivision, whose post office address is 211 Ninth Street South, P.O. Box 2806, Fargo, ND 58103 (hereinafter referred to as the “County”).

WHEREAS, County is planning to undertake improvements along County Highway No. 14 from the Sheyenne River to Interstate 29; and

WHEREAS, portions of County Highway No. 14 are located within the municipal boundaries of City of Horace; and

WHEREAS, County is planning to undertake improvements to County Highway No. 14, including Mill & Hot Mix Asphalt overlay and turnlane construction ; and

WHEREAS, because of these improvements planned for County Highway No. 14, the Developer desires to coordinate its improvements in conjunction with the County’s improvements; and

WHEREAS, Developer and County agree that coordination of the two entities’ construction efforts will foster efficiency and may result in cost savings; and

WHEREAS, Developer and County are interested in working in a cooperative manner to undertake improvements to County Highway No. 14 (hereinafter collectively referred to as the “project”) pursuant to the terms and conditions of this Cost Share Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. Purpose. The intent of this agreement is to increase efficiencies with respect to the bidding, contracting and construction oversight of the project, and to prevent delays with respect to the scheduling of work for the project.
2. Term. Cost Share Agreement shall terminate sixty (60) days after the final payment is issued to the contractor hired to undertake the improvements for the project. A correction period of one year shall be observed after the project is deemed substantially complete to enforce any portion of the scope of work that needs to be fixed at the general contractor’s expense.
3. Procedures. Developer and County agree that the following procedures will govern the bidding, contracting, oversight and payment procedures for the project:
  - Subd. 1. Engineering Services. County will employ an engineer who will be responsible for a full set of street plans.

- Subd. 2. Bidding. County shall coordinate in the preparation and drafting of the request for bids as provided under North Dakota law after the Developer has approved the plans. County shall have the authority to accept the lowest responsible bid after the City has approved the bid.
- Subd. 3. Contract. The County shall be identified as owner with respect to any contract let for the project and be identified in any bid bond, payment bond or performance bond required.
- Subd. 4. Cost Share. The costs associated with Mill & Hot Mix Asphalt overlay shall be paid entirely by the County. The costs associated with the turnlane construction shall be paid entirely by the Developer. All other cost associated with the project and incidentals will be paid entirely by the County. County's engineer shall be responsible for preparing and forwarding invoices to the appropriate entities. See Exhibit 1 for the bid item quantity splits.
- Subd. 5. Financing. Developer and County shall each be individually responsible for obtaining financing for their respective shares of the project.
- Subd. 6. Construction Oversight/Inspections. County shall be responsible for inspection, review, observation of work performed, and administration of the construction contract within the county's right of way.
- Subd. 7. Processing of Pay Requests and Change Orders. County's engineers shall coordinate in the processing of pay requests. Pay requests shall first be provided to Developer for review and then submitted to County for approval. Developer shall pay all pay requests recommended by the County engineer and approved by the County in accordance with the agreed cost share set forth in subdivision 4 above. Invoices will be submitted to the Developer when the project is substantially complete and when the final is submitted. The Developer and County shall coordinate in the review and approval of change orders as needed.
- Subd. 8. Final Punch List. County and Developer shall coordinate with respect to developing a final punch list.
- Subd. 9. Disputes with Contractor. Developer and County shall coordinate with respect to any disputes regarding the contractor. Such coordination shall include any potential litigation with the contractor. However, each party shall be responsible for their own attorney's fees should a dispute occur with the contractor.
4. Workers Compensation. Each party shall be responsible for injuries or death of its own personnel. Each party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance



pursuant to this agreement. Each party waives the right to sue the other party for any workers' compensation benefits paid to its own employee or volunteer or their dependents, even if the injuries were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.

5. Damage to Equipment. Each party shall be responsible for damages to or loss of its own equipment. Each party waives the right to sue any other party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.
6. Liability. For the purposes of Municipal Tort Liability, the employees and officers of a party are deemed to be employees of that party. Under no circumstances shall a party, irrespective of whether it may have waived the limit on liability set forth in the North Dakota Century Code, be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in the North Dakota Century Code applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party.
7. Merger Clause. This agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.
8. Written Amendment Required. No amendment, modification, or waiver of any condition, provision or term shall be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein shall limit the remedies and rights of the parties thereto under and pursuant to this Cost Share Agreement.
9. Grammatical Construction. Whenever the singular number is used herein, the same shall include the plural where appropriate, and the words of any gender shall include any other genders where appropriate.
10. Severability Clause. Each provision, section, sentence, clause, phrase, and word of this Cost Share Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Cost Share Agreement.
11. Agreement Binding on Successors. This Cost Share Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.

12. North Dakota Law Applies. This Cost Share Agreement shall be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Cost Share Agreement shall be brought in an appropriate venue in the State of North Dakota.
13. Execution in Counterparts. This Cost Share Agreement may be executed in counterparts with both Developer and County having a fully-executed counterpart.
14. Exhibit 1. Bid Item quantity splits are attached.

EDWARD O. SAMUELSON REVOCABLE  
LIVING TRUST DATED JUNE 27, 2010

CASS COUNTY

BY: \_\_\_\_\_  
Thomas J. Samuelson  
Its: Trustee

BY: \_\_\_\_\_  
Chairperson

BY: \_\_\_\_\_  
Edward Samuelson Jr.  
Its: Trustee

BY: \_\_\_\_\_  
County Finance Director

EXHIBIT 1

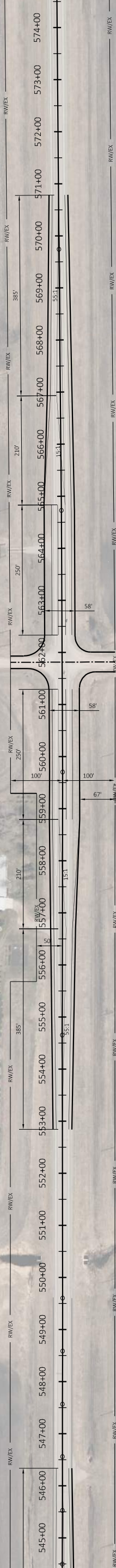
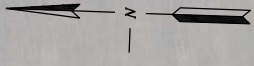
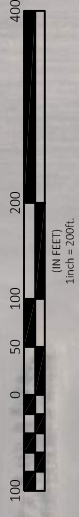
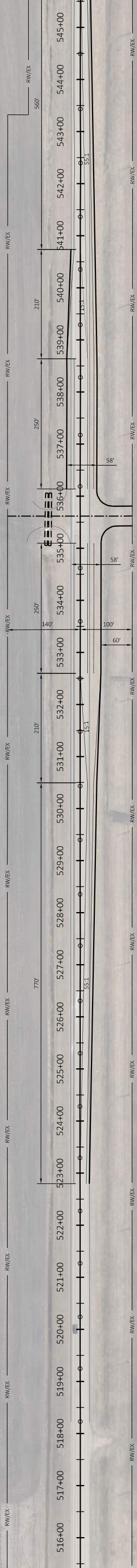
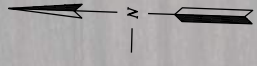
CASS COUNTY HIGHWAY DEPARTMENT

