

LAKE AGASSIZ WATER AUTHORITY**SPECIAL MEETING
BOARD OF DIRECTORS****Video Conference
January 15, 2025**

A special meeting of the Lake Agassiz Water Authority (LAWA) board of directors was held by video conference on January 15, 2025. The meeting was called to order by Chair Mahoney at 8:00 a.m.

BOARD MEMBERS PRESENT

Chair Timothy Mahoney
Director LaVonne Althoff
Director Ann Broussard
Director Tom Erdmann
Director Keith Nilson
Director Jim Schmaltz
Director Travis Schmidt
Alternate Todd Feland for Vice Chairman Bochenski
Alternate Jeremy Schuler for Director Rick Bigwood
Secretary Duane DeKrey

MEMBERS ABSENT

Director Bill Bohnsack
Director Dave Carlsrud
Director Mark Johnson
Associate Member Bernie Dardis
Associate Member Brett Lambrecht
Associate Member Jim Moe
Associate Member Carol Siegert

A copy of the registration sheet is attached to these minutes as Annex I.

The meeting was recorded to assist with compilation of the minutes.

RED RIVER VALLEY WATER SUPPLY PROJECT**Memorandum of Commitment**

Tami Norgard, Vogel Law Firm, referred to the four Memorandum of Commitments (MOC) provided with the meeting materials, including Grand Forks, Washburn, Dickey County and Sargent County, adding the one for Grand Forks was previously approved by the LAWA Board. Grand Forks' attorney wanted to make a few changes to the document so their MOC

has been revised. Copies of the MOCs are attached to these minutes as Annexes II, III, IV and V, respectively.

Ms. Norgard said the standard language in all the MOCs identifies the amount of water the system user is nominating. By signing the MOC, the system user is also indicating they intend to enter into the Project Participation Agreement (PPA) when the parties have agreed to a final form of that document. Grand Forks' attorney wanted the MOC to be wordsmithed a bit making it absolutely crystal clear Grand Forks did not have to sign a PPA.

Ms. Norgard said she believes the language is very clear in the standard MOCs, but there was not a problem making that amendment for the Grand Forks city attorney. Garrison Diversion agreed to the revision last week, and LAWA is asked to also agree to the revision.

Ms. Norgard reported closing has taken place on the bond, so the loan monies will now be available.

Motion by Director Nilson to approve the RRVWSP Memorandum of Commitment, as revised, by and between LAWA, Garrison Diversion Conservancy District and the City of Grand Forks. Second by Director Schmidt. Upon roll call vote, the following directors voted aye: Althoff, Broussard, Erdmann, Mahoney, Nilson, Schmaltz and Schmidt. Alternates voting aye: Feland and Schuler. Those voting nay: none. Motion carried.

Motion by Director Broussard to approve the RRVWSP Memorandum of Commitments by and between LAWA, Garrison Diversion Conservancy District, the City of Washburn, Dickey County and Sargent County. Second by Director Althoff. Upon roll call vote, the following directors voted aye: Althoff, Broussard, Erdmann, Mahoney, Nilson, Schmaltz and Schmidt. Alternates voting aye: Feland and Schuler. Those voting nay: none. Motion carried.

The meeting adjourned at 8:10 a.m.

Timothy Mahoney, Chair

Duane DeKrey, Secretary

REGISTRATION

**LAWA Special Board Meeting
Video Conference**

January 15, 2025

NAME	ADDRESS
Timothy Mahoney	LAWA
Lavonne Althoff	LAWA
Ann Broussard	LAWA
Tom Erdmann	LAWA
Keith Nilson	LAWA
Jim Schmaltz	LAWA
Travis Schmidt	LAWA
Greg Bischoff	Garrison Diversion
Merri Mooridian	Garrison Diversion
Kimberly Cook	Garrison Diversion
Kip Kovar	Garrison Diversion
Lisa Schafer	Garrison Diversion
Bruce Grubb	City of Fargo
Troy Hall	City of Fargo
Brent Bogar	LAWA/AE2S
Tami Norgard	Vogel Law Firm
Katie Schmidt	Ohnstad Twichell
Marc Pritchard	Moorhead Public Service
Shawn Gaddie	Advanced Engineering & Environmental Services

