



*A Subsidiary of MDU Resources Group, Inc.*

400 North Fourth Street  
Bismarck, ND 58501  
701-222-7900  
www.montana-dakota.com

July 20, 2023

Executive Secretary  
North Dakota Public Service Commission  
600 E. Boulevard Ave., Dept. 408  
Bismarck, ND 58505-0480

Re: Service Area Agreement – Case No. PU-23-\_\_\_\_

Montana-Dakota Utilities Co. (Montana-Dakota or Company), herewith submits for Commission approval an original and seven (7) copies of a Service Area Agreement (Agreement) between Montana-Dakota and Dakota Valley Electric Cooperative, Inc. Select provisions of the Agreement contain trade secret information and therefore, in accordance with N.D. Century Code §69-02-09-02, an Application for Trade Secret Protection is included herein as Attachment A. A single un-redacted copy of the trade secret information is being provided in a sealed envelope marked “Protected Information - Private”.

The Agreement seeks to establish service areas and to designate service locations to be served by Montana-Dakota surrounding the Applied Digital Data Center location near the City of Ellendale, North Dakota.

Montana-Dakota believes the attached Agreement meets the requirements outlined in Section 49-03-06 North Dakota Century Code.

Montana-Dakota will provide the appropriate fee upon request of the Commission in accordance with the requirements of Section 49-05-05 of the North Dakota Century Code.

Please refer all inquiries regarding this filing to:

Mr. Travis R. Jacobson  
Director of Regulatory Affairs  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, North Dakota 58501  
Travis.Jacobson@mdu.com

1 PU-23-272 Filed 07/20/2023 Pages: 14  
Service Area Agreement - redacted  
Montana-Dakota Utilities Co.  
Travis Jacobson, Director, Reg. Affairs

Also please send copies of all written inquiries, correspondence, and pleadings to:

Mr. Paul Sanderson  
Attorney  
MDU Resources Group, Inc.  
P.O. Box 5650  
Bismarck, North Dakota 58506-5650  
Paul.Sanderson@mduresources.com

Montana-Dakota respectfully requests that this filing be accepted as being in full compliance with the filing requirements of this Commission.

Sincerely,



Travis R. Jacobson  
Director of Regulatory Affairs

Attachments  
cc: Paul Sanderson

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

Montana-Dakota Utilities Co.                     )  
Approval of a Service Area Agreement        )  
in Dickey County                                    )                     Case No. PU-23-\_\_\_\_\_

**APPLICATION FOR APPROVAL OF SERVICE AREA AGREEMENT**

Applicant Montana-Dakota Utilities Co. ("Montana-Dakota") submits this application for approval of a Service Area Agreement with Dakota Valley Electric Cooperative, Inc. ("Dakota Valley") pursuant to N.D.C.C. § 49-03-06. Montana-Dakota is a Delaware corporation duly authorized to do business as a public utility in the state of North Dakota as a foreign corporation, with its principal place of business at 400 North Fourth Street, Bismarck, North Dakota 58501. Dakota Valley is an electrical cooperative corporation organized in North Dakota under N.D.C.C. Chapter 10-13, with its principal place of business at 7296 Highway 281, Edgeley, ND 58433.

Montana-Dakota and Dakota Valley operate electrical distribution systems in Dickey County, North Dakota. Under the authority granted by N.D.C.C. § 49-03-06, Montana-Dakota and Dakota Valley have entered into a Service Area Agreement, a copy of which is attached as Exhibit A. As part of the terms, the Service Area Agreement allocates to Montana-Dakota a specified service area in Dickey County. By its terms, the Service Area Agreement is subject to the approval of the Commission. The Service Area Agreement is in the public interest by, among other matters: (a) creating the certainty necessary for both applicants to plan and operate efficiently within the service territory granted to them; (b) establishing a service area which will avoid unreasonable duplication of electric facilities; and (c) establishing agreements which will help avoid territorial disputes between the parties with respect to the area encompassing the service area referenced in the Service Area Agreement.

Notices regarding this matter should be directed to:

Mr. Travis R. Jacobson  
Director of Regulatory Affairs  
Montana-Dakota Utilities Co.  
400 North Fourth Street  
Bismarck, North Dakota 58501  
travis.jacobson@mdu.com

Please send copies of all written inquiries, correspondence, and pleadings to:

Mr. Paul Sanderson  
Attorney  
MDU Resources Group, Inc.  
P.O. Box 5650  
Bismarck, North Dakota 58506-5650  
Paul.sanderson@mduresources.com

For Dakota Valley Electric Cooperative:

Mr. Arden Fuher  
President  
Dakota Valley Electric Cooperative, Inc.  
7296 Highway 281  
Edgeley, ND 58433

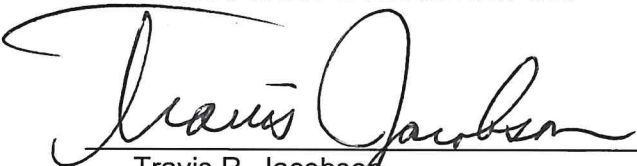
For the reasons set forth above, the Applicant believes it is proper and in the public interest for the Commission to approve the Service Area Agreement.