| PROJECT NO. CH2404<br>GRADING, MILL, & HMA OVERLAY<br>CASS CO HWY 17; FROM 1,075' SOUTH OF 112TH AVE S NORTH TO 68TH AVE S<br>CASS CO HWY 14; FROM SHEYENNE RIVER EAST TO INTERSTATE HGHWAY I-29<br>CASS CO HWY 6; FROM 75TH ST S EAST TO CASS CO HWY 17 |             |   |  |                |              |              |                |              |         |                 |              |         |
|--|-------------|---|--|----------------|--------------|--------------|----------------|--------------|---------|-----------------|--------------|---------|
|  |             |   | ESTIMATED ADDITIONAL<br>REVISED QUANTITIES |                | BID PRICE    |              | CASS COUNTY    |              |         | SAMUELSON TRUST |              |         |
| ITEM   | SPEC<br>NO. | DESCRIPTION                                       | UNIT                                       | APPROX.<br>QTY | UNIT<br>COST | TOTAL        | APPROX.<br>QTY | TOTAL        | PERCENT | APPROX.<br>QTY  | TOTAL        | PERCENT |
| 1  | 103         | CONTRACT BOND                                     | L SUM                                      | 0              | \$8,000.00   | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 2  | 202         | REMOVAL OF BITUMINOUS SURFACING                   | SY   | 3,848          | \$9.65       | \$37,133.20  | 1,282.67       | \$12,377.73  | 33%     | 2565.33         | \$24,755.47  | 67%     |
| 3  | 202         | SAW BITUMINOUS SURFACING - FULL DEPTH             | LF   | 5,996          | \$3.00       | \$17,988.00  | 1,998.67       | \$5,996.00   | 33%     | 3997.33         | \$11,992.00  | 67%     |
| 4  | 202         | REMOVAL OF CULVERTS - ALL TYPES & SIZES           | LF   | 150            | \$20.00      | \$3,000.00   | 50.00          | \$1,000.00   | 33%     | 100.00          | \$2,000.00   | 67%     |
| 5  | 203         | COMMON EXCAVATION - TYPE A                        | CY   | 3,663          | \$9.50       | \$34,798.50  | 1,221.00       | \$11,599.50  | 33%     | 2442.00         | \$23,199.00  | 67%     |
| 6  | 203         | TOPSOIL   | CY   | 4,146          | \$13.55      | \$56,178.30  | 1,382.00       | \$18,726.10  | 33%     | 2764.00         | \$37,452.20  | 67%     |
| 7  | 203         | TOPSOIL - IMPORTED                                | CY   | 552            | \$24.30      | \$13,413.60  | 184.00         | \$4,471.20   | 33%     | 368.00          | \$8,942.40   | 67%     |
| 8  | 203         | BORROW - EXCAVATION                               | CY   | 3,756          | \$17.10      | \$64,227.60  | 1,252.00       | \$21,409.20  | 33%     | 2504.00         | \$42,818.40  | 67%     |
| 9  | 216         | WATER   | M GAL                                      | 150            | \$27.50      | \$4,125.00   | 50.00          | \$1,375.00   | 33%     | 100.00          | \$2,750.00   | 67%     |
| 10   | 251         | SEEDING CLASS III                                 | ACRE                                       | 5.14           | \$1,585.00   | \$8,146.90   | 1.71           | \$2,715.63   | 33%     | 3.43            | \$5,431.27   | 67%     |
| 11   | 253         | HYDRAULIC MULCH                                   | ACRE                                       | 5.14           | \$2,785.00   | \$14,314.90  | 1.71           | \$4,771.63   | 33%     | 3.43            | \$9,543.27   | 67%     |
| 12   | 255         | ECB TYPE 1  | SY   | 240            | \$6.30       | \$1,512.00   | 80.00          | \$504.00     | 33%     | 160.00          | \$1,008.00   | 67%     |
| 13   | 261         | FIBER ROLLS 12IN                                  | LF   | 900            | \$4.45       | \$4,005.00   | 300.00         | \$1,335.00   | 33%     | 600.00          | \$2,670.00   | 67%     |
| 14   | 261         | REMOVE FIBER ROLLS 12IN                           | LF   | 90             | \$1.05       | \$94.50      | 30.00          | \$31.50      | 33%     | 60.00           | \$63.00      | 67%     |
| 15   | 302         | SALVAGED BASE COURSE                              | CY   | 0              | \$23.75      | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 16   | 302         | AGGREGATE BASE COURSE CL 5                        | TON  | 7,175          | \$29.85      | \$214,173.75 | 2,391.67       | \$71,391.25  | 33%     | 4783.33         | \$142,782.50 | 67%     |
| 17   | 411         | MILLING PAVEMENT SURFACE                          | SY   | 0              | \$0.95       | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 18   | 430         | RAP - SUPERPAVE FAA 43                            | TON  | 4,879          | \$81.00      | \$395,199.00 | 1,626.33       | \$131,733.00 | 33%     | 3252.67         | \$263,466.00 | 67%     |
| 19   | 430         | HMA INTELLIGENT COMPACTION                        | L SUM                                      | 0              | \$7,500.00   | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 20   | 430         | CORED SAMPLE                                      | EA   | 0              | \$36.75      | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 21   | 702         | MOBILIZATION                                      | L SUM                                      | 0              | \$125,740.00 | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 22   | 704         | TRAFFIC CONTROL SIGNS                             | UNITS                                      | 216            | \$1.05       | \$226.80     | 72.00          | \$75.60      | 33%     | 144.00          | \$151.20     | 67%     |
| 23   | 704         | DELINEATOR DRUMS                                  | EA   | 0              | \$21.00      | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 24   | 704         | TUBULAR MARKERS                                   | EA   | 50             | \$5.25       | \$262.50     | 16.67          | \$87.50      | 33%     | 33.33           | \$175.00     | 67%     |
| 25   | 706         | BITUMINOUS LABORATORY                             | EA   | 0              | \$2,500.00   | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 26   | 706         | CONTRACTOR'S LABORATORY                           | EA   | 0              | \$2,500.00   | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 27   | 709         | GEOSYNTHETIC MATERIAL TYPE R1                     | SY   | 8,764          | \$3.25       | \$28,483.00  | 2,921.33       | \$9,494.33   | 33%     | 5842.67         | \$18,988.67  | 67%     |
| 28   | 714         | PIPE CONC REINF 24IN CL III                       | LF   | 142            | \$135.00     | \$19,170.00  | 47.33          | \$6,390.00   | 33%     | 94.67           | \$12,780.00  | 67%     |
| 29   | 714         | END SECT - CONC REINF 24IN                        | EA   | 4              | \$2,850.00   | \$11,400.00  | 1.33           | \$3,800.00   | 33%     | 2.67            | \$7,600.00   | 67%     |
| 30   | 714         | PIPE CORR STEEL .079IN 24IN                       | LF   | 64             | \$80.00      | \$5,120.00   | 21.33          | \$1,706.67   | 33%     | 42.67           | \$3,413.33   | 67%     |
| 31   | 714         | END SECT CORR STEEL .064IN 24IN                   | EA   | 6              | \$630.00     | \$3,780.00   | 2.00           | \$1,260.00   | 33%     | 4.00            | \$2,520.00   | 67%     |
| 32   | 762         | PREFORMED PATTERNED PVMT MK - MESSAGE (GROOVED)   | SF   | 320            | \$38.15      | \$12,208.00  | 106.67         | \$4,069.33   | 33%     | 213.33          | \$8,138.67   | 67%     |
| 33   | 762         | SHORT TERM 4IN BROKEN LINE - PNT TAPE OR RSD MRK  | LF   | -3,969         | \$0.21       | -\$833.49    | -1,323.00      | -\$277.83    | 0%      | -2646.00        | -\$555.66    | 0%      |
| 34   | 762         | SHORT TERM 4IN LINE NPZ - PN TP OR RS MRK         | LF   | 49,827         | \$0.21       | \$10,463.67  | 16,609.00      | \$3,487.89   | 33%     | 33218.00        | \$6,975.78   | 67%     |
| 35   | 762         | PVMT MK PAINTED 6IN LINE                          | LF   | 14,902         | \$0.14       | \$2,086.28   | 4,967.33       | \$695.43     | 33%     | 9934.67         | \$1,390.85   | 67%     |
| 36   | 762         | PVMT MK PAINTED 8IN LINE                          | LF   | 1,778          | \$0.19       | \$337.82     | 592.67         | \$112.61     | 33%     | 1185.33         | \$225.21     | 67%     |
| 37   | 762         | PVMT MK PAINTED 24IN LINE                         | LF   | 664            | \$5.80       | \$3,851.20   | 221.33         | \$1,283.73   | 33%     | 442.67          | \$2,567.47   | 67%     |
| 38   | 762         | PREFORMED PATTERNED PVMT MK - 8IN LINE - GROOVED  | LF   | 0              | \$24.05      | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 39   | 762         | PREFORMED PATTERNED PVMT MK - 24IN LINE - GROOVED | LF   | 0              | \$42.00      | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |
| 40   | 990         | TEMPORARY ACCESS                                  | L SUM                                      | 0              | \$8,000.00   | \$0.00       | 0.00           | \$0.00       | 0%      | 0.00            | \$0.00       | 0%      |

