

**PROPERTY ACCESS AND COST SHARING AGREEMENT  
NRCS - SHORELINE STABILIZATION AND EROSION CONTROL PROJECT**

**THIS AGREEMENT** (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2020, by and between the FOUR LAKES SPECIAL ASSESSMENT DISTRICT, by and through the Four Lakes Task Force (“FLTF”), a Michigan non-profit corporation, 233 E. Larkin, Midland, Michigan 48640, and the PROPERTY OWNERS (“Property Owners”) listed in **Exhibit A**. In this Agreement, the FLTF and Property Owners may be referred individually as “Party” or collectively, as Parties.

**Recitals:**

- A. On May 19, 2020 Edenville and Sanford dams experienced a catastrophic failure resulting in the loss of Wixom and Sanford Lakes and permanent damage and/or loss of to the dams and earthen dikes of a severity yet unknown, of not only Wixom and Sanford, but also possibly Secord and Smallwood. At this time, it appears that the dam owner (Boyce Trusts and related entities) is incapable of restoring, repairing, and/or replacing the dams, removal of accumulated debris, and stabilizing shoreline which is affecting properties within the Four Lakes Special Assessment District.
- B. Protection of the public, replacement and repair of the dams, and the restoration of Wixom and Sanford lakes, and improvements and repairs to the dams supporting Smallwood and Secord lakes, will require significant coordination between Federal and State regulatory agencies and departments, as well as local and County government.
- C. The Four Lakes Task Force, is a Michigan non-profit and IRS 501(c)(3) corporation that was appointed by the Counties of Midland and Gladwin (the “Counties”) to serve as the County Delegated Authority pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.30701 et seq. (“Part 307”) on behalf of the Four Lakes Special Assessment District. The FLTF was also appointed by the Counties to coordinate all efforts with Federal, State and local agencies and departments with respect restoring, repairing, and/or replacing the dams, removal of accumulated debris, and stabilizing shoreline that is affecting properties within the Four Lakes Special Assessment District.
- D. The FLTF has the expertise and experience to lead and coordinate with the federal, state and local agencies with respect restoring, repairing, and/or replacing the dams, removal of accumulated debris, and stabilizing shoreline that is affecting properties within the Four Lakes Special Assessment District with a focus on public safety.
- E. The Four Lakes Special Assessment District, by and through the FLTF has entered into an agreement with the Natural Resources Conservation Service (“NRCS”), a federal program through the United States Department of Agriculture (“USDA”), that will provide financial assistance to address the removal of accumulated debris and shoreline stabilization (“NRCS Program”).

- F. The financial assistance provided by NRCS Program will pay up to 75% of the eligible costs incurred for qualified projects and requires at least 25% matching funds from parties benefitting from the Project.
- G. The Property Owners listed in **Exhibit A**, own property within the Four Lakes Special Assessment District, and have experienced shoreline damage that requires stabilization to prevent further soil erosion created by the failure of the Edenville and Sanford dams and should qualify for financial assistance provided by the NRCS.
- H. The purpose of this Agreement is to provide FLTF, its contractors, consultants and agents access to the properties owned by the Property Owners listed in Exhibit A, and further obligate the Property Owners to paying their respective share of the costs of the Project identified in **Exhibit B**.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises, representations, and Agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**Article I. Project and Estimate of Cost; Access to Property.**

- 1.1 Purpose. The Parties agree and approve the Project(s) and estimated cost identified in **Exhibit B**. The Project(s) shall be constructed substantially in accordance with the plans and specifications, prepared and submitted by the FLTF consulting engineers, with the understanding that variations therefrom that do not materially change the location, capacity or overall design of the Project(s), and do not require an increase in the total estimated cost of the Project(s) may be permitted on the sole authority of the FLTF following consultation with Property Owners affected. The Estimated Cost of the Projects and the cost borne by the Property Owners is set forth in Exhibit B, is hereby approved and adopted.
- 1.2 Property Access. Each of the Property Owners listed in Exhibit A, hereby grants a ingress and egress license authorizing the FLTF, including its, employees, consultants, contractors and agents (collectively “Authorized Persons”) to enter the Properties listed in **Exhibit A**, and further authorizes to perform the work identified in **Exhibit B**. The work may include, survey staking, on-site observation, construction and other purposes in conformance with the requirements of the NRCS Program.

**Article II. FLTF Responsibilities.**

- 2.1 If applicable, the FLTF will proceed to:
  - (a) enter into construction agreements for the Project(s);
  - (b) procure from the contractors all necessary and proper bonds and insurance;

(c) cause the Projects to be constructed; and,  
(d) do all other things required by the NRSC Program, this Agreement, and federal, state and local law and regulations.