WHEREFORE, Applicant respectfully request the North Dakota Public Service Commission enter an Order:

- (1) Approving the Service Area Agreement in accordance with N.D.C.C. § 49-03-06; and
- (2) Granting such other relief as the Commission may deem lawful, just and proper.

Dated this 20<sup>th</sup> day of July 2023.

**MONTANA-DAKOTA UTILITIES CO.**

  
Travis R. Jacobson  
Director of Regulatory Affairs

# Exhibit A

## Service Area Agreement

**SERVICE AREA AGREEMENT**

This Service Area Agreement (Agreement) is between Montana-Dakota Utilities Co., a Delaware corporation, 400 North Fourth Street, Bismarck, ND 58501 (Montana-Dakota), and Dakota Valley Electric Cooperative, Inc., 7296 Highway 281, Edgeley, ND 58433 (Dakota Valley).

**RECITALS**

Section 49-03-06 N. D. Cent. Code authorizes agreements among electric providers to encourage harmony and operational efficiency in the provision of electric distribution service; to promote safety; to discourage unreasonable duplication of electric facilities; to assure adequate and reliable electric service; and to obtain anti-trust immunity for agreements such as this.

Montana-Dakota and Dakota Valley are "electric providers" as defined under §49-03-01.5 N. D. Cent. Code.

Montana-Dakota and Dakota Valley desire to avoid misunderstanding and disagreement over areas that each party is to serve and over Service Locations within these areas; provide both parties with equitable participation in the provision of electric distribution service in un-served areas governed by this Agreement; encourage operational efficiency and safety and discourage unreasonable duplication of electric facilities; and assure orderly growth of electric infrastructure for adequate and reliable service in the areas governed by this Agreement.

**ARTICLE I.**  
**SERVICE AREAS, LOCATIONS AND FACILITIES**

Montana-Dakota and Dakota Valley agree to the following:

1. **Areas Governed.** The areas governed by this Agreement are those areas near Montana-Dakota's 345kv Substation located in NE¼ of Section 9, Township 129N, and Range 63W, in Dickey County, North Dakota, specifically delineated on the attached map. The provision of electric distribution service outside the geographic scope of this Agreement shall be governed by applicable law, any future amendments extending the scope of this Agreement, or new service area agreements that may be made between the parties.
2. **Definitions.** For purposes of this Agreement:  
The term "Service Location" shall mean structures, facilities, or improvements located within the areas governed by this Agreement to which retail electric service is provided.

The term "Existing Service Location" shall mean the Service Locations to which a party provides service as shown by its books and records as of the effective date of this Agreement. The term includes all expansions, improvements, or additions to a Service Location made after the date of signing of this Agreement that do not amount to a New Service Location. Any changes to Service Locations between the

date the parties sign this Agreement and its effective date will be provided to the other party within 10 business days from the effective date of this Agreement.

The term "New Service Location" shall mean a Service Location that is not an Existing Service Location. An Existing Service Location is converted to a New Service Location when: (1) retail electric service is provided to a Service Location after electric service has been disconnected and electric service use abandoned at the Service Location for a period of at least 90 days; or (2) a customer makes a material change of use of the Service Location or modifies the structures, facilities or improvements on the Service Location and such change or modification necessitates a replacement or substantial modification of the electric service facilities historically used to serve the Service Location, including but not limited to:

- o Replacement of single phase family/farm use to three phase commercial/industrial (this shall not include replacement of single phase to three phase if for family/farm use only) or three phase high density residential use (18 or more units); and
  - o Replacement of single phase commercial/industrial use to three phase commercial/industrial use of 1.0 MW or greater of connected load.
3. Montana-Dakota Service Area. The service area of Montana-Dakota is that area governed by this Agreement shaded in blue on the attached map, marked as Exhibit 1 and incorporated by reference as integral to this Agreement. Montana-Dakota will provide retail electric service in this service area, and Dakota Valley shall not provide retail electric service in this service area, except as otherwise provided in this Agreement or in any amendment to this Agreement. That is, unless changed by the written consent of both parties, Montana-Dakota will serve all of its Existing Service Locations and all New Service Locations in its service area while Dakota Valley will continue to serve only its Existing Service Locations in Montana-Dakota's service area. Dakota Valley may serve New Service Locations within Montana-Dakota's service area only as provided in this Agreement or in any amendment to this Agreement.
4. Dakota Valley Service Area. Dakota Valley is not granted a specific service area that will be governed by this Agreement. As consideration for this Agreement, Dakota Valley will receive, and Montana-Dakota agrees to pay, an annual payment to Dakota Valley [REDACTED] of the Company's Commission-approved retained margins from the Applied Digital data center. Under the proposed sharing mechanism, Montana-Dakota would file annually, no later than February 1, an annual Rate 45 margin sharing report with the Commission. Within the report, the total margin collected under Rate 45 would be reported, along with the amount to be shared with Dakota Valley and the Company's North Dakota electric customers. Montana-Dakota would provide payment to Dakota Valley no later than 30 days following the date of Commission approval of the annual report.