TOTAL = \$964,866.03

\$321,622.00

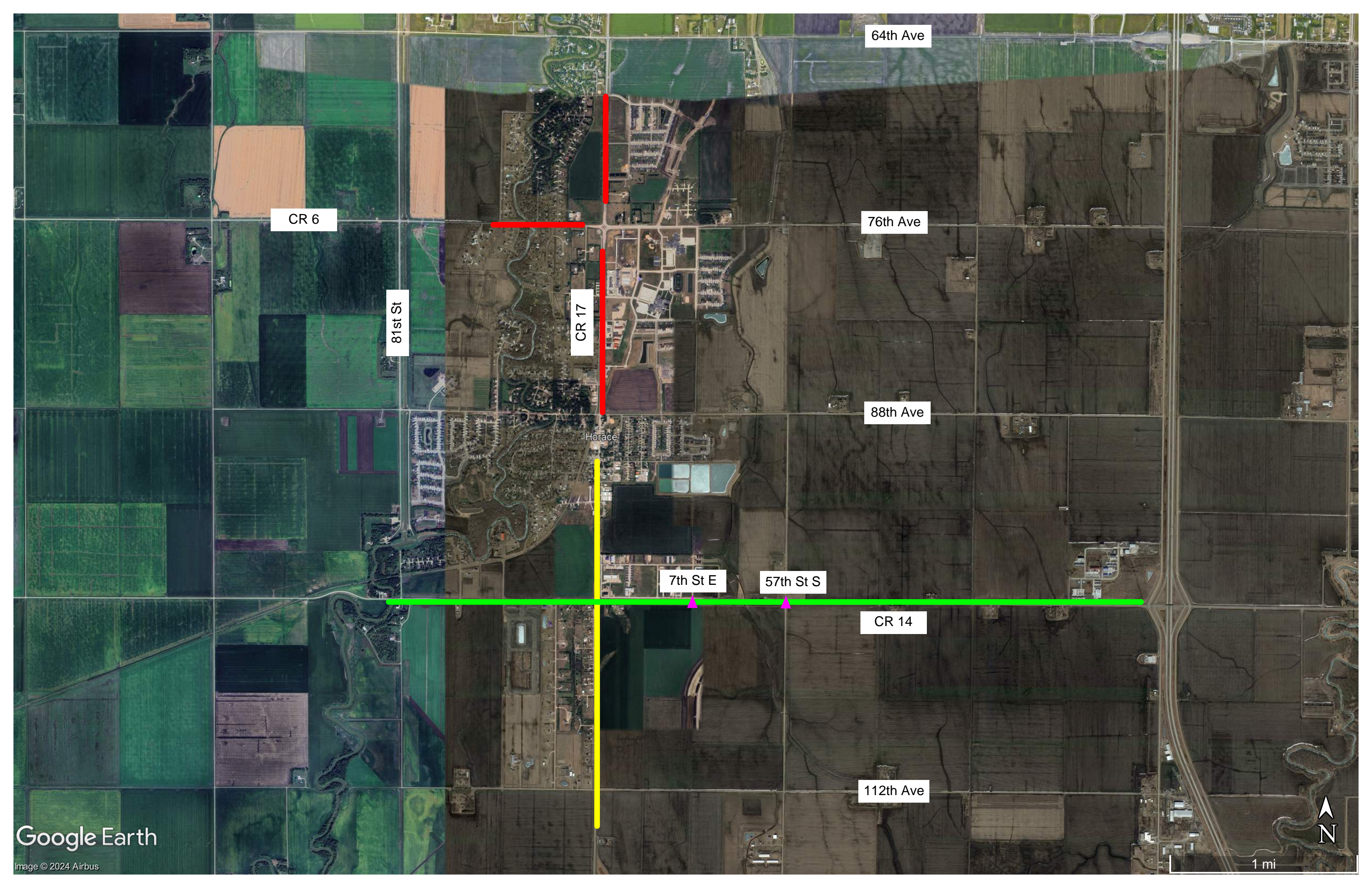
\$643,244.03



**PRELIMINARY**  
NOT FOR CONSTRUCTION

CASS COUNTY HIGHWAY DEPARTMENT  
WEST FARGO, NORTH DAKOTA  
C14 TURN LANES

|                        |
|------------------------|
| Drawn By               |
| Checked By             |
| REV DATE<br>01/31/2024 |
| Scale<br>As Shown      |
| SEC NO.                |
| SHEET NO.              |



64th Ave

CR 6

76th Ave

81st St

CR 17

88th Ave

Horace

7th St E

57th St S

CR 14

112th Ave



1 mi



www.casscountynynd.gov

# Office of the Sheriff

Jesse Jahner, Sheriff

June 7, 2024

Mr. Chad Peterson, Chair  
Cass County Commission  
Via email

Chair Peterson,

I am writing to request placement on the Commission Agenda to consider a new contract for use by the Community Supervision Unit (CSU) at the Cass County Jail.

For the past several years, CSU has been using software for participant tracking that is provided by a company named Promise, Inc. Earlier this year, Promise notified us that they would be unable to renew during 2024 and unable to provide ongoing data services or connection to their software.

The Sheriff's Office, in coordination with Cass County IT Dept, sought similar options from multiple vendors as potential replacements. The best option we have found turns out to be published by the same vendor that supplies software and equipment for our 24/7 Alcohol Monitoring program, and the annual costs are \$6000 less than what is already approved for the prior vendor contract.

Attached with this request is a copy of a proposed contract with Alcohol Monitoring Systems, Inc (dba "AMS"). I request that the commission consider and approve this contract to ensure the continuity of data collection for the CSU program. I will also note that if this contract is approved, the amount is less than actually budgeted for 2024, and if approval is granted prior to our July budget hearings, we can reduce the amount requested for 2025 as well.

Proposed Motion *"Move to authorize the chair to sign an agreement with Alcohol Monitoring Systems, Inc., for the purchase of data collection software and services in support of the Community Supervision Unit."*

Sincerely,

Capt. Andrew Frobiger  
Jail Administrator

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

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

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



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Sheriff's Office DATE OF REQUEST: 06-13-2024

COMPANY REQUESTING CONTRACT: Alcohol Monitoring Systems, Inc.

BRIEF PROJECT DESCRIPTION: Contract for 24/7 alcohol monitoring program

NEW CONTRACT OR  CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

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

STATE'S ATTORNEY COMMENTS:

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# SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT

This **SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT** (“**Agreement**”) is entered into on the Effective Date by and between **ALCOHOL MONITORING SYSTEMS, INC.** (“**AMS**”) with its primary address at 1241 W. Mineral Ave., Ste. 200, Littleton, CO 80120 and Cass County Sheriff’s Office with its primary address at 450 34<sup>th</sup> Street, S. Fargo, ND 58103 (“**Customer**”). The Effective Date of this Agreement is the date of AMS’ signature. Activation of the Premium Software will be upon AMS’ acknowledgement of a fully executed initial Order Form as Attachment 1 to this Agreement . The initial Statement of Work is attached to and made part of this Agreement as Exhibit A to this Agreement.

## 1. DEFINITIONS

“**Access Fees**” means the fees specified in this Agreement for access to, and use of, the Premium Software and Mobile Applications.

“**API**” means application program interfaces which are a set of tools and protocol created to provide interfaces and data exchanges between applications.

“**Billing Period**” means the agreed upon intervals for which AMS will invoice Customer for the Premium Software and Mobile Applications as specified on any Order Form.

“**Client**” means any person who is an offender, an ex-offender, or participant under supervision by an officer or any other similarly supervised personnel of the Customer.

“**Client User**” means any Client who is using a device registered by Customer in the Premium Software user administration system as an active Client.

“**Customer Components**” means Customer’s software, hardware and/or components of the same.

“**Intellectual Property Rights**” means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, and instruction manuals.

“**Implementation Services**” means services and other deliverables that are provided by AMS or its third-party suppliers in order to configure the Premium Software for its use by the Customer with the Customer Components.

“**Mobile Applications**” are any applications listed in this Agreement which are provided by AMS or its third-party supplier and designed to complement the Premium Software, but which run on mobile devices such as smart phones or tablets.

“**Order Form**” means the AMS form, a copy of which is attached here to as Attachment 2, evidencing an order for the Premium Software and/or Mobile Applications and any subsequent orders for any of the foregoing submitted online or in written form. The Order Form shall specify, among other things, the order date, the services contracted for and software licensed, the applicable Access Fees, the Billing Period, number of Users, Subscription Term and other charges as agreed to between the parties.

“**Premium Software**” means (i) the software application(s) Customer is subscribing to as identified in the Order Form which is an AMS proprietary, online, web-based software application as provided by AMS (ii) any APIs to third party products provided by AMS, (iii) all AMS-included content and; (iv) any related User Guides accessed online or downloaded by Customer through its access to the Premium Software.

“**Provider User**” is means an individual who is a treatment provider to active Clients of Customer.

