



# Des Moines River Watershed Partnership Joint Powers Board

Thursday, January 19, 2023

9:00 AM – 11:00 AM

## Meeting Location (In-Person)

Cottonwood County Law Enforcement Center  
902 5<sup>th</sup> Avenue, Windom, MN

## Remote Meeting Link

WebEx Link (*See second page for remote access information*)

<i>Agenda Items</i>	<i>Action</i>	<i>Time</i>
1. Welcome <ul style="list-style-type: none"> <li>● Approve bylaws</li> <li>● Election of officers</li> </ul>	Decide	15 min
2. BEAST Spreadsheet <ul style="list-style-type: none"> <li>● Approve use of remaining Planning Grant funds</li> </ul>	Decide	15 min
3. MS4Front Tracker <ul style="list-style-type: none"> <li>● Approve pursuing for implementation</li> </ul>	Decide	30 min
4. Planning Grant budget update	Discuss	10 min
5. General Business Items <ul style="list-style-type: none"> <li>● Approve minutes</li> <li>● Appoint Executive Committee</li> <li>● Authorize Chair to sign documents necessary to apply for an EIN number</li> </ul>	Decide	20 min
6. MCIT Insurance	Discuss/Decide	20 min
7. Next Meeting  Thursday, March 16 at 9:00 am	Discuss	5 min

## *Remote Meeting Link*

### **Join from the meeting link**

[https://cottonwoodsoilandwaterconservationdistrict.my.webex.com/cottonwoods  
oilandwaterconservationdistrict.my/j.php?MTID=m9f56a1ecf404023e4b0d4dbfc0  
5f1584](https://cottonwoodsoilandwaterconservationdistrict.my.webex.com/cottonwoods<br/>oilandwaterconservationdistrict.my/j.php?MTID=m9f56a1ecf404023e4b0d4dbfc0<br/>5f1584)

### **Join by meeting number**

Meeting number (access code): 2555 285 2199

Meeting password: pBJ6Y3J38mi (72569353 from phones and video systems)

### **Tap to join from a mobile device (attendees only)**

[+1-415-655-0001,,25552852199#72569353#](tel:+1-415-655-0001,,25552852199#72569353#) US Toll

Some mobile devices may ask attendees to enter a numeric password.

### **Join by phone**

+1-415-655-0001 US Toll

[Global call-in numbers](#)

### **Join from a video system or application**

Dial [25552852199@webex.com](mailto:25552852199@webex.com)

You can also dial 173.243.2.68 and enter your meeting number.

# Des Moines River Watershed Partnership

## Bylaws

### ARTICLE I: PURPOSE

1. The purpose of these bylaws is to facilitate the function of the Joint Powers Board (“Board”) of the Des Moines River Watershed Partnership (“DMRWP”) related to organizing, implementing and maintaining the Des Moines River Watershed Comprehensive Watershed Management Plan.
2. The Board comprises the governing body of DMRWP, a joint powers organization established pursuant to Minnesota Statutes section 471.59.

### ARTICLE II: MEMBERSHIP PROVISIONS

1. Each Member’s governing body shall appoint a Director to represent it on the Board. The Board shall initially be composed of thirteen (13) directors each representing one of the 13 Members.
2. Each Member’s governing body shall also appoint an Alternate to perform a Director’s duties in the Director’s absence. Throughout these bylaws, the term “Director” includes the term “Alternate” unless specifically stated otherwise.
3. An appointed Director must also be part of the Member’s governing body.
4. A Director shall serve for a term identified by appointing Member’s governing body.
5. If a Director resigns or is otherwise unable to complete the term, the Director shall notify their Member’s governing body of the vacancy as soon as practicable. The Member’s governing body shall appoint a replacement Director as soon as possible.
6. A Director shall be subject to removal by the Member’s governing body at any time, with or without cause. A vacancy shall be filled by the appointing Member’s governing body.
7. The Board, by simple majority vote of Directors present, may request the Members appoint a replacement Director if the presently appointed Director misses two (2) consecutive meetings without notice to the DMRWP Chairperson, or to the Vice Chairperson if the Chairperson is absent.
8. A Director shall not take any action that may materially benefit the financial interest of that Director, a Director’s family member, or a Director’s close associate, unless and until that Director first discloses that interest for the record. The Director who so discloses an interest may be present to answer questions related to that interest, but shall not advocate for nor vote on the action. If a Director concludes that his or her interest does not create a conflict, but that there may be an appearance of a conflict, he or she shall disclose the interest for the record before participating in discussion or voting on an action.

9. No Member shall have authority to designate a proxy to exercise the privileges of membership.

### **ARTICLE III: OFFICERS**

1. Board Officers shall include a Chairperson, Vice Chairperson, and a Secretary. The Board desires Directors from each County, Soil and Water Conservation District, and Watershed District have an opportunity to serve as officers on an equitable basis.

- a. The Chairperson:

- i. Shall serve as Chairperson/presiding officer for all meetings; and
- ii. Shall sign and deliver in the name of the Partnership any correspondence pertaining to the business of the Partnership.

- b. The Vice Chairperson shall:

Discharge the Chairperson's duties in the event of the absence or disability of the Chairperson.

- c. The Secretary:

- i. Shall maintain records of the DMRWP.
- ii. Shall certify records and proceedings of the DMRWP.
- iii. Shall ensure that minutes of all Board meetings are recorded and made available in a timely manner to the Board, and maintain a file of all approved minutes including corrections and changes.
- iv. Shall provide for proper public notice of all meetings or maintain a regular meeting schedule.
- v. May delegate a representative to record the minutes and perform other duties of the Secretary. The elected Secretary will sign the official minutes of all meetings.

In the Secretary's absence, the Board or the Secretary may delegate a representative to record the minutes and perform other necessary duties for a meeting.

2. At its first regular meeting of each calendar year, the Board shall by simple majority vote of Directors present, elect officers from its present Directors. Alternates are not eligible to be elected as officers under this section. The term of each office shall be one year. An officer may be elected to subsequent terms.

3. An officer shall serve until the officer resigns, is removed, or is replaced by the election of a successor. No officer may hold more than one office at a time.