RRVWSP MEMORANDUM OF COMMITMENT

THIS RED RIVER VALLEY WATER SUPPLY PROJECT (“RRVWSP” or “Project”) MEMORANDUM OF COMMITMENT (this “MOC”), dated _____, 2024 (the “Effective Date”), by and between the City of Grand Forks, a city (the “Participant”), Lake Agassiz Water Authority (“LAWA”), a political subdivision of the state of North Dakota, and Garrison Diversion Conservancy District (“Garrison Diversion”), a political subdivision and instrumentality of the state of North Dakota (collectively the “Parties”), is a contingent acknowledgement of the Participant’s intent to financially participate in the RRVWSP. Additionally, through this MOC and a related Interim Financing Agreement Series D – Small System Amendment (“Series D Small Systems Amendment”), Participant agrees to provide funding for a portion of the 2023-2025 RRVWSP Work Plan (attached as Exhibit A and referred to herein as the “Biennium Work Plan”) and pay its identified share of the associated Budget (attached as Exhibit B, as amended, and referred to herein as the “Budget”).

Recitals

A. The RRVWSP is a forthcoming reliable, high quality supplemental water supply project for central and eastern North Dakota for various purposes, including domestic, rural water, municipal and industrial uses. The infrastructure making up the Project presently includes by way of illustration and not limitation an intake, biota water treatment plant, buried pipeline, pump stations, air release valves, discharge structure, and associated infrastructure used to transport a supplemental water supply from the Missouri River and/or the McClusky Canal, to the Participant and other LAWA stakeholders.

B. LAWA is assisting in the development of the RRVWSP. LAWA is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-39 of the North Dakota Century Code.

C. Garrison Diversion is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-24 of the North Dakota Century Code.

D. Participant is a city. The Participant along with each other political subdivision entering into a MOC and Series D Small Systems Amendment are together referred to herein as the “Participants.”

E. It is imperative to the timely and cost-efficient development to now identify as accurately as possible which Participants will be part of the RRVWSP and to identify accurately the Project Participation Agreement (“PPA”) financial obligations for each of the RRVWSP Participants.

F. Garrison Diversion received 75% cost-share funding from the North Dakota Department of Water Resources, with an obligation to fund the 25% local cost share. Garrison Diversion needs the Participants to cover the local cost share for the 2023-2025 biennium Budget expenses. To date, Garrison Diversion, LAWA, Fargo and Grand Forks have already entered into an agreement to fund 81% of the 25% local share of Garrison Diversion’s 2023-2025 Work Plan. (See Exhibit C, Interim Financing Agreement Series D). The contemporaneously executed Series D Small Systems Amendment is in addition to, and does not supplant or replace the financing responsibilities identified in the initial Interim Financing Agreement Series D. In order to fund the remaining local share, Garrison Diversion, LAWA and all other Participants have agreed to enter into this MOC to set forth the Participants’ water nomination. This MOC commits Participant to pay its identified portion of the remaining Biennium Work Plan and Budget, and sets forth its good faith intention to enter the final PPA in the event the review, terms and conditions, and negotiations of the PPA are determined to be satisfactory to the Participant.