“**SOW**” means a Statement of Work executed by the parties, which is subject to and made part of this Agreement by reference which details project-specific activities, deliverables and timelines for the provision of Implementation Services.

“**Subscription Term**” means the period for which Customer has committed to subscribe to the Premium Software and Mobile Applications as indicated on any Order Form, unless (and until) terminated earlier in accordance with this Agreement.

“**Term**” means the term of the Agreement as set forth in Section 16.1 below.

“**Third-party Components**” means third party software, hardware and/or content.

“**TouchPoint Mobile Application or App**” means a Mobile Application used by a Client User under this Agreement.



“**Update**” means maintenance releases, patches, fixes, extensions or enhancements of the Mobile Applications which AMS generally makes available in its sole discretion and which may be delivered automatically or made available for download via notification.

“**User**” means an individual authorized and registered with AMS to access the Premium Software and/or Mobile Applications who is either an employee, an independent contractor or a treatment provider (“**Provider User**” defined above) engaged by Customer, who is not a competitor of AMS, and who requires access in order to perform his/her tasks and who is registered in AMS’ monitoring system as an active user.

“**User Guides**” means AMS’s online user guides comprising instructions for the use of the Premium Software and Mobile Applications and/or descriptions of their operational and/or design characteristics.

“**User Types**” means various categories of Users as listed in this Agreement that have different rights of access to and use of the Premium Software and Mobile Applications.

## **2. GRANT OF ACCESS – PREMIUM SOFTWARE.**

**2.1 Grant of Access – Premium Software.** In consideration for the payment by the Customer to AMS of the Access Fees contained in the applicable Order Form(s), AMS shall grant to Customer a non-exclusive, non-transferable limited right to access and use the Premium Software pursuant to the terms set out in this Agreement and the applicable SOW for the duration of the specified Subscription Term. Customer’s license to access the Premium Software shall commence upon execution of an Order Form and Customer understands that the maximum number of Users at all times shall not exceed the number of Users and User Type subscriptions purchased by Customer. Customer agrees that it will not allow access to the Premium Software by anyone other than a User. Customer shall maintain a written, up-to-date list of the current Users and provide such list to AMS within five (5) working days of AMS’s written request at any time. Customer shall be, separately but fully liable for any acts or omissions of their Users related to the use of the Premium Software. Customer shall ensure that each User shall keep a secure password for their use of the Software or Mobile Application and that such password shall be changed no less frequently than every six (6) months and that each User shall keep their password confidential. Customer agrees to (i) use reasonable efforts to prevent unauthorized access to or use of the Premium Software and notify AMS promptly upon becoming aware of any such unauthorized access or use; (ii) use the Premium Software only in accordance with the User Guides, any other written instructions and all applicable laws and government regulations; and (iii) use the Premium Software, Mobile Applications and User Guides only as expressly allowed under this Agreement. Customer and its Provider Users acknowledge and understand that that Provider Users shall not transmit to or enter into the Premium Software database any Protected Health Information of Clients as that term is defined in the Health Insurance Portability and Accountability Act (“HIPAA”). Customer’s failure to comply with Customer’s obligations under this Section 2.1 shall be deemed a material breach of this Agreement.

## **3. GRANT OF ACCESS – MOBILE APPLICATIONS.**

**3.1 Customer Mobile Applications.** Subject to the terms and conditions of this Agreement and in consideration for the payment by Customer to AMS of the Access Fees contained in the applicable Order Form(s), AMS shall grant to Customer a non-transferable, non-exclusive limited license to install one or more of the Customer Mobile Applications specified in the Order Form for the Subscription Term for the purposes set out in this Section 3.1. Customer shall procure that its Users (a) may use the Customer Mobile Applications only for the purpose of obtaining and analyzing information accessed through the Premium Software on behalf of the Customer and its Clients and interacting with any Clients who are authorized users of the Client Mobile Applications; and (b) may install or use the Customer Mobile Applications only on devices owned or controlled by the Customer or the Users.

**3.2 Client Mobile Applications.** Subject to the terms and conditions of this Agreement and in consideration for the Access Fees contained in the applicable Order Form(s) AMS shall grant to Customer a non-transferable, non-exclusive limited license to install one or more Client Mobile Applications on its Client Users’ personal mobile devices.

**3.3 Access to Mobile Applications.** Mobile Applications are available by either a through one of the mobile app stores supported by AMS. For the Mobile Applications, AMS shall provide each User and, if applicable, Client User, with an access code to enable such User or Client User to download a copy of and use the Mobile Applications. To the extent there is any conflict or inconsistency between any license terms that may be embedded in the Mobile Applications (the “EULA”) and the terms and conditions of this Agreement, this Agreement shall prevail and apply to the use of such Mobile Applications and Customer shall be solely responsible and liable to AMS for ensuring all the Users’ and Client Users’ compliance with the terms of this Agreement and associated EULA.

**3.4 Mobile Application Updates.** The timing and frequency of any Updates to the Mobile Applications will be determined at the sole discretion of AMS.

**3.5 Mobile Application Removal.** Within three (3) working days of termination or expiration of this Agreement or when the Mobile Application is no longer in use by the Client, Customer is solely responsible for ensuring that the Mobile Application Users remove the Mobile Application from their cell phone or other device.

## **4. RESERVATION OF RIGHTS; USER RESTRICTION, LIMITATIONS OF USE AND HIPAA.**

**4.1 Reservation of Rights.** Except for the limited rights expressly granted hereunder, AMS (or its third-party licensors) reserves all rights and title to and interest in the Premium Software and Mobile Applications (and all modification to the

same), including without limitation all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**4.2 User and License Restrictions.** Customer acknowledges and agrees that each User and Client User subscription is for a single designated individual and cannot be shared or used by more than one individual unless it has been reassigned in its entirety to another individual. Subject to AMS's prior written consent, Customer may purchase additional subscriptions during the Subscription Term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the Subscription Term. Unless extended in accordance with this Agreement, the additional User and Client User subscriptions shall terminate on the same date as the pre-existing subscriptions.

**4.3 Limitations of Use.** With regard to the Premium Software and Mobile Applications, Customer agrees not to and shall not permit anyone to (including, without limitation, third parties and Users) do or attempt to do any of the following, except as may be expressly permitted by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement: (a) tamper with the security of the Premium Software and/or Mobile Applications; (b) access data not intended for Customer; (c) log into a server or account for which Customer is not authorized; (d) copy, modify, adapt, alter, translate, or create derivative works of the Premium Software or Mobile Applications; (e) rent, lease, license, sublicense, sell, resell, assign, transfer, distribute or otherwise transfer or commercially exploit the Premium Software or Mobile Applications; (f) make the Premium Software or Mobile Applications available to any third party not explicitly authorized under this Agreement (g) remove, modify, or obscure any copyright, trademark, patent or other proprietary notice that appears in the Premium Software or Mobile Applications; (h) except as expressly permitted in this Agreement, make the Premium Software or Mobile Applications available over a network or other environment permitting access or use by multiple mobile devices; (i) create any link to the Premium Software or Mobile Applications or frame or mirror any content contained or accessible from the Premium Software or Mobile Applications; (j) use the Premium Software or Mobile Applications for timesharing or service bureau purposes or otherwise for the benefit of a third party or use the Premium Software or Mobile Applications for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by AMS; (k) reverse engineer, remanufacture, decompile, disassemble, or otherwise attempt, in whole or in part, to derive the source code for or to decrypt the Premium Software or Mobile Applications; (l) probe, scan or test the vulnerability of the Premium Software or Mobile Applications or to breach the security or authentication measures without prior written and proper authorisation from AMS; or (m) wilfully render any part of Premium Software or Mobile Applications unusable. Customer shall not access, store, distribute or transmit any viruses (or similar) or any material during the course of its use of the Premium Software or Mobile Applications that is: (a) unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; or (c) is otherwise illegal or causes damage or injury to any person or property, and AMS reserves the right, without liability or prejudice to its other rights, to suspend Customer's (and/or Users' or Client Users') access to the Premium Software or Mobile Applications in the event of any breach of this Section 4.3.

#### **4.4 HIPAA and 42 C.F.R. Part 2.**

**4.4.1 Purpose of Customer Use.** The parties agree that the Premium Software will be accessed and used by Customer for the purpose of monitoring and communicating regarding a Client's compliance with parole obligations or court order. The parties further understand that the Premium Software is not used to maintain information on behalf of a "covered entity" or "business associate" under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations found at 45 C.F.R. Parts 160 and 164 (collectively "HIPAA") or on behalf of a "program" under the Confidentiality of Substance Use Disorder Patient Records found at 42 C.F.R. Part 2 ("Part 2").

