

Nicollet County Board of Commissioners Meeting



November 9, 2021

Nicollet County Government Center 501 South Minnesota Avenue, St. Peter, MN 56082

Commissioners – Terry Morrow, Chair; Jack Kolars; John Luepke; Marie Dranttel

9:00 a.m. Call Board of Commissioners Meeting to Order: Chair Morrow

1. Flag Pledge
2. Silence Your Cell Phones
3. Approval of Agenda

Consent Agenda

1. [Approval of October 26, 2021 Board Minutes](#)
2. [Delegated County Feedlot Grant Agreement](#)
3. [FY 2022 and FY 2023 Natural Resources Block Grant Agreement](#)
4. [MPCA County Feedlot Program Delegation Agreement Work Plan](#)
5. [End of Probations](#)
6. [Approval of Bills](#)

Public Appearances

9:05 a.m. Finance

1. [Public Hearing Notice – Capital Improvement Plan 2022-2026](#)
2. [2021 Quarter 3 Donations](#)

9:15 a.m. Human Resources

1. [National Insurance Services Consulting Agreement](#)

9:25 a.m. Public Works

1. [Consider Resolution Transferring Excess Municipal Construction Funds to Regular Construction](#)
2. [Consider Final Payment for 2021 Highway Striping Project](#)
3. [Consider Final Payment for SAP 052-621-027](#)

9:40 a.m. Administration

1. [Set Public Hearing Date for Fee Schedule Amendment](#)
2. [Consideration of the AIA Document B132-2019 with Vetter Johnson Architects, Inc.](#)

This portion of the meeting is closed for attorney-client privilege pursuant to MN Statutes Chapter 13D to discuss real property

3. [Consideration of Property Under Minn. Stat. Chap. §13D.05, subd. 3\(c\)\(3\)](#)

Vision Statement

Setting the standard for providing superior and efficient county government services through leadership, accountability and innovation to a growing and diverse society.

**Leadership. Efficiency. Accountability.
Innovation. Integrity.**

Mission Statement

Providing efficient services with innovation and accountability

Nicollet County Board of Commissioners Meeting



November 9, 2021

Nicollet County Government Center 501 South Minnesota Avenue, St. Peter, MN 56082

Commissioners – Terry Morrow, Chair; Jack Kolars; John Luepke; Marie Dranttel

County Attorney Update

Chair's Report

Commissioner Committee Reports

Commissioners Meetings & Conferences

Approve Per Diems and Expenses

Adjourn Board of Commissioners Meeting

10:20 a.m. Call Drainage Authority Meeting to Order:

Drainage Authority Agenda Items

1. Consent Agenda
 - a. Approval of October 26, 2021 Drainage Authority Minutes
 2. 2021 Annual Maintenance Levies
 3. CD86A Proposed Change Order Request
- Adjourn Drainage Authority Meeting

Notice of Scheduled Meetings

The following is a notice of scheduled meetings. Pursuant to Minnesota Statute 13D.04, this notice of meetings also serves as notice of regular and special meetings of the Nicollet County Board of Commissioners. Meetings with a quorum of Nicollet County Board of Commissioners expected to attend is noted with an asterisk (*).

Questions or comments regarding any Nicollet County meeting and requests to participate in any meeting can be directed to Mandy Landkamer, Nicollet County Administrator, at 507-934-7074 or mandy.landkamer@co.nicollet.mn.us.

November 9 – County Board of Commissioners Meeting, 9 a.m., Nicollet County Board Room, St. Peter *

November 9 – County Drainage Authority Meeting, 9 a.m., Nicollet County Board Room, St. Peter *

November 15 – Minnesota Valley Action Council

November 15 – Board of Adjustment and Appeals/Planning & Zoning Advisory Commission Meeting, 7 p.m., Nicollet County Board Room, St. Peter*

November 16 – Individual Department Head Meeting with Administrator, 8:15 a.m., Nicollet Room, St. Peter*

November 16 – County Board Workshop, 9:30 a.m., Nicollet County Board Room, St. Peter *

November 18 – BNCH Executive Committee Meeting

November 23 – County Board of Commissioners Meeting, 9 a.m., Nicollet County Board Room, St. Peter *

November 23 – County Drainage Authority Meeting, 9 a.m., Nicollet County Board Room, St. Peter *

December 2 – Budget and Tax Levy Meeting, 6:30 p.m., Nicollet County Board Room, St. Peter *

December 6-8– AMC Annual Conference; Doubletree Hotel, Bloomington, MN

December 14 – County Board of Commissioners Meeting, 9 a.m., Nicollet County Board Room, St. Peter *

December 14 – County Drainage Authority Meeting, 9 a.m., Nicollet County Board Room, St. Peter *

December 20 – Board of Adjustment and Appeals/Planning & Zoning Advisory Commission Meeting, 7 p.m., Nicollet County Board Room, St. Peter*

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OFFICIAL PROCEEDINGS OF THE
BOARD OF COUNTY COMMISSIONERS FOR
NICOLLET COUNTY, MINNESOTA
OCTOBER 26, 2021

The Nicollet County Board of Commissioners met in regular session on Tuesday, October 26, 2021, at 9:05 a.m. Commissioners Marie Dranttel, Jack Kolars, and John Luepke were present, and Commissioner Terry Morrow was present via Zoom. Also present were County Administrator Mandy Landkamer, County Attorney Michelle Zehnder Fischer and Recording Secretary Sarah Frahm.

Approval of Agenda

Motion by Commissioner Luepke and seconded by Commissioner Kolars to approve the agenda. Motion carried with all voting in favor.

There was a brief recess for technology issues from 9:06 am - 9:12 am. Commissioner Morrow exited the meeting at this time.

Consent Agenda

Motion by Commissioner Kolars and seconded by Commissioner Luepke to approve the consent agenda items as follows:

- October 12, 2021 Board Meeting Minutes, Approve Lease Amendment with MN Driver and Vehicle Services; Juvenile Work Crew Contract with Blue Earth County
- End of Probations for Adam Hanson, part-time Correctional Officer, effective October 22, 2021, and Lula Dayib, Community Health Worker, effective November 5, 2021
- Commissioner Warrants as presented for the following amounts: General Revenue Fund - \$38,290.81, Road & Bridge Fund - \$58,313.81, Human Services Fund - \$263,249.24, and acknowledge review of the Auditor's Warrants. Motion carried with all voting in favor on a roll call vote.

Public Appearances

Azad Mesrobian and David Koppendraye appeared before the board regarding a concern in Belgrade Township.

Health and Human Services

Operational Funding to Address Social Determinants of Health

Motion by Commissioner Luepke and seconded by Commissioner Kolars to authorize Director Sassenberg to accept the Operational Funding to Address Social Determinants of Health. Motion carried with all voting in favor.

COVID-19 Response Update

Director Sassenberg gave a brief update on the response of Health and Human Services to the COVID-19 pandemic. In general, positive cases in Nicollet County have trended downward slightly. The impact, however, remains severe. The Moderna and

Johnson & Johnson booster shots were approved last week, and HHS will be hosting four upcoming vaccine booster clinics for the community.

Human Resources

Elected Official Benefit Policy

Motion by Commissioner Luepke and seconded by Commissioner Dranttel to approve the Elected Official Benefit Policy. Motion carried with all voting in favor.

Administration

Declaration of Vacancy and Authorization for a Special Election Resolution

Motion by Commissioner Kolars and seconded by Commissioner Luepke to approve a resolution declaring a vacancy in the County Commissioner Third District. This Resolution also authorizes the Special Election for the Vacancy because more than one year remains in the term. Motion carried with all voting in favor on a roll call vote.

County Attorney Update

County Attorney Zehnder Fischer shared that there continues to be increased chemical use within the community. Efforts are currently focused on opioid prevention and treatment as well as finding ways to reduce usage, especially among teens.

Commissioner Committee Reports

The Commissioners reported on various meetings and activities including:

Chair's Report

- N/A

Commissioner Marie Dranttel

- One Watershed One Plan (1W1P)
- Advisory Committee
- VINE Meeting
- Board Workshop
- Personnel Committee
- Union Negotiations

Commissioner Jack Kolars

- REDA
- TAC Meeting
- MVAC
- Board Workshop
- Personnel Committee
- Greater Mankato Growth
- Traverse de Sioux
- Union Negotiations

Commissioner John Luepke

- Board Workshop
- Union Negotiations

Approve Per Diems and Expenses

Motion by Commissioner Luepke and seconded by Commissioner Kolars to approve the expenses and per diems for the meetings noted above during the Commissioner Reports and/or as submitted on approved expense reports, and authorize payment of those expenses and per diems by the Finance Office. Motion carried with all voting in favor.

Adjourn

Motion by Commission Luepke and seconded by Commissioner Kolars to adjourn the meeting. Motion carried with all voting in favor. The meeting adjourned at 9:38 a.m.

MARIE DRANTTEL, VICE CHAIR
BOARD OF COMMISSIONERS

ATTEST:

MANDY LANDKAMER
CLERK TO THE BOARD

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:		
Delegated County Feedlot Grant Agreement		
Primary Originating Division/Dept.: Property Services	Meeting Date: 11/9/2021	
Contact: Jaci Kopet Title: PPSD Director	Item Type: Consent Agenda (Select One)	
Amount of Time Requested minutes		
Presenter: Title:	Attachments: ☒ Yes ☐ No	
County Strategy: Programs and Services - deliver value-added quality services (Select One)		
BACKGROUND/JUSTIFICATION: Consideration of the FY2022 Minnesota Pollution Control Agency (MPCA) Feedlot Grant Agreement. This agreement funds feedlot related activities such as inspections, permitting, verification of spreading acres, and investigation of complaints. Nicollet County will be paid based upon a formula as determined by Minn. Stat. 116.0711 FEEDLOT PERMITS; CONDITIONS; COUNTY GRANTS. In addition to the grant monies, the county must provide a match as defined in previous statute.		
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None		
Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No		
If "yes", when? (provide year; mm/dd/yy if known)		
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A		
ACTION REQUESTED:		
Approval of the FY 2022 MPCA Feedlot Grant Agreement		
FISCAL IMPACT: Other (Select One) If "Other", specify	FUNDING County Dollars = Grant (Select One)	
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total	



DELEGATED COUNTY FEEDLOT GRANT AGREEMENT

State of Minnesota
Doc Type: Contract/Grant Reference

SWIFT Contract Number: 200002
AI: 115953
Activity ID: PRO20210002

A. COVERSHEET WITH SIGNATURES

1. County ("Grantee")	
Name	Nicollet
2. County ("Grantee") Authorized Representative (Feedlot Contact)	
Name	Jaci Kopet
Address	Nicollet County Government Center 501 South Minnesota Ave.
City, State, Zip code	St. Peter, MN 56082
Phone Number	507-934-7074
Email	Jaci.Kopet@co.nicollet.mn.us

3. MPCA ("State") Authorized Representative	
Name	Michelle Oie, or successor
Address	7678 College Road, Suite 105
City, State, ZIP	Baxter, MN 56425
Phone	218-316-3877
Email	Michelle.oie@state.mn.us
4. County ("Grantee") Signature	
SIGNATURE OF OFFICIAL WITH AUTHORITY TO SIGN:	
NAME _____	
SIGNED _____ DATE: _____	
I certify I have read the Grant agreement and will comply with all provisions including additional state, local, federal regulations and policies governing the funding that apply to my organization.	

B. GRANT AGREEMENT

1. Term of Grant Agreement

A. Effective date:

January 1, 2022, or the date the State obtains all required signatures, whichever is later.

B. Expiration date:

December 31, 2025, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

C. Survival of Terms.

The following clauses survive the expiration or cancellation of this Grant agreement: Liability; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure.

2. Grantee's Duties

The Grantee, who is not a state employee, will administer the state feedlot program as per [Minn. R. ch. 7020](#).

The Grantee will use feedlot grant funds according to [Minn. Stat. 116.0711 FEEDLOT PERMITS; CONDITIONS; COUNTY GRANTS](#) in conjunction with the required local match dollars and in-kind contributions to carry out the goals, plans, and minimum program requirements. If the Grantee fails to meet minimum program requirements it could result in reduction to base grant funding, and/or loss of eligibility for performance credits, and/or jeopardize status as a delegated county.

3. Time

The Grantee must comply with all the time requirements described in this grant agreement. In the performance of this grant agreement, time is of the essence.

4. Conditions of Payment

All services provided by the Grantee under this grant agreement must be performed in accordance with [Minn. Stat. 116.0711](#) to the State's satisfaction, as determined by the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

5. Terms of Payment

The Grantee will be paid based upon a formula as determined by [Minn. Stat. 116.0711 FEEDLOT PERMITS; CONDITIONS; COUNTY GRANTS](#).

6. Assignment Amendments, Waiver, and Grant agreement Complete

A. Assignment

The Grantee shall neither assign nor transfer any rights or obligations under this grant agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant agreement, or their successors in office.

B. Amendments

Any amendments to this grant agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant agreement, or their successors in office.

C. Waiver

If the State fails to enforce any provision of this grant agreement, that failure does not waive the provision or the State's right to enforce it.

D. Grant Agreement Complete

This grant agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant agreement, whether written or oral, may be used to bind either party.

7. Liability

Each party will be responsible for its own acts and behavior and the results thereof.

8. State Audits

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

9. Government Data Practices and Intellectual Property Rights

A. Government Data Practices

The Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

B. Intellectual Property Rights

(a) Intellectual property rights. All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Grant shall be jointly owned by the Grantee and the State. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and Contractors, either individually or jointly with others in the performance of this grant agreement. Works include "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant agreement. The ownership interests of the State and the Grantee in the Works and Documents shall equal the ratio of each party's contributions to the total costs described in the budget of this grant agreement, except that the State's ownership interests in the Works and Documents shall not be less than fifty percent (50%). The party's ownership interest in the Works and Documents shall not be reduced by any royalties or revenues received from the sale of the products or the licensing or other activities arising from the use of the Works and Documents. Each party hereto shall, at the request of the other, execute all papers and perform all other acts necessary to transfer or record the appropriate ownership interests in the Works and Documents.

(b) Obligations.

- (1) **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this grant agreement, the Grantee shall immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure therein.
- (2) **Representation.** The Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the joint property of the State and Grantee, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding

Clause Liability, the Grantee shall indemnify, defend, to the extent permitted by the Attorney General, and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, attorney fees. If such a claim or action arises or in Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

- (3) **License.** The State hereby grants a limited, no-fee, noncommercial license to the Grantee to enable the Grantee's employees engaged in research and scholarly pursuits to make, have made, reproduce, modify, distribute, perform, and otherwise use the Works, including Documents, for research activities or to publish in scholarly or professional journals, provided that any existing or future intellectual property rights in the Works or Documents (including patents, licenses, trade or service marks, trade secrets, or copyrights) are not prejudiced or infringed upon, that the Minnesota Data Practices Act is complied with, and that individual rights to privacy are not violated. The Grantee shall indemnify and hold harmless the State for any claim or action based on the Grantee's use of the Works or Documents under the provisions of Clause 10.2(b)(2). Said license is subject to the State's publicity and acknowledgement requirements set forth in this grant agreement. The Grantee may reproduce and retain a copy of the Documents for research and academic use. The Grantee is responsible for security of the Grantee's copy of the Documents. A copy of any articles, materials or documents produced by the Grantee's employees, in any form, using or derived from the subject matter of this license, shall be promptly delivered without cost to the State.

10. Workers Compensation

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

11. Publicity and Endorsement

A. Publicity

Any publicity regarding the subject matter of this grant agreement must identify the State as the sponsoring agency and must use the MPCA logo and language provided by the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant agreement. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.

B. Endorsement

The Grantee must not claim that the State endorses its products or services.

12. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant agreement. Venue for all legal proceedings out of this Grant agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

13. Termination

A. Termination by the State

The State may immediately terminate this grant agreement with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

B. Termination for Cause

The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this grant agreement, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

C. Termination for Insufficient Funding

The State may immediately terminate this grant agreement if:

(a) It does not obtain funding from the Minnesota Legislature

(b) Or, if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

14. Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

15. Availability of Records

In the event a monitoring visit(s) is required by the State, the Grantee shall cooperate with the State and shall comply with the State's request for documentation and other information, before, during and/or after the visit(s).

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:		
FY 2022 and FY 2023 Natural Resources Block Grant Agreement		
Primary Originating Division/Dept.: PPSP - Property Services Contact: Pete Otterness Title: PSD Manager Amount of Time Requested 5 minutes Presenter: Title:	Meeting Date: 11/9/2021 Item Type: Consent Agenda (Select One) Attachments: ☒ Yes ☐ No	
County Strategy: Programs and Services - deliver value-added quality services (Select One)		
BACKGROUND/JUSTIFICATION: Consideration of the FY2022 and FY2023 Natural Resource Block Grant Agreement. This agreement funds local water management activities, the administration of the wetland conservation act, shoreland activities, and septic systems. With this grant agreement, Nicollet County is set to receive \$83,170. In addition to the grant monies, specific areas require a county match as defined in statute.		
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None		
Prior Board Action Taken on this Agenda Item: ☐ Yes ☒ No If "yes", when? (provide year; mm/dd/yy if known)		
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A		
ACTION REQUESTED: Approval of FY2022 and FY2023 Natural Resources Block Grant Agreement		
FISCAL IMPACT: Included in current budget (Select One) If "Other", specify	FUNDING County Dollars = Statutorily determined match State \$83,170 (Select One) Total \$83,170	
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:		



**FY 2022 and 2023 STATE OF MINNESOTA
BOARD OF WATER and SOIL RESOURCES
NATURAL RESOURCES BLOCK GRANT AGREEMENT**

Vendor:	0000197335
PO#:	3000014042

This Grant Agreement is between the State of Minnesota, acting through its Board of Water and Soil Resources (Board) and **Nicollet County, 501 South Minnesota Avenue St. Peter Minnesota 56082** (Grantee).

<i>This grant is for the following Grant Programs :</i>		
P22-6678	2022 - Shoreland-NRBG (Nicollet County)	\$2,682
P23-6763	2023 - Shoreland-NRBG (Nicollet County)	\$2,682
P22-6331	2022 - Local Water Management - NRBG (Nicollet County)	\$13,156
P22-6849	2022 - Septic Treatment Systems - NRBG (Nicollet County)	\$18,600
P23-6418	2023 - Local Water Management - NRBG (Nicollet County)	\$13,156
P22-6505	2022 - Wetland Conservation Act - NRBG (Nicollet County)	\$16,447
P23-6592	2023 - Wetland Conservation Act - NRBG (Nicollet County)	\$16,447
Total Grant Awarded: \$83,170		

Recitals

1. This Grant Agreement is for the FY 2022 and 2023 Department of Natural Resources (DNR) Shoreland, Local Water Management (LWM), Wetland Conservation Act (WCA), Subsurface Sewage Treatment System (SSTS) and FY 2022 Minnesota Pollution Control Agency (MPCA) Subsurface Sewage Treatment System (SSTS) Program Grants.
2. The Laws of Minnesota 2021, 1st Special Session, Chapter 6, Section 4(a), appropriated funds to the Board for the FY 2022 & 2023 DNR Shoreland, LWM, WCA, and SSTS.
3. The MPCA transferred to BWSR funds for their Fiscal Year 2022 SSTS Grant Programs to be allocated with this Grant Agreement.
4. Minnesota Statutes § 103B.101, Subd. 9(1), and § 103B.3369, Subd. 5 authorize the Board to award grants.
5. The Board adopted Board Order #21-36 to authorize and allocate funds for the FY 2022 and 2023 Natural Resources Block Grant (NRBG).
6. The Grantee has met the criteria established by statute, the Board, the DNR, and the MPCA, and is eligible to receive NRBG grant funds.
7. The Grantee represents that it is duly qualified and agrees to perform all services described in this Grant Agreement to the satisfaction of the Board.
8. As a condition of the grant, Grantee agrees to minimize administration costs.

