



ITASCA COUNTY BOARD OF COMMISSIONERS

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744
(218) 327-2847

Wednesday, July 5, 2023

2:30 PM

Itasca County Boardroom

FINAL

WORK SESSION MINUTES

I. CALL TO ORDER

Chair Ives called the meeting to order at 2:30 PM.

Attendee Name	Title	Status	Arrived
Cory Smith	District #1	Present	2:30 PM
Terry Snyder	District #2	Present	2:30 PM
John Johnson	District #3	Absent	
Burl Ives	District #4	Present	2:30 PM
Casey Venema	District #5	Absent	

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

Motion To: Added Item #6.5 (Request to Submit Amicus Brief) and approve the agenda, as amended.

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, Burl Ives
ABSENT:	John Johnson, Casey Venema

IV. MINUTES APPROVAL

Motion To: Approved the minutes of the Tuesday, June 27, 2023 County Board Special Session Re: Grand Village and the minutes of the Tuesday, June 27, 2023 County Board Regular Session.

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Cory Smith
SECONDER:	Commissioner Terry Snyder
AYES:	Cory Smith, Terry Snyder, Burl Ives
ABSENT:	John Johnson, Casey Venema

V. RECOMMENDED FOR CONSENT AGENDA

1. Approve donation of 4 GETC laptops to the City of Grand Rapids.

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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2. Barring any irregularities, award Contract 59832 for CR 336 Bridge Replacement to the lowest responsible bidder and authorize the required signatures on the contract documents.

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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3. Approve the CSAH 61 Crossing Surface Installation Agreement between Itasca County and BNSF and authorize the necessary signatures.

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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4. Approve easement for ingress and egress over that part of the South Half of the vacated alley lying North and adjacent to Lots 7-8, Block 12, SPINA ADDITION TO KEEWATIN Less that part located within the public road right of way, located on tax-forfeited trust lands in Section 25, Township 57, Range 22 and authorize necessary signatures.

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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5. Award the 2023 Brush and Noxious Weed Spraying contract to B and P Weed Control and authorize necessary signatures.

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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6. Approve signatures to execute the Second Amendment to the Site Use Agreement between Verizon and Itasca County

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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VI. DISCUSSION / INFORMATIONAL

1. Citizen Input
No citizen input provided.

2. FAA Grant Agreement

Motion To: Approve the FAA Grant Agreement for Airport Improvement Program (AIP) project no. 3-27-0037-028-2023 at the Grand Rapids/Itasca County Airport and authorize necessary signatures.

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, Burl Ives
ABSENT:	John Johnson, Casey Venema

3. Hiring of Correctional Employees
County Sheriff Joe Dasovich provided information regarding the request to approve the hiring of 3 FTE Correctional Officers which are required to open the new correctional facility per the DOC Employment Study.

RESULT:	RECOMMENDED FOR REGULAR	NEXT: 07/11/2023 2:30 PM
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4. Release of Claims Agreement

Motion To: Approve Bryan Johnson's Release of Claims.

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Cory Smith
SECONDER:	Commissioner Terry Snyder
AYES:	Cory Smith, Terry Snyder, Burl Ives
ABSENT:	John Johnson, Casey Venema

5. Request to Submit Amicus Brief

Motion To: Approve submission of an Amicus Brief in support of State of MN Court of Appeals filing, as requested by Mesabi Metallics.

RESULT:	WITHDRAWN
MOVER:	Commissioner Burl Ives
SECONDER:	Commissioner Terry Snyder

Motion To: Approve Intent to Submit an Amicus Brief in support of State of MN Court of Appeals filing, as requested by Mesabi Metallica, reflective of Resolution #2023-26.

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, Burl Ives
ABSENT:	John Johnson, Casey Venema

VII. COMMITTEE REPORTS

VIII. ADMINISTRATOR UPDATE

IX. COMMISSIONER COMMENTS

Commissioner Burl Ives and County Engineer Karin Grandia provided comment regarding traffic counters and road construction on Highway 169 near Highway 210. For more information on this and other MnDOT projects, please visit <https://www.dot.state.mn.us/construction/index.html>.

X. CLOSED SESSIONS

XI. ADJOURN

Chair Ives adjourned the meeting at 3:21 PM.

ATTEST



Burl Ives
Chair of the County Board



Brett Skyles
Clerk of the County Board



July 5, 2023

Chair:

PULL: None

ADDITIONS:

1. Item #6.5 – Request to Submit Amicus Brief

CHANGES: None

INFORMATIONAL:

1. Item #6.4 – Additional Information



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744
(218) 327-2847

Tuesday, June 27, 2023

12:30 PM

Itasca County Boardroom

DRAFT

SPECIAL SESSION MINUTES

I. CALL TO ORDER

Chair Ives called the meeting to order at 12:30 PM.

Attendee Name	Title	Status	Arrived
Cory Smith	District #1	Present	12:30 PM
Terry Snyder	District #2	Present	12:30 PM
John Johnson	District #3	Present	12:30 PM
Burl Ives	District #4	Present	12:30 PM
Casey Venema	District #5	Present	12:30 PM

II. REGULAR AGENDA

1. Grand Village Options

Commissioners discussed Grand Village options.

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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III. ADJOURN

Chair Ives adjourned the meeting at 1:22 PM.

ATTEST

Burl Ives
Chair of the County Board

Brett Skyles
Clerk of the County Board



ITASCA COUNTY BOARD OF COMMISSIONERS

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744
(218) 327-2847

Tuesday, June 27, 2023

2:30 PM

Itasca County Boardroom

DRAFT

REGULAR SESSION MINUTES

I. CALL TO ORDER

Chair Ives called the meeting to order at 2:30 PM.

Attendee Name	Title	Status	Arrived
Cory Smith	District #1	Present	2:30 PM
Terry Snyder	District #2	Present	2:30 PM
John Johnson	District #3	Present	2:30 PM
Burl Ives	District #4	Present	2:30 PM
Casey Venema	District #5	Present	2:30 PM

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

Motion To: Amended Item #5.4 (MnDOT Agreement No. 1046667 - County Road 407 Gunn Road Railroad Crossing Signal) and approved the agenda, as amended.

RESULT: APPROVED (5 TO 0)
MOVER: Commissioner Terry Snyder
SECONDER: Commissioner John Johnson
AYES: Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

IV. MINUTES APPROVAL

Motion To: Approve the minutes of the Tuesday, June 20, 2023 County Board Special Session Re: Transportation and the minutes of the Tuesday, June 20, 2023 County Board Work Session.

RESULT: APPROVED (5 TO 0)
MOVER: Commissioner Cory Smith
SECONDER: Commissioner Casey Venema
AYES: Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

V. CONSENT AGENDA

Motion To: Pull Item #5.2 (Appointment - Park & Recreation Commission), renumber the item as Item #6.9, and approve the Consent Agenda as amended and delineated below.

RESULT: APPROVED (5 TO 0)
MOVER: Commissioner Terry Snyder
SECONDER: Commissioner Cory Smith
AYES: Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

1. Appoint Pat Schwartz to the Bowstring Airport Commission fulfilling an unexpired vacancy effective June 27, 2023 through December 31, 2024.

3. Approve and accept the 2023/2024 Housing Support Agreements effective July 1, 2023.
4. Adopt the Resolution Re: MnDOT Agreement No. 1046667, which approves the agreement and authorizes the necessary signatures.
5. Approve utility license for construction, maintenance and operation of an underground telecommunication line over and across tax-forfeited trust lands in Sections 19, 29 & 30, Township 62, Range 23 and Section 24, Township 62, Range 24 and authorize necessary signatures.
6. Approve utility license for construction, maintenance and operation of an underground telecommunication line over and across tax-forfeited trust lands in Sections 19 & 30, Township 59, Range 23 and authorize necessary signatures.
7. Approve Utility License for construction, maintenance and operation of an underground telecommunication line over and across tax-forfeited trust lands in Sections 20 & 29, Township 59, Range 23 and authorize necessary signatures.
8. Approve Utility License for construction, maintenance and operation of an underground telecommunication line over and across tax-forfeited trust lands in Section 3, Township 60, Range 25 and authorize necessary signatures.

VI. REGULAR AGENDA

1. Citizen Input
No citizen input provided.
2. Recognition of County Employees
The following employees were recognized:

Congratulations to Rebecca McDonald who accepted a job change from Legal Secretary, County Attorney to Legal Secretary, Probation Department effective June 19, 2023.

Welcome to new employee Kelsey Maust, Social Worker with Itasca County Health and Human Services, effective June 20, 2023.

Welcome to new employee Taylor Peck, Corrections Deputy with Itasca County Sheriff Department, effective June 20, 2023.

Welcome to new employee Kristina Westerberg, Accounting Technician with Itasca County Auditor/Treasurer Department, effective June 25, 2023.

Farewell to Heather Roy whose last day as Assistant County Attorney, Attorney Department will be June 16, 2023 after 6+ years of service.

Farewell to Chris Gunderson whose last day as IT Director, MIS Department will be June 30, 2023 after 3+ years of service.

Farewell to Matt Huebescher whose last day as an Assessor/Appraiser I will be June 30, 2023 after 8 months of service.

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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3. Commissioner Warrants
Motion To: Approve Commissioner Warrants with a check date of June 30, 2023, in the amount of \$1,495,281.18.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Cory Smith
SECONDER:	Commissioner Casey Venema
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

4. ICHHS Warrants

Motion To: Approve the Itasca County Health and Human Services (ICHHS) Department Warrants for June 2023, in the amount of \$1,466,993.32.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

5. Scheduling Budget Sessions

Motion To: Cancel the Budget Work Session scheduled for July 19, 2023 and schedule a Budget Work Session on Tuesday, August 8, 2023 from 9AM until 1PM to discuss the 2023 budget and preliminary levy in the Boardroom of the Itasca County Courthouse.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner John Johnson
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

6. Interim Administrator at Grand Village

Motion To: Approve agreement with HH Operations, Inc. for Interim Administrator Services at Grand Village.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner John Johnson
SECONDER:	Commissioner Casey Venema
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

7. County Based Purchasing (IMCare) Division Update/Presentation

RN QI/UM Director Amber Silliman provided a County Based Purchasing (IMCare) Division update including information regarding member renewal processes following the completion of the Federal Public Health Emergency.

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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8. Community Living Infrastructure (CLI) Grant Addendum

Motion To: Accept the Community Living Infrastructure Grant Addendum in the amount of \$217,492 for the 2024/2025 Fiscal year and authorize necessary signatures.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

9. Appointment - Park & Recreation Commission

Commissioners discussed the request to appoint Tom Saxhaug to the Park & Recreation Commission representing District #4 fulfilling an unexpired vacancy effective June 27, 2023 through December 31, 2025.

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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VII. COMMISSIONER COMMENTS

Commissioner Smith reported on his attendance at a recent Energy Transition Summit.

Commissioner Johnson reported on his attendance at a recent City of Coleraine Planning Commission meeting.

Commissioners Snyder and Johnson provided comment to acknowledge June 27 as National Post-Traumatic Stress Disorder (PTSD) Awareness Day.

Commissioner Ives provided comment regarding the status of the Short-Term Rental Ordinance.

RECESS

Chair Ives recessed the meeting at 3:47 PM.

RECONVENE

Chair Ives reconvened the meeting at 3:53 PM with all members present.

VIII. CLOSED SESSIONS**1. Closed Litigation Session – Attorney-Client Privilege**

Motion To: Go into pursuant to Minn. Stat. §§ 13D.05, Subd. 3(b) and 13D.05, Subd. 1(d), based upon Attorney Client Privilege, Minn. Stat. § 595.02, Subd. 1(b), to consult with its attorney in reference to attorney-client privilege information relative to case 31-CV-20-2149.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Cory Smith
SECONDER:	Commissioner John Johnson
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

Others Present: County Attorney Matti Adam, MCIT Claims Representative Jeffrey Hentges (via teleconference), County Auditor/Treasurer Austin Rohling, MCIT Appointed Attorney Jessica Schwie, County Administrator Brett Skyles, and Deputy Clerk of the County Board Amanda Schultz.

Motion To: Go into Open Session.

RESULT:	APPROVED (5 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Casey Venema
AYES:	Cory Smith, Terry Snyder, John Johnson, Burl Ives, Casey Venema

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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IX. ADJOURN

Chair Ives adjourned the meeting at 4:55 PM.

ATTEST

Burl Ives
Chair of the County Board

Brett Skyles
Clerk of the County Board



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3176

DEPARTMENT: Management Information Services **TIME REQUESTED:** < 5 Minutes
PRESENTER: Brett Skyles

AGENDA ITEM:
Donation of Equipment

BOARD ACTION REQUESTED:
Approve donation of 4 GETC laptops to the City of Grand Rapids.

BACKGROUND:
The County no longer utilizes this laptop configuration. Past auction results reflect a \$10 to \$15 bud per laptop.

COUNTY ATTORNEY REVIEW: N/A

SUPPORTING DOCUMENTATION: None

07/05/2023

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3162

DEPARTMENT: Transportation

TIME REQUESTED: < 5 Minutes

PRESENTER: Rachel Metelak

AGENDA ITEM:

Bid Award for Contract 59832 - CR 336 Bridge Replacement

BOARD ACTION REQUESTED:

Barring any irregularities, award Contract 59832 for CR 336 Bridge Replacement to the lowest responsible bidder and authorize the required signatures on the contract documents.

BACKGROUND:

Bids will be opened on July 10, 2023 @ 11:00 am. Results of the opening will be provided prior to the County Board Regular session on July 11, 2023.

The County received State Bridge Bond funds to complete this project, and due to the size of the project there is a need to start as soon as possible this summer.

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION: None

07/05/2023

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3149

DEPARTMENT: Transportation
PRESENTER: Ryan Sutherland

TIME REQUESTED: < 5 Minutes

AGENDA ITEM:
CSAH 61 Railroad Crossing Surface Installation Agreement

BOARD ACTION REQUESTED:
Approve the CSAH 61 Crossing Surface Installation Agreement between Itasca County and BNSF and authorize the necessary signatures.

BACKGROUND:
Under this agreement, the railroad crossing surface on CSAH 61 will be replaced by BNSF. Costs will be shared by both parties. Itasca County's project costs will be funded by state aid. It is anticipated that this work will be completed as part of a proposed bituminous project on CSAH 61 in 2024.

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION:
1. BF-20266205#076034F_Original_PP - 108 - Crossing Surface Installation

07/05/2023

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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CROSSING SURFACE INSTALLATION AGREEMENT

BNSF File No.: BF-20266205
Mile Post 24.733
Line Segment 237
U.S. DOT Number 076034F
Casco Subdivision

This Crossing Surface Installation Agreement (hereinafter called, this "Agreement") is entered into effective as of _____, _____, by and between **ITASCA COUNTY** (hereinafter called, "**AGENCY**") and BNSF Railway Company (hereinafter called, "**BNSF**").

WHEREAS, BNSF operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, AGENCY desires to replace the existing concrete crossing surface at CSAH 61 with a new concrete crossing surface;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1) BNSF Work.** The Company will install a new concrete crossing surface for a width of 72 feet from the edge of the pavement on the East side of the tracks to the edge of the pavement on the West side of the tracks. The new crossing surface will adequately cover all vehicular driving lanes at CSAH 61. The Company will perform all necessary track upgrades to accommodate the new crossing surface.
- 2) AGENCY Work.** AGENCY must construct the Project as shown on the attached Exhibit A and do all work ("AGENCY's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY's Work. The principal elements of AGENCY's Work are as follows:
 - A.** Design and Construction of CSAH 61;
 - B.** Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
 - C.** Installation of advance warning signs in accordance with the MUTCD;



- D. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- E. Provide suitable drainage, both temporary and permanent;
- F. Provide all barricades, lights, flagmen or traffic control devices as necessary, during the installation of the concrete pedestrian crossing surfaces;
- G. Construct concrete sidewalk surface on approaches to each track, if desired; and
- H. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.

- 3) **Payment; Invoicing.** Upon execution of this Agreement by both parties hereto, Company will send Agency an invoice detailing the total amount owed by Agency for the new crossing surface. Company shall send to Agency a final invoice upon completion and Agency shall pay the final invoice within 30 days of receipt.

Agency agrees to pay Company One Thousand and No/100 Dollars (\$1,000.00) per foot for the new crossing surface. Agency's **ESTIMATED** total cost for the new crossing surface is Seventy Two Thousand and No/100 Dollars (\$72,000.00).

- 4) **Maintenance of the Crossing Surface.** After installation of the new crossing surface is completed, BNSF will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, BNSF shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.
- 5) **Vehicular Traffic during Installation.** The AGENCY shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring vehicular/pedestrian traffic at the CSAH 61 crossing during installation of the new crossing surface.
- 6) **Drainage.** The AGENCY agrees to allow BNSF to drain water from the CSAH 61 crossing area into existing AGENCY storm sewers, if such storm sewers are available. Drain pipes and filter fabric necessary for such drainage will be furnished and installed by BNSF.
- 7) **Roadway Surfacing Work.** The AGENCY agrees to provide, at its sole cost and expense, enough asphalt to cover the distance between the existing roadway surface at CSAH 61 and the new crossing surface on both sides of the track as well as the area between the tracks.



- 8) **Contractor Requirements:** AGENCY must require its contractor to comply with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

No work shall be commenced within BNSF's right of way until the AGENCY's contractor shall have (i) executed and delivered to BNSF an agreement in the form of said Exhibit C-1 and (ii) delivered to and secured BNSF's approval of the required insurance.