Agreement

In consideration of the foregoing and the covenants and agreements set forth herein, the Parties agree as follows:

1. Participant has reviewed and understands the Biennium Work Plan (Exhibit A) and the Budget (Exhibit B), which identifies Participant’s responsibility for part of the local cost share associated with the Series D Small Systems Amendment in the amount of \$1,823,370 in principal (the “Participant Portion”). Participant agrees to pay the Participant Portion plus financing costs as its portion of the Local Project costs of the Biennium Work Plan pursuant to the Series D Small Systems Amendment (together, the “Participant Share”). The Budget is Garrison Diversion’s best estimate of the Biennium Work Plan costs from July 2023 to June 2025, with a 25% local cost share estimated to be \$60 million. These estimates are not intended to create a final financial limit on contributions of Participant but are presented merely to identify the categories of expenses contemplated by this MOC and the total Biennium Work Plan anticipated costs. That said, unless otherwise agreed to, Participant’s cost will be limited to a maximum amount representing its allocated portion of the Budget, as identified in this paragraph, based upon the Project Tiered Cost Allocation model. The Participant’s contributions, along with contributions of other Participants, will be used to pay the Small Systems (as defined in the Series D Agreement) portion of the twenty five percent local share of the total Budget as well as any costs ineligible for state cost share, as depicted on Exhibit B. Participant’s allocated contribution is capped at the amount identified herein, unless otherwise agreed to in writing.
2. Participant has conducted and continues to conduct a meaningful review of its anticipated future water needs and had the opportunity to consult with engineers and legal

professionals of its own choosing, including hiring its own independent and unbiased representatives to advise Participant regarding its anticipated future water needs and the legal obligations under this MOC, the Series D Agreement, the Series D Small Systems Amendment and the draft PPA. The water nomination provided by the Participant in this MOC represents the capacity the Participant intends to contract for upon completion of PPA negotiations given the information known at this time. To secure capacity in the Project and to better identify the financial commitments expected of all Parties through the Series D Agreement, the Series D Small Systems Amendment and PPA, Participant hereby identifies its future water needs from the Project at 28.1 cfs. Of this amount, Participant anticipates that its nomination would include 13.8 cfs annually for domestic needs and 14.3 cfs annually for industrial needs. Garrison Diversion will prepare the PPA financial obligations using this nomination. The Parties recognize that this nomination may vary somewhat after additional analysis prior to the PPA being signed, however it is the best estimate and intent of the Participant with information known today.

3. This MOC is binding upon Participant solely with respect to its responsibility to pay the Participant Share through the later of (1) June 30, 2025 if budgeted funds are expended by that date, or (2) thereafter if the completion of the budgeted items extend beyond that date and so long as there are budgeted funds available to complete the items identified on the Biennium Work Plan.
4. Participant agrees that the funds it will pay per the Series D Small Systems Amendment are non-refundable in any and all cases including, without limitation, if the Project is discontinued or terminated or if Participant decides not to further participate in the Project. However, if Participant signs this MOC and ultimately chooses not to sign the PPA, the Participant has the ability to assign its nomination, rights and obligations under this MOC to another LAWA member capable of assuming the obligation with the written consent of Garrison Diversion and LAWA so long as the assignment is executed and provided to Garrison Diversion and LAWA by or before June 1, 2025, or as otherwise extended by Garrison Diversion.
5. Participant acknowledges there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project, including by way of illustration and not limitation, the following:
 - (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA and/or the Garrison Diversion; (iv) different environmental risks than those previously identified; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approval or a Federal permit; (vii) the Federal Government's decision to support the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; and (ix) political interference at the local, state or Federal level. That said, any increase in the identified Budget costs would require approval of the Garrison Diversion Board, the LAWA Board, and the Participant.
6. This MOC may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. This MOC shall be governed by the laws of the State of North Dakota, without giving effect to its choice of laws principles. Venue of any proceedings shall be in the state courts located in Cass County, North Dakota.
8. Contingency: This MOC is valid and enforceable only if Garrison Diversion obtains similar memoranda from other Participants that represent nominations of at least 100 cfs in the aggregate. If Garrison Diversion is unable to secure agreements amounting to 100 cfs to share the costs of this MOC, this MOC is null and void and without further effect.
9. Electronic Signatures; Counterparts: This MOC may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, including but not limited to a signature delivered through a provider such as DocuSign®, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

WITNESS WHEREOF, the Parties hereto have executed this MOC as of the Effective Date.