4. If an officer fails to complete the full term of office, the Board shall as soon as possible act to fill the vacant position following section

#### **ARTICLE IV: MEETINGS**

1. The Board shall establish a regular meeting schedule consisting of not less than 4 (one per calendar quarter) meetings per year. All Board and committee meetings shall comply with statutes and rules requiring open and public meetings. Meeting notices shall be posted on the Partnership's website.
2. All meetings shall be conducted generally by Robert's Rules of Order. Robert's Rule of Order may temporarily be suspended by consent of the majority of the Directors present and eligible to participate at a meeting.
3. Directors may attend meetings via interactive technology as long as their attendance complies with statutory requirements.
4. A quorum of the Board shall consist of a simple majority of Directors present.
5. Notice of Board meetings and a proposed agenda shall be mailed or emailed to all Directors not less than seven (7) days prior to the Board's scheduled meeting date.
6. Meeting minutes shall be made available to all Directors prior to the next meeting.

#### **ARTICLE V – VOTING**

1. Each Director shall have one vote. In the absence of a Member's representative Director, the Member's representative Alternate may vote.
2. A motion or resolution shall be approved by simple majority vote of the Directors present and constituting a quorum of the Board.
3. A supermajority vote of two-thirds of all Directors present shall be required to enter a contract or agreement for services if the contract or agreement could result in the expenditure of non-state or non-federal public dollars of the DMRWP or its member boards.

#### **ARTICLE VI – COMPENSATION**

1. Directors shall serve without compensation or per diems for Board meetings from DMRWP, but this shall not prevent a Member from compensating its Director if such compensation is authorized by such Governmental Unit and by law.

#### **ARTICLE VII – SUBCOMMITTEES OF THE BOARD AND OTHER COMMITTEES**

1. The Board may appoint subcommittees for the purpose of assisting the Board with its duties.

2. The Board shall create, and appoint Directors to, an Executive Committee (the Committee). The Committee shall consist of the Chairperson, Vice Chairperson, Secretary, and four Directors at large. In appointing Committee members, The Board intends the Committee be composed equally between representative Directors from Counties and Soil and Water Conservation Districts; and to have equal representation by rotating Directors from County and Soil and Water Conservation Districts every other year. The Committee will include a representative Director from the watershed district each year.

The Committee shall be authorized to act on the Board's behalf between Board meetings on matters within the scope of the budget, on personnel matters, to make budget recommendations, and to review and consider other matters and make recommendations to the Board, and to act on behalf of the Board on all routine matters including the payment of bills and other areas of authority specifically delegated by the Board. The Committee shall not perform any act or make any decision specifically reserved to the Board by the Agreement or by law.

3. The Board shall create a Technical Committee to advise the Board on the implementation of the Comprehensive Watershed Management Plan for the Des Moines River watershed and on issues of policy and administration related to the Plan.
  - a. The Technical Committee shall at a minimum consist of a technical staff member from each Member.
  - b. The Technical Committee shall establish a regular meeting schedule consisting of not less than 4 (one per calendar quarter) meetings per year.
  - c. The Technical Committee may seek the assistance of one or more representatives from Minnesota's principal water management or plan review state agencies, including but not limited to, the MN Board of Water and Soil Resources, Department of Agriculture, Department of Health, Department of Natural Resources, and Pollution Control Agency.
4. The Board may appoint an Advisory Committee and act to approve all Advisory Committee members.

#### **ARTICLE VIII: MAILING ADDRESS, MEETING LOCATION AND RECORDS CUSTODY**

1. DMRWP's mailing address will be the location of its administrative agent.
2. All regular DMRWP meetings shall be held at a location within the Des Moines River watershed as specified in the regular meeting schedule adopted by the Board.
3. DMRWP shall adopt a data practices policy designating the location of records, the records custodian, and the Board's agent for data practices compliance.

**ARTICLE IX: MISCELLANEOUS**

1. Portions of these bylaws may be suspended temporarily upon motion by a Director, provided the motion includes the suspension’s effective date and termination date, and such motion is carried by a two-third supermajority vote of the Directors..
2. Any permanent change to any part of these bylaws by the Board may be made at any meeting by a supermajority of two-thirds of the membership of the Member’s governing bodies, provided that thirty (30) days advance written notice of the proposed change has been given to each member of the Board.
3. The Board shall contract for services with an entity as a Plan Coordinator/Administrative Agent. The Plan Coordinator/Administrative Agent shall implement the Plan. The Plan Coordinator/Administrative Agent shall coordinate the plan and organize both the Board and Technical Committee. The Board may adopt a policy or agreement defining the duties and facilitating the Plan Coordinator/Administrative Agent’s function.
4. The Board shall contract for services with an entity as a Fiscal Agent. Official records and the requirements of the BWSR grant agreement shall be maintained by the fiscal agent. Records maintenance and disposition shall be in accordance with applicable laws. The Board may adopt a policy or agreement to define duties and facilitate the Fiscal Agent’s functions.
5. These bylaws are intended to be consistent with applicable provisions of Minnesota Statutes Chapters 103B, 103C, and 103D. In all cases of omission or error, Minnesota Statutes Chapters 103B, 103C, and 103D will govern.

**ARTICLE X – CERTIFICATION**

1. These By-laws were adopted by a vote of \_\_\_ ayes and \_\_\_\_ nays by the members of the Board on \_\_\_\_\_.

January 12, 2023

Des Moines River 1W1P Policy Committee  
Attn: Sarah Soderholm

**Subject: Quote for Purchase of Des Moines River Watershed Implementation Tracking Tools (BEAST Spreadsheet and MS4Front Implementation Tracking with Modules)**

Dear Ms. Soderholm,

We would like to thank you for the opportunity to provide a quote for our BEAST (Benefits Estimator and Summary Tool) spreadsheet and MS4Front Software Platform. As per our discussion, we are providing a quote for the use of this spreadsheet and software platform by the Des Moines River Watershed Partnership for specific implementation tracking components of the Des Moines River Watershed Comprehensive Watershed Management Plan (CWMP). These two tools are separated in two deliverables, as outlined below.