- 9) **Term.** This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and AGENCY's payment of the amounts set forth in Section 3 above.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

BNSF Railway Company:

By: _____

Printed Name: _____

Title: _____

AGENCY:

ITASCA COUNTY

By: _____

Printed Name: _____

Title: _____

Exhibit A

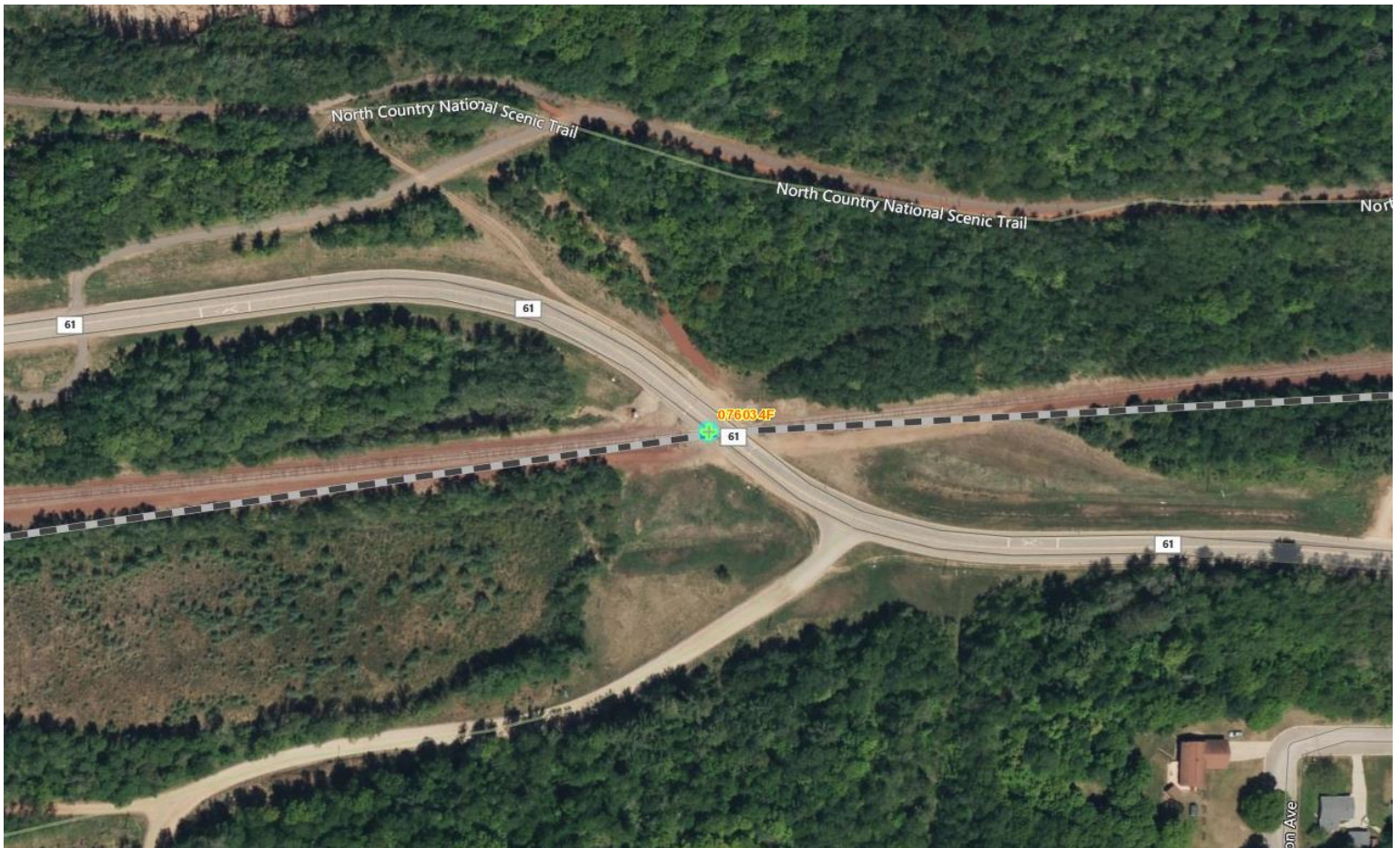




EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the reconstruction of the railroad crossing surface approaches and associated traffic control at CSAH 61 (DOT 076034F) in Coleraine, MN.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify **(Agency)** and Railway's Manager Public Projects, telephone number 763-782-3476 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF-20266205.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor



must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Tyrel Antonich at 309-345-6090 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for



protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **(Agency)** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical



Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster Ben Peterson (telephone 218-828-7286)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.

- **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
- **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between \$1,200.00-\$2,000.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
 - **1.05.03d** The average train traffic on this route is 6 freight trains per 24-hour period at a timetable speed 10 MPH and N/A passenger trains at a timetable speed of N/A MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS,**

MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative Ben Peterson (218-828-7286)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA



regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

☐ Passenger on train (C)

☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

☐ Contractor/safety sensitive (F)

☐ Contractor/non-safety sensitive (G)

☐ Volunteer/safety sensitive (H)

☐ Volunteer/other non-safety sensitive (I)

☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St:	_____	2. Date:	_____	Time:	_____
County:	_____	3. Temperature:	_____	4. Weather:	_____
(if non BNSF location)					
Mile Post / Line Segment:	_____				
5. Driver's License No (and state) or other ID:	SSN (required): _____				
6. Name (last, first, mi):	_____				
7. Address:	_____	City:	_____	St:	_____
				Zip:	_____
8. Date of Birth:	_____	and/or Age:	_____	Gender:	_____
		(if available)			
Phone Number:	_____	Employer:	_____		
9. Injury:	_____		10. Body Part:	_____	
	(i.e., Laceration, etc.)			(i.e., Hand, etc.)	
II. Description of Accident (To include location, action, result, etc.):					

12. Treatment:					
☐	First Aid Only				
☐	Required Medical Treatment				
☐	Other Medical Treatment				

13. Dr. Name:	_____		Date:	_____	
14. Dr. Address:	_____				
Street:	_____	City:	_____	St:	_____
				Zip:	_____
15. Hospital Name:	_____				
16. Hospital Address:	17 of 27				
Street:	_____	City:	_____	St:	_____
				Zip:	_____
17. Diagnosis:	_____				



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EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Agency Project: _____

_____(hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 202__, with **ITASCA COUNTY** for the performance of certain work in connection with the following project: reconstruction of the railroad crossing surface approaches and associated traffic control at CSAH 61 (DOT 076034F) in Coleraine, MN. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **ITASCA COUNTY** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS,**



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EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE



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Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.



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No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.



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A. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.



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Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.



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If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes



Contract Number: BF-20235429

(together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

1) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.



Contract Number: BF-20235429

2) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative Ben Peterson 218-828-7286 (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



Contract Number: BF-20235429

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor Legal Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3153

DEPARTMENT: Land Department

TIME REQUESTED: < 5 Minutes

PRESENTER: Cindy Shevich

AGENDA ITEM:

Easement for Access Over and Across Tax-Forfeited Trust Land

BOARD ACTION REQUESTED:

Approve easement for ingress and egress over that part of the South Half of the vacated alley lying North and adjacent to Lots 7-8, Block 12, SPINA ADDITION TO KEEWATIN Less that part located within the public road right of way, located on tax-forfeited trust lands in Section 25, Township 57, Range 22 and authorize necessary signatures.

BACKGROUND:

This easement is for ingress and egress to benefit adjacent landowners.

COUNTY ATTORNEY REVIEW: N/A

SUPPORTING DOCUMENTATION:

1. Easement Abress
2. Easement map Abress

07/05/2023

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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ROAD EASEMENT

Whereas the State of Minnesota, in trust for the taxing districts, is owner of the following described tract:

The South Half of the vacated alley lying North and adjacent to Lots Seven (7) and Eight (8), Block Twelve (12), SPINA ADDITION TO KEEWATIN

Pursuant to authority of the Itasca County Board of Commissioners, on _____, the State of Minnesota, in trust for the taxing districts, herein called "Grantor", hereby creates a non-exclusive easement for ingress and egress purposes over, under and across the above described property to travel by vehicle or other means.

Said easement to be subject to the following terms and conditions:

1. Easement is granted pursuant to the provisions of Minnesota Statutes Section 282.04, Subd. 4a.
2. Easement shall be non-exclusive and appurtenant to and for the benefit of the parcel of land described as: The West 23' of Lot Five (5) and all of Lot Six (6), Block Twelve (12) and the North half of vacated alley lying south and adjacent thereto, SPINA ADDITION TO KEEWATIN.
3. The Landowners of the West 23' of Lot 5 and all of Lot 6, Block 12 and North half of vacated alley lying south and adjacent thereto, SPINA ADDITION TO KEEWATIN, are herein called "Grantees".

4. The Itasca County Board of Commissioners, by Board Action dated _____ day of _____, has prescribed the terms set forth below.
5. Road construction and maintenance activities under such easement shall not exceed 8 feet in width without written approval by the Land Commissioner.
6. Road must be maintained in a manner that complies with forest management guidelines and county policy as followed by the Itasca County Land Department on similar tax-forfeited lands. Current road maintenance guidelines should be obtained from the Land Department prior to planning such activities. All plans for road construction and significant maintenance must be pre-approved by the Land Commissioner prior to implementation to assure compliance with current requirements.
7. All roadway construction and maintenance desired by the **Grantees** or required by the **Grantor** pursuant to the terms of this easement, shall be the responsibility of the **Grantee** without any cost to the **Grantor** except that road damage caused by the **Grantor**, its agents or contractors (the general public does not constitute an agent of the **Grantor**), shall be the responsibility of the **Grantor** to restore the road condition to what it was upon commencement of Grantor's activities without any cost to the **Grantee**. **Any merchantable timber cut and forest regeneration damaged on the above mentioned right-of-way by the Grantee will be paid for by the Grantee at prevailing timber prices prior to being incurred. Upon completion of the road construction, all timber rights revert back to the Grantor.**
8. The roadway which is the subject of this easement shall be open for public use.
9. Prior to consideration of this roadway for establishment as a public road by Itasca County or any Township, the roadway must be constructed to standards as set forth in the Itasca County Subdivision Ordinance as in effect as of the day of consideration for establishment.

10. The **Grantee** shall indemnify and hold the **Grantor** harmless from any and all liability for injury to, or death of, the **Grantee**, its agents, guests or invitees or destruction of, or damage to, the property of the **Grantee**, its agents, guests or invitees in any manner arising from or out of the existence, condition, operation or use of the roadway by the **Grantee**, its agents, guests or invitees. Further, the **Grantee** shall indemnify and hold the **Grantor** harmless from any and all liability for injury to, or death of, persons; or loss or destruction to or damage to property intentionally caused by the **Grantee**, its agents, guests or invitees. Intentionally means the actor either has a purpose to do the thing or cause the result specified or believes the act performed by the actor, if successful, will cause that result.
12. This easement shall revert to the State of Minnesota in trust for the taxing district in the event of nonuse.
13. The **Grantee's** address for the purpose of giving any notice of this agreement is as follows:
Name: John Abress
Address: 311 W. Hibbing Ave.
Keewatin, MN 55753
14. This easement shall enure to the benefit of, and be binding upon, the heirs and assigns of the Parties hereto, if any.

IN TESTIMONY WHEREOF, the County Auditor of the County of Itasca, State of Minnesota, has affixed his hand and seal this _____ day of _____, 20____.

County of Itasca, State of Minnesota

by Austin Rohling, Auditor/Treasurer
Itasca County, Minnesota

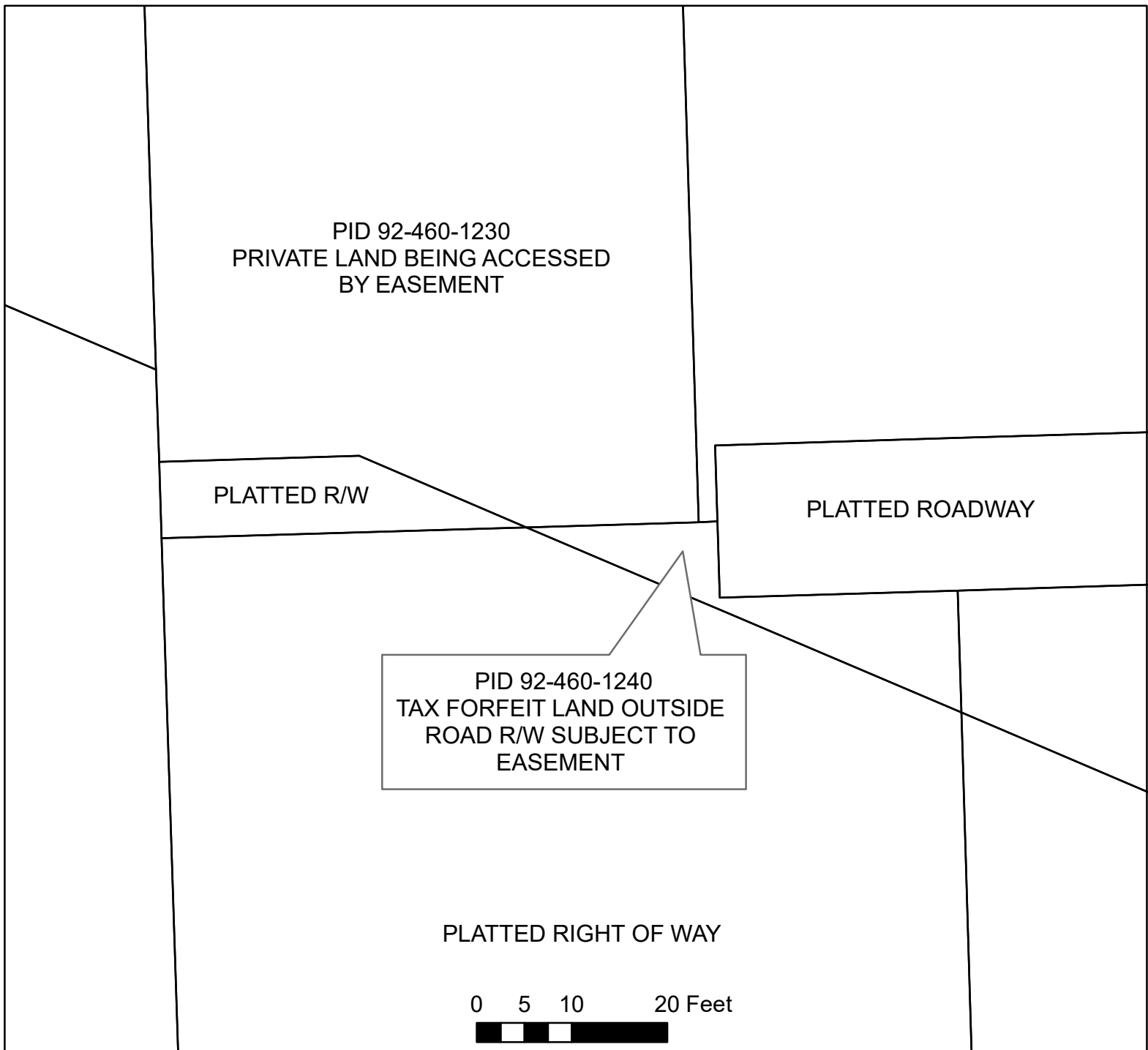
STATE OF MINNESOTA)
) ss.
COUNTY OF ITASCA)

On this _____ day of _____, 2023, before me a Notary within and for said county, personally appeared Austin Rohling, Itasca County Auditor/Treasurer of said county, to me personally known to be the person who executed the foregoing instrument on behalf of said county and acknowledged that he executed the same in his official capacity as his free act and deed pursuant to statutes and in such case made and provided and pursuant to the authority of the Itasca County Board of Commissioners.

Notary

Drafted by:
Cindy Shevich, Real Estate Specialist
Itasca County Land Department
1177 LaPrairie Ave
Grand Rapids, MN 55744

Area Map of Easement



This information is a compilation of data from different sources with varying degrees of accuracy and requires a qualified survey to verify.

Itasca Geographic Information System

"Decision support through automation"

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Legend

 Parcels



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3163

DEPARTMENT: Land Department

TIME REQUESTED: < 5 Minutes

PRESENTER: Sara Thompson, Kory Johnson

AGENDA ITEM:

Quote Award for 2023 Brush and Noxious Weed Spraying

BOARD ACTION REQUESTED:

Award the 2023 Brush and Noxious Weed Spraying contract to B and P Weed Control and authorize necessary signatures.

BACKGROUND:

Quotes were requested from two companies for the 2023 brush and noxious weed contract spraying. Quotes were received from B and P Weed Control and JH Lawn Solutions. Quotes came in at \$353.13/mile from B and P Weed Control and \$457.85/mile with JH Lawn Solutions.

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION:

1. 2023 JH Lawn Solutions Quote
2. 2023 B and P Weed Control Quote

07/05/2023

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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Exhibit A

2023 SPECIAL CONDITIONS FOR NOXIOUS WEED CONTROL

I. SCOPE OF WORK

This work shall consist of chemical application of noxious weed control and right of way brush spraying, as needed:

- A. For Roads: from the shoulder edge of the road to 30 feet into the right of way or the right of way limits whichever is less, except areas in front of homes, where grass lawns have eliminated weeds and except areas where private landowners have agreed to maintain right-of-way and have installed signs, and;
- B. Non-Roadside sites which may include gravel pits, fields, or reclaimed lands. Operators should be able to handle multiple site conditions. Ideally, in order to effectively treat a diversity of sites, applicators should have the following equipment available: hand, backpack, ATV, and truck sprayers. The Itasca County Land Department is designated to be your contact and provide work orders of areas to be treated. Areas to be treated shall be in accordance with directions provided by the Itasca County Land Department.

The Contractor shall be responsible for providing water, laborers, and all spraying equipment needed in accordance with provisions of this contract. Vehicles used for this operation shall have proper flashers, slow-moving vehicle signs and comply with all other pertinent laws and regulations. All work will initiate out of the Itasca County Land Department offices. Fuel surcharges will not be allowed during the term of the Contract. Contractor bid rate shall include all travel to sites or Land Department offices as necessary, not additional compensation will be made for additional travel.

