

RING DIKE COST SHARE AGREEMENT

THIS RING DIKE COST SHARE AGREEMENT (this Agreement), is entered into this _____ day of _____, 202__ (the “Effective Date”), by and between the Bois de Sioux Watershed District, whose principal address is 704 Highway 75 South, Wheaton, Minnesota 56296 (the “District”) and _____, whose principal address is _____, Minnesota _____ (the “Owner”).

RECITALS

WHEREAS, ring dikes can be used to reduce flood risk and the Bois de Sioux River & Mustinka River Watersheds Joint Comprehensive Watershed Management Plan identifies private flooding as one of the District’s top twelve issues and specifies the use of ring dikes to reach related long and short-term goals; and

WHEREAS, the District has authority to acquire, operate, construct, and maintain dikes and appurtenant works pursuant to Minn. Stat. § 103D.335, subd. 9; and

WHEREAS, the District’s Board of Managers established a ring dike cost share policy whereby the District will contribute funds, not to exceed twenty five percent (25%), to cover the costs associated with constructing or improving rural ring dikes to protect rural properties in the Bois de Sioux Watershed District’s geographical area (the “Policy”); and

WHEREAS, additional funding partners of the Policy may include the Red River Water Management Board (RRWMB), NRCS, the State of Minnesota, and local townships; and

WHEREAS, ring dike cost share funds are only to be used to construct new ring dikes or improvements to existing ring dikes, including engineering costs; repair and maintenance costs are ineligible; and

WHEREAS, the Policy is intended to target rural landowners that pay taxes to local governments, specifically, to the District; and

WHEREAS, the Owner is a taxpaying farmer/rancher, or owner of a rural dwelling, who desires to have a ring dike constructed around his/her property in accordance with the terms and conditions outlined herein (the “Project”).

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **PURPOSE.** The purpose of the Policy is intended to encourage and promote the installation of ring dikes, and associated appurtenances, and to protect privately owned rural and farmstead structures and dwellings subject to flood damage in the Bois de Sioux Watershed District. The Policy is administered by the District; final decisions on project cost share are dependent upon approvals and contingencies by the District and funding partners.

2. **RING DIKE PROPERTY.** The Owner desires to install a ring dike around the following property located in _____ County, Minnesota, described as follows:

(the "Protected Property").

3. **COST SHARE FUNDING PROCESS.** Implementation of the Project will be administered in accordance with the following process:

- A. The Owner filed a permit application with the District, attached as **Exhibit A**, to construct a ring dike around the Protected Property in accordance with the Policy.
- B. After reviewing the permit application, District engineering staff will create a preliminary report to estimate size, location, and project cost. Engineering staff will take into consideration how much land is needed for construction, and whether additional land must be purchased adjacent to the Protected Property.
- C. The preliminary report will be presented to the Owner and the District's Board of Managers (the "Board") for consideration as to whether the parties desire to proceed with the Project.
- D. Upon approval of necessary matching funds from the funding partners, the Owner shall deliver cash or a certified check to the District covering twenty five percent (25%) of the Project cost based on the District Engineer's cost estimate in the preliminary report.¹ If the actual costs exceed the estimated costs, the Owner must make immediate payment of twenty five percent (25%) of the cost overrun. If the actual costs are less than the estimated costs, the Owner will be reimbursed twenty five percent (25%) of the excess. Actual costs are based on bid prices or written change orders received from the contractor prior to performing work on the Project, at the sole discretion of the District.

¹ The Owner's cost share portion will be held in an account by the District. These funds may be commingled with other District funds but a ledger of the Owner's funds deposited shall be kept by the District.

- E.** Engineering staff will prepare and deliver the construction contract and final design of the plans and specifications to the Board for approval and direction to bid the Project.
- F.** Upon receiving bids, the Board will award the bid to the lowest, responsible bidder. Engineering staff will administer the construction contract and monitor the contractor's performance in accordance with the approved plans and specifications for the Project.
- G.** At any time during construction of the Project, the District, its officers, agents, employees, or contractors, may enter the Protected Property to inspect construction of the Project to ensure it complies with the District permit, the construction contract, plans and specifications, and the District's other rules and policies.
- H.** The contractor and engineering staff will submit progress payment requests to the District for costs incurred by the contractor, materials furnished for the Project, construction supervision, engineering services, administration, and any other work necessary or incident to the construction of the Project.
- I.** Upon final completion of the Project, engineering staff will inspect the Project to determine compliance with the construction plans and specifications. The District may withhold final payment until all components of the Project are completed in a satisfactory, workmanlike manner.
- J.** Engineering staff will then recommend final payment to the Board. The District will provide written notice to the Owner that the District is issuing final payment and the Project is considered complete.
- K.** Upon Project completion, the Project becomes the sole property of the Owner, with any and all future costs relating to Project maintenance or repairs being the sole responsibility of the Owner.