GARRISON DIVERSION CONSERVANCY DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

LAKE AGASSIZ WATER AUTHORITY

By: _____

Name: Dr. Timothy Mahoney

Its: Board Chair

Date: _____

PARTICIPANT

City of Grand Forks

By: _____

Name: Brandon Bochenski

Title: Mayor

Date: _____

**RRVWSP MEMORANDUM OF COMMITMENT
AND NOMINATION**

THIS RED RIVER VALLEY WATER SUPPLY PROJECT (“RRVWSP” or “Project”) MEMORANDUM OF COMMITMENT AND NOMINATION (this “MOC”), dated December 9, 2024 (the “Effective Date”), by and between Washburn, a [city, county, water district or other water distribution system] (the “Participant”), Lake Agassiz Water Authority (“LAWA”), a political subdivision of the state of North Dakota, and Garrison Diversion Conservancy District (“Garrison Diversion”), a political subdivision and instrumentality of the state of North Dakota (collectively the “Parties”), is a contingent acknowledgement of the Participant’s intent to financially participate in the RRVWSP.

Recitals

A. The RRVWSP is a forthcoming reliable, high quality supplemental water supply project for central and eastern North Dakota for various purposes, including domestic, rural water, municipal and industrial uses. The infrastructure making up the Project presently includes, by way of illustration and not limitation, an intake, biota water treatment plant, buried pipeline, pump stations, air release valves, discharge structure, and associated infrastructure used to transport a supplemental water supply from the Missouri River and/or the McClusky Canal to the Participant and other LAWA stakeholders.

B. LAWA is assisting in the development of the RRVWSP. LAWA is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-39 of the North Dakota Century Code.

C. Garrison Diversion is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-24 of the North Dakota Century Code.

D. Participant is a [city, water district or other water distribution system]. The Participant along with each other municipality entering into a MOC are together referred to herein as the “Participants.”

E. Participant acknowledges it intends to enter into a Project Participation Agreement (“PPA”) with Garrison Diversion, LAWA, and other Participants to pay for its share of the past, current and future design, construction, operation, and maintenance of the RRVWSP and to nominate and reserve water supply capacity from the RRVWSP. The PPA is a voluminous agreement, with significant appendices. The Parties are working through edits to the PPA and appendices, so Participant is not yet comfortable signing the PPA. Participant, however, acknowledges its intent to participate in the RRVWSP and sign the satisfactory final form of the PPA upon timely completion of the editing process.

F. It is imperative to the timely and cost-efficient development to now identify as accurately as possible which Participants will be part of the RRVWSP and to identify accurately the PPA financial obligations for each of the RRVWSP Participants.

G. Throughout the development of this Project, Garrison Diversion has received at least seventy-five percent (75%) cost-share funding from the North Dakota Department of Water Resources, with an obligation to fund the twenty-five percent (25%) local cost share. Throughout the years, the local share of Project development costs has been paid by the Cities of Fargo and Grand Forks, as well as by Garrison Diversion, with others committed to pay their respective portions of the Garrison Diversion 2023-2025 Work Plan. Through the PPA, the investments of all Participants for these past development costs will be trued up and assessed to all Participants in accordance with their nomination proportion. The PPA will also set out each Participant's responsibility for future capital and operation and maintenance costs. All Participants have had an opportunity to review the most recent version of the PPA and have an understanding of the financial requirements and operational structure of the Project. Through its signature on this MOC, the Participant sets forth its good faith intention to enter the final PPA once review and negotiations satisfactorily are complete.