II. CONTRACTOR SCOPE OF SERVICES

The Contractor shall provide the Itasca County Land Department with the following services and information.

- A. Contractor will treat Itasca County Road rights-of-way as needed to control noxious weeds and brush control areas directed by Itasca County Land and Transportation Departments.
- B. Contractor will coordinate spraying with the Itasca County Land Department between contract execution and October 31, 2023.
- C. Contractor and operators must have a current State of Minnesota Commercial Pesticide Applicator License Individual(s) directly involved in the application of pesticides and must supply the Itasca County Land Department proof of a valid MN Commercial Applicators License. A copy of the daily Pesticide Application Record for each spray job must be turned over to the Itasca County Land Department as requested in a form comparable to attachment.
- D. Contractor must supply the Itasca County Land Department with the completed herbicide

application record for all sites controlled.

- E. Contractor will use only those herbicides which are approved for use on target species in accordance with label instructions. The contractor will comply with all State and Federal regulations and laws concerning the application of herbicides to road right-of-way areas.
- F. All label restrictions for pesticides will be adhered to, including appropriate personal protective equipment (PPE) as listed or described by product label. All operations will be halted by County personnel if PPE is not on site or not being utilized properly.
- G. Itasca County will supply the chemicals for the completion of the contract work. The contractor shall receive the chemicals from the County and shall be responsible for the safe transport of the materials to the work sites. Empty containers shall be triple rinsed and returned to the County. Contractor is required to have a chemical spill kit on site at all times. All unused herbicides or surfactant provided to vendor are to be returned to Itasca County.
- H. Contractor shall protect all non-targeted species from drift or miss-applications or other application related incident whether within or out of the County Road right-of-way or designated spray area. The Contractor shall not spray when wind speeds exceed 10 mph and when temperatures fall outside of a range from 45-90 degrees Fahrenheit unless otherwise specified by the product label. Contractor shall protect all other property whether within or outside the County Road right-of-way or designated spray area. The mixing of chemical shall not be done in or near water and wetlands. Any spills shall be dealt with according to Minnesota State Law.
- I. All equipment (hoses, pumps, valves, tanks, etc.) on the spray unit and support truck will be in good working condition. Application equipment for road spraying from the shoulder of the road will consist of a vehicle with tank and sprayer capable of directing spray solution as far as 30 feet from the center line of the road and only where needed to control target species. The spray unit should be equipped to halt liquid flow should a leak or failure occur.
- J. Spraying shall be halted, and County personnel will be immediately notified if disputes arise between the operators and other individuals on the treatment sites. Spraying shall be halted if it is not clear to the operators where treatment boundaries are located. If questions arise, the County must be notified immediately, and boundaries clearly marked before any further treatment takes place.
- K. The County shall be immediately notified if any chemical spills or non-target application of herbicides occur.
- L. Work shall be confined to County Road rights-of-way or other specified locations in Itasca County as directed by the Itasca County Land Department except areas in front of where grass lawns have eliminated weeds, where private landowners have agreed to maintain ditch and installed signs in ditch, and where the Itasca County Land Department prohibits treatment.
- M. A work order will be provided by the Itasca County Land Department in the form of a map indicating areas to be treated. The Itasca County Land Department may monitor spraying

operations to ensure contractor compliance with contract. Liquidated damages of \$50 per day will be assessed to the Contractor for work done after the two-week completion time period, unless poor weather conditions delay spraying.

N. Areas of Avoidance

a. USFS Right of Way parcels

b. No spraying within Reservation boundary. All reservations are avoided with the road listing.

O. Contractor must retain a copy of all herbicide manufacturer's labels, as well as safety data sheets of the herbicides to be used on site.

P. Contractor shall provide a separate itemization of cost accounting of each individual county road or spray location indicating the dates, hours worked, and chemicals used during the term of the contract, and the amount due the Contractor for such services and chemicals rendered. All costs will be determined from the Rate Proposal Form. *Work for townships, cities, or private individuals will be billed separately.*

III. INSURANCE REQUIREMENTS

A. The following insurance must be maintained for the duration of this Contract. A Certificate of Insurance for each policy which lists Itasca County as a certificate holder and as an additional insured must be on file with the Itasca County Risk Management Department within 10 days of execution of this Contract and prior to commencement of any work under this Contract. Each certificate must include a 30-day notice of cancellation, nonrenewal, or material change to all named and additional insureds.

B. The County reserves the right to terminate, suspend or rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against Contractor. All insurance policies shall be open to inspection by the County, and copies of policies shall be submitted to the County upon written request. All subcontractors shall provide evidence of similar coverage.

C. General Liability Insurance

	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed	
Operations Aggregate	\$3,000,000
Personal and Advertising Injury	\$1,500,000
Each Occurrence:	
Combined Bodily Injury and Property Damage	\$1,500,000

Policy shall contractors and subcontractors, and contractual liability.

Itasca County **must be named as certificate holder and an additional insured.**

D. Automobile Liability Insurance

	<u>Limit</u>
Automobile Liability - Combined single limit each	

occurrence for bodily injury and property damage covering
owned, non-owned and hired automobiles

\$1,500,000

Must cover owned, nonowned and hired vehicles.

E. Workers' Compensation Per Statutory Requirements

1. Vendor must maintain statutory limits. Itasca County reserves the right to rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against bidder. If the Contractor is based outside the State of Minnesota, coverage must apply to Minnesota laws.

F. Employer's Liability

	<u>Limit</u>
Bodily injury by:	
Accident - Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

G. Professional Liability Insurance [For Professional Services Contracts Only]

1. Provider shall maintain at its sole expense a valid policy of insurance covering professional liability, arising from the acts or omissions of Provider, its agent and employees in the amount of not less than \$500,000 per claim and \$3,000,000 annual aggregate. (These suggested limits should be reviewed on a cases by case basis)

H. Indemnification Clause

1. Except as may be caused by the sole negligence of the County or its employees, Contractor shall indemnify and save harmless Itasca County, its employees, and its agents from all claims, actions, demands, and judgments of any kind arising in whole or in part from any act or omission of Contractor, its subcontractors, and their agents, servants, or employees, incidental to the performance of the Contract and from all expenses in connection with such claims, actions, demands and judgments, and shall assume, without expense to the County, the defense of any such claims, actions, demands and judgments, irrespective of whether it is alleged, claimed, or proved in connection with such act or omission that negligence of the County or its representatives caused or contributed thereto.
2. Contractor agrees, that in order to protect itself and the County under the indemnity provisions set forth above, it will at all times during the term of this Agreement keep in force policies of insurances indicated in paragraph entitled, "INSURANCE."
3. This provision is not intended to create any cause of action in favor of any third party against the Contractor or the County or to enlarge in any way the Contractor's liability, but it is intended solely to provide for indemnification of the County from liability for damages or injuries to third persons or property arising from the Contractor's or the Contractor's agents' performance hereunder.

The above establishes minimum insurance requirements. It is the sole responsibility of Vendor to determine the need for and to procure additional coverage that may be needed in connection with this Agreement.

Vendor further agrees the minimum requirements set forth above shall at all times be in an amount at least equal to the maximum liability of the County under Minn. Stat. 466.04 now or as said statute is hereafter amended or as otherwise required by law, statute or rule.

without USFC

RATE PROPOSAL FORM

Rate Proposal for Itasca County

Subject: 2023 County Road Noxious Weed and Brush Control

Based upon the specifications and other provisions described in the above Special Conditions for the 2023 County Spraying Contract for Noxious Weed and Brush Control Proposal must be written clearly in ink or typewritten. Attach additional pages if you desire.

Weeds targeted may include but are not limited to leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), spotted knapweed (*Centaurea maculosa*), poison ivy (*Toxicodendron radicans*), wild parsnip (*Pastinaca sativa*), common buckthorn (*Rhamnus cathartica*), common tansy (*Tanacetum vulgare*). Proposals should be made considering herbicides best suited for control of indicated species. Quotes may be submitted for other chemicals and price per gallon that may be preferred for use by.

HOURLY RATE CHARGE FOR LABOR / TRUCK/ EQUIPMENT

(Specify equipment type and hourly rate including operator)

ESTIMATED UNIT PRICES	TOTALS
Labor Rate - <i>if needed to treat areas w/o trucks</i>	\$ 100 PER HOUR = 2000
Travel Rate - <i>89.05 miles w/out USFS sites.</i>	\$ 295 PER MILE = 26,269.75
Truck Equipment Type - <i>Sprayer w/ controls & gps</i>	\$ Included PER HOUR = N/A
ATV Equipment Type	\$ Included PER HOUR = N/A
Other Equipment Type	\$ 1 PER HOUR =
Other Rates	\$ PER =

UNIT RATE CHARGE FOR HERBICIDES (include any additives or surfactants necessary)

Escort	#lb. @	\$ 162	PER LB.	=
Garlon 3A	#gal. @	\$	PER GAL.	=
Opensight	#lb. @	\$ 99.20	PER LB.	=
Vastlan	#gal @	\$	PER GAL	=
TerraVue	#gal @	\$	PER GAL	=
Transline	#gal. @	\$	PER GAL	=
Milestone	#gal. @	\$	PER GAL	=
Non-Ionic Surfactant	#gal. @	\$	PER GAL	=
Basal Bark Oil	#gal @	\$	PER GAL	=
Other <i>Liberate - Surfactant</i>		\$ 30	per gal.	=

Above quotations must be based on normal strength provided by manufacturer for chemical.

NAME OF CONTRACTOR: JH Lawn Solutions

TITLE and/or POSITION: Owner DATE: _____

OFFICIAL ADDRESS: 17256 Trengare Rd NW Solway MN 56678

SIGNATURE: 

Travel rates are all inclusive with chemical cost added into price per mile. If chemical will be supplied by county we will only charge labor to apply at a rate of \$100 per mile. 5

USFC roads

RATE PROPOSAL FORM

Rate Proposal for Itasca County

Subject: 2023 County Road Noxious Weed and Brush Control

Based upon the specifications and other provisions described in the above Special Conditions for the 2023 County Spraying Contract for Noxious Weed and Brush Control Proposal must be written clearly in ink or typewritten. Attach additional pages if you desire.

Weeds targeted may include but are not limited to leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), spotted knapweed (*Centaurea maculosa*), poison ivy (*Toxicodendron radicans*), wild parsnip (*Pastinaca sativa*), common buckthorn (*Rhamnus cathartica*), common tansy (*Tanacetum vulgare*). Proposals should be made considering herbicides best suited for control of indicated species. Quotes may be submitted for other chemicals and price per gallon that may be preferred for use by.

HOURLY RATE CHARGE FOR LABOR / TRUCK/ EQUIPMENT

(Specify equipment type and hourly rate including operator)

ESTIMATED UNIT PRICES	TOTALS		
Labor Rate - if needed to spray out of truck (questioned)	\$ 100	PER HOUR	= \$ 2000
Travel Rate - 47.63 miles for USFS roads only.	\$ 295	PER MILE	= \$ 14,050.85
Truck Equipment Type Sprayer w/controls & gps	\$ Included	PER HOUR	=
ATV Equipment Type () () () ()	\$ included	PER HOUR	=
Other Equipment Type	\$	PER HOUR	=
Other Rates	\$	PER	=

UNIT RATE CHARGE FOR HERBICIDES (include any additives or surfactants necessary)

Escort	#lb. @	\$ 162	PER LB.	=
Garlon 3A	#gal. @	\$	PER GAL.	=
Opsight	#lb. @	\$ 99.20	PER LB.	=
Vastlan	#gal @	\$	PER GAL	=
TerraVue	#gal @	\$	PER GAL	=
Transline	#gal. @	\$	PER GAL	=
Milestone	#gal. @	\$	PER GAL	=
Non-Ionic Surfactant	#gal. @	\$	PER GAL	=
Basal Bark Oil	#gal @	\$	PER GAL	=
Other Liberate - surfactant		\$ 30 per gal		=

Above quotations must be based on normal strength provided by manufacturer for chemical.

NAME OF CONTRACTOR: JH Lawn Solutions

TITLE and/or POSITION: Owner DATE: _____

OFFICIAL ADDRESS: 17256 Trengene Rd NW Solway MN 56678

SIGNATURE: [Signature]

Travel rates are all inclusive with chemical cost added into price per mile. If chemical will be supplied, we will only charge labor to apply at a rate of \$100 per⁵ mile

Legend

Vector.GIS.County_Garages

COMMENT

BALSAM

Grand Rapids/Cohasset

NASHWAUK

SWAN RIVER

Tansy

Wild Parsnip

Spotted Knapweed

Vector.GIS.Reservation

Roads Public/Private

Route System, Surface Type

State or US Hwy

County Road - Paved

County Road - Gravel

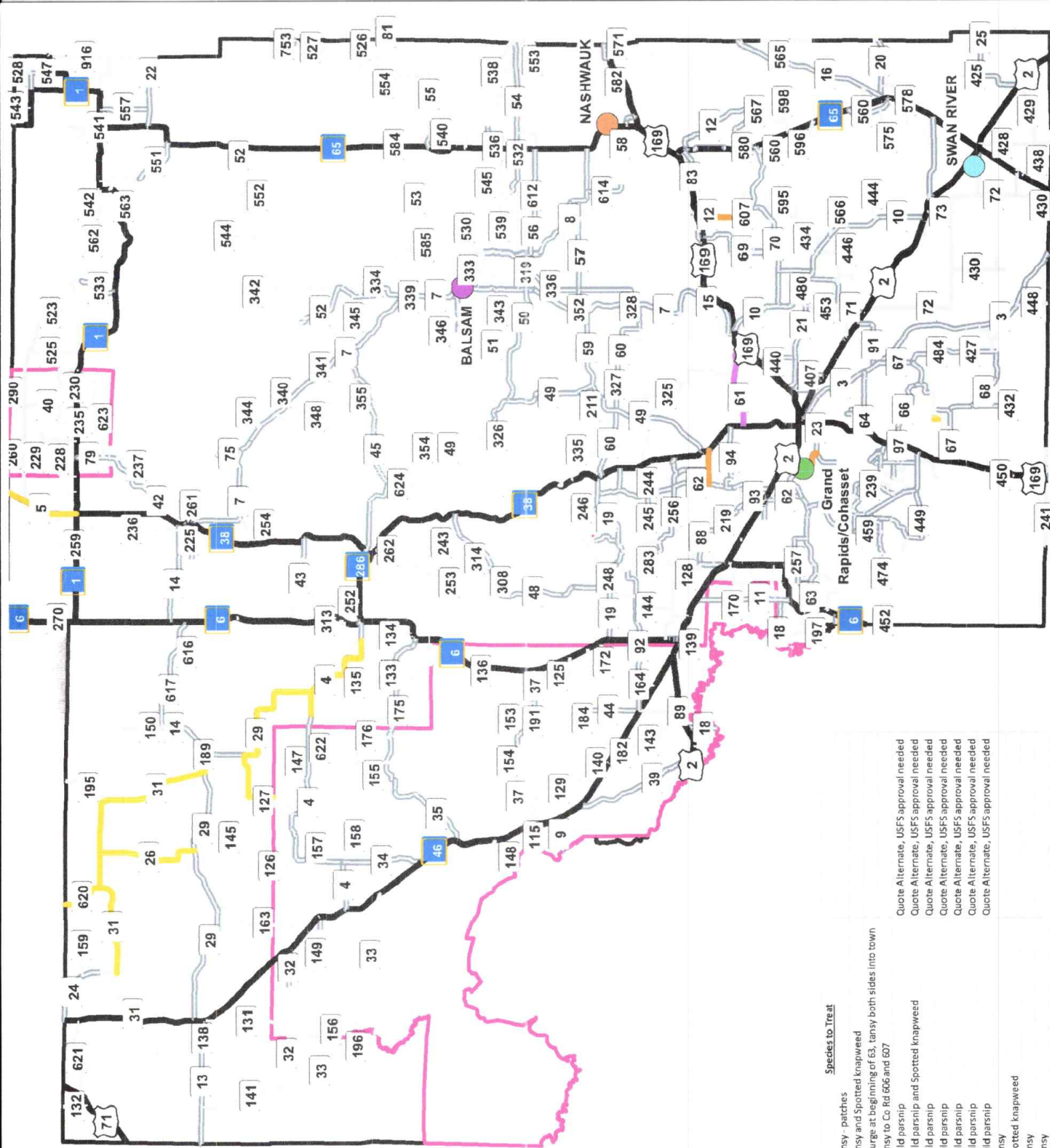
Species to Treat

Acres

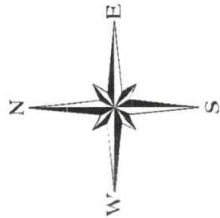
Road # / County Garage / Pit

County Road 90	1.9	Tansy - patches	14
County Road 61	4.75	Tansy and Spotted knapweed	20
County Road 76	1.9	Surge at beginning of 63, tansy both sides into town	9
County Road 12	2.5	Tansy to Co Rd 606 and 607	19
County Road 5	4.2	Wild parsnip	
County Road 4	6.5	Wild parsnip and Spotted knapweed	
County Road 127	4	Wild parsnip	
County Road 29	7.23	Wild parsnip	
County Road 620	2.8	Wild parsnip	
County Road 31	16.9	Wild parsnip	
County Road 26	6	Wild parsnip	
Balsam Garage	-	Tansy	
Swan River Pit	-	Spotted knapweed	
Nashwaik Garage	-	Tansy	
Grand Rapids/Cohasset	-	Tansy	

Quote Alternate, USFS approval needed
Quote Alternate, USFS approval needed
Quote Alternate, USFS approval needed
Quote Alternate, USFS approval needed
Quote Alternate, USFS approval needed
Quote Alternate, USFS approval needed
Quote Alternate, USFS approval needed