4. OWNER RESPONSIBILITIES. The Owner is responsible for the following:

- A.** Obtaining any other necessary permits or approvals from other governing bodies, in addition to filing a District permit application and seeking District approval.
- B.** Contributing twenty five percent (25%) cost share for the Project based on the District Engineer's estimated cost in the preliminary report.
- C.** Providing proof of property ownership to the satisfaction of the District, including but not limited to, an inspection of the Owner's abstract of title and/or certificate of title.
- D.** Carefully reviewing the District Engineer's preliminary report and plans and specifications for the Project, including the Project location.

- E.** Granting the District, and its officers, agents, employees, and contractors, access to the Protected Property, via a license or temporary construction easement, during all phases of construction of the Project.
- F.** Providing dirt necessary for the construction of the Project, including excavation of the borrow pits on site if an alternate source of dirt is not provided.
- G.** Communicating with the District, and its officers, agents, employees, and contractors, throughout construction of the Project.
- H.** Authorizing the contractor to install any internal drainage necessary to drain any portions of the Protected Property resulting from the construction of the Project.
- I.** Owning, operating, maintaining, repairing, and removing the Project, including interior and exterior perimeter drainage ditches, after final completion, including any and all costs associated therewith. The Owner is aware that the construction of the Project will not eliminate the need for emergency type measures by the Owner (e.g. sandbagging, pumping, etc.) during times of flooding. The water control gates, if any, are typical for this type of flood mitigation project and if manufactured and installed properly, should provide appropriate flood control. The Owner is aware that the water control gates, even if manufactured and installed properly, allow some leakage, and the Owner will need to take the appropriate flood protection measures (e.g. sandbagging, pumping, etc.). In addition, the water control gates, as well as the rest of the appurtenances of the Project, require periodic inspections and maintenance by the Owner, including but not limited to, mowing and repairing washouts and burrowing animal holes. The Owner is responsible for the operation and monitoring of water control gates, interior and exterior perimeter drainage ditches, and other closures to prevent or reduce flooding of the Protected Property and adjacent real property.
- J.** It is understood that precipitation and interior snow melt during times of flooding and subsequent operation of the Project will result in water build-up within the Protected Property. It is the Owner's responsibility to manage interior water and pump the water over the ring-dike if necessary to prevent damage to structures and other property within the Protected Property.

5. DISTRICT RESPONSIBILITIES. The District is responsible for the following:

- A.** Administering the Policy, including proper recordkeeping.
- B.** Reviewing the Owner's permit and the District Engineer's preliminary report and plans and specifications to ensure compliance with the District's rules and policies.
- C.** Communicating with potential funding partners and the Owner.
- D.** Awarding and administering the construction contract for the Project.

- E. Reviewing/approving progress payment requests submitted by the contractor.
- F. Contributing twenty five percent (25%) cost share funds, at its sole discretion.
- G. Inspecting the Project, as it desires, to ensure compliance with the preliminary report, construction plans and specifications, and the District's policies and rules; however, neither the District nor its engineer are required to make continuous on-site inspections to verify quality or quantity of the work.
- H. Determining and administering Project close out.

6. **OWNERSHIP.** The Owner represents that they are the fee owner(s) of the Protected Property and upon request by the District, its officers, agents, employees, or contractors, shall promptly provide proof of said ownership to the satisfaction of the District, including but not limited to, an inspection of the Owner's abstract of title and/or certificate of title. The Owner has authority to enter into this Agreement and, in doing so, does not constitute a violation or default of any other agreement to which the Owner is a party or which affects the Protected Property.

The Owner will also ensure that the Project is constructed on the Owner's property. If additional property is required to construct or maintain the Project, the Owner is solely responsible for acquiring necessary property interests. The District will not be responsible in any way for trespass issues or related damages. Costs associated with property acquisition are not a reimbursable expense under the Policy or this Agreement.

7. **ASSUMPTION OF RISK.** The Owner explicitly accepts any and all risk regarding the District's entry, or that of its officers, agents, employees, or contractors, upon the Protected Property in performing services under this Agreement. The District will not be liable or responsible for any damages or injuries to the Owner or any of the Owner's real or personal property, or to other persons or their real or personal property, as a result of the District's entry, or that of its officers, agents, employees, or contractors, upon the Protected Property. The Owner is responsible for granting the District, its officers, agents, employees, and contractors, access, ingress and egress, to the Protected Property prior to commencement of construction.

The Owner understands that the height of the ring dike is designed to the standard set forth in the plans and specifications and floods of a larger magnitude can cause overtopping. The purpose of the Project is flood risk reduction, not flood prevention. The Owner further agrees that the proposed Project's benefit to the Owner's property outweighs any potential risk to the Owner and the Owner's adjacent property due to the actual construction of the ring dike or any subsequent embankment slippage or sliding.