**4.4.2 Customer Compliance with HIPAA and Part 2.** Customer and each User granted access to the Premium Software are responsible for ensuring compliance with HIPAA, Part 2, or applicable state law when entering, transmitting, or accessing information through the Premium Software, including but not limited to information entered into the Premium Software from other Customer or third-party systems through the use of APIs or any other means of automatic information transmittal. Customer is responsible for establishing the access levels and controls granted to each User and Customer warrants to AMS that it will (a) establish such user access and controls consistent with its obligations under HIPAA, Part 2, state law, and court limitations and (b) ensure that each User will only enter information into the application to the extent such User has legal authority to use or disclose such information. To the extent information subject to Part 2 is entered into the application, the User entering such information is responsible for identifying the information by indicating "42 CFR Part 2 prohibits unauthorized disclosure of these records".

### **5. OTHER TERMS OF ACCESS AND USE**

**5.1 Other Terms of Access and Use.** Upon request from Customer, AMS may make Customer Components and Third-party Components available for access through or linked to the Premium Software and Mobile Applications. AMS disclaims all liability and responsibility for such Customer Components and Third-party Components, and Customer remains solely responsible for obtaining and maintaining the necessary permissions for such access or linkage and for obtaining and maintaining all necessary rights for Customer's use of (and AMS's access or linking to) the Customer Components and Third-party Components and Customer shall be solely responsible for any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer Components and Third-party Components. In the event there is a claim made against AMS by a third party alleging that the Customer Components or Third-party Components infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law, AMS will provide notice of such claim to Customer and AMS may immediately remove the relevant Customer Components or

Third Party Components until such claim is resolved to the satisfaction of AMS. Customer warrants that its purchases hereunder are based on the current specifications, functionality and features and are not contingent on the delivery of any future specifications, functionality or features nor dependent on any oral or written comments, statements or other representations made by or on behalf of AMS regarding future specifications, functionality or features of the Premium Software or Mobile Applications, or other products or services. Customer hereby assigns (and shall procure that each of its Users assigns) to AMS (by way of present and, where appropriate future assignment) all its right, title and interest (including Intellectual Property Rights) in and to all and any suggestions, enhancement requests, recommendations, communications or other feedback provided by Customer or its Users in connection with the Premium Software, Mobile Applications or other products or services of AMS, and Customer agrees that the foregoing shall be provided free of any confidentiality or privacy restrictions that may otherwise apply.

## **5.2 Reserved**

**5.3 Order of Precedence.** Should there be a conflict between the Agreement, the SOW, and Order Form, the order of precedence shall be the Agreement, the SOW (if applicable) and the Order Form.

**5.4 Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of AMS, other entities may be permitted to make purchases at the terms and conditions contained herein. These purchases shall be independent of the agreement between Customer and AMS, and Customer shall not be a party to any transaction between AMS and any other purchaser.

- 6. AVAILABILITY OF SERVICES.** AMS shall use commercially reasonable efforts to make the Premium Software and Mobile Applications available for twenty-four (24) hours a day, seven (7) days a week. Customer agrees that from time to time the Premium Software or Mobile Applications may be inaccessible or inoperable for reasons beyond the control of AMS, including: (i) equipment malfunctions; (ii) periodic planned and unscheduled maintenance procedures or repairs; or (iii) interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other similar failures or disasters. Customer shall not be entitled to any setoff, discount, refund or other credit as a result of unavailability of the Services except as expressly provided herein.
- 7. SECURITY.** AMS shall use commercially reasonable efforts to prevent unauthorized access to restricted areas of the Premium Software and any databases or other sensitive material. AMS reserves the right to deactivate or suspend access to the Premium Software by Customer and/or by a User or a Mobile Application by a User or Client User if such User or Client User is found or AMS reasonably suspects them to be using their access to facilitate illegal, abusive or unethical activities or otherwise in breach of this Agreement. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses, or any harassing or harmful materials or uses.
- 8. AMS WARRANTY.** AMS warrants that the Premium Software and the Mobile Applications will perform in all material respects in accordance with their respective User Guides for the Subscription Term. The entire liability of AMS and the exclusive remedy of Customer for breach of this warranty is for AMS, at its expense and sole option, to: (a) use all reasonable commercial endeavours to correct any such non-conformance; (b) provide Customer with an alternative means of accomplishing the desired performance; or (c) terminate this Agreement and refund Customer in accordance with Section 16.3.
- 9. CUSTOMER WARRANTIES.** Customer represents and warrants that (i) it has the legal power to enter into this Agreement, (ii) it will not transmit to AMS any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; and (iii) that it has and will maintain all rights necessary to any Customer Components and Third Party Components accessed through or linked to the Premium Software or Mobile Applications in accordance with Section 5.1. Customer shall defend, indemnify and hold AMS harmless from and against all claims, actions, proceedings, losses, damages, costs and expenses, (including without limitation court costs and reasonable legal fees), arising out of or in connection with any breach of this warranty.
- 10. IMPLEMENTATION SERVICES.**
  - 10.1 Services.** In the event that AMS agrees to provide any Implementation Services under a SOW in order to configure the Premium Software for its use by Customer, AMS shall provide such Implementation Services under the terms of this Agreement and the applicable SOW.
  - 10.2 Change Procedures.** In the event it is necessary to modify the scope of the Implementation Services at any time, including but not limited to, where such modifications would: (a) add to AMS's obligations under the SOW; (b) extend the time needed to complete the Implementation Services; and/or (c) increase the cost to complete the Implementation Services, the parties will mutually discuss in good faith and sign an amendment to the SOW modifying the scope, timescales and/or cost of the Implementation Services accordingly.
  - 10.3 Deliverable(s), Ownership and Customer License.** AMS retains all right, title and interest in any deliverables provided as a part of the Implementation Services ("Deliverables"), except for any Customer Components or Third Party Components incorporated in the Deliverable (hereinafter "Components"). To the extent Customer acquires any rights in a Deliverable, excluding in relation to the Components, Customer hereby assigns (by way of present and, where appropriate future assignment) all such rights, title and interest (including Intellectual Property Rights) in and to the Deliverable to AMS. Notwithstanding the foregoing and provided AMS has been paid for all amounts owed pursuant to this Agreement and applicable SOW(s) for such Deliverables, AMS grants Customer a non-exclusive, non-transferrable, limited license to use the Deliverables in conjunction with the Premium Software and Mobile Applications.

**10.4 Implementation Services Warranty.** AMS warrants that any Implementation Services provided under this Agreement shall be performed in a professional and workmanlike manner in accordance with applicable industry standards. For any breach of the foregoing warranty, Customer's sole remedy and AMS's sole obligation, at AMS's option, is to: (a) re-perform the Implementation Services that failed to comply with the warranty at no additional charge to Customer, or (b) refund the amounts paid by Customer for the Implementation Services that failed to comply with the warranty, provided AMS has received written notice from Customer within thirty (30) calendar days after completion of any such Implementation Services (or part thereof) that Customer alleges fails to comply with the warranty above and AMS has been provided with sufficient access to assess or otherwise test the compliance of such Implementation Services.

**11. DISCLAIMER AND LIABILITY OF THE PARTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, COURSE OF PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Except as provided herein, AMS cannot and does not guarantee the privacy, security, authenticity and non-corruption of any information transmitted through, or stored in any system connected to, the Internet. Except in relation to any claim AMS may have for breach of its Intellectual Property Rights, under no other circumstances shall a party to this Agreement be liable to the other party (or in the case of such other party being the Customer, to its Users) whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any indirect, special, incidental, exemplary or consequential damages including, without limitation, damages for loss of goodwill, profits, data (or use thereof), or business interruption arising out of any acts or failures to act, whether such damages are labeled in strict liability, tort, contract or otherwise, even if such party has been advised of the possibility of such damages. Nothing in this Agreement excludes or limits the liability of either party for (i) any indemnity or breach of the confidentiality obligations in this Agreement; (ii) any liability for personal injury, death or damage to property caused by its negligence or willful misconduct or the negligence of its employees, agents or subcontractors; or (iii) fraud or fraudulent misrepresentation; or (iv) any other liability that cannot be limited or excluded by applicable law. Subject to the foregoing, AMS's aggregate liability to Customer, Clients and its Users in each Liability Period (defined below) in respect of any and all claims of any nature (including in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise), arising directly or indirectly out of or in connection with this Agreement, including all SOWs or the performance or contemplated performance of this Agreement including all SOWs, in each case in respect of all incidents or series of incidents arising in such Liability Period, shall be limited to, an amount equal to the aggregate amounts paid by Customer to AMS in respect of the twelve (12) calendar months immediately preceding the earliest event giving rise to such claim (the "Liability Period") less any amounts paid by AMS to Customer in such Liability Period under this Agreement.