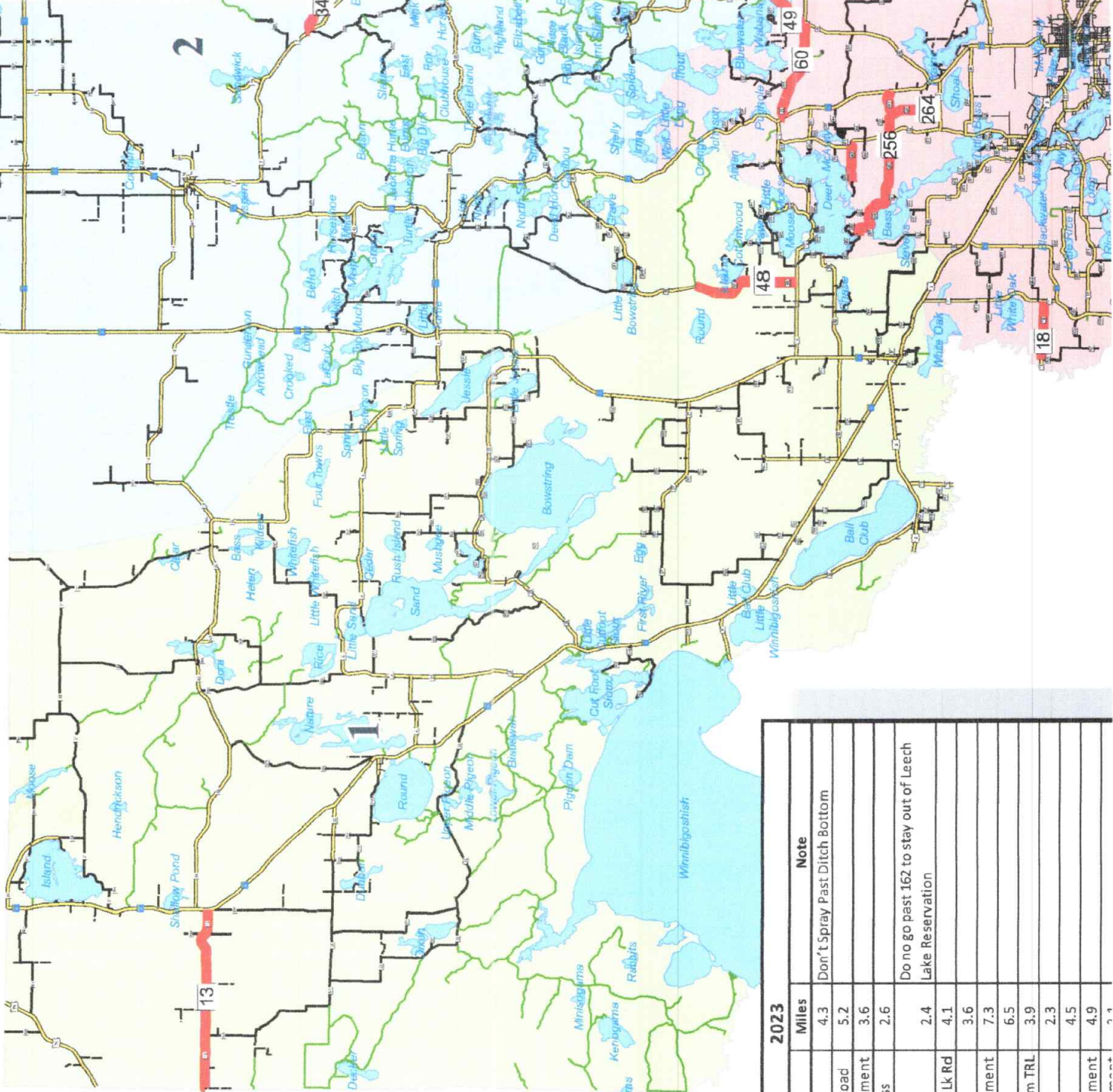


PROPOSED BRUSHING (2023)



Road Types

- Highways - Paved
- Highways - Gravel
- Township Roads
- Municipal
- Forest Trails



2023				Note
Road Number	From	To	Miles	
343	51	50	4.3	Don't Spray Past Ditch Bottom
68	67	Behm Road	5.2	
67	US 169	End Pavement	3.6	
432	68	Access	2.6	Do no go past 162 to stay out of Leech Lake Reservation
18	11	162	2.4	
7	60	Diamond Lk Rd	4.1	
7	Shop	52	3.6	
52	7	End Pavement	7.3	
340	52	7	6.5	
51	50	Big Balsam TRL	3.9	
49	60	59	2.3	
59	7	49	4.5	
256	62	End Pavement	4.9	
256	62	End Pavement	4.9	

Sara Thompson

From: jeff hublit <jeffhublit@yahoo.com>
Sent: Tuesday, June 20, 2023 2:49 PM
To: Sara Thompson
Subject: Re: Noxious Weed Spraying

CAUTION: This email originated from outside of the Itasca County email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Yes sorry - 100% correct on the brush roads pricing there and the correction on original pricing. Sorry the heat is messing with my head and its tough to look on my phone sometimes :)

Thank you!

Jeff Hublit

(218)368-3363

On Tuesday, June 20, 2023 at 02:46:25 PM CDT, Sara Thompson <sara.thompson@co.itasca.mn.us> wrote:

Looking at the spreadsheet. The brushing miles would be 78 and the noxious weed miles are 58.86. I think you had 295.00/mile originally.

12702.14 divided by 78 would increase the cost per mile by 162.85 + original \$295/mile. Is this correct?

Brushing roads are separate from noxious weed roads.

Thanks,



SARA THOMPSON

ITASCA COUNTY LAND DEPARTMENT

FOREST RECREATION SPECIALIST

ASSISTANT COUNTY AGRICULTURAL INSPECTOR

Office: 218-327-7393 **Mobile:** 218-398-5471

1177 LaPrairie Avenue, Grand Rapids, MN 55744

Email: sara.thompson@co.itasca.mn.us

From: jeff hublit <jeffhublit@yahoo.com>
Sent: Tuesday, June 20, 2023 2:28 PM
To: Sara Thompson <Sara.Thompson@CO.ITASCA.mn.us>
Subject: Re: Noxious Weed Spraying

CAUTION: This email originated from outside of the Itasca County email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hey there! The roads with the brush control needed would be at \$541.69/mile. This would be the brushing chemical along with the noxious weed chemical as well included. Brushing chemical is ridiculously pricy. Roads without the brush chemical needed would be at \$275/mile. If you would like I can print off and send back paper copies as well.

Chemical cost for brushing total - \$12,702.14 divided by 47.63 miles increases the per mile cost by \$266.68 + original \$275/mile.

If ONLY brushing is needed in those areas we would reduce the chemical cost and leave out opensite/escort/liberate and using only brushing chemical. This rate for brushing by itself would come to \$466.68 per mile.

RATE PROPOSAL FORM

Rate Proposal for Itasca County

Subject: 2023 County Road Noxious Weed and Brush Control

Based upon the specifications and other provisions described in the above Special Conditions for the 2023 County Spraying Contract for Noxious Weed and Brush Control Proposal must be written clearly in ink or typewritten. Attach additional pages if you desire.

Weeds targeted may include but are not limited to leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), spotted knapweed (*Centaurea maculosa*), poison ivy (*Toxicodendron radicans*), wild parsnip (*Pastinaca sativa*), common buckthorn (*Rhamnus cathartica*), common tansy (*Tanacetum vulgare*). Proposals should be made considering herbicides best suited for control of indicated species. Quotes may be submitted for other chemicals and price per gallon that may be preferred for use by.

HOURLY RATE CHARGE FOR LABOR / TRUCK/ EQUIPMENT

(Specify equipment type and hourly rate including operator)

ESTIMATED UNIT PRICES	TOTALS
Labor Rate	\$ PER HOUR = 125.00
Travel Rate	\$ PER MILE =
Truck Equipment Type	\$ PER HOUR =
ATV Equipment Type	\$ PER HOUR =
Other Equipment Type	\$ PER HOUR =
Other Rates <u>P.R. Mile Rate</u>	\$ PER = 105.00

UNIT RATE CHARGE FOR HERBICIDES (include any additives or surfactants necessary)

Escort <u>XP</u>	<u>13</u> #lb @	\$ <u>6.50</u> PER LB. 0Z	= <u>84.50</u>
Garlon 3A	<u>400</u> #gal. @	\$ <u>68.00</u> PER GAL.	= <u>27,200.00</u>
Opensight	<u>52</u> #lb. @	\$ <u>90.00</u> PER LB.	= <u>4,680.00</u>
Vastlan	____ #gal @	\$ _____ PER GAL	= _____
TerraVue	____ #gal @	\$ _____ PER GAL	= _____
Transline	____ #gal. @	\$ _____ PER GAL	= _____
Milestone	____ #gal. @	\$ _____ PER GAL	= _____
Non-Ionic Surfactant	____ #gal. @	\$ _____ PER GAL	= _____
Basal Bark Oil	____ #gal @	\$ _____ PER GAL	= _____
Other <u>Liberate Surfactant 65 gals</u>		\$ <u>30.00</u> Per. Gal	= <u>1,950.00</u>

Above quotations must be based on normal strength provided by manufacturer for chemical.

NAME OF CONTRACTOR: B and P Weed Control

TITLE and/or POSITION: owner DATE: 6-2-23

OFFICIAL ADDRESS: 7903 Radar Rd. NW Bemidji, MN 56601

SIGNATURE: 

\$ 8190.00

Brush spraying @ P.R. mile = ~~1160.25~~

Invasive Weeds @ P.R. mile = 6056.40 w/o/F 1160.25

Shops & Gravel Pits are at 125.00 P.R. hour



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3164

DEPARTMENT: Sheriff
PRESENTER: Joe Dasovich

TIME REQUESTED: < 5 Minutes

AGENDA ITEM:

Verizon Second Amendment to Antenna Site Use Agreement - Nashwauk Tower

BOARD ACTION REQUESTED:

Approve signatures to execute the Second Amendment to the Site Use Agreement between Verizon and Itasca County

BACKGROUND:

This agreement is amended to allow Verizon to revise the installation of equipment identified in the locations shown in Exhibit A-2. Exhibit A-1 of the agreement will be deleted in its entirety and replaced with Exhibit A-2.

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION:

1. MN03 Nashwauk - Second Amendment_

07/05/2023

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 07/11/2023 2:30 PM
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SITE NAME: **MN03 Nashwauk**

SECOND AMENDMENT TO ANTENNA SITE USE AGREEMENT

THIS SECOND AMENDMENT TO ANTENNA SITE USE AGREEMENT ("Amendment") is made by and between the COUNTY OF ITASCA, State of Minnesota, hereinafter referred to as the "COUNTY", and Rural Cellular Corporation d/b/a Verizon Wireless, hereinafter referred to as "LESSEE".

WHEREAS, COUNTY and LESSEE entered into an ANTENNA SITE USE AGREEMENT dated November 8, 2016, as amended by that certain FIRST AMENDMENT TO ANTENNA SITE USE AGREEMENT dated December 1, 2020 (collectively, the "Agreement"); and

WHEREAS, the COUNTY and LESSEE desire to amend the Agreement.

NOW THEREFORE, in consideration of the mutual undertakings and agreement hereinafter set forth, the COUNTY and LESSEE agree as follows:

1. REVISED INSTALLATION

The Agreement is amended to allow LESSEE to install the equipment identified in the locations shown on Exhibit A-2, attached hereto, and made a part hereof. Exhibit A-1 shall be deleted in its entirety and replaced with Exhibit A-2.

2. RATIFICATION

Except as specifically modified by this Amendment, the parties agree that all of the terms and conditions of the Agreement are in full force and effect and remain unmodified, and the parties hereby ratify and reaffirm the terms and conditions of the Agreement and agree to perform and comply with the same. In the event of a conflict between any term or provision of the Agreement and this Amendment, the terms and provisions of this Amendment shall control. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Amendment.

Signatures on following page

The remainder of this page intentionally left blank

COUNTY BOARD APPROVAL

LESSEE, having signed this contract and COUNTY having duly approved this contract on the ____ day of _____, 2023, and pursuant to such approval, the proper COUNTY officials having signed this contract, the parties hereto agree to be bound by the provisions herein set forth.

COUNTY OF ITASCA
STATE OF MINNESOTA

Approved as to form and execution:

By: _____
Chairperson, Itasca County,
Board of Commissioners

Itasca County Attorney

Date: _____

By: _____
Clerk, Itasca County,
Board of Commissioners

LESSEE APPROVAL

Rural Cellular Corporation
d/b/a Verizon Wireless

By: _____

Name: _____

Its: _____

Date: _____

COUNTY SHERIFF APPROVAL

LESSEE, having agreed to a detailed technical site plan and site access procedures for installing commercial antennas on a COUNTY owned antenna site which is part of the Statewide Public Safety Radio Communications System, the proper COUNTY officials having reviewed such technical and Site access details, the parties hereto agree to such collocation.

ITASCA COUNTY SHERIFF'S OFFICE
STATE OF MINNESOTA

Itasca County Sheriff

MN03 Nashwauk
Second Amendment to Antenna Site Use Agreement

EXHIBIT A-2

Page 1 of 2

EXHIBIT A-2

Page 2 of 2



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-2790

DEPARTMENT: Administrative Services

TIME REQUESTED: 10 Minutes

PRESENTER: Chair

AGENDA ITEM:

Citizen Input

BOARD ACTION REQUESTED:

Receive Citizen Input

BACKGROUND:

The Itasca County Board of Commissioners encourages citizen input. Each citizen will be allowed to address the County Board one time for up to three (3) minutes in length. Comments should be directed to the Board as a body. When addressing the Board, please state your name and address for the record. The Board will take all information under advisement. As part of County Board protocol, it is unacceptable for any speaker to slander or engage in character assassination at a County Board meeting. In addition, no political grandstanding, candidate endorsement, or other attempts to influence the outcome of an election shall be permitted. Any violation of the above statement shall result in the loss of your remaining time.

COUNTY ATTORNEY REVIEW: N/A

SUPPORTING DOCUMENTATION: None

RESULT:	INFORMATIONAL - NO ACTION TAKEN
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**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3175

DEPARTMENT: Administrative Services

TIME REQUESTED: 5 Minutes

PRESENTER: Brett Skyles

AGENDA ITEM:

FAA Grant Agreement

BOARD ACTION REQUESTED:

Approve the FAA Grant Agreement for Airport Improvement Program (AIP) project no. 3-27-0037-028-2023 at the Grand Rapids/Itasca County Airport and authorize necessary signatures.

BACKGROUND:

Project includes pavement crack sealing of the south taxiway. This is a budgeted project for 2023.

Funding: Project is funded 90% FAA, 5% State, 5% Local (split 2.5% City, 2.5% County)

Total County obligation is \$1,719

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION:

1. GPZ-GLG-3-27-0037-028 2023 Grant Agreement
2. GPZ Contract Award Memo 3.10.23
3. Crack Seal Location map

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, Burl Ives,
ABSENT:	John Johnson, Casey Venema



U.S. Department
of Transportation
Federal Aviation
Administration

Airports Division
Great Lakes Region
Minnesota, North Dakota, South Dakota

Dakota-Minnesota Airports
District Office
6020 28th Ave S, Ste 102
Minneapolis, MN 55450

June 8, 2023

Mr. Matt Wegwerth
City Engineer
Grand Rapids Municipal Airport
420 N Pokegama Ave
Grand Rapids, MN 55604

Dear Mr. Wegwerth:

The Grant Offer for Airport Improvement Program (AIP) Project **No. 3-27-0037-028-2023** at Grand Rapids/Itasca County-Gordon Newstrom Field Airport is attached for execution. This letter outlines the steps you must take to properly enter into this agreement and provides other useful information. Please read the conditions, special conditions, and assurances that comprise the grant offer carefully.

You may not make any modification to the text, terms or conditions of the grant offer.

Steps You Must Take to Enter Into Agreement.

To properly enter into this agreement, you must do the following:

1. The governing body must give authority to execute the grant to the individual(s) signing the grant, i.e., the person signing the document must be the sponsor's authorized representative(s) (hereinafter "authorized representative").
2. The authorized representative must execute the grant by adding their electronic signature to the appropriate certificate at the end of the agreement.
3. Once the authorized representative has electronically signed the grant, the sponsor's attorney(s) will automatically receive an email notification.
4. On the **same day or after** the authorized representative has signed the grant, the sponsor's attorney(s) will add their electronic signature to the appropriate certificate at the end of the agreement.
5. If there are co-sponsors, the authorized representative(s) and sponsor's attorney(s) must follow the above procedures to fully execute the grant and finalize the process. Signatures must be obtained and finalized no later than **July 8, 2023.**
6. The fully executed grant will then be automatically sent to all parties as an email attachment.

Payment. Subject to the requirements in 2 CFR § 200.305 (Federal Payment), each payment request for reimbursement under this grant must be made electronically via the Delphi eInvoicing System. Please see the attached Grant Agreement for more information regarding the use of this System.

Project Timing. The terms and conditions of this agreement require you to complete the project without undue delay and no later than the Period of Performance end date (1,460 days from the grant execution

date). We will be monitoring your progress to ensure proper stewardship of these Federal funds. We expect you to submit payment requests for reimbursement of allowable incurred project expenses consistent with project progress. Your grant may be placed in “inactive” status if you do not make draws on a regular basis, which will affect your ability to receive future grant offers. Costs incurred after the Period of Performance ends are generally not allowable and will be rejected unless authorized by the FAA in advance.