Authorized Representative

The State's Authorized Representative is Marcey Westrick, BWSR Central Region Manager, BWSR, 520 Lafayette Road North, Saint Paul, MN 55155, 651-284-4153, or her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services and performance provided under this Grant Agreement.

The Grantee's Authorized Representative is:

TITLE: Chair, Nicollet County Board of Commissioners
ADDRESS: 501 S. Minnesota Ave
CITY: St. Peter, Minnesota, 56082
TELEPHONE NUMBER: 507-934-7070

If the Grantee's Authorized Representative changes at any time during this Grant Agreement, the Grantees must immediately notify the Board.

Grant Agreement

1. Terms of the Grant Agreement.

- 1.1. **Effective date:** The date the Board obtains all required signatures under Minn. Stat. § 16B.98, Subd. 5. **The Board will notify the Grantee when this Grant Agreement has been executed. The Grantee must not begin work under this Grant Agreement until it is executed.**
- 1.2. **Expiration date:** **December 31, 2024**, or until all obligations have been satisfactorily fulfilled, whichever comes first.
- 1.3. **Survival of Terms:** The following clauses survive the expiration date or cancellation of this Grant Agreement: 7. Liability; 8. State Audits; 9. Government Data Practices; 12. Governing Law, Jurisdiction, and Venue; 14. Data Disclosure; and 17. Intellectual Property Rights.

2. Grantee's Duties.

- 2.1. The Grantee is responsible for the specific duties for the NRBG, as follows:
- 2.2. **Reporting:** All data and information provided in a Grantee's report shall be considered public.
 - 2.2.1. The Grantee will submit an annual progress report to the Board by February 1 of each year on the status of program implementation by the Grantee. Information provided must conform to the requirements and formats set by the Board. All individual grants over \$500,000 will also require a reporting expenditure by June 30 of each year.
 - 2.2.2. Final Progress Report: The Grantee will submit a final progress report to the Board by February 1, 2024. Information provided must conform to the requirements and formats set by the Board.
 - 2.2.3. A late or incomplete annual progress or final report will result in withholding of any future NRBG allocations.
- 2.3. **Compliance:** The Grantee will comply with Minnesota Statutes Section 103B.3361 through 103B.3369 (LWP), Minnesota Rules Chapter 8420 (WCA); Minnesota Statutes Section 103F.201 and Minnesota Rules Chapter 6120 (Shoreland) and have a DNR approved shoreland ordinance; Minnesota Rules Chapter 7082.0040 through 7082.0700 (SSTS); and amendments thereto, for Local Water Management, Wetland Conservation Act, Shoreland Management, and Subsurface Sewage Treatment Systems.
- 2.4. **Wetland Conservation Act Funds Transfer:** As required by the Board, the Grantees' participation in the NRBG is conditioned upon a transfer of funds to the Soil and Water Conservation District (SWCD) for Wetland Conservation Act activities, or such greater amount as agreed upon by the county and SWCD. This transfer must occur within 120 days of receipt of NRBG funds by the Grantee. This amount is listed on the BWSR website.

3. Time.

The Grantee must comply with all the time requirements described in this Grant Agreement. In the performance of this Grant Agreement, time is of the essence.

4. Terms of Payment.

- 4.1. All FY 2022 Grant funds will be distributed in one installment promptly after the execution of the Grant Agreement. FY 2023 grant funds will be distributed as soon as is practicable after the start of fiscal year 2023. FY 2023 grant funds may not be spent before they are received.
- 4.2. Any grant funds remaining unspent after the end of the expiration date stated above will be returned to the Board within one month of that date.
- 4.3. The Board must consult with the State agency responsible for administering the grant program before granting an amendment to the Grant Agreement, or a component thereof.
- 4.4. The obligation of the State under this Grant Agreement will not exceed the amount listed above.
- 4.5. This grant is an advance payment. Advance payment allows the Grantee to have adequate operating capital for start-up costs, ensure their financial commitment to landowners and contractors, and to better schedule work into the future.

5. Conditions of Payment.

- 5.1. All services provided by the Grantee under this Grant Agreement must be performed to the Board's satisfaction, as set forth in this Grant Agreement and in the Board approved work plan for this program. Compliance will be determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, State, and local laws, policies, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the Board to be unsatisfactory or performed in violation of federal, State, or local law.
- 5.2. Minn. Stat. §103C.401 (2018) establishes BWSR's obligation to assure program compliance. If the noncompliance is severe, or if work under the Grant Agreement is found by BWSR to be unsatisfactory or performed in violation of federal, State, or local law, BWSR has the authority to require the repayment of grant funds or withhold payment on grants from other programs.

- 5.3. For the LWM, WCA and DNR Shoreland Programs, Grantees have the flexibility of determining the amount of grant funds to expend on each of these three Programs locally. This is to provide needed spending flexibility for yearly fluctuations in workload and program activity in counties and SWCDs.
6. **Assignment, Amendments, and Waiver**
- 6.1. **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this Grant Agreement without the prior consent of the Board and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Grant Agreement, or their successors in office.
- 6.2. **Amendments.** Any amendments to this Grant Agreement must be in writing and will not be effective until it has been approved and executed by the same parties who approved and executed the original Grant Agreement, or their successors in office. Amendments must be executed prior to the expiration of the original Grant Agreement or any amendments thereto.
- 6.3. **Waiver.** If the Board fails to enforce any provision of this Grant Agreement, that failure does not waive the provision or its right to enforce it.
7. **Liability.**
- The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this Grant Agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this Grant Agreement.
8. **State Audits.**
- Under Minn. Stat. § 16B.98, Subd. 8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this Grant Agreement or transaction are subject to examination by the Board and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Grant Agreement, receipt and approval of all final reports, or the required period of time to satisfy all State and program retention requirements, whichever is later.
- 8.1. The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this grant, may be examined at any time by the Board or Board's designee and are subject to reconciliation. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.
9. **Government Data Practices.**
- The Grantee and Board must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the Board under this Grant Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this Grant Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.
10. **Workers' Compensation.**
- The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.
11. **Publicity and Endorsement.**
- 11.1. **Publicity.** Any publicity regarding the subject matter of this Grant Agreement must identify the Board as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Grant Agreement.
- 11.2. **Endorsement.** The Grantee must not claim that the State endorses its products or services.
12. **Governing Law, Jurisdiction, and Venue.**
- Minnesota law, without regard to its choice-of-law provisions, governs this Grant Agreement. Venue for all legal proceedings out of this Grant Agreement, or its breach, must be in the appropriate State or federal court with competent jurisdiction in Ramsey County, Minnesota.

13. Termination.

- 13.1. The Board may cancel this Grant Agreement at any time, with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 13.2. The Board may immediately terminate this Grant Agreement if the State finds that there has been a failure to comply with the provisions of this Grant Agreement, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The Board may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14. Data Disclosure.

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Grantee to file State tax returns and pay delinquent State tax liabilities, if any.

15. Prevailing Wage.

It is the responsibility of the Grantee or contractor to pay prevailing wage for projects that include construction work of \$25,000 or more; prevailing wage rules apply per Minn. Stat. §§177.41 through 177.44. All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with these State funds shall be paid wages at a rate not less than those prevailing on projects of a character similar in the locality. Bid requests must state the project is subject to prevailing wage.

16. Municipal Contracting Law.

Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 of this statute must follow the Uniform Municipal Contracting Law. Supporting documentation of the bidding process utilized to contract services must be included in the Grantee's financial records, including support documentation justifying a single/sole source bid, if applicable.

17. Intellectual Property Rights.

The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this grant*. Works means all inventions, improvements, discoveries, (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant. Work includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents or subcontractors, in the performance of this grant. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this grant at the State's request. To the extent possible, those Works eligible for copyright protection under the United State Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed intending to be bound thereby.

Approved:

Nicollet County

Board of Water and Soil Resources

By: _____

(print)

By: _____

(signature)

Title: Chair, Nicollet County Board of Commissioners

Title: _____

Date: _____

Date: _____

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:		
MPCA County Feedlot Program Delegation Agreement Work Plan		
Primary Originating Division/Dept.: Property Services	Meeting Date: 11/9/2021	
Contact: Jaci Kopet Title: PPSD Director	Item Type: Consent Agenda (Select One)	
Amount of Time Requested minutes		
Presenter: Title:	Attachments: ☒ Yes ☐ No	
County Strategy: Programs and Services - deliver value-added quality services (Select One)		
BACKGROUND/JUSTIFICATION: Minn. R. ch. 7020.1600, subp. 3a. states a County must develop annual plans and goals in accordance with registration, inspection, compliance and owner assistance responsibilities as well as permit goals, complaint response and staffing levels. Attached is Nicollet County's Feedlot Program Delegations Agreement Work Plan. This plan has been reviewed and approved by the Minnesota Pollution Control Agency. This plan also needs county board approval. This is an annual review and approval. I recommend this plan be approved by the County Board.		
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None		
Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No		
If "yes", when? (provide year; mm/dd/yy if known)		
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A		
ACTION REQUESTED:		
County Board Approval for MPCA Feedlot Program Workplan		
FISCAL IMPACT: Other (Select One) If "Other", specify	FUNDING County Dollars = Grant (Select One)	
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total	

Minnesota Pollution Control Agency County Feedlot Program Delegation Agreement Work Plan

Delegation Agreement Years:	2022 – 2023
County:	Nicollet
County Feedlot Officer (CFO):	Deanna Biehn
If CFO is employed solely by SWCD, list designated County employee who will sign permits/Grant Agreement:	NA
Telephone number(s):	507-934-7073
Email address(es):	deanna.biehn@co.nicollet.mn.us
Amendment number:	NA

A. Strategies

Minn. R. ch. 7020.1600, subp. 3a. states a County must develop annual plans and goals in accordance with registration, inspection, compliance and owner assistance responsibilities as well as permit goals, complaint response and staffing levels.

Registration Strategy

See Appendix A for additional clarifying information regarding Registration of feedlots.

1. Please indicate the method(s) the County will use to provide a feedlot owner, who does not have an email address, with a registration receipt within 30 days of the county entering the registration information into the online registration service: *(Double-click on checkbox and select "checked." Select all that apply.)*

- ☒ A registration receipt letter or postcard.
- ☒ An inspection letter that contains confirmation about registration/re-registration.
- ☒ A permit and/or a permit cover letter that contains confirmation of registration/re-registration.
- ☐ The County will document the dated 30-day registration receipts, as described below:

If the County enters a registration into the State system for a producer that does not have an email address, the County will provide a registration receipt one of the above ways.

2. Please indicate how the County will register sites using the online registration service. Select all that apply or provide a narrative if the County is planning to conduct registrations in another manner than those provided below:

- ☒ The County will advise feedlot owners to use the online registration service to register new feedlots or update existing feedlot registration information.
- ☒ The County will request feedlot owners complete and submit a registration data collection sheet. Upon receiving completed registration data collection sheets the County will enter registration information into the online registration service for feedlot owners.
- ☒ The County will collect registration information during site inspections and will enter registration information into the online registration service for feedlot owners.

- ☒ The County will use information provided by feedlot owners on permit application forms and/or Notices of Construction forms and will enter registration information into the online registration service for feedlot owners.

The County will do one of the above. If information is omitted from forms, the CFO will contact the feedlot owner and gather or verify the information and enter the information for the owner. If the information is available in their county file, the CFO may enter the omitted information for them and document the addition in the receipt letter.

3. Please describe how the County will address facilities that upon re-registration show an increase in animal units, a change or addition to animal types, or a change or addition to manure storage (i.e., liquid storage not previously included).

For facilities that show a significant change to their operation, the County will schedule an inspection with the feedlot owner.

4. Please describe the strategy and timeline the County shall follow to address facilities that are not registered/re-registered in the current (items a, b, d) and/or prior (item c, d) four-year registration cycle. (Select all that apply.)

- ☒ Register/re-register sites throughout the four-year registration cycle.
- ☒ Register/re-register sites early in the fourth year of the registration cycle.
- ☒ Sites required to be registered that do not have a current registration (registered prior to January 1, 2018) will be inspected or contacted to verify animal numbers so registration can be updated.
- ☐ Other (describe below):

The County will do one, two or all of the above.

Inspection Strategy

For assistance with completing this part of the Delegation Agreement Work Plan please see **Appendix A**. A County must have an inspection strategy for the purpose of identifying pollution hazards and determining compliance with discharge standards, rules and permit conditions.

Note: At least half of the required seven percent inspections need to be "Compliance" inspections. However, stockpile and manure storage area closure inspections conducted on their own do not count towards the County's minimum seven percent inspection rate.

Required Inspection Strategies

Strategy	Year 1	Year 2
Conduct compliance inspections at existing sites that have not had an inspection within the last year and have submitted permit applications proposing construction or expansion to ensure that the appropriate permit is issued.	Yes ☒ No ☐	Yes ☒ No ☐

The County's inspection strategy shall include goals for conducting a **majority** of inspections at high risk/high priority sites. The strategy may also include goals for low risk/low priority sites. The County may choose from the provided examples and/or write an alternative strategy in the space provided in the below sections.

HIGH RISK/HIGH PRIORITY SITES *(check all that apply):*

- ☒ Sites within shoreland, a Drinking Water Supply Management Area (DWSMA), Watershed Restoration and Protection Strategy (WRAPS), BWSR One Watershed One Plan (1W1P), or other prioritized impaired waters (see Appendix A for 1W1P link). If the whole county is in a 1W1P/WRAP, perhaps prioritize by sub watersheds.
- ☐ Sites that have open lot area(s) without runoff controls.
- ☐ Sites that have never been inspected that fall into the first two checkboxes.
- ☐ Sites that, according to previous inspections, have not been maintaining adequate land application records and/or manure management plans.
- ☐ Sites constructing Manure Storage Areas (MSA) and open lot runoff controls.
- ☐ Conduct phosphorus inspections within a formally designated area such as WRAPS or BWSR 1W1P. *(See Appendix A for BWSR 1W1P link.)*
- ☐ Conduct in-field land application inspections within a formally designated area such as WRAPS or BWSR 1W1P. *(See Appendix A for BWSR 1W1P link.)*
- ☒ Alternative Strategy *(explain alternative strategies below):*
Conduct inspections at all sites in the County on a rotational basis.

LOW RISK/LOW PRIORITY SITES *(check all that apply):*

- ☐ Sites within a specified size category (i.e., 300 – 499 AU). *Please explain/describe your inspection strategies in the text box below.*
- ☒ Sites within a watershed, township or other formally designated area.
- ☐ Conduct phosphorus inspections within a specific watershed, township or other formally designated area.
- ☐ Conduct in-field land application inspections within a specific watershed, township or other formally designated area.
- ☐ Conduct phosphorus inspections as part of a compliance inspection.
- ☐ Conduct in-field land application inspections as part of a compliance inspection or at non-NPDES sites >300 AU.
- ☐ Conduct inspections at all sites in the County on a five year or less rotating basis.
- ☐ Conduct inspections at sites required to be registered that have never been inspected
- ☒ Alternative Strategy *(explain alternative strategies below):*
Conduct inspections at all sites in the County on a rotational basis.

Inspection Strategies

Inspection Strategy	Inspection Goal 2022	Inspection Goal 2023
Minnesota River - Mankato Watershed	10	10
Lower Minnesota River Watershed	3	3
Inspect on a rotational basis	9	7
Total:	22	20 or whatever required to reach 7%

**Enter the number of inspections the County predicts will be completed for each category.*

Note: Numbers entered for in-field land application goals must be quantified by feedlot sites and not individual farm fields.

At least seventy five percent (75%) of inspection data shall be entered into Tempo within 120 days of the inspection. Minimally funded counties may enter data less frequently.

☒ Yes, I agree ☐ No I do not agree (*discuss with MPCA staff*)

Note: Additional information and/or follow-up information may exceed time requirement.

- Counties need to enter data from all feedlot inspections at feedlots required to be registered into Tempo by no later than **February 1** of the year following the end of the program year.
- Counties that enter ninety percent (90%) of inspection data within 60 days of the inspection will receive two (2) Performance Credits.

Be sure to read and understand Appendix A for required inspection documentation.

Compliance Strategy

1. Please state the various initial method(s) and practice(s) the County will use in response to **compliance inspections** that result in non-compliance. (Blatant violations will be referred to MPCA as soon as possible in accordance with Appendix C.):
 - ☒ Include corrective actions with completion deadlines in the inspection results notification letter.
 - ☒ Issue a Letter of Warning (LOW) or a Notice of Violation (NOV) that will include corrective actions and deadlines.
 - ☒ Issue an interim permit that includes timelines for corrective actions.
 - ☐ Other (describe below):

2. Please indicate the various initial method(s) and practice(s) the County will use in response to **land application inspections** that result in non-compliance. (Blatant violations will be referred to MPCA as soon as possible in accordance with Appendix C.):
 - ☒ Address non-compliance at the same time the facility non-compliance is addressed. See above.
 - ☒ Include corrective actions with completion deadlines in the inspection results notification letter.

- ☒ Issue an LOW or NOV that will include corrective actions and deadlines.
- ☐ Other (describe below):

The County will do one of the above.

3. Notification of inspection results, including corrective action(s) and completion deadlines, shall be sent to feedlot owners. For compliance inspections and/or desktop N & P record reviews the notification of results will be sent to feedlot owners within 30 days of a compliance determination. County intends to follow-up with feedlot owners to evaluate progress.
 - ☒ Yes, I agree ☐ No I do not agree (*discuss with MPCA staff*)
4. Explain how the County will escalate enforcement action when progress is not being made on corrective actions. (**Note:** See Appendix C – MPCA memorandum on CFO referral to MPCA.) The County will evaluate the reason corrective actions have not taken place within the deadline period. If valid, the County will give the feedlot owner additional time to correct the issue. If no progress has been made and no valid explanation has been given, the feedlot owner will receive a letter, a LOW or NOV with new deadline dates. This will be repeated if no progress has been made or no explanation has been given. If after the additional notifications progress has still not been made and no valid explanation has been received, the CFO will request assistance from the County Attorney. If County Attorney involvement still does not get the feedlot owner to correct their non-compliance or if the County Attorney is unable to assist in the situation, the CFO will ask MPCA for assistance or for the matter to be referred to them.