- 2.2 Project Variations and Change Orders. The FLTF shall have sole authority to approve variations or changes during construction that do not materially change the location or overall design of the Project(s), and do not require an increase in the estimated cost of the Project. In the event that it shall be necessary to increase the estimated cost of the Project(s) that is a material change (as determined in the sole discretion of the FLTF), or if the actual cost of the Project shall exceed the estimated of cost of the Project(s) agrees to consult and obtain the consent of the affected Property Owner prior to proceeding with the work requiring the material change.
- 2.4 Agreement Administration. The FLTF will be responsible for contact administration. All certificates required for payments to contractors shall be approved by the consulting engineers before presentation to the FLTF for payment, and the FLTF shall be entitled to rely on such approval in making payments.
- 2.5 Contractor Insurance. The FLTF shall require all contractors engaged for the Project(s) to provide commercial general liability, umbrella or excess coverage, workers' compensation, and other insurance; and shall require the contractors to name or provide an endorsement naming the Parties, Midland County, Gladwin County, and their respective elected officials, officers and employees, as additional insureds under the required insurance.
- 2.6 Permits. The FLTF will be responsible for obtaining and securing all licenses, permits, certificates, and governmental authorizations necessary to perform all of its obligations under this Agreement. The cost for securing the same shall be a project cost and allocated in accordance with Article III, and regardless of whether said expense exceeds the Estimated Cost of the Project as set forth in **Exhibit B**.
- 2.8 Compliance with Laws and Regulations. The Parties will comply with all federal and state laws, regulations, and requirements applicable to the obligations under this Agreement.
- 2.9 Ownership, Operation and Maintenance. If applicable, following completion of the Project, the respective Property Owner where the work has been completed on their respective Property shall be the owner of that portion of the Project and shall be responsible for all future operation and maintenance, if any.

### **Article III. Consideration and Payment of Project Costs.**

- 3.1 Consideration and Payment of Project Costs. The NRSC Program proposed to pay up to 75% of all eligible Project Costs. The Property Owners listed in Exhibit B shall be responsible of at least 25% of eligible costs and all ineligible costs as determined by NRSC. Upon written request, FLTF will provide Property Owners all relevant

documentation evidencing the final costs of the Project(s). The Parties shall have the right to inspect and review all documentation evidencing the final total costs of the Project. It is understood, that where two or more Property Owners are responsible for the 25% or more match of eligible or ineligible costs, there FLTF agrees to develop a policy related to cost allocation between the Property Owners.

- 3.2 Liability and Claims; Selection of Legal Counsel. The Parties agree the costs and expenses of any lawsuits or claims arising directly or indirectly out of this Agreement or the construction of the Project, shall be deemed to constitute a part of the cost of the Project and shall be paid and allocated between the Parties in accordance with Article III, as part of the cost of the Project and regardless whether said expense exceeds the Estimated Cost of the Project as set forth in **Exhibit B**.

#### **Article IV. Effective Date; and Term.**

- 4.1 Effective Date. This Agreement shall become effective upon the execution by the last Party to execute the Agreement and such date shall be indicated in the first paragraph of this Agreement.
- 4.2. Term. This Agreement shall terminate upon completion of the Project(s) or the warranty period of the work performed under this Agreement, whichever is later.

#### **Article V. General Provisions.**

- 5.1 Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole according to its fair meaning, and not construed strictly for or against any party. As used in this Agreement, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.
- 5.2 Reservation of Rights. This Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.
- 5.3 Severability. If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision of persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable, provided the invalid provision does not substantially alter the Agreement or make execution impractical.
- 5.4 Binding Agreement; Assignment; and Amendments. This Agreement will be binding upon and for the benefit of the Parties hereto and their respective successors and assigns, subject to any assignment requiring the prior written consent of the non-assigning Party

by an amendment to this Agreement signed by both Parties, and the assignor binding the assignee to the terms and provisions of this Agreement.

- 5.5. Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall be considered a valid original.
- 5.6. Captions. The section headings or titles and/or all section numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
- 5.7. Notices. All correspondence and written notices shall be considered delivered to a Party as of the date that such notice is deposited with the U.S. Postal Service to be delivered to the address the respective Party as identified in the opening paragraph of this Agreement.
- 5.8. Recitals. The recitals shall be considered an integral part of the Agreement.

**IN WITNESS WHEREOF**, this Agreement if executed by the Parties on the date hereafter set forth in the opening paragraph of this Agreement.

**FOUR LAKES SPECIAL ASSESSMENT DISTRICT**  
by and through the FOUR LAKES TASK FORCE

By: \_\_\_\_\_  
David Kepler  
Chairperson

Dated: \_\_\_\_\_

PROPERTY OWNERS – see attached **Exhibit A**.

**EXHIBIT A – PROPERTY OWNERS**

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. (“Property”)

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. (“Property”)

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. (“Property”)

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. (“Property”)

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. (“Property”)

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Property Address and Parcel Identification No. ("Property")

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**EXHIBIT B – PROJECTS, SCOPE OF WORK AND ESTIMATED COST**