Reporting. Until the grant is completed and closed, you are responsible for submitting formal reports as follows:

- For all grants, you must submit by December 31st of each year this grant is open:
 1. A signed/dated SF-270 (Request for Advance or Reimbursement for non-construction projects) or SF-271 or equivalent (Outlay Report and Request for Reimbursement for Construction Programs), and
 2. An SF-425 (Federal Financial Report).
- For non-construction projects, you must submit [FAA Form 5100-140, Performance Report](#) within 30 days of the end of the Federal fiscal year.
- For construction projects, you must submit [FAA Form 5370-1, Construction Progress and Inspection Report](#), within 30 days of the end of each Federal fiscal quarter.

Audit Requirements. As a condition of receiving Federal assistance under this award, you must comply with audit requirements as established under 2 CFR Part 200. Subpart F requires non-Federal entities that expend \$750,000 or more in Federal awards to conduct a single or program specific audit for that year. Note that this includes Federal expenditures made under other Federal-assistance programs. Please take appropriate and necessary action to ensure your organization will comply with applicable audit requirements and standards.

Closeout. Once the project(s) is completed and all costs are determined, we ask that you work with your FAA contact indicated below to close the project without delay and submit the necessary final closeout documentation as required by your Region/Airports District Office.

FAA Contact Information. Mark Johnson, (651) 253-4642, mark.r.johnson@faa.gov is the assigned program manager for this grant and is readily available to assist you and your designated representative with the requirements stated herein.

We sincerely value your cooperation in these efforts and look forward to working with you to complete this important project.

Sincerely,



E. Lindsay Terry
Manager



U.S. Department
of Transportation
Federal Aviation
Administration

FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM

FY 2023 Airport Improvement Program (AIP)

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date	June 8, 2023
Airport/Planning Area	Grand Rapids/Itasca County-Gordon Newstrom Field Airport
FY2023 AIP Grant Number	3-27-0037-028-2023
Unique Entity Identifier	FYCKJLVMF3J6
TO:	County of Itasca and City of Grand Rapids (herein called the "Sponsor") <i>Channeled through the State of Minnesota</i>

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated **April 4, 2023**, for a grant of Federal funds for a project at or associated with the Grand Rapids/Itasca County-Gordon Newstrom Field Airport, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Grand Rapids/Itasca County-Gordon Newstrom Field Airport (herein called the "Project") consisting of the following:

Seal Taxilane F, H, and I Pavement Joints

which is more fully described in the Project Application.

NOW THEREFORE, Pursuant to and for the purpose of carrying out the Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project

Application; and in consideration of: (a) the Sponsor's adoption and ratification of the Grant Assurances attached hereto; (b) the Sponsor's acceptance of this Offer; and (c) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurance and conditions as herein provided;

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay ninety (90) percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **\$61,894.**

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$ 0 for planning;

\$ 61,894 airport development or noise program implementation; and,

\$ 0 for land acquisition.

2. **Grant Performance.** This Grant Agreement is subject to the following Federal award requirements:
 - a. Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this Agreement and is the date signed by the last Sponsor signatory to the Agreement. The end date of the Period of Performance is 4 years (1,460 calendar days) from the date of acceptance. The Period of Performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions or budget periods. (2 Code of Federal Regulations (CFR) § 200.1).
 - b. Budget Period:
 1. For this Grant is 4 years (1,460 calendar days) and follows the same start and end date as the Period of Performance provided in paragraph (2)(a)(1). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the Budget Period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR § 200.308.
 - c. Close Out and Termination

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the grant within one year of the Period of Performance end date with the information available at the end of 120 days. (2 CFR § 200.344).
2. The FAA may terminate this Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the project application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages.
5. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with 49 U.S.C. § 47109, the regulations, policies, and procedures of the Secretary of Transportation ("Secretary"), and any superseding legislation. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
6. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this Agreement, 49 U.S.C. Chapters 471 and 475, the regulations, and the Secretary's policies and procedures. Per 2 CFR § 200.308, the Sponsor agrees to report and request prior FAA approval for any disengagement from performing the project that exceeds three months or a 25 percent reduction in time devoted to the project. The report must include a reason for the project stoppage. The Sponsor also agrees to comply with the grant assurances, which are part of this Agreement.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **July 8, 2023**, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner for any project upon which Federal funds have been expended. For the purposes of this Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor, that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share

or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.

10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this Grant Agreement.
11. **System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).**
 - a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR § 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
 - b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/content/entity-registration>.
12. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this Agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.
13. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of Condition No. 1, Maximum Obligation.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.
14. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Grant Agreement.
15. **Financial Reporting and Payment Requirements.** The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
16. **Buy American.** Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any

steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this Grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.

17. **Build America, Buy America.** The Sponsor must comply with the requirements under the Build America, Buy America Act (Public Law 117-58).
18. **Maximum Obligation Increase.** In accordance with 49 U.S.C. § 47108(b)(3), as amended, the maximum obligation of the United States, as stated in Condition No. 1, Maximum Obligation, of this Grant Offer:
 - a. May not be increased for a planning project;
 - b. May be increased by not more than 15 percent for development projects if funds are available;
 - c. May be increased by not more than the greater of the following for a land project, if funds are available:
 1. 15 percent; or
 2. 25 percent of the total increase in allowable project costs attributable to acquiring an interest in the land.

If the Sponsor requests an increase, any eligible increase in funding will be subject to the United States Government share as provided in 49 U.S.C. § 47110, or other superseding legislation if applicable, for the fiscal year appropriation with which the increase is funded. The FAA is not responsible for the same Federal share provided herein for any amount increased over the initial grant amount. The FAA may adjust the Federal share as applicable through an informal letter of amendment.

19. **Audits for Sponsors.**

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA. Sponsors that expend less than \$750,000 in Federal awards and are exempt from Federal audit requirements must make records available for review or audit by the appropriate Federal agency officials, State, and Government Accountability Office. The FAA and other appropriate Federal agencies may request additional information to meet all Federal audit requirements.

20. **Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
 - a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions with their contractors and sub-contractors.
- c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debars a contractor, person, or entity.

21. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

22. Trafficking in Persons.

- a. *Posting of contact information.*
 1. The Sponsor must post the contact information of the national human trafficking hotline (including options to reach out to the hotline such as through phone, text, or TTY) in all public airport restrooms.
- b. *Provisions applicable to a recipient that is a private entity.*
 1. You as the recipient, your employees, subrecipients under this Grant, and subrecipients' employees may not:
 - i. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
 - ii. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
 - iii. Use forced labor in the performance of the Grant or any subgrants under this Grant.
 2. We as the Federal awarding agency, may unilaterally terminate this Grant, without penalty, if you or a subrecipient that is a private entity –

- i. Is determined to have violated a prohibition in paragraph (a) of this Grant Condition; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (a) of this Grant Condition through conduct that is either –
 - a) Associated with performance under this Grant; or
 - b) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- c. *Provision applicable to a recipient other than a private entity.* We as the Federal awarding agency may unilaterally terminate this Grant, without penalty, if a subrecipient that is a private entity –
 - 1. Is determined to have violated an applicable prohibition in paragraph (a) of this Grant Condition; or
 - 2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated an applicable prohibition in paragraph (a) of this Grant Condition through conduct that is either –
 - i. Associated with performance under this Grant; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 1200.
- d. *Provisions applicable to any recipient.*
 - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a) of this Grant Condition.
 - 2. Our right to terminate unilaterally that is described in paragraph (a) or (b) of this Grant Condition:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended [22 U.S.C. § 7104(g)], and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this Grant.
 - 3. You must include the requirements of paragraph (a) of this Grant Condition in any subgrant you make to a private entity.
- e. *Definitions.* For purposes of this Grant Condition:
 - 1. “Employee” means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Grant; or
 - ii. Another person engaged in the performance of the project or program under this Grant and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. "Force labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25.
 - ii. Includes:
 - a) A nonprofit organization, including any nonprofit institute of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - b) A for-profit organization.
 - 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).
23. **AIP Funded Work Included in a PFC Application.** Within 90 days of acceptance of this Grant Agreement, the Sponsor must submit to the FAA an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this Grant Agreement as described in the project application. The airport sponsor may not make any expenditure under this Grant Agreement until project work addressed under this Grant Agreement is removed from an approved PFC application by amendment.
24. **Exhibit "A" Property Map.** The Exhibit "A" Property Map dated 08/04/2014, is incorporated herein by reference or is submitted with the project application and made part of this Grant Agreement.
25. **Employee Protection from Reprisal.**
- a. Prohibition of Reprisals
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a Sponsor, grantee, subgrantee, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) below, information that the employee reasonably believes is evidence of:
 - i. Gross mismanagement of a Federal grant;
 - ii. Gross waste of Federal funds;
 - iii. An abuse of authority relating to implementation or use of Federal funds;
 - iv. A substantial and specific danger to public health or safety; or

- v. A violation of law, rule, or regulation related to a Federal grant.
- 2. Persons and bodies covered. The persons and bodies to which a disclosure by an employee is covered are as follows:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Federal employee responsible for contract or grant oversight or management at the relevant agency;
 - v. A court or grand jury;
 - vi. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - vii. An authorized official of the Department of Justice or other law enforcement agency.
- b. Investigation of Complaints.
 - 1. Submission of Complaint. A person who believes that they have been subjected to a reprisal prohibited by paragraph (a) of this Condition may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - 2. Time Limitation for Submittal of a Complaint. A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
 - 3. Required Actions of the Inspector General. Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
- c. Remedy and Enforcement Authority.
 - 1. Assumption of Rights to Civil Remedy. Upon receipt of an explanation of a decision not to conduct or continue an investigation by the OIG, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c)(2).
- 26. **Prohibited Telecommunications and Video Surveillance Services and Equipment.** The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)] and 2 CFR § 200.216.
- 27. **Critical Infrastructure Security and Resilience.** The Sponsor acknowledges that it has considered and addressed physical and cybersecurity and resilience in their project planning, design, and oversight, as determined by the DOT and the Department of Homeland Security (DHS). For airports that do not have specific DOT or DHS cybersecurity requirements, the FAA encourages the voluntary adoption of the cybersecurity requirements from the Transportation Security Administration and Federal Security Director identified for security risk Category X airports.

SPECIAL CONDITIONS

- 28. **Environmental.** The environmental approval for this project was issued on 3/30/2023 This project includes the following mitigation measures:

29. **Buy American Executive Orders.** The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the Grant Assurances, terms, and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.¹

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**



(Signature)

E. Lindsay Terry

(Typed Name)

Manager, FAA-DMA-ADO

(Title of FAA Official)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated June 8, 2023

County of Itasca and City of Grand Rapids

(Name of Sponsor)

Dale Christy

Dale Christy (Jun 8, 2023 21:28 CDT)

(Signature of Sponsor's Authorized Official)

By: Dale Christy

(Typed Name of Sponsor's Authorized Official)

Title: Mayor

(Title of Sponsor's Authorized Official)

² Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the Grant Assurances, terms, and conditions in this Offer and in the Project Application.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.²

Dated _____

County of Itasca and City of Grand Rapids

(Name of Sponsor)

(Signature of Sponsor's Authorized Official)

By: _____

(Typed Name of Sponsor's Authorized Official)

Title: _____

(Title of Sponsor's Authorized Official)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Minnesota. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at _____

By: _____

(Signature of Sponsor's Attorney)

³ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Minnesota. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; and Title 49, United States Code (U.S.C.), Chapters 471 and 475; 49 U.S.C. §§ 40101 et seq., and 48103; FAA Reauthorization Act of 2018 (Public Law Number 115-254); the Department of Transportation Appropriations Act, 2021 (Public Law 116-260, Division L); the Consolidated Appropriations Act, 2022 (Public Law 117-103); Consolidated Appropriations Act, 2023 (Public Law 117-328); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.³

Dated at _____

By: _____

(Signature of Sponsor's Attorney)

ASSURANCES

AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full force and effect during the life of the project; there shall be no limit on the

duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

FEDERAL LEGISLATION

- a. 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.^{1, 2}
- f. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108.1.¹
- g. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. § 312501, et seq.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended - 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended - 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.¹
- l. 49 U.S.C. § 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 - 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended - 42 U.S.C. § 4151, et seq.¹
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 - 42 U.S.C. § 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. § 874.¹
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321, et seq.¹

- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. § 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (P.L. 109-282, as amended by section 6202 of P.L. 110-252).
- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity¹
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.^{4, 5}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice For Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.

- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.¹
- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.¹
- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).¹
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).¹
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.^{1 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.¹
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

FOOTNOTES TO ASSURANCE (C)(1)

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

⁴ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

- ⁵ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such

performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of

residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance-Management.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security

equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere

with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 3. Promptly notifying pilots of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the

providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all

revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
 - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 - 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
 1. eliminate such adverse effect in a manner approved by the Secretary; or
 2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 - 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
 - 2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The (**County of Itasca and City of Grand Rapids**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport,

or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:

1. Reinvestment in an approved noise compatibility project;
2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117
4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
 1. Reinvestment in an approved noise compatibility project;
 2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
 3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117
 4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport; or
 5. Payment to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the

airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out any project funded under an Airport Improvement Program Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars (<https://www.faa.gov/airports/aip/media/aip-pfc-checklist.pdf>) for AIP projects as of April 4, 2023.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin, or sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
 1. Describes the requests;
 2. Provides an explanation as to why the requests could not be accommodated; and
 3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

Certification and Disclosure Regarding Potential Conflicts of Interest Airport Improvement Program Sponsor Certification

Sponsor: City of Grand Rapids

Airport: Grand Rapids Municipal Airport

Project Number: 3-27-0037-028-2023

Description of Work: Seal S Area Taxilanes

Application

Title 2 CFR § 200.112 and § 1201.112 address Federal Aviation Administration (FAA) requirements for conflict of interest. As a condition of eligibility under the Airport Improvement Program (AIP), sponsors must comply with FAA policy on conflict of interest. Such a conflict would arise when any of the following have a financial or other interest in the firm selected for award:

- a) The employee, officer or agent,
- b) Any member of his immediate family,
- c) His or her partner, or
- d) An organization which employs, or is about to employ, any of the above.

Selecting "Yes" represents sponsor or sub-recipient acknowledgement and confirmation of the certification statement. Selecting "No" represents sponsor or sub-recipient disclosure that it cannot fully comply with the certification statement. If "No" is selected, provide support information explaining the negative response as an attachment to this form. This includes whether the sponsor has established standards for financial interest that are not substantial or unsolicited gifts are of nominal value (2 CFR § 200.318(c)). The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance.

Certification Statements

1. The sponsor or sub-recipient maintains a written standards of conduct governing conflict of interest and the performance of their employees engaged in the award and administration of contracts (2 CFR § 200.318(c)). To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the sponsor's and sub-recipient's officers, employees, or agents, or by contractors or their agents.

☐ Yes ☐ No ☐ N/A

2. The sponsor's or sub-recipient's officers, employees or agents have not and will not solicit or accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements (2 CFR § 200.318(c)).

☐ Yes ☐ No ☐ N/A

3. The sponsor or sub-recipient certifies that it has disclosed and will disclose to the FAA any known potential conflict of interest (2 CFR § 1200.112).

☐ Yes ☐ No ☐ N/A

Attach documentation clarifying any above item marked with "no" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Name of Sponsor:

Name of Sponsor's Authorized Official: {{N_es_:signer6: fullname}}

Title of Sponsor's Authorized Official:

Signature of Sponsor's Authorized Official:

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Construction Project Final Acceptance Airport Improvement Program Sponsor Certification

Sponsor: City of Grand Rapids

Airport: Grand Rapids Municipal Airport

Project Number: 3-27-0037-028-2023

Description of Work: Seal S Area Taxilanes

Application

49 USC § 47105(d), authorizes the Secretary to require me certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program. General standards for final acceptance and close out of federally funded construction projects are in 2 CFR § 200.343 – Closeout and supplemented by FAA Order 5100.38. The sponsor must determine that project costs are accurate and proper in accordance with specific requirements of the grant agreement and contract documents.

Certification Statements

Except for certification statements below marked not applicable (N/A), this list includes major requirements of the construction project. Selecting “Yes” represents sponsor acknowledgment and confirmation of the certification statement. The term “will” means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. The personnel engaged in project administration, engineering supervision, project inspection, and acceptance testing were or will be determined to be qualified and competent to perform the work (Grant Assurance).
☐ Yes ☐ No ☐ N/A
2. Construction records, including daily logs, were or will be kept by the resident engineer/construction inspector that fully document contractor’s performance in complying with:
 - a. Technical standards (Advisory Circular (AC) 150/5370-12);
 - b. Contract requirements (2 CFR part 200 and FAA Order 5100.38); and
 - c. Construction safety and phasing plan measures (AC 150/5370-2).☐ Yes ☐ No ☐ N/A
3. All acceptance tests specified in the project specifications were or will be performed and documented. (AC 150/5370-12).
☐ Yes ☐ No ☐ N/A

4. Sponsor has taken or will take appropriate corrective action for any test result outside of allowable tolerances (AC 150/5370-12).
- ☐ Yes ☐ No ☐ N/A
5. Pay reduction factors required by the specifications were applied or will be applied in computing final payments with a summary made available to the FAA (AC 150/5370-10).
- ☐ Yes ☐ No ☐ N/A
6. Sponsor has notified, or will promptly notify the Federal Aviation Administration (FAA) of the following occurrences:
- a. Violations of any federal requirements set forth or included by reference in the contract documents (2 CFR part 200);
 - b. Disputes or complaints concerning federal labor standards (29 CFR part 5); and
 - c. Violations of or complaints addressing conformance with Equal Employment Opportunity or Disadvantaged Business Enterprise requirements (41 CFR Chapter 60 and 49 CFR part 26).
- ☐ Yes ☐ No ☐ N/A
7. Weekly payroll records and statements of compliance were or will be submitted by the prime contractor and reviewed by the sponsor for conformance with federal labor and civil rights requirements as required by FAA and U.S. Department of Labor (29 CFR Part 5).
- ☐ Yes ☐ No ☐ N/A
8. Payments to the contractor were or will be made in conformance with federal requirements and contract provisions using sponsor internal controls that include:
- a. Retaining source documentation of payments and verifying contractor billing statements against actual performance (2 CFR § 200.302 and FAA Order 5100.38);
 - b. Prompt payment of subcontractors for satisfactory performance of work (49 CFR § 26.29);
 - c. Release of applicable retainage upon satisfactory performance of work (49 CFR § 26.29); and
 - d. Verification that payments to DBEs represent work the DBE performed by carrying out a commercially useful function (49 CFR § 26.55).
- ☐ Yes ☐ No ☐ N/A
9. A final project inspection was or will be conducted with representatives of the sponsor and the contractor present that ensure:
- a. Physical completion of project work in conformance with approved plans and specifications (Order 5100.38);
 - b. Necessary actions to correct punch list items identified during final inspection are complete (Order 5100.38); and
 - c. Preparation of a record of final inspection and distribution to parties to the contract (Order 5100.38);
- ☐ Yes ☐ No ☐ N/A
10. The project was or will be accomplished without material deviations, changes, or modifications from approved plans and specifications, except as approved by the FAA (Order 5100.38).
- ☐ Yes ☐ No ☐ N/A

11. The construction of all buildings have complied or will comply with the seismic construction requirements of 49 CFR § 41.120.