**Deliverable 1: Benefits Estimator and Summary Tool (BEAST) Spreadsheet**

The Benefits Estimator and Summary Tool is a calculation spreadsheet for consistently estimating water quality benefits (sediment, total phosphorus, and total nitrogen load reduction) and storage volume of implemented best management practices (BMPs) on the landscape. The spreadsheet can provide load reduction and water storage estimates with as few as two inputs, general location of an implemented or proposed BMP, and the treated acreage of that BMP. It is built using watershed-specific Prioritize, Target, and Measure Application (PTMApp) data and presented in a simplified and generalized manner to reduce the necessary effort of PTMApp data analysis. The Benefits Estimator and Summary Tool is provided as an excel file and includes a user guide.

The user must understand the following PTMApp terms: Priority Resource Point and Priority Resource Catchment, and must understand the relationship between them. The user must be able to calculate the treated acres for all implemented BMPs. This includes calculating upstream drainage area for storage, filtration, biofiltration, and infiltration-type practices, or calculating BMP footprint area for protection or source reduction-type practices.

**Deliverable 1, Task 1- BEAST Spreadsheet for the Des Moines River Watershed**

Build a PTMApp data summary spreadsheet for the Des Moines River Watershed. Services associated with this task include:

- Extract and summarize PTMApp data from the modernized PTMApp data
- Process data to work within the Microsoft Excel summary spreadsheet
  - This assumes data are from a large HUC 8 watershed where data may have to be processed in multiple batches due to Excel's row limit.



- Perform a quality review on summary spreadsheet
- Provide guidance documentation

Cost Estimate: \$7,500 for the BEAST Spreadsheet for the Des Moines River Watershed. This is an eligible cost that could be re-imbursed by remaining BWSR 1W1P Planning Grant.

## **Deliverable 2: MS4Front Subscription Cost and Implementation of Modules for 1W1P Tracking**

Our software platform allows users to configure as many data modules (aka “Pages”) as needed for your organization. With this version of MS4Front it now integrates with an ESRI ArcGIS online account and allows you to leverage ESRI’s Collector and Survey 123 mobile apps for a complete end to end solution. MS4Front is sold as a Software as a Service (SaaS) subscription by organizational license with unlimited user licenses for that organization and its partners.

Beyond the annual software subscription there are typically professional service fees for implementation such as module configurations, report creation, ArcGIS online integration, data migration (if applicable) and additional training. Our goal is to provide the most cost-effective solution possible while still being successful and sustainable for the future.

We believe our software is a great fit to help CWMP groups track implementation activities and progress towards goals. Our software is flexible in that it allows groups to configure tracking modules that make sense for their group without being locked into a specific data model. It can assist with the implementation of the CWMPs and can be configured to follow best practices recommended in BWSR’s guidance documents. Our software is flexible in that you can start simple with one or a few modules and add modules and reports as business needs arise or become more clear in the future.

### **Deliverable 2, Task 1 – MS4Front Subscription Cost**

Cost Estimate: The cost for the MS4Front subscription is \$6,000 annually. This includes an initial setup of your account and onboarding session with an administrative user. This is an eligible cost that could be re-imbursed by a BWSR Watershed Based Implementation Funding grant.

### **Deliverable 2, Task 2 – Implementation of Modules for CWMP Tracking**

For purposes of this estimate, HEI is proposing the implementation of three tracking modules that consist of the ideas listed below. Each of these tracking modules needs to be separately configured and tested by Steering Committee users. We propose that the Steering Committee form a small working group of who they would envision being the power users of the MS4Front software. HEI would then conduct a discovery meeting for each module to obtain the needs and ideas by these users. HEI would then configure the module and provide it for testing by the work group users. These modules are just a proposal and if the group does not feel a module is need or has ideas for a different tracking module this scope can be adjusted. In general, we are estimating an average of \$5,000 in professional services for each module that is configured. This could vary a bit between modules but should average out if the group moves forward with implementing all three of these modules.

- Landowner Projects – the purpose of this module to document and track the project lifecycle for funded landowner projects in the watershed. Data can be captured for ranking, agreements, site visits, status, financials, and finally installed practices with estimated benefits.
- Public Education and Outreach Module – the purpose of this module would be to document all public education and outreach done in the watershed that can used to share with the group but also report against any goal metrics that may have been developed for the watershed plan.
- Landowner Marketing Module – the purpose of this module is to assist the collaborative partners in documenting landowner conservation interest and capturing key metrics about the contact to report against goals. It also provides standardized documentation to quickly see past discussions with landowners if staff turnover should occur. This module is also map based so the mapviewer can show all parcels where landowners said they are or are not interested in conservation.

Cost Estimate: \$15,000 for the implementation of these CWMP tracking modules.

Cost Estimate Assumption: The cost assumes a host organization (such as Jackson County) will provide access to their ArcGIS online for the GIS integration with MS4Front. The ArcGIS Online subscription would be used to host GIS map layers for use in the MS4Front map viewer. Otherwise, the cost for an ESRI ArcGIS Online subscription is \$500/yr payable to ESRI. The organization would also have to purchase some additional storage service credits at \$200/yr payable to ESRI as well.

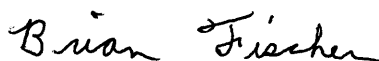
### Cost Estimate Summary

Task	Estimate
<b>Deliverable 1, Task 1 – BEAST Spreadsheet for the Des Moines River Watershed</b>	\$7,500
<b>Deliverable 2, Task 1 – MS4Front Subscription for Host Organization</b>	\$6,000
<b>Deliverable 2, Task 2 – 1W1P Modules Implementation Services</b>	\$15,000

If you have any questions, do not hesitate to reach out to me.