Agreement

In consideration of the foregoing and the covenants and agreements set forth herein, the Parties agree as follows:

1. Participant has conducted and continues to conduct a meaningful review of its anticipated future water needs and has had the opportunity to consult with engineers and legal professionals of its own choosing, including having the opportunity to hire its own independent and unbiased representatives to advise Participant regarding its anticipated future water needs, the legal obligations under this MOC, and the draft PPA. The water nomination provided by the Participant in this MOC represents the capacity the Participant intends to contract for upon completion of PPA negotiations given the information known at this time. To secure capacity in the Project and to better identify the financial commitments expected of all Parties in the PPA, Participant hereby identifies its future water needs from the Project at 0.45 cfs. Of this amount, Participant anticipates that its nomination would include 0.45 annually for domestic needs and 0 annually for industrial needs. Garrison Diversion will prepare the PPA financial obligations using this nomination. The Parties recognize that this nomination may vary somewhat after additional analysis prior to the PPA being signed; however, it is the best estimate and intent of the Participant with information known today.
2. If Participant signs this MOC and ultimately chooses not to sign the PPA, the Participant has no property right in the nomination and has no ability to assign its nomination, rights and obligations under this MOC to any other entity.
3. There is no financial penalty to Participant if it signs this MOC and does not ultimately sign the PPA. There is no credit to Participant or reimbursement of any prior amounts that Participant may have paid to Garrison Diversion or LAWA for any Project contributions or other Project support if Participant does not sign a PPA. If Participant signs the PPA and thereafter no longer desires to receive water from the Project, Participant may be eligible to have its nomination, and the associated financial commitment therefor, assumed by LAWA or another LAWA member entity. The assumption of Participant's nomination may include the reimbursement to Participant for principal amounts contributed by

Participant for capital expenses of the Project to the point of assumption. Further details on the assumption of a nomination will be outlined in the PPA.

4. Participant acknowledges there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project, including by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA and/or Garrison Diversion; (iv) different environmental risks than those previously identified; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approval or a Federal permit; (vii) the Federal Government's decision to support the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; and (ix) political interference at the local, state or Federal level. As such, there is always potential for delay of the Project, increases in the proposed Project budget, and a change in the expected financial obligation of the Participant from what has been provided. The Participant understands that the final PPA financial terms may differ from what has been presented to Participant to date, but the information presented has been a good faith estimate of the obligations that would be incurred at the nomination amount discussed to date.
5. This MOC may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
6. This MOC shall be governed by the laws of the State of North Dakota, without giving effect to its choice of laws principles. Venue of any proceedings shall be in the state courts located in Cass County, North Dakota.
7. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, including but not limited to a signature delivered through a provider such as DocuSign®, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

WITNESS WHEREOF, the Parties hereto have executed this MOC as of the Effective Date.

GARRISON DIVERSION CONSERVANCY DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

LAKE AGASSIZ WATER AUTHORITY

By: _____

Name: _____

Its: _____

Date: _____

PARTICIPANT

City of Washburn

By: _____

Name: Mark Lester

Title: President of Commission

Date: Dec 10, 2024

**RRVWSP MEMORANDUM OF COMMITMENT
AND NOMINATION**

THIS RED RIVER VALLEY WATER SUPPLY PROJECT (“RRVWSP” or “Project”) MEMORANDUM OF COMMITMENT AND NOMINATION (this “MOC”), dated January 7, 2025 (the “Effective Date”), by and between Dickey County, a county (the “Participant”), Lake Agassiz Water Authority (“LAWA”), a political subdivision of the state of North Dakota, and Garrison Diversion Conservancy District (“Garrison Diversion”), a political subdivision and instrumentality of the state of North Dakota (collectively the “Parties”), is a contingent acknowledgement of the Participant’s intent to financially participate in the RRVWSP.

Recitals

A. The RRVWSP is a forthcoming reliable, high quality supplemental water supply project for central and eastern North Dakota for various purposes, including domestic, rural water, municipal and industrial uses. The infrastructure making up the Project presently includes, by way of illustration and not limitation, an intake, biota water treatment plant, buried pipeline, pump stations, air release valves, discharge structure, and associated infrastructure used to transport a supplemental water supply from the Missouri River and/or the McClusky Canal to the Participant and other LAWA stakeholders.