8. **ACKNOWLEDGMENT.** The Owner acknowledges that the District is under no obligation to approve this Agreement or perform the duties of the District listed herein or under the Policy within a specific period of time. If this Agreement is not approved for any reason, the District will be under no further obligations with regard to the Project except to

return the Owner's deposit, less funds expended pursuant to this Agreement. Notwithstanding approval of this Agreement by the District, the Project may be terminated at any time if the District determines, in its sole discretion, that the Project is not feasible for any reason such as engineering reports, design problems, failure to procure financing, other agencies' decisions, etc. The Owner waives all claims for damages related to the denial of this Agreement, timing or delays of the approval, design and construction of the Project, or termination of the Project at any time by the District.

9. **USE OF FUNDS.** Cost share funds are only to be used for the construction of new ring dikes or improvements to existing ring dikes, including engineering costs; repair and maintenance costs are ineligible. Cost share funds must be used within the term of the District permit for the Project.
10. **TERM.** The original term of this Agreement commences on the Effective Date and expires upon Project completion or expiration of the District permit for the Project, unless terminated sooner as provided under this Agreement.
11. **TERMINATION.** This Agreement may be terminated, at any time, upon thirty (30) days' written notice to the other party. The Owner understands that early termination may result in the Project being incomplete and that the Owner will need to reapply for a permit in order to complete construction of the Project, if the Owner so desires. Funds expended for work up to early termination will not be reimbursed to the Owner.
12. **INDEMNIFICATION.** The Owner will release, defend, indemnify, protect, and hold harmless the District, and its officers, agents, employees, and contractors, from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorneys' fees, together with all other costs and expenses of any kind or nature suffered by or asserted against the District, or its officers, agents, employees, or contractors, as a result of or arising out of the District's, or its officers', agents', employees', or contractors', performance or failure to perform under this Agreement, including any costs, expenses, and attorneys' fees incurred in establishing the indemnification provided in this Agreement.
13. **LIMITATION OF LIABILITY.** Any and all liability of the District related to the terms of this Agreement will be limited to the amounts specified by the statutory requirements set forth in Minn. Stat. Chapter 466. The District is not liable for the structural integrity or effectiveness of the Project.
14. **NOTICE.** All notices and other communications required pursuant to this Agreement must be in writing and given by registered or certified mail, postage prepaid, delivered by hand to the addresses set forth above, or by electronic mail.
15. **GOVERNING LAW.** This Agreement is governed by and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement will be venued in the county in which the Protected Property is located.

16. **ENTIRE AGREEMENT.** The entire agreement between the parties is contained herein and this Agreement supersedes all oral agreements and negotiations relating to the subject matter hereof.
17. **BINDING EFFECT.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any amendment, will be binding upon the parties' successors and assigns.
18. **NO FORBEARANCE.** The failure or delay of either party to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right to enforce each and every term of this Agreement.
19. **RULES OF CONSTRUCTION.** The parties acknowledge that they have had the opportunity to review this Agreement, and that they have an equal bargaining position in this transaction. A rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will not be operative against any party to this Agreement.
20. **REPRESENTATION.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties. The Owner further understands that the District is not making any representations or other guarantees regarding the adequacy of the Project and that the installation of the Project does not remove the Owner from the existing flood plain designation.
21. **AMENDMENTS, MODIFICATIONS, AND WAIVERS.** No amendment, modification, or waiver of any condition, provision, or term of this Agreement will be valid or of any effect unless made in writing signed by the party to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by either party of any default of the other party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties hereto under and pursuant to this Agreement.
22. **SEVERABILITY.** In the event that any part or provision of this Agreement is held to be invalid or unenforceable, in whole or in part, all other parts and provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts or provisions severed from the remainder of this Agreement.
23. **COUNTERPARTS.** This Agreement may be signed in counterparts meaning this Agreement is valid if signed on separate copies of the same agreement.

24. EFFECTIVE DATE. This Agreement becomes effective upon the date of the last signature appearing below.

IN WITNESS WHEREOF, the parties executed this Agreement on the dates written below.

BOIS DE SIOUX WATERSHED DISTRICT

Date: _____, 202__

Linda Vavra, President

Attest:

Date: _____, 202__

Jamie Beyer, Administrator

[Signatures continue on the following page.]

OWNER

Date: _____, 202__

By: _____

Its: _____

For office use only.

Application received: _____, 20____, by _____.

Action taken by District's Board of Managers: _____, 20____.

- Approved
- Conditionally Approved
- Denied
- Additional Information Required
- Tabled due to _____

Estimated cost of the Project: \$ _____

Owner's estimated cost share: \$ _____

Project commenced on: _____, 20____

Project completed on: _____, 20____

Total costs of completed Project: \$ _____

To be paid as follows:

State of Minnesota: \$ _____

NRCS: \$ _____

RRWMB: \$ _____

BdSWD: \$ _____

Owner: \$ _____

Other: \$ _____

Amount refunded to Owner, if any: \$ _____

Addt. amount from Owner, if any: \$ _____

EXHIBIT A
PERMIT APPLICATION