Owner Assistance Strategy

1. Please describe the type and number of activities you plan to conduct and how you will track the number of producers reached. (Example: group education events; newsletters; newspaper articles; producer surveys; distribution of manure sample containers; help with MMP writing, social media posts.)

The County plans to educate feedlot owners at each feedlot inspection and when a new permit application is received. The County will assist with MMP and/or record keeping upon request from the feedlot owner. The County will do news blasts when appropriate.

Counties are pre-approved to conduct publicity based on their Owner Assistance Strategy. Counties need to add "Paid for by a grant from the State of Minnesota" to any originally created Minn. R. ch. 7020 information intended for distribution.

B. Delegated County MPRs

Minn. Stat. § 116.0711, subd. 2. (c) states that 25% of the total appropriation must be awarded according to the terms and conditions of the following MPRs.

Inspection MPRs

A County must inspect seven percent (7%) or more of their State required registered feedlots annually, as determined by the table in Appendix B, to be eligible for the Inspection MPR award. A full compliance inspection, a construction inspection, a desk-top nitrogen and phosphorus record inspection or an in-field land application inspection may only count once towards the minimum seven percent inspection rate. A second inspection done at the same site in the same year would be counted towards performance credits. At least half of the seven percent (7%) inspections need to be compliance inspections. The remaining half can be a combination of construction inspections, desk-top nitrogen and phosphorus record inspections or in-field land application inspections. Note that stockpile and manure

storage area closure inspections, on their own, do not count towards the minimum seven percent inspection requirement.

Inspection MPRs	Jan 1 – Dec 31, 2022	Jan 1 –Dec 31 2023
1. Agency-approved number of feedlots required to be registered by the State. <i>(For 2022 enter the number of feedlots for your County found in Appendix B. For 2023, the Agency-approved number of feedlots for each county will not be determined by the MPCA until April 1, 2022. Counties will need to determine the number of inspections that need to be conducted to meet their 7% inspection rate based on the number of Agency-approved feedlots at that time.)</i> Reminder: Your year two inspection numbers are to be determined/identified in a DAWP addendum that will be completed fall of 2022.	302	tbd
2. County–Agency agreed upon inspection rate. <i>(Enter “7%” unless a different inspection rate percentage was negotiated.)</i>	7%	7%
3. County–Agency agreed upon inspection number for the identified time period. <i>(Calculate 7% of the number from item 1 and if not a whole number, round up to the nearest 0.5 and enter it here. Example: 12.0 =12.0, 12.1 thru 12.5 = 12.5, 12.6 thru 12.9 = 13.0)</i> Reminder: Your year two inspection numbers are to be determined/identified in a DAWP addendum that will be completed fall of 2022.	22	tbd

Non-Inspection MPRs

Registration MPRs	YES	NO
1. The County will register and maintain registration data in the Tempo database (Minn. R. ch. 7020.0350, subp. 1 and 7020.1600, subp. 2. C). <i>Instructions for entering registration information into the online registration system are available on the MPCA website https://www.pca.state.mn.us/water/registration-permits-and-environmental-review in Tempo HELP/Feedlot folder/Registration Information folder/ “Online Registration FAQs.docx” and in Appendix A.</i>	☒	☐
2. The County issues a registration receipt to the feedlot owner within 30 days of entering registration information into the online registration service (Minn. R. ch. 7020.0350, subp. 5). <i>A file review should indicate the County has fulfilled the registration receipt requirement as stated in their Delegation Agreement Work Plan Registration Strategy.</i>	☒	☐

Registration MPRs	YES	NO
The County acknowledges the following: a. The MPCA will run a report on or about January 30, 2024 to determine the number of feedlots the County will receive funding for during 2025 and 2026. b. In order for feedlot sites to count for funding purposes for 2025 and 2026 they must: • Have a locked registration in Tempo, • Have a registration <i>Effective Start Date</i> of January 1, 2018 or later; and • Be required to register: 10 or more AU in shoreland areas or 50 or more AU outside shoreland areas. c. Feedlot sites will not count for funding purposes for 2025 and 2026 if they: • Do not have a locked registration in Tempo even if they are required to be registered, • Do not have a current registration <i>Effective Start Date</i> (i.e., it is dated December 31, 2017 or earlier); or • Have less than 10 AU in shoreland areas or less than 50 AU in areas outside of shoreland even if the previous registration contained animal numbers that required registration and/or the date they last had animals was within five (5) years prior to January 1, 2024.	☒	☐

Inspection MPRs	YES	NO
3. The County maintains a record of all compliance inspection results, including land application inspections, conducted at feedlots required to be registered. At a minimum, counties must maintain on file (electronic or paper) inspection documentation as outlined in Appendix A (Minn. R. ch. 7020.1600, subp. 2.H.) <i>A file review should indicate that the County uses and maintains on file inspection documentation as stated in their Delegation Agreement Work Plan Inspection Strategy.</i>	☒	☐
4. NEW! The County enters data from all feedlot inspections at feedlots required to be registered into Tempo by no later than February 1 of the year following the end of the program year (Minn. R. ch. 7020.1600, subp. 2.H) and at least seventy five percent (75%) of inspection data shall be entered into Tempo within 120 days of the inspection. Minimally funded counties may enter data less frequently. <i>A Tempo database query should indicate that inspection checklist data was entered into Tempo within required parameters.</i> <i>Instructions for entering an inspection into Tempo are available in Tempo HELP/Feedlot folder/ Inspection Information folder.</i>	☒	☐

Inspection MPRs	YES	NO
The County acknowledges the following: a. For inspections to count toward the required seven percent (7%) inspection rate they must: • Be at sites that are required to register, • Have a locked inspection in Tempo; and • Occurred during the CFO Annual Report reporting year. *If at the time of inspection a site has a current (January 1, 2018 or later) locked registration with animal numbers that require registration (10 or more AU in shoreland or 50 or more AU outside of shoreland), and as a result of the inspection the registration information is updated to animal numbers that no longer require registration, the inspection shall count toward the seven percent (7%) inspection rate. b. Inspections at feedlot sites will not count toward the required seven percent (7%) inspection rate if: • Inspection information is not entered into Tempo, or • Inspections entered into Tempo are not locked.	☒	☐
5. The County's Inspection Strategy has been approved by the agency (Minn. R. ch. 7020.1600, subp. 3a.B(1-2)). <i>The County's CFO Annual Report should indicate the County initiated inspection plans and goals as stated in their Delegation Agreement Work Plan Inspection Strategy.</i>	☒	☐

Compliance MPRs	YES	NO
6. The County will notify the producer, in writing or via e-mail, of the results of any inspection. The notification must include a completed copy of the Minnesota Feedlot Inspection Checklist (wq-f3-45e). (Minn. R. ch. 7020.1600, subp. 3a.B(5)(a)). For compliance and desktop N & P inspections the written or e-mailed inspection notification shall be within 30 days of a compliance determination. <i>A file review should indicate the County has notified the producer(s) of compliance inspection results. Notification must be in writing or via email.</i>	☒	☐
7. The County will bring feedlot operations into compliance through the implementation of scheduled compliance goals as stated in the County's Delegation Agreement Work Plan Compliance Strategy (Minn. R. ch. 7020.1600, subp. 3a.B(5)). <i>A file review should indicate that the County brought non-compliant feedlots into compliance as stated in their Delegation Agreement Work Plan Compliance Strategy.</i>	☒	☐
8. The County maintains documentation and correspondence for any return to compliance from a documented non-compliance status (Minn. R. ch. 7020.1600, subp. 2.H). <i>When a County records a corrective action in Tempo the file should contain documentation verifying the corrective action. Tempo should indicate that the audit data screen is correctly filled out for partial or complete upgrades and the Violations screen in Tempo has been updated to reflect the return to compliance.</i>	☒	☐

Permitting MPRs	YES	NO
9. The County will issue permits within the 60/120-day time period according to Minn. Stat. § 15.99 (Minn. R. ch. 7020.0505, subp. 5.C). <i>A file review should indicate that the County date stamps all application components and, if applicable, uses letters to notify producers of incomplete applications. An application component received by the County electronically (via e-mail) does not need a date stamp provided the dated e-mail is saved with the document.</i>	☒	☐
10. The County will make sure all permit applications are complete (Minn. R. ch. 7020.1600, subp. 2.C). <i>A file review should indicate that the County uses the most recent agency-approved permit application review checklist and that application information is complete and accurate as verified through the use of the permit application review checklist.</i>	☒	☐
11. The County will ensure producer compliance with required notifications (Minn. R. ch. 7020.2000, subp. 4 and subp. 5). <i>Public notifications for new or existing feedlots with a capacity of ≥ 500 AU proposing to construct or expand must include the following information:</i> <i>a. Owner(s) name(s) or legal name of the facility;</i> <i>b. Location of facility - county, township, section, quarter section;</i> <i>c. Species of livestock and total animal units;</i> <i>d. Types of confinement buildings, lots, and areas at the animal feedlot; and</i> <i>e. Types of manure storage areas.</i> <i>Public notification is completed by equal or greater notification of one of the following:</i> <i>a. Newspaper (affidavit in file);</i> <i>b. Delivery by mail or in person; or</i> <i>c. As part of a county/township permitting process (Conditional Use Permit);</i> <i>d. A copy of the newspaper including date of publication;</i> <i>e. A printed copy of the notification from the newspaper website including date of publication.</i>	☒	☐
12. The County will issue the appropriate permit after completion of required notifications (Minn. R. ch. 7020.2000, subp. 4, 5). <i>A file review should indicate that permits have been issued more than twenty (20) business days after public notifications.</i>	☒	☐
13. The County will ensure that MMP (manure management plan) conditions have been met according to Minn. R. ch. 7020.2225, subp. 4.D prior to permit issuance (Minn. R. ch. 7001.0140). <i>A file should contain either a permit with a deadline for MMP submittal or an MMP and a completed MMP review checklist for any interim permit issued for a site >100 AU; a MMP and a completed MMP review checklist for any CSF (construction short form) permit issued for a feedlot where manure is non-transferred over 300 AU; and a completed copy of the document "MMP When Ownership of Manure is Transferred" for a feedlot ≥ 300 AU where manure is transferred. A file review will confirm that a copy of the most recent agency-approved MMP review checklist is in the permit file and verify that the MMP is complete, accurate and meets feedlot rule requirements as verified through the use of the MMP review checklist.</i>	☒	☐

14. The County will ensure that a producer who submits a permit application that includes a liquid manure storage area (LMSA) meets the requirements in Minn. R. ch. 7020.2100. <i>A file review should indicate that the County uses the most recent agency-approved LMSA checklist and that LMSA plans and specifications are complete, accurate and meet feedlot rule requirements as verified through the use of the LMSA checklist.</i>	☒	☐
15. The County will ensure that any pollution problem existing at a producer's site will be resolved before the permit is issued or will be addressed by the permit (Minn. R. ch. 7020.0535, subp. 7 and 7001.0140). <i>A file review should indicate the County issues interim permits in appropriate situations and conducts an inspection at existing sites within one year prior to permit issuance.</i>	☒	☐

Complaint Response MPR	YES	NO
16. The County maintains a record of all complaint correspondence. (Minn. R. ch. 7020.1600, subp. 2.H. and subp. 2.J.(6)) <i>The County maintains a complaint log and promptly reports to the MPCA any complaints that represent a possible health threat, a significant environmental impact or indicate a flagrant violation. The complaint log should include:</i> a. Type of complaint; b. Location of complaint; c. Date and time complaint was made; d. Facts and circumstances related to the complaint; and e. A statement describing the resolution of the complaint.	☒	☐

Owner Assistance MPR	YES	NO
17. The County's Owner Assistance Strategy has been approved by the agency. (Minn. R. ch. 7020.1600, subp. 2.J.(5) and subp. 3a.B.(7)) <i>A review should indicate the County initiated their plan as stated in their Delegation Agreement Work Plan Owner Assistance Strategy.</i>	☒	☐

Staffing Level and Training MPR	YES	NO
18. The CFO (and other feedlot staff) attend training necessary to perform the duties of the feedlot program and is consistent with the agency training recommendations. (Minn. R. ch. 7020.1600, subp. 2.K.) <i>The County should complete a minimum of 18 continuing education units (CEUs). Each unit consists of one hour of training related to Minn. R. ch. 7020 competency areas: regulating new construction, conducting inspections and evaluating compliance, handling complaints and reported spills, responding to air quality complaints, resolving identified pollution problems, communicating with farmers and the agricultural community.</i>	☒	☐

Air Quality MPR	YES	NO
19. The County maintains a record of all notifications received from feedlot owners claiming air quality exemptions including the days exempted and the cumulative days used. (Minn. R. ch. 7020.1600, subp. 2.I.) <i>The County should maintain a pumping notification log. The log should include:</i> <i>a. Names of the owners/legal facility name;</i> <i>b. Location of the facility (county, township, section, quarter);</i> <i>c. Facility permit number; and</i> <i>d. Start date and number of days to removal.</i>	☒	☐

Web Reporting Requirement	YES	NO
20. The County maintains an active website listing detailed information on the expenditure of County program grant funds and measureable outcomes as a result of the expenditure of funds. (86th Legislature, MN Session Laws 2009, Chapter 37 – H. F No. 2123, article 1, section 3, subdivision 1) <i>As of July 1 of the current program year, the CFO Annual Report and MPCA Financial Report from the previous program year should be posted on the County's website:</i> https://www.revisor.mn.gov/laws/?year=2009&type=0&doctype=Chapter&id=37	☒	☐

Appendix A

2022-23 Delegation Agreement Work Plan Guidance

This Delegation Agreement Work Plan applies to feedlots that are required to be registered under Minn. R. ch. 7020.

If a Delegated County (County) will not be able to meet their registration, inspection, compliance and/or owner assistance strategies during the year the County needs to communicate this with the MPCA in a timely manner and work with MPCA to determine an acceptable alternative. If a County is unable to achieve the strategies of the Delegation Agreement Work Plan they risk losing funding. A County that does not meet the minimum seven percent inspection rate may be at risk for losing funding.

1. DATA PRACTICES:

Any data requested that is part of the Tempo warehouse data dump, MPCA's "What's in my Neighborhood" and a submitted permit application and Manure Management Plan is public information. As such the county is not required to immediately notify the MPCA and is does not need to await direction on whether the county can disseminate this data to the public. The county can release this public data because this statement is a blanket approval for the county to do so.

2. REGISTRATION:

a) Producer contact information

- If a feedlot owner provides contact information (phone/email) it needs to be entered. Counties should not enter their own contact information if a feedlot owner has provided contact information.
- If a feedlot owner does not provide contact information an effort should be made by the CFO to gather/obtain feedlot owner contact information (phone/email) before entering registration information so if possible the feedlot owner's contact information is entered rather than the contact information of the CFO.
- Entering CFO contact information (phone/email) as part of a feedlot's contact information should only be done as a last resort... meaning that either:
 - The feedlot owner does not have phone/email contact information.
 - The feedlot owner is unwilling to provide contact information.

b) Collected registration information

- If a feedlot owner submits registration information to the county (i.e. Registration Data Collection sheet or permit application) so that the county can enter the registration information into the on-line registration service, the submitted information needs to be retained (attached in Tempo or in county file).

c) Registration receipt

- If a feedlot owner does not provide email contact information and CFO email contact information is entered as contact information for the feedlot, the CFO needs to clearly document receipt of registration back to the feedlot owner. Acceptable forms of documentation include:
 - Dated registration receipt letter,
 - Dated inspection letter that indicates registration was updated,
 - Dated permit cover letter that indicates registration was updated; and/or
 - The County will document the dated 30-day registration receipts as described in the Registration Strategy above.

d) Register / Update feedlot registration information when permits are issued

- When a feedlot owner submits an application for a feedlot permit or Notice of Construction the CFO needs to ensure that:
 - New feedlot sites are registered based on the information submitted.
 - Registration information is updated for existing feedlot sites based on the information submitted.

3. TYPES OF INSPECTIONS

Please refer to the Minnesota Feedlot Inspection Checklist (Checklist) to learn more about a feedlot inspection. All inspections must be documented.

Compliance Inspection is an onsite, full facility inspection during which all parts of the feedlot are inspected. When inspecting a site registered for ≥ 100 AU the nitrogen section of the Checklist must be filled out for the inspection to be complete. When entering an inspection of this type into Tempo select *FE Compliance Inspection* as the Compliance Evaluation Type and load applicable checklist.

Construction Inspection is an onsite inspection completed at a feedlot site that is constructing. A construction inspection typically involves just inspecting the construction activity that is taking place and does not require inspection of other parts of the feedlot. When entering an inspection of this type into Tempo select *FE Construction Inspection* as the Compliance Evaluation Type and load applicable checklist.

Complaint Inspection is an inspection conducted in response to a complaint. A complaint inspection typically involves just inspecting the portion of the feedlot, land application site, manure stockpile or other areas relating to the complaint and does not require inspection of any other area not directly related to the complaint. When entering an inspection of this type into Tempo select *FE Complaint Inspection* as the Compliance Evaluation Type.

Stockpile Inspection is an onsite inspection conducted to inspect one or more stockpiles. A stockpile inspection typically involves just inspecting the portion of the feedlot relating to the stockpile(s) and does not require inspection of other parts of the feedlot. The stockpile section(s) of the Checklist must be filled out for the inspection to be complete. When entering an inspection of this type into Tempo select *FE Stockpile Inspection* as the Compliance Evaluation Type and load the applicable checklist portions.

Manure Storage Area Closure is an inspection that has been conducted at a facility and the inspector has evaluated the site's compliance with manure storage area closure requirements. If you

have received a notification of manure storage area closure and did not inspect the facility, follow the procedure for "How to enter Notification of Manure Storage Area Closure" located here:

<file:///pca.state.mn.us/xdrive/Tempo/Feedlot/>

Note that stockpile and manure storage area closure inspections, on their own, do not count towards the minimum seven percent inspection requirement.

Land Application Inspections

- **Phosphorus Inspection** is an inspection of the phosphorus portion of land application records that is conducted *in conjunction* with a compliance inspection of a site registered for ≥ 300 AU. The phosphorus section of the Checklist must be filled out for the inspection to be complete. **NOTE:** The number of years of records reviewed needs to meet the minimum of the crop rotation (i.e., C*/SB = two years, C/C/SB = three years, O/H/H/H/C/C/C = seven years). When entering an inspection of this type in Tempo *both FE Compliance Inspection and FE Phosphorus* are selected as Compliance Evaluation Types and load the applicable checklist. (*C = Corn, SB = Soybean, O = Oats, H = Hay.)
- **Desktop Nitrogen & Phosphorus Record Review** is an inspection of *both* nitrogen and phosphorus land application records of a site registered for ≥ 300 AU. This is an *independent* inspection conducted *without* inspecting other parts of the feedlot. The nitrogen and phosphorus sections of the Checklist must be filled out for the inspection to be complete. This inspection typically would be conducted in the office after requesting and receiving application records but it could also be conducted onsite. When entering an inspection of this type into Tempo select *FE Desk-top Nitrogen & Phosphorus Record Inspection* as the Compliance Evaluation Type and load the applicable checklist. **NOTE:** Desk-top Phosphorus records reviews must be completed in the same manner as described in the Phosphorus inspection above.
- **In-field Land Application Inspection** is an onsite/in-field inspection that focuses on land application practices including but not limited to discharges and setback requirements. The inspection should include a review of the MMP as applicable. The in-field land application inspection section of the Checklist must be filled out for the inspection to be complete. When entering an inspection of this type into Tempo select *FE In-field Land Application Inspection* as the Compliance Evaluation Type and load the applicable checklist.