Sincerely,

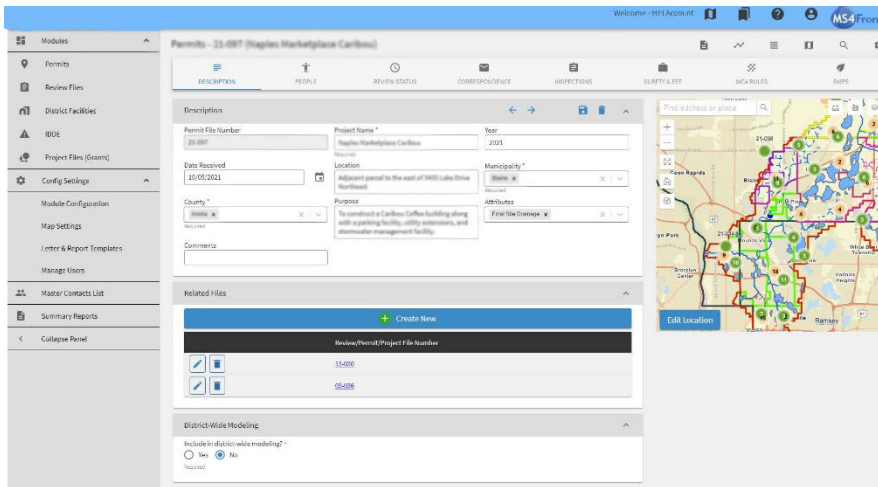
HOUSTON ENGINEERING, INC.



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Brian Fischer  
Project Manager - Technology  
Direct: 763.493.6664  
bfischer@houstoneng.com

# Implementing a Comprehensive Watershed Management Plan: Project Tracking and Program Management Software



## Background

During implementation of a Comprehensive Watershed Management Plan (CWMP), local partners need a system to consistently and comprehensively track and manage the implementation of plan projects, practices, and activities. Tracking is necessary to:

- Complete required eLINK reporting
- Simplify plan assessments and evaluations, and
- Demonstrate to the community and the state that dollars are going to the right place.

## The Software Solution

Houston Engineering, Inc. (HEI) developed MS4Front, a robust Software as a Service (SaaS) data management platform that provides configurable data entry forms, GIS integration, and reporting

tools. The platform has been traditionally used to aid MS4 permittees in tracking data related to public outreach, post construction stormwater practices and outfall inspections. More recently the tool has been used for local organizations in Minnesota to manage permit, grant, and capital improvement programs.

**This configurable platform provides a perfect solution to aid local partners in One Watershed, One Plan CWMP implementation tracking and management including:**

- tracking conservation projects from application through construction,
- tracking civic engagement and training activities,
- tracking landowner contacts and outreach, and
- summarizing benefits of implementation efforts toward plan goals.

The system is flexible and can be configured to align with each unique watershed and plan.

The software/system is hosted in the cloud, so users do not need to manage hardware, software installation, or updates. Users can access the system anywhere with an internet connection. The data is password protected with a username and password for authorized users. The tool is offered as a software service with an annual subscription cost, which pays for software maintenance, updates, and web hosting.

HEI can assist with planning, implementation or data migration as needed by subscribers.

## Contacts

**Brian Fischer**  
HEI Project Manager  
763.493.6664

**Doug Thomas**  
HEI Project Manager  
763.493.6679

**Rachel Olm**  
HEI Project Manager  
763.493.6694



## Attachment D

# MS4FRONT SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

This Subscription Agreement ("Agreement") for use of the software service as described herein ("Service") is made between Houston Engineering, Inc. ("Provider") and the single business entity or organization identified as "Subscriber" in Schedule A hereto. In consideration of the payment by the Subscriber to Provider of the charges specified in Schedule B to this Agreement, Provider grants to the Subscriber a nonexclusive, worldwide access and use the Service in accordance with the following terms and conditions:

### 1. The Service.

(1) Provider shall provide to the Subscriber access to the MS4Front software product for MS4 permit compliance (the "Service"). The Specifications for the Service are provided in Schedule A hereto, which is incorporated by reference. Provider agrees that the Service will meet service level standards (SLAs) provided in Schedule A hereto, which is incorporated by reference.

(2) Provider shall promptly report to Subscriber any malfunctions in the System discovered by Provider or any cause for interruption or delay in the Services, together with Provider's proposed solution.

### 2. Term and Termination.

(1) Subject to the cancellation provisions set forth below, the minimum term for which the Service shall be provided to the Subscriber under this Agreement shall be twelve (12) months, commencing on start-up of the Service and satisfactory completion of reasonable testing and acceptance procedures for the Software and the Service in a "live" environment, as indicated by notice to be provided by Subscriber to Provider (the "Commencement Date"). The Service shall be subject to annual renewal, and payment to Provider and shall be renewed unless otherwise cancelled on or before the one year anniversary from the Commencement Date or any renewal date.

(2) Either party may cancel the Service after the expiration of the applicable minimum term. If Subscriber chooses to cancel the Service, they will provide ninety (90) days written notice and forfeit the remaining annual subscription fee for that year if applicable. If Provider chooses to cancel the Service they will provide the Subscriber one (1) year written notice.

(3) The Service may be cancelled at any time in the event that: (a) the Subscriber fails to pay the charges specified in Schedule B in accordance with Section 3, except as a result of a bona fide billing dispute, and such nonpayment is not cured within fifteen (15) days after Provider notifies the Subscriber of the nonpayment (it being understood that cancellation for such cause is solely Provider's option); or (b) either party is in material breach of this Agreement, and the breach is not cured within thirty (30) days after the non-breaching party notifies the breaching party of the breach (it being understood that cancellation for such cause is solely the non-breaching party's option).

(4) Except as expressly provided in this Agreement, any cancellation of the Service or termination of this Agreement shall not affect any accrued remedies or liabilities of either party and shall not affect or impair any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after that cancellation or termination.

(5) In connection with any cancellation or termination of the Service, Provider will return or destroy all reports, files and data supplied to Provider by the Subscriber within 15 days after cancellation or termination. Provider will provide, at

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Subscriber's cost, such assistance as Subscriber may reasonably request in order to accomplish a transition to another service provider, if applicable. If necessary, for Subscriber to meet legal and business requirements for the safekeeping and/or lookup of historical information, Provider shall permit Subscriber to retain a backup copy of the Service and/or employ a limited version of the Service, without charge.

### 3. Charges for Service.

(1) In return for the Service provided by Provider, the Subscriber agrees to pay the charges specified in Schedule B. The Subscriber may elect to add additional modules to the software at an additional fee to the subscriber.

