

# **NORTHWEST AREA WATER SUPPLY PROJECT FINANCING CONTRACT**

## **1. PARTIES**

This contract is by and between the North Dakota State Water Commission (the "Commission"), a state agency created and existing pursuant to North Dakota Century Code chapter 61-02, and the City of Minot (the "City").

**2. Substitution.** This contract substitutes and replaces the January 1999 Northwest Area Water Supply Interim Financing Contract entered into by the North Dakota State Water Commission and the City of Minot.

## **3. INTRODUCTION**

### **3.1 Statutory Authority**

North Dakota Century Code (N.D.C.C.) Chapter 61-24.6 authorizes the Commission to develop a project to deliver water throughout northwest North Dakota for multiple purposes, including domestic, rural water districts, and municipal uses. This water project is known as the Northwest Area Water Supply Project ("the Project"). The Commission, pursuant to N.D.C.C. Chapters 61-02 and 61-24.6 may enter into water service contracts to finance the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.

### **3.2 Background**

The Commission started construction of the Northwest Area Water Supply project in 2002. Eight communities and two rural water districts in northwestern North Dakota have signed water service contracts with the Commission to receive water from the Project. The Commission may enter into formal contracts with other communities and rural water associations in the future.

### **3.3 Need for Financing**

The Project is eligible for reimbursement of sixty-five percent (65%) of the capital costs with federal funds or state funds. This financing agreement is needed to provide for the remaining and thirty-five percent (35%) of the capital costs from local funds.

The purpose of this agreement is to commit the City to provide the 35% of the capital costs.

## **4. DEFINITIONS**

### **4.1 Capital Costs**

"Capital Costs" means all costs incurred by the Commission or reasonably expected to be incurred by the Commission in construction of the Project, which are properly chargeable,

in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, costs of issuance and financing in connection with any bonds issued to finance the Project, and essential legal, administrative and financial work in connection therewith.

#### **4.2 Local Share of Capital Costs**

“Local Share of Capital Costs” means the thirty-five (35%) of capital costs which are not eligible for payment from non-reimbursable federal grants and from non-reimbursable state grants.

### **5. FINANCING**

#### **5.1 City to Underwrite Commission’s Costs.**

The City agrees to underwrite the Local Share of Capital Costs incurred or will be incurred by the Commission for construction of the Project with respect to the Project facilities constructed, under contract, and remaining projects outlined in the April 2015 Final Supplemental Environmental Impact Statement (SEIS) and August 2015 Record of Decision.

Remaining project components covered by this agreement not already under contract as of February 2024 are listed below:

1. Raw water initialization and startup
2. Intake Pipeline and Screen Structure at the Snake Creek Pumping Plant
3. Phase III Improvements to the Minot Water Treatment Plant
4. Souris Reservoir and Pump Station
5. Inline Booster Pump Stations along North Dakota Highway 5

City will use sales tax revenue for the Local Share upto \$142 million. When Local Share needed for the Project exceeds \$142 million, Commission will consult with the City and the Northwest Area Water Supply Authority to determine appropriate revenue source for the Local Share to potentially include consideration of user fees.

#### **5.2 Credit to City.**

The City shall be credited 65% of the expenses relating to the Sundre aquifer raw water supply pipeline and reservoir, as well as an additional well in the Sundre aquifer completed between 2016 to 2020 to bolster raw water capacity and meet the requirements identified in the SEIS. The credit for the City is estimated at \$10.7 million.

### **5.3 Biota Water Treatment Plant Costs.**

The City is not responsible for any costs incurred related to the construction of the NAWS Biota Water Treatment Plant or other federal responsibilities identified in the SEIS.

### **5.4 Time of Performance**

The City will make payments to the Commission in fulfillment of its obligation under this agreement in installments (which may be irregular in timing and amounts), within thirty (30) days of being called upon by the Commission to make such payments, upon a construction cost reimbursement basis. The city agrees to levy and collect all necessary taxes and use all its authority and resources available to meet its obligations under this contract and will make in full all payments to be made pursuant to this contract on or before such payments are due.

## **6. TERM OF CONTRACT**

This contract shall remain in effect until all payments required herein have been completed.

## **7. TERMINATION**

### **7.1 Termination by Mutual Consent**

This contract may be terminated by mutual consent of both parties executed in writing.

### **7.2 Termination for Cause By Commission**

The Commission may terminate this Contract effective upon delivery of written notice to the City, or any later date stated in the notice. The Contract may be terminated if City fails to make payments within the time specified or any extension agreed to in writing by the Commission. The rights and remedies of the Commission provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

### **7.3 Termination by Commission**

The Commission may abandon the Project and terminate this contract effective upon written notice to the City. In the event that the Commission abandons the Project and terminates this Contract, the Commission shall assist to the fullest extent possible in the orderly transition of all pending matters related to this Project.

### **7.4 Termination for Cause by City**

The Contract may be terminated if Commission fails to complete its duties and obligations under this Contract. The Contract may be terminated by City upon ninety (90) days' written

notice to the Commission, if Commission substantially fails to complete its duties and obligations under this Contract. The rights and remedies of the City provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **8. BURDEN OF LOSS.**

### **8.1 Third-Party Claims.**

Each party agrees to assume its own liability for any and all claims of any nature from third parties, including all costs, expenses, and attorney's fees which may in any manner result from or arise out of this agreement. Hence the right of equitable contribution which each may have against the other is limited to accomplishing the result contemplated by the prior sentence.

## **9. GENERAL PROVISIONS**

### **9.1 Access to and Inspection of Books and Records.**

To the extent, if any, not already provided under the North Dakota open records law, each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

### **9.2 Remedies Not Exclusive.**

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

### **9.3 Waiver of Rights.**

Any waiver at any time by either party of its rights with respect to a default or any other matter arising in connection with this contract, must be in writing, and shall not be deemed to be a waiver with respect to any other default or matter.

### **9.4 Notices.**

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be in writing. All such notice shall be deemed to have been given and delivered, if delivered personally or if delivered by registered or certified mail, and are complete on the date postmarked when addressed to the parties at their addresses as shown on the signature page of this contract.

## **10. MERGER CLAUSE**

This contract constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this contract.

## **11. SEVERABILITY**

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this contract did not contain that term.

## **12. EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

## **13. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

## **14. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering this Contract, the Commission does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. The Commission does not waive any right to a jury trial.

**IN WITNESS WHEREOF**, the parties execute this contract on the date specified below.

### **NORTH DAKOTA STATE WATER COMMISSION**

1200 Memorial Highway  
Bismarck, ND 58504

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

Title: Secretary, North Dakota State Water Commission

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

Approved and entered into resolution of the State Water Commission this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

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Secretary

# DRAFT

Dated at Minot, North Dakota, this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_.

**CITY OF MINOT**

By: \_\_\_\_\_  
Tom Ross, Mayor

**DRAFT**