A Special Note about Inspections at Facilities Designated as a Large CAFO or Operating Under an NPDES or SDS Permit

County inspections conducted at NPDES/SDS/CAFO sites **DO NOT count towards the minimum seven percent (7%) inspection rate**. If the inspection was requested of the County by MPCA feedlot program staff the County can add that inspection to the CFO Annual Report to obtain performance credits.

4. INSPECTION DOCUMENTATION

Required

Each compliance inspection must be documented. A Checklist must be used for all compliance inspections as applicable (MPR #3). The results of compliance and land application inspections are to be documented and communicated in writing or via e-mail to the feedlot owner. For compliance

inspections and desktop N & P record reviews results are to be communicated to the feedlot owner within 30 days of a compliance determination (MPR #6).

Both the Checklist and the written communication of inspection results to the feedlot owner need to be either in the County's file or uploaded into Tempo.

It is not necessary to document and communicate results to the feedlot owner for a construction or complaint inspection unless compliance issues are discovered as a result of the inspection.

For **Compliance** inspections at feedlot sites with ≥ 300 AU where **manure application records are kept**, documentation in the file must include:

- The Checklist;
- Written communication of the inspection results;
- A copy or photo of a representative sample of manure application records that were evaluated. Examples include: manure and soil sample results, field maps with application rates, MPCA Manure Planner. (This is not tied to an MPR.);
- The County's evaluation of nitrogen rates (i.e., nitrogen rate worksheet). Include documentation used to make a nitrogen determination; and
- The County's evaluation of phosphorus rates (i.e. phosphorus rate worksheet), if an optional phosphorus inspection is conducted in conjunction with a compliance inspection.

The County can also include additional items (photos, site map, etc.) as part of the inspection file if they determine it is applicable or necessary to document the inspection.

For **Compliance** inspections at feedlot sites with 100 -299 AU where **manure application records are required to be kept**, documentation in the file must include:

- The Checklist;
- Written communication of the inspection results;
- The County's evaluation of nitrogen rates (i.e., nitrogen rate worksheet). Include documentation used to make a nitrogen determination; and
- The County's evaluation of phosphorus rates (i.e., phosphorus rate worksheet), if an optional phosphorus inspection is conducted in conjunction with a compliance inspection.

The County can also include additional items (photos, site map, etc.) as part of the inspection file if they determine it is applicable or necessary to document the inspection.

For **Desk-Top N & P** inspections documentation in the file must include:

- The Checklist;
- Written communication of the inspection results;
- A copy or photo of a representative sample of manure application records that were evaluated (This is not tied to an MPR.);
- The County's evaluation of the nitrogen rates (i.e. nitrogen rate worksheet); and
- The County's evaluation of phosphorus rates (i.e. phosphorus rate worksheet).

The County can also include additional items as part of the inspection file if they determine it is applicable or necessary to document the inspection.

For **Compliance inspections** at feedlot sites where manure application records are **not** required to be kept (**sites with less than 100 AU**) and other types of inspections, documentation in the file must include the Checklist, written communication of inspection results to the feedlot owner and **at least one of the following suggested pieces of documentation**.

Suggested

The following are suggestions for documenting an inspection. This documentation should be either in the County's file or uploaded into Tempo.

- **Compliance Inspection** - aerial photos, maps, camera photos, notes (on non-compliance).
- **Construction Inspection** - aerial photos, maps, camera photos, notes, copies or photos of contents of the owner's feedlot files or records, as-built documentation.
- **Complaint Inspection** - aerial photos, maps, camera photos, notes, copies or photos of contents of the owner's feedlot files or records, land ownership records, nitrogen and phosphorus record review worksheets, manure and/or soil test results.
- **Stockpile Inspection** - aerial photos, maps, camera photos, notes, locations of nearby sensitive features requiring setbacks, soil information (slope/depth to seasonal water table/texture).
- **Land Application Inspections** - aerial photos, maps, camera photos, notes, copies or photos of contents of the owner's feedlot files or records, land ownership records, nitrogen and phosphorus record review worksheets, manure and/or soil test results.
- **Manure Storage Area (MSA) Closure** - either a letter stating that the MSA was closed in accordance with rule requirements and/or photo documenting the closure.

For all inspection types except Construction and Complaint:

- Checklist must be used.
- Results must be entered in Tempo.
- A follow-up letter needs to be sent to the feedlot owner. The letter should include Checklist section(s) where non-compliance was identified (or a copy of the entire Checklist), and corrective actions/time frames for addressing non-compliance if applicable. For Compliance and Desk-Top N & P inspections, the follow-up letter is to be sent to the producer within 30 days of compliance determination.
- Inspection documentation needs to be in County files or uploaded into Tempo.

For Construction and Complaint inspections:

- Inspection checklist can be used.
- Results must be entered in Tempo.
- Inspection documentation should be in County files or uploaded into Tempo.

5. HOW INSPECTIONS COUNT TOWARDS THE MINIMUM SEVEN PERCENT (7%) INSPECTION RATE

Compliance and construction Inspections count toward the minimum 7% inspection rate, each as **one (1) inspection**.

Desktop Nitrogen & Phosphorus Record Review (conducted independent of a compliance inspection) at a feedlot site ≥ 300 AU counts as **one (1) inspection**. Credit will be given only if there

are records available and if those records are sufficient to meet the nitrogen record requirement first and then the phosphorus record requirement second. Therefore, looking at both nitrogen and phosphorus records during a desk-top nitrogen and phosphorus inspection counts as one (1) inspection.

In-field Land Application Inspection at a feedlot site that is required to be registered or at a feedlot site that receives manure from a site required to be registered counts as **one half (0.5)** an inspection. In order for the in-field land application inspection to count towards the minimum 7% inspection rate, the feedlot that is the source of the manure should not be considered a large CAFO or operating under an NPDES or SDS permit.

It is important to note that only **one inspection can be counted toward the minimum 7% inspection rate** for any given feedlot site during the program year. For example, if a County completes a compliance inspection and an in-field land application inspection at the same feedlot site during the same program year, the in-field land application inspection cannot be counted towards the minimum 7% inspection rate. However, any additional inspections completed for the same feedlot site during the same program year may count towards performance credits.

6. INSPECTION STRATEGY

As part of developing a realistic inspection strategy the County needs to consider all of their strategies (compliance and land application) and the time commitment required. The County should not design their inspection goals to simply meet the minimum 7% inspection rate. Rather, the County is urged to set inspection goals according to their inspection needs such as feedlots that have never been inspected. The County needs to be realistic with their inspection strategy because they will be required to initiate and work towards these strategy goals (MPR #5).

Recommended Approach for Developing an Inspection Strategy

Step 1. The first step is to calculate the number of feedlots the County intends to inspect annually. The County needs to set a goal of inspecting at least 7% of the total number of feedlots required to be registered in the County. Given this formula, a County with 300 feedlots would need to conduct 21 compliance inspections or a combination of 21 compliance/construction/desk-top nitrogen and phosphorus record/in-field land application inspections annually. One in-field land application inspection counts as one half (0.5) inspection towards the minimum 7% inspection rate.

Step 2. The second step is to decide how many inspections the County can conduct in each of the high risk/low risk categories over the next two years. Counties are encouraged to inspect sites in the BWSR One Watershed One Plan (see link below). Remember that inspections require follow-up and possible enforcement for non-compliant sites. Follow-up calls, letters, assistance and enforcement do not count towards the minimum 7% inspection rate.

7. BWSR ONE WATERSHED ONE PLAN (1W1P)

1W1P website link: <http://bwsr.state.mn.us/planning/1W1P/index.html>

APPENDIX B

2022 County Program Base Grant Award Feedlot Number

Big Stone	51	\$7,500	\$7,500		\$7,500
Blue Earth	353	\$27,152	\$27,152	\$11,921	\$39,073
Brown	372	\$28,614	\$28,614	\$12,562	\$41,176
Carver	190	\$14,615	\$14,615	\$6,416	\$21,031
Clay	89	\$6,846	\$6,846	\$3,006	\$9,852
Cottonwood	233	\$17,922	\$17,922	\$7,868	\$25,790
Douglas	322	\$24,768	\$24,768	\$10,874	\$35,642
Faribault	293	\$22,537	\$22,537	\$9,895	\$32,432
Fillmore	597	\$45,921	\$45,921	\$20,161	\$66,082
Freeborn	245	\$18,845	\$18,845	\$8,274	\$27,119
Goodhue	496	\$38,152	\$38,152	\$16,750	\$54,902
Houston	354	\$27,229	\$27,229	\$11,955	\$39,184
Jackson	317	\$24,383	\$24,383	\$10,705	\$35,088
Kandiyohi	389	\$29,921	\$29,921	\$13,137	\$43,058
Kittson	18	\$7,500	\$7,500		\$7,500
Lac Qui Parle	185	\$14,230	\$14,230	\$6,247	\$20,477
Lake of the Woods	25	\$7,500	\$7,500		\$7,500
Le Sueur	158	\$12,153	\$12,153	\$5,336	\$17,489
Lincoln	402	\$30,921	\$30,921	\$13,576	\$44,497
Lyon	272	\$20,922	\$20,922	\$9,185	\$30,107
Marshall	38	\$7,500	\$7,500		\$7,500
Martin	520	\$39,998	\$39,998	\$17,560	\$57,558
McLeod	300	\$23,076	\$23,076	\$10,131	\$33,207
Meeker	287	\$22,076	\$22,076	\$9,692	\$31,768
Morrison	612	\$47,074	\$47,074	\$20,667	\$67,741
Mower	342	\$26,306	\$26,306	\$11,549	\$37,855
Murray	435	\$33,460	\$33,460	\$14,690	\$48,150
Nicollet	302	\$23,229	\$23,229	\$10,199	\$33,428
Nobles	463	\$35,613	\$35,613	\$15,636	\$51,249
Norman	49	\$7,500	\$7,500		\$7,500
Pennington	44	\$7,500	\$7,500		\$7,500
Pipestone	447	\$34,383	\$34,383	\$15,095	\$49,478
Polk	76	\$5,846	\$5,846	\$2,567	\$8,413
Pope	138	\$10,615	\$10,615	\$4,660	\$15,275
Red Lake	46	\$7,500	\$7,500		\$7,500
Renville	278	\$21,383	\$21,383	\$9,388	\$30,771
Rice	244	\$18,768	\$18,768	\$8,240	\$27,008
Rock	509	\$39,152	\$39,152	\$17,189	\$56,341
Stearns	1,447	\$111,302	\$111,302	\$48,865	\$160,167
Steele	239	\$18,384	\$18,384	\$8,071	\$26,455
Stevens	125	\$9,615	\$9,615	\$4,221	\$13,836
Swift	155	\$11,922	\$11,922	\$5,234	\$17,156
Todd	797	\$61,304	\$61,304	\$26,915	\$88,219
Traverse	39	\$7,500	\$7,500		\$7,500
Wadena	81	\$6,230	\$6,230	\$2,735	\$8,965
Waseca	232	\$17,845	\$17,845	\$7,835	\$25,680
Watsonwan	186	\$14,307	\$14,307	\$6,281	\$20,588
Winona	522	\$40,152	\$40,152	\$17,628	\$57,780
Wright	248	\$19,076	\$19,076	\$8,375	\$27,451
Yellow Medicine	249	\$19,153	\$19,153	\$8,409	\$27,562

APPENDIX C

CFO referral of enforcement to MPCA

Policy memo: Referral of enforcement cases from delegated counties to MPCA

DATE : June 21, 2006 (updated June 1, 2021)
TO : MPCA and County Feedlot Staff
FROM : Randall G. Hukriede, Feedlot Program Manager
PHONE : 320-295-2227

Goal: To provide criteria to promote statewide consistency regarding acceptance of feedlot enforcement referrals from delegated counties to the Minnesota Pollution Control Agency (MPCA) where there is a persistent failure by a feedlot owner to correct pollution hazards. Referral of cases from the delegated counties to the MPCA should be done infrequently and only for very serious cases. This memo does not apply to situations where a county feedlot officer (CFO) discovers a blatant violation (e.g., acute discharging, pumping, piping, dumping manure to waters of the state). These situations should be referred to the MPCA immediately.

Situations where referrals may be accepted:

- Conflict of interest between producer and county/CFO;
- Serious environmental harm/potential for harm;
- Pollution problems and/or investigations involving multiple counties; and
- Other cases as determined appropriate by the MPCA.

Requirements for the county before cases are referred:

- County must have issued a Notice of Violation (NOV);
- County must have tried to refer the case to its county attorney if its previous enforcement action was not successful in resolving the case;
- County must send a letter to the MPCA describing what it has done to resolve the case and why it wants to refer the case to the MPCA; and
- County must agree to continue to work with the MPCA as needed to resolve the case.

Requirements for the MPCA:

- Incorporate enforcement requirements by reference into county workplans and delegation agreements.
- Staff meet with supervisor and compliance coordinator to approve acceptance of the referral.
- Continue to conduct enforcement training for CFOs and/or county attorney as needed.
- Maintain a NOV and Letter of Warning to be used by counties.

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item: End of Probations	
Primary Originating Division/Dept.: Human Resources Contact: Kristy Larson Title: HR Director Amount of Time Requested minutes Presenter: Kristy Larson Title: HR Director	Meeting Date: 11/09/2021 Item Type: (Select One) Consent Agenda Attachments: ☒ Yes ☐ No
County Strategy: (Select One) Facilities and Space - preserve, maintain and build our assets	
BACKGROUND/JUSTIFICATION: Property & Public Services Property & Public Services Director Jaci Kopet has requested the end of probation for Isaac Ubben, GIS Technician, effective November 9, 2021. Public Works Public Works Director Seth Greenwood has requested the end of probation for Joel Hawbaker, Assistant Public Works Director/County Engineer, effective November 9, 2021. Health & Human Services Health & Human Services Director Cassie Sassenberg has requested the end of probation for Erin Berkenpas, Eligibility Worker, effective November 16, 2021. Finance Finance Director Heather McCormick has requested the end of probation for Kellie Dirksen, Collections Officer, effective November 12, 2021.	
Supporting Documents: ☐ Attached ☒ In Signature Folder ☐ None	
Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No If "yes", when? (provide year; mm/dd/yy if known)	
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A	
ACTION REQUESTED: Grant end of probationary status	
FISCAL IMPACT: Other (Select One) If "Other", specify FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	FUNDING County Dollars = Grant (Select One) Total

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:	
Public Hearing Notice - Capital Improvement Plan 2022-2026	
Primary Originating Division/Dept.:	Meeting Date: 11/09/21
Contact: Heather McCormick Title: Finance Director	Item Type: Regular Agenda (Select One)
Amount of Time Requested 5 minutes	
Presenter: Heather McCormick Title: Finance Director	Attachments: ☐ Yes ☒ No
County Strategy: Financial Security - prudent use of taxpayer resources (Select One)	
BACKGROUND/JUSTIFICATION: This agenda item is to set a Public Hearing for the adoption of the 2022-2026 Capital Improvement Plan. Following MN Statute 373.40, Nicollet County will conduct a public hearing for their 5 year CIP Plan. I am requesting the Public Hearing to occur on Tuesday, December 14, 2021 at 10:00 a.m. The purpose of the public hearing is the review, discussion and approval of the proposed 2022 – 2026 Capital Improvement Plan for Nicollet County. The plan identifies estimated capital expenditures and funding sources for a five-year period. Having a CIP allows the County Board, Administration, and Department Heads make better financial decisions on the County's capital improvement needs.	
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None	
Prior Board Action Taken on this Agenda Item: ☐ Yes ☒ No	
If "yes", when? (provide year; mm/dd/yy if known)	
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A	
ACTION REQUESTED:	
FISCAL IMPACT: Other (Select One) If "Other", specify	FUNDING County Dollars = Other (Select One)
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:		
Quarter 3 2021 Donations		
Primary Originating Division/Dept.:	Meeting Date: 11/09/21	
Contact: Heather McCormick Title: Finance Director	Item Type: Regular Agenda (Select One)	
Amount of Time Requested 5 minutes		
Presenter: Heather McCormick Title: Finance Director	Attachments: ☒ Yes ☐ No	
County Strategy: Programs and Services - deliver value-added quality services (Select One)		
BACKGROUND/JUSTIFICATION:		
This is to present the Quarter 3 2021 Donations received for approval by resolution.		
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None		
Prior Board Action Taken on this Agenda Item: ☐ Yes ☒ No		
If "yes", when? (provide year; mm/dd/yy if known)		
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A		
ACTION REQUESTED:		
Approval of Donations		
FISCAL IMPACT: Other (Select One) If "Other", specify Donations	FUNDING County Dollars = (\$2,160.00) Other (Select One)	
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total (\$2,160.00)	



RESOLUTION APPROVING THE ACCEPTANCE
OF DONATIONS



WHEREAS, MN Statute 465.03 states any city, county, school district or town may accept a grant or devise of real or personal property and maintain such property for the benefit of its citizens in accordance with the terms prescribed by the donor. Nothing herein shall authorize such acceptance or use for religious or sectarian purposes. Every such acceptance shall be by resolution of the governing body adopted by a two-thirds majority of its members, expressing such terms in full.

WHEREAS, the Nicollet County Finance Office has compiled a list of donations made to the County from July 1 through September 30, 2021.

THEREFORE, BE IT RESOLVED that the Nicollet County Board of Commissioners approve the following donations made to the County from July 1 through September 30, 2021:

**Donations received by Nicollet County
July 1 through September 30, 2021**

<u>FROM WHOM</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
Various Donations	\$ 800.00	Van Services
Auto Restorers Club Inc	\$ 1,000.00	Sheriff Posse and Sheriff K-9
Various Donations	\$ <u>360.00</u>	Loan Closet
Total	\$ 2,160.00	

Dated this 9th day of November, 2021.