(2) The charges set forth on Schedule B include API maintenance charges (if applicable), support (as described in the Schedule), and use of the number of browser-based user interfaces indicated in Schedule B.

(3) Subscriber is responsible for maintaining its own access to the Internet so as to access the Service, which is web-based.

(4) Subscriber shall also be responsible for payment of any and all sales, value added, use and other similar taxes or charges levied by any governmental, statutory, or regulatory authority in connection with Provider providing the Service under this Agreement. Provider agrees to consult with Subscriber before charging for any such taxes, and the parties will cooperate with each other to determine the amounts due and avoid the payment of taxes not legally required.

(5) The Subscriber shall pay to Provider, upon demand, interest accruing daily from the date an invoice becomes past due to the date of actual payment on any undisputed amounts which are thirty (30) days or more overdue under this Agreement at the rate of three per cent (3%) per annum.

### 4. Installation, Equipment and Support.

(1) The Subscriber shall promptly provide Provider with all information necessary for the configuration information necessary to provide the Service and will cooperate to facilitate prompt setup.

(2) As part of the Service, Provider shall provide to the Subscriber support for the Service during normal business hours (Central U.S. Time). Provider shall provide such support during Provider's normal business hours in accordance with the terms of the Schedule B.

### 5. Provider Software.

(1) Subscriber agrees that all software and related users' guides and documentation provided by Provider (collectively, the "Provider Software"), including all copies of the Provider Software, and all copyright and all other intellectual property rights in or relating to the Provider Software are and shall, as between the parties to this Agreement, remain the property of Provider. The Subscriber, acting itself and with its contractors and consultants, may use the Provider Software only in the ordinary course of its internal business and only on equipment that meets all the technical specifications provided in writing by Provider prior to execution of this Agreement.

(2) The Subscriber may not copy sell, transfer, rent, share, reverse engineer, decompile, copy, duplicate or translate into any language the Provider Software, or use the Provider Software or the Service to operate a service bureau for other users, except that the Subscriber may make copies of the Provider Software as necessary for Subscriber to have access to and use of the Service in accordance with this Agreement or for backup, test, training or development purposes. The Subscriber shall ensure that all copies of all or any part of the

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Provider Software include all Provider's and its licensors' (if any) copyright and other proprietary rights notices.

(3) The Subscriber shall not modify any part of the Provider Software nor in any way make available to or provide copies of the whole or any part of the Provider Software to any third party.

(4) The Subscriber shall notify Provider promptly upon any unauthorized disclosure, use or copying of the Provider Software of which the Subscriber becomes aware.

### 6. Access to Service and Rights to Data.

(1) The Subscriber shall not permit anyone other than its employees (and any contractors or consultants who are responsible for supporting the Subscriber's relevant business operations) to use the Service, and agrees that the Service will be used only in accordance with the operating instructions and procedures established by Provider and provided from time to time by Provider to the Subscriber.

(2) Data and data compilations provided by Provider (except for data in the form supplied by the Subscriber or any data compilations including such data, which are and shall remain Subscriber's sole property) (collectively, the "Service Data"), and all database, copyright and other intellectual property rights in the Service Data, shall remain the property of Provider or its licensors, and no disclosure, reuse, extraction, re-transmission or storage of any of the Service Data shall be made except as necessary for use of the Service by the Subscriber hereunder or otherwise expressly permitted in writing by Provider. The Subscriber shall not gain or be entitled to assert any rights over the Service Data by virtue of the use or transmission of the Service Data on or through the Service. Subscriber shall ensure that the Service Data shall be kept confidential.

(3) Data cross references supplied by Provider or its licensors shall only be used with the Service and shall not be used for any other purpose.

### 7. Limitation of Liability.

(1) Provider will not be liable for the consequences of any decision taken by the Subscriber based on the Service Data or for any loss or damage that is, in whole or part, attributable to the Subscriber's failure to comply with this Agreement including, without limitation, Subscriber's obligations set out in Section 6.

(2) PROVIDER WARRANTS THAT THE SOFTWARE AND SERVICE WILL MEET ITS SPECIFICATIONS AND THAT THE SERVICE WILL BE PROVIDED IN A COMMERCIALY REASONABLE FASHION IN ACCORDANCE WITH INDUSTRY STANDARDS. ALTHOUGH PROVIDER WILL ENDEAVOR TO ENSURE THAT THE SERVICE DATA ACCURATELY REFLECTS INFORMATION AND DATA SUPPLIED TO IT BY THIRD PARTIES OR BY THE SUBSCRIBER, PROVIDER DOES NOT WARRANT THAT THE SERVICE DATA IS ACCURATE OR COMPLETE. IF PROVIDER DISCOVERS OR IS NOTIFIED OF ANY ERROR OR DEFICIENCY IN THE SERVICE DATA, PROVIDER WILL NOTIFY THE SUBSCRIBER AND TAKE COMMERCIALY REASONABLE EFFORTS TO CORRECT THE SAME.

(3) PROVIDER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF ANY INACCURACY, ERROR OR OMISSION IN THE SERVICE DATA, HOWEVER THEY ARISE, UNLESS RESULTING FROM PROVIDER'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR FOR ANY USE OR RELIANCE PLACED ON THE SERVICE DATA OR THE SERVICE.

(4) Provider will not be liable for any fault, delay or interruption to the Service or for any loss or damage that is in any way attributable to any data, information, equipment or software not supplied directly or indirectly by Provider or to any circumstances outside its control. The Subscriber will indemnify Provider against all losses, claims, expenses, costs, liability and

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damages suffered or incurred by Provider in connection with: any claim or action by any client of the Subscriber or by any third party who has access to the Service or any information from or about the Service via the Subscriber; any claim or action which arises in connection with the Subscriber's failure or delay in complying with its obligations under this Agreement; and any claim or action by any counterparty or other person with whom the Subscriber has done business or is considering doing business; any act or omission of the Subscriber's including, without limitation, any decision to do or not to do business with that person, except in each case to the extent resulting from Provider's negligence or willful misconduct.

