

**AGENDA  
OF THE CITY  
COUNCIL WORK SESSION  
CITY OF EAST GRAND FORKS  
TUESDAY, FEBRUARY 9, 2016 – 5:00 PM**

**CALL TO ORDER:**

**CALL OF ROLL:**

**DETERMINATION OF A QUORUM:**

- 1. Interconnect Presentation – David Murphy**
- 2. Amend Transportation Improvement Program – Steve Emery**
- 3. Intermediary Relending Program – Paul Gorte**
- 4. Pine to Prairie Drug Task Forks Joint Powers Agreement – Mike Hedlund**
- 5. Grand Forks Regional Special Operations Group Joint Powers Agreement – Mike Hedlund**
- 6. Other**

**ADJOURN:**

**Upcoming Meetings**

Regular Council Meeting – February 16, 2016 – 5:00 PM – Council Chambers  
Work Session – February 23, 2016 – 5:00 PM – Training Room  
Regular Council Meeting – March 1, 2016 – 5:00 PM – Council Chambers  
Work Session – March 8, 2016 – 5:00 PM – Training Room

# Request for Council Action

Date: February 9, 2016

To: East Grand Forks City Council Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: City Administrator David Murphy

RE: Wastewater Intergovernmental Agreement.

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## Background

On July 20<sup>th</sup>, 2015 the City of Grand Forks, at the request of East Grand Forks City Council (See Attachment 1) authorized AE2S to provide the City of Grand Forks and East Grand Forks with Cost of Service Analysis (COSA) finalization, rate design, intergovernmental agreement review, and facility plan assistance for the GF/EGF Wastewater Interconnect Project (See Attachment 2).

## Staff Report and Findings

**Cost of Service Analysis (COSA) Finalization.** Evaluations and COSA model revisions have been made based on input from City staff. A summary of the results were presented at a Grand Forks/East Grand Forks City Council Wastewater Interconnect Project Working Meeting on January 14, 2016 (See Attachment 3)

**Rate Design.** Utilizing the results of the finalized COSA, a rate design and structure have been developed that relate to the recovery of costs for the City of Grand Forks to accept, monitor, convey and treat the City of East Grand Forks' wastewater. A summary of this information was also provided at the Grand Forks/East Grand Forks City Council Wastewater Interconnect Project Working Meeting on January 14, 2016

**Intermunicipal Agreement.** An intermunicipal agreement related to the conveyance, treatment and regulation of wastewater between the Cities of Grand Forks, North Dakota and East Grand Forks, Minnesota has been developed collaboratively between representatives of the Cities of Grand Forks and East Grand Forks and the respective legal counsels. (See Attachment 4) Maps of the project are included in the agreement as an Exhibit. (See Attachment 5) The 2016 Budget Year COSA is also

included as an Exhibit. (Attachment 6 to be distributed 2/9/2016) Based upon results of the Budget Year 2016 COSA of \$410,947.00 with the following rates.

Monthly base fee charge	\$2,887.00
Volumetric charge in dollars per 1,000 gallons	\$1.10

The baseline fixed capacity allocation for the City of East Grand Forks is 1.2 million gallons per day (MGD). The City of East Grand Forks will be responsible for the bidding and construction of the entire interconnect project, including the interconnect infrastructure to be owned, operated and maintained by the City of Grand Forks. The total cost of the project is estimated to be \$10,675,981.00; approximately \$1,200,000.00 of that total is to be constructed in the City of Grand Forks. (See Attachment 7) Grand Forks and East Grand Forks will execute a Memorandum of Understanding (MOU), which outlines the requirements associated with the bidding, construction, financing, ownership and transfer of ownership of the Interconnect Project. (Attachment 8 to be distributed 2/9/2016) Additionally, as incorporated in the agreement, an Industrial Wastewater Permit will be issued by Grand Forks to East Grand Forks upon receipt and review of their application. (See Attachment 9)

**EGF Facility Plan Update and Assistance.** Representatives of the City of Grand Forks provided East Grand Forks with assistance related to wastewater forcemain mapping for portions of the interconnect project that are routed within the City of Grand Forks' Right of Way. This information was used to complete sections of East Grand Forks' Facility plan as required by the Minnesota Pollution Control Agency (MPCA) and the Minnesota Public Finance Authority (PFA). The State of Minnesota, including MPCA and PFA, has been supporting of the interconnect project.

The City of Grand Forks is working in parallel with the City of East Grand Forks on the approval process.

The estimated Interconnect Project timeline is as follows:  
March/April 2016 – Project Bidding and Bid Approval  
June 2016 – Project Construction Start  
Fall 2016 – Project Substantial Completion  
Spring 2017 – Project Final Completion

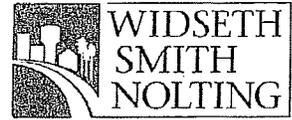
**Budget Impact**

No changes in fees from early projections presented to council with a grant from the State of Minnesota. Without a State grant fees will need to be researched and adjusted.

**Action Required**

Recommendation for approval of the agreement.

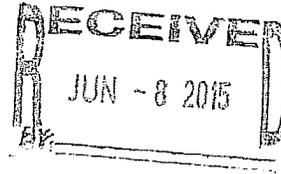
Attachment 1



East Grand Forks  
1600 Central Avenue NE  
East Grand Forks, MN 56721-1570

218.773.1185   
218.773.3348   
EastGrandForks@wsn.us.com

WidsethSmithNolting.com



June 5, 2015

Mr. Al Grasser  
City Engineer  
City of Grand Forks Engineering Department  
255 N 4<sup>th</sup> Street  
PO Box 5200  
Grand Forks, ND 58203

RE: Proposed Wastewater Interconnect  
East Grand Forks, MN

Dear Mr. Grasser:

The City of East Grand Forks is proposing to install an interconnect with the City of Grand Forks, ND to treat the sanitary sewer waste (East Grand Forks is proposing to abandon their stabilization ponds). The City of East Grand Forks has an approved Facility Plan (2006, 2011, 2013) from Minnesota Pollution Control Agency (MPCA), however due to the change to the treatment process, we must get the review as part of the Environmental Review Process as required by MPCA.

Therefore, please review the attached maps for the above mentioned project and provide any comments or concerns you may have. Please provide any comments by June 19, 2015.

If you have any questions, or if additional information is needed, please contact our office.

Respectfully yours,  
Widseth Smith Nolting & Associates, Inc.

A handwritten signature in black ink, appearing to read "Greg Bopppe".  
\_\_\_\_\_  
Greg Bopppe, P.E.

GB:kmu

Enc.



**City of Grand Forks  
Staff Report**

**Service/Safety Committee – July 14, 2015  
City Council – July 20, 2015**

**APPROVED & ACCEPTED  
by City Council**

7/20/2015

*Maureen Storstad*  
Maureen Storstad  
City Auditor

**Agenda Item: GF/EGF Wastewater Interconnect Project Finalization Services Agreement  
(City Project No. 7447)**

**Submitted by:** Todd Feland, City Administrator

**Staff Recommended Action:** Approve the Professional Services Agreement with AE2S in the not to exceed amount of \$27,530.00 to provide support services for cost of services analysis (COSA) finalization, rate design, intergovernmental agreement review, and facility plan assistance, subject to City Attorney's Office review and approval. The Cities of Grand Forks and East Grand Forks will split the costs of the agreement on a 50/50 cost share basis.

**Committee Recommended Action:**

It was moved by Bjerke and Schneider to approve the professional services agreement with AE2S in an amount not to exceed \$27,530, and to refer to City Council. Motion carried. Vein recused.

**Council Action:**

**BACKGROUND:**

During the 2010 to 2011 time frame, representatives of the Cities of Grand Forks and East Grand Forks worked in a collaborative manner on a potential Grand Forks/East Grand Forks Wastewater Interconnect Project. In 2011, City of East Grand Forks staff and consultant made a recommendation to the City of East Grand Forks City Council to do the following: (1) Approve amendment to 2006 Facility Plan to include/recommend Interconnect project; (2) Grand Forks/East Grand Forks City Councils to proceed with (a) COSA finalization, (b) Grand Forks service to East Grand Forks rate design, (c) Initiate Draft Intergovernmental Agreement, and (d) Per North Dakota Department of Health (NDDH), initiate Industrial Pretreatment Program (IPP) Agreement with East Grand Forks.

Based on the analysis in 2011, the GF/EGF Wastewater Interconnect provided active treatment and required pump station and force main improvements and pond decommissioning and equalization basin construction for an estimated \$9.7 million in construction cost and \$447,000 in annual cost of service from Grand Forks. The average rate increase was projected to be

\$15/month for the typical residential user.

Ultimately in 2011, the City of East Grand Forks City Council decided to move forward with an East Grand Forks only project, which was Phase 2 Pond Upgrade (passive treatment). The plan called for a construction cost of approximately \$15.4 million construction cost and the average rate increase was project to be \$17/month for the typical residential user.

Since 2011, the construction cost estimate of the Phase 2 Pond Upgrade Project (passive treatment) has increased substantially, which has reopened additional alternatives for consideration, including an East Grand Forks mechanical wastewater treatment option (Active Treatment) and revisiting the Grand Forks/East Grand Forks Wastewater Interconnect.

The City of East Grand Forks City Council passed a motion on February 17, 2015 to direct representatives from the City of East Grand Forks City Council to formally request that the City of Grand Forks update the previously submitted COSA and to request that the City of Grand Forks cover the cost of the update. On March 2, 2015, Grand Forks City Council approved the request to update the previously submitted COSA at a 50/50 cost share, and the City of East Grand Forks subsequently agreed to the 50/50 cost share.

City of Grand Forks and AE2S representatives met with the East Grand Forks City Council on April 23, 2015 and provided a Power Point briefing on the draft and updated GF/EGF Wastewater Interconnect Project COSA. The 2015 COSA to provide services to East Grand Forks was estimated at \$516,185 (See attached City of Grand Forks Wastewater Service to East Grand Forks Draft Cost of Service Analysis Results Power Point dated April 23, 2015). On June 2, 2015, the East Grand Forks City Council unanimously approved moving forward with the wastewater interconnect project with the City of Grand Forks versus upgrading its lagoons or building a mechanical wastewater treatment plant.

In order to finalize the GF/EGF Wastewater Interconnect Project, the COSA needs to be finalized along with an associated rate design and these cost and rate methods need to be incorporated as part of an overall intergovernmental agreement with East Grand Forks. The City of East Grand Forks needs to submit a facility plan to the State of Minnesota and will need support and assistance from the City of Grand Forks. AE2S will provide this support to the City of Grand Forks in the not to exceed amount of \$27,530, and the City of East Grand Forks will share these expenses in a 50/50 cost share. The GF/EGF Wastewater Interconnect Project is expected to begin construction in 2016 with a project completion in the 2016/2017 timeframe.

On behalf of the City of Grand Forks, City Attorney Howard Swanson will help lead the development of the intergovernmental agreement and the City of East Grand Forks will retain its own respective legal representation.

#### **ANALYSIS AND FINDINGS OF FACT:**

**The AE2S will provide the following outlined and supportive professional services:**

- **Cost of Service Analysis (COSA) Finalization** - Perform various evaluations as they relate to the finalization of the Draft Interconnect COSA that has been performed to date under a separate contract. The complete extent of scope for the COSA finalization is somewhat undefined; therefore hours have been budgeted for AE2S to include:
  - i. COSA model revisions requiring no more than forty (40) hours of analyst time;
  - ii. Participation in approximately (3) meetings;
  - iii. Preparation of meeting materials such as Power Point slides and/or handouts; and

- iv. Preparation of a summary memorandum documenting the results of the Final COSA results.
- **Rate Design** – Utilizing the results of the finalized COSA, AE2S will assist the City of Grand Forks to develop a proposed rate design for the City of East Grand Forks relating to the recovery of costs on both a fixed and variable basis for the City of Grand Forks to accept, monitor, convey, and treat the City of East Grand Forks' wastewater. It is expected that the rate design process will include the following components:
  - i. One (1) dedicated meeting with the City to establish rate design objectives;
  - ii. Development/assessment of rate structure alternatives;
  - iii. Assess sensitivity of proposed rate structure alternatives;
  - iv. Develop recommended rate structure; and
  - v. Prepare summary memorandum documenting rate structure recommendations.
- **Intergovernmental Agreement Assistance** – AE2S will assist City representatives and the City Attorney in the review and revision of an intergovernmental agreement (to be drafted by the City Attorney) between City of Grand Forks and the City of East Grand Forks related to the conditions set forth for the City of Grand Forks to provide wastewater service to the City of East Grand Forks. It is expected that AE2S will participate in a number of meetings (4 have been assumed for the purposes of this Agreement) and various reviews and comment (2 review cycles have been assumed for the purposes of this Agreement) of the intergovernmental agreement prior to its execution.
- **EGF Facility Plan Update Assistance** – AE2S will assist the City of East Grand Forks with the completion of portions of their facility plan as required by the Minnesota Pollution Control Agency and the Minnesota Public Finance Authority. Specific assistance to be offered includes the following:
  - i. Force main route mapping assistance for portions of interconnect that are anticipated to be routed within City of Grand Forks' Right of Way;
  - ii. Present worth financial evaluations related to elements of the COSA that will be analyzed similar to other non-interconnect related alternatives within the Facility Plan.
  - iii. Assistance with documentation of the present worth analysis for incorporation into the Facility Plan.

**SUPPORT MATERIALS:**

- City of Grand Forks Wastewater Service to East Grand Forks Draft Cost of Service Analysis Results Power Point dated April 23, 2015.
- Professional Services Agreement with AE2S and related attachments.

*Attachment 3*

# **GF/EGF WASTEWATER INTERCONNECT PROJECT**

## **2016 Cost of Service Results Summary**

**January 14, 2016**

# **COSA Methodology**

- An Industry standard cost of service analysis (COSA) was used to allocate revenue requirements to the user classes, including East Grand Forks, of the Grand Forks Wastewater System
- Revenue Requirements allocated based on the proportional benefit to each user class
- Methodology supported by the American Water Works Association (AWWA) and Water Environment Federation (WEF)

# Previous COSA Results 2015 Budget

Total Costs	Grand Forks	East Grand Forks	Total
Customer	\$1,073,756	\$9,708	\$1,083,464
Customer %	99.1%	0.9%	100%
Collection	\$1,405,738	\$5,787	\$1,411,525
Collection %	99.6%	0.4%	100%
Pumping	\$2,251,072	\$28,925	\$2,279,996
Pumping %	98.7%	1.3%	100%
Treatment	\$4,930,517	\$357,248	\$5,287,765
Treatment %	93.2%	6.8%	100%
Solids	-	-	-
Solids %	-	-	-
Assigned – IPP	\$223,904	\$34,060	\$257,964
Assigned – EGF	\$0	\$80,457	\$80,457
Total Cost	\$9,884,986	\$516,185	\$10,401,172
Total % Cost	95.0%	5.0%	100%

# COSA Revisions

1. Removed EGF Assigned Cost for Forcemain Debt Service (\$80,457)
  - EGF now intends to finance this portion of the project
2. Updated COSA model with 2016 budget (versus 2015 as previously presented)
  - 2016 budget less than 2015 budget primarily due to reduction in annual rate funded capital (Pump Station rehab, Headworks rehab, Biosolids Pilot, etc.)
3. Reduced EGF's variable flow from 1.16 MGD to 0.94 MGD based on EGF's average flows from 2012-2014

# Test Year Comparison

Budget Subdivision	Previous (2015)	Updated (2016)
Administration - O&M	\$2,228,840	\$2,111,567
Administration - Debt	\$3,256,863	\$3,312,026
Collection System	\$537,690	\$602,758
Pumping	\$1,332,713	\$1,077,643
Forcemain	\$347,327	\$366,238
Wastewater Treatment (General)	\$280,200	\$299,900
Headworks	\$557,201	\$361,306
Treatment	\$568,703	\$620,122
Clarification	\$516,796	\$560,642
Effluent Management	\$271,653	\$222,629
Lab - Treatment	\$177,256	\$241,763
Lab - IPP	\$159,047	\$136,829
<b>Total Wastewater Budget</b>	<b>\$10,234,289</b>	<b>\$9,913,423</b>
EGF Assigned Forcemain Cost	\$80,457	\$0
EGF Incremental Chemicals & Electricity	\$86,427	\$74,883
<b>Total Test Year Cost</b>	<b>\$10,401,172</b>	<b>\$9,988,306</b>

# COSA Results

## GF vs EGF - 2016 Test Year

Total Costs	Grand Forks		East Grand Forks		Total
Customer	\$1,024,817		\$9,265		\$1,034,082
Customer %	99.1%		0.9%		100%
Collection	\$1,472,929		\$5,874		\$1,478,803
Collection %	99.6%		0.4%		100%
Pumping	\$1,862,478		\$25,535		\$1,888,013
Pumping %	98.6%		1.4%		100%
Treatment	\$4,870,058		\$335,783		\$5,205,841
Treatment %	93.5%		6.5%		100%
Solids	\$140,884		\$9,116		\$150,000
Solids %	93.9%		6.1%		100%
Assigned – IPP	\$206,193		\$25,373		\$231,566
Assigned – EGF	\$0		\$0		\$0
<b>Total Cost</b>	<b>\$9,577,359</b>		<b>\$410,947</b>		<b>\$9,988,306</b>
<b>Total % Cost</b>	<b>95.9%</b>		<b>4.1%</b>		<b>100%</b>

# Rate Design

- EGF Cost of Service to be recouped through a monthly minimum charge and a volumetric rate per kgal
- “Customer” and “IPP” cost included in the minimum, with remaining costs captured through volumetric rate

Category	EGF Allocated Cost
Customer	\$9,265
Collection	\$5,874
Pumping	\$25,535
Treatment	\$335,783
Solids	\$9,116
IPP	\$25,373
<b>Total Cost</b>	<b>\$410,947</b>

# Rate Calculations

Category	EGF Allocated Cost
Customer	\$9,265
Collection	\$5,874
Pumping	\$25,535
Treatment	\$335,783
Solids	\$9,116
IPP	\$25,373
<b>Total Cost</b>	<b>\$410,947</b>

Monthly Minimum:	
Total Annual Cost	\$34,639
Monthly Fixed Charge	\$2,887
<b>Volumetric Rate:</b>	
Total Annual Cost	\$376,308
Volume (1,000 Gallons)	343,100
Unit Charge per Kgal	\$1.10
<b>Total</b>	<b>\$410,947</b>

# Rate Sensitivity

**Two sensitivity analyses were completed at varying discharge volumes:**

1. Low Volume
  - Volume discharged lower than planned - 10-year average annual minimum (0.80 MGD)
2. High Volume
  - Volume discharged higher than planned – 10-year average annual maximum (1.5 MGD)

<b>Sensitivity #1: Low Volume</b>	
Volume Discharged	0.8 MGD
Total EGF Cost	\$354,901
<b>Sensitivity #2: High Volume</b>	
Volume Discharged	1.5 MGD
Total EGF Cost	\$515,032

# The Benefit of Reserved Capacity

1. 1.2 MGD (and corresponding domestic strength loadings) is basis for fixed cost allocation to EGF for presented 2016 Cost of Service
2. EGF could elect to request an option to reserve additional capacity for its future use/benefit (i.e. domestic growth or new business attraction)
3. Fixed cost allocation would be adjusted accordingly to assign EGF its appropriate share of fixed cost based on elected capacity

# Reserved Capacity Scenario

- Additional COSA scenario completed based on incorporating additional capacity for East Grand Forks to serve as reserved capacity
- Increased EGF's Fixed Capacity from 1.2 MGD to 1.6 MGD
- Additional 0.4 MGD based upon potential future Residential/Commercial/Industrial\* User flows provided by EGF

*\*Industrial flows subject to further review  
by GF for strength considerations*

# Reserved Capacity Scenario EGF 1.2 MGD vs 1.6 MGD

Total Costs		East Grand Forks – 1.2 MGD	East Grand Forks – 1.6 MGD
Customer		\$9,265	\$9,265
Customer %		0.9%	0.9%
Collection		\$5,874	\$7,832
Collection %		0.4%	0.5%
Pumping		\$25,535	\$28,320
Pumping %		1.4%	1.5%
Treatment		\$335,783	\$416,206
Treatment %		6.5%	8.0%
Solids		\$9,116	\$11,914
Solids%		6.1%	7.9%
Assigned – IPP		\$25,373	\$25,373
<b>Total Cost</b>		<b>\$410,847</b>	<b>\$498,910</b>
<b>Total % Cost</b>		<b>4.1%</b>	<b>5.0%</b>

**INTERMUNICIPAL AGREEMENT**  
**FOR CONVEYANCE AND TREATMENT OF WASTEWATER**  
**BETWEEN THE CITIES OF GRAND FORKS, NORTH DAKOTA**  
**AND EAST GRAND FORKS, MINNESOTA**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between the **City of Grand Forks, North Dakota**, a North Dakota municipal corporation, hereinafter referred to as “Grand Forks” and the **City of East Grand Forks Minnesota**, a Minnesota municipal corporation, hereinafter referred to as “East Grand Forks”.