Terry Morrow, Chair
Nicollet County Board of Commissioners

ATTEST:

Mandy Landkamer
Clerk to the Board

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:	
National Insurance Services Consulting Agreement	
Primary Originating Division/Dept.: Human Resources	Meeting Date: 11/09/2021
Contact: Kristy Larson Title: HR Director	Item Type: Regular Agenda (Select One)
Amount of Time Requested 10 minutes	
Presenter: Kristy Larson Title: HR Director	Attachments: ☒ Yes ☐ No
County Strategy: Financial Security - prudent use of taxpayer resources (Select One)	
BACKGROUND/JUSTIFICATION: Human Resources is requesting that the Board agrees to and signs a consulting agreement with National Insurance Services (NIS) for 2022. We wish to continue to our relationship with Benefits Consultant Bill Chukuske by using NIS for assistance with strategic benefit planning, design, funding, administration, and communication. Payment to NIS is included in the medical and dental premiums paid by the County and staff. Amount will depend on employee open enrollment choices. We estimate that the cost in 2022 will be approximately \$54,280.00.	
Supporting Documents: ☐ Attached ☒ In Signature Folder ☐ None	
Prior Board Action Taken on this Agenda Item: ☐ Yes ☒ No	
If "yes", when? (provide year; mm/dd/yy if known)	
Approved by County Attorney's Office: ☒ Yes ☐ No ☐ N/A	
ACTION REQUESTED:	
Approval of NIS Consulting Agreement	
FISCAL IMPACT: Included in current budget (Select One) If "Other", specify	FUNDING County Dollars = Other (Select One)
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify:	Total
Related Financial/FTE Comments:	

NIS Full Benefit Consulting Services

Because of our exclusive commitment to serve only public sector organizations since 1969, National Insurance Services (NIS) is uniquely qualified to serve as your full benefits consultant.

Not only do we work with benefit structures like yours every day, we are in touch with the political atmosphere, budgetary constraints, and negotiations you face. We will partner with you every step of the way – at the negotiating table, in front of your board, at insurance committee meetings – wherever you need us.

Our Full Benefits Service Model includes:

- Analysis of your **claims experience** and **individualized strategic solutions** to tackle issues.
- Addressing your **budget concerns** and helping you **contain costs**.
- Leveraging our carrier relationships to **best represent you** in negotiations.
- **Reviewing your contracts** to help avoid employer liability and grievances.
- Building a **strategic benefit plan** specific to your culture and plan analytics.
- Thoroughly evaluating your **early retiree benefits** for plan sustainability.

Improving outcomes for public sector employers and schools is our exclusive focus. That's all we do. We look forward to working with you.



The NIS Service Philosophy

Our central focus is our customers. This means...

- When you call during business hours, our phones are answered by a person.
- If your representative is not available, we will attempt to route you to another representative, if desired.
- We make every effort to return calls and emails within 24 hours or explain why a reply may take longer.

We strive to deeply understand our customers' needs. This means...

- We seek to understand before being understood.
- We pro-actively reach out to you on a regular basis in person, by telephone and through e-mail, based on your needs.
- We ask our customers what we can do better.
- We occasionally hold client councils so that we can truly appreciate our customers' world.

Our customers' needs drive our internal decision making. This means...

- We put ourselves in our customers' shoes whenever we make a decision.

Our customers' wants and needs inspire product and service innovation.

We use our public sector expertise to proactively deliver solutions instead of waiting for problems to happen. This means...

- We share strategic insight gained from our success with other public sector organizations with you. We do not rely on quick fixes.
- We advise and guide you, passing up short-term opportunities if it does not make long-term sense.
- We use a proactive "Best Practices Checklist" (gathered from years of public-sector expertise) to be sure you are administering your plans correctly to help you avoid liability.

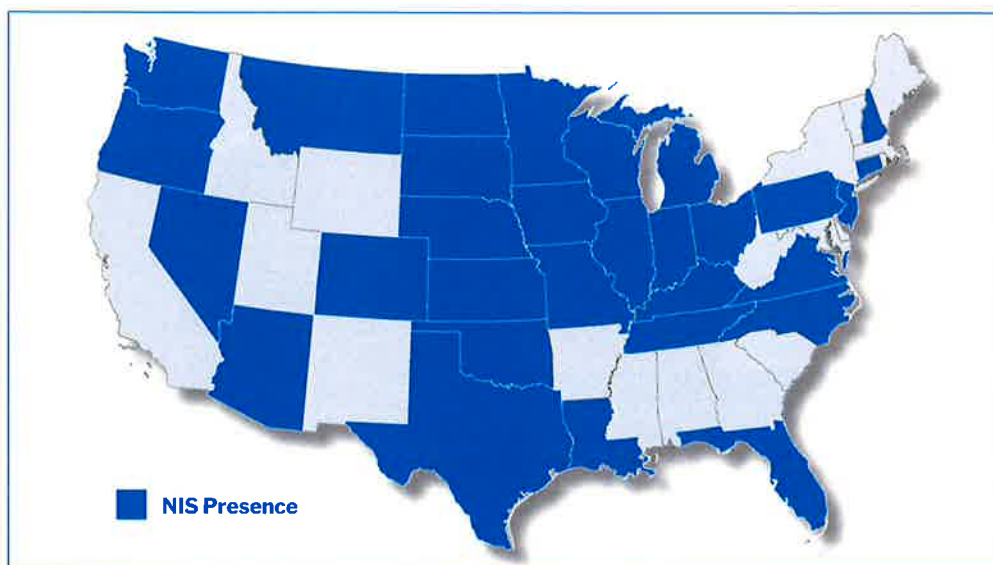


4 Things That Make NIS Different:

01 Exclusive Public Sector Focus

NIS is committed to the needs of public sector organizations such as schools, cities, and counties.

- We understand your culture, political atmosphere, budgetary constraints, and challenges.
- We don't wait for problems to happen. We proactively address common public sector issues before they take place.
- We pour through your contracts and benefit promises to look for gaps in coverage.
- We bring compliance and regulation issues to your attention and guide you toward solutions.



02 Proactive Service Model

Your consulting team follows a proactive, proprietary service model described below. Before and after each step is completed, the information is recorded in our custom-designed software system. The system outputs a document at every stage that we share and review with you on an annual basis.



Strategy

During implementation, your NIS team will analyze the following to identify areas for improvement:

- **Initial Claim Analysis:** We will analyze claims to detect trends for planning purposes.
- **Funding Assessment:** We will assess your plans to determine suitability of a self-funded or fully-insured plan.
- **Retiree Benefits:** We will evaluate your retiree benefits to help you plan for restructuring, if desired.
- **Written Strategic Plan:** After the initial benefit plan analysis, a comprehensive strategic plan is created.



Service Modules

Annually, we work with you on the following service modules based on priorities you determine.

- **Communication Plan:** We will help you communicate your benefit plan with emails, newsletters, posters, etc.
- **Wellness Planning:** We will help you launch or plan your wellness program from A to Z.
- **Insurance Committee:** We will help manage your insurance committee, or assist you in creating one.
- **Enrollment:** We will evaluate past enrollments and work with you to improve your upcoming enrollment.
- **Bidding & Renewal:** 120 days prior to renewal, we will benchmark your plan, run a claim analysis, and perform cost modeling/renewal estimates to be sure you are being charged appropriately.



Annual Review

On an annual basis, your NIS consultant will meet with you to:

- Analyze the prior year's strategic plan to review the completed work.
- Assess results.
- Discuss how things went.
- Review areas of concern and areas of improvement.
- Review industry trends and current issues.

After the annual review, another comprehensive strategic plan is drafted and presented to your team.

"It's the carrier's job to get the highest renewal, and our job to get you the lowest. We don't wait for the renewal. We've already done the analytics and predictive modeling."

NIS CONSULTANT

03 Retirement Benefits

Because of our public sector focus, we understand the unique retirement needs of early retirees (prior to age 65). NIS has developed a number of solutions that ensure plan sustainability, as well as honor public employees as they transition into retirement.



Retiree Payout Solutions

- Payouts for accumulated leave, OPEB buyouts, and retirement incentives into a Retiree-Only HRA
- Payouts for accumulated leave, OPEB buyouts, and retirement incentives into a 403(b)/401(a) Special Pay Plan
- 415 excess benefits trust



Retirement Savings Accounts

- TPA Compliance Services for 403(b) and 457(b)
- Single vendor employer-sponsored plan for 403(b) and 457(b)
- FICA alternative 3121 Plan



Early Retiree/OPEB Solutions

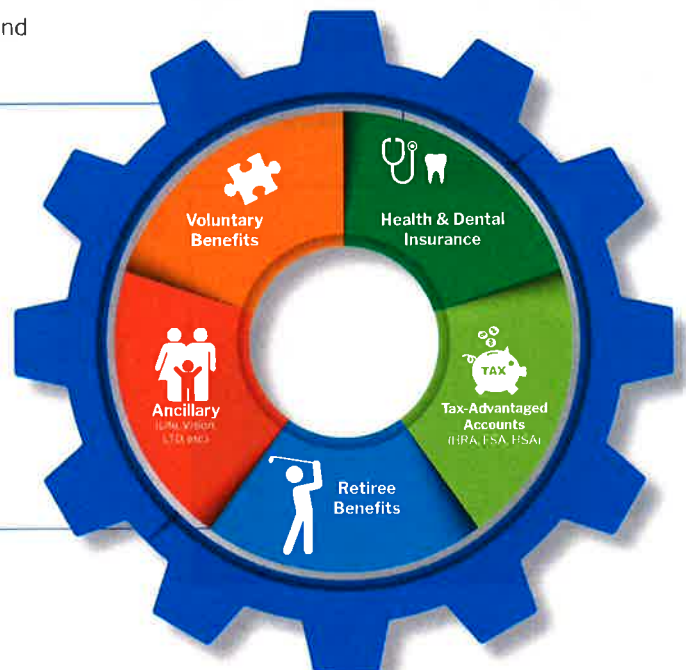
- Payments in lieu of retiree health insurance using a Retiree-Only HRA
- Defined contribution plan using a Retiree-Only HRA
- Post-Employment Benefit Trust



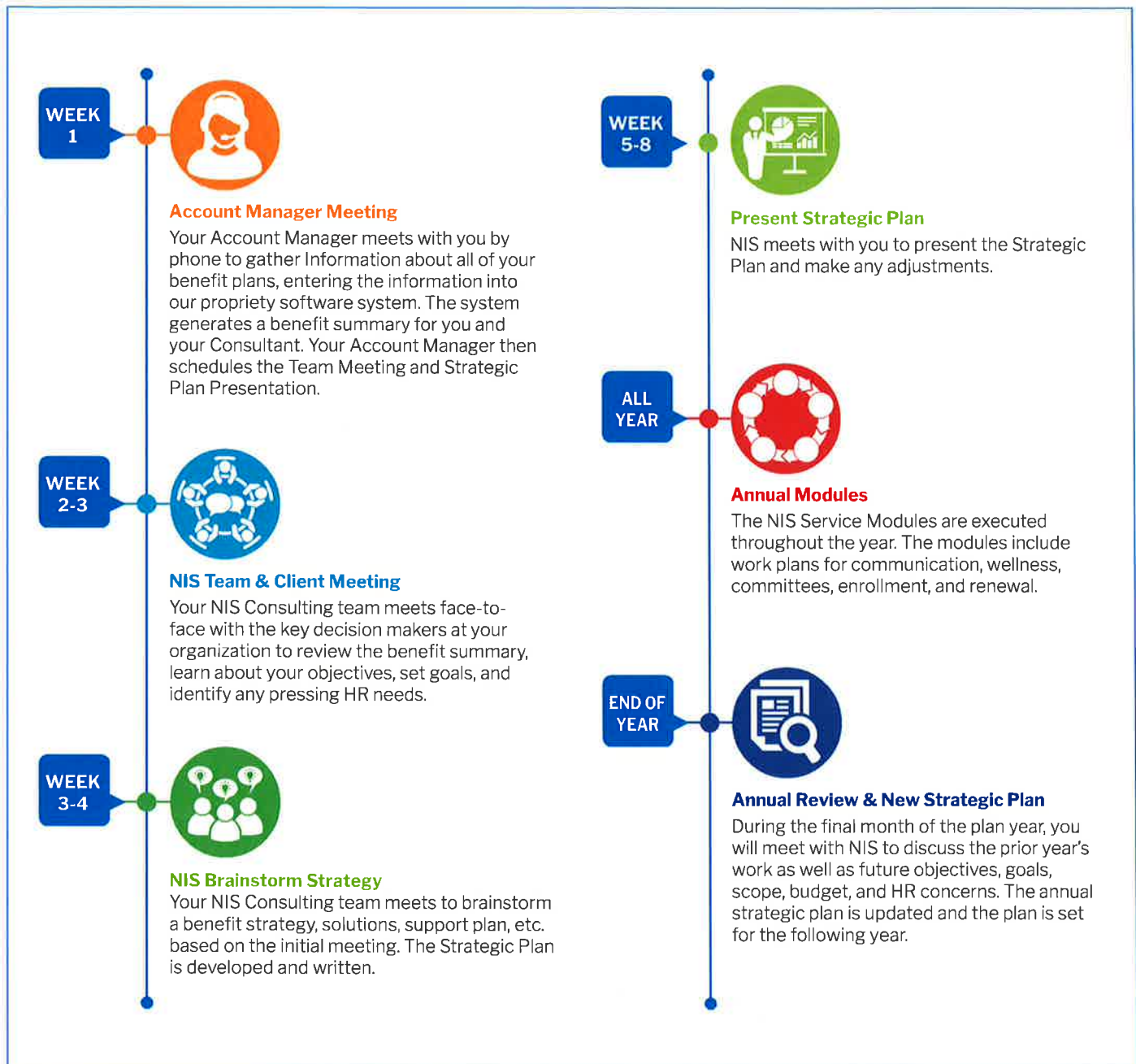
04 Benefit Integration

We don't try to fit conventional plans into your unique structure. We find the fit that works for you.

- Connecting benefits can reduce costs and improve health outcomes.
- We understand how retiree benefits impact OPEB balances, how medical prices relate to negotiations, and how contributions affect cash flow.
- Ancillary coverage is not really ancillary. All your benefits plans impact each other and can be integrated for maximum effectiveness.
- We recognize how each benefit impacts the medical plan and your entire benefits program as a whole.



Implementation - What You Can Expect from Us



About National Insurance Services:

Since 1969, National Insurance Services (NIS) has worked with public sector organizations such as schools, cities, counties, municipalities, libraries, and community mental health organizations providing employee benefit consulting services, as well as brokerage services for medical, dental, life, disability, and vision insurance benefits. NIS also specializes in early retiree benefit restructuring services, tax-free options for retiree payouts, as well as, on-site and near-site medical clinics.

NIS is trusted by over 2,500 public sector organizations and 500,000 insured individuals in 29 states. We are headquartered in Brookfield, Wisconsin with regional offices in Indiana, Iowa, Michigan, Minnesota, Nebraska, and Pennsylvania.

To learn more about NIS, visit our website NISBenefits.com.



250 South Executive Drive, Suite 300, Brookfield, WI 53005-4273

Offices Nationwide: 800.627.3660 www.NISBenefits.com

Consulting Agreement

This Consulting Agreement (Agreement) is between Nicollet County (Client) and National Insurance Services (NIS) (Consultant), effective as of January 1, 2022.

WHEREAS, Client wishes to obtain the assistance of Consultant with strategic benefit planning, design, funding, administration, and communication with respect to its employee benefit programs;

WHEREAS, Consultant has superior knowledge and expertise in assisting employers with designing and servicing employee benefit plans; and

WHEREAS, the parties wish to set forth their respective expectations;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereby agree as follows:

1. **Scope of Services to be provided by Consultant.** Scope of service actions will be mutually agreed upon annually through our Full Benefits Consulting Service Model.
2. **Client's Responsibilities.** Client will make available such reasonable information as required for Consultant to conduct its services. Such data will be made available as promptly as possible. It is understood by Consultant that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement. Client will make timely payments of the service fees as set forth elsewhere in this Agreement.
3. **Disclosure and Recordkeeping.**
 - a. **Full Disclosure.** Client has the right to approve any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's insurance and risk management program. Consultant must seek approval from Client prior to the use of any of the above in connection with the Client's insurance and risk management program.
 - b. **Recordkeeping.** Consultant will maintain accurate and current files including, but not limited to, insurance policies and correspondence with insurers or brokers in accordance with industry standard record retention practice or as otherwise directed by Client.
4. **Term & Termination.**
 - a. **Term.** The initial term of this Agreement shall be 12 months, commencing on January 1, 2022 and ending December 31, 2022 (Initial Term). Thereafter, this Agreement will remain in effect until terminated as described below.
 - b. **Termination.** This Agreement may be terminated by either party only as follows:
 - I. Effective upon ninety (90) days' advance written notice to the other

party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within twenty (30) days after the notice is received;

- II. effective upon ninety (90) days' advance written notice to the other party given with or without reason; provided such notice is given after the Initial Term; or
- III. By mutual written agreement of the parties.
- IV. If contract is termed prior to the agreed upon contractual time frame. Any uncompleted services will cease.

5. **Compensation.** Subject to any changes as may be mutually agreed by the parties, NIS will receive, as compensation for its services under this Agreement, fees illustrated in Exhibit 1. (Attached)

Consistent with industry practices, insurers may also pay insurance brokers, such as NIS, indirect compensation based upon volume efficiencies, client renewals, marketing services, product development, technology investments, and other additional services. NIS seeks written assurances from insurers that any such indirect compensation will not adversely impact the pricing or coverage terms that NIS is able to obtain for its clients. The amount of any available indirect compensation shall not be included in the calculation of any commission that may be due to NIS as a result of the placement of an insurance product.

NIS shall comply with all applicable state and/or federal laws and regulations regarding disclosure of compensation and embraces industry efforts for transparency. We believe it is important that clients have access to information that may be relevant to their choice of insurance products, including the cost of such insurance and services, and, the compensation that may be directly or indirectly paid to NIS in connection with the products or services that are selected. Your NIS account representative will be happy to address any questions you have regarding this matter.

6. **Personnel.** Consultant will assign its personnel according to the needs of Client and according to the disciplines required to complete the appointed task in a professional manner. Consultant retains the right to substitute personnel with reasonable cause. The Account Management Team consists of the following individuals:

Primary Service Team:

- **Consultant:** William (Bill) Chukuske
- **Account Manager:** Mari Wagner
- **Director of Health Plan Analytics:** Pierre Guilfoile
- **Senior Client Relations:** Ashley VBeenendaal

7. **Records and Information.** Consultant agrees to keep any information provided by Client confidential and to exercise reasonable and prudent cautions in protecting the confidentiality of such information. If the services provided by Consultant involve the

use of protected health information, Client and Consultant agree to enter into an appropriate business associate agreement.

8. **Independent Contractor.** It is understood and agreed that Consultant is engaged by Client to perform services under this Agreement as an independent contractor. Consultant shall use its best efforts to follow written, oral, or electronically transmitted (i.e., sent via facsimile or email) instructions from Client as to policy and procedure.
9. **Fiduciary Responsibility.** Client acknowledges that: (i) Consultant shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) Consultant shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and (iii) Consultant shall perform services pursuant to this Agreement in a non-fiduciary capacity.

Client agrees to notify Consultant as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect Consultant in the performance of its obligations under this Agreement. Client agrees to submit (or cause its agent, consultants or vendors to submit) all information in its (or their) control reasonably necessary for Consultant to perform the services covered by this Agreement.