(5) In no circumstances whatsoever will either party be liable for any indirect, incidental or consequential loss or damage or for any loss of profits, loss of goodwill, loss of opportunity, or loss or spoiling of data, even if such party was advised of or knew of the likelihood of that loss or type of loss arising.

(6) The express terms of this Agreement are in lieu of all other warranties, conditions, terms and undertakings implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded and disclaimed to the fullest extent permitted by law.

(7) This Section 7 governs Provider's liability in respect of the Service, whether arising in tort (including negligence and willful misconduct), under these terms and conditions, this Agreement, the terms of any Service Level Agreement relating to the Service, any other agreement or document relating to the Service, or in any other way.

(8) Nothing in this Section 7 shall relieve Provider of liability for direct damages caused by the negligence or willful misconduct of Provider or Provider's violation of applicable law.

### 8. Confidentiality, Privacy and Security

(1) Except as otherwise expressly provided in this Agreement, Provider and Subscriber each agrees that (a) all information communicated to it by the other and reasonably known to be or identified as confidential, whether before or after the date hereof, (b) all other information reasonably known to be or identified as confidential to which it has access in connection with the Services, whether before or after the date hereof, and (c) technical specifications, nonstandard price and payment terms, or performance requirements applicable to the Services which are designated as confidential information of one party or the other, will be and will be deemed to have been received in confidence and will be used only for purposes of each party's (i) carrying out the terms of this Agreement, (ii) in Subscriber's case, using, managing, maintaining or replacing the System as its internal needs dictate, and (iii) as otherwise permitted by the Agreement.

(2) Each of Provider and Subscriber agrees to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the unauthorized use or disclosure and to protect the confidentiality thereof. Except as otherwise permitted by the Agreement, no such information will be disclosed by the recipient party without the prior written consent of the other party; provided, however, that each party may disclose the other party's confidential information to those of the recipient party's employees, contractors, agents, attorneys, auditors, and insurers (if applicable) who have a need to have access to such information in connection with their employment (or engagement, if applicable) by the recipient party. The recipient party takes reasonable steps to require such individuals and entities to be bound by confidentiality obligations no less restrictive than those required hereunder.

(3) The foregoing will not prevent either party from disclosing information that (i) belongs to such party or is already known by the recipient party, free of any other confidentiality obligation (i.e., separate from the confidentiality obligation herein) directly or indirectly owed to the disclosing party, (ii) is publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) is rightfully received from a third party who is not

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subject to any obligation of confidentiality directly or indirectly owed to the disclosing party, (iv) is independently developed without use of the other party's confidential information, or (v) is approved for unrestricted release by the disclosing party. If confidential information is required to be disclosed pursuant to a requirement of law (e.g., any applicable Freedom of Information or Public Records Act) or by lawful demand or order of a governmental authority, such confidential information may be disclosed pursuant to such requirement so long as the party required to disclose the confidential information, to the extent possible, provides the other party with timely prior notice of such requirement and coordinates with such other party in an effort to limit the nature and scope of such required disclosure, provided, however, that in the event of a tax audit or regulatory investigation, notice of a disclosure requirement in connection therewith will not be given, and the parties will use commercially reasonable efforts to ensure that any confidential information that is subject to a valid request for delivery of a copy of such information (including a copy of this Agreement) to the applicable government authority is not subject to further disclosure by it (such as by marking such information as a trade secret).

(4) Provider shall exercise reasonable care for the protection of personally identifiable information included in Subscriber's data processed by or stored by Provider pursuant to the Service and shall maintain reasonable data integrity safeguards against the deletion or alteration of such data. In the event that any such data is compromised, released, lost or destroyed, or there is any unauthorized intrusion into systems operated by Provider adversely affecting Subscriber data, then Provider shall notify Subscriber within 48 hours after Provider's discovery thereof and use commercially reasonable efforts to correct the matter.

(5) During the Term of this Agreement, both parties agree to comply with privacy laws directly applicable to their respective businesses. To the extent Subscriber is required by law to do so with respect to Subscriber data that is provided to Provider to perform the Services, Provider shall implement appropriate security measures, policies and procedures that are designed to meet applicable privacy laws.

### 9. Indemnification and Insurance

(1) Provider and Subscriber each will be responsible for any and all third party claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses (collectively, "Losses") to their respective tangible personal or real property or for personal bodily injury to its employees and agents except to the extent that such Losses result from the negligence or willful misconduct of the other party, its agents or employees.

(2) Provider and Subscriber each agrees to defend, indemnify and hold harmless the other party against any third party Losses to the extent that such action is based upon a claim that the systems, facilities or resources, including confidential information, provided by the indemnitor: (i) infringes a copyright recognized under United States statute, (ii) infringes a patent granted under United States law, (iii) constitutes an unlawful disclosure, use or misappropriation of another party's trade secret, or (iv) conflicts with or violates any contract limitation to which the indemnifying party is a party or otherwise subject. The indemnitor will bear the expense of such defense and pay any Losses that are attributable to such claim finally awarded by a court of competent jurisdiction at indemnitee's cost and expense.

### 10. Miscellaneous.

(1) This Agreement, including the Schedules attached hereto, constitutes the entire agreement of the parties on the subject matter of this Agreement, and supersedes all prior agreements and all oral or collateral representations, agreements and understandings between Provider and the Subscriber relating to that subject matter.

(2) Except as expressly provided in this Agreement, this Agreement may not be amended, waived or varied other than by an agreement in writing signed on behalf of both Provider and the Subscriber.



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(3) Without the other party's prior written consent, neither party may assign, sublicense, transfer or otherwise dispose of any of its rights or subcontract, transfer or otherwise dispose of any of its obligations under this Agreement except to its present and future subsidiaries and affiliates and any successors to all or substantially all of its or their business. Subject to the foregoing, this Agreement shall inure to the benefit of, and shall be binding on, each party's respective successors and assigns.

(4) Notices under this Agreement shall be considered to have been duly given when delivered by hand, or two days after being mailed by first class, prepaid post, to Provider at 6901 East Fish Lake Road, Suite 140, Maple Grove, MN 55369-5400 or to the Subscriber at its address specified in Schedule A. Such addressees may be changed by notice given as provided in this Subsection (4).