WITNESSETH:

WHEREAS, Grand Forks owns and operates a Wastewater system, including facilities for the conveyance and treatment of domestic, commercial and industrial Wastewater;

WHEREAS, the Grand Forks Wastewater System has capacity for the conveyance and treatment of additional Wastewater;

WHEREAS, East Grand Forks is in need of services and capacity for the treatment of Wastewater;

WHEREAS, Grand Forks and East Grand Forks deem it to be in the public interest to enter into this Agreement whereby Grand Forks would receive and treat East Grand Forks’ Wastewater;

WHEREAS, East Grand Forks has agreed to pay the costs of the interconnection of the systems and to pay for treatment services and expenses for the domestic, commercial and industrial wastewater generated and conveyed through the East Grand Forks Wastewater system;

WHEREAS, Grand Forks and East Grand Forks intend to work cooperatively to provide their citizens with safe, effective, and environmentally sound wastewater treatment services;

WHEREAS, Grand Forks will consider East Grand Forks a user of its Wastewater System, and as such, East Grand Forks will be regarded in the same manner as other users of Grand Forks' Wastewater System in regards to cost of service based rate setting and surcharges;

WHEREAS, Grand Forks and East Grand Forks desire to comply with all applicable federal and state requirements dealing with Wastewater treatment and pollution control;

WHEREAS, Grand Forks and East Grand Forks recognize the public interests to be served and the economic savings to be recognized by avoiding duplication of services and facilities;

NOW, THEREFORE, In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed by and between Grand Forks and East Grand Forks as follows:

**Article 1. Definitions.** For the purpose of this Agreement the following terms are defined as follows:

*Agreement* shall mean this Intermunicipal Agreement for Conveyance and Treatment of Wastewater Between the Cities of Grand Forks, North Dakota and the City of East Grand Forks, Minnesota.

*Budget Year* shall mean from January 1 thru December 31 of the specified calendar year.

*Connection Point* shall mean a point of connection between the City of East Grand Forks and City of Grand Forks Wastewater Systems located at the first isolation gate valve on the dedicated Grand Forks and East Grand Forks Wastewater Interconnect Forcemain located

immediately exterior to the City of Grand Forks flood protection system (See Exhibit 1). The Connection Point shall delineate the point of ownership, operation, and maintenance responsibility transfer between the City of East Grand Forks Wastewater System and the City of Grand Forks Wastewater System.

*East Grand Forks* shall mean the City of East Grand Forks, Minnesota.

*East Grand Forks Master Wastewater Pump Station* shall mean the pumping facility located near the City of East Grand Forks treatment ponds (See Exhibit 1) that pumps East Grand Forks wastewater through the East Grand Forks Wastewater Interconnect Forcemain to the Connection Point with the City of Grand Forks Wastewater Interconnect Forcemain.

*East Grand Forks Wastewater Equalization Basin* shall mean the basin integrally attached to the East Grand Forks Master Wastewater Pump Station that intermittently stores East Grand Forks Wastewater in times such that Grand Forks cannot accept East Grand Forks Wastewater or when the influent exceeds the allowable pump station discharge.

*East Grand Forks Wastewater Interconnect Forcemain* shall mean the dedicated forcemain from the East Grand Forks Master Wastewater Pump Station to the Connection Point.

*East Grand Forks Wastewater System* shall mean all properties and facilities, whether leased, owned, or otherwise controlled, operated or maintained by East Grand Forks, used for the collection, conveyance, and/or treatment of Wastewater within East Grand Forks.

*Force Majeure* shall mean a cause or causes beyond a reasonable control of the party claiming Force Majeure and shall include but is not limited to natural disasters, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind in the United States of America, or the State of North Dakota or Minnesota, or any civil or military authority, insurrections, riots, epidemics, lightening, fires, hurricanes, storms, floods, tornadoes, washouts,

earthquakes, droughts, restraint of government and people, civil disturbances, explosions and breakage or accidents to machinery, pipelines or facilities. However, the parties agree that a mere increase in operating costs shall not, by itself, constitute an event of Force Majeure.

*Grand Forks* shall mean the City of Grand Forks, North Dakota.

*Grand Forks/East Grand Forks Intermunicipal Wastewater Advisory Board* is an advisory group whose objectives are to share information, improve understanding of Wastewater issues, and improve the level of cooperation regarding Wastewater issues between Grand Forks and East Grand Forks. Members of the Grand Forks/East Grand Forks Intermunicipal Wastewater Advisory Board shall be appointed by the City Councils of the respective cities in accordance with Section 19.1 hereof..

*Grand Forks Master Pump Station 17* shall mean the pumping facility located west of the intersection of North Columbia Rd and North Washington St that boosts wastewater within the Grand Forks Trunk Forcemain System to the Grand Forks Wastewater Treatment Plant.

*Grand Forks Trunk Forcemain System* shall mean the forcemain system through which the City of Grand Forks conveys wastewater to the Grand Forks Wastewater Treatment Plant.

*Grand Forks Wastewater Interconnect Forcemain* shall mean the dedicated forcemain from the Connection Point to point where East Grand Forks Wastewater is discharged to the City of Grand Forks Trunk Forcemain System (See Exhibit 1).

*Grand Forks Wastewater System* shall mean all properties and facilities, whether leased, owned, or otherwise controlled, operated, or maintained by Grand Forks, used for the collection, conveyance, treatment, and discharge of Wastewater within Grand Forks.

*Grand Forks Wastewater Treatment Plant* – shall mean the City of Grand Forks' Publicly Owned Treatment Works (POTW) existing at the time of the execution of this agreement which

is comprised of: preliminary screening and grit removal; activated sludge secondary treatment; secondary solids clarification; wastewater pond effluent storage and disinfection; and wastewater pond waste activated sludge treatment and storage (See Exhibit 1).

*Industrial Wastewater Permit* shall mean the permit issued and administered by the City of Grand Forks in accordance with Section 15-0408 of the City of Grand Forks Code of Ordinances which allows for the regulation and monitoring of bulk wastewater discharges from the City of East Grand Forks to the City of Grand Forks.

*Master Wastewater Meter* shall mean the primary wastewater flow measuring device located within the Master Wastewater Meter and Sampling Structure that measures the wastewater flow from East Grand Forks immediately prior to connecting to the Grand Forks Trunk Forcemain System.

*Master Wastewater Meter and Sampling Structure* shall mean the structure housing the Master Wastewater Meter and Sampling Point located upstream of Grand Forks Master Pump Station 17 immediately prior to connecting to Grand Forks Trunk Forcemain System (See Exhibit 1).

*Master Wastewater Sampling Point* shall mean the point of primary East Grand Forks wastewater sampling and water quality monitoring prior to discharge to the Grand Forks Trunk Forcemain located within the Master Wastewater Meter and Sampling Structure.

*Redundant Wastewater Meter* shall mean the secondary wastewater flow measuring device located within East Grand Forks Master Wastewater Pump Station that measures the wastewater flow from East Grand Forks prior to discharge to the East Grand Forks Interconnect Forcemain.

*Secondary Wastewater Sampling Point* shall mean the point of secondary East Grand

Forks wastewater sampling and water quality monitoring located within the East Grand Forks Master Wastewater Pump Station.

*Wastewater* shall mean the spent water of a community, including but not limited to a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water, and storm water.

*Wastewater Collection System* shall mean all properties and facilities used for the collection and conveyance of Wastewater from its source to the point of treatment.

*Wastewater Facilities* shall mean the structures, equipment, and processes required to collect, transport, and treat domestic and industrial wastes and transport effluent to a watercourse and treat and dispose residual solids. Also referred to as “public-owned treatment works” (POTW) or Wastewater System.

## **Article 2. Scope.**

2.1 The purpose of this Agreement is to set forth the conditions by which East Grand Forks may discharge Wastewater into the Grand Forks Wastewater System for conveyance and treatment services and to establish mutually acceptable standards and procedures.

2.2 A further purpose of this Agreement is to establish that Grand Forks will be issuing an Industrial Wastewater Permit to East Grand Forks setting forth the parameters, standards and requirements for the discharge of Wastewater into the Grand Forks Wastewater System in addition to the provisions contained in this Agreement.

2.3 The parties intend that East Grand Forks shall comply with all requirements, parameters, conditions, and standards contained within this Agreement as well as those contained within the Industrial Wastewater Permit.

2.4 The parties intend that Grand Forks shall receive and treat East Grand Forks' Wastewater in accordance with the provisions of this Agreement and in compliance with all existing or future laws, regulations, ordinances, water quality standards, orders and decrees of any governmental authority having jurisdiction over the treatment and disposal of said Wastewater. It is understood by the parties hereto that Grand Forks can only treat East Grand Forks' Wastewater to the extent Grand Forks is presently capable of treating said Wastewater utilizing the existing municipal Wastewater Treatment Facilities. In the event that future regulatory changes require a greater degree of treatment, Grand Forks shall comply with such requirements. The cost associated with performing a higher degree of treatment will be incorporated in the Cost of Service Analysis (COSA) further defined herein and, if necessary, East Grand Forks shall be assessed an adjusted rate for the disposal based on the results of the COSA modifications.

2.5 The parties intend that East Grand Forks is responsible for all design, engineering and construction costs, to convey Wastewater from East Grand Forks to the Grand Forks Wastewater System, including the construction and installation of the necessary pipes and facilities from the Connection Point to the point of connection to the Grand Forks Trunk Forcemain System near Grand Forks Master Pump Station 17. Attached hereto as Exhibit 1 is a diagram of the intended configuration and location of such facilities. Grand Forks and East Grand Forks have executed a Memorandum of Understanding separate from this agreement (attached as Exhibit 3) which outlines the requirements associated with the bidding, construction, financing, ownership and transfer of ownership of the Interconnect Project

**Article 3. Term.**

3.1 Except in the event of early termination as provided herein, the term of this Agreement shall expire on the 1<sup>st</sup> day of March, 2046.

3.2 This Agreement may be extended or renewed by the mutual consent of the parties

under such terms and conditions as are mutually agreeable to the parties.

3.3 The discharge of East Grand Forks Wastewater to the Grand Forks Wastewater System pursuant to this Agreement may be commenced only after all construction required for the transmission and pumping of such Wastewater is substantially complete and ready for use and further upon receipt of all necessary local, state and/or federal approvals and permits.

**Article 4. Termination of Agreement.**

4.1 Termination Due to Material Breach. Either party shall have the right to terminate this Agreement in the event of a material breach of the provisions of this Agreement by the other if the defaulting party has not cured such material breach within ninety (90) days after the nondefaulting party has made written demand to cure the same. Events that shall constitute a “material breach” of this Agreement by East Grand Forks, include but are not limited to:

- A. Exceeding the limitations set forth herein and/or the Industrial Wastewater Permit;
- B. Failure to take actions in the event of discharge of harmful substances in excess of the quantity or concentrations permitted by local, state and/or federal laws;
- C. Failure to enforce any local, state and/or federal rules, regulations, laws or procedures as they relate to the development, maintenance or operation of a Wastewater collection system;
- D. Failure to comply with the requirements of the Industrial Wastewater Permit.
- E. Failure to perform any material covenant or obligation contained in this Agreement.
- F. Remaining delinquent for any payments due hereunder for a period of 90 days after receiving notice thereof by Grand Forks. Grand Forks agrees that in the event East Grand Forks disputes any charge or fees imposed by Grand Forks, East Grand Forks may pay the disputed bill under protest pending a resolution of the dispute.

- G. Failure to enforce any local, state and/or federal rules, regulations, laws or procedures as they relate to the development, maintenance or operation of a Wastewater collection system;
- H. Failure to perform any material covenant or obligation contained in this Agreement

4.2 Mutual Agreement. This Agreement may be terminated by the mutual consent of the parties given in writing.

4.3 Unilateral Termination.

- A. East Grand Forks shall provide Grand Forks a minimum of three (3) years' notice of any intent to cancel this Agreement or intent to divert all or portions of its Wastewater. The parties agree that this notice period is necessary so Grand Forks can properly plan and budget for its Wastewater System.
- B. Grand Forks shall provide East Grand Forks a minimum of three (3) years' notice of any intent to cancel this Agreement or intent to reduce the amount of Wastewater processed under this Agreement. The parties agree that this notice period is required, in a minimum, for East Grand Forks to investigate alternative means for Wastewater treatment and processing and to engineer, construct and complete alternative treatment facilities.

4.4 Continuing Responsibilities. No termination of this Agreement shall terminate the rights of either party to indemnification, payment or other outstanding performance, remedy or recourse arising with respect to an event, circumstance or event of default occurring or existing prior to the date of termination.

**Article 5. Payment of Capital Costs, Costs of Operation, Maintenance and Repair.**

5.1 East Grand Forks agrees to pay to Grand Forks capital costs, costs of operation, maintenance, and repair and capital charges as set forth herein. It is understood and agreed by East Grand Forks that the charges do not include unanticipated or emergency capital repairs to the Grand Forks Wastewater System and that the charges set forth herein are subject to annual adjustment as provided herein. East Grand Forks shall be provided sufficient budgetary information necessary to explain the Grand Forks Wastewater System revenues and expenditures, fees charged, and how the fees were developed. East Grand Forks shall have the opportunity to review and provide comment and recommendations on budgetary information used to develop such fees.

5.2 The parties agree to utilize an industry standard cost of service analysis (COSA) based on a methodology that is supported by the American Water Works Association and Water Environment Federation to fairly and equitably allocate revenue requirements to the user classes, including East Grand Forks, of the Grand Forks Wastewater System based on the proportional benefit to each user class. In order to allocate costs and establish rates for East Grand Forks similar to the other user classes served by the Grand Forks Wastewater System, Grand Forks agrees to utilize a “cash-basis” COSA methodology for the determination and allocation of capital costs (as opposed to other commonly recognized methods such as the “utility-basis” where users are charged full depreciation and a rate of return on the value of the assets that they benefit from the use of). Grand Forks shall conduct an annual update to the COSA to the proposed Budget Year for the purpose of annual rate setting. For the “cash-basis” COSA calculation, the annual rate revenue requirements will be based upon the most recent City of Grand Forks Wastewater Budget and will include items such as operation and maintenance expense, cash funded capital, capital debt service, transfers, and other reasonable obligations.

5.3 The results of the annual update of the COSA will be summarized in a written technical memorandum and provided to East Grand Forks no later than August 1 of the respective update year . The results of the 2016 Budget Year COSA and rate setting are attached as Exhibit 2. Grand Forks and East Grand Forks will mutually agree to any adjustments to the

methodology and/or steps in regards to the annual update to the COSA based rates for East Grand Forks to accurately represent any changes in the operation of the Grand Forks Wastewater System.

**Article 6. Fees and Charges.**

6.1 All fees, costs of service and establishment of rates to be charged by Grand Forks for the services provided to East Grand Forks shall be based upon the most recent COSA.

6.2 Based upon results of the Budget Year 2016 COSA and rate setting, the following rates are anticipated to be in effect:

Monthly base fee charge	\$2,887.00
Volumetric charge in dollars per 1,000 gallons	\$ 1.10

6.3 The City of Grand Forks maintains an Industrial Strength Surcharge rate structure for its large industrial customers. Grand Forks and East Grand Forks recognize that East Grand Forks will largely be discharging Wastewater generated by domestic households and sewage generated by commercial, not industrial, users of the East Grand Forks Wastewater System whereby such wastewater includes an average concentration less than those concentrations as defined in Chapter 15 of the Grand Forks City Code of Ordinances. Should it be determined through sampling that industrial strength Wastewater is being discharged from East Grand Forks into the Grand Forks Wastewater System, Grand Forks retains the right to implement strength surcharge rates in the same manner as other affected surcharge users as defined in Chapter 15 of the Grand Forks City Code of Ordinances.

**Article 7. Billing and Payment.**

7.1 On or before the 15<sup>th</sup> day of each month, Grand Forks shall prepare a bill for East

Grand Forks. Such a bill shall become due and payable within thirty (30) days from the billing date. Any balance remaining unpaid thirty (30) days from the date issued shall be considered delinquent and accrue a delinquent surcharge of twelve percent (12%) per annum.

7.2 All billings for wastewater service by Grand Forks to East Grand Forks shall be based upon the readings of the measuring devices taken at the Master Wastewater Meter. Readings taken at the Master Wastewater Meter will be cross checked monthly with redundant flow measuring at the East Grand Forks Master Wastewater Pump Station.

7.3 In the event of the failure of flow measuring devices at the Master Wastewater Meter, the redundant flow measuring at East Grand Forks Master Wastewater Pump Station will be used for the purpose of determining billing amounts pursuant to this agreement. If both flow measuring devices fail or if there is a significant discrepancy between flow measuring devices, for the purpose of determining the billing amounts pursuant to this Agreement, it will be assumed that during any period of inoperability or discrepancy of the measuring device (s), the flow was at the average daily volume as during the same time period during the three (3) preceding years. If the most recent three year flow record is unavailable, or flows have changed significantly over the preceding three years, then an alternate method as mutually agreed upon by the parties may be used to determine flow during the periods of inoperability or discrepancy of the monitoring device.

#### **Article 8. Industrial Pretreatment Program.**

8.1 Grand Forks and East Grand Forks shall work cooperatively in all pretreatment program requirements to insure Grand Forks Wastewater System performance and regulatory compliance.

8.2 East Grand Forks shall insure that its discharge into the Grand Forks Wastewater System shall be in conformance with the provisions of its Industrial Wastewater Permit. The

terms and provisions of the Industrial Wastewater Permit issued on annual basis by Grand Forks to East Grand Forks shall be incorporated herein by reference.

8.3 To the extent allowed by law, both Grand Forks and East Grand Forks shall enforce all federal, state and local laws as they relate to the development, construction, maintenance and operation of their respective Wastewater Systems including all pretreatment provisions imposed by law or permit.

**Article 9. Monitoring, Sampling and Measurement of Wastewater.**

9.1 Grand Forks agrees to maintain an automatic flow measuring and recording system for the purpose of accurately measuring the flow from East Grand Forks at the Master Wastewater Meter and Sampling Structure located near Grand Forks Master Pump Station 17 immediately prior to connection to the Grand Forks Trunk Forcemain System. In addition, East Grand Forks agrees to provide, install and maintain at its costs and expense a Redundant Wastewater Meter for the purpose of automatic flow measuring and recording to accurately measure the flow from East Grand Forks at the East Grand Forks Master Wastewater Pump Station.

9.2 East Grand Forks shall cooperate with and assist Grand Forks to maintain the operation of Project Instrumentation and Controls including the Supervisory Control and Data Acquisition (SCADA) system components within East Grand Forks Master Wastewater Pump Station, Master Wastewater Meter and Sampling Structure, and Grand Forks Master Pump Station 17, which will assist with the control, monitoring, and metering of East Grand Forks' Wastewater. SCADA readings will be electronic and/or radio and available instantaneously in real-time.

9.3 The records and reports from such measuring devices shall be maintained by Grand Forks and made available to East Grand Forks.

9.4 Grand Forks shall coordinate the inspection, testing and calibration of flow measuring devices at the Master Wastewater Meter and Sampling Structure. The Master flow measuring device shall be calibrated at least annually.

9.5 East Grand Forks shall coordinate the inspection, testing, and calibration of the Redundant flow measuring device at least annually at the East Grand Forks Master Wastewater Pump Station.

9.6 A certified copy of the inspection and test results of such flow measuring devices shall be provided respectively to Grand Forks and East Grand Forks promptly after completion. Representatives of Grand Forks and East Grand Forks shall be allowed to inspect such devices and reports at any reasonable time. In the event any East Grand Forks measuring, monitoring or testing device should fail and is not repaired within ten (10) days by East Grand Forks, Grand Forks may repair the same. If Grand Forks performs any such repairs, Grand Forks shall provide East Grand Forks with an itemized invoice of the actual costs and expenses incurred for the repair. Similarly, in the event any Grand Forks measuring, monitoring or testing device should fail and is not repaired within ten (10) days by Grand Forks, East Grand Forks may repair the same. If East Grand Forks performs any such repairs, East Grand Forks shall provide Grand Forks with an itemized invoice of the actual costs and expenses incurred for the repair.