**12. ACCESS FEES AND IMPLEMENTATION SERVICES FEES: PAYMENT TERMS.**

**12.1 Access Fees.** Customer shall pay AMS in advance the Access Fees specified on the initial Order Form for each Billing Period commencing on the date specified in the Order Form for the Subscription Term. Customer shall pay, all Access Fees under this Agreement and any subsequent Order Forms which for additional Users or Client Users upon receipt of the applicable invoice from AMS.

**12.2 Implementation Services Fees; Payment terms.** AMS shall invoice Customer for the fees for the Implementation Services fees on a monthly basis unless agreed otherwise in the applicable SOW. Customer shall reimburse AMS for all actual and reasonable travel and related living expenses that AMS incurs in connection with delivering the Implementation Services. Customer shall pay the invoices for the fees and expenses relating to the Implementation Services within thirty (30) days of date of each such invoice.

**12.3 Unpaid Fees.** Without prejudice to any other right and remedies of AMS, if any invoice remains unpaid by the relevant due date, interest shall accrue on a daily basis on such overdue amounts at the rate of the lesser of: (a) 1.5% per month; or (b) the maximum amount permitted by applicable law, in each case whether before or after judgment.

**12.4 Taxes.** Customer shall pay all taxes invoiced by AMS related to the Access Fees, Implementation Services fees or other charges or fees payable in connection with this Agreement to the extent such taxes are applicable to Customer. All amounts referenced or referred to in this Agreement shall be payable in US Dollars and exclusive of value added or other applicable sales taxes, unless otherwise stated.

**13. SUSPENSION OF SERVICE.** If any amounts, fees, expenses or charges payable by Customer under or in connection with this Agreement remain unpaid by the relevant due date, AMS may, without limiting its other rights and remedies, suspend access to the Premium Software and/or Mobile Applications until such overdue amounts are paid in full together with any interest payable on such overdue amount. For a Client User who is responsible for paying his/her Access Fees, AMS may, without limiting its other rights and remedies, suspend access to the Client Mobile Application for such Client User in the event of non-payment.

**14. INFRINGEMENT INDEMNIFICATION.** AMS agrees to defend Customer and pay any judgments, costs and expenses, or amounts paid in settlement to which AMS agrees, which Customer may sustain as the result of any claim by a third party that Customer's use of the Premium Software or Mobile Applications in accordance with this Agreement infringes or misappropriates such third party's (i) duly issued patent existing or issued prior to the Effective Date, or (ii) copyright, or trade secrets existing as of the Effective Date. Provided always that in the event of a claim for indemnification, Customer must: (a) immediately notify AMS in writing of the suit or claim; (b) give AMS sole authority to defend or settle the suit or claim (provided that AMS may not settle any claim unless it unconditionally releases Customer of all liability); and (c)

reasonably cooperate and assist AMS (at AMS's expense) with defense of the suit or claim. The obligations under this Section do not apply to the extent a claim against Customer arises from Customer's breach of the terms of this Agreement.

If either the Premium Software or Mobile Applications become or in AMS's opinion are likely to become the subject of a suit or claim of infringement of a third party's intellectual property rights, AMS will, at AMS's option and expense:

- (a) procure for Customer the right to continue to use the relevant software as furnished;
- (b) modify the relevant software to make it non-infringing, provided that it still substantially conforms to the applicable User Guides in all material respects; or
- (c) terminate this Agreement and/or the Order Form for the relevant software. In such event, AMS will pay Customer, as Customer's sole and exclusive remedy, an amount equal to the prepaid Access Fees calculated commencing with on the effective date of termination.

## 15. CONFIDENTIAL INFORMATION

**15.1 Confidential Information.** In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") confidential information, including without limitation, software, user and training manuals, data, Client information, designs, drawings, tracings, plans, layouts, specifications, samples, equipment and other information provided by or on behalf of Discloser to Recipient, that should reasonably have been understood by Recipient, because of (i) any markings, or (ii) the circumstance of disclosure or the nature of the information itself, to be proprietary and confidential to Discloser or to a third party ("Confidential Information"). Confidential Information specifically includes the Premium Software, Mobile Applications, User Guides and all data and other information accessed by Customer via the Premium Software and Mobile Applications. Confidential Information may be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Each party agrees not to disclose to the other party any confidential or proprietary information of third parties unless authorized to do so. The parties each agree to treat this Agreement, including all attachments and amendments hereto, as Confidential Information of each party.

**15.2 Nondisclosure.** It is agreed that, after receipt of Confidential Information of the other party, Recipient shall: (i) treat the Discloser's Confidential Information as confidential; (ii) not disclose the Discloser's Confidential Information to any other person without the Discloser's prior written consent save to those employees who need to use the Confidential Information in connection with the performance of this Agreement, (iii) not use such Confidential Information other than for the purposes of this Agreement; and (iv) use no less than a reasonable standard of care in safeguarding against unauthorized disclosure of such Confidential Information. Recipient agrees to have an appropriate nondisclosure agreement signed by each of its employees, agents and contractors who are exposed to Discloser's Confidential Information.

**15.3 Exceptions from Confidential Information.** Confidential Information shall not include information that: (i) is or becomes part of the public domain without violation of this Agreement by Recipient, (ii) is already in Recipient's possession free of any restriction on use or disclosure, (iii) becomes available to Recipient from a third party provided that such party was free from restriction on disclosure of the information or (iv) has been independently developed by Recipient without the use of such Confidential Information.

**15.4 Required Disclosures.** If Recipient is required by legal proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that: (i) the disclosure is limited to the extent and purpose Recipient is legally required; and (ii) to the extent permitted by law, prior to any disclosure, Recipient shall immediately notify Discloser in writing of the existence, terms and conditions of the required disclosure and, at Discloser's request and expense, cooperate in obtaining a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

## 16. TERM OF AGREEMENT; TERM OF LICENSE SUBSCRIPTION; REFUND UPON TERMINATION FOR CAUSE.

**16.1 Term of Agreement.** This Agreement commences on the Effective Date and continues for the Subscription Term specified in the Order Form unless the Agreement is extended pursuant to Section 16.2 or has been otherwise terminated as set forth in its termination provisions.

**16.2 Term of Additional User/Client User Subscriptions.** Additional Users or Client Users may be added by written addendum to the applicable Order Form. Additional User/Client User subscriptions commence on the start date specified in the addendum to the Order Form and continue for the Subscription Term specified therein. User subscriptions shall automatically renew for additional periods equal to the shorter of the expiring Subscription Term or one year, unless either party gives the other party notice of non-renewal at least thirty (30) days before the expiry of the then current Subscription Term. The Access Fees (and any other applicable charges) for additional Users or Client Users added during the remainder of the Subscription Term and for the subsequent renewal term shall be the same as the Access Fees (and any other applicable charges) that applied during the immediately preceding Subscription Term, unless AMS provides written notice of an increase at least thirty (30) days before the extension of the Subscription Term.

### **16.3 Termination for Cause; Refund or Payment upon Termination.**

**16.3.1 Termination for Cause.** In the event that either party breaches any of the terms or conditions in this Agreement, this Agreement may be terminated by the non-breaching party; provided that prior to any such termination or any claim for

damages being made, the terminating party must provide the other party with thirty (30) days' written notice and sufficient detail of any such alleged breach so as to afford the breaching party an opportunity to cure the alleged breach.

**16.3.2 Refund upon Termination for Cause.** In the event that Customer exercises its right and terminates the Agreement in accordance with Section 16.3.1 as a result of a breach by AMS that remains unremedied, AMS shall refund to Customer any prepaid Access Fees covering the remainder of the Subscription Term of all subscriptions after the effective date of termination. In the event that AMS exercises its right and terminates the Agreement in accordance with Section 16.3.1 as a result of a breach by Customer then, without prejudice to any other rights or remedies AMS may have, Customer shall pay any unpaid Access Fees through the remainder of the Subscription Term.