B. LAWA is assisting in the development of the RRVWSP. LAWA is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-39 of the North Dakota Century Code.

C. Garrison Diversion is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-24 of the North Dakota Century Code.

D. Participant is a county. The Participant along with each other municipality entering into a MOC are together referred to herein as the “Participants.”

E. Participant acknowledges it intends to enter into a Project Participation Agreement (“PPA”) with Garrison Diversion, LAWA, and other Participants to pay for its share of the past, current and future design, construction, operation, and maintenance of the RRVWSP and to nominate and reserve water supply capacity from the RRVWSP. The PPA is a voluminous agreement, with significant appendices. The Parties are working through edits to the PPA and appendices, so Participant is not yet comfortable signing the PPA. Participant, however, acknowledges its intent to participate in the RRVWSP and sign the satisfactory final form of the PPA upon timely completion of the editing process.

F. It is imperative to the timely and cost-efficient development to now identify as accurately as possible which Participants will be part of the RRVWSP and to identify accurately the PPA financial obligations for each of the RRVWSP Participants.

G. Throughout the development of this Project, Garrison Diversion has received at least seventy-five percent (75%) cost-share funding from the North Dakota Department of Water Resources, with an obligation to fund the twenty-five percent (25%) local cost share. Throughout

the years, the local share of Project development costs has been paid by the Cities of Fargo and Grand Forks, as well as by Garrison Diversion, with others committed to pay their respective portions of the Garrison Diversion 2023-2025 Work Plan. Through the PPA, the investments of all Participants for these past development costs will be trued up and assessed to all Participants in accordance with their nomination proportion. The PPA will also set out each Participant's responsibility for future capital and operation and maintenance costs. All Participants have had an opportunity to review the most recent version of the PPA and have an understanding of the financial requirements and operational structure of the Project. Through its signature on this MOC, the Participant sets forth its good faith intention to enter the final PPA once review and negotiations satisfactorily are complete.

Agreement

In consideration of the foregoing and the covenants and agreements set forth herein, the Parties agree as follows:

1. Participant has conducted and continues to conduct a meaningful review of its anticipated future water needs and has had the opportunity to consult with engineers and legal professionals of its own choosing, including having the opportunity to hire its own independent and unbiased representatives to advise Participant regarding its anticipated future water needs, the legal obligations under this MOC, and the draft PPA. The water nomination provided by the Participant in this MOC represents the capacity the Participant intends to contract for upon completion of PPA negotiations given the information known at this time. To secure capacity in the Project and to better identify the financial commitments expected of all Parties in the PPA, Participant hereby identifies its future water needs from the Project at 4.00 cfs. Of this amount, Participant anticipates that its nomination would include 0.00 annually for domestic needs and 4.00 annually for industrial needs. Garrison Diversion will prepare the PPA financial obligations using this nomination. The Parties recognize that this nomination may vary somewhat after additional analysis prior to the PPA being signed; however, it is the best estimate and intent of the Participant with information known today.
2. If Participant signs this MOC and ultimately chooses not to sign the PPA, the Participant has no property right in the nomination and has no ability to assign its nomination, rights and obligations under this MOC to any other entity.
3. There is no financial penalty to Participant if it signs this MOC and does not ultimately sign the PPA. There is no credit to Participant or reimbursement of any prior amounts that Participant may have paid to Garrison Diversion or LAWA for any Project contributions or other Project support if Participant does not sign a PPA. If Participant signs the PPA and thereafter no longer desires to receive water from the Project, Participant may be eligible to have its nomination, and the associated financial commitment therefor, assumed by LAWA or another LAWA member entity. The assumption of Participant's nomination may include the reimbursement to Participant for principal amounts contributed by Participant for capital expenses of the Project to the point of assumption. Further details on the assumption of a nomination will be outlined in the PPA.