9.7 At the date of this Agreement, the Grand Forks Wastewater System has the capacity to accept East Grand Forks Wastewater and volumes up to the quantities and standards set forth below. East Grand Forks agrees to operate its Wastewater Equalization Basin so as to not exceed the defined capacities set forth below. Furthermore and for the purposes of accommodating an emergency interruption of wastewater service, East Grand Forks agrees to maintain redundant equalization storage above and beyond what is necessary to maintain the agreed upon flow rates with a volume equivalent to 7 days of average wet weather flow:

2015 Baseline Variable COSA Flow Allocation	0.94 MGD
Baseline Fixed COSA Capacity Allocation	1.20 MGD
Peak Instantaneous flow rate	1.50 MGD

2035 Future Design Average Wet Weather Flow rate	1.90 MGD
7-days Redundant Equalization Storage*	13.3 MG

\*East Grand Forks agrees to provide standard equalization storage equivalent to 14 days of average wet weather flow. The stated 7-days redundant equalization storage is in addition to the standard equalization storage and is intended to provide wastewater storage in the event of an emergency interruption of wastewater service while standard equalization is already being utilized for normal wet weather flow management.

9.8 Should emergency interruption of wastewater service become necessary, Grand Forks and East Grand Forks agree it is in the interest of both parties to work cooperatively to determine a satisfactory response plan to best accommodate the needs of both entities. Upon execution of this agreement, the Cities' operational staff will develop emergency operational protocols to address an event should it occur.

9.9 East Grand Forks may discharge Wastewater to the Grand Forks Wastewater System in excess of that set forth in this Agreement, provided that such discharge is approved by Grand Forks and such discharge does not adversely affect the operation or condition of the Grand Forks Wastewater System or the ability of the Grand Forks Wastewater System to continue normal operations. Discharge of Wastewater in excess of that set forth in this Agreement shall not create or be construed as a right of East Grand Forks to continue to discharge Wastewater in such amount or condition. The discharge of such excess Wastewater may result in additional charges by Grand Forks.

9.10 **Reserve Capacity:** Because conditions of development within the City of East Grand Forks may change resulting in Wastewater flows and loadings ultimately exceeding those estimated in Article 9.7, East Grand Forks may elect for Grand Forks to reserve additional available capacity in the Grand Forks Wastewater System for the sole benefit and use of East Grand Forks. An additional cost for this reserve capacity would be developed based upon the COSA methodology for fixed cost allocation as utilized for the rates established in Article 6.

Section 9.11 is limited to the excess capacity that is available in the Grand Forks Wastewater System for the infrastructure in service at time of the inception of this agreement and does not include any future capacity expansions or upgrades to the Grand Forks Wastewater System. Prior to granting any Reserve Capacity allocation to the City of East Grand Forks, Grand Forks reserves the right to review the need for any available capacity for other users of the Grand Forks Wastewater System.

9.12 **Testing and Sampling:** Grand Forks shall perform all testing and sampling of wastewater and determine the type of tests to be performed, frequency of sampling, limits for test compliance, sampling methods (composite or grab), and points of sampling. Said parameters are subject to change from time to time at Grand Forks' sole discretion. Such changes do not require renegotiations of this Agreement. At a minimum, annual sampling will be performed, with composite sampling being performed at East Grand Forks Secondary Wastewater Sampling Point and quarterly grab sampling being performed at the Master Wastewater Meter and Sampling Structure. East Grand Forks will provide appropriate access as determined by Grand Forks in order for Grand Forks staff to perform testing and sampling at East Grand Forks Master Pump Station.

9.13 **Wastewater Reuse:** Grand Forks and East Grand Forks recognize the potential for Grand Forks to reuse wastewater for a beneficial purpose with the potential for sale of recycled wastewater. The City of East Grand Forks grants all rights to the use or reuse of wastewater conveyed through the system to the City of Grand Forks, subject to the revenue credit as provided in this section. If deemed that revenues received from the sale of recycled wastewater exceed the cost to provide recycled wastewater to future users, the revenues may be allocated to the Grand Forks Wastewater Enterprise Fund to offset costs of operations. Such cost offset will be proportionally allocated to the users of the Grand Forks Wastewater System in a similar manner that costs are allocated to users of the Grand Forks Wastewater System in the COSA.

**Article 10. Responsibilities of Grand Forks.**

10.1 Grand Forks shall coordinate and collaborate with East Grand Forks the planning, design, bidding assistance, and construction observation of the Grand Forks portions of the Project.

10.2 Grand Forks shall operate and maintain the Grand Forks Wastewater System in compliance with all applicable local, state and federal laws and regulations.

10.3 Grand Forks shall coordinate and collaborate with East Grand Forks the application for appropriate permits from the North Dakota State Health Department, North Dakota Department of Transportation, and the North Dakota State Water Commission, or any other applicable regulatory agency, as necessary for the Project.

10.4 Grand Forks shall own all interconnection Wastewater facilities from the Connection Point to the point of connection to the Grand Forks Trunk Forcemain.

10.5 Grand Forks shall be responsible for any and all maintenance and repair of Wastewater Facilities including the Grand Forks Wastewater Interconnect Forcemain located downstream from the Connection Point (see Exhibit 1) to the point of connection to the Grand Forks Trunk Forcemain System

10.6 Grand Forks shall provide easement to East Grand Forks to construct the interconnect project and to access, operate, maintain and repair the portion of the East Grand Forks Wastewater System located in Grand Forks.

**Article 11. Responsibilities of East Grand Forks.**

11.1 East Grand Forks shall bid and construct the entire interconnect project, including

the interconnect infrastructure to be owned, operated, and maintained by the City of Grand Forks; which includes the Grand Forks Interconnect Forcemain and appurtenances as described herein from the Connection Point to the point of connection to the Grand Forks Trunk Forcemain System. Grand Forks and East Grand Forks have executed a Memorandum of Understanding separate from this agreement (attached as Exhibit 3) which outlines the requirements associated with the bidding, construction, financing, ownership and transfer of ownership of the Interconnect Project.

11.2 East Grand Forks shall be responsible for all appropriate permit applications for project work in Minnesota and the permit application for crossing the North Dakota portion of the Red River of the North.

11.3 East Grand Forks shall operate and maintain the East Grand Forks Wastewater System in accordance with applicable local, state and federal requirements.

11.4 East Grand Forks at its cost shall be responsible for any and all maintenance and repair of Wastewater Facilities at all points up to the Connection Point.

11.5 East Grand Forks shall maintain sufficient volume and capacity in its Wastewater Equalization Basin to accommodate interruptions of service, flows in excess of Grand Forks Wastewater System capacity, or flows in excess of the limits provided in this Agreement.

## **Article 12. Control and Ownership of Wastewater Systems.**

12.1 East Grand Forks and Grand Forks shall control, own, operate and maintain their respective Wastewater Collection Systems, except for sewer lines, force mains and/or interceptors that may be constructed for the sole purpose of accommodating the receipt of East Grand Forks Wastewater.

12.2 Except as otherwise provided herein, East Grand Forks shall have no ownership rights in, to or over the Grand Forks Wastewater System nor shall it have any rights to control or operate such system.

12.3 Except as otherwise provided herein, Grand Forks shall have no ownership rights in, to or over the East Grand Forks Wastewater System nor shall it have any rights to control or operate such system.

12.4 Except as otherwise provided herein, East Grand Forks shall have no right to participate in the management and operation of the Grand Forks Wastewater System by reason of its participation under this Agreement.

12.5 Except as otherwise provided herein, Grand Forks shall have no right to participate in the management and operation of the East Grand Forks Wastewater System by reason of its participation under this Agreement.

**Article 13. Enforcement of Regulation of Wastewater Discharge Requirements.**

13.1 If East Grand Forks is discharging prohibited Wastewater into the Grand Forks Wastewater System, the cities shall cooperate in taking forthright action to prohibit the prohibited flow. Both parties agree that depending upon the seriousness of the harm being done or the potential for harm to be done to the Grand Forks Wastewater System or the health, safety and environment, and with notice to East Grand Forks, Grand Forks may temporarily suspend services to be provided under this Agreement until resolution of the problem flow.

13.2 If East Grand Forks is discharging Wastewater in excess of the accepted concentration or flows set forth in the Industrial Wastewater Permit issued by Grand Forks to East Grand Forks, Grand Forks may impose a surcharge. East Grand Forks shall pay the surcharge whether it collects such amount from the offending facility or not.

13.3 **Corrosion and Hydrogen Sulfide:** The parties recognize that hydrogen sulfide is a common corrosion and health/safety problem in wastewater collection systems and that the biochemical interactions of hydrogen sulfide are complex and difficult to accurately predict. As such, East Grand Forks agrees to limit hydrogen sulfide concentrations to 10 parts per million (ppm) or less (8 hour average basis) with peak concentrations of 20 ppm or less from the discharge of the East Grand Forks Forcemain to Grand Forks Wastewater Interconnect Forcemain through operational control or chemical based control. Monitoring will occur at the Master Wastewater Sampling Point. All costs associated with the compliance with this paragraph shall be the responsibility of East Grand Forks.

**Article 14. General Provisions.**

14.1 East Grand Forks is authorized to enter into this Agreement under the laws of the State of Minnesota, including Minnesota Statutes Section 471.59

14.2 Grand Forks is authorized to enter into this Agreement under the laws of the State of North Dakota, including N.D.C.C. Chapter 54-40.3.

14.3 Grand Forks and East Grand Forks shall make available for review all records relating to the matters covered by this Agreement.

14.4 Grand Forks and East Grand Forks shall work cooperatively in the enforcement of their respective sewer use ordinances and all applicable local, state and/or federal law.

14.5 If Grand Forks determines that a characteristic of East Grand Forks' flow causes or contributes to the degradation of the Grand Forks Wastewater System, despite the Cities' compliance with the developed operation, monitoring and maintenance schedules, all applicable NPDES permits, sewer use ordinances and pretreatment requirements, Grand Forks shall notify

East Grand Forks in writing and shall establish not less than 30 days for East Grand Forks to initiate any corrective action, which may include investigation, testing and inspection. If East Grand Forks fails to act in good faith by the initiation of a cure within 30 days of the notice and correct the noncompliant characteristic within 30 days of notice, Grand Forks may take corrective action and assess the cost of the action to East Grand Forks.

14.6 This Agreement is subject to the lawful rules, regulations, decisions, orders or directives of the U.S. Environmental Protection Agency (EPA) and of any agency of the state and/or federal government with jurisdiction over the parties or subject matter of this Agreement.

14.7 East Grand Forks shall have the right to discharge into the Grand Forks Wastewater System domestic, commercial and industrial wastewater as long as East Grand Forks complies with the provisions of this Agreement, applicable law and all applicable permits.

#### **Article 15. Disputes and Remedies.**

15.1 Scope of Dispute Resolution. The parties acknowledge that disputes regarding the interpretation or application of this Agreement may arise from time to time and agree that, subject to other provisions of this Agreement, each shall attempt to resolve such disputes according to the provisions of this article, unless otherwise provided in this Agreement. The parties do not intend to limit the kind of disputes or disagreements arising under this Agreement, which may be submitted to the dispute resolution procedures as set forth herein.

15.2 Request for clarification. In the event of an issue or question by either party regarding any aspect of this Agreement, both parties shall attempt to resolve that issue or answer that question amicably before proceeding to the remedies set forth in this article. Such resolution effort shall include communication between the parties outlining the particular issues, proposed solutions, and any other items necessary to resolve the dispute. The parties agree that the request for clarification and any responses thereto should be completed no later than thirty

(30) calendar days after the request for completion is made.

15.3 Negotiation. When a disagreement or dispute arises over interpretation or application of any provision of this Agreement and such dispute does not constitute an event of default, the parties will each direct staff members as they deem appropriate to meet at a mutually convenient time and place to attempt to resolve the disagreement or dispute through negotiation.

15.4 Mediation. When the parties to this Agreement are unable to resolve disputes, claims or counterclaims, or unable to negotiate an interpretation or application of any provision of this Agreement, the parties may mutually agree in writing to seek relief by submitting the respective grievances to mediation.

15.5 Arbitration. If mediation is not used or is unsuccessful, the parties may mutually agree to submit the dispute to binding arbitration. If the parties are unable to agree upon a single arbitrator, then each party shall appoint an arbitrator. The two arbitrators shall choose a third arbitrator. In the event that arbitrators are not designated by either party, then the other party may apply to the presiding judge of the Northeast Central Judicial District to appoint the required arbitrator. The arbitrator shall proceed according to the North Dakota statutes governing the arbitrators and the award of the arbitrators shall have the affect provided therein. The arbitration shall take place in Grand Forks County, North Dakota. The fees and expenses of a single or any third arbitrator shall be shared equally by the parties. Each party shall pay their own arbitrator. The arbitrators may allow discovery and may grant any remedy or relief which arbitrators deem just and equitable and within the scope of the Agreement of the parties, including, but not limited to, specific performance of any obligation contained under this Agreement, any interim or provisional relief that is necessary to protect the rights or property of the parties, or imposition of fees or damages, and/or the imposition of sanctions for abuse or frustration of the arbitration process. NORTH DAKOTA CENTURY CODE Chapter 32-29.3 shall govern the arbitrability of all disputes; the arbitrator shall not have authority to award punitive damages; the arbitrator's award may be entered in any court having jurisdiction thereof. Each

party shall bear its own costs and attorneys' fees.

15.6 Adjudication: When the parties to this Agreement are unable to resolve disputes, claims or counterclaims, are unable to negotiate an interpretation or application of any provision of this Agreement, or are unable to agree to submit their respective grievances to mediation or binding arbitration, or such action has not otherwise resolved the matter in dispute, either party may seek relief through initiation of an action in a court of competent jurisdiction. Notwithstanding the provisions of this Article, upon breach, violation, or default of any provision of this Agreement by either party or dispute hereunder, the non-breaching, non-violating, or non-defaulting party shall be entitled to pursue any additional remedies it may have at law or equity including, but not limited to, injunctive relief and specific performance of this Agreement in accordance with its terms.

**Article 16. Indemnification.** To the greatest extent allowed by law, each party shall indemnify and hold the other party harmless from and against any and all claims, costs, charges and expenses, including, without limitation, attorney's fees, expert witness fees, costs and disbursements which may be imposed against either City by any of the following occurring during the term of this Agreement:

- A. Any negligent or tortuous act, error or omission of either city or any of its personnel, employees, subcontractors or consultants in the construction, operation or maintenance of either city's Wastewater System.
- B. Any failure by either city or any of its personnel, employees, subcontractors or consultants to perform its obligations, either express or implied, under this Agreement, or any negligent or tortuous act, error or omission of either city, its personnel, employees, consultants or subcontractors related to this Agreement.
- C. Provided, however, nothing in this Agreement shall constitute or be construed as a waiver of any governmental immunity provided under North Dakota or Minnesota law.

**Article 17. Compliance with Applicable Laws.** East Grand Forks shall adopt, maintain and enforce the following in such a manner as to at all times comply with the Clean Water Act of 1972 and any further or supplementary amendments thereto:

- A. A system of charges to insure that East Grand Forks is able to pay its proportionate share of the cost of operation, maintenance, expansion, rehabilitation and improvement of the Grand Forks Wastewater System.
- B. An ordinance related to sewer use containing provisions that are, at a minimum, as stringent as Grand Forks' code provisions appearing in Chapter XV of the Grand Forks City Code.
- C. An ordinance or other rules or regulations to insure discharge compliance with any Industrial Wastewater Permit issued by Grand Forks to East Grand Forks.
- D. East Grand Forks shall not allow any user from outside its respective corporate limits to discharge Wastewater into its sewer system without the prior written approval of Grand Forks.

**Article 18. Miscellaneous Provisions.**

18.1 No Waiver. The failure of either party to this Agreement to insist upon compliance of any provision of this Agreement shall not constitute a waiver by said party of its rights to enforce any such provision or other provisions of this Agreement.

18.2 Changes in Law Incorporated. Any provision of this Agreement which refers to a federal, state or local law, regulation, standard or industry guideline, shall be construed to refer to the most current applicable version of the same so as to insure that the requirements of this Agreement are consistent at all times with the currently applicable requirements and standards.

18.3 Nonassignable Agreement. Neither party may assign any right under this Agreement, and any purported assignment shall be null and void.

18.4 Interpretation of Agreement. This Agreement, or any portion thereof, shall not be interpreted by a court of law or arbitrator to the detriment of a party based solely upon that party's authorship of the Agreement or any provision contained herein. Each party has been involved in the drafting and preparation of this Agreement and it is hereby expressly agreed that any uncertainty or ambiguity contained herein shall not be construed for or against any party. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

18.5 Governing Law. Except as expressly stated herein, this Agreement shall be made pursuant to and shall be construed in accordance with the laws of the State of North Dakota.

18.6 Relationship of Parties. Neither the execution nor delivery of this Agreement nor actions to complete this Agreement shall create or constitute a partnership, joint venture, joint enterprise or any other form of business organization or arrangement between the parties, except for the contractual arrangements specifically set forth herein. Except as set forth herein, no party, or any of its agents, officers or employees, has any power to assume or create any obligation on behalf of the other party.

18.7 Modification or Amendment to Agreement. Except as otherwise provided herein, this Agreement shall not be modified, amended or altered except upon the written agreement of Grand Forks and East Grand Forks, duly executed and adopted by the City Council of each municipality.

18.8 Modification/Amendment of Ordinances and/or Rules. Whenever either party intends to amend its sewer use ordinance and/or any rules or regulations related to the operation

of its Wastewater System that may affect the other party, except or otherwise provided herein, such party shall notify the other party in writing and provide a sixty (60) day review and comment period.

18.9 No Rights to Third Parties. This Agreement is between Grand Forks and East Grand Forks only and creates no rights in or to third parties as beneficiaries of this Agreement. Nothing in this Agreement is intended or shall be construed or conferred upon, or give to, any person or entity other than the parties hereto, any right, remedy or claim under or by reason of this Agreement; or any covenants, terms, conditions and provisions in this Agreement by and on behalf of the parties shall be for the sole and exclusive benefit of the parties. Nothing in this Agreement is intended to interfere with any agreements of any party with any third party.

18.10 Severability. In the event that any provision of this Agreement is determined and adjudged to be unconstitutional, invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and the parties hereto shall negotiate in good faith and agree to such amendments or modifications of or to this Agreement or other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties hereto.

18.11 Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any provisions of the Agreement.

18.12 Entire Agreement. The terms, covenants, conditions and provisions of this Agreement, including the present and all future attachments, shall constitute the entire agreement between the parties hereto, superseding all prior agreements and negotiations. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

18.13 Notice. Any notices required under the provisions of this Agreement shall be in

writing, and sufficiently given if delivered in person or sent by U.S. Mail, postage prepaid, as follows:

If to Grand Forks: Mayor  
Grand Forks City Hall  
255 North 4th St.  
Grand Forks, ND 58203

If to East Grand Forks Mayor  
East Grand Forks City Hall  
600 DeMers Avenue  
East Grand Forks, MN 56721

18.14 Counterparts. This Agreement may be executed in as many counterparts as the parties deem necessary and each counterpart, so executed, shall be considered one and the same instrument.

18.15 Force Majeure. By reason of Force Majeure, if any party shall be rendered partially or wholly unable to carry out its obligations under this Agreement, then if such party shall give notice in writing and full particulars of Force Majeure to the other party immediately after occurrence of the event or cause rely upon, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, with the exception of any obligation of East Grand Forks to pay for services actually received from Grand Forks hereunder, shall be suspended during the continuance of the inability then claimed, and such party shall endeavor to use its best efforts to remove or overcome such inability with all reasonable dispatch.

18.16 Remedies. All remedies provided in this Agreement are distinct and cumulative to any other right or remedy under this Agreement or afforded by law or equity, and may be exercised concurrently, independently, or successively.

18.17 Consent. Whenever a party's consent is required under this Agreement, it shall not be unreasonably withheld.

**Article 19. Grand Forks/East Grand Forks Intermunicipal Wastewater Advisory Board.**

19.1 There is hereby established an Advisory Board which shall consist of three members as appointed by the East Grand Forks City Council and three members as appointed by the Grand Forks City Council. In addition, if in the future Grand Forks provides regional wastewater service to additional regional customers, members from each respective regional customer community may be added to the Advisory Board. The Board may elect a chair and vice-chair from among its members. The Board shall meet on an as-needed basis at the call of the chair or vice-chair.

19.2 The Advisory Board may provide non-binding recommendations to Grand Forks in areas concerning Grand Forks Wastewater System operations, budgets, improvements, policies, permits, and procedures.

19.3 The Board may perform such other functions as may be delegated by the concurrence of the Grand Forks and East Grand Forks City Councils.

IN WITNESS WHEREOF, The parties hereto have set their hands the day and year first written above.