**16.4 Termination for Non-Appropriation of Funds.** In the event that Customer is unable to continue to make payments required hereunder due to a failure of the responsible governmental entity to make available funding to the level and in the amount required to remain in compliance with Customer's financial obligations; hereunder, then upon the occurrence of such a non-appropriation event and on the date that the requisite funding ceases to be available to the Customer, Customer may terminate this Agreement, without further financial obligation or liability to AMS.

**16.5 Data Transfer.** Within 90 days of termination or expiration of this Agreement, AMS will provide Customer with a Client Data file in JSON format. Any requirement to expunge Client Data is Customer's sole responsibility and AMS will bear no responsibility or liability for Customer's failure to expunge such data.

**16.6 Survival.** Upon termination of this Agreement for any reason, all licences granted under or in connection with this Agreement shall immediately terminate and Customer shall immediately cease (and procure that its Clients and Users immediately cease) all use of, and access to, the Premium Software and Mobile Application. This Section 16 and Sections 11, 14, 15, 17 and 18 shall survive termination of this Agreement howsoever arising.

## 17. MISCELLANEOUS PROVISIONS

**17.1 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflicts of laws provisions. In any litigation in which the parties are adverse, the parties agree to waive their respective rights to a trial by jury.

**17.2 Arbitration.** Disputes arising under this Agreement that cannot be resolved informally by the parties through good faith negotiations shall be resolved by arbitration before a sole arbitrator appointed and operating pursuant to the Federal Arbitration Act and Commercial Arbitration Rules of the American Arbitration Association and the party not initiating the arbitration will choose its location. The written decision of the arbitrator shall be final, binding and convertible to a court judgment in any appropriate jurisdiction. Each party shall bear its own expenses with respect to such arbitration and shall share equally in the expenses of the arbitrator and the fees of the American Arbitration Association.

**17.3 Injunctive Relief.** Notwithstanding anything above to the contrary, either party at any time may apply to a court having jurisdiction thereof for a temporary restraining order, preliminary injunction or other appropriate order where such relief may be necessary to protect its interests (including, without limitation, any breach of the obligations under Sections 3 to 6 and/or 15), without any showing or proving of any actual damages and without posting a bond or other security.

**17.4 Assignment.** Except as expressly permitted herein, neither party may transfer or assign this Agreement, in whole or in part, without the prior written consent of the other party and any such attempt at transfer or assignment shall be void. Notwithstanding the foregoing, AMS may transfer or assign this Agreement to an entity that is an affiliate of AMS or, in the event of a sale of all or substantially all of its assets or equity, each without the consent of Customer. This Agreement shall extend to and be binding upon any successors and permitted assigns of the parties. AMS may subcontract the performance of any of its obligations under this Agreement. AMS shall remain responsible for all acts and omissions of its subcontractors (and their employees) as if they were its own.

**17.5 Independent Contractor.** This Agreement does not constitute and shall not be construed as constituting a partnership, agency, distributorship or joint venture between the parties and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). AMS is to be and shall remain an independent contractor with respect to Products provided or Services performed under this Agreement.

**17.6 Force Majeure.** Except for the obligation to make payments as provided herein, neither party shall be liable to the other party or in default under this Agreement if it is prevented or delayed in performing its obligations or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes or other industrial disputes, failure of a utility service or transport or communications network, wars, act of God, fire, flood, storm, natural disaster, riot or civil commotion, malicious damage, acts of the public enemy, compliance with any law or government order, rule, regulation or direction, government restrictions or acts of terrorism. Such party shall promptly notify the other party and use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed.

**17.7 Notices.** All notices, requests, demands or communications required or permitted hereunder shall be in writing, delivered personally or by electronic mail or overnight delivery service at the respective addresses set forth herein (or at such other addresses as shall be given in writing by either party to the other). All notices, requests, demands or communications shall be deemed effective upon receipt for personal delivery, or on the business day following the date of sending by electronic mail or overnight delivery service.

**17.8 Waiver; Severability.** Any waiver of any default or breach of this Agreement shall be effective only if in writing and signed by an authorized representative of the party providing the waiver. No such waiver shall be deemed to be a waiver of any other or subsequent breach or default.

**17.9 Severability.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted and such modification or deletion not affect the validity and enforceability of the rest of this Agreement.

**17.10 Publicity.** Subject to Section 15, AMS shall have the right to issue news releases, press releases or other communications regarding the intended nature of the relationship between the parties in connection with this Agreement to potential investors and customers. However, AMS shall not disclose any names of Customer or Clients without the prior written approval of the relevant Customer or Client.

**17.11 Headings.** Headings used in this Agreement are for convenience of reference only and shall not be construed as altering the meaning of this Agreement or any of its parts.

**17.12 Execution.** This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute one agreement. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.

**17.13 Entire Agreement.** This Agreement constitutes the entire understanding of the parties, and supersedes and extinguishes all prior promises, assurances, warranties, representations and understandings between them, whether written or oral relating to its subject matter hereof. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**17.14 Third Party Rights.** No one other than a party to this Agreement (and their permitted assignees) shall have any right to enforce any of its terms. For the avoidance of doubt, no Clients shall have the right to enforce any terms of this Agreement against AMS. The rights of the parties to enter into, rescind or vary this Agreement are not subject to the consent of any other person.

**17.15 Variation.** This Agreement may not be modified or amended except in writing and signed by both parties (or their authorised representatives).

**THIS AGREEMENT** has been entered into by each party's duly authorised representatives on the date of signature by AMS below.

**FOR AND ON BEHALF OF:**

**CUSTOMER**

**ALCOHOL MONITORING SYSTEMS, INC.**

**By:** \_\_\_\_\_  
Authorized Signature

**Name:** Chad Violet \_\_\_\_\_

**Position:** Captain \_\_\_\_\_

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

**By:** \_\_\_\_\_  
Authorized Signature

**Name:** John Hennessey \_\_\_\_\_

**Position:** Chief Operating Officer \_\_\_\_\_

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



**ATTACHMENT 1 – ORDER FORM  
TO  
PREMIUM SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT  
SOFTWARE, PRICING AND OTHER TERMS**

**1. Premium Software and Access Fees:**

| Premium Software | User Type:  | Maximum Number of Users: | Price Per User Per Month | Per Year Paid Annually |
|------------------|-------------|--------------------------|--------------------------|------------------------|
| Nexus            | Full Access | 5                        | \$150                    | \$9000                 |

**2. Subscription Term:** Three (3) years from the Effective Date.

**3. Billing Period/Price Increases:**

NEXUS: Year 1 Annual, per paid annually. Annual Access Fee may increase by 2.5% per year after Year 3.

**4. Implementation Services Fees:** One-time site configuration/setup fee \$5,000 payable within thirty (30) days of ~~Effective Date~~ configuration and setup as outlined in Exhibit A Statement of Work .

**5. Training:** One-time training fee \$2,500 payable within thirty (30) days of ~~Effective Date~~ completion of training. All training shall be remote unless otherwise specified by AMS.

**6. Other Special Terms:** N/A

**EXHIBIT A – STATEMENT OF WORK  
TO  
PREMIUM SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT**



## Highway Department

Telephone: 701-298-2370

Fax: 701-298-2395

SMB-HWY@casscountynd.gov

### MEMORANDUM

TO: Cass County Commission

FROM: Thomas Soucy, County Engineer

DATE: June 11, 2024

SUBJECT: Consent Agenda Item for June 17, 2024 Commission Meeting: BRC-BRJ-0900(053) – Structure Replacement & Structure Removal on County Road 32 between sections 22/27 Amenia Twp. Over the Rush River & 41<sup>st</sup> St SE between sections 28/33 Hill Twp. Over the Maple River respectively.

For: 

Attached is the Contract and Bond with Robert R Schroeder Construction, Inc. through the North Dakota Department of Transportation for the bridge across the Rush River, and the removal of the bridge across the Maple River at the locations stated above. This project was bid on May 10, 2024 and a resolution was signed with the North Dakota Department of Transportation at the May 20, 2024 commission meeting. This project was included in our 2024 budget, however due to the late bid letting date the contractor plans to construct this project in 2025.