☐ Yes ☐ No ☐ N/A

12. For development projects, sponsor has taken or will take the following close-out actions:

a. Submit to the FAA a final test and quality assurance report summarizing acceptance test results, as applicable (Grant Condition);

b. Complete all environmental requirements as established within the project environmental determination (Order 5100.38); and

c. Prepare and retain as-built plans (Order 5100.38)

☐ Yes ☐ No ☐ N/A

13. Sponsor has revised or will revise their airport layout plan (ALP) that reflects improvements made and has submitted or will submit an updated ALP to the FAA no later than 90 days from the period of performance end date. (49 USC § 47107 and Order 5100.38).

☐ Yes ☐ No ☐ N/A

Attach documentation clarifying any above item marked with "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Name of Sponsor:

Name of Sponsor's Authorized Official: {{N_es_ :signer6: fullname}}

Title of Sponsor's Authorized Official:

Signature of Sponsor's Authorized Official:

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.



Selection of Consultants Airport Improvement Program Sponsor Certification

Sponsor: City of Grand Rapids

Airport: Grand Rapids Municipal Airport

Project Number: 3-27-0037-028-2023

Description of Work: Seal S Area Taxilanes

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements for selection of consultant services within federal grant programs are described in 2 CFR §§ 200.317-200.326. Sponsors may use other qualifications-based procedures provided they are equivalent to standards of Title 40 chapter 11 and FAA Advisory Circular 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting "Yes" represents sponsor acknowledgement and confirmation of the certification statement. The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. Sponsor acknowledges their responsibility for the settlement of all contractual and administrative issues arising out of their procurement actions (2 CFR § 200.318(k)).
☐ Yes ☐ No ☐ N/A
2. Sponsor procurement actions ensure or will ensure full and open competition that does not unduly limit competition (2 CFR § 200.319).
☐ Yes ☐ No ☐ N/A
3. Sponsor has excluded or will exclude any entity that develops or drafts specifications, requirements, or statements of work associated with the development of a request-for-qualifications (RFQ) from competing for the advertised services (2 CFR § 200.319).
☐ Yes ☐ No ☐ N/A

4. The advertisement describes or will describe specific project statements-of-work that provide clear detail of required services without unduly restricting competition (2 CFR § 200.319).
- ☐ Yes ☐ No ☐ N/A
5. Sponsor has publicized or will publicize a RFQ that:
- a. Solicits an adequate number of qualified sources (2 CFR § 200.320(d)); and
- b. Identifies all evaluation criteria and relative importance (2 CFR § 200.320(d)).
- ☐ Yes ☐ No ☐ N/A
6. Sponsor has based or will base selection on qualifications, experience, and disadvantaged business enterprise participation with price not being a selection factor (2 CFR § 200.320(d)).
- ☐ Yes ☐ No ☐ N/A
7. Sponsor has verified or will verify that agreements exceeding \$25,000 are not awarded to individuals or firms suspended, debarred or otherwise excluded from participating in federally assisted projects (2 CFR § 180.300).
- ☐ Yes ☐ No ☐ N/A
8. A/E services covering multiple projects: Sponsor has agreed to or will agree to:
- a. Refrain from initiating work covered by this procurement beyond five years from the date of selection (AC 150/5100-14); and
- b. Retain the right to conduct new procurement actions for projects identified or not identified in the RFQ (AC 150/5100-14).
- ☐ Yes ☐ No ☐ N/A
9. Sponsor has negotiated or will negotiate a fair and reasonable fee with the firm they select as most qualified for the services identified in the RFQ (2 CFR § 200.323).
- ☐ Yes ☐ No ☐ N/A
10. The Sponsor's contract identifies or will identify costs associated with ineligible work separately from costs associated with eligible work (2 CFR § 200.302).
- ☐ Yes ☐ No ☐ N/A
11. Sponsor has prepared or will prepare a record of negotiations detailing the history of the procurement action, rationale for contract type and basis for contract fees (2 CFR § 200.318(i)).
- ☐ Yes ☐ No ☐ N/A
12. Sponsor has incorporated or will incorporate mandatory contract provisions in the consultant contract for AIP-assisted work (49 U.S.C. Chapter 471 and 2 CFR part 200 Appendix II)
- ☐ Yes ☐ No ☐ N/A

13. For contracts that apply a time-and-material payment provision (also known as hourly rates, specific rates of compensation, and labor rates), the Sponsor has established or will establish:

- a. Justification that there is no other suitable contract method for the services (2 CFR §200.318(j));
- b. A ceiling price that the consultant exceeds at their risk (2 CFR §200.318(j)); and
- c. A high degree of oversight that assures consultant is performing work in an efficient manner with effective cost controls in place 2 CFR §200.318(j)).

☐ Yes ☐ No ☐ N/A

14. Sponsor is not using or will not use the prohibited cost-plus-percentage-of-cost (CPPC) contract method. (2 CFR § 200.323(d)).

☐ Yes ☐ No ☐ N/A

Attach documentation clarifying any above item marked with “no” response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked “no” is correct and complete.

Name of Sponsor:

Name of Sponsor's Authorized Official: {{N_es_:signer6: fullname}}

Title of Sponsor's Authorized Official:

Signature of Sponsor's Authorized Official:

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Drug-Free Workplace Airport Improvement Program Sponsor Certification

Sponsor: City of Grand Rapids

Airport: Grand Rapids Municipal Airport

Project Number: 3-27-0037-028-2023

Description of Work: Seal S Area Taxilanes

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General requirements on the drug-free workplace within federal grant programs are described in 2 CFR part 182. Sponsors are required to certify they will be, or will continue to provide, a drug-free workplace in accordance with the regulation. The AIP project grant agreement contains specific assurances on the Drug-Free Workplace Act of 1988.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting "Yes" represents sponsor acknowledgement and confirmation of the certification statement. The term "will" means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. A statement has been or will be published prior to commencement of project notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace, and specifying the actions to be taken against employees for violation of such prohibition (2 CFR § 182.205).

☐ Yes ☐ No ☐ N/A

2. An ongoing drug-free awareness program (2 CFR § 182.215) has been or will be established prior to commencement of project to inform employees about:

- a. The dangers of drug abuse in the workplace;
- b. The sponsor's policy of maintaining a drug-free workplace;
- c. Any available drug counseling, rehabilitation, and employee assistance programs; and
- d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

☐ Yes ☐ No ☐ N/A

3. Each employee to be engaged in the performance of the work has been or will be given a copy of the statement required within item 1 above prior to commencement of project (2 CFR § 182.210).

☐ Yes ☐ No ☐ N/A

4. Employees have been or will be notified in the statement required by item 1 above that, as a condition employment under the grant (2 CFR § 182.205(c)), the employee will:

- a. Abide by the terms of the statement; and
- b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

☐ Yes ☐ No ☐ N/A

5. The Federal Aviation Administration (FAA) will be notified in writing within 10 calendar days after receiving notice under item 4b above from an employee or otherwise receiving actual notice of such conviction (2 CFR § 182.225). Employers of convicted employees must provide notice, including position title of the employee, to the FAA (2 CFR § 182.300).

☐ Yes ☐ No ☐ N/A

6. One of the following actions (2 CFR § 182.225(b)) will be taken within 30 calendar days of receiving a notice under item 4b above with respect to any employee who is so convicted:

- a. Take appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; and
- b. Require such employee to participate satisfactorily in drug abuse assistance or rehabilitation programs approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

☐ Yes ☐ No ☐ N/A

7. A good faith effort will be made, on a continuous basis, to maintain a drug-free workplace through implementation of items 1 through 6 above (2 CFR § 182.200).

☐ Yes ☐ No ☐ N/A

Site(s) of performance of work (2 CFR § 182.230):

Location 1

Name of Location:

Address:

Location 2 (if applicable)

Name of Location:

Address:

Location 3 (if applicable)

Name of Location:

Address:

Attach documentation clarifying any above item marked with a "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Name of Sponsor:

Name of Sponsor's Authorized Official: {{N_es_:signer6: fullname}}

Title of Sponsor's Authorized Official:

Signature of Sponsor's Authorized Official:

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Equipment and Construction Contracts Airport Improvement Sponsor Certification

Sponsor: City of Grand Rapids

Airport: Grand Rapids Municipal Airport

Project Number: 3-27-0037-028-2023

Description of Work: Seal S Area Taxilanes

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). General procurement standards for equipment and construction contracts within Federal grant programs are described in 2 CFR §§ 200.317-200.326. Labor and Civil Rights Standards applicable to the AIP are established by the Department of Labor (www.dol.gov) AIP Grant Assurance C.1—General Federal Requirements identifies all applicable Federal Laws, regulations, executive orders, policies, guidelines and requirements for assistance under the AIP. Sponsors may use state and local procedures provided the procurement conforms to these federal standards.

This certification applies to all equipment and construction projects. Equipment projects may or may not employ laborers and mechanics that qualify the project as a “covered contract” under requirements established by the Department of Labor requirements. Sponsor shall provide appropriate responses to the certification statements that reflect the character of the project regardless of whether the contract is for a construction project or an equipment project.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting “Yes” represents sponsor acknowledgement and confirmation of the certification statement. The term “will” means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. A written code or standard of conduct is or will be in effect prior to commencement of the project that governs the performance of the sponsor’s officers, employees, or agents in soliciting, awarding and administering procurement contracts (2 CFR § 200.318).

☐ Yes ☐ No ☐ N/A

2. For all contracts, qualified and competent personnel are or will be engaged to perform contract administration, engineering supervision, construction inspection, and testing (Grant Assurance C.17).
- ☐ Yes ☐ No ☐ N/A
3. Sponsors that are required to have a Disadvantage Business Enterprise (DBE) program on file with the FAA have included or will include clauses required by Title VI of the Civil Rights Act and 49 CFR Part 26 for Disadvantaged Business Enterprises in all contracts and subcontracts.
- ☐ Yes ☐ No ☐ N/A
4. Sponsors required to have a DBE program on file with the FAA have implemented or will implement monitoring and enforcement measures that:
- a. Ensure work committed to Disadvantaged Business Enterprises at contract award is actually performed by the named DBEs (49 CFR § 26.37(b));
 - b. Include written certification that the sponsor has reviewed contract records and has monitored work sites for performance by DBE firms (49 CFR § 26.37(b)); and
 - c. Provides for a running tally of payments made to DBE firms and a means for comparing actual attainments (i.e. payments) to original commitments (49 CFR § 26.37(c)).
- ☐ Yes ☐ No ☐ N/A
5. Sponsor procurement actions using the competitive sealed bid method (2 CFR § 200.320(c)). was or will be:
- a. Publicly advertised, allowing a sufficient response time to solicit an adequate number of interested contractors or vendors;
 - b. Prepared to include a complete, adequate and realistic specification that defines the items or services in sufficient detail to allow prospective bidders to respond;
 - c. Publicly opened at a time and place prescribed in the invitation for bids; and
 - d. Prepared in a manner that result in a firm fixed price contract award to the lowest responsive and responsible bidder.
- ☐ Yes ☐ No ☐ N/A
6. For projects the Sponsor proposes to use the competitive proposal procurement method (2 CFR § 200.320(d)), Sponsor has requested or will request FAA approval prior to proceeding with a competitive proposal procurement by submitting to the FAA the following:
- a. Written justification that supports use of competitive proposal method in lieu of the preferred sealed bid procurement method;
 - b. Plan for publicizing and soliciting an adequate number of qualified sources; and
 - c. Listing of evaluation factors along with relative importance of the factors.
- ☐ Yes ☐ No ☐ N/A
7. For construction and equipment installation projects, the bid solicitation includes or will include the current federal wage rate schedule(s) for the appropriate type of work classifications (2 CFR Part 200, Appendix II).
- ☐ Yes ☐ No ☐ N/A

8. Concurrence was or will be obtained from the Federal Aviation Administration (FAA) prior to contract award under any of the following circumstances (Order 5100.38D):

- a. Only one qualified person/firm submits a responsive bid;
- b. Award is to be made to other than the lowest responsible bidder; and
- c. Life cycle costing is a factor in selecting the lowest responsive bidder.

☐ Yes ☐ No ☐ N/A

9. All construction and equipment installation contracts contain or will contain provisions for:

- a. Access to Records (§ 200.336)
- b. Buy American Preferences (Title 49 U.S.C. § 50101)
- c. Civil Rights - General Provisions and Title VI Assurances(41 CFR part60)
- d. Federal Fair Labor Standards (29 U.S.C. § 201, et seq)
- e. Occupational Safety and Health Act requirements (20 CFR part 1920)
- f. Seismic Safety – building construction (49 CFR part 41)
- g. State Energy Conservation Requirements - as applicable(2 CFR part 200, Appendix II)
- h. U.S. Trade Restriction (49 CFR part 30)
- i. Veterans Preference (49 USC § 47112(c))

☐ Yes ☐ No ☐ N/A

10. All construction and equipment installation contracts exceeding \$2,000 contain or will contain the provisions established by:

- a. Davis-Bacon and Related Acts (29 CFR part 5)
- b. Copeland “Anti-Kickback” Act (29 CFR parts 3 and 5)

☐ Yes ☐ No ☐ N/A

11. All construction and equipment installation contracts exceeding \$3,000 contain or will contain a contract provision that discourages distracted driving (E.O. 13513).

☐ Yes ☐ No ☐ N/A

12. All contracts exceeding \$10,000 contain or will contain the following provisions as applicable:

- a. Construction and equipment installation projects - Applicable clauses from 41 CFR Part 60 for compliance with Executive Orders 11246 and 11375 on Equal Employment Opportunity;
- b. Construction and equipment installation - Contract Clause prohibiting segregated facilities in accordance with 41 CFR part 60-1.8;
- c. Requirement to maximize use of products containing recovered materials in accordance with 2 CFR § 200.322 and 40 CFR part 247; and
- d. Provisions that address termination for cause and termination for convenience (2 CFR Part 200, Appendix II).

☐ Yes ☐ No ☐ N/A

13. All contracts and subcontracts exceeding \$25,000: Measures are in place or will be in place (e.g. checking the System for Award Management) that ensure contracts and subcontracts are not awarded to individuals or firms suspended, debarred, or excluded from participating in federally assisted projects (2 CFR parts 180 and 1200).

☐ Yes ☐ No ☐ N/A

14. Contracts exceeding the simplified acquisition threshold (currently \$150,000) include or will include provisions, as applicable, that address the following:

- a. Construction and equipment installation contracts - a bid guarantee of 5%, a performance bond of 100%, and a payment bond of 100% (2 CFR § 200.325);
- b. Construction and equipment installation contracts - requirements of the Contract Work Hours and Safety Standards Act (40 USC 3701-3708, Sections 103 and 107);
- c. Restrictions on Lobbying and Influencing (2 CFR part 200, Appendix II);
- d. Conditions specifying administrative, contractual and legal remedies for instances where contractor or vendor violate or breach the terms and conditions of the contract (2 CFR §200, Appendix II); and
- e. All Contracts - Applicable standards and requirements issued under Section 306 of the Clean Air Act (42 USC 7401-7671q), Section 508 of the Clean Water Act (33 USC 1251-1387, and Executive Order 11738.

☐ Yes ☐ No ☐ N/A

Attach documentation clarifying any above item marked with "No" response

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Name of Sponsor:

Name of Sponsor's Authorized Official: {{N_es_:signer6: fullname}}

Title of Sponsor's Authorized Official: |

Signature of Sponsor's Authorized Official: |

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

Project Plans and Specifications

Airport Improvement Program Sponsor Certification

Sponsor: City of Grand Rapids

Airport: Grand Rapids Municipal Airport

Project Number: 3-27-0037-028-2023

Description of Work: Seal S Area Taxilanes

Application

49 USC § 47105(d) authorizes the Secretary to require certification from the sponsor that it will comply with the statutory and administrative requirements in carrying out a project under the Airport Improvement Program (AIP). Labor and civil rights standards applicable to AIP are established by the Department of Labor (www.dol.gov/). AIP Grant Assurance C.1—General Federal Requirements identifies applicable federal laws, regulations, executive orders, policies, guidelines and requirements for assistance under AIP. A list of current advisory circulars with specific standards for procurement, design or construction of airports, and installation of equipment and facilities is referenced in standard airport sponsor Grant Assurance 34 contained in the grant agreement.