**CITY OF GRAND FORKS,**  
a North Dakota municipal corporation

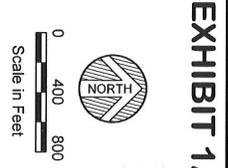
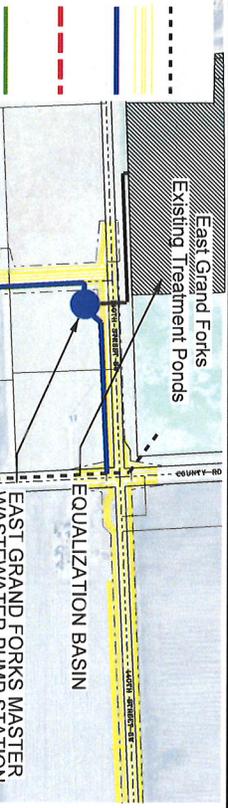
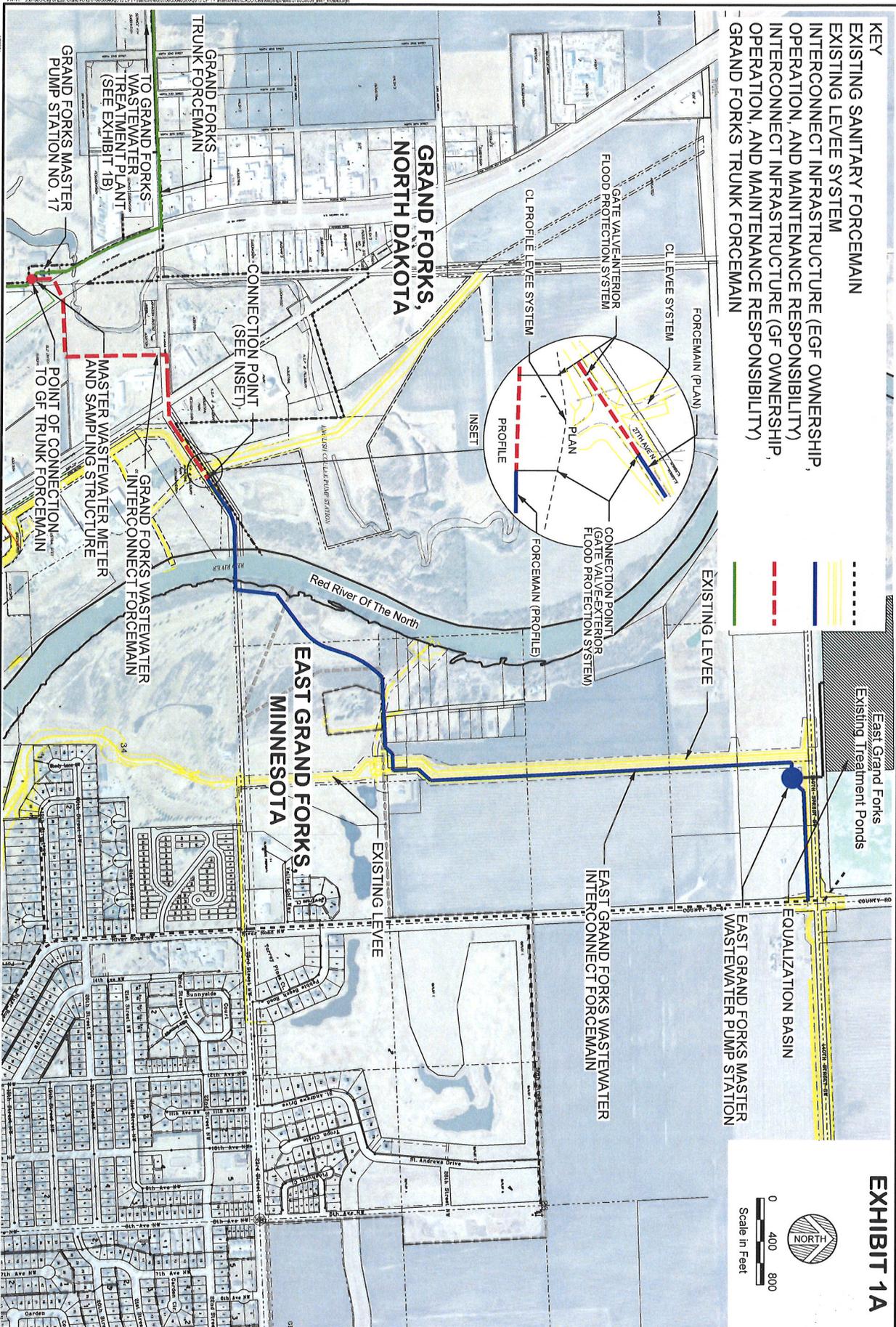
By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

**CITY OF EAST GRAND FORKS,**  
a Minnesota municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Its \_\_\_\_\_

Attachment 5

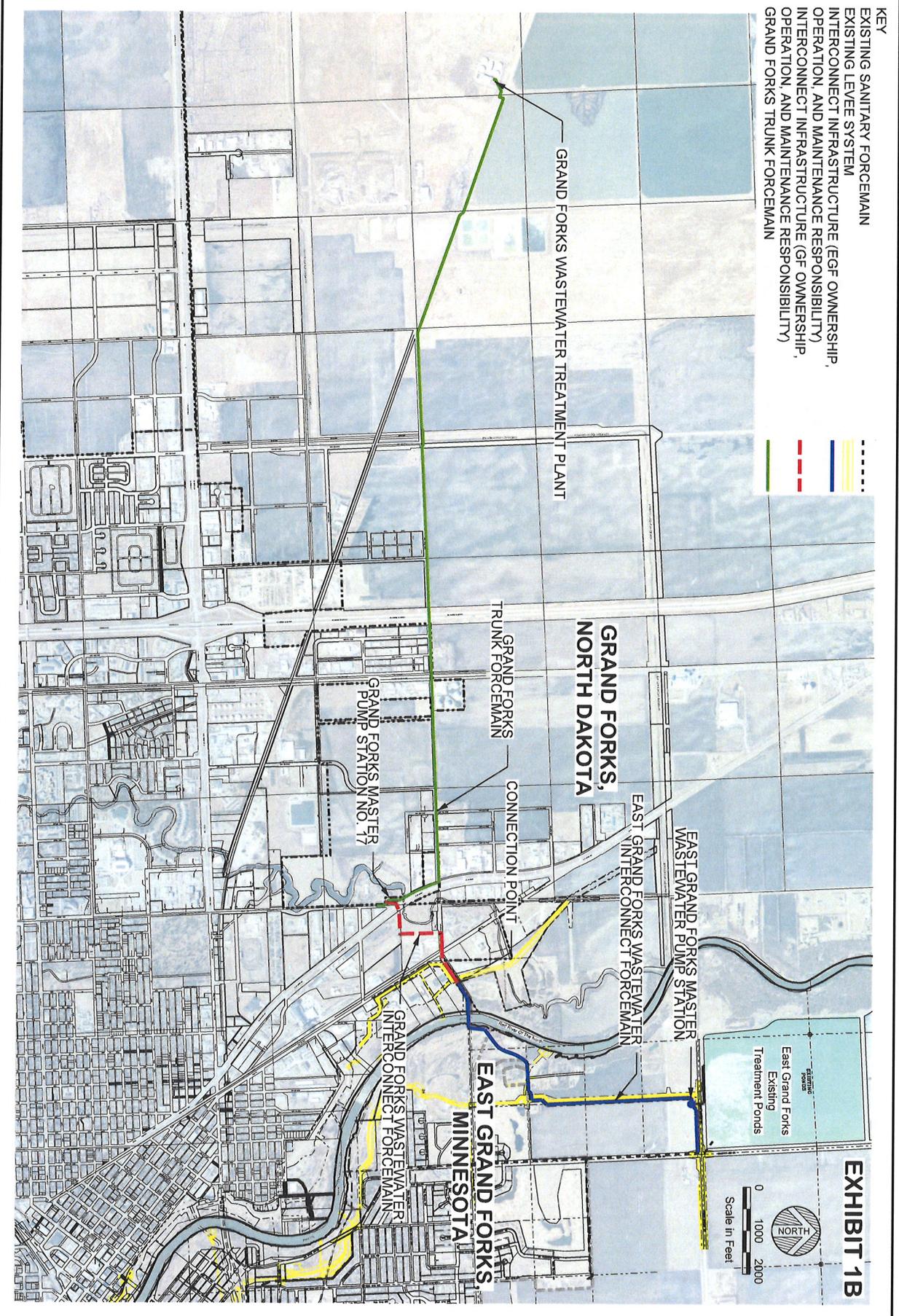
- KEY**
- EXISTING SANITARY FORCEMAIN
  - EXISTING LEVEL SYSTEM
  - INTERCONNECT INFRASTRUCTURE (EGF OWNERSHIP, OPERATION, AND MAINTENANCE RESPONSIBILITY)
  - INTERCONNECT INFRASTRUCTURE (GF OWNERSHIP, OPERATION, AND MAINTENANCE RESPONSIBILITY)
  - GRAND FORKS TRUNK FORCEMAIN



**EXHIBIT 1A**

<p>Wastewater Interconnect</p> <p>East Grand Forks, Minnesota - Grand Forks, North Dakota</p> <p><b>INTERMUNICIPAL AGREEMENT EXHIBIT 1A</b></p>		<p>DATE: 10/27/16</p> <p>SCALE: As Shown</p> <p>DRAWN BY: BAS/MSA</p> <p>CHECKED BY: GJB</p> <p>JOB NUMBER: 070600039.000</p>	<table border="1"> <thead> <tr> <th>DATE</th> <th>REV</th> <th>REVISION DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td></td> <td>1</td> <td></td> </tr> <tr> <td></td> <td>2</td> <td></td> </tr> <tr> <td></td> <td>3</td> <td></td> </tr> </tbody> </table>	DATE	REV	REVISION DESCRIPTION		1			2			3		<p>I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF</p> <p>DATE: _____ LIC. NO. _____</p>
DATE	REV	REVISION DESCRIPTION														
	1															
	2															
	3															

Attachment 5



**EXHIBIT 1B**

<p><b>EX-1B</b></p>	<p>Wastewater Interconnect</p>		DATE:	01/14/18	DATE:	01/14/18	REVISION:	DESCRIPTION:	BY:	<p>I HEREBY CERTIFY THAT THE PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A duly LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF</p>	DATE:	LIC. NO.
	<p>East Grand Forks, Minnesota - Grand Forks, North Dakota</p>		DRAWN BY:	RAB/SBA	CHECKED BY:	GJB						
	<p>INTERMUNICIPAL AGREEMENT EXHIBIT 1B</p>		JOB NUMBER:	0705250033/000								

**WIDSETH SMITH NOLTING**  
 Engineering | Architecture | Surveying | Environmental

Attachment 7

Minnesota Public Utilities Authority  
CWRP Application  
Form 4a - Clean Water Project Budget (Wastewater Projects)

Applicant: City of East Grand Forks Project: 2015 City Project No. 1 - Intercomm Costs based on: Estimated costs Date: 10/08/15

	Start Date*	End Date	Total Requested			Total Project Cost
			From PFA	Other Funding (name source)	Other Funding (name source)	
<b>1. Non-Construction Costs</b>						
A. Planning						
B. Engineering Design	08/15/15	02/15/16	628,161			628,161
C. Inspection/Construction Mgmt	06/01/16	10/15/18	348,978			348,978
D. Other Engineering						
E. Develop Asset Management Program						
F. Attorney/Financing Related Fees	08/15/15	02/15/16	69,795			69,795
G. Land						
<b>Non-Construction Subtotal</b>			<b>\$ 1,046,934</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,046,934</b>
<b>2. Construction Costs (1)</b>						
A. Secondary Treatment (I)						
B. Advanced Treatment (II)			8,027,664			8,027,664
C. Infiltration/Inflow Correction (IIIa)						
D. Sewer System Rehabilitation (IIIb)						
E. New Collector Sewers (IVa)						
F. New Interceptors (IVb)						
G. CSO Correction (V)						
H. Storm Sewer (VI)						
I. Service Connections (2)			1,200,000			1,200,000
<b>Construction Subtotal</b>			<b>\$ 8,027,664</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 8,027,664</b>
Contingencies (up to 5% of construction subtotal)			401,383			401,383
<b>Total</b>			<b>\$ 9,475,981</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 10,675,981</b>

\* If the applicant will be requesting PFA reimbursement for costs incurred prior to the PFA award date, a list of the specific prior incurred costs based on invoices may be required prior to PFA award. Contact your loan officer for more information.

- Notes:
- (1) After as-bid project costs are known, a revised Form 4 must be submitted
  - (2) Check with PFA loan officer regarding eligibility of private service connections.

**DRAFT INDUSTRIAL WASTEWATER PERMIT**  
**City of Grand Forks**

Company Name: City of East Grand Forks

Mailing Address: City of East Grand Forks Public Works

1001 2<sup>nd</sup> Street NE

East Grand Forks, MN 56721

Address of Premises: Not yet established

Telephone Number: 218-773-1313

Name of Contact person: Jason Stordahl, Public Works Director

**AUTHORIZATION TO DISCHARGE TO GRAND FORKS SEWER SYSTEM**

City of East Grand Forks is authorized hereby to discharge from Not yet established to the Grand Forks sewer system in accordance with all terms and conditions of the Grand Forks City Code and exhibit A, both governing the use of the public sewer. This permit is also granted in accordance with the application filed on \_\_\_\_\_, Exhibit B, and in conformity with plans, specifications and other data submitted to the City, all of which are filed with and considered a part of this permit.

Effective this \_\_\_ day of January, 2016

Expires on the \_\_\_ day of December, 2016

William Sukalski, Industrial Pretreatment Specialist

Reviewed By: \_\_\_\_\_

**INDUSTRIAL WASTEWATER PERMIT CONDITIONS****A. GENERAL CONDITIONS**1. Violation of conditions

All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant more frequently than, or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit. Such a violation may result in the imposition of civil or administrative penalties of up to one thousand dollars (\$1,000.00) per day for each offense and/or criminal penalties of up to one thousand dollars (\$1,000.00) per incident or imprisonment for up to thirty (30) days or by both, as provided for in the Grand Forks City Code.

2. Permit Modification, Suspension, Revocation

This permit may be modified, suspended or revoked in whole or in part during its term for cause including the following:

- a. Violation of any term or condition of this permit,
- b. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts in either the permit or any required report,
- c. Promulgation of a more stringent pretreatment standard by State or Federal agencies having jurisdiction over receiving waters,
- d. Changes in the processes used by the permittee or changes in the discharge volume or character,
- e. Changes in the design or capability of receiving wastewater facilities.

3. Right of Entry

The permittee shall allow the City of Grand Forks Industrial Pretreatment Specialist or a duly authorized representative bearing proper credentials and identification:

- a. To enter all properties for the purpose of inspection, observation, measurement, sampling, and testing to determine compliance with the provisions of this permit,
- b. To examine and copy any and all records required to be maintained by Industrial Users for the purpose of determining compliance with Pretreatment Standards and Regulations.

**All required East Grand Forks Wastewater System operation and discharge monitoring records relating to wastewater discharges shall be maintained for a minimum of three (3) years.**

The Industrial Pretreatment Specialist or representative shall have no authority to inquire into any industrial process beyond that point having a bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

4. Noncompliance Notification

In the event compliance or process control sampling by the permittee indicates that the permittee has violated or is unable to comply with any of the conditions of this permit, the permittee shall **notify the Industrial Pretreatment Specialist within 24 hours** of becoming aware of such violation(s). The permittee shall repeat the sampling and analysis and submit the results of the repeat analysis to the Industrial Pretreatment Specialist within 30 days of becoming aware of the violation(s).

The permittee shall further provide the Industrial Pretreatment Specialist with the following information in writing within five (5) days after commencement of such occurrence:

- a. Cause of noncompliance,
- b. Anticipated time the condition of noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of noncompliance,
- c. Steps taken by the permittee to reduce and eliminate the noncomplying discharge, and

- d. Steps to be taken by the permittee to prevent recurrence of the condition of noncompliance.
- e. All notifications, reports, applications and other correspondence shall be addressed to the Industrial Pretreatment Specialist, P.O. Box 5200, Grand Forks, ND 58206-5200, or telephone (701) 740-8266(cell).

The City reserves all rights and remedies that it has under or by reason of any statutory law, ordinance or common law to cure any breach of this agreement or to enforce any penalty for the breach thereof.

5. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to the public treatment system resulting from noncompliance with any effluent limitation specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. The permittee shall **immediately notify the Industrial Pretreatment Specialist** of slug discharges, spills that may enter the public sewer or any other significant changes in operations, wastewater characteristics and constituents.

6. Facilities Operation

The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment and control facilities and systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.

7. Removed Substances

Solids, sludges, membrane/prescreen backwash or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering the City's sewerage system.

8. Transfer of Ownership or Control

An Industrial Wastewater Permit is issued to a specific user for a specific operation. An Industrial Wastewater Permit shall not be re-assigned or transferred to or sold to a new

owner, new user, different premises or a new or changed operation without the approval of the Authorized City Representative. Any succeeding owner or user shall be required to obtain a new permit for the specific user and use intended.

9. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

11. Reapplication

If the permittee desires to continue to discharge after the expiration of this permit, it shall reapply on the application forms then in use at least 90 days before this permit expires. Under no circumstances shall the permittee continue to discharge after the expiration of the permit.

**B. SPECIFIC CONDITIONS**

1. Prohibited Wastes

The following wastes are **prohibited** and shall not be discharged into the City's sanitary sewer system:

- a. Pollutants which create a fire or explosion hazard,
- b. Pollutants which will cause corrosive damage, any discharge with a pH less than 5.5 or greater than 11.0.
- c. Solid or viscous pollutants which will cause obstruction of flow, or other interference with the operation of the treatment works,

- d. Pollutants, including oxygen demanding pollutants, discharged at such volume or strength as to cause treatment interference,
- e. Heat which will inhibit treatment, any discharge exceeding 104 degrees Fahrenheit (40 degrees Celsius),
- f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through,
- g. Pollutants which result in the presence of toxic gasses, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems,
- h. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

2. Wastewaters subject to Surcharge

Wastewaters discharged into the sanitary sewer system that exceed the limits listed below are subject to an industrial wastewater surcharge determined according to applicable resolutions, ordinances, and/or the city code.

<u>Pollutant</u>	<u>Concentration</u>
a. BOD	300 mg/L
b. Suspended Solids	350 mg/L
c. Total Kjeldahl Nitrogen	40 mg/L

3. Permit Limits

- a. Wastewater discharged into the sanitary sewer system shall not have a pollutant concentration greater than that listed for the substances below.

<u>Pollutant</u>	<u>Monthly Average</u>	<u>24-Hr. Maximum</u>
i. BOD	<u>2252lbs./day</u>	<u>3753lbs./day</u>
ii. TSS	<u>2627lbs./day</u>	<u>4379lbs./day</u>
iii. TKN	<u>300lbs./day</u>	<u>500lbs./day</u>

- b. Wastewater discharged to the sanitary sewer system shall not exceed the flow conditions listed below:

Average flow rate 900,000 GPD Monthly Average

Maximum flow rate 1.5M GPM Daily Peak Limit

- c. Wastewater discharged to the WWTP secondary pond shall not have a metals concentration greater than the local limits for the following metals.

Arsenic	.46 mg/L	Cadmium	.29 mg/L
Chromium	.82 mg/L	Chromium +6	.82 mg/L
Copper	1.77 mg/L	Lead	.925mg/L
Mercury	.014mg/L	Molybdenum	.10 mg/L
Nickel	3.57 mg/L	Silver	.10 mg/L
Selenium	.23 mg/L	Zinc	.60 mg/L

4. Monitoring Requirements

- a. The above named industry shall install and maintain on its own premises the following monitoring facilities:
  - i. TBD.
  - ii. Location address to be determined.
- b. The industry named above shall sample and analyze its wastewater discharges for the parameters & under the schedules listed below. These samples for compliance must be analyzed by a certified laboratory using methods of analysis specified in **40 CFR 136**. Any effluent failing to comply with the permit limits herein shall be re-sampled within 30 days. The results from all samples analyzed by the approved methods must be reported to the Authorized City Representative.

<u>Parameter</u>	<u>Frequency</u>	<u>Type of measurement</u>
a.Flow	<u>Daily</u>	measured
b.BOD	<u>Weekly</u>	24-Hr.Time composite
c.TSS	<u>Weekly</u>	24-Hr.Time composite
d.pH	<u>Weekly</u>	Grab sample
e.Oil & grease	<u>N/A</u>	Visual
f.TKN	<u>Weekly</u>	24-Hr.Time composite

Samples need not be taken or analyzed if no discharge is occurring.

- c. The City will run a split/no split sample 1 to 5 times per month per sample point.

5. Reporting Requirements

The industry named above shall provide compliance, discharge, and other technical reports at a minimum of four (4) times per year or within 30 days after the following schedule, if more stringent than the above:

- a. Reports on all parameters monitored according to item B., 4., b., shall be submitted at the frequency stated therein and are due within 30 days after the monitoring period.
- b. All reports required under a compliance schedule shall be submitted to the Authorized City Representative according to the compliance schedule (item B., 7., following).

