

# MEMORANDUM OF AGREEMENT

**between the East Dakota Water Development District, the Lake Poinsett Association, the Lake Poinsett Water Project District, and the Lake Poinsett Sanitary District**

## **I. INTRODUCTION**

THIS MEMORANDUM OF AGREEMENT (MOA) (“Memorandum”), dated September 30, 2023, between the East Dakota Water Development District (“PARTNER”), a political subdivision of the state of South Dakota established under the laws of the state of South Dakota with its offices in Brookings, South Dakota, represented by Jay Gilbertson, Manager/Treasurer; and the Lake Poinsett Association (“PARTNER”), a domestic nonprofit corporation established under the laws of the state of South Dakota with its principal place of business in Lake Norden, South Dakota, represented by Scott Ross, President; the Lake Poinsett Water Project District (“PARTNER”), a political subdivision of the state of South Dakota established under the laws of the state of South Dakota with its principal place of business in Estelline, South Dakota, represented by John Pantzke, Chairman; and the Lake Poinsett Sanitary District (“PARTNER”), a political subdivision of the state of South Dakota established under the laws of the state of South Dakota with its principal place of business in Arlington, South Dakota, represented by Dennis Micko, Chairman; collectively referred to as “the Partners.”

The Partners wish to work together and in compliance with the following clauses:

## **II. GOAL**

The primary goal of the Partners is to develop a Lake Poinsett Management Plan. To develop the Plan, a Study Advisory Team will be formed to collect input from stakeholders, conduct a technical analysis of the Lake and the area, and explore potential funding opportunities.

The Plan will identify and prioritize the critical needs and potential solutions for Lake Poinsett. This information will be put together in a Management Plan that identifies the next steps for the projects that are identified.

The purpose and vision of the Management Plan is to equip the Partners with the means to make important changes. Some of the issues that will be explored include, but are not limited to:

- a. Water quality;
- b. Water levels;
- c. Fish / wildlife habitat;
- d. Tourism;
- e. Recreation;
- f. Roads and transportation around the lake;
- g. Land use;
- h. Economic development;
- i. Shoreline damage; and
- j. Sanitary sewer use and expansion

The final Lake Poinsett Management Plan will be completed by September 1, 2025, unless the Partners agree to revised completion date.

### **III. ROLES AND RESPONSIBILITIES OF PARTNERS**

Each Partner shall provide at least one representative to actively participate in the Study Advisory Team (SAT). The SAT will be responsible for providing input and guidance to the Consultant on the development of the Plan as follows:

- a. Participation in the bi-monthly progress meetings;
- b. Active participation in at least three public meetings designed to engage stakeholders and receive input on priorities;
- c. Freely share information between the Partners and the Consultant. Example includes, but is not limited to, names and addresses of homeowners and other stakeholders; and
- d. Development and implementation of a communications strategy to ensure the Partners are communicating a consistent message to the public.

#### **IV. PRINCIPAL CONTACTS**

The Principal Contact for each of the Partners is:

##### **East Dakota Water Development District**

Jay Gilbertson, Manager / Treasurer

132 Airport Avenue

Brookings, SD 57006

(605) 688-6741

##### **Lake Poinsett Association**

Scott Ross, President

PO Box 222

Lake Norden, SD 57248

(701) 740-2362

##### **Lake Poinsett Water Project District**

John Pantzke, Chairman

242 E Lake Dr.

Estelline, SD 57234

(605) 881-4800

##### **Lake Poinsett Sanitary District**

Dennis Micko, Chairman

19553 US Hwy 81, Suite 3

Arlington, SD 57212

(605) 690-7021

Such Principal Contacts may be changed in writing from time to time by their respective Partners.



## **V. USE OF INTELLECTUAL PROPERTY**

The parties agree that any intellectual property that is jointly developed through activities covered under this MOA can be used by each Partner for project development or strategic communication purposes without obtaining consent from the other Partners and without any need to account to the other.

All other intellectual property used in the implementation of the MOA will remain the property of the party that provided it. This property can be used by the parties for purposes covered by the MOA but consent must be obtained from the owner of the property before using it for purposes not covered by the MOA.