Certification Statements

Except for certification statements below marked as not applicable (N/A), this list includes major requirements of the construction project. Selecting “Yes” represents sponsor acknowledgement and confirmation of the certification statement. The term “will” means Sponsor action taken at appropriate time based on the certification statement focus area, but no later than the end of the project period of performance. This list is not comprehensive and does not relieve the sponsor from fully complying with all applicable statutory and administrative standards. The source of the requirement is referenced within parenthesis.

1. The plans and specifications were or will be prepared in accordance with applicable federal standards and requirements, so that no deviation or modification to standards set forth in the advisory circulars, or FAA-accepted state standard, is necessary other than those explicitly approved by the Federal Aviation Administration (FAA) (14 USC § 47105).
☐ Yes ☐ No ☐ N/A
2. Specifications incorporate or will incorporate a clear and accurate description of the technical requirement for the material or product that does not contain limiting or proprietary features that unduly restrict competition (2 CFR §200.319).
☐ Yes ☐ No ☐ N/A

3. The development that is included or will be included in the plans is depicted on the current airport layout plan as approved by the FAA (14 USC §47107).
- ☐ Yes ☐ No ☐ N/A
4. Development and features that are ineligible or unallowable for AIP funding have been or will be omitted from the plans and specifications (FAA Order 5100.38, par. 3-43).
- ☐ Yes ☐ No ☐ N/A
5. The specification does not use or will not use "brand name" or equal to convey requirements unless sponsor requests and receives approval from the FAA to use brand name (FAA Order 5100.38, Table U-5).
- ☐ Yes ☐ No ☐ N/A
6. The specification does not impose or will not impose geographical preference in their procurement requirements (2 CFR §200.319(b) and FAA Order 5100.38, Table U-5).
- ☐ Yes ☐ No ☐ N/A
7. The use of prequalified lists of individuals, firms or products include or will include sufficient qualified sources that ensure open and free competition and that does not preclude potential entities from qualifying during the solicitation period (2 CFR §319(d)).
- ☐ Yes ☐ No ☐ N/A
8. Solicitations with bid alternates include or will include explicit information that establish a basis for award of contract that is free of arbitrary decisions by the sponsor (2 CFR § 200.319(a)(7)).
- ☐ Yes ☐ No ☐ N/A
9. Concurrence was or will be obtained from the FAA if Sponsor incorporates a value engineering clause into the contract (FAA Order 5100.38, par. 3-57).
- ☐ Yes ☐ No ☐ N/A
10. The plans and specifications incorporate or will incorporate applicable requirements and recommendations set forth in the federally approved environmental finding (49 USC §47106(c)).
- ☐ Yes ☐ No ☐ N/A
11. The design of all buildings comply or will comply with the seismic design requirements of 49 CFR § 41.120. (FAA Order 5100.38d, par. 3-92)
- ☐ Yes ☐ No ☐ N/A
12. The project specification include or will include process control and acceptance tests required for the project by as per the applicable standard:
- a. Construction and installation as contained in Advisory Circular (AC) 150/5370-10.
- ☐ Yes ☐ No ☐ N/A

b. Snow Removal Equipment as contained in AC 150/5220-20.

☐ Yes ☐ No ☐ N/A

c. Aircraft Rescue and Fire Fighting (ARFF) vehicles as contained in AC 150/5220-10.

☐ Yes ☐ No ☐ N/A

13. For construction activities within or near aircraft operational areas(AOA):

a. The Sponsor has or will prepare a construction safety and phasing plan (CSPP) conforming to Advisory Circular 150/5370-2.

b. Compliance with CSPP safety provisions has been or will be incorporated into the plans and specifications as a contractor requirement.

c. Sponsor will not initiate work until receiving FAA's concurrence with the CSPP (FAA Order 5100.38, Par. 5-29).

☐ Yes ☐ No ☐ N/A

14. The project was or will be physically completed without federal participation in costs due to errors and omissions in the plans and specifications that were foreseeable at the time of project design (49 USC §47110(b)(1) and FAA Order 5100.38d, par.3-100).

☐ Yes ☐ No ☐ N/A

Attach documentation clarifying any above item marked with "No" response.

Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and additional documentation for any item marked "no" is correct and complete.

Name of Sponsor:

Name of Sponsor's Authorized Official: {{N_es_:signer6: fullname}}

Title of Sponsor's Authorized Official: |

Signature of Sponsor's Authorized Official: |

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.



TO: Matt Wegwerth, PE
Public Works Director, City Engineer
City of Grand Rapids, Minnesota

FROM: Lindsay Reidt, PE

DATE: March 10, 2023

RE: Construction Contract Award Recommendation
SEH No. GRAIT 171180

PROJECT SCOPE:

Competitive quotes were received for the 2023 Airport Crack Seal project at the Grand Rapids-Itasca County Airport. The project includes joint and crack sealing of the bituminous pavements at the airport. Those pavements include the south taxilanes.

Quote RESULTS – 2023 Airport Crack Seal:

On Friday March 3, 2023, contractors submitted quotes for the 2023 project. The Engineer's estimate for the project was \$56,500. Three (3) quotes were received, with the results as follows:

<u>Contractor</u>	<u>Bid Amount</u>
Struck & Irwin Paving, Inc.	\$48,072.00
ASTECH	\$66,750.00
Fahrner Asphalt Sealers	\$68,800.00

SEH RECOMMENDATION:

Based on the outcome of the bids and the company reputations, it is our recommendation that the City of Grand Rapids award the 2023 Airport Crack Seal project to Struck and Irwin Paving, Inc., contingent on reception of the FAA and MnDOT Aeronautics grant.

In reliance on our experience with the contractors and information provided in the bid packages, we have determined that they have a sufficient understanding of the project and equipment to perform the construction for which it bid. SEH makes no representation or warranty as to the actual financial viability of the contractor or its ability to complete its work.

PROJECT COST SUMMARY:

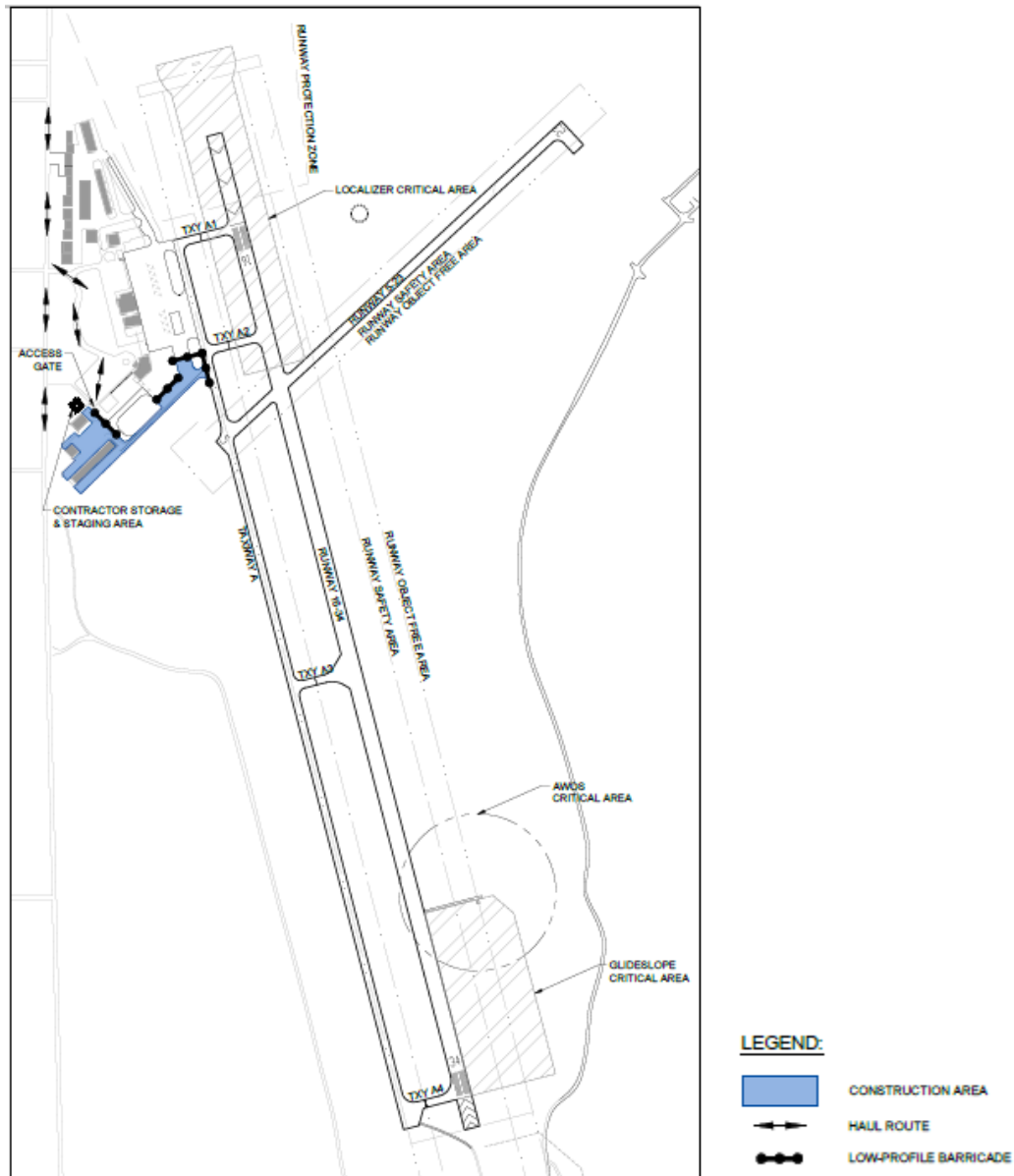
The following table summarizes the costs of the components for this year's federal and state grant:

2023 Airport Crack Seal (Struck and Irwin Paving, Inc)	\$ 48,072.00
Engineering & Construction Administration (SEH)	\$ 18,700.00
Administration (City of Grand Rapids) (estimated)	\$ 2,000.00
TOTAL PROJECT COSTS (APPROX):	\$ 68,772.00

The eligible portions of the project are anticipated to be funded by a 90 percent FAA grant. The remaining 10 percent will be split between the State and the City at 5 percent each.

AIRPORT

2023 South Taxilanes Crack Seal Project – Location Map





**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3173

DEPARTMENT: Sheriff
PRESENTER: Joe Dasovich

TIME REQUESTED: < 5 Minutes

AGENDA ITEM:
Hiring of Correctional Employees

BOARD ACTION REQUESTED:

Approve the hiring of 3 FTE Correctional Officers which are required to open the new correctional facility per the DOC Employment Study.

Discuss the housing out-of-county inmates in the new correctional facility.

BACKGROUND:

COUNTY ATTORNEY REVIEW: N/A

SUPPORTING DOCUMENTATION:

1. Cass County Per Diem
2. Jail Expansion
3. DOC Information
4. Jail Personnel Increase

07/05/2023

RESULT:	RECOMMENDED FOR REGULAR	NEXT: 07/11/2023 2:30 PM
----------------	--------------------------------	---------------------------------

2021 ESTIMATES
Daily Per Diem Costs of Fourth Housing Unit

	<u>Yearly Cost</u>		<u>Per Diem Cost</u>	<u>Number of Employeess</u>	
<u>Direct Positions</u>		Itasca			
4th Housing Unit Position	402,780.00	5.00	18.39	5	402,780
Rover Position	241,668.00	0.00	11.04	3	0.00
Subtotal	644,448.00		29.43		402780
			22.07		

<u>Indirect Positions</u>					
Program Staff	19,898.00	1.00	0.91	1	82,345.00
Booking Officer Position	17,883.00	1.00	0.82	1	
Shift Supervisor Position	21,793.00	1.00	1.00	1	
Admin Sec/Receptionist	22,630.00	2.00	1.03	1.5	
Operations Lt	25,840.00	1.18	1.18	1	
Master Control Position	89,417.00	4.10	4.08	5	
Training Officer Position	16,333.00	1.00	0.75	1	
Maintenance Position	17,010.00	1.20	0.78		
Subtotal	230,804.00	12.00	10.55		185000

<u>Operational Costs</u>				
Educational & Certifications	146.00		0.01	
Uniforms for Staff	14,696.00		0.67	
Inmate Postage	366.00		0.02	
Telephone Services	1,554.00		0.07	
Other Communications	503.00		0.02	
Membership Dues/Pub. Rel	411.00		0.02	
Inmate Meals	106,960.00		4.88	
Prof & Tech Fee - Other	4,595.00		0.21	
Mach, Equip, Software Serv	2,994.00		0.14	
Equipment and Repair	1,110.00		0.05	
Office Training Budget	5,550.00		0.25	

Machinery/equipment Rental	2,479.00		0.11	
Office Supplies	3,108.00		0.14	
Building Maintenance Supp	8,880.00		0.41	
Safety Supplies	5,328.00		0.24	
Computer Equipment	2,797.00		0.13	
Furn & Eq Other Under \$5K	2,042.00		0.09	
Medical Services	156,837.00		7.16	
Jail Inmate Supp; Lndry; Cloth	25,197.00		1.15	
Utilities @ 22.2%	62,599.00		2.86	
Sanitation	711		0.03	
Miscellaneous	19,929.00		0.91	
Subtotal	428,792.00		19.57	

Total	1,304,044.00	1,016,572.00	59.55		53.64
		287,472.00			

1. only ER transport by ambulance charge
2. other transports will be by LE
3. we will sit at hospital for first 24 hours- at your expense
4. after that your responsible
5. do not need to book back in after court
6. will provide a virtual hearing room
7. State dictates you do it and you are allowed to do the recap
8. Medications- outside cost to you
9. 6696G Standing order- once admitted then medicaid will pick up
10. Dental-emergent only roughly \$300 on the high side but you pay 100% and they don't have to leave the jail.
11. no Other hidden costs

Current Jail Staffing- 24

New Jail Staffing- 27 working Jailers

New Jail with Pod that was going to be vacant= 33

Housing

Only Itasca= Employees needed 0 more/ No Profit

Itasca and Beltrami= 0 employees needed/ Profit \$420,000

Itasca and Cass= 6 employees needed/ Profit \$ 287,492

Itasca, Beltrami, Cass= 6 employees needed/ Profit \$707,492

DOC Mandated 30 staff after a staffing analysis was performed on 06-21-23.

Current Jail Staffing- 24 line staff

New Jail Staffing- 27 w/comp replacement

New Jail with Pod that was going to be vacant= 33 line staff

(Below information is based off the jail hiring to get to 27 line staff before opening).

Housing

All housing numbers have variables and the numbers provided are best estimates.

Only Itasca= Employees needed 0 more/ No Profit

No additional information on this option is needed.

Itasca and Beltrami= 0 employees needed/ Profit \$420,000

This option would bring the most profit but also the least amount of liability. Each inmate brings a level of liability as a human being, as were responsible for their safety and welfare. We currently are in a lawsuit for the last in custody death we had. The job of a jail administrator is to deflect or limit liability of the county in regards to the correctional facility. This option for housing in has the lowest liability and again the highest profit margin.

Itasca and Cass= 6 employees needed/ Profit \$ 287,492

This option is the least profitable and adds 6 staff to the books. The jail is rarely fully staffed, and hiring has proven very challenging. Trying to hire, train, and retain 6 additional staff for this level of profit does not seem feasible in a short period. Not to mention if the jail staffing level goes down by 2 for any length of period (60 days or more) the DOC would require we close down a pod. An example of this is Mille Lacs who is running at 40% capacity as they can not hire enough staff currently. If were under contract and are forced to close down a pod due to lack of staffing, we would have to house Itasca inmates out and keep Cass's inhouse as were under contract.

Itasca, Beltrami, Cass= 6 employees needed/ Profit \$707,492

This option would bring the Itasca jail to around 90% capacity. This option would most likely put us in a position where we will be housing inmates out again. Most likely under 15 housed out per month. Itasca did a saturation this month and arrested 23 people in 8 hours. These types of events would not be possible at this level of capacity. This option also places Itasca County in the highest position for liability, by having 60 additional inmates on hand.



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3177

DEPARTMENT: Administrative Services

TIME REQUESTED: < 5 Minutes

PRESENTER: Brett Skyles

AGENDA ITEM:

Release of Claims Agreement

BOARD ACTION REQUESTED:

Approve Bryan Johnson's Release of Claims.

BACKGROUND:

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION:

1. Settlement Agreement CONFIDENTIAL

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Cory Smith
SECONDER:	Commissioner Terry Snyder
AYES:	Cory Smith, Terry Snyder, Burl Ives,
ABSENT:	John Johnson, Casey Venema



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Wednesday, July 5, 2023

REQUEST FOR BOARD ACTION: RBA-2023-3179

DEPARTMENT: Administrative Services

TIME REQUESTED: 10 Minutes

PRESENTER: Larry Sutherland

AGENDA ITEM:

Request to Submit Amicus Brief

BOARD ACTION REQUESTED:

Approve submission of an Amicus Brief in support of State of MN Court of Appeals filing, as requested by Mesabi Metallics.

BACKGROUND:

COUNTY ATTORNEY REVIEW: Yes and/or Pending

SUPPORTING DOCUMENTATION:

1. 193 Amicus curiae brief
2. 20230623 Statement of the Case(738757.1)
3. June 30, 2023 Attorney Client Privileged Memo to County Commissioners regarding Mesabi Metallics

Motion To: Approve Intent to Submit an Amicus Brief in support of State of MN Court of Appeals filing, as requested by Mesabi Metallics, reflective of Resolution #2023-26.

RESULT:	APPROVED (3 TO 0)
MOVER:	Commissioner Terry Snyder
SECONDER:	Commissioner Cory Smith
AYES:	Cory Smith, Terry Snyder, Burl Ives
ABSENT:	John Johnson, Casey Venema

5A Minn. Prac., Methods Of Practice § 1.93 (4th ed.)