10. **Entire Agreement.** This constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded.
11. **Hold Harmless.** The Consultant agrees to defend, indemnify, and hold Client, its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney's fees and expenses arising out of any act or omission on the part of the Consultant, or its subcontractors, partners or independent contractors or any of their agents or employees in the performance of or with relation to any of the work or services to be performed or furnished by the Consultant or the subcontractors, partners, or independent contractors or any of their agents or employees under the agreement.
12. **Minnesota Government Practices Act.** Consultant and Client agree that all data collected, created, received, maintained, or disseminated for any purposes by the activities of Consultant because of this agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such act now in force or as adopted, as well as federal regulations on data privacy. Consultant and Client agree to abide by the applicable provisions of the Minnesota Data Practices Act in Minnesota Statutes Chapter 13, HIPAA requirements, and all other applicable state or federal rules, regulations, or orders pertaining to privacy and/or confidentiality.

Subsequent amendments to this Agreement shall only be in writing signed by both parties.

For National Insurance Services:

Signature

Date

For Nicollet County:

Signature

Date

EXHIBIT 1

COMPENSATION AGREEMENT

Client: Nicollet County

Client State: Minnesota

Client has agreed that National Insurance Services will be compensated for the above services as follows:

☒ Compensation embedded in the monthly cost of the insurance plan/s. Details below.

Compensation Details for Insured and Self-Funded Employee Benefit Products and Services

Product/Service	Effective Date of Product/Service	Percentage of Premium
Dental	01/01/2022	\$5.00 per contract per month
Medical	01/01/2022	.75% of premium

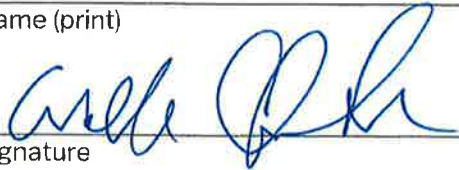
For National Insurance Services:

William Chukuske

Benefits Consultant/Broker

Name (print)

Title



Signature

10-22-21

Date

For Nicollet County:

Name (print)

Title

Signature

Date

Page 2 of Exhibit 1

Certificate of Liability Insurance (Attached)

Assured Partners Northeast, LLC (Parent Company)

National Insurance Services



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/26/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AssuredPartners Northeast, LLC 445 Hamilton Avenue 10th Floor White Plains NY 10601		CONTACT NAME: Jeanne Vezina PHONE (A/C, No, Ext): (914) 761-9000 FAX (A/C, No): (914) 761-3749 E-MAIL ADDRESS: jeanne.vezina@assuredpartners.com																					
INSURED National Insurance Services of Wisconsin, Inc. c/o The AssuredPartners Group, LP 200 Colonial Center Parkway Lake Mary FL 32746		<table border="1"><thead><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A:</td><td>Charter Oak Fire Insurance Co</td><td>25615</td></tr><tr><td>INSURER B:</td><td></td><td></td></tr><tr><td>INSURER C:</td><td></td><td></td></tr><tr><td>INSURER D:</td><td></td><td></td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Charter Oak Fire Insurance Co	25615	INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:		
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INSURER D:																							
INSURER E:																							
INSURER F:																							

COVERAGES**CERTIFICATE NUMBER:** CL21102680611**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:			6301C226998	10/01/2021	10/01/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 OTHER: \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			N/A			COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$
	UMBRELLA LIAB ☐ EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED \$ RETENTION \$			N/A			EACH OCCURRENCE \$ AGGREGATE \$ OTHER: \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N/A			PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
				N/A			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

FOR EVIDENCE PURPOSES ONLY

CERTIFICATE HOLDER**CANCELLATION**

FOR EVIDENCE PURPOSES ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:

Consider resolution transferring excess municipal construction funds to regular construction +

Primary Originating Division/Dept.: Public Works-Highway

Meeting Date: 11/09/2021

Contact: Seth Greenwood, P.E. Title: PWD/Co. Eng.

Item Type: Regular Agenda
(Select One)

Amount of Time Requested 5 minutes

Presenter: Seth Greenwood, P.E. Title: PWD/Co. Eng.

Attachments: ☒ Yes ☐ No

County Strategy: Financial Security - prudent use of taxpayer resources
(Select One)

BACKGROUND/JUSTIFICATION:

Our Municipal and Regular Construction accounts have maximum balance limits that can't be exceeded at the end of each year. If we go past the end of the year carrying more than we are allowed in these accounts we then lose those excess funds. Our municipal account has this situation. State law allows us by resolution to transfer excess municipal funds to our regular construction account to avoid losing any funds.

Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None

Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No

If "yes", when? (provide year; mm/dd/yy if known)

Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A

ACTION REQUESTED:

Approve the attached resolution transferring excess municipal construction funds to the regular construction account. +

FISCAL IMPACT: Other
(Select One)

If "Other", specify

FUNDING
County Dollars =

Grant
(Select One)

FTE IMPACT: No FTE change
(Select One)

If "Increase or "Decrease" specify:

Total

Related Financial/FTE Comments:

COUNTY OF NICOLLET

WHEREAS, Minnesota Statute 162.08, Subd 4 (d), provides that accumulated balances in excess of two years of municipal account apportionments may be spent on projects located outside of municipalities under 5000 population when approved solely by resolution of the county board.

NOW, THEREFORE, BE IT RESOLVED, that the Commissioner of Transportation transfer **\$330,000** in excess of two years apportionment into the Regular Construction Account.

I, Mandy Landkamer, duly appointed and qualified Administrator in and for the County of Nicollet, State of Minnesota; do hereby certify that the above is a true and full copy of a resolution duly adopted by the County Board of Nicollet County, Minnesota, assembled in regular session on the 9th day of November, 2021.

County of Nicollet

Mandy Landkamer
Nicollet County Administrator

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item: Consider Final Payment for 2021 Highway Striping Project		
Primary Originating Division/Dept.: Public Works-Highway Contact: Seth Greenwood, P.E. Title: PWD/Co. Eng. Amount of Time Requested 5 minutes Presenter: Seth Greenwood, P.E. Title: PWD/Co. Eng.	Meeting Date: 11/09/2021 Item Type: Regular Agenda (Select One) Attachments: ☐ Yes ☒ No	
County Strategy: Facilities and Space - preserve, maintain and build our assets (Select One)		
BACKGROUND/JUSTIFICATION: The 2021 Highway Striping Project is an annual contract where we restripe a portion of the County's paved road system. Final Payment Amount: \$1,311.34 Total Contract Value: \$131,133.68		
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None		
Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No If "yes", when? (provide year; mm/dd/yy if known)		
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A		
ACTION REQUESTED: Approve final payment amount of \$1,311.34 to Traffic Marking Services for the 2021 Highway Striping Project.		
FISCAL IMPACT: Included in current budget (Select One) If "Other", specify	FUNDING County Dollars = \$1,311.34 Grant (Select One)	+
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total \$1,311.34	

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:								
Consider Final Payment for SAP 052-621-027								
Primary Originating Division/Dept.: Public Works-Highway Contact: Seth Greenwood, P.E. Title: PWD/Co. Eng. Amount of Time Requested 5 minutes Presenter: Seth Greenwood, P.E. Title: PWD/Co. Eng.	Meeting Date: 11/09/2021 Item Type: Regular Agenda (Select One)							
		Attachments: ☐ Yes ☒ No						
County Strategy: Facilities and Space - preserve, maintain and build our assets (Select One)								
BACKGROUND/JUSTIFICATION: This project was the construction of a new bridge on CSAH 21 near Fort Ridgely State Park. All Contract obligations are complete for this contract so final acceptance and payment can be made to Prahm Construction Inc. Final Payment Amount \$11,063.51 Final Contract Total Amount \$1,070,611.79								
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None								
Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No If "yes", when? (provide year; mm/dd/yy if known)								
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A								
ACTION REQUESTED: Approve final payment amount of \$11,063.51 to Prahm Construction Inc. for SAP 052-621-027.								
FISCAL IMPACT: Included in current budget (Select One) If "Other", specify	FUNDING County Dollars = <table style="width: 100%;"> <tr> <td style="width: 50%;">State</td> <td style="width: 50%; text-align: right;">\$11,063.51</td> </tr> <tr> <td>(Select One)</td> <td></td> </tr> <tr> <td>Total</td> <td style="text-align: right;">\$11,063.51</td> </tr> </table>		State	\$11,063.51	(Select One)		Total	\$11,063.51
State	\$11,063.51							
(Select One)								
Total	\$11,063.51							
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:								

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:

Set Public Hearing Date for Fee Schedule Amendment

Primary Originating Division/Dept.: Administration

Meeting Date: 11/09/2021

Contact: Mandy Landkamer Title: County Administrator

Item Type: Regular Agenda
(Select One)

Amount of Time Requested 5 minutes

Presenter: Mandy Landkamer Title: County Administrator

Attachments: ☐ Yes ☒ No

County Strategy: Programs and Services - deliver value-added quality services
(Select One)

BACKGROUND/JUSTIFICATION:

Consideration of December 14, 2021, at 10:15 am for a public hearing concerning the amendment of the County Fee Schedule

Supporting Documents: ☐ Attached ☐ In Signature Folder ☒ None

Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No

If "yes", when? (provide year; mm/dd/yy if known) 12/15/2020

Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A

ACTION REQUESTED:

Set public hearing date

FISCAL IMPACT: No fiscal impact
(Select One)

If "Other", specify

FUNDING
County Dollars =

Other
(Select One)

FTE IMPACT: No FTE change
(Select One)

If "Increase or "Decrease" specify:

Total

Related Financial/FTE Comments:

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:	
Consideration of the AIA Document B132-2019 with Vetter Johnson Architects, Inc.	
Primary Originating Division/Dept.: Administration Contact: Mandy Landkamer Title: County Administrator Amount of Time Requested 15 minutes Presenter: Mandy Landkamer Title: County Administrator	Meeting Date: 11/09/2021 Item Type: Regular Agenda (Select One) Attachments: ☒ Yes ☐ No
County Strategy: Financial Security - prudent use of taxpayer resources (Select One)	
BACKGROUND/JUSTIFICATION: Consideration of the attached agreement between Nicollet County and Vetter Johnson Architects, Inc. for services related to the interior remodel of the Nicollet County Health and Human Services Building located at 2070 Howard Drive West, North Mankato, MN 56003. In addition, Vetter Johnson Architects has completed the schematic drawings for the remodel.	
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None	
Prior Board Action Taken on this Agenda Item: ☒ Yes ☐ No If "yes", when? (provide year; mm/dd/yy if known) July 27, 2021	
Approved by County Attorney's Office: ☒ Yes ☐ No ☐ N/A	
ACTION REQUESTED: Approval of the AIA Document B132-2019 between Nicollet County and Vetter Johnson Architects, Inc.	
FISCAL IMPACT: Included in current budget (Select One) If "Other", specify	FUNDING County Dollars = Other (Select One)
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total

AIA[®] Document B132[™] – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition

AGREEMENT made as of the Twenty Seventh day of July in the year Two Thousand Twenty One

(In words, indicate day, month, and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

County of Nicollet
Nicollet County Government Center
501 S. Minnesota Ave.
St. Peter, Minnesota 56082

and the Architect:
(Name, legal status, address, and other information)

Vetter Johnson Architects, Inc.
4245 Cottonwood Lane North
Plymouth, Minnesota 55441

for the following Project:
(Name, location, and detailed description)

Nicollet County Services Building Remodeling, North Mankato, MN
Interior remodeling of the Nicollet County Services Building in North Mankato.

The Construction Manager:
(Name, legal status, address, and other information)

Contegritty Group, Inc.
101 First Street SE
Little Falls, Minnesota 56345

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232[™]–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable," or "unknown at time of execution".)

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Not applicable

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Interior remodeling of the Nicollet County Services Building in North Mankato, Minnesota to include a revised floorplan layout to accommodate anticipated needs. Work is to include replacement of flooring, ceilings, lighting, wall finishes, doors, interior windows, mechanical, electrical, security and technology improvements.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Not applicable

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Not applicable

Init.

.2 Construction commencement date:

Winter of 2022

.3 Substantial Completion date or dates:

Summer of 2022

.4 Other milestone dates:

Not applicable

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive bid

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

Not applicable

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not applicable

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Ms. Mandy Landkamer
Nicollet County Administrator
Nicollet County Government Center
501 S. Minnesota Ave.
St. Peter, Minnesota 56082

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

To be determined

§ 1.1.10 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

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(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Contegrity Group, Inc.
101 First Street SE
Little Falls, MN 56345

.2 Land Surveyor:

To be determined, if required.

.3 Geotechnical Engineer:

To be determined, if required.

.4 Civil Engineer:

To be determined, if required.

.5 Other consultants and Contractors:

(List any other consultants and Contractors retained by the Owner.)

Not applicable

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(List name, address, and other contact information.)

Tyler L. Johnson

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Not applicable

Int.

.2 Mechanical Engineer:

EDI-Dolejs, Inc.
1112 N 5th Street
Minneapolis, MN 55411

.3 Electrical Engineer:

EDI-Dolejs, Inc.
1112 N 5th Street
Minneapolis, MN 55411

.4 Civil Engineer:

Not applicable

§ 1.1.12.2 Consultants retained under Supplemental Services:

To be determined, if required.

§ 1.1.13 Other Initial Information on which the Agreement is based:

Not applicable

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

Init.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than four million dollars (\$ 4,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than two million dollars (\$ 2,000,000.00) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability at statutory limits.

(Paragraph deleted)

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$ 2,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner and Construction Manager regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Construction Manager's review and Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop

Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and an estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

1. facilitating the distribution of Bidding Documents to prospective bidders;
2. organizing and conducting a pre-bid conference for prospective bidders;
3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and
4. organizing and conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work,

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nor shall the Architect be responsible for the Contractors' failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for acts or omissions of the Construction Manager, or acts or omissions of the Contractors or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractors, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractors through the Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232-2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- 1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- 2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously

prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractors to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractors' design professionals, provided the submittals bear such professionals' seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid each of the Contractors, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractors, through the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractors under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

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Supplemental Services	Responsibility (Architect, Owner or Not Provided)
§ 4.1.1.1 Assistance with selection of Construction Manager	Not applicable
§ 4.1.1.2 Programming	Not applicable
§ 4.1.1.3 Multiple preliminary designs	Not applicable
§ 4.1.1.4 Measured drawings	Not applicable
§ 4.1.1.5 Existing facilities surveys	Not applicable
§ 4.1.1.6 Site evaluation and planning	Not applicable
§ 4.1.1.7 Building Information Model management responsibilities	Not applicable
§ 4.1.1.8 Development of Building Information Models for post construction use	Not applicable
§ 4.1.1.9 Civil engineering	To be determined
§ 4.1.1.10 Landscape design	Not applicable
§ 4.1.1.11 Architectural interior design	Not applicable
§ 4.1.1.12 Value analysis	Not applicable
§ 4.1.1.13 Cost estimating	Not applicable
§ 4.1.1.14 On-site project representation	Not applicable
§ 4.1.1.15 Conformed documents for construction	Not applicable
§ 4.1.1.16 As-designed record drawings	Not applicable
§ 4.1.1.17 As-constructed record drawings	Not applicable
§ 4.1.1.18 Post-occupancy evaluation	Not applicable
§ 4.1.1.19 Facility support services	Not applicable
§ 4.1.1.20 Tenant-related services	Not applicable
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not applicable
§ 4.1.1.22 Telecommunications/data design	Not applicable
§ 4.1.1.23 Security evaluation and planning	Not applicable
§ 4.1.1.24 Commissioning	Not applicable
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not applicable
§ 4.1.1.26 Historic preservation	Not applicable
§ 4.1.1.27 Furniture, furnishings, and equipment design	To be determined
§ 4.1.1.28 Other services provided by specialty Consultants	To be determined
§ 4.1.1.29 Other Supplemental Services	To be determined

(Paragraphs deleted)

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for

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Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of entities providing bids or proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;
- .2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors
- .2 Eight (8) visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work, or (2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is

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earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

(Paragraphs deleted)

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractors to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

(Paragraphs deleted)

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractors, Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and Separate Contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for

the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed

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with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

- ☒ **[X]** Arbitration pursuant to Section 8.3 of this Agreement
- ☐ **[]** Litigation in a court of competent jurisdiction
- ☐ **[]** Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional

person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or if the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Not applicable

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Not applicable

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, and including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Paragraphs deleted)

Compensation shall be a percentage of construction cost equal to nine and three quarter percent (9.75%). It is agreed that at the end of the Design Development phase, the percentage fee, based on the Construction Manager's Design Development estimate including contingencies, shall be converted to a stipulated sum fee. Percentage fee is to be based on the Design Development estimate.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly, based on annual rates applicable on the first day of January, each year unless it is agreed that the cost for any particular Additional Service shall be a percentage of the related cost.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly, based on annual rates applicable on the first day of January, each year unless it is agreed that the cost for any particular Additional Service shall be a percentage of the related cost.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10 %), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Hourly, based on annual rates applicable on the first day of January each year.

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

§ 11.9 Architect's Insurance

If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

Not applicable

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to Contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

- 12.1 Field observations under Basic Services will be provided with an average of two (2) site visits monthly. Basic services include a maximum of 8 visits. Authorization to exceed this amount will require an Additional Services amendment to this agreement.
- 12.2 Additional Services will be required if a revision in project scope and/or quality level is required to reduce the Construction Cost if it is exceeded by the sum of the lowest bids. Specifically, if the Architect is asked to modify the drawings and specifications as necessary to comply with the latest estimated construction cost as prepared by the Construction Manager, the Architect shall be entitled to payment for all services performed in accordance with these modifications, whether or not the construction phase is commenced.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- 1. AIA Document B132™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

(Paragraphs deleted)

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name, title, and license number, if applicable)

Nicollet County
HHS Interior Renovation
SD Estimate
10/15/21



DIVISIONS OF WORK	12-12-19: SD TOTALS	7-14-21: SD TOTALS	10-15-21: SD TOTALS	Cost / SF (9,895)
CATEGORY 01 - GENERAL CONSTRUCTION	199,189.10	237,326.05	250,781.25	25.34
CATEGORY 02 - GLAZING & ALUMINUM OFFICE FRONTS	24,278.50	38,673.50	25,830.00	2.61
CATEGORY 03 - ACOUSTICAL CEILING	28,944.50	28,944.50	40,446.25	4.09
CATEGORY 04 - TILE/FLOORING/WINDOW TREATMENTS	110,895.50	119,813.50	120,404.00	12.17
CATEGORY 05 - PAINTING	32,158.75	32,158.75	53,302.75	5.39
CATEGORY 06 - FIRE SUPPRESSION	27,211.25	27,211.25	29,685.00	3.00
CATEGORY 07 - PLUMBING/HVAC/TEST & BALANCING/CONTROLS	239,330.00	239,330.00	276,436.25	27.94
CATEGORY 08 - ELECTRICAL/COMMUNICATION/ELECTRONIC SAFETY & SECURITY	300,565.75	299,865.75	431,134.00	43.57
Sub Total Construction	962,573.35	1,023,323.30	1,228,019.50	124.11
** General Requirements	115,508.80	122,798.80	147,362.34	
Building Permitting / Plan Review	9,000.00	10,000.00	12,000.00	
Contingency Allowance - Design / Bid / Build 10%	107,808.22	114,612.21	137,538.18	
Sub Total	1,194,890.37	1,270,734.31	1,524,920.02	
2019 Estimated Construction Management Fee	41,000.00			
2019 Estimated Architect / Engineering Fee	111,509.69			
Professional Fees (Architect / Engineers / CM - Allowance of 15% Carried)		190,610.15	228,738.00	
Owner Items				
FF & E Allowance (VJA Prelim. Estimate)	194,000.00	194,000.00	194,000.00	
PROJECT TOTAL*	1,541,400.06	1,655,344.45	1,947,658.03	

Notes

* ESTIMATE IS BASED ON AN OPEN COMPETITIVE BID MARKET.