Semi-annual reports are due at the end of June and December; quarterly reports are due at the end of each calendar quarter.

All required plant operation and discharge monitoring records relating to wastewater discharges shall be maintained for a minimum of three (3) years.

6. Inspection Required

The industry named above shall schedule an inspection of its premises by the authorized city representative at a time to be determined by the City at least once each year.

7. Schedule for Compliance

If it should be determined that the above-named industry has inadequate treatment facilities or a history of significant noncompliance with its industrial wastewater permit the city may require, if it is deemed necessary, a Pollution Prevention Program and/or improvements to its treatment facilities, methods of operation and/or reporting procedures in accordance with the following schedule of compliance:

- a. Description of existing pretreatment facilities
- b. Pollution Prevention Program
- c. Description of proposed changes and schedule for compliance: NONE

# Request for Council Action

Date: February 4, 2016

To: East Grand Forks City Council, Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Henry Tweten, Marc Demers, Craig Buckalew and Mike Pokrzywinski.

Cc: File

From: Steve Emery, P.E.

RE: Amend Transportation Improvement Program (TIP) for Roundabout Bygland Road

---

**Background:**

As discussed the City is considering the reconstruction of Rhinehart Dr SE from Bygland Road to 6<sup>th</sup> St SE as part of the 2016 Street project. However, as part of the Bygland Road Study completed by Alliant Engineering, the construction of a Roundabout is identified as a potential project in the near future (2016-2020). Also, as part of the study and as previously discussed the City could utilize City Subtarget Federal funds which is awarded every 4 years to the City of East Grand Forks to pay for a portion of this project. These funds could be available as early as 2018. However, currently on the TIP is the reconstruction of 10<sup>th</sup> St NE from 5<sup>th</sup> Ave to 8<sup>th</sup> Ave NE. Therefore, in order to be eligible for TIP funds the city would need to pass a resolution to amend the TIP to provide Federal Funds for the roundabout construction.

The following is the proposed budget for the project:

**PROPOSED BUDGET**

	<u>Bygland Roundabout</u>	<u>10<sup>th</sup> St NE</u>
Construction	\$1,100,000.00	\$990,000.00
Plans / Specifications (8%)	\$88,000.00	\$79,200.00
Staking / Inspection (6%)	\$66,000.00	\$59,400.00
Contingencies (8%)	\$88,000.00	\$79,200.00
Administration / Legal (3%)	\$33,000.00	\$29,700.00
<b>TOTAL PROJECT COST</b>	<b>\$1,375,000.00</b>	<b>\$1,237,500.00</b>

**PROPOSED FUNDING**

	<u>Bygland Roundabout</u>	<u>10<sup>th</sup> St NE</u>
MnDOT	\$750,000.00	\$750,000.00
City / State Aid Maint	\$625,000.00	\$487,500.00
<b>TOTAL PROJECT COST</b>	<b>\$1,375,000.00</b>	<b>\$1,237,500.00</b>

**Recommendation:**

If the City wishes to prioritize the construction of the Bygland Roundabout and utilize Federal Funds as one source of income for the project, we would recommend the City to Amend the TIP

**Enclosures:**

Copy of MPO Transportation Improvement Program (TIP) 2016-2019  
Section 4.4 from Bygland Road Study in regard to Funding.  
Cost Estimate for Bygland Roundabout as provided in the Bygland Road Study  
Project Map provided by Alliant Engineering for Bygland Roundabout.  
Project Area Map – 10<sup>th</sup> St NE



- This also includes right sizing the intersection footprints to accommodate all vehicle and truck types expected to use the intersections.
- The implementation of roundabouts in any community requires a public outreach and education plan. Until more roundabouts are installed, familiarity and motorist comfort will take time.

### 4.3 Implementation Plan

The implementation plan has identified improvement strategies at key locations along Bygland Road. In most cases, implementations of the improvement strategies are mutually exclusive of one another and could be constructed at any time. All improvements identified should be further evaluated during the design development phase and are subject to further environmental analysis and design requirements. To address the critical needs of the corridor, the implementation plan has been developed to prioritize the recommendations over near term (within 5 years), mid-term (2020 to 2025) and long term (2026-2040) horizons. Figure 4.1 and the included concept design indices illustrate the recommended components of the near term implementation plan. Figure 4.2 and the included concept design indices illustrate the recommended components of the mid-term and long term implementation plan. It is noted, the implementation plan could be subject change based on unforeseen traffic changes that may occur in the future.

### 4.4 Funding

To support the implementation of the recommended alternatives, the City of East Grand Forks and the GF-EGF MPO will seek support from available funding sources. Key funding sources may include:

- **NWATP City Sub-target Federal Funds.** This fund is awarded every 4 years (2018, 2022, etc.). An estimated \$750,000 may be available to help support the construction of the roundabout at Rhinehart Drive under the 2018 allocated funding.
- **City Maintenance and Operation Funds.** The city currently expends resources to provide regular signing, pavement marking and other infrastructure maintenance along the city streets. Components of the recommended transportation plan, such as the bicycle lanes, route connection or sidewalk widening could be funded through this resource.
- **Transportation Alternatives Program.** This program provides funding for non-traditional transportation improvement projects. For Bygland Road, this could include the construction of the High-Intensity Activated crossWalk beacon (HAWK) system, pedestrian refuge islands or curb extensions.
- **MnDOT Municipal State Aid (MSA) Funds.** The City of East Grand Forks is allocated state aid funding to help maintain and improve roadways on the state system. Bygland Road is an MSA roadway and MSA funds could be applied to most components of the transportation plan. A specific improvement eligible for MSA funding could be the traffic signal left turn arrow installation or bike lanes.
- **Minnesota and Federal Safe Route to School (SRTS) Funds.** The city can submit eligible projects to compete for available SRTS funds. Specific improvements may

Table 4.1 Implementation Cost Summary

## Near Term Improvements (Year 2016 to 2020)

Element	Intersection or Roadway Segment	Improvement Description	Construction Cost <sup>(1)</sup>	Engineering, Admin, Utilities and Inspection <sup>(2)</sup>	Total Cost
1	Bygland Road - 1st Street to South City Limits	On Street Bike Lane	Paint - \$172,000 Epoxy - \$210,000 GR IN Poly - \$500,000	\$43,000	Paint - \$215,000 Epoxy - \$253,000 GR IN Poly - \$543,000
2	19th Avenue S, Greenway Boulevard and 13th Street	Establish Bike Route Connection Between Elementary School and Regional Trails	\$20,000	\$5,000	\$25,000
3	Bygland Road at 1st Street N	Install Green Left Turn Arrow (with Flashing Yellow Arrow Indications)	\$50,000	\$12,500	\$62,500
4	CAT Route 11	Re-route CAT Route 11 to Bygland Road/Rhinehart Drive Intersection.	\$0	\$0	\$0
5	Bygland Road at Rhinehart Drive	Construct Roundabout <sup>(3)</sup>	\$1,100,000	\$275,000	\$1,375,000
6	Bygland Road - Regional Trail (South of 1st Street) to 5th Avenue	Construct Sidewalk	\$57,000	\$14,250	\$71,250
7	Bygland Road at 13th Street	Install HAWK Signal System	\$225,000	\$56,250	\$281,250
<b>Total</b>			<b>\$1,624,000 to \$1,952,000</b>	<b>\$406,000</b>	<b>\$2,030,000 to \$2,358,000</b>

## Mid Term Improvements (Year 2021 to 2025)

Element	Intersection or Roadway Segment	Improvement Description	Construction Cost <sup>(1)</sup>	Engineering, Admin, Utilities and Inspection <sup>(2)</sup>	Total Cost
8	Bygland Road at Middle School Access	Construct Refuge Median	\$115,000	\$28,750	\$143,750
9	Bygland Road at 5th Avenue	Persue 5th Avenue Realignment <sup>(4)</sup> (Maintain Stop Control)	\$655,000	\$163,750	\$818,750
10	Bygland Road - 4th Street to Metro Court (East Side)	Widen Existing 4 foot Sidewalk to 5 foot Sidewalk	\$50,000	\$12,500	\$62,500
<b>Total</b>			<b>\$820,000</b>	<b>\$205,000</b>	<b>\$1,025,000</b>

## Long Term Improvements (Year 2026 to 2040)

Element	Intersection or Roadway Segment	Improvement Description	Construction Cost <sup>(1)</sup>	Engineering, Admin, Utilities and Inspection <sup>(2)</sup>	Total Cost
11	Bygland Road at 13th Street	Construct Roundabout	\$2,800,000	\$700,000	\$3,500,000
12	13th Street - Bygland Road to Elementary School	Construct Sidewalk on South Side of Street	\$325,000	\$81,250	\$406,250
13	Bygland Road at 6th Street	Construct Curb Extensions	\$420,000	\$105,000	\$525,000
14	Bygland Road at James Street and 8th Street	Construct Refuge Medians	\$195,000	\$48,750	\$243,750
15	Bygland Road at 5th Avenue	Construct Roundabout	\$1,500,000	\$375,000	\$1,875,000
<b>Total</b>			<b>\$3,740,000</b>	<b>\$935,000</b>	<b>\$4,675,000</b>

(1) Construction costs are estimated year of expenditure (YOE) with an assumed 5% per year inflation rate

(2) Engineering, Administration, Utilities and Inspection are assumed to be 25% of the YOE construction cost.

(3) Rhinehart Roundabout requires an estimated 1,500 SF easement for relocation of the gas station driveway and an estimated 1,600 SF of right of way acquisition (2 parcels) to accommodate potential future expansion

(4) The future realignment of 5th Avenue requires an estimated 20,500 SF of right of way acquisition (1 parcel).

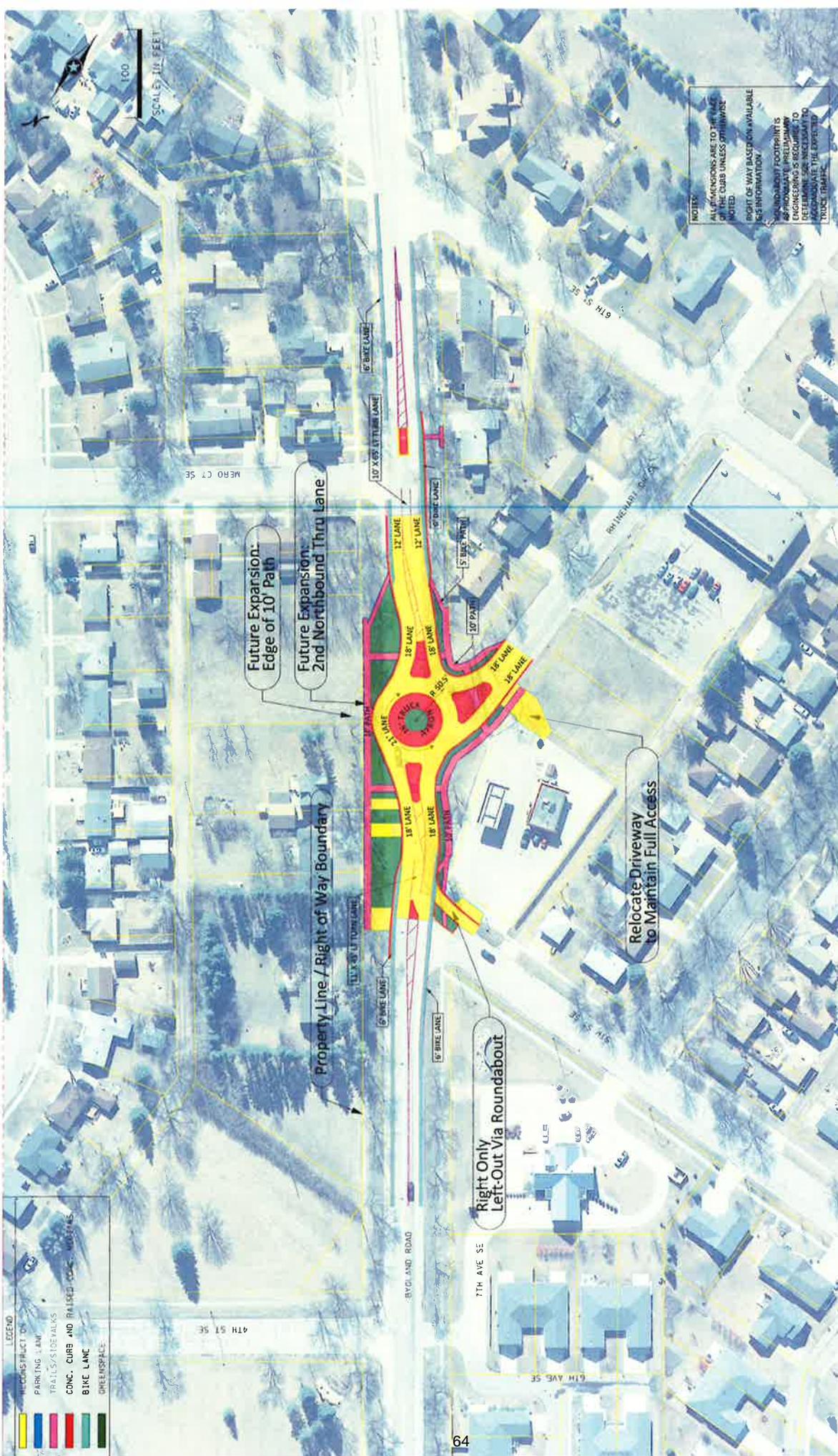
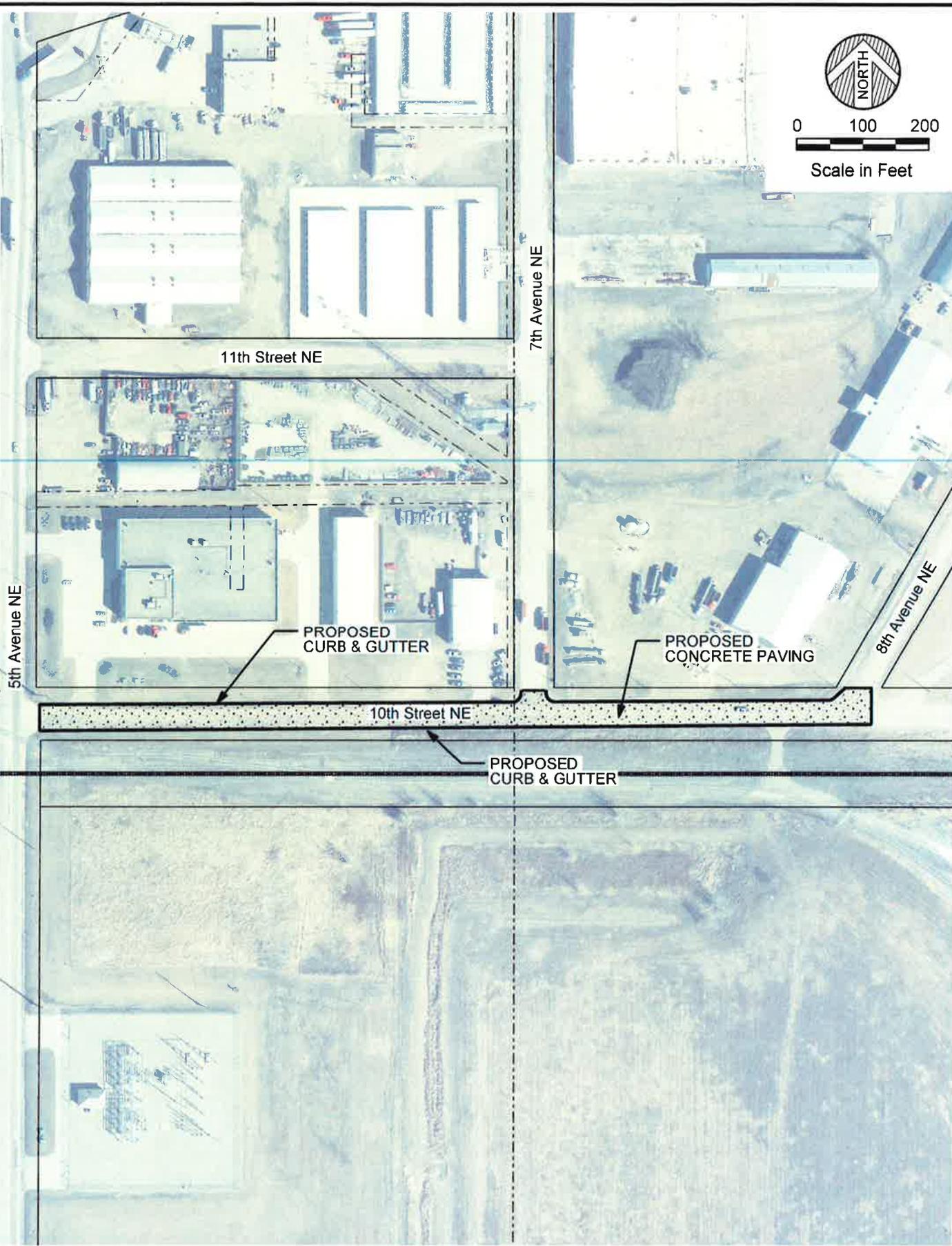


Figure 11



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Scale in Feet



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**WIDSETH SMITH NOLTING**  
Engineering | Architecture | Surveying | Environmental

DATE 02/04/16  
SCALE As Shown  
DRAWN BY RAB  
CHECKED BY SRE  
JOB NUMBER

Proposed Paving Map  
10th Street NE  
East Grand Forks, Minnesota

**General Area Map**

SHEET NO  
**C1.0**  
SHEET  
OF

# Request for Council Action

Date: February 16, 2016

To: East Grand Forks City Council Mayor Lynn Stauss, Council President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: Paul Gorte, Economic Development Director

RE: Intermediary Relending Program (USDA, Rural Development)

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The USDA, Rural Development, has an economic development program (Intermediary Relending Program, or IRP) in which it lends funds to communities who use the funds for economic development assistance to local businesses. In June 1997 the City received \$750,000 in IRP funds, which must be repaid to USDA over time. The City is still making payments, which the last scheduled annual payment of \$30,843.34 to be made no later than June 20, 2025.

The EGF program offers 5% loans to a maximum of \$150,000. These are local limits. USDA allows loans up to \$250,000. There are also limits on the uses of the funds. When we repay the loan in total, we will be able to use the funds at the discretion of the City. The USDA hopes that the residual dollars will continue to be used for economic development purposes. The City has made no loans from these funds for several years.

I proposed to the EDA that the City repay the outstanding balance of the loan, approximately \$290,000, in order to gain the flexibility to use the funds as needed for economic development activities that result in investment in the City. I would expect the funds to be used in ways that will replenish these dollars.

The residual amount after the repayment would be approximately \$460,000. The EDA agreed that the loan should be repaid to increase local flexibility and approved this action at its February 2, 2016, meeting.

Recommendation: Approval of Final Repayment of the IRP loan to make the remaining funds available for economic development activities.

Attachment: IRP Work Program

IRP

OK

# WRITTEN WORK PLAN

**CITY OF EAST GRAND FORKS  
ECONOMIC DEVELOPMENT ASSISTANCE FUND AND  
INTERMEDIARY RELENDING PROGRAM  
LENDING GUIDELINES**

**I. Eligibility:**

- A. Business acquisitions, construction, conversion, enlargement, repair, modernization or development.
- B. Purchasing and development of land, easements, right of ways, building, facilities, leases, or materials.
- C. Purchasing of equipment, leasehold improvements, machinery or supplies.
- D. Pollution control or abatement.
- E. Transportation services.
- F. Start-up operating costs and working capital.
- G. Interest (including interest on interim financing) during the period before facility becomes income producing, but not to exceed 3 years.
- H. Feasibility studies.
- I. Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual state or accrediting associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.
- J. Aquaculture, including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture of granting or augmenting publicly owned or regulated stock of fish.
- K. The recipient must show one job retained or added for each \$35,000 of the project.
- L. The project must be located within the city limits of the City of East Grand Forks.

**II. Ineligible Purposes:**

- A. Payment of the intermediary's own administration costs or expenses.

- B. To purchase goods or services or render assistance in excess of what is needed to accomplish the purposes of the ultimate recipient project.
- C. Distribution or payment to the owner, partners, shareholders, or beneficiaries of the recipient or members of their families when such persons will retain any portion of their equity in the recipient.
- D. Charitable or educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.
- E. Assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers, or have a majority ownership (20 percent or more) in the recipient.
- D. Relending in a city with a population of twenty five thousand or more as determined by the latest decennial census.
- E. A recipient which has applied or received a loan from another intermediary unless FmHA provides prior written approval for such loan.
- F. Any line of credit.
- G. To finance more than 75 percent of the total cost of a project by the recipient. The total amount of EDAF loan funds requested by the recipient plus the outstanding balance of any existing EDAF loan(s) will not exceed \$150,000.
- H. Any investment in securities or certificates of deposit of over 30 day duration. Without concurrence of FmHA.
- I. Agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, or agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, and raising, housing, feeding, breeding, hatching, control and /or management of farm and domestic animals). Exceptions to this definition are:
  - a. Aquaculture as identified under eligible purposes.
  - b. Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products.
  - c. Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.
  - d. Financial assistance for livestock and poultry processing as identified under eligible purposes.
  - e. The growing of mushrooms or hydroponics.

J. Transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide for expanded job opportunities.

K. Community antenna television services or facilities.

L. Any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

M. Any illegal activity.

N. Any otherwise eligible project that is in violation of either a federal, state, or local environmental protection law or regulation of any enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

O. Any hotels, motels, tourist homes or convention centers.

P. Any tourist, recreation, or amusement centers.

### III. Terms of Loan:

A. No loan shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred for not more than 1 year.

1. Loans secured by a real estate mortgage will generally not be extended for a period exceeding 20 years.

2. Loans secured by personal property will generally not be extended for a period exceeding 8 years.

3. Loans secured by both real estate mortgage and personal property will be extended for an appropriate blended period.

B. The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

### IV. Interest and Fees on Loans:

A. Interest rates charged to the recipient will be at an initial rate of 5 percent per annum and will be adjusted on each five year anniversary of the loan if the term of the loan is more than 8 years.

B. A fee equal to one (1) percent of the loan will be charged to cover documentation and loan supervision expenses.

C. Each payment by the recipient will be applied first to accrued interest and the balance of the payment, if any, will be applied to the principal balance.

V. Security:

- A. Adequate security will be required for all loans.
  - 1. Total loans (including the EDAF loan) which are secured by a real estate mortgage shall not exceed 80 percent of the appraised value of the property. When the mortgage securing an EDAF loan is a second mortgage, the total of all mortgages can not exceed 70 percent.
  - 2. Total loan secured by personal property shall not exceed 65 percent of the appraised value of machinery, equipment, and fixtures or 50 percent of accounts receivable less than 60 days old or 50 percent of inventory.
- B. Additional security may be required at any time during the term of the loan if, after review and monitoring, an assessment indicates the need for such security.
- C. Real property will be appraised by a qualified third party.

VI. Environmental Requirements:

- A. Every loan secured by a real estate loan will have an environmental assessment.
- B. If there is an indication of noncompliance, such facts will be reported in writing to the administrator, Attn: Equal Opportunity Officer.

VII. Loan Agreements:

- A. Each loan will be supported by a loan agreement. The loan agreement will specify the following:
  - 1. Amount of the loan.
    - a. The amount of the loan cannot exceed \$150,000 or 75 percent of the total project.
    - b. The amount cannot exceed 50 percent of the amount of the project. Other funds must constitute the remaining 50 percent with no less than 20 percent equity.
  - 2. Interest Rate:
    - a. The interest rate shall be at an initial rate of 5 percent per annum.
    - b. If the term of the loan is more than 10 years, the interest rate of the note shall be increase or decreased on each five year anniversary of the note until the note is paid in full (each such date, a "change date") so that the interest rate equals the index rate (the average yield of the

U.S. Treasury Securities maturing 7 years from the date of the note or Change Date) in effect 10 days before the Change Date plus the margin rate of 2 percent. The rate shall always be rounded to the nearest 1/8th of 1%. The maximum rate will never exceed 10 percent.

- c. Interest will be paid at least annually.
- d. Interest only may be paid for a period of one year.

3. Terms and Repayment Schedule.

- a. The loan will be repaid according to the lending guidelines.
- b. The recipient will pay a late charge of 4 percent of the payment due if the payment is not received within 15 calendar days following the due date. The late charge will be considered unpaid if not received within 30 calendar days of the missed due date for which it is imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge does not constitute a waiver of default.

4. Disbursement Procedures.

- a. Disbursement of loan funds shall take place after the loan agreement and the promissory note are executed and any other conditions precedent to disbursement of funds are fully satisfied.
- b. All required documentation must be received before any funds can be disbursed.
- c. Recipient will apply their funds before loan funds are disbursed.
- d. Interim disbursements will be limited to 90 percent of work completed and must be substantiated by contractor bills and supported by lean waivers.
- e. Final disbursement will be made only upon completion of all work and an inspection by a representative of the lender. The owner or contractor must submit a final bill certifying that all work has been completed and submit a final lean waiver.

5. Insurance Requirements.

- a. Hazard insurance (fire and windstorm and extended coverage) will be secured in an amount sufficient to cover the amount of the loan.
- b. Life insurance coverage in an amount sufficient to cover the amount of the loan will be secured on the life of the recipient if a single borrower or on the life of the key officers or major stockholders if the borrower is a corporation.

- c. The recipient will provide evidence of workmans' compensation insurance coverage.
  - d. The recipient will provide evidence of flood insurance coverage or evidence that the project is not in a flood plain.
6. Other Documentation.
- a. An existing business.
    - 1. 3 years of prior years Profit and Loss Statements.
    - 2. 3 years of prior years Financial Statements.
    - 3. a 3 year projection.
  - b. A new business.
    - 1. Current financial statement.
    - 2. Current income statement.
    - 3. 5 year business projection.
  - c. All corporations.
    - 1. Articles of Incorporation.
    - 2. Copy of Corporate Charter.
    - 3. Borrowing Resolution.
7. Working Capital. Dollar amount appropriate to the size of the business and the loan.
- a. Current assets after disbursement of the loan shall not be less than 115% of current liabilities.
  - b. Equity capital after disbursement of the loan shall not be less than 30%.
8. Projected net income available to service debt shall not be less than 120% of the amount necessary to service all debts of the recipient.
9. All loans to corporations will require the personal guarantee of the corporate officers and the principal stockholders.
10. Reporting Requirements.

- a. Quarterly profit and loss statements will be submitted within 30 days of the end of the quarter.
- b. Quarterly Financial Statements will be submitted within 30 days of the end of the quarter.
- c. Annual Profit and Loss Statements and Financial Statements will be submitted within 45 days of the year end.

# Request for Council Action

Date: February 3, 2016

To: East Grand Forks City Council Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: Chief Michael Hedlund

RE: Pine to Prairie Drug Task Force Joint Powers Agreement

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**Background:** The Pine to Prairie Drug Task Force has been in place since 2008. This Task Force was initially made up of only three agencies – the East Grand Forks and Crookston Police Departments and the Polk County Sheriff’s Office. In 2015 the Task Force expanded to include three levels of membership and added full-time members from the Roseau County Sheriff’s Office, Pennington County Sheriff’s Office/Thief River Falls Police Department (one position shared), the United States Border Patrol (four positions) and the Department of Homeland Security Investigations Division (one position). These additions required an amendment to the original Task Force JPA. For 2016 we are adding two more full-time members with Lake of the Woods County and Norman County both providing a full-time officer to the Task Force. This change made a new amended JPA necessary. The final version of the new amended JPA, which has been approved by the Task Force Board, is attached.

**Recommendation:** It is my recommendation that the East Grand Forks City Council approve the “Pine to Prairie Drug Task Force Joint Powers Agreement”.

**Attachments:** Pine to Prairie Drug Task Force Joint Powers Agreement

**THIRD AMENDED AND RESTATED  
JOINT POWERS AGREEMENT FOR THE  
PINE TO PRAIRIE  
DRUG AND VIOLENT CRIME TASK FORCE**

**THIS SECOND AMENDED AND RESTATED AGREEMENT** is made and entered into by the undersigned, who are units of government responsible for the enforcement of controlled substance, gang, and violent crime laws in their respective jurisdictions. This agreement is made pursuant to the authority conferred upon the parties by the laws of the State of Minnesota, including the Joint Exercises of Powers Act, Minn. Stat. 471.59.

**WHEREAS**, the Pine to Prairie Drug Task Force was organized and established by the County of Polk, the City of Crookston, and the City of East Grand Forks, pursuant to a Joint Powers Agreement (“Original Agreement”) in 2008; and

**WHEREAS**, from time to time, the Original Agreement was amended pursuant to its terms by agreement of the parties; and

**WHEREAS**, an Amended and Restated Pine to Prairie Drug Task Force Joint Powers Agreement (“Amended Agreement”) was approved by the parties in early 2014. The Amended Agreement incorporated all previously approved amendments to the Agreement and amended the Agreement to provide for participation by U.S. Customs and Border Protection as a non-voting member; and

**WHEREAS**, the undersigned parties desire to further amend and restate the Amended Agreement to change the name of the task force and to provide for enhanced participation of members to this agreement in the task force as stated below.

**NOW, THEREFORE**, the undersigned Governmental Units, in the joint and mutual exercise of their powers, agree as follows:

**1. Name.**

1.1 The name of the joint powers entity created herein shall be the “Pine to Prairie Drug Task Force” (hereinafter “PTPDTF”).

**2. General Purpose.**

2.1 The purpose of this Agreement is to establish an organization to coordinate efforts to investigate, apprehend, and prosecute drug, gang, and violent crime offenders. The PTPDTF shall seek to target felonies that have the likelihood of being related to the distribution of narcotics, gang activity, violent crimes, and/or other cases that have multi-jurisdictional impact.

**3. Members.**

3.1 The Members of this Agreement shall consist of the following units of government:

The City of Crookston (Full member);  
The City of East Grand Forks (Full member);

The County of Polk (Full member);  
 The County of Roseau (Full Member)  
 The County of Pennington and the City of Thief River Falls (Full Member - Combined);  
 The County of Norman (Full Member);  
 The County of Lake of the Woods (Full Member)  
 The City of Ada (Associate Member);  
 The County of Red Lake (Associate Member);  
 The County of Marshall (Liaison Member);  
 The County of Kittson (Liaison Member);  
 U.S. Customs and Border Protection and Homeland Security Investigations (non-voting, Full Member - Combined);

3.2 The Polk County Attorney’s Office shall participate as the legal advisor to the PTPDTF. However, when necessary, each of the respective Members to this Agreement shall obtain legal advice from their respective County Attorneys on cases from their respective jurisdictions.

3.4 The Members to this Agreement shall cooperate and use their best efforts to ensure that the various provisions of the Agreement are fulfilled. The Members agree to act in good faith to undertake resolutions of disputes, if any, in an equitable and timely manner and in accordance with the provisions of this Agreement.

3.5 Full, Associate, and Liaison Members. Each Member to the PTPDTF shall assign at least one experienced peace officer to serve as an Agent on the task force, subject to the provisions set forth below.

3.5.1 Full Members. Each Full Member shall assign a peace officer to be an Agent on the task force, and such assignment shall be the principal assignment of such peace officer.

3.5.2 Associate Members. Each Associate Member is not required to assign a peace officer as an Agent to the task force, but will participate in PTPDTF investigations, operations and activities on occasion. Participation in occasional task force investigations, operations and activities by peace officers from an Associate Member will be initiated by requests from full time PTPDTF Agents or by the initiation of cases by the Associate Member officers that require or would benefit from task force assistance or participation. Task force case participation by Associate Member peace officers is contingent upon the Associate Member agency’s supervisory notification and approval, if possible under the circumstances.

3.5.2.1 The following Associate Member agrees to contribute towards the annual budget of the PTPDTF, the following sum:

The County of Red Lake	\$5,000
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Such funds shall be used by the PTPDTF for buy funds and

operational funds, as directed by the Governing Board.

3.5.2.2 The following Associate Member agrees to contribute the following sum to the Norman County Sheriff's Office to help fund Norman County's assigned Deputy to the PTPDTF:

The City of Ada                      \$10,000

3.5.3 Liaison Members. Each Liaison Member is not required to assign a peace officer as an Agent to the task force, but will participate in PTPDTF investigations, operations and activities on occasion. Participation in occasional task force activities by peace officers from a Liaison Member will be initiated by requests from full time PTPDTF Agents or by the initiation of cases by the Liaison Member officers that require or would benefit from task force assistance or participation. Task force case participation by Liaison Member peace officers is contingent upon the Liaison Member agency's supervisory notification and approval, if possible under the circumstances.

3.6 Peace officers, who are assigned by Associate or Liaison Members to participate in PTPDTF investigations and operations, shall report to the Task Force Commander or Team Leader(s) during the course of joint operations or investigations. During joint operations and investigations, the Task Force Commander or Team Leader(s) or designee shall update and coordinate with the Associate or Liaison Member officer's supervisor to ensure compliance with work standards and department policy.

3.7 Peace officers, who are assigned by Associate or Liaison Members to participate in PTPDTF investigations and operations, shall be trained in the established operational protocols and practices of the PTPDTF. Operations involving the use of PTPDTF confidential funds shall require involvement of a full time PTPDTF Agent. Use of PTPDTF equipment by Associate Member or Liaison Member officers is allowed after the officer is trained in the use of the equipment and is approved by the Task Force Commander or Supervisor.

**4. Term of Agreement.**

4.1 The term of this Agreement shall be for one (1) year, commencing January 1, 2016, and terminating on December 31, 2016, unless terminated earlier, pursuant to Section 12.1 of this Agreement.

4.2 The Members agree that this Agreement shall be automatically extended for successive one-year terms upon the same terms, conditions, and covenants, unless the PTPDTF is dissolved prior to expiration of the initial or successive term.

**5. Coordinating Agency.**

5.1 Unless otherwise provided by resolution of the Governing Board, the City of Crookston shall serve as the Coordinating Agency.

5.2 Acting on behalf of the PTPDTF and its members, the Coordinating Agency shall apply for state and/or federal funding through grant agreements with the Minnesota Department of Public Safety, Office of Justice Programs (OJP) the United States Department of Justice, Bureau of Justice Assistance, and/or any other sources of grant funding available to support the operations and expenses of the PTPDTF ("Grant Funds"). Unless otherwise designated by resolution of the Governing Board, the City of Crookston Chief of Police shall be the "authorized official" as defined in the general policies and procedures for applying for and accepting Grant Funds.

## **6. Governing Board.**

6.1 Creation and Composition. A joint powers board, known as the PTPDTF Governing Board, is established for the purposes contained herein with the powers and duties set forth in this Agreement. The Governing Board shall consist of not less than six members, nor more than 14 members, which shall include the chief law enforcement officer, or his/her designee, from each participating Full Member agency, an attorney from the Polk County Attorney's Office, and up to five additional members selected by the Governing Board. Board members shall not be deemed employees of the PTPDTF and shall not be compensated by it.

### **6.2 Officers.**

6.2.1 At the first meeting of each year, the Governing Board shall elect from the persons representing Full Members a Chair, a Vice-Chair, and such other officers, if any, as it deems necessary to conduct its meetings and affairs. The prosecuting attorney shall not be eligible to serve as an officer of the Governing Board. Associate and Liaison Members shall not be entitled to representation on the Governing Board, but shall be entitled to attend meetings of the Governing Board and serve in an advisory role to the Governing Board.

6.2.2 The Governing Board may adopt rules and regulations governing its meetings. Such rules and regulations may be amended from time to time at either a regular or a special meeting of the Board provided that at least ten (10) days prior notice of the meeting has been furnished to each Board member.

6.2.3 The Chair and any other officers so selected shall serve for a term of one (1) year or until the officer ceases to be a Governing Board member, whichever is shorter.

6.2.4 The Chair shall have no more power than any other member of the Governing Board, except that the Chair shall have the authority to do the following:

6.2.4.1 Give notice of any meetings when scheduled or otherwise called;

6.2.4.2 Call meetings to order and provide for their orderly and efficient conduct;

- 6.2.4.3 Provide for the preparation of minutes of all meetings; and
- 6.2.4.4 When authorized by the passage of a motion by the Governing Board, execute such contracts, agreements, reports, filings, and other documents as necessary on behalf of the PTPDTF.

### 6.3 Meetings.

- 6.3.1 The Governing Board shall meet at least quarterly and shall have such other special meetings at such times and places as Chair of the Governing Board shall determine. Special meetings may be held on three (3) days' notice by the Chair or any two (2) Governing Board members, except that a special meeting to consider adoption of or amendments to the Governing Board's operating rules pursuant to Section 6.2.2 shall require ten (10) days' notice. The presence of a majority of the duly appointed voting members of the Governing Board at a meeting shall constitute a quorum.
- 6.3.2 Each Governing Board member shall be entitled to one vote, with the exception of the member from U.S. Customs and Border Protection and Homeland Security Investigations, whose assigned Governing Board member shall act in an advisory capacity only. Proxy voting is not permitted. The Governing Board shall function by a majority vote of the board members present, except as provided herein.
  - 6.3.2.1 An affirmative vote of at least two-thirds of the members shall be required to:
    - 6.3.2.1.1 Approve or amend the budget;
    - 6.3.2.1.2 Abolish or dissolve the PTPDTF; or
    - 6.3.2.1.3 Designate a Coordinating Agency, pursuant to Section 5.

### 6.4 Duties and Powers.

- 6.4.1 The Governing Board may adopt and amend such bylaws that it may deem necessary or desirable for the conduct of the business of the Governing Board. Such bylaws shall be consistent with the terms of this Agreement and any applicable laws or regulations.
- 6.4.2 The Governing Board may enter into any contract necessary or proper for the exercise of its powers or the fulfillment of its duties and may enforce such contracts to the extent available in equity or at law. The Governing Board may authorize the Chair or Vice Chair of the Governing Board to execute those contracts.
- 6.4.3 The Governing Board may disburse funds in a manner which is consistent with this Agreement and with the method provided by law for the disbursement of funds by the Members to this Agreement. Such disbursements shall be made through the Fiscal Agent approved by the Governing Board.

- 6.4.4 The Governing Board may apply for and accept gifts, grants or loans of money or other property or assistance from the United States Government, the State of Minnesota, or any person, association or agency for any of its purposes. The Governing Board may enter into any agreement in connection therewith, and hold, use and dispose of such money, property or assistance in accordance with the terms of the gift, grant or loan relating thereto.
- 6.4.5 The Governing Board may cooperate with other federal, state, and local law enforcement agencies to accomplish the purpose for which it is organized.
- 6.4.6 Other Conditions:<sup>1</sup> even though it may otherwise be stated herein, the PTPDTF, and each of its members, further agree as follows:
- 6.4.6.1 The PTPDTF will meet and maintain the conditions of eligibility established as a part of the Request for Proposal that established funding for the grant funded project.
  - 6.4.6.2 The PTPDTF will be in compliance with the Open Meeting Law requirements contained in Minn. Stat., Chapter 13D.
  - 6.4.6.3 The PTPDTF will be subject to the operational command and supervision of one of the participating agencies.
  - 6.4.6.4 The PTPDTF will be subject to a biennial operational and financial audit contracted out to an external organization not associated with us and designed to ensure that our multijurisdictional entity and our designated fiscal agent are in compliance with applicable legal requirements, proper law enforcement standards and practices and effective financial controls.
  - 6.4.6.5 The PTPDTF will ensure that it has adequate staffing and funding to support law enforcement, prosecutorial and financial operations, including bookkeeping, evidence handling and inventory recording.
  - 6.4.6.6 The PTPDTF will process all seized cash, physical assets and evidence through the standard evidence handling procedures established by its policies and procedures or the policies and procedures of one or more of its Members.
  - 6.4.6.7. Officers participating in the PTPDTF shall be subject to annual performance reviews conducted by its operational supervisor.

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<sup>1</sup> These conditions originally were agreed to and adopted by the Governing Board pursuant to a Resolution of the PTPDTF adopted October 14, 2010.

- 6.4.6.8. The PTPDTF governing board will require that the prosecutor on the governing board who shall: (1) Recommend to the governing board the nature and frequency of training for officers assigned to the PTPDTF in order to increase successful prosecutions; (2) Advise the PTPDTF on the lawful handling and processing of seized property and evidence and forfeited property and money; and (3) Ensure that seizures and forfeitures are reported in accordance with Minn. Stat. § 609.5315, subd. 6.
  
- 6.4.6.9 The fiscal agent appointed by the Governing Board shall be approved by the Department of Public Safety. The Governing Board will require the fiscal agent to adhere to these conditions.
  
- 6.4.7 From the full-time Agents assigned to the PTPDTF pursuant to Section 7, the Governing Board shall appoint a Task Force Commander, who shall be responsible for overseeing and coordinating the day-to-day operations of the PTPDTF, subject to the supervision and direction of the Governing Board. The Task Force Commander must be a full-time, licensed peace officer of a full Member of the PTPDTF. The Task Force Commander shall remain an employee of the Member that has assigned them to the PTPDTF. Such Task Force Commander shall perform duties in accordance with Section 8 herein.
  
- 6.4.8 The Governing Board shall formulate policies and procedures to govern the Task Force Commander and PTPDTF Agents. In the absence of PTPDTF policies and procedures, the Task Force Commander and the Agents shall be governed by the policies and procedures of the respective law enforcement agency of the Member that appointed them to the PTPDTF.
  