(5) Failure by either party to enforce any term of this Agreement shall not be construed as a waiver.

(6) The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

(7) Neither party shall be liable to the other for any delay or nonperformance of its obligations under this Agreement arising from any cause beyond its reasonable control. The party who so delays or fails to perform shall promptly notify the other party in writing of the cause and the likely duration of the cause.

(8) This Agreement is governed by and shall be construed in accordance with the laws of the United States and the State of North Dakota as it applies to a contract made and performed solely in such jurisdiction. Any dispute related to, or arising from, these terms or this Agreement shall be resolved by single-member arbitration in accordance with the AAA Commercial Rules of Arbitration, with such arbitration occurring in Fargo, North Dakota.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal.

Subscriber:  
XXXXX

XXXXXXXXX

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

Title: \_\_\_\_\_

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

Provider:

HOUSTON ENGINEERING, INC

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

Title: \_\_\_\_\_

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

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### SCHEDULE A

SUBSCRIBER (Name; Address; Primary Phone #):

Subscribers Authorized Contact:

SOFTWARE AS A SERVICE (SaaS):

The Service is Provider's MS4Front software. See: [www.ms4front.com](http://www.ms4front.com). The MS4Front system is hosted on cloud servers and is accessible on a password-protected website via a web browser and standard internet connection. The service provides access to the software to the subscriber's organization with unlimited users for that organization. The service may not be shared with other individuals from other organizations under this agreement unless those individuals are contracted for services by the organization.

Software

Features include:

- Access to and entry of information via web-based interface
- Multiple users can simultaneously access the program
- Allows users account administrator the ability to control user permissions (i.e., full access, read only, or no access)
- Configurable pages and form fields to implement data management tracking for stormwater and water quality programs
- Web-based GIS mapping viewer
- Importing of existing databases in the provided template format in Microsoft Excel
- Exporting of MS4Front databases in Microsoft Excel format
- Ability to export data to commercially available formats
- Store photos of database records, screenings, inspections and maintenance actions

SOFTWARE SPECIFICATIONS:

MS4Front is a web-based application that requires a modern web browser to access. The software is designed for use on a personal computer web browser with a minimum resolution of 1024x768.

Supported Desktop Browsers:

- Microsoft Edge
- Mozilla Firefox
- Google Chrome
- Apple Safari

Mobile Support:

MS4Front may work on a mobile device such as an Ipad or smartphone device, but no guarantees are made with the software that all features will work on smartphones or tablets at this time. The web application was designed for a minimum screen resolution and touch events have not been tested. Mobile support for field use is provided thru ESRI's native mobile applications.

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### Application Hosting:

MS4Front is a hosted solution. We strive for 100% uptime, but no guarantee can be made about uptime due to circumstance out of our control such as power outages. MS4Front makes every reasonable attempt to back up Subscriber's data on a nightly basis but does not retain every night's backup for the life of the service. Provider should make a reasonable attempt to export their data from time to time for a backup copy at Providers location.

### Data Storage:

This subscription includes a 100GB storage limit for photos, attachments and videos for the account. Additional storage may be purchased if needed at a cost of \$100/year for additional 100GB blocks.

### Software Security:

MS4Front is secured with SSL encryption.

### Subscriber's Responsibilities

- Equipment (computers, monitors, smartphones, tablets, etc.)
- Internet access
- All data entry and management

## Attachment D

### SCHEDULE B

#### SaaS PRICING

Initial Account Creation and Set-up:

Provided under separate professional services agreement.

First Year Software as a Service Subscription Fee for MS4Front:

\$6,000

- Includes unlimited subscriber user accounts for staff of subscriber's organization
- All support requests must go through Subscribers authorized contacts

Annual Subscription Fee (starting on the renewal date of the 2<sup>nd</sup> year):

\$6,000

- Includes unlimited subscriber user accounts for staff of subscriber's organization
- All support requests must go through Subscribers authorized contact

3<sup>rd</sup> Party Licensing Requirements

- MS4Front can integrate with ESRI's mobile data collection apps. Subscriber is responsibility to provide appropriate licenses for their users to ESRI's mobile data collection apps, specifically Collector and Survey 123. Costs to integrate with ESRI's mobile data collection apps is included in initial setup and annual subscription fees.

Pricing Assumptions

- The provider reserves the right to increase annual subscription fees based on standard inflation rates and cloud server costs. Provider will provide 12 months' notice to subscriber of intent to increase any subscription fees. The provider will not increase the subscription fee for the year following the current active subscription by more than 10%.
- The provider reserves the right to create and sell optional modules that are developed to provide new functionality that is not included in the core software product.
- Professional service for configuration of modules, reports, custom features or data migration are not included in the subscription fee. These services can be provided upon request and a separate quote if needed.