* ESTIMATE IS BASED ON HISTORICAL VALUES AND IS AN APPROXIMATION OF CONSTRUCTION COSTS FOR 2022

* BASE PROJECT TOTAL DOES NOT INCLUDE COSTS FOR INCIDENTALS TO ONGOING COUNTY OPERATIONS THAT NEED TO BE ACCOUNTED FOR DURING PHASING AND DISRUPTION OF PROJECT IF NECESSARY.

* ESTIMATE DOES NOT INCLUDE ANY HAZARDOUS MATERIAL / ASBESTOS REMOVAL.

** GENERAL REQUIREMENTS (Owner Budget) are for items such as; Surveying, Soil Borings, Site Fencing, Portable Toilets, Dumpsters, Office Trailer, Plan Reproduction, Mailing Fees, Temp Signage, Temp Power, Temp Heat/Cool, Special Inspections/Testing, Builders Risk Insurance, Temp Enclosures, Safety Barricades, Fire Protection, Moving Expense, Final Cleaning, Temp Storage, On Site Supervision, This Budget will be refined and established in conjunction with the owner and the architect based on the anticipated needs of the project.

Nicollet County Board of Commissioners
Board Meeting Agenda Item



Agenda Item:		
Consideration of Property Under Minn. Stat. Chap. §13D.05, subd. 3(c)(3)		
Primary Originating Division/Dept.: Administration	Meeting Date: 11/09/2021	
Contact: Mandy Landkamer Title: County Administrator	Item Type: Regular Agenda (Select One)	
Amount of Time Requested 20 minutes		
Presenter: Mandy Landkamer Title: County Administrator	Attachments: ☐ Yes ☒ No	
County Strategy: Financial Security - prudent use of taxpayer resources (Select One)		
BACKGROUND/JUSTIFICATION: This portion of the meeting will be closed pursuant to Minnesota Statutes Chapter §13D.05, subd. 3(c)(3) to discuss property located at 1301 Marshall Street, St Peter, MN 56082.		
Supporting Documents: ☐ Attached ☐ In Signature Folder ☒ None		
Prior Board Action Taken on this Agenda Item: ☐ Yes ☒ No		
If "yes", when? (provide year; mm/dd/yy if known)		
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A		
ACTION REQUESTED: Action by the Board to develop or consider an offer concerning Minn. Stat. Chap. §13D.05, subd. 3(c)(3)		
FISCAL IMPACT: Other (Select One) If "Other", specify	FUNDING County Dollars = Other (Select One)	
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	Total	

OFFICIAL PROCEEDINGS OF THE
NICOLLET COUNTY DRAINAGE AUTHORITY
OCTOBER 26, 2021

The Nicollet County Drainage Authority met in regular session on Tuesday, October 26, 2021 at 9:38 with Vice Chair Dranttel presiding. Commissioners John Luepke and Jack Kolars were also present. Also present were County Administrator Mandy Landkamer and Recording Secretary Sarah Frahm.

Agenda

Motion by Commissioner Luepke and seconded by Commissioner Kolars to approve the agenda. Motion carried with all voting in favor.

Consent Agenda

Motion by Commissioner Kolars and seconded by Commissioner Luepke to approve the consent agenda items as follows: approval of the October 12, 2021 Drainage Authority minutes. Motion carried with all voting in favor.

Consider Ditch Repair Report 21-019 through 21-023

Motion by Commissioner Kolars and seconded by Commissioner Luepke to approve the Ditch Repair Report 21-019 through 21-023. Motion approved with all voting in favor.

Adjourn

Motion by Commissioner Luepke and seconded by Commissioner Kolars to adjourn the Drainage Authority Meeting. Motion carried with all voting in favor.

Chair Morrow adjourned the meeting at 9:39 a.m.

MARIE DRANTTEL, VICE CHAIR
BOARD OF COMMISSIONERS

ATTEST:

MANDY LANDKAMER
CLERK TO THE BOARD

NICOLLET
COUNTY EST. 1853

Agenda Item:					
2021 Annual Maintenance Levies					
Primary Originating Division/Dept.: Public Services				Meeting Date: 11/09/2021	
Contact: Jaci Kopet	Title: Public Services Manager			Item Type: (Select One) Regular Agenda	
Amount of Time Requested 5 minutes					
Presenter: Jaci Kopet		Title: Public Services Manager		Attachments: ☒ Yes ☐ No	
County Strategy: Programs and Services - deliver value-added quality services (Select One)					
BACKGROUND/JUSTIFICATION: Public Services annually reviews the ditch balances for all Nicollet County drainage systems and has determined that several ditch systems have negative ditch balances. I have attached a spreadsheet indicating a detailed breakdown of the balances of the negative ditch systems and the amount I am requesting to levy each ditch system. I have also attached a Findings and Order for the drainage authority to consider. This order would adopt the indicated levies for each ditch listed as well as the terms for the assessment if not paid by December 31, 2021					
Supporting Documents: ☒ Attached ☐ In Signature Folder ☐ None					
Prior Drainage Authority Action Taken on this Item: ☐ Yes ☒ No					
If yes, when? (provide year; mm/dd/yy if known)					
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A					
ACTION REQUESTED: Approval of all ditch system levies as listed in the Findings and Order					
FISCAL IMPACT: Other (Select One) If "Other", specify			FUNDING Drainage Authority Dollars = Grant (Select One) Total		
FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:					

2021 Ditch Levies

Ditch	Last Levied	9/31/2021 Balance*	Upcoming Expenses	Outstanding to be Collected	Balance	Original Benefits	Balance for Future Repairs	Total Amount to Raise	Recommended Levy	Amount to Raise
CD 9	2019	(11,426.37)			(11,426.37)	67,856.00	10,000.00	21,426.37	33.00%	22,392.48
CD 23	2017	(11,609.08)			(11,609.08)	25,469.00	5,000.00	16,609.08	70.00%	17,828.30
CD 27	2017	(20,033.92)			(20,033.92)	44,587.00	7,000.00	27,033.92	61.00%	27,198.07
CD 30A	2020	(58,858.15)		11,830.48	(45,027.67)	213,992.37	10,000.00	55,027.67	26.00%	55,638.02
CD 30A	2020	(20,627.38)	(35,000.00)		(55,627.38)	227,630.00	10,000.00	65,627.38	29.00%	66,012.70
CD 38A	2018	(57,815.45)		14,113.00	(43,702.45)	14,987,031.00	20,000.00	63,702.45	0.40%	59,948.12
CD 40A	2019	(17,888.74)		987.80	(16,900.94)	288,995.00	10,000.00	26,900.94	9.00%	26,009.55
CD 59A	2019	(12,512.14)		150.00	(12,362.14)	3,723,446.00	10,000.00	22,362.14	0.60%	22,340.68
CD 76A	2019	(64,210.16)		14,656.76	(49,553.40)	3,684,543.00	10,000.00	59,553.40	1.70%	62,297.23
CD 77	2019	(7,425.93)		33,882.45	(40,743.48)	11,119,951.75	25,000.00	65,743.48	0.60%	66,719.71
CD 80	2017	(6,401.72)			(6,401.72)	66,572.00	10,000.00	16,401.72	25.00%	16,643.00
CD 82	2018	(23,177.88)	(20,000.00)	225.00	(42,952.88)	47,445.00	5,000.00	47,952.88	100.00%	47,445.00
CD 83	2017	(10,871.87)		3,891.22	(6,980.65)	1,876,677.35	10,000.00	16,980.65	0.90%	16,890.10
CD 84	2011	9,703.25			(9,703.25)	28,488.60	5,000.00	14,703.25	50.00%	14,244.30
CD 85	2018	(34,437.27)			(34,437.27)	78,585.00	10,000.00	44,437.27	58.00%	45,579.30
CD 87	<1996	(3,797.13)			(3,797.13)	20,270.00	5,000.00	8,797.13	43.00%	8,716.10
CD 88	<1996	(4,442.08)			(4,442.08)	26,589.00	5,000.00	9,442.08	35.00%	9,306.15
CD 92	2018	(7,194.88)			(7,194.88)	16,670.00	5,000.00	12,194.88	75.00%	12,502.50
Totals		(405,191.45)		79,736.71	(399,861.24)	36,431,473.07	157,000.00	556,861.24		597,711.30

Redetermination Expenses Removed

Redeterminatoin Expenses Removed

Ditches with Redeterminations

		8/31/2021	Purchase of Batteries/Leasement	Outstanding to be collected	New Balance	Original Benefits	Additional Money for future expenses	Total Amount to Raise	Recommended Levy	Amount to Raise
CD4A	2016	(51,709.81)	(68,479.00)		(120,188.81)	2,690,839.00	14,000.00	134,188.81	5.09%	134,541.95
CD13A	2018	(40,209.54)	(393,852.00)	624.05	(433,437.49)	6,517,718.00	10,000.00	443,437.49	6.80%	443,204.82
CD33A	2016	(20,447.02)	(79,776.00)		(100,223.02)	1,028,262.00	10,000.00	110,223.02	10.80%	111,052.51
CD48A	2012	(37,896.70)	(56,354.00)		(94,250.70)	661,894.00	10,000.00	104,250.70	16.00%	105,903.04
CD51A	2006	(3,266.44)	-	-	(3,266.44)	436,138.00	10,000.00	13,266.44	3.00%	13,084.14

Grand Total	1,405,497.77
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Re-Payment Schedule Guideline

0 - \$500	1 year
\$501 - \$1000	2 years
\$1001 & over	3 years

If not paid by the end of year, 4% interest.

**BEFORE THE NICOLLET COUNTY DRAINAGE AUTHORITY
FOR ASSESSING ANNUAL MAINTENANCE LEVIES**

Findings and Order of the Board
Regarding Drainage System
Assessments, Installment Schedules
Interest Rates and Maintenance Funds

The Drainage Authority, having completed its deliberations, its examination of all files and records herein, and its consideration of all reports, makes the following:

FINDINGS OF FACT

1. Minn. Stat. § 103E.725 provides all fees and costs incurred relating to a drainage system, including repairs, inspections, engineering, viewing, and publications, are costs of the drainage system and must be assessed against the property and entities benefited.
2. Some drainage system accounts for systems administered by the Nicollet County Board of Commissioners, the Board, carry negative balances and others will benefit from establishment of a maintenance fund. The negative-balance system accounts have benefited from inter-fund loans from the general fund of the county. If the Board transfers money from another account or fund to a drainage system account, the money, plus interest, must be reimbursed from the proceeds of the drainage system that received the transfer.
3. If there is not enough money in the drainage system account to pay drainage system costs, the Board must assess the costs on all property and entities that have been assessed benefits for the drainage system.
4. If assessments are to be paid in installments, the Board may set an interest rate not to exceed the rate determined by the state court administrator for judgments under section 549.09.
5. Minn. Stat. § 103E.735 allows the creation of a repair fund for each drainage system. The repair fund is intended to create a positive balance in a drainage system account to pay routine costs of inspection and minor maintenance and to eliminate the need for inter-fund loans to drainage system accounts.
6. To create a repair fund, the drainage authority may apportion and assess an amount against all property and entities assessed for benefits. The fund may not exceed 20 percent of the assessed benefits of the drainage system or \$100,000, whichever is greater.

7. The drainage authority's staff has investigated the current drainage system funds and made a recommendation for assessments, installment schedules, interest rates, and maintenance funds.

ORDER

Based on the foregoing Findings and the entire record of proceedings before the Nicollet County Board of Commissioners, the Board, acting as the drainage authority for all Nicollet County drainage systems, hereby adopts the following drainage system assessments, installment schedules, interest rates, and maintenance funds and direct certification thereof to the County Public Services office for collection:

Ditch	Amount to Levy	Ditch	Amount to Levy
CD 4A	\$134,541.95	CD 59A	\$22,340.68
CD 9A	\$22,392.48	CD 76A	\$62,297.23
CD 13A	\$443,204.82	CD 77	\$66,719.71
CD 23	\$17,828.30	CD 80	\$16,643.00
CD 27	\$27,198.07	CD 82	\$47,445.00
CD 30A	\$55,638.02	CD 83	\$16,890.10
CD 32A	\$66,012.70	CD 84	\$14,244.30
CD 33A	\$111,052.51	CD 85	\$45,579.30
CD 38A	\$59,948.12	CD 87	\$8,716.10
CD 40A	\$26,009.55	CD 88	\$9,306.15
CD 48A	\$105,903.04	CD 92	\$12,502.50
CD 51A	\$13,084.14	TOTAL	\$1,405,497.77

All assessments not paid by December 31, 2021 will be charged 4% interest and the following installment schedule will apply to your property tax bill starting in 2022;

\$500 & under	1 year assessment
\$501 - \$1,000	2 year assessment
\$1,001 & over	3 year assessment

Dated: November 9, 2021

Terry Morrow
Chairperson of Drainage Authority

ATTEST:

Mandy Landkamer, County Administrator
Clerk to the County Board

Nicollet County Drainage
Authority Meeting
Agenda Item



Agenda Item: CD86A Proposed Change Order Request														
Primary Originating Division/Dept.: Public Services Contact: Jaci Kopet Title: PPSP Director Amount of Time Requested 15 minutes Presenter: Chuck Brandel Title: ISG Engineer	Meeting Date: 09/09/2021 Item Type: Regular Agenda (Select One) Attachments: ☒ Yes ☐ No													
County Strategy: Programs and Services - deliver value-added quality services (Select One)														
BACKGROUND/JUSTIFICATION: At the October 12, 2021 Drainage Authority meeting, ISG presented a change order requested by the contractor (Lametti & Sons, Inc.). This change order was identified as Serial Letter No. 3. Please see attached for details. This item was tabled to obtain more information from the County Attorney and a breakdown of separable maintenance costs and improvement costs from previous change orders. Please see the information below on the remaining improvement benefits. <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">07/10/2018</td> <td style="width: 60%;">Remaining improvement benefits approved at the FER hearing.</td> <td style="width: 20%; text-align: right;">\$291,699.21</td> </tr> <tr> <td>11/13/2018</td> <td>Pump Change Design Public Hearing - Approved</td> <td style="text-align: right;">-\$251,313.00</td> </tr> <tr> <td>05/11/2021</td> <td>Change order for adding head wall to isolation gate. \$25,190-Approved</td> <td></td> </tr> <tr> <td></td> <td>All separable maintenance cost per ISG</td> <td></td> </tr> </table> Remaining Improvement Benefits \$40,386.21			07/10/2018	Remaining improvement benefits approved at the FER hearing.	\$291,699.21	11/13/2018	Pump Change Design Public Hearing - Approved	-\$251,313.00	05/11/2021	Change order for adding head wall to isolation gate. \$25,190-Approved			All separable maintenance cost per ISG	
07/10/2018	Remaining improvement benefits approved at the FER hearing.	\$291,699.21												
11/13/2018	Pump Change Design Public Hearing - Approved	-\$251,313.00												
05/11/2021	Change order for adding head wall to isolation gate. \$25,190-Approved													
	All separable maintenance cost per ISG													
Supporting Documents: ☐ Attached ☐ In Signature Folder ☒ None														
Prior Drainage Authority Action Taken on this Item: ☐ Yes ☒ No If yes, when? (provide year; mm/dd/yy if known)														
Approved by County Attorney's Office: ☐ Yes ☐ No ☒ N/A														
ACTION REQUESTED: The Drainage Authority will be asked to approve or deny the proposed change order requests														
FISCAL IMPACT: Other (Select One) If "Other", specify FTE IMPACT: No FTE change (Select One) If "Increase or "Decrease" specify: Related Financial/FTE Comments:	FUNDING Drainage Authority Dollars = Grant (Select One) Total													

Change Order Memo

Nicollet County Ditch No. 86A – Pump Station



To: Nicollet County Drainage Authority
From: Chuck Brandel, PE
Jacob Rischmiller, PE
Date: October 5, 2021
Subject: Nicollet County Ditch No. 86A – Pump Station Change Order Explanation

County Commissioners,

Nicollet County Ditch No. 86A (CD 86A) pump station is located in Section 8 of Brighton Township. The pump station project involves replacing the existing station with a 90,000 gallon per minute station. ISG and Nicollet County staff have had multiple meetings with Lametti & Sons (Contractor) to discuss the Change Orders and Serial letter as described below.

Change Order No. 2

Change Order No. 2 is extended the contract time based on the delay is awarding the project as well as delay in supply of some electrical components. ISG reviewed the delay of the awarding of the contract to the Contractor, which was 64 days. The Contractor has encountered another delay is receiving some electrical components to complete the job, which is asking for an additional 180 days. Attached to the change order is Serial Letter No. 4 (from the contractor), which provides additional detail.

Change Order No. 3

Change Order No. 3 is a recommendation based on the Contractors Serial Letter No. 2 (attached to the change order). This change order developed based on the existing pump station failure on site, which all pumps were not functional during these months. Nicollet County has provided ISG with the average electrical costs of \$4,774.07 for the month of March and \$5,551.35 for the month of April based on the previous 5 years of pumping. Therefore, ISG believes that the system could be responsible for \$10,325.42 of the requested \$120,189.89.

Serial Letter No. 03

Serial Letter No. 3 from the Contractor is for additional electrical upgrades that were required from the basis of design. ISG bid the pumps based on the performance required of the pump station and not based on horsepower from a single pump manufacturer. That way, the system would allow other pump manufacturers to bid on the project with that could meet the performance required by the pump station. Serial Letter No. 3 from the Contractor provides additional detail of their request.

ISG has previous experience with approving additional manufacturers from the basis of design, and in that experience that contractor has typically caught any changes from the basis of design. Therefore, ISG's stance on the additional cost incurred for upsizing the electrical equipment to accommodate the different pump manufacturer is to deny the request.

Lametti & Sons, Inc.