- 6.4.8 The Governing Board shall cause to be made an annual audit of the books and accounts of the PTPDTF and shall make and file a report to its members which includes the following information:
  - 6.4.8.1 The financial condition of the PTPDTF;
  - 6.4.8.2 The business transacted by the PTPDTF; and
  - 6.4.8.3 Any other matters which affect the interests of the PTPDTF.
  
- 6.4.10 The PTPDTF's books, receipts, and records shall be open to inspection by its Members at all reasonable times.
  
- 6.4.11 The Governing Board may contract with any of its Members to take title to, hold, manage and convey real and/or personal property obtained by the PTPDTF as a result of civil asset forfeiture proceedings.

6.4.12 The Governing Board may hold such property as may be required to accomplish the purposes of this Agreement and upon termination of this Agreement make distribution of such property as provided for in Section 12.2 of this Agreement.

**7. Duties of Task Force Members.**

7.1 Each Full Member shall assign one experienced, licensed peace officer to serve as Agents for the PTPDTF as follows:

City of Crookston	1 Full Time Equivalent (FTE)
City of East Grand Forks	1 FTE
County of Polk	1 FTE
County of Pennington & City of Thief River Falls (combined)	1 FTE
County of Roseau	1 FTE
County of Norman	1 FTE
County of Lake of the Woods	1 FTE
U.S. Customs and Border Protection	4 FTEs
Homeland Security Investigations	<u>1 FTE</u>
Total:	12 FTEs

7.2 Agents assigned to the PTPDTF will be responsible for drug investigation, including but not limited to intelligence gathering and management, case development, and referrals of investigations for prosecution. Agents may also assist other law enforcement agencies in surveillance and undercover operations. Agents will work cooperatively with law enforcement officers from the Members and will work cooperatively with other federal, state, and local law enforcement agencies, as directed by the Task Force Commander.

7.3 Agents assigned to the PTPDTF will be supervised by the Task Force Commander or, in his/her absence, by a Team Leader or such other agent assigned by the Task Force Commander to act in his/her behalf.

7.3.1 From Agents assigned by Members, one or more Team Leaders may be appointed by the Governing Board, with the concurrence of the Agent's member agency, to serve at the pleasure of the Governing Board. Team Leaders so appointed shall act in the absence of the Task Force Commander and will have the duties, responsibility, and authority of the Task Force Commander during the time the Task Force Commander is absent.

7.3.1.1 The duties, responsibilities, and authority of the Team Leader(s), while the Task Force Commander is absent, shall be the same as the Task Force Commander as described in Section 8 herein. If there is more than one Team Leader, the Task Force Commander will assign one of the Team Leaders to act as Task Force Commander while the Task Force Commander is absent.

7.4 Agents will maintain compliance with the policies and procedures of the PTPDTF, and in the absence of a PTPDTF policy or procedures, Agents shall maintain compliance with the applicable policy or procedure, if any, of his/her

appointing Member.

- 7.5 Agents will adhere to all laws of the State of Minnesota and the United States of America.
- 7.6 Unless otherwise agreed to by the Governing Board, the Member appointing an Agent to the PTPDTF shall furnish the Agent with a weapon and a vehicle, and the Member shall pay any lease payments, insurance, maintenance and operating costs for said vehicle. Further, unless otherwise agreed to by the Governing Board, the Member appointing the Agent shall pay all expenses associated with tuition, travel, lodging and meals incurred on behalf of said Agent.
- 7.7 Agents assigned by the Members shall not be employees of the PTPDTF. Agents shall remain the employees of the Member that has assigned them to the task force and shall be compensated by that Member, except as otherwise provided herein.
  - 7.7.1 Grant Funds will be utilized to ensure that PTPDTF operations are properly funded, including but not limited to the funding of office supplies, support staff salary, cellular telephones and service, liability insurance, training, and confidential funds. The Members agree that remaining Grant Funds will be divided equally among its Full Member agencies for reimbursement of the Full Member assigned agent's salary (excluding benefits).<sup>2</sup>
- 7.8 During the term of this Agreement, the Members agree to maintain the law enforcement officer position assigned to the PTPDTF and shall maintain the FTE staffing assigned to the Task Force as shown in Section 7.1.

## **8. Task Force Commander.**

- 8.1 The Task Force Commander shall serve at the pleasure of the Governing Board and shall be in charge of the day-to-day operation of the PTPDTF, including supervising the task force's assigned personnel, subject to direction received from the Governing Board. The Task Force Commander is responsible for staffing, scheduling, case assignment, case management, record keeping, informant management, buy fund management, petty cash management and intelligence management.
- 8.2 The Task Force Commander will be responsible to keep the Governing Board updated as to the task force's activity, which would include major case development within Member jurisdictions.
- 8.3 The Task Force Commander will supervise the drafting and, when possible, the execution of all search warrants initiated by the PTPDTF and will work cooperatively with the agencies with venue over the case.
- 8.4 The Task Force Commander will be responsible for all buy fund monies and petty cash funds, if any is provided for by resolution of the Governing Board, and will provide the Governing Board with a monthly accounting of all funds disbursed and a written summary of activity involving task for buy money and

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<sup>2</sup> The Members understand and agree that the amount of reimbursement to Full Member agencies will be equivalent to approximately one-half of their assigned agent's salary, excluding benefits and overtime.

funds.

- 8.5 The Task Force Commander shall be responsible to coordinate annual leave (vacation) of all Agents under his supervision, in accordance with any bargaining agreement, policy, and guidelines of the Agent's respective appointing Member.
- 8.6 The Task Force Commander shall immediately notify the chair of the Governing Board and all other members of the Governing Board on any misconduct by Agents under his/her supervision. Such misconduct shall include, but not be limited to, the following: commission of a criminal offense; neglect of duty; violation of PTPDTF policies, rules or procedures, or the policies, rules, and procedures of the respective appointing Member; and conduct that tends to reflect unfavorably upon the PTPDTF or any Member.
- 8.7 The Task Force Commander shall coordinate intelligence among the Members and between the PTPDTF and other local, state, and federal law enforcement agencies.

## **9. Budgeting and Funding.**

- 9.1 The Members intend to fund the cost of operation of the PTPDTF from grant funds and matching funds and/or contributions from the member cities and counties, from the proceeds of forfeiture actions, and from restitution.
- 9.2 The Governing Board shall adopt a budget based upon grant funds, member matching funds and/or contributions, and money made available from other sources. The Governing Board may amend the budget from time to time as provided herein.
- 9.3 The Governing Board shall appoint one of its Members to serve as Fiscal Agent to provide budgeting, recordkeeping, and accounting services necessary or convenient for the operations of the PTPDTF. Such services shall include, but not be limited to:
  - 9.3.1 Management of all PTPDTF funds, including member contributions and grant monies;
  - 9.3.2 Management and tracking of forfeiture assets and proceeds;
  - 9.3.3 Timely payment of any contracted services; and
  - 9.3.4 Maintenance of all relevant bookkeeping and recordkeeping.
- 9.4 No payment on any invoice for services performed by any person providing services or supplying goods to the PTPDTF in connection with this Agreement shall be authorized unless approved by the Chair or Vice Chair of the Governing Board.
- 9.5 The Members agree to contribute their grant funds and required matching funds/contributions, if any, to operate the PTPDTF.
- 9.6 All funds shall be accounted for according to generally accepted accounting

principles. The Fiscal Agent shall make a monthly financial report of all expenditures and receipts, and current fund balances to the Board.

- 9.7 The Governing Board may not incur debts and may not incur obligations or approve contracts which will require expenditure of funds in excess of funds available to the PTPDTF.
- 9.8 The Board's obligation to reimburse members for any expense, furnish equipment and the like is contingent upon the receipt of grant funds for that purpose. If insufficient grant funds are received, the Board may reduce the level of reimbursement and/or reduce other expenditures.

## **10. Seizures, Forfeitures, and Restitution.**

- 10.1 Cash, property, and other items that are seized and thereafter forfeited pursuant to the operations or efforts of the PTPDTF under this Agreement shall be used to support PTPDTF efforts. Additionally, the Members agree that any and all forfeitures of cash, property, and other items, resulting from cases where felony-level drug charges are filed, shall be paid to and/or the property of the PTPDTF, to be used to support PTPDTF efforts.
- 10.2 All money and property that is obtained as a result of PTPDTF efforts and operations shall be forfeited by the Member agency originating the specific case. Forfeitures so initiated shall be cleared through the respective Member's prosecuting authority. Forfeited monies or property shall be distributed in the manner consistent with applicable statutes of the State of Minnesota. Unless otherwise agreed to by a unanimous vote of the Governing Board, the portion of forfeiture proceeds inuring to Members under the applicable law shall be used for the benefit of PTPDTF as provided below.
  - 10.2.1 If the felony-level drug charge is the result of a case initiated by a licensed peace officer who is not a PTPDTF assigned Agent, and the case involved one or more PTPDTF assigned Agents in any way, then the Members agree that fifteen percent (15%) of any net forfeiture proceeds, which are disbursed to the "appropriate agency," pursuant to Minn. Stat. § 609.5315, Subd. 5, shall be disbursed to the Member whose officer initiated the case, and the remainder of the net proceeds shall be disbursed to the PTPDTF.
  - 10.2.2 If the felony-level drug charge is the result of a case initiated by a licensed peace officer who is not a PTPDTF assigned Agent, and the case did not involve any PTPDTF assigned Agents, then the Members agree that that twenty-five percent (25%) of any net forfeiture proceeds, which are disbursed to the "appropriate agency," pursuant to Minn. Stat. § 609.5315, Subd. 5, shall be paid to the Member whose officer initiated the case, and the remainder of the net proceeds shall be disbursed to the PTPDTF.
- 10.3 Forfeiture proceeds hereunder shall be deposited into a PTPDTF forfeited funds account to be maintained by the Coordinating Agency. In the case of Federal forfeiture actions, established Federal Rules shall be followed. Fine or restitution monies ordered paid to the PTPDTF by court order may be used to offset equipment or operating costs of the PTPDTF which are not funded by grant or matching monies, subject to compliance with applicable laws.
- 10.4 If expenses from a forfeiture exceed the sale proceeds, the Governing Board

shall provide for reimbursement from other funds of the PTPDTF.

- 10.5 The use and disbursement of all cash and/or property forfeited to the PTPDTF pursuant to this Agreement shall be in accordance with Minnesota law and must be approved by the Governing Board. Any disputes on disbursement of funds will be decided by the Governing Board.

## **11. Insurance and Indemnification.**

### **11.1 Insurance.**

- 11.1.1 The PTPDTF will maintain liability coverage with the League of Minnesota Cities Insurance Trust (LMCIT) with a limit of at least \$2,000,000 per occurrence, under standard LMCIT liability coverage forms.
- 11.1.2 Alternatively, the PTPDTF may maintain equivalent private liability insurance coverage. Such coverage may be provided through separate policies for commercial general liability (CGL) and law enforcement liability. Such private liability insurance policies must comply with the following requirements:
  - 11.1.2.1 Each policy shall have a limit of at least \$2 million per occurrence. If the policy contains a general aggregate limit, the general aggregate limit shall not be less than \$2,000,000.
  - 11.1.2.2 The CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and contractually-assumed liability.
  - 11.1.2.3 Each member, and each member's officers, employees, and volunteers, shall be named as additional covered parties on each policy for all claims arising from PTPDTF activities or operations.
- 11.1.3 Each Member agrees to procure and maintain insurance for auto liability and damage to or loss of property with respect to any automobile(s) and/or property/equipment supplied by the Member for PTPDTF efforts. Each member shall be responsible for damages to or loss of its own equipment. Each Member waives the right to, and agrees that it will not, bring any claim or suit against the PTPDTF or any other Member for damages to or loss of its equipment arising out of participation in or assistance with PTPDTF operations or activities, even if the damages or losses were caused wholly or partially by the negligence of any other Members, or its officers, employees, and/or volunteers.
- 11.1.4 Each Member shall be responsible for injuries to or death of its own personnel, including those assigned to the PTPDTF. Each Member will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are assigned to the PTPDTF or are otherwise participating in or assisting with PTPDTF operations or activities. Each Member waives the right to, and agrees that it will not, bring any claim or

suit against the PTPDTF or any of its Members for any workers' compensation benefits paid to its own employee or dependents, that arise out of participation in or assistance with PTPDTF operations or activities, even if the injuries were caused wholly or partially by the negligence of any other Member or its officers, employees, or volunteers.

11.1.5 All insurance policies and certificates required under this agreement shall be open to inspection by any member and copies of the policies of certificates shall be submitted to a member upon written request.

11.1.6 Any excess or uninsured liability of the PTPDTF shall be borne equally by all of the Members, but this does not include the liability of any individual officer, employee, or volunteer that which arises from his or her own malfeasance, willful neglect of duty, or bad faith.

## 11.2 Indemnity.

11.2.1 The PTPDTF agrees to defend and indemnify the Members for any and all claims, losses, damage, liability, suits, judgments, costs, and expenses by reason of the action or inaction of its employees assigned to the PTPDTF for claims arising from PTPDTF activities or operations and decisions of the Governing Board.

11.2.2 The Agreement to indemnify and hold harmless provided herein does not constitute a waiver by any Member of limitations on liability provided by Minnesota Statutes, Chapter 466. Under no circumstances shall a Member be required to pay on behalf of itself and other Members, any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466, applicable to any other Member. The limits of liability for some or all of the Members may not be added together to determine the maximum amount of liability for any Member.

11.2.3 Nothing herein shall be construed to provide insurance coverage or indemnification to an officer, employee, or volunteer of any Member for any act or omission for which the officer, employee, or volunteer is guilty of malfeasance in office, willful neglect of duty, or bad faith.

## 12. Termination / Withdrawal.

12.1 Termination. This Agreement shall terminate upon the occurrence of any one of the following events, whichever occurs first:

12.1.1 When necessitated by operation of law or as a result of a decision by a court of competent jurisdiction;

12.1.2 When necessitated based upon the failure to obtain the necessary grant funding from the State of Minnesota and/or the United States federal government and/or Member agencies and other local sources of funding; or

12.1.3 When two-thirds of the Members agree by resolution to terminate the agreement upon a date certain.

12.2 **Effect of Termination.** Upon termination of this Agreement, the Governing Board shall provide for the distribution of all PTPDTF funds and assets in the following manner:

12.2.1 The Governing Board may determine to sell and liquidate any and all non-monetary assets prior to distribution.

12.2.2 Any and all personal property used by the PTPDTF and owned by a Member shall be returned to that Member upon dissolution of the PTPDTF.

12.2.3 All remaining funds and assets shall be distributed to the Members in proportion to the full-time equivalent (FTE) contributions of each Member to the PTPDTF. Only Members who have been a member of the PTPDTF continuously for 24 months immediately preceding dissolution shall be entitled to a share in the distribution.

12.3 **Withdrawal.**

12.3.1 Any Member may withdraw from this Agreement upon six months' written notice to the Governing Board.

12.3.2 Withdrawal shall not act to discharge any liability incurred by the Member prior to withdrawal. Such liability shall continue until discharged by law or agreement of the remaining Members.

12.3.3 If a Member withdraws from the PTPDTF, and the remaining Members decide to continue the operations of the PTPDTF under the terms of this Agreement, including any amendment(s) thereto, the withdrawing Member shall not be entitled to the distribution of any assets or funds under Section 12.2, above, except as provided by Section 12.2.2.

12.3.4 In the event of withdrawal by any Member, this Agreement shall remain in full force and effect as to all remaining Members.

**13. Modification of Agreement.**

13.1 Any alterations, modifications, or amendments of the provisions of this Agreement shall only be valid if they have been reduced to writing and duly approved and signed by all of the Members.

**14. Counterparts.**

14.1 This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

# Request for Council Action

Date: February 3, 2016

To: East Grand Forks City Council Mayor Lynn Stauss, President Mark Olstad, Council Vice President Chad Grassel, Council Members: Clarence Vetter, Mike Pokrzywinski, Craig Buckalew, Henry Tweten, and Marc DeMers.

Cc: File

From: Chief Michael Hedlund

RE: Grand Forks Regional Special Operations Group Joint Powers Agreement

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**Background:** In August 2014 the East Grand Forks City Council authorized a Joint Powers Agreement between the Pine to Prairie Drug Task Force and the Grand Forks Narcotics task Force. This JPA was an “Agreement for the Joint Exercise of Peace Officer Duties” which allowed officers of the involved agencies to exercise police powers in any of the involved jurisdictions. An off-shoot of this agreement was the beginning of a formal agreement between the agencies involved in the Grand Forks Regional Special Operations Group (Grand Forks Police Department, Grand Forks Sheriff’s Office and University of North Dakota Police Department) and the East Grand Forks Police Department, Crookston Police Department that would allow officers from our agencies to join the various teams of the Special Operations Group. In 2015 officers from our various agencies began working as auxiliary members (Limited authority and scope during callouts). Upon the execution of this JPA our officers will be eligible to become full-members of the various teams and participate fully in their various activities. The involved agencies had originally planned to have this JPA as an addendum to the JPA that had been enacted in August 2014 but over time it was determined that it was more appropriate to develop a stand-alone JPA for the Special Operations Group. This proposed JPA has been reviewed and approved by the attorneys representing each member agency.

**Recommendation:** It is my recommendation that the East Grand Forks City Council approve the “Special Operations Group Joint Powers Agreement” and authorize the officers of the East Grand Forks Police Department to become formal and full members of the Special Operations Group Teams.

**Attachments:** Special Operations Group Joint Powers Agreement

## SPECIAL OPERATIONS GROUP JOINT POWERS AGREEMENT

This Agreement for the Joint Exercise of Police Powers is made and entered into by and between Grand Forks County, ND, acting by and through the Grand Forks County Sheriff's Department, the City of Grand Forks, ND, acting by and through the Grand Forks Police Department, the North Dakota State Board of Higher Education, acting by and through the University of North Dakota and the University of North Dakota Police Department, Polk County, MN, acting by and through the Polk County Sheriff's Department, the City of Crookston, MN, acting by and through the Crookston Police Department, and the City of East Grand Forks, MN, acting by and through the East Grand Forks Police Department.

Altru Health System of Grand Forks is not a party to this agreement. However, the parties to this agreement agree that members of Altru Health System may participate in Special Operations Group (SOG) activities, to include training, administrative functions and SOG activations for the specific purpose of providing emergency medical and other support as needed.

**PURPOSE.** The purpose of this Agreement is to grant the authority and set forth the conditions under which the participating agencies may exchange or provide personnel and equipment for the purpose of conducting or assisting in law enforcement and emergency response operations by establishment of a joint Special Operations Group.

**AUTHORITY.** Grand Forks County, ND, the City of Grand Forks, ND, the North Dakota State Board of Higher Education and the University of North Dakota enter into this Agreement pursuant to N.D.C.C. § 54-40.3-04. Polk County, MN, the City of Crookston, MN, and the City of East Grand Forks, MN enter into this Agreement pursuant to Minn. Stat. § 471.59.

### WITNESSETH

**WHEREAS,** Any county, city, township, or other political subdivision of North Dakota may, upon approval of its governing body, enter into an agreement with any other political subdivision of North Dakota, any agency, board, or institution of the State of North Dakota, or any other political subdivision of another state for the joint exercise of police powers in accordance with N.D.C.C. ch. 54-40.3 and § 54-40.3-04, and Minn. Stat. § 471.59; and

**WHEREAS,** the parties to this Agreement confront threats to public health and safety, including criminal activity and natural or manmade emergencies or disasters; and

**WHEREAS,** the parties to this Agreement individually do not possess all of the necessary resources to cope with every possible incident, crime, emergency or disaster by itself, and an effective, efficient response can best be achieved by the joint exercise of police powers between the parties to this Agreement; and

**WHEREAS**, the parties to this Agreement have determined it is in the best interest of all parties to this agreement to jointly exercise police powers and to share or lend resources necessary to assist each party's law enforcement agency.

**NOW, THEREFORE**, it is hereby agreed by and between each and all of the parties hereto as follows:

**I. PURPOSE.** The purpose of this Agreement is to provide for the joint exercise of police powers and emergency response by the City of Grand Forks, North Dakota, the County of Grand Forks, North Dakota, the North Dakota Board of Higher Education and the University of North Dakota, the cities of Crookston and East Grand Forks, Minnesota, and the County of Polk, Minnesota to provide law enforcement and emergency assistance to each other under circumstances in which a need for law enforcement or emergency assistance exists which cannot be met with available personnel or other resources.