4. Participant acknowledges there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project, including by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA and/or Garrison Diversion; (iv) different environmental risks than those previously identified; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approval or a Federal permit; (vii) the Federal Government's decision to support the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; and (ix) political interference at the local, state or Federal level. As such, there is always potential for delay of the Project, increases in the proposed Project budget, and a change in the expected financial obligation of the Participant from what has been provided. The Participant understands that the final PPA financial terms may differ from what has been presented to Participant to date, but the information presented has been a good faith estimate of the obligations that would be incurred at the nomination amount discussed to date.
5. This MOC may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
6. This MOC shall be governed by the laws of the State of North Dakota, without giving effect to its choice of laws principles. Venue of any proceedings shall be in the state courts located in Cass County, North Dakota.
7. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, including but not limited to a signature delivered through a provider such as DocuSign®, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

WITNESS WHEREOF, the Parties hereto have executed this MOC as of the Effective Date.

GARRISON DIVERSION CONSERVANCY DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

LAKE AGASSIZ WATER AUTHORITY

By:

Name:

Its:

Date:

PARTICIPANT

Dickey County

By: Blal

Name: Brandon Carlson

Title: Chair

Date: 1-7-25

**RRVWSP MEMORANDUM OF COMMITMENT
AND NOMINATION**

THIS RED RIVER VALLEY WATER SUPPLY PROJECT (“RRVWSP” or “Project”) MEMORANDUM OF COMMITMENT AND NOMINATION (this “MOC”), dated Dec. 17, 2024 (the “Effective Date”), by and between Sargent County, a [*city, county, water district or other water distribution system*] (the “Participant”), Lake Agassiz Water Authority (“LAWA”), a political subdivision of the state of North Dakota, and Garrison Diversion Conservancy District (“Garrison Diversion”), a political subdivision and instrumentality of the state of North Dakota (collectively the “Parties”), is a contingent acknowledgement of the Participant’s intent to financially participate in the RRVWSP.

Recitals

A. The RRVWSP is a forthcoming reliable, high quality supplemental water supply project for central and eastern North Dakota for various purposes, including domestic, rural water, municipal and industrial uses. The infrastructure making up the Project presently includes, by way of illustration and not limitation, an intake, biota water treatment plant, buried pipeline, pump stations, air release valves, discharge structure, and associated infrastructure used to transport a supplemental water supply from the Missouri River and/or the McClusky Canal to the Participant and other LAWA stakeholders.

B. LAWA is assisting in the development of the RRVWSP. LAWA is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-39 of the North Dakota Century Code.

C. Garrison Diversion is a governmental agency, body politic and corporate with the powers set forth in Chapter 61-24 of the North Dakota Century Code.

D. Participant is a [*city, water district or other water distribution system*]. The Participant along with each other municipality entering into a MOC are together referred to herein as the “Participants.”

E. Participant acknowledges it intends to enter into a Project Participation Agreement (“PPA”) with Garrison Diversion, LAWA, and other Participants to pay for its share of the past, current and future design, construction, operation, and maintenance of the RRVWSP and to nominate and reserve water supply capacity from the RRVWSP. The PPA is a voluminous agreement, with significant appendices. The Parties are working through edits to the PPA and appendices, so Participant is not yet comfortable signing the PPA. Participant, however, acknowledges its intent to participate in the RRVWSP and sign the satisfactory final form of the PPA upon timely completion of the editing process.

F. It is imperative to the timely and cost-efficient development to now identify as accurately as possible which Participants will be part of the RRVWSP and to identify accurately the PPA financial obligations for each of the RRVWSP Participants.