May 19, 2021

Serial Letter No. 03

Jacob Rischmiller, PE
ISG, Inc.
6465 Wayzata Blvd, Suite 970
Minneapolis, MN 55426

RE: Nicollet County Ditch no. 86A Pump Station
Pumping of storm water - Additional Cost

Jacob,

As previously stated in email sent March 24th, 2021 additional cost has been incurred on the Nicollet County Ditch No. 86A Pump Station due to electrical and control changes not specified however required due to KSB pump being utilized. While it is understood the position of ISG is the specification was written as performance based, the option was given in addendum no. 1 to utilize KSB Pumps, the KSB pumps were a substantially cheaper option and were selected. At the time of bid the contractor could not be expected to be aware of the power requirements of these pumps, it would be anticipated the engineer allowed these pumps after doing their due diligence. Therefore, the following additional cost should be the responsibility of the owner:

Change No. 1 Electrical Gear Upsize:

- 1) Changed VFD and Load Reactor for P1 from 60HP to 75HP, max continuous output of 106 Amps.
- 2) Changed SSRV'S for P2&P3 from 300HP to 350HP, max continuous output of 480 Amps.
- 3) Changed breaker in MDP for P1 from 125A to 175A.
- 4) Changed breakers in MDP for P2&P3 from 600A Frame to 800A Frame with 600A trip (load required a larger frame size for heat.)
- 5). Wire size changes for the 125 to 175amp breaker change for the Jockey Pump VFD feeder.
- 6). VFD cable size change from #1 to 1/0 for the Jockey pump 101amp draw plus 125% (126.25 amps)

Change No. 2:

- 1) Changed VFD for P1 from 75HP to 100HP, max continuous output of 145 Amps.
- 2) Changed SSRV'S for P2&P3 from 350HP to 400HP, max continuous output of 590 Amps.
- 3) Change main circuit breaker in L1 from 1200A to 1600A. Note: Panelboard is changing to a switchboard that is 91H 72W 24D.
- 4) Changed breakers in MDP for P2&P3 from 600A Frame to 800A Frame with 700A trip (load required a larger frame size for heat)
- 5) Changed service conduit and wire size to accommodate the requested 1600amp service. (No change in service transformer size per BCREA)
- 6) Changed feeder wire from #3 to #2 for jockey pump and jockey pump disconnect from 100amp to 200amp non-fused.
- 7) Changed Pumps P2 & P3 feeder from 4/0 to 250MCM with a 2-1/2" conduit and a 400amp NF disconnect to a 600amp NF disconnect.



Summary of Cost:

Change No. 1	\$13,243.15
Change No. 2	\$28,617.00
<u>Lametti Mark Up</u>	<u>\$ 4,186.00</u>
Total Cost	\$46,046.15

Backup documentation enclosed.

If you have any questions, please feel free to contact us.

Sincerely,
Lametti & Sons



Dave Lovas
Project Manager

From: Kurt Paddock
To: David Lovas
Subject: Nicollet Ditch 86A Upsize Electrical Gear for Larger Pump Size Brighton Township, MN
Date: Tuesday, March 23, 2021 11:38:55 AM

RE: Upsize Electrical Gear for Larger Pump Size Brighton Township, MN

Dave,

We propose to supply the following equipment and services for the above referenced project.

The following equipment change will need to be done by Sweeney Controls Co.

- 1) Changed VFD and Load Reactor for P1 from 60HP to 75HP, max continuous output of 106 Amps.
- 2) Changed SSRV'S for P2&P3 from 300HP to 350HP, max continuous output of 480 Amps.
- 3) Changed breaker in MDP for P1 from 125A to 175A.
- 4) Changed breakers in MDP for P2&P3 from 600A Frame to 800A Frame with 600A trip (load required a larger frame size for heat.)
- 5). Wire size changes for the 125 to 175amp breaker change for the Jockey Pump VFD feeder.
- 6). VFD cable size change from #1 to 1/0 for the Jockey pump 101amp draw plus 125% (126.25 amps) .

Total lump sum addition to the original contract price.....\$ 13,243.15

Lump sum cost includes equipment installation, wire size changes as listed, Labor, taxes and 5% markup
On Sweeney Controls Equipment.

****Notice – Production Stoppage.** We are not able to progress with this project until a decision is communicated on this change order. This production stoppage will likely impact the project completion date.

Thank you,

Kurt Paddock
Project Manager / Estimator

Killmer Electric Company

5141 Lakeland Ave No. Crystal, Mn. 55429

Office- (763) 425-2525 Ext 233

Cell- (612) 363-5124

Fax- (763) 424-1258

kpaddock@killmerelectric.com

From: Kurt Paddock
To: David Lovas
Subject: Nicollet Ditch 86A Change Request #2
Date: Monday, May 17, 2021 3:44:48 PM
Attachments: quote 4360 additional upsize to electrical gear brighton township. mn.pdf

Dave,

Per the attached returned submittal Killmer is forwarding the additional costs for the changes per engineers request in the returned submittal.

- 1) Changed VFD for P1 from 75HP to 100HP, max continuous output of 145 Amps.
- 2) Changed SSRV'S for P2&P3 from 350HP to 400HP, max continuous output of 590 Amps.
- 3) Change main circuit breaker in L1 from 1200A to 1600A. Note: Panelboard is changing to a switchboard that is 91H 72W 24D.
- 4) Changed breakers in MDP for P2&P3 from 600A Frame to 800A Frame with 700A trip (load required a larger frame size for heat)
- 5) Changed service conduit and wire size to accommodate the requested 1600amp service. (No change in service transformer size per BCREA)
- 6) Changed feeder wire from #3 to #2 for jockey pump and jockey pump disconnect from 100amp to 200amp non-fused.
- 7) Changed Pumps P2 & P3 feeder from 4/0 to 250MCM with a 2-1/2" conduit and a 400amp NF disconnect to a 600amp NF disconnect.

****Notice - Production Stoppage.** We are not able to progress with this project until a decision is communicated on this change order. This production stoppage will likely impact the project completion date.

Total cost change in Material, Labor for the items mentioned above including tax is: \$28,617.00.

Kurt Paddock
Project Manager / Estimator

Killmer Electric Company

5141 Lakeland Ave No. Crystal, Mn. 55429
Office- (763) 425-2525 Ext 233
Cell- (612) 363-5124
Fax- (763) 424-1258
killmerelectric.com
kpaddock@killmerelectric.com

May 11, 2021

Mr. Kurt Paddock
Killmer Electric Co., Inc.

Quote Number: QUO-04360-W3M2F6
SCC - Change Order Number: 2

RE: Additional Size Increases to Electrical Gear
Brighton Township, MN

****Notice – Production Stoppage.** We are not able to progress with this project until a decision is communicated on this change order. This production stoppage will likely impact the project completion date.

Kurt,

We propose to supply the following equipment and services for the above referenced project.

- 1) Changed VFD for P1 from 75HP to 100HP, max continuous output of 145 Amps.
- 2) Changed SSRV'S for P2&P3 from 350HP to 400HP, max continuous output of 590 Amps.
- 3) Change main circuit breaker in L1 from 1200A to 1600A
- 4) Changed breakers in MDP for P2&P3 from 600A Frame to 800A Frame with 700A trip (load required a larger frame size for heat.)

Note: Panelboard is changing to a switchboard that is 91H 72W 24D

Total lump sum addition to the contract price.....\$ 21,700.00

Prices **do not** include inspections, installation, conduit, field wiring, shipping or applicable taxes.

By accepting this quotation you agree to our terms and conditions. Pricing will be honored for 30 days from above quoted date.

If you have any questions or comments, please feel free to contact me at 1-800-743-6536.

Sincerely,

Mike Phillips

234 28th Street S Fargo ND 58103 | T. 701.232.3644 | F. 701.232.3635 | www.sweeneycontrols.com
Additional Size Increases to Electrical Gear –QUO-04360-W3M2F6

Mike Phillips | mphillips@sweeneycontrols.com

Contract Acceptance:

By signing below, or by returning your executed purchase order on these same terms, you have accepted the foregoing Scope Letter and the attached Terms and Conditions and this document becomes a legal and binding contract between the parties.

By: _____

Print name: _____

Its: (title) _____

Date: _____

SWEENEY CONTROLS COMPANY – TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS: Any order submitted by a customer of Sweeney Controls Company shall be expressly conditioned upon these terms and conditions. No changes or modifications to these terms and conditions shall be binding unless put into a writing signed by both parties. If the agreed change results in greater or lesser cost, Sweeney Controls Company's compensation for the order will be adjusted accordingly.

These terms and conditions, along with the attached proposal, constitute the entire integrated agreement between Sweeney Controls Company and the customer for the services, deliverables and the project. These terms supersede all previous and contemporaneous agreements, proposals and representations, written or oral, concerning such matters. Any additional, conflicting or inconsistent customer terms (whether set forth in a request for proposals, purchase order or acknowledgement or in any other document) are expressly rejected by Sweeney Controls Company and are not a part of the agreement for the project.

PAYMENT: Our terms of payment are as follows: 10% due upon approval of submittals for the project, 80% due upon delivery of the equipment, and 10% due after successful completion of start-up. All product delivery terms are FOB shipping point, all payments are due NET 45 days, and any balance remaining due 46 days beyond the invoice date will be subject to a 1.5% monthly service charge until paid. The credit terms described herein are subject to Sweeney Controls Company's continuing approval of customer's credit, and Sweeney Controls Company at any time may withdraw its extension of credit and require modified payment terms (including pre-payment for services and/or for production of equipment) if Sweeney Controls Company determines in good faith that its right to payment for the applicable order(s) is not secure and the customer fails to promptly provide adequate assurances of its ability to make timely payment of all amounts due for such order(s).

It is specifically agreed and understood that this proposal is submitted with the understanding that Sweeney Controls Company shall be paid for its work and products in accordance with the terms above, regardless of whether or not the customer has been paid pursuant to any contract it may have with the project owner, a prime contractor or other contractors on the project. Sweeney Controls Company shall not be held responsible for, and shall not accept any back charge for, liquidated damages resulting from failure of the customer to complete the project contract on time, or any extra engineering costs necessitated by the continuance of work beyond the specified completion date.

CHANGES, CANCELLATIONS AND RETURNS: All changes, cancellations, or returns must have Seller's prior written approval and are conditional on compliance with manufacturer's cancellation/return policies and subject to restocking fees and service charges. Authorized returned equipment must be packaged and shipped prepaid to manufacturer. Sweeney Controls Company must be notified in writing of accepted changes in scope; verbal change in scope will not be accepted. Sweeney Controls Company will advise the customer of any revisions in the price and/or deliver schedule.

LIMITED WARRANTY: Sweeney Controls Company warrants to the original purchaser that the product or services delivered herewith, to the extent the product has been manufactured by Sweeney Controls Company, will at the time of delivery comply with the material aspects the design specifications set out in the attached proposal and be free from material defects in material and workmanship and, for a period of one year from the date of purchase under normal use and conditions, will comply with the material aspects of the operational specifications set out in the attached proposal. Products not created by Sweeney Controls Company, but provided under this agreement as a part of the project, are warranted only by, and only to the extent of the express written warranties of, the manufacturer(s) of such products, if any. Services provided by Sweeney Controls Company under this agreement will be provided in accordance with the generally recognized standards in the industry. SWEENEY CONTROLS COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ANY OTHER WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE/AGAINST INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE) ARE EXPRESSLY DISCLAIMED BY SWEENEY CONTROLS COMPANY TO THE FULLEST EXTENT PERMITTED BY LAW.

EXCLUSIVE REMEDY: In the event the customer believes Sweeney Controls Company owes a warranty obligation applicable to the product, or has otherwise failed to comply with any other contract obligation, it must notify

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Sweeney Controls Company in writing within 20 days of its discovery of such obligation and in no event later than 90 days after delivery of the product or services. If Sweeney Controls Company owes a warranty obligation, it will promptly commence to remedy and cure such default upon receipt of such notice from the customer at Sweeney Controls Company's own cost and expense or, at Sweeney Controls Company's option, will refund to the customer the portion of the compensation paid for any defective products or services. Such performance or refund by Sweeney Controls Company is the customer's sole and exclusive remedy in the event of a warranty obligation of Sweeney Controls Company or any other failure of Sweeney Controls Company to comply with its contract obligations. In addition to the foregoing, the customer will inspect all deliverables immediately upon receipt and will report to Sweeney Controls Company any shortages and damages within 3 days of receipt or such claims shall be deemed waived by the customer.

In no event shall Sweeney Controls Company be liable for any incidental, special, punitive or consequential damages of any kind, including, without limitation, loss of use, productivity, reputation, financing, business opportunities or profits, even if Sweeney Controls Company had been advised of the possibility of such damages. MOREOVER, TO THE FULLEST EXTENT PERMITTED BY LAW, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR STRICT LIABILITY), IN NO EVENT WILL SWEENEY CONTROLS COMPANY'S TOTAL AGGREGATE LIABILITY RELATED TO THE SERVICES, DELIVERABLES OR THIS AGREEMENT EXCEED THE AMOUNT OF COMPENSATION PAID BY THE CUSTOMER TO SWEENEY CONTROLS COMPANY UNDER THIS AGREEMENT.

LIMITATION, DISCLAIMER, AND EXCLUSION OF WARRANTY: In no event will Sweeney Controls Company be responsible for (a) any modifications to any product made by anyone other than Sweeney Controls Company; (b) damages caused by misuse, negligence, abuse, neglect, accident, or improper operation or improper or insufficient maintenance of any product or defects that arise after the warranty period described herein or for which the customer has failed to provide prompt notice in accordance with these terms and conditions; (c) normal wear and tear; (d) any data loss or corruption or personal information data breach; (e) any alleged defects in any product that arise from Sweeney Controls Company's compliance with designs or other criteria or requirements provided by or through the customer; (f) damage resulting from connection or removal of components/parts of the product; or (g) damages arising from claims of third parties related to or connected with the use or performance of any of deliverables or services provided under the applicable order(s).

INTELLECTUAL PROPERTY RIGHTS: Sweeney Controls Company retains all rights, title and interest in its services and products, including patents and copyrights; however, upon payment of the agreed compensation to Sweeney Controls Company, the customer will be deemed to have been granted a non-exclusive, non-transferable, royalty-free, perpetual license to use the services and products for the purposes contemplated in the attached proposal, except that third-party "shrink-wrapped" software or "off-the-shelf" hardware provided through Sweeney Controls Company will be subject to the customer's compliance, at its own costs, with all applicable manufacturer licensing requirements. Customer may not sell, sublicense, assign or transfer its license to the services and products provided by Sweeney Controls Company without the prior written consent of Sweeney Controls Company, nor may the customer reverse engineer or make derivative works from Sweeney Controls Company's services or products.

EXPORT RESTRICTIONS: Customer acknowledges that the services and products may be subject to export and use restrictions under applicable law, including Export Administration Regulations maintained by the United States Department of Commerce. Customer agrees to comply with all such requirements and to hold Sweeney Controls Company harmless from any violations of such requirements.

FORCE MAJEURE: In the event that performance of the services and/or delivery to the customer of the products is delayed by circumstances beyond the reasonable control of Sweeney Controls Company (including, without limitation, changes to the scope of work, delays by the customer in providing information to Sweeney Controls Company, fire, natural disasters, civil disturbances, acts of governmental authorities, labor disputes, unavailability of materials or equipment or shipping delays), Sweeney Controls Company will promptly notify the customer of such circumstances in writing and Sweeney Controls Company will be granted an equitable extension of the time to meet its obligations under the proposal.

SWEENEY CONTROLS COMPANY'S STATUS: Sweeney Controls Company is an independent contractor of the

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Additional Size Increases to Electrical Gear –QUO-04360-W3M2F6

customer and will have sole charge over, and be solely responsible for, (a) the payment of its employees and subcontractors and (b) the means, methods, techniques and sequences used in the performance of the services and the creation of its deliverables. Both Sweeney Controls Company and the customer assume that the industrial exemption applies to all services and the proposal, and the customer acknowledges that individuals not licensed as professional engineers may execute some or all of the services and create some or all of the products.

NON-SOLICITATION: To the fullest extent permitted by law, during the course of the performance of this agreement, and for one year thereafter, the customer agrees that it will not hire or retain, or offer to hire or retain, any of Sweeney Controls Company's employees that have been involved in performing the scope of work set forth in the proposal, nor will customer otherwise induce or seek to induce, directly or indirectly, any such Sweeney Controls Company employees to leave Sweeney Controls Company's employment.

DISPUTE RESOLUTION: In the event Sweeney Controls Company and the customer cannot resolve any claim or dispute between them arising out of or related to the proposal, this agreement or the scope of work or project through direct negotiations, such dispute shall be subject to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Such arbitration proceedings will be held in North Dakota before a single arbitrator with experience in resolving disputes arising from information technology services. The prevailing party (as determined by the arbitrator) will be entitled to recover from the other party all costs incurred in resolving the dispute, including reasonable attorneys and expert fees and the costs of arbitration. The arbitrator's award shall be final and may be entered as a judgment in any court with jurisdiction.

SUSPENSION AND TERMINATION: If the customer fails to comply with its obligations under the proposal or these terms and conditions (including, without limitation, the full and timely payment to Sweeney Controls Company), Sweeney Controls Company may provide written notice of such default to the customer and may thereafter suspend further performance until such default is cured by the customer. When such default is cured by the customer, the amount to be paid for the scope of work will be equitably increased to account for Sweeney Controls Company's damages arising from such suspension (including, without limitation, demobilization and remobilization expenses and increased costs of performance) and the time for Sweeney Controls Company to complete the scope of work will be equitably extended to account for such suspension. If the customer fails to cure such default within 30 days of its receipt of such notice from Sweeney Controls Company, the customer cancellation the project, or the customer requests Sweeney Controls Company to stop work Sweeney Controls Company may terminate its agreement with the customer by providing written notice to the customer and in such an event, the customer will pay Sweeney Controls Company for all portions of the scope of work performed (in whole or in part) through the date of such termination, materials purchased (including any restocking charges incurred), Sweeney Controls Company's demobilization expenses and other reasonable termination costs, the amount of expected overhead and profit Sweeney Controls Company would have earned on the cancelled portions of the scope of work if not for the customer's default, and any collection costs incurred by Sweeney Controls Company in obtaining payment for its services and deliverables from customer.

ASSIGNMENT: Neither the customer nor Sweeney Controls Company may assign its respective rights and obligations under their agreement without the written consent of the other party. However, Sweeney Controls Company may subcontract or delegate its work obligations to other persons or entities, but will nonetheless be responsible to the customer for the performance of the work as required by the proposal. Both the customer and Sweeney Controls Company agree that there are no third-party beneficiaries to their agreement.

CHOICE OF LAW: The proposal and these terms and conditions will be governed by the laws of North Dakota and of the United States of America (including the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* with respect to the parties' agreement to arbitrate any dispute arising out of or related to this agreement), without regard to rules governing choice or conflict of laws. The customer and Sweeney Controls Company agree that the proposal is predominately for the performance of services, not for the sale of goods, and further agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to their agreement.

SAVINGS CLAUSE AND WAIVER: If any term of the proposal or these terms and conditions is found to be unenforceable, the remaining terms will remain in effect. The failure of either Sweeney Controls Company or the

customer to exercise any rights under their agreement will not be deemed a waiver of such right except as agreed in writing or as otherwise set forth in these terms and conditions.