**II. DEFINITIONS.** The terms as used in this Agreement have the following definitions:

- A. Agency:** means a criminal justice agency from the state of North Dakota or the state of Minnesota participating in this agreement.
- B. Agreement:** means this agreement for the Joint Exercise of Police Powers which sets forth the services provided as well as the terms and conditions under which the services are provided and includes exhibits, addendums and any renewals or attachments.
- C. Authorized Representative:** The Chief Law Enforcement Officer, or designee, of a participating criminal justice agency to this agreement, who has authorization to request or provide peace officer assistance under the terms of this agreement.
- D. Assisting Agency.** An agency participating in this agreement that provides manpower, equipment, facilities and resources to a participating agency from another jurisdiction that has requested assistance under the terms of this agreement.
- E. Emergency:** Any incident(s), human-caused or natural, that requires responsive action to save lives; protect property and public health and safety; or to lessen or avert the threat to public safety and which is beyond the capacity of an individual agency to effectively control.
- F. Incident Commander:** The official or designee, of a participating agency responsible for overseeing a request for assistance under this agreement.
- G. Requesting Agency:** An agency participating in this Agreement that has requested assistance from another agency participating in this agreement.

**III. SCOPE.** The identified participating agencies find it mutually beneficial to actively participate and field a joint Regional Special Operations Group. The participating agencies agree to provide personnel, resources and supervision to maintain the operational readiness of the Grand Forks Regional Special Operations Group. The Grand Forks Regional SOG is a Special Operations Group consisting of six operational teams or units who fall under the supervision and control of the Grand Forks Regional SOG Executive Board of Authority and their appointed SOG Commander(s). For purposes of this section, “High Risk” refers to potential threats of death or serious bodily injury or great bodily harm to person(s) including law enforcement. The six operational SOG Teams are as follows:

- A. Special Weapons and Tactics (SWAT) Team** – Responsible for regional response to law enforcement related “high risk” events requiring specialized equipment, resources or training in order to safely contain and resolve such events.
- B. Crisis Negotiations Team (CNT)** – Responsible for regional response to law enforcement related “high risk” events requiring specialized equipment, resources or training in order to safely resolve these events primarily through communicative methods.
- C. Bomb Team** – Responsible for regional response to law enforcement related “high risk” events requiring specialized equipment, resources or training in order to safely resolve events including, but not limited to, incidents involving explosives, hazardous materials, energetic materials or chemical, biological, or nuclear materials.
- D. Tactical Emergency Medical Services (TEMS) Team** – Responsible for regional response to law enforcement related “high risk” events requiring specialized equipment, resources or training in order to safely render emergency medical care to all persons involved.
- E. Water Operations Team** – Responsible for regional response to water related events requiring specialized equipment, resources or training in order to maintain safety and/or perform rescue/recovery operations as required.
- F. Unmanned Aircraft Systems (UAS) Team** – Responsible for regional response to aerial related events requiring specialized equipment, resources or training to perform search, surveillance, rescue or evidentiary operations as required.

**IV. SOG EXECUTIVE BOARD OF AUTHORITY.** The participating agencies hereby establish a joint board responsible for administering the Grand Forks Regional Special Operations Group. This joint board shall be known as the “SOG Executive Board of Authority,” or such other name as is agreed upon by the voting members. Membership of the joint board shall consist of an appointed voting member from each of the governing bodies of all parties to this Agreement with membership on SOG Teams. **The**

board, at its discretion, may allow a voting member from Altru Health System to participate on the board. Appointed members shall serve upon the joint board at the pleasure of the appointing authority from each of the governing bodies participating in this agreement and may be removed at any time. A chairperson shall be selected from the serving members of the joint board and may serve in that position at the discretion of the joint board membership. SOG Commander(s) may attend board meetings at the discretion of the board but shall not be voting board members. The joint board shall meet as needed, but no less than annually. The joint board shall have the following powers:

- A. To appoint a SOG Commander(s) who shall exercise operational control of the Grand Forks Regional SOG, or a portion thereof, subject to Joint Board of Authority approval.
- B. Within the limits of authorized budgets, construct, equip, train, maintain and manage the Grand Forks Regional SOG.
- C. To authorize the purchase of and to sell such supplies, equipment and other property as may be necessary for the operation of the Grand Forks Regional SOG.
- D. To establish staffing parameters to include quantity, qualifications, selection and training criteria of personnel and such other individuals each participating agency shall commit to the Grand Forks Regional SOG.
- E. To execute such contracts for management and operation of the Grand Forks Regional SOG including contracts or agreements with other SOG organizations.
- F. To apply for and accept grants from any public or private entities.
- G. To acquire, by purchase, gift, devise, lease or otherwise, any and all joint property that may be necessary to provide sufficient services to the participating agencies.
- H. To establish rules and regulations for the maintenance and operation of the Grand Forks Regional SOG, including the determination of financial contributions of each entity in compliance with N.D.C.C. §54-40.3-04 and Minn. Stat. §471.59.
- I. To appoint and make use of subcommittees to assist the board in carrying out its powers and authority.

**V. POWERS.** In exercising the foregoing powers, the joint board does not have authority to bind a participating agency to financial obligations in amounts that exceed a participating agency's appropriations, as approved by the representing governing body of each participating agency.

**VI. ADDITIONAL FUNDING SOURCES.** Applications for federal or state aid, as well as funds from other public and private sources may be applied for in the name of any of the participating agencies provided that the other participating agencies agree to the same. It is the intent of this paragraph that the participating agencies agree upon the most simple and expeditious process in applying for said funds.

**VII. MEMBERSHIP AND CHAIN OF COMMAND.** The SOG Executive Board of Authority will appoint a SOG Commander(s) to oversee all, or portions of the SOG Teams. The SOG Commander(s) is responsible for the day-to-day management of all SOG Teams under their command. These responsibilities include, but are not limited to, safety, training, equipment procurement, team member selection and certifications and operational control and oversight. The SOG Commander(s) shall report to the SOG Executive Board of Authority by established chain of command within that Commander's employing agency.

Each SOG Team will employ at a minimum, a Team Leader who shall be selected by established written team Standard Operating Procedures (SOPs). Each Team Leader(s) must be approved by the respective SOG Commander and SOG Executive Board of Authority. Team Leaders are responsible for the day-to-day operations of their specific team. These responsibilities include, but are not limited to, safety, training, equipment procurement, team member selection and certifications and operational control and oversight. The Team Leader(s) shall report directly to their respective SOG Commander.

Each SOG Team will employ various other team members with specific tasks, duties and responsibilities as assigned. All SOG Team Members shall be selected by established written team SOPs. Each team member selected must be approved by their respective SOG Team Leader(s), SOG Commander and SOG Executive Authority Board. All SOG Team Members shall report directly to their respective SOG Team Leader(s).

Auxiliary Team Members may be assigned to various SOG Teams with approval of the SOG Executive Board of Authority, SOG Commander and the SOG Team Leader(s). Auxiliary members are generally not fully trained, certified or equipped in order to safely participate in an activation of the team or certain training scenarios. Auxiliary members may be allowed limited participation in certain training scenarios and activations based upon their specific training, certification level, equipment and experience. Such participation must be approved by the team member's participating agency, SOG Commander and SOG Team Leader(s).

**VIII. STANDARD OPERATING PROCEDURES (SOPS).** Each SOG Team will operate based upon written Standard Operating Procedures. All SOPs will be reviewed and approved by the SOG Team Leader(s), SOG Commander and SOG Executive Board of Authority. All SOPs will minimally address team safety procedures, member selection, removal and certifications, training, equipment, and operational procedures. All SOG Members will be governed by their respective SOG SOPs and respective agency

policies.

**IX. INCIDENT COMMAND.** Overall incident command at any specific team activation will be the responsibility of the senior law enforcement official or designee of the law enforcement agency with lawful jurisdiction over the incident. The SOG Commander(s) or their designee will report and shall work under the direction to the designated Incident Commander or Unified Command structure and shall follow their direction. The SOG Commander(s) or their designee shall evaluate the situation and provide resources and resolution options to the Incident Commander as appropriate. The Incident Commander will have final authority on the operational use of the various SOG Teams within reason and safety. The SOG Commander or their designee will retain direct control over deployed SOG Teams. No SOG Team shall be compelled to perform actions which are deemed unsafe or unreasonable given the circumstances, or which the team is insufficiently staffed, trained or equipped to perform.

**X. TRAINING.** The SOG Executive Board of Authority shall establish basic, specialized and on-going training standards and certifications for the various SOG Teams and associated members. Once established, these training standards and certifications shall be identified in SOP. All costs associated with any required training will be the responsibility of the participating agency employing the team member unless specific agreements are otherwise made or decisions authorized by the SOG Executive Board of Authority.

**XI. PERSONAL EQUIPMENT.** The SOG Executive Board of Authority shall identify personal equipment necessary for the safe function and operation of all SOG Members. All personal equipment shall meet uniform and safety requirements commensurate with the duties and tasks assigned to each SOG Member. All personal equipment deemed necessary shall be properly inventoried and identified in SOP. All costs associated with any required personal equipment will be the responsibility of the participating agency employing the team member unless specific agreements are otherwise made or decisions authorized by the SOG Executive Board of Authority.

**XII. JOINT EQUIPMENT AND SHARED COSTS.** Participating agencies possessing equipment that may be beneficial for deployment or use by any SOG Team should consider allowing shared use of that equipment by the various SOG Teams. Equipment originally purchased or acquired by any participating agency to this agreement will remain the exclusive property of that party. Any such property that is damaged or destroyed during training or team activations will be the responsibility of the participating agency owning that equipment and/or its insurer. Examples of jointly shared equipment that may be solely owned are SWAT Command Vehicles, Bearcat, CNT Vehicles, Bomb Vehicles, Robots, Ambulances, All Terrain or Utility Vehicles, etc.

Joint equipment may be purchased with funds allocated proportionally by the participating agencies party to this agreement, **including Altru Health System**. In such cases, each participating agency will be responsible for funding of the joint equipment based upon their proportional (percentage) involvement in the specific SOG Team

purchasing equipment. All joint equipment that will be purchased or otherwise acquired through shared costs by the participating agencies to this agreement, shall first be approved by the SOG Executive Board of Authority. The SOG Executive Board of Authority and/or its individual insurers are responsible for any subsequent repair or replacement of any joint equipment purchased with funds allocated proportionally by the participating agencies which may be damaged or destroyed during training or activations. In the event a party to this agreement withdraws from this agreement and has contributed to the purchase of any joint equipment, the SOG Executive Board of Authority shall make fair and equitable pro-rated reimbursement to the withdrawing agency based upon the original proportionate payment and the present fair market value of the equipment. All Joint equipment shall be properly inventoried by respective SOG Teams. Examples of jointly purchased equipment may be ammunition, chemical munitions, explosives, etc.

**XIII. EMPLOYMENT STATUS AND REIMBURSEMENT.** SOG personnel shall at all times, continue to be employees of their respective appointed agencies, including such times as providing service to the SOG. All SOG personnel shall be compensated as provided by the policies and procedures of their respective employing agency, including all time spent during activations and training. Except as otherwise provided herein, no reimbursement shall be made by or to any of the parties hereto nor by the SOG for wages, salaries, fringe benefits or overtime payments. In the event reimbursement of personnel, equipment, travel, or other expenses becomes available from outside entities such as the North Dakota Special Operations Committee (ND SOC), the SOG Commander(s) will seek such reimbursement and upon receipt, will distribute the reimbursement based upon this agreement and each agency's contribution of personnel, equipment and supplies.

**XIV. REQUEST AND ASSISTANCE.**

- A.** Each party agrees that in the event of a request for assistance from a requesting agency, the assisting agency will furnish available personnel, equipment, facilities, or services, provided that the assistance will not unreasonably diminish the assisting agency's capacity to provide services within its own jurisdiction.
  
- B.** In order to request assistance under this Agreement, the Authorized Representative from the requesting agency shall contact the Authorized Representative of the assisting agency by voice communication system, in writing, or through a message relay provided by an emergency dispatch center. Any request for assistance must include a statement of the amount and type of equipment and personnel requested, and shall specify the location where the equipment and personnel are to be dispatched. The assisting agency may request information from the requesting agency necessary to confirm the nature of the request and to assess the types and amount of assistance it is able to provide to the requesting agency. In the event a request for assistance is made under this agreement, communications must be established between the requesting and assisting agencies, when possible, through the use of a locally

established communications plan, by utilization of the statewide frequency management interoperability plan or other shared communication system.

- C. All personnel from assisting agencies shall report to and shall work under the direction of the designated incident commander or unified command structure. Personnel from either the requesting or the assisting agencies may receive supervision from any command personnel from the combined participating agencies if authorized by the incident commander or designee in the incident command structure, depending on identified needs and available resources deemed most qualified to meet mission goals and objectives. **SOG Teams once authorized to undertake assignments, shall operate under the direction of the designated Incident Commander and identified SOG Chain of Command.** The assisting agency may withdraw its personnel and equipment when it is deemed to be in the best interest of the assisting agency and following notice provided to the requesting agency of the intended action as noted in Section XV, Subsection G below.
- D. A peace officer acting under this agreement must be licensed or certified as a peace officer by the peace officer's respective licensing, or certifying authority. A peace officer acting under this agreement has full peace officer authority in any jurisdiction that is a party to the agreement.
- E. Assisting agency personnel and equipment shall be released by the requesting agency when the resources of the assisting agency are no longer needed. The assisting agency may also withdraw its personnel and equipment when it is deemed to be in the best interest of the assisting agency and following notice provided to the requesting agency of the intended action. The assisting agency may withdraw resources if it determines response conditions are beyond acceptable risk. There will be no liability for withdrawal placed on or transferred to the assisting agency.
- F. The requesting agencies agree to reimburse assisting agencies for the actual costs of personnel, equipment, facilities, and related resources used during the period of assistance unless mutually accepted costs associated with these resources have been pre-identified in this agreement or addendum to this agreement. The assisting agency(ies) may waive all or any part of the payment for costs at its (their) sole discretion depending on the reasonable value of the resources committed and the length of the deployment. Funding sources associated with this agreement may include any or all combinations of federal, state, local and private funding. The participating agencies understand federal reimbursement is contingent upon policy and practice and availability. If participating agencies routinely waive response costs, the costs normally acceptable for federal reimbursement may be ineligible. All reimbursement requires proper documentation, accountings, inventories, receipts, and other evidence of expenses provided by the assisting agency.

**G.** In the event that any assets are seized and forfeited, assets seized in North Dakota will be forfeited to the North Dakota participating agencies, and assets seized in Minnesota will be forfeited to the Minnesota participating agencies.

**H. Worker's Compensation and Liability:**

**1) Workers' Compensation Coverage:** Each participating agency shall be responsible for its own actions and those of its employees and is responsible for complying with the rules established within the State of residence of the participating agency.

**2) Automobile Liability Coverage:** Each participating agency is responsible for its own actions and is responsible for complying with the motor vehicle financial responsibility laws of the State of the participating agency. Each participating agency agrees to obtain automobile liability coverage with at least a \$100,000.00 per person and \$300,000.00 per occurrence limit and coverage extended to owned, non- owned, and hired vehicles. It is understood that the participating agency may include in the emergency response, volunteer agencies or individuals that have motor vehicles titled in the name of the volunteer agency or individual. It is the responsibility of participating agency to determine if the volunteer agency or individual has automobile liability coverage as outlined in this section.

**3) General Liability, Public Officials Liability, and Law Enforcement Liability:**

**a.** For the purposes of the Minnesota Municipal Tort Liability Act, Minnesota Statutes, Section 466 and North Dakota Century Code chapter 32-12.1 Governmental Liability, and the North Dakota Risk Management Fund, chapter 32-12.2, the peace officers of the assisting agency are employees as defined in Minn. Stat. § 466.01 (6) and N.D.C.C. §§ 32-12.1-02(3) and 32-12.2-018) of the requesting agency.

**b.** Each participating agency is responsible for its own acts and agrees to assume its own liability for those acts and consequences. The liability of any participating North Dakota state agency is governed by N.D.C.C. ch. 32- 12.2, and the liability of any North Dakota political subdivision's participating criminal justice agency is governed by N.D.C.C. ch. 32-12.1. The liability of any Minnesota municipality participating criminal justice agency is governed by Minnesota Statutes ch. 466.

**c.** Under no circumstances shall any participating agency be required to pay in excess of its statutory liability limits under North Dakota or Minnesota law.

**d. Liability- Minnesota.** For the purposes of the Minnesota Municipal Tort Liability Act (Minn. Stat. Ch. 466), the employees and officers of a party

are deemed to be employees (as defined in Minn. Stat. § 466.01, subdivision 6) of that party. Under no circumstances shall a party, irrespective of whether it may have waived the limit on liability set forth in Chapter 466 of the Minnesota Statutes, be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party.

- e. **Liability- North Dakota.** For the purposes of North Dakota's political subdivisions Tort Liability Act (N.D.C.C. ch. 32-12.1, and for Stat. Ch. 466), the employees and officers of a party are deemed to be employees (as defined in N.D.C.C. § 32-12.1-02(3) and N.D.C.C. § 32-12.2-01(8), respectively). Under no circumstances shall a party, irrespective of whether it may have waived the limit on liability set forth in N.D.C.C. chapters 32-12.1 and 32-12.2 be required to pay on behalf of itself or the other party, any amounts in excess of the limits on liability established in N.D.C.C. chapters 32-12.1 and 32-12.2 applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for each party.
- 4) The execution of this Agreement shall not give rise to any liability or responsibility for failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action whatsoever here under for any cause whatsoever.
- I. Each participating agency shall develop and update on a regular basis a plan providing for the effective mobilization of its peace officers, resources and facilities.
- J. The participating agencies agree to meet on a regular basis to develop, review and modify as necessary all interagency assistance plans and the provisions of this Agreement. Any modifications or amendments must be approved under N.D.C.C. § 54-40.3-04, and Minn. Stat. § 471.59.

In order to maintain the efficient implementation of the Agreement, the Chief Authorized Representatives of participating agencies, or their designees, have the following responsibilities:

- 1) Attend regular meetings with participating agency representatives to formulate or revise tactical or emergency plans, share information, and assess the general law enforcement and emergency needs of the participating agencies under this agreement.

- 2) Provide information upon request to participating agencies concerning available manpower, equipment, facilities and specialized units.
- 3) Negotiate modifications to or renewal of the Agreement, subject to the requirements of N.D.C.C. ch. 54-40.3 and § 54-40.3-04, and Minn. Stat. § 471.59.
- 4) The costs of salaries or wages, pensions, relief and workers' compensation for loaned personnel resulting from activities performed under this agreement, shall be allocated according to the Agreement or addendum to it.

**K.** All funds and assets jointly owned at the time of termination of this agreement shall be distributed pro-rated to the agencies participating at the time of termination of the agreement.

## **XV. OTHER TERMS.**

- A. Effective Date and Duration of Agreement.** This Agreement shall become effective when approved and executed by each of the participating criminal justice agencies to this Agreement and their respective governing bodies, and upon the determination of the legal sufficiency of this Joint Powers Agreement by the Office of North Dakota Attorney General in accordance with N.D.C.C. § 54-40.3-04. The Agreement shall remain in effect until participation in this Agreement is terminated by the mutual agreement of all participating agencies. Termination of participation in this Agreement by one or more participating agencies shall not affect the continued operation of this Agreement between the remaining participating criminal justice agencies. Any participating agency to this Agreement may terminate participation in this Agreement upon thirty days written notice addressed to the designated Chief Law Enforcement Officer of each of the other participating agencies under this Agreement. This Agreement is binding on future governing bodies and participating agencies unless affirmative measures have been taken to terminate the Agreement in accordance with this section.
- B. Nonexclusive.** Nothing within this Agreement shall prevent any participating agencies from entering into similar agreements with any other criminal justice agency.
- C. Merger.** This Agreement constitutes the entire agreement between the participating agencies. No waiver, consent, modification, or change of terms of this Agreement shall bind the participating agencies unless in writing and signed by the parties. Any waiver, consent, modification or change, if made, shall be effective only for the specific purposes given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The parties, by their signatures below of their authorized representatives, hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and

conditions.

- D. Severability.** The participating agencies agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligation of the participating agencies shall be construed and enforced as if the Agreement did not contain the particular term or provision. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- E. Withdrawal of an Agency.** At the time of withdrawal any and all personal property used by the agencies to this agreement and owned by a one of the named agencies shall be returned to that agency upon its termination of participation or termination of the agreement.
- F. Addenda.** Any addendum is subject to the requirements of N.D.C.C. ch. 54-40.3 and § 54-40.3-04, and Minn. Stat. § 471.59.
- G. Notices.** Notices required to be provided under the terms of this Agreement shall be given by personal service or by enclosing the same in a sealed, envelope, postage prepaid, and depositing the same in the U.S. Postal Service, addressed to the attention of the Chief Law Enforcement Officer, or designee of the jurisdiction(s) party to the notice.
- H. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.