Des Moines River 1W1P Proposed Budget

Pre Planning		Draft Plan							Formal Review and Public Hearing		Meetings and Facilitation		Geospatial Services		Total Budget	
Aggregate Watershed Information	Notify Plan Review Authorities and Host Public Kick-off Meeting	Write Land and Water Resources Narrative	Identify and Prioritize Resources and Issues	Establish Measurable Goals	Develop a Targeted Implementation Schedule	Describe Implementation Programs	Determine Plan Admin and Coordination	Write Plan Final Review Draft	Conduct Formal Review	Write Final Plan and Submit to BWSR	18 In-person Meetings Over 9 Meeting Days	18 Conference Calls	Hydroconditioning East Fork Des Moines	PTMApp		
Beginning Budget	\$8,450.00	\$5,122.00	\$6,324.00	\$12,156.00	\$11,442.00	\$16,652.00	\$6,462.00	\$4,704.00	\$15,060.00	\$3,568.00	\$7,408.00	\$29,338.00	\$23,328.00	\$12,600.00	\$7,000.00	\$169,614.00
																<b>Total Bill</b>
7/16/2021	\$3,670.50		\$1,125.50													\$4,796.00
8/13/2021	\$4,779.50	\$1,409.50	\$2,032.00									\$3,982.69			\$838.50	\$13,042.19
9/17/2021		\$2,316.00		\$2,950.50								\$2,268.00		\$7,750.00	\$1,419.00	\$16,703.50
10/12/2021				\$7,233.00								\$1,985.00		\$3,224.50		\$12,442.50
11/9/2021				\$1,972.50		\$3,998.50						\$1,893.75	\$1,893.75	\$1,625.50	\$4,723.50	\$16,107.50
12/20/2021			\$3,166.50		\$3,758.50							\$1,822.50	\$1,822.50		\$967.25	\$11,537.25
1/14/2022					\$4,860.75							\$729.00	\$729.00			\$6,318.75
2/14/2022					\$1,500.00	\$1,428.00							\$1,210.75			\$4,138.75
3/14/2022					\$1,322.75	\$10,026.50							\$1,711.75			\$13,061.00
4/14/2022							\$2,504.25					\$4,265.46				\$6,769.71
5/4/2022						\$1,199.00	\$3,378.50						\$835.00			\$5,412.50
6/29/2022							\$579.25	\$4,704.00	\$5,945.25			\$2,755.50	\$2,755.50			\$16,739.50
7/28/2022									\$5,185.15							\$5,185.15
10/20/2022									\$3,840.50	\$1,336.00						\$5,176.50
12/21/2022									\$89.10	\$2,156.40			\$1,693.00			\$3,938.50
Remaining Budget	\$0.00	\$1,396.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75.60		\$9,636.10	\$10,676.75	\$0.00	-\$948.25	

\$169,614.00(HEI Contract) - \$141,369.30 (HEI Invoices Total) = \$28,244.70



## Grant All-Detail Report One Watershed One Plan 2021

Original Awarded Amount	<b>\$232,320.00</b>	Grant Execution Date	<b>12/30/2020</b>
Required Match Amount	\$0.00	Original Grant End Date	6/30/2023
Required Match %	0%	Grant Day To Day Contact	Andy Geiger
Current Awarded Amount	\$232,320.00	Current End Date	6/30/2023

### Budget Summary

	Budgeted	Spent	Balance Remaining*
Total Grant Amount	\$232,320.00	\$141,961.88	\$90,358.12
Total Match Amount	\$0.00	\$0.00	\$0.00
Total Other Funds	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$232,320.00</b>	<b>\$141,961.88</b>	<b>\$90,358.12</b>

\*Grant balance remaining is the difference between the Awarded Amount and the Spent Amount. Other values compare budgeted and spent amounts

### Budget Details

Activity Name	Activity Category	Source Type	Source Description	Budgeted	Spent	Last Transaction Date	Matching Fund
1W1P Contingency	Administration /Coordination	Current State Grant	2021 - One Watershed One Plan (Jackson SWCD)	\$21,120.00			N
1W1P Planning	Planning and Assessment	Current State Grant	2021 - One Watershed One Plan (Jackson SWCD)	\$182,200.00	\$141,584.30	12/27/2022	N
Administration, Coordination & Reporting	Administration /Coordination	Current State Grant	2021 - One Watershed One Plan (Jackson SWCD)	\$29,000.00	\$377.58	11/14/2022	N

# Des Moines River One Watershed One Plan Policy Committee Meeting

Thursday, December 15, 2022

**Members Present:** Rick Anderson, Lyon County; Paul Langseth, Nobles SWCD; Richard Koons, Martin County; Karen Hurd, Murray SWCD; Linda Meschke, Martin SWCD; Tom Appel, Cottonwood County; Justin Ahlers, Nobles County; Phil Nasby, Jackson County; Mark Bartosh, HLWD; Bob Paplow, Nobles County; Dave Thiner, Murray County

**Staff Present:** Sarah Soderholm, Murray County; Amanda Strommer, MNDNR; Kay Gross, Cottonwood County; Dave Bucklin, Cottonwood SWCD; Andy Geiger, Jackson County; Dan Bartosh, Jackson SWCD; John Shea, BWSR; Ashley Brenke, Martin SWCD; Katherine Pekarek-Scott, MPCA; Shelly Lewis, Murray SWCD; Tom Kresko, MNDNR; Brian Fischer, HEI; Rachel Olm, HEI; Danielle Evers, Pipestone SWCD

**Meeting called to order 9:00 a.m.**

A motion was made by Richard Koons to approve the minutes of the previous meeting. Paul Langseth seconded it, and the motion passed unanimously.

Brian Fischer from HEI gave a presentation on the BEAST spreadsheet and the policy committee had a brief discussion about the benefits and limitations of the software. Brian then gave another presentation, followed by a demonstration, of the MS4Front tracking software. The policy committee again discussed the benefits and limitations of the software, focusing heavily on if it warrants the annual subscription. Action was tabled on these pieces of software until the January meeting.

Dan Bartosh presented the budget.

Sarah Soderholm presented options for accepting the resolution to adopt the DMR 1W1P CWP. She explained that resolution could be adopted after the regional committee, or it could be adopted after BWSR approves it.

Rick Anderson made a motion to use the resolution for adoption after the regional committee. Justin Ahlers seconded it; motion passed unanimously.

Sarah Soderholm presented a spreadsheet that laid out a tentative schedule for meetings where committees need to discuss key milestones. This spreadsheet also explains when the key milestones are scheduled to be completed during the 10-year timeframe of the CWMP. No action was necessary on this item.

Sarah Soderholm explained what the grant policy for the DRM 1W1P looks like thus far. The policy included a general summary of the plan, guidelines, practices, and project budget. No action was necessary on this item.

A motion was made by Linda Meschke to appoint Murray County and Murray SWCD as admin/fiscal agents for the DMR 1W1P. Paul Langseth seconded it; motion passed unanimously.

Sarah explained the scoring and ranking sheet. The group discussed how to handle special circumstances if they fall out of priority areas. No action was necessary on this item.

January 19<sup>th</sup> is the tentative date for the next policy meeting. Implementation tools, JPB bylaws, officer election, and executive committee members will all be points of discussion.

**Meeting adjourned at 11:05 a.m.**

Submitted respectfully,

Tom Muller

Secretary