Minnesota Practice Series TM | September 2022 Update

Methods Of Practice

Roger S. Haydock^{a0}

Peter B. Knapp^{a1}

Richard S. Gillman^{a2}

Chapter 1. The Appellate Process^{*}

by Diane B. Bratvold^{**} and Paula Duggan Vraa^{***}

XI. Briefs

§ 1.93. Amicus curiae brief

West's Key Number Digest

- West's Key Number Digest, [Amicus Curiae](#)³

Legal Encyclopedias

- C.J.S., [Amicus Curiae](#) §§ 1 to 2, 12 to 20

Minn.R.Civ.App.P. 129 governs the procedure for obtaining leave of the appellate courts to file an amicus curiae brief. The purpose of an amicus brief is to broaden the discussion of important points of law in cases pending before the appellate court. An amicus curiae does not participate in oral argument except with the express permission of the appellate court.¹

A request to file an amicus curiae brief must be filed with the appellate court and served upon all parties no later than 14 days after the filing of the notice of appeal, the petition initiating the appeal, or the order granting review.² Failure to serve all parties may result in denial of the request. The request should be made by motion under Rule 127, identifying the nature of the appellant's interest (public or private) and the reasons why an amicus curiae brief is desirable. The request must not exceed 1,500 words, exclusive of the caption, signature block, and any addendum, and must be accompanied by a certificate of documents length.^{2.50}

Any party to the appeal may object to the request to file an amicus brief. Once the court grants permission, the amicus brief must comply with the form set forth in [Minn.R.Civ.App.P. 131.03](#) and [132.01](#). Copies of an amicus curiae brief must be served on all parties and filed with the clerk of the appellate courts with proof of service. The brief should be filed no later than seven

days after the time allowed for filing the brief of the party supported.³ The brief must disclose whether any counsel for a party authored the brief in whole or in part and identify persons other than the amicus curiae who provided monetary contribution to its preparation or submission.⁴

The purpose of an amicus curiae brief is to inform the court of facts or matters of law that may have escaped its consideration, not to repeat or emphasize arguments already put forth by a party.⁵ An amicus may properly point out to the court practical or legal consequences of a particular decision beyond those involved in the case pending before the court. It is wise for counsel for amicus curiae to ascertain, before the amicus brief is written, the arguments which will be made by the party whose position an amicus supports so that unnecessary repetition or restatement of arguments will be avoided. The function of an amicus is best served by a non-adversarial explanation of the reasons why a particular rule, doctrine, or statutory construction advocated should be adopted, retained or abandoned. An amicus brief should not argue facts or urge that a particular party should prevail.

Amicus briefs are particularly appropriate in cases where constitutional questions are presented, where new statutes are to be construed, or where troublesome legal principles are being considered.

Oral argument by an amicus is available only with leave of the appellate court. Leave is more frequently granted in the court of appeals, particularly if the request is supported by one of the parties and the time used by the amicus is taken from the time allotted to that party for oral argument. Oral argument by an amicus is less likely to be granted if additional time is required or if there are multiple parties who have already requested additional time. The supreme court rarely grants permission for oral argument by amicus.

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Footnotes

- a0 Professor of Law, Mitchell Hamline College of Law. Director, Institute for Advanced Dispute Resolution. Member, Minnesota Bar.
- a1 Professor of Law, Mitchell Hamline College of Law. Co-Director, William Mitchell Law Clinic. Member, Minnesota Bar.
- a2 Member, Minnesota Bar.
- * Our thanks to Eric Magnuson, head of the appellate practice group at Rider Bennett, LLP. Eric kindly gave us permission to revise and update the original version of this chapter.
- ** Diane B. Bratvold is a judge on the Minnesota Court of Appeals. Before her appointment to the appellate court in 2016, she was a judge for the Fourth Judicial District beginning in 2014. She received her law degree from the University of Minnesota Law School. After law school, she was in private practice at Briggs and Morgan, Rider Bennett LLP, and Fetterly & Gordon.
- *** Paula Duggan Vraa is a district court judge in the First Judicial District. Before her appointment to the bench, she was in private practice, concentrating on civil litigation and appellate matters. She is a former appellate law clerk to Judge Harriet Lansing and Judge Jack Davies. She received her law degree from William Mitchell College of Law in 1991.
- 1 [Minn.R.Civ.App.P. 129.04.](#)
- 2 [Minn.R.Civ.App.P. 129.01.](#)
- 2.50 [Minn.R.Civ.App.P. 129.01.](#)

- 3 Minn.R.Civ.App.P. 129.02.
- 4 Minn.R.Civ.App.P. 129.03.
- 5 See *State v. Finley*, 242 Minn. 288, 64 N.W.2d 769 (1954).

End of Document

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STATE OF MINNESOTA
IN COURT OF APPEALS

FILED

June 23, 2023

OFFICE OF
APPELLATE COURTS

Mesabi Metallics Company LLC,

STATEMENT OF THE CASE

Relator,

Court of Appeals No. _____

v.

Date of Decision:

May 25, 2023

Minnesota Department of Natural
Resources; Sarah Strommen,
Commissioner of the Minnesota
Department of Natural Resources; and
Cleveland-Cliffs Minnesota Land
Development LLC,

Respondents.

1. Court or agency of case origination and name of presiding judge or hearing officer:

Minnesota Department of Natural Resources (“DNR”)

DNR Commissioner Sarah Strommen (“Commissioner”)

2. Jurisdictional statement:

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

This certiorari appeal is authorized by Minnesota Statute section (“Minn. Stat. §”) 93.50, the Minnesota Administrative Procedure Act (“APA”), Minn. Stat. §§ 14.63–.69, Minn. Stat. § 606.06, and Minnesota Rules of Civil Appellate Procedure 103 and 115. “Any person aggrieved by any final order, ruling, or decision of the [Commissioner of the

DNR] may obtain judicial review of such . . . decision under [the Minnesota APA].” Minn. Stat. § 93.50.

Relator Mesabi Metallics Company, LLC (“Mesabi”) appeals the Commissioner’s decision to award 30 state taconite iron ore mining leases in Itasca County (the “Leases”) to Cleveland-Cliffs Minnesota Land Development LLC (“Cliffs”). Commissioner findings are a necessary component of valid negotiated leases under Minn. Stat. § 93.1925, subd. 1 and the Commissioner’s decision is reviewable pursuant to Minn. Stat. § 93.50. The decision is also reviewable pursuant to Minnesota Statute section 606.06.

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, e.g. mailing of decision, receipt of decision, or receipt of other notice):

The Minnesota APA provides that a petition for writ of certiorari must be filed and served “not more than 30 days after the party receives the final decision and order of the agency.” Minn. Stat. § 14.63.¹ The DNR submitted its decision to issue the Leases to Cliffs for Executive Council approval on May 25, 2023, and the Executive Council approved the DNR’s decision on that date. Relator received notice through a local news article on June 7, 2023 that the DNR and Cliffs had executed the Leases.²

¹ In the alternative, under Minn. Stat. § 606.01, the applicable time period is 60 days after the party applying for the writ of certiorari received due notice of the proceeding to be reviewed. Minn. Stat. § 606.01.

² Relator has submitted a request for a copy of the executed Leases, pursuant to the Minnesota Government Data Practices Act. See Minn. Stat. § 13.

(D) Finality of order of judgment.

The DNR decision to be reviewed disposes of all claims by and against all parties, including attorney fees, with respect to the Commissioner's award of the Leases.

3. State type of litigation and designate any statutes at issue:

This is a certiorari appeal from the decision of the Commissioner to award all 30 Leases in Itasca County to Cliffs. This litigation pertains to violation of Minn. Stat. § 93.1925 by the Commissioner of DNR, which requires specific factors to be met before the Commissioner may issue a mining lease through negotiations with an applicant. The decision is subject to judicial review pursuant to Minn. Stat. §§ 93.50 and 14.69.

4. Brief description of claims, defenses, issues litigated, and result below:

Minn. Stat. § 93.1925 limits the conditions under which a decision to issue a taconite iron ore mining lease through negotiations with a party can be taken —as opposed to a public sale process under Minn. Stat. § 93.16. Minn. Stat. § 93.1925 requires specific factual findings prior to issuing negotiated leases to applicants. Specifically, the statute provides:

Subdivision 1. Conditions required.

When the commissioner finds that the best interests of the state will be served and the circumstances in clause (1), (2), or (3) exist, the commissioner, with the approval of the Executive Council, may issue an iron ore or taconite iron ore mining lease through negotiations to an applicant. A lease may be issued through negotiations under any of the following circumstances:

(1) the state taconite iron ore is adjacent to taconite iron ore owned or leased for mining purposes by the applicant and the commissioner finds that it is impracticable to mine the state

taconite iron ore except in conjunction with the mining of the adjacent ore;

(2) the lands to be leased are primarily valuable for their natural iron ore content; or

(3) the state's mineral ownership interest in the lands to be leased is an undivided fractional interest and the applicant holds under control a majority of the remaining undivided fractional mineral interests in the lands to be leased.

Minn. Stat. § 93.1925, subd. 1 (emphasis added).

Here the DNR relied on the first and third clauses of Minn. Stat. § 93.1925, subd. 1.

The Leases state:

The Commissioner of Natural Resources, pursuant to Minnesota Statutes 2022, section 93.1925, has found the state taconite ore is adjacent to taconite ore owned or leased for mining purposes by the applicant and the commissioner finds it is impracticable to mine the state taconite iron ore except in conjunction with the mining of the adjacent ore.

In advance of the DNR's submission of its decision to the Executive Council, multiple parties and organizations with varied interests provided public comments opposing the decision to award the Leases to Cliffs. In addition to Relator, these parties included many entities with mining and business interests in the region, including Itasca County (where the Leases are located), Scranton Holding Company ("Scranton"), multiple labor unions, the City of Nashwauk, and the Western Mesabi Mine Planning Board.

As explained below, the decision of the DNR to award negotiated leases to Cliffs without meeting the specific conditions as required under Minn. Stat. 93.1925 exceeded the statutory authority of the agency. Minn. Stat. § 14.69(b). The decision of DNR to award all 30 Leases to Cliffs in one block without meeting the statutory conditions for entering into a negotiated lease under Minn. Stat. § 93.1925 with respect to each individual

lease was made upon unlawful procedure. Minn. Stat. § 14.69 (c) The DNR’s decision is affected by other errors of law, is unsupported by substantial record evidence, and is arbitrary and capricious. Minn. Stat. § 14.69 (d), (e), (f). For these reasons, the Commissioner’s decision to award the Leases should be remanded to the DNR for further proceedings to determine on a lease-by-lease basis whether the statutory prerequisites have been met.

A. The Conditions of Minn. Stat. § 93.1925 Are Not Met Because (a) Cliffs’ Rights in the Lands Adjacent to the State Ore Are Currently Restricted and (b) it is Practicable for Other Entities to Mine the State Leases.

As illustrated below, the Leases do not satisfy the statutory requirements in several respects.

First, Minn. Stat. § 93.15 requires that each state taconite iron ore lease to be awarded must satisfy the specific conditions under Minn. Stat. § 93.1925. The DNR exceeded its statutory authority by determining that the 30 Leases be issued to Cliffs as a single package without determining that each such lease met the statutory requirements for negotiated leases. Minn. Stat. § 93.1925 provides that “*a lease* may be issued through negotiations” where the statutory requirements are met. (Emphasis added). Separately, Minn. Stat. § 93.15 requires that each “mining unit” as designated by the state be covered by a separate lease. Accordingly, this necessarily requires that the DNR separately consider the statutory factors under Minn. Stat. § 93.1925 for each separate lease. Relator and Scranton both submitted public comments to the DNR that for several leases, it is practicable for other parties to mine these leases and therefore that the conditions under Minn. Stat. § 93.1925 have not been met for all 30 Leases. Relator supports the underlying

reason of the award of *some* state taconite leases to Cliffs in order to support Hibbing Taconite jobs, but the decision of awarding *all* the Leases (even those six leases within Relator's permit to mine area) exceeds the DNR's authority under the statute, as the conditions under Minn. Stat. § 93.1925 have not been met.

Second, even though several leases of the state taconite iron ore are not adjacent to taconite iron ore owned or leased for mining purposes by Cliffs, the DNR included in the Leases state parcels that are not adjacent to any parcel in which Cliffs has an interest.³ As noted in Minn. Stat. § 93.1925(1), "A lease may be issued through negotiations . . . [if] the state taconite iron ore is **adjacent to** taconite iron ore owned or leased for mining purposes by the applicant and the commissioner finds that it is impracticable to mine the state taconite iron ore except in conjunction with the mining of the **adjacent ore**[" (Emphasis added). The leasing of state parcels that are not adjacent to any Cliffs parcel is beyond the DNR's statutory authority and an error of law.

Third, the adjacent parcels cannot be mined by Cliffs due to various pending litigation, let alone satisfy the condition that the state parcels can only be mined in conjunction with mining of such adjacent parcels. It must be observed that Cliffs does not have any mining rights for the taconite iron ore that is adjacent to the state taconite iron ore because Cliffs' rights in adjacent parcels are limited and subject to continuing stay in ongoing legal disputes in litigation pending in other jurisdictions, which prevents Cliffs

³ An opinion by the Trenti Law Firm contained in the public comment submissions to the DNR demonstrates that the statutory prerequisites for negotiated leases that the DNR relied upon have not, in fact, been satisfied.

from mining the land. Cliffs' adjacent parcels fall into two categories: (1) parcels that are jointly-owned with Mesabi and (2) parcels in Mesabi's project area for which Cliffs purportedly obtained lease rights from a third party. Cliffs' rights in both categories are subject to the outcome of pending litigation elsewhere.

The parcels that are jointly-owned with Mesabi are subject to an action under Minn. Stat. Ch. 560 to determine who between Mesabi and Cliffs has the right to mine the parcels. This 560 Action is currently pending in Delaware bankruptcy court and has been informally stayed pending resolution of antitrust litigation brought by Mesabi against Cliffs, pending in the same court. *See Mesabi Metallica Co. LLC v. Cleveland-Cliffs, Inc.*, Adv. Pro. No. 17-51210-CTG (Bankr. D. Del.) (the "Antitrust Litigation"). Notably, the Ramsey County District Court issued a stay in litigation brought by Cliffs in 2018 regarding Mesabi's project because of the dispute over Cliffs' legal rights in those jointly owned parcels. In that matter, the Court found that the disputed status of Cliff's rights in those parcels is "squarely before the federal courts of Delaware" and that a stay was warranted to "avoid the risk of inconsistent determinations." *Cleveland-Cliffs Minn. Land. Dev., LLC v. Mesabi Metallica Co., LLC*, No. 62-CV-18-7473, Order Granting a Stay, at 7 (Ramsey Cty. Ct. July 31, 2019).

The lands that Cliffs acquired in Mesabi's project area from a third party are subject to challenge in the Antitrust Litigation. As part of that litigation, Mesabi is seeking to avoid the transfer of such lands to Cliffs on a number of grounds, including that Cliffs violated the antitrust laws. The status of Cliffs' property rights in the parcels adjacent to state land will have a material impact on compliance with the Minnesota statutory factors,

and only once these legal disputes are resolved will there be clarity as to Cliffs' property rights and ability to mine many of the state parcels.

Fourth, the DNR has erroneously concluded that the state parcels can only practicably be mined in conjunction with Cliffs' adjacent lands. Unless the legal challenge to the status of the disputed parcels is resolved in Cliffs' favor in Delaware, Cliffs will not have property rights that support such mining, and thus will be incapable of mining the state Leases. Moreover, it is simply incorrect that mining the state parcels would be impracticable except in conjunction with Cliffs' adjacent ore. Even if Cliffs had undisputed rights to the adjacent ore, there are other parties situated to practicably mine the state parcels. Another mining company from the Iron Range—Scranton—has also submitted the same argument to the DNR that it is practical for other parties also to mine the state mineral leases.

Finally, the state Leases in general also do not meet the conditions of the third clause of the statute, which requires "the state's mineral ownership interest in the lands to be leased is an undivided fractional interest and the applicant holds under control a majority of the remaining undivided fractional mineral interests in the lands to be leased." Minn. Stat. § 93.1925, subd. 1(3). This is due to pending litigation regarding the ownership of such parcels.

Given the fact that some of the leased parcels are not adjacent to any Cliffs parcel, along with the disputed nature of Cliff's property and mining rights in other adjacent parcels, the transaction does not meet the requirements prescribed by Minnesota law. The DNR has not demonstrated the satisfaction of the Minnesota Statutes for the award of

negotiated leases and there is substantial evidence to the contrary. Accordingly, Mesabi respectfully requests that the Commissioner's decision be remanded to the DNR for further proceedings to determine on a lease-by-lease basis that all statutory prerequisites have been met. Minn. Stat. § 14.69.

5. List specific issues proposed to be raised on appeal.

The issues to be considered include, but are not limited to:

Whether the DNR's decision to award the Leases to Cliffs exceeded the DNR's statutory authority, was made upon unlawful procedure, is unsupported by substantial evidence, and/or is arbitrary and capricious under Minn. Stat. § 14.69 because the Leases do not meet the conditions set forth in clauses (1) or (3) of Minn. Stat. § 93.1925.

6. Related appeals:

None.

7. Contents of Record.

Is a transcript necessary to review the issues on appeal? Yes () No (X) Relator has been informed by the Executive Council that there is no recording or transcript of the May 25, 2023 meeting where the DNR presented its decision.

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes () No (X)

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No (X)

8. Is oral argument requested?

Yes (X) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (X)

9. Identify the type of brief to be filed.

Formal brief under Rule 128.08.

10. Names, addresses, and telephone numbers of attorney for appellant and respondent.

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Dated: June 23, 2023

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