G. Throughout the development of this Project, Garrison Diversion has received at least seventy-five percent (75%) cost-share funding from the North Dakota Department of Water Resources, with an obligation to fund the twenty-five percent (25%) local cost share. Throughout the years, the local share of Project development costs has been paid by the Cities of Fargo and Grand Forks, as well as by Garrison Diversion, with others committed to pay their respective portions of the Garrison Diversion 2023-2025 Work Plan. Through the PPA, the investments of all Participants for these past development costs will be trued up and assessed to all Participants in accordance with their nomination proportion. The PPA will also set out each Participant's responsibility for future capital and operation and maintenance costs. All Participants have had an opportunity to review the most recent version of the PPA and have an understanding of the financial requirements and operational structure of the Project. Through its signature on this MOC, the Participant sets forth its good faith intention to enter the final PPA once review and negotiations satisfactorily are complete.

Agreement

In consideration of the foregoing and the covenants and agreements set forth herein, the Parties agree as follows:

1. Participant has conducted and continues to conduct a meaningful review of its anticipated future water needs and has had the opportunity to consult with engineers and legal professionals of its own choosing, including having the opportunity to hire its own independent and unbiased representatives to advise Participant regarding its anticipated future water needs, the legal obligations under this MOC, and the draft PPA. The water nomination provided by the Participant in this MOC represents the capacity the Participant intends to contract for upon completion of PPA negotiations given the information known at this time. To secure capacity in the Project and to better identify the financial commitments expected of all Parties in the PPA, Participant hereby identifies its future water needs from the Project at 1.00 cfs. Of this amount, Participant anticipates that its nomination would include 0.00 cfs annually for domestic needs and 1.00 cfs annually for industrial needs. Garrison Diversion will prepare the PPA financial obligations using this nomination. The Parties recognize that this nomination may vary somewhat after additional analysis prior to the PPA being signed; however, it is the best estimate and intent of the Participant with information known today.
2. If Participant signs this MOC and ultimately chooses not to sign the PPA, the Participant has no property right in the nomination and has no ability to assign its nomination, rights and obligations under this MOC to any other entity.
3. There is no financial penalty to Participant if it signs this MOC and does not ultimately sign the PPA. There is no credit to Participant or reimbursement of any prior amounts that Participant may have paid to Garrison Diversion or LAWA for any Project contributions or other Project support if Participant does not sign a PPA. If Participant signs the PPA and thereafter no longer desires to receive water from the Project, Participant may be eligible to have its nomination, and the associated financial commitment therefor, assumed by LAWA or another LAWA member entity. The assumption of Participant's nomination may include the reimbursement to Participant for principal amounts contributed by

Participant for capital expenses of the Project to the point of assumption. Further details on the assumption of a nomination will be outlined in the PPA.

4. Participant acknowledges there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project, including by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA and/or Garrison Diversion; (iv) different environmental risks than those previously identified; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approval or a Federal permit; (vii) the Federal Government's decision to support the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; and (ix) political interference at the local, state or Federal level. As such, there is always potential for delay of the Project, increases in the proposed Project budget, and a change in the expected financial obligation of the Participant from what has been provided. The Participant understands that the final PPA financial terms may differ from what has been presented to Participant to date, but the information presented has been a good faith estimate of the obligations that would be incurred at the nomination amount discussed to date.
 5. This MOC may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
 6. This MOC shall be governed by the laws of the State of North Dakota, without giving effect to its choice of laws principles. Venue of any proceedings shall be in the state courts located in Cass County, North Dakota.
 7. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, including but not limited to a signature delivered through a provider such as DocuSign®, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
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WITNESS WHEREOF, the Parties hereto have executed this MOC as of the Effective Date.

GARRISON DIVERSION CONSERVANCY DISTRICT

By: Alan M. Walter

Name: ALAN M. WALTER

Title: CHAIRMAN

Date: 1/9/25

LAKE AGASSIZ WATER AUTHORITY

By: _____

Name: _____

Its: _____

Date: _____

PARTICIPANT

Sargent County

By: Wade Anderson

Name: Wade Anderson

Title: chairman

Date: 12/17/2024