## **VI. EFFECTIVE DATES AND AMENDMENTS.**

This MOA shall take effect upon the date of the last party to sign this MOA and shall remain in effect until September 1, 2025, unless earlier terminated. No party may assign or transfer all or any portion of this MOA without the prior written consent of the other parties.

The MOA may be renewed at the end of this period by mutual written agreement by both Parties.

The provisions of this MOA may only be amended or waived by mutual written agreement by all Parties.

The individuals signing this MOA on behalf of their respective entities represent and warrant (without personal liability therefor) that upon the signature of each, this MOA shall have been duly executed by the entity each represents.

## **VII. TERMINATION**

Any Party may terminate this MOA and any related agreement, workplan, and budget at any time and for any reason by giving 60 days prior written notice to the other Parties; provided, however, that in the event a Partner fails to perform any of its obligations under this MOA, the other Partners shall have the right to terminate this MOA and any related agreement, workplan, and budget immediately upon written notice.

### **VIII. FUNDING AND COSTS.**

The parties acknowledge and agree that this MOA creates a financial or funding obligation on the other parties. The Partners have committed to financially support the development of the Lake Poinsett Management Plan as follows:

- East Dakota Water Development District: \$20,000
- The remaining expenses, not to exceed \$95,000, shall be shared approximately equally between the three boards as follows:
  - Lake Poinsett Association: \$31,666
  - Lake Poinsett Water Project District: \$31,667
  - Lake Poinsett Sanitary District: \$31,667

Should additional funding be necessary, the Partners will jointly agree on the amount of the additional funding and the Lake Poinsett Association, Lake Poinsett Water Project Board and the Lake Poinsett Sanitary District will share the expenses equally. The Memorandum of Agreement would be modified to reflect any funding changes.

### **IX. NO JOINT VENTURE**

Notwithstanding the terms “Partners” and “Partnership,” the Partners agree that they are not entering into a Legal Partnership, joint venture, or other such business arrangement, nor is the purpose of the Partners to enter into a commercial undertaking for monetary gain. The Partners will not refer to or treat the arrangements under this Agreement as a Legal Partnership or take any action inconsistent with such intention.


### **X. DISPUTE RESOLUTION**

The Partners hereby agree that, in the event of any dispute between the Partners relating to this Agreement, the Partners shall first seek to resolve the dispute through informal discussions. In the event any dispute cannot be resolved informally within 60 calendar and consecutive days, the Partners agree that the dispute will be negotiated between the Partners through mediation if Partners can agree on a mediator. The costs of mediation shall be shared equally by the Partners. Neither Partner waives its legal rights to adjudicate this Agreement in a legal forum.

## **XI. ENTIRETY**

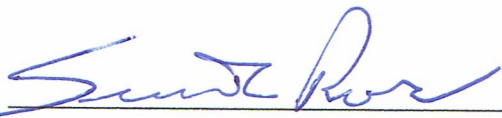
This Agreement, including all Annexes, embodies the entire and complete understanding and agreement between the Partners and no amendment will be effective unless signed by all Partners. Such signature by both Partners may be made by telefacsimile.

**FOR THE EAST DAKOTA WATER DEVELOPMENT DISTRICT**

  
\_\_\_\_\_  
Jay Gilbertson, Manager / Treasurer

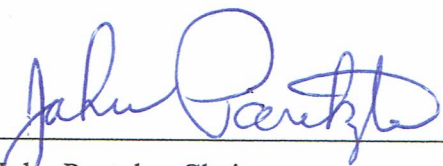
10/3/23  
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DATE

**FOR THE LAKE POINSETT ASSOCIATION**

  
\_\_\_\_\_  
Scott Ross, President

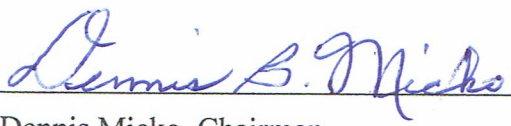
9-25-23  
\_\_\_\_\_  
DATE

**FOR THE LAKE POINSETT WATER PROJECT DISTRICT**

  
\_\_\_\_\_  
John Pantzke, Chairman

9-29-23  
\_\_\_\_\_  
DATE

**FOR THE LAKE POINSETT SANITARY DISTRICT**

  
\_\_\_\_\_  
Dennis Micko, Chairman

9/22/23  
\_\_\_\_\_  
DATE