**SUGGESTED MOTION:** AUTHORIZE CHAIRPERSON TO SIGN THE CONTRACT AND BOND WITH ROBERT R SCHROEDER CONSTRUCTION, INC. FOR THE STRUCTURE REPLACEMENT & STRUCTURE REMOVAL ON THE LOCATIONS STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

J:\Admin-Eng\Commission Corresp\2024 Commission Correspondence\C2302 C32 Bridge Replacement\Agenda Memo BRC-BRJ-0900(053) Robert Schroeder Construction Inc2.docx



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway Department      DATE OF REQUEST: June 12, 2024

COMPANY REQUESTING CONTRACT: Robert R. Schroeder Construction

BRIEF PROJECT DESCRIPTION: contract documents for bridge project on County Highway 32

   NEW CONTRACT    OR        CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

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

STATE'S ATTORNEY COMMENTS:

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June 3, 2024

Robert R Schroeder Construction Inc  
880 14<sup>th</sup> Avenue NE  
Glenwood, MN 56334-8900

**RE: COUNTY AWARD PROJECT: JOB 23959, BRC-BRJ-0900(053)– CASS COUNTY**

Enclosed are the contract and contract bond forms for the subject project. Please have the original contract bond form executed by yourself and your surety, sign the original contract, and return both along with the required Certificate of Insurance and the original Fuel Cost Adjustment Affidavit to the county auditor within 10 days. The county will be executing the contract for this project. Only the original signed forms will be accepted.

**Submit signed documents to:**  
**Brandy Madrigga**  
**County Auditor**  
**PO Box 2806**  
**Fargo, ND 58108-2806**

NDDOT standard specification 107.14 requires the contractor to secure Commercial General Liability and Commercial Automobile Liability insurance and keep it in force during the term of the contract. The insurance coverages shall include: Commercial General Liability for limits not less than two million dollars (\$2,000,000) combined single limit per occurrence and aggregate for bodily injury, property damage, personal injury, and completed operations/product liability. Commercial Automobile Liability for limits not less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage. (See section 107.14 of the Standard Specifications for further requirements on insurance.) "Auto" and "General" must include an endorsement naming the owner and the State of North Dakota as additional insured in the same amounts. In the description item, please have your Certificate of Insurance filled out like the attached sample. The certificate must reflect the additional insured status of the State.

When arranging for contract bonds, your attention is directed to the requirements of section 26.1-03-01, North Dakota Century Code, which provides that, "An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured."

Sincerely,



Phillip Murdoff, PE  
Construction Services Engineer

80/pm/jmm  
Enclosures

c: District & County  
via email only

**COUNTY FEDERAL AID CONTRACT**

North Dakota Department of Transportation, Local Government  
SFN 19315 (Rev. 08-2013)

This agreement made between CASS County, North Dakota, (hereinafter called County), and  
ROBERT R SCHROEDER CONSTRUCTION INC, (hereinafter called Contractor), whose address is  
880 14TH AVE NE GLENWOOD, MN 56334-8900, WITNESSETH:

1. That in consideration of the payments to be made, the Contractor agrees to provide all labor, equipment, and materials; to pay or cause to be paid, all claims for work, labor, materials, equipment, including equipment rental or repair, and other supplies or insurance premiums, all of which are attributable to or utilized in the improvement and construction of **Project BRC-BRJ-0900(053) on CMC 0922, 1 MI W OF ND 18 (AMENIA); 41ST ST SE, 7 MI S OF TOWER CITY AND 2.5 MI E OF CMC 0901; Type of Work: STRUCTURE REPLACEMENT AND STRUCTURE REMOVAL**

Job No. 23959 all in accordance and in conformity with this contract and bond, the project proposal, North Dakota Department of Transportation's (NDDOT's) standard specification, supplemental specifications, special provisions, and plans approved on May 10, 2024, all of which are incorporated as a part of this contract.

2. The County agrees to pay the Contractor for the work, when completed and accepted in accordance with this contract, the price stated in the proposal, amounting to **One Million Eight Hundred Fifty-seven Thousand Seven Hundred Sixty-three Dollars and Ninety-three Cents (\$1,857,763.93)**. Payments are to be made as per specifications upon presentation of the proper certification of the engineer, or his representative, and by the terms of this contract.

3. The work shall be done pursuant to this contract and the laws of the state of North Dakota, to the satisfaction of the County, subject at all times to the inspection and approval of NDDOT and the U. S. Department of Transportation, its agents and representatives and in accordance with the rules and regulations made pursuant to state and federal law.

4. The decision of the project engineer upon any question 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. The Contractor, in employing and maintaining labor, shall do so in conformity with state and federal law and this contract.

6. The Contractor shall begin work as required by this contract or when so ordered by the County and shall maintain the maximum and efficient work force on the project necessary to complete the work within the time established by this contract.

EXECUTED the date last below signed.

County of CASS

\_\_\_\_\_  
COUNTY AUDITOR (TYPE OR PRINT)

\_\_\_\_\_  
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**WITNESS TO CONTRACTOR'S SIGNATURE**

\_\_\_\_\_  
CONTRACTOR COMPANY NAME

\_\_\_\_\_  
NAME AND TITLE (TYPE OR PRINT)

\_\_\_\_\_  
NAME AND TITLE (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

|   |   |
|---|---|
| Contractor Name<br><b>ROBERT R SCHROEDER CONSTRUCTION INC</b> | Project Number <b>BRC-BRJ-0900(053)</b> |
|---|---|

## INSURANCE CERTIFICATION

Certificates of Insurance contain additional pages or language on the certificate which either purports to limit or qualify the information reflected on the certificate of insurance or which purports to change, modify or amend your company's insurance policies. NDDOT policy is to not solicit, review or approve contractors' insurance policies, endorsements or amendments to insurance policies, or insurance documents other than properly completed certificates of insurance. NDDOT contacts specify that contractors are responsible for acquiring and maintaining specified coverage and proof of insurance.

Please sign and date the statement below attesting that your company has insurance coverage consistent with the contract provisions.

**The contractor has, and will maintain in force, insurance coverage (including proof of coverage consistent with the contract specifications).**

CONTRACTOR:

\_\_\_\_\_  
NAME AND TITLE (TYPE OR PRINT)

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**COUNTY FEDERAL AID CONTRACT BOND**

North Dakota Department of Transportation, Local Government  
SFN 19316 (Rev. 02-2009)

Project Number BRC-BRJ-0900(053)

KNOW ALL MEN BY THESE PRESENTS, that we **ROBERT R SCHROEDER CONSTRUCTION INC**  
**880 14TH AVE NE GLENWOOD, MN 56334-8900**  
NAME AND ADDRESS OF CONTRACTOR

as principal, and \_\_\_\_\_  
NAME AND ADDRESS OF SURETY

as surety, are held and firmly bound unto **CASS County**  
NAME AND ADDRESS OF OWNER

as owner in the penal sum of **One Million Eight Hundred Fifty-seven Thousand Seven Hundred Sixty-three Dollars and Ninety-three Cents (\$1,857,763.93)**

for the use of the owner and also for the use of any person having any lawful claim against the principal or any subcontractor on account of labor or supplies or materials as set forth in the conditions hereof; for the payment of which well and truly to be made we jointly and severally bind ourselves, and each of our heirs, executors, administrators, and successors, firmly by these presents.

WHEREAS, said principal has entered into a written contract with the owner for: **Project BRC-BRJ-0900(053) on CMC 0922, 1 MI W OF ND 18 (AMENIA); 41ST ST SE, 7 MI S OF TOWER CITY AND 2.5 MI E OF CMC 0901; Type of Work: STRUCTURE REPLACEMENT AND STRUCTURE REMOVAL**

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

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

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



SIGNED and SEALED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**IMPORTANT NOTICE**

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

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

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

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

(Seal of Principal)

\_\_\_\_\_  
PRINCIPAL  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

(Seal of Surety)

\_\_\_\_\_  
SURETY  
\_\_\_\_\_  
COMPLETE MAILING ADDRESS  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
COMPLETE MAILING ADDRESS

**NOTICE TO SURETY  
Section 26.1-03-01 N.D.C.C. Provides:**

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

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

**ACKNOWLEDGMENT OF PRINCIPAL**

State of \_\_\_\_\_  
ss.  
County of \_\_\_\_\_

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

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

(Notary Seal)

(Notary Public must print or type name here.)

My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF SURETY**

State of \_\_\_\_\_ SS.

County of \_\_\_\_\_

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

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

(Notary Seal)

\_\_\_\_\_  
(Notary Public must print or type name here.)

My commission expires \_\_\_\_\_

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
COUNTY STATE'S ATTORNEY

Approved by owner this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
CHAIRMAN, BOARD OF COUNTY COMMISSION