Montana-Dakota also agrees to make an additional annual payment to Dakota Valley [REDACTED] of the Company's Commission-approved retained margins from any new Rate 45, or a substantially similar rate structure that serves a high density data center, customer that locates within Montana-Dakota's service area

**PUBLIC COPY - NOT PUBLIC OR PRIVILEGED DATA HAS BEEN EXCISED**

governed by this agreement. Any future payment would comply with the procedures outlined in the preceding paragraph.

5. Separate Agreements Pertaining to Service Locations and Service Areas. With the written consent of the parties:
  - o Electric service may be supplied by one party to a New Service Location in another party's service area on a temporary or permanent basis.
  - o New or Existing Service Locations may be exchanged, even though the number or service characteristics of the Service Locations to be exchanged are not equal.
  - o All or portions of new or existing service areas may be exchanged or transferred, even though the number or service characteristics of the Service Locations located in said areas to be exchanged or transferred are not equal.

Agreements pertaining to Service Locations or service areas shall not alter or stand as precedent to alter the intent of this Agreement regarding the provision of retail electric service in defined service areas.

6. Service Location Disputes. This Agreement is subject to the continuing jurisdiction of the North Dakota Public Service Commission to settle Service Location and service area disputes arising under the Agreement.
7. Duplication of Facilities. The parties will avoid unreasonable duplication of facilities in order to provide electric service for all consumers efficiently and economically. The incidental duplication of some facilities, however, will not violate or serve as grounds to alter this Agreement.
8. Sale, Transfer, Exchange or Lease of Equipment or Facilities. A sale, transfer, exchange or lease of equipment or facilities owned by one party but located in the other party's service area may be made with the written consent of both parties. To the extent applicable, a sale, exchange, transfer or lease of equipment or facilities made under this section of this Agreement is subject to §49-04-05 and §10-13-08.1 N. D. Cent. Code.
9. Tapping Facilities. A temporary tap of one party's facilities may be made by the other with the written consent of both parties to an interconnection agreement and/or electric wheeling agreement governing the terms of the tap. This provision shall not limit any access requested and approved by Midcontinent Independent System Operator (MISO) to any MISO facilities governed by MISO's Open Access Tariff.
10. Scope of the Agreement. This Agreement governs electric distribution service by the parties to Service Locations within the areas governed by this Agreement. This Agreement does not apply to nor does it affect the rights of either party:
  - o To construct transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;

- To maintain existing transmission or distribution line facilities in the other party's service area for the purpose of providing adequate electric power in any area it serves;
- To the provision of electric transmission or distribution services outside of the areas governed by this Agreement; or
- Under applicable law, except only to the extent specifically enumerated herein.

ARTICLE II.  
RELATIONSHIPS WITH OTHER ENTITIES

11. Filing the Agreement for Approval. This Agreement shall be filed with the North Dakota Public Service Commission. Both parties will file written statements with and appear before the North Dakota Public Service Commission supporting unconditional approval of this Agreement.
12. Conditions Precedent to Agreement. This Agreement is subject to approval of the North Dakota Public Service Commission of the margin-sharing agreement. If this Agreement is disapproved by the North Dakota Public Service Commission this Agreement shall be void *ab initio*.
13. Future Requests for Certificates of Public Convenience and Necessity. After the effective date of this Agreement, in all cases under the provisions of Chapter 49-03 N. D. Cent. Code, when Montana-Dakota applies to the North Dakota Public Service Commission for a certificate of public convenience and necessity to extend its electric service to a New Service Location within Montana-Dakota's service area as set forth in Section 1 herein, provided that such does not violate the terms of this Agreement, Dakota Valley shall not object to Montana-Dakota's application.
14. Review Requirement. It is realized that this Agreement will not cover all conditions that may arise but, if followed in good faith by both parties, will serve as a guide to future development and growth for both parties. The parties shall meet on a bi-annual basis to review the operation of this Agreement and the parties' respective growth in electric service within the areas governed by this Agreement since the effective date of this Agreement.

ARTICLE III.  
EFFECTIVE DATE AND TERM

15. Effective Date. This Agreement shall become effective on the first day of the month following the date approval of this Agreement by the North Dakota Public Service Commission.
16. Term. Unless terminated sooner by the written consent of both parties, this Agreement shall continue from its effective date through December 31, 2042.

Either party may give written notice to the other on or before December 31, 2042 of its intent to terminate the Agreement at the end of its term.

If neither of the foregoing two events occurs, this Agreement shall remain in force after December 31, 2042 until either party gives twelve months' written notice to the other party of its intent to terminate this Agreement or negotiate a new agreement consistent with the intent and purpose of this Agreement. It is the intent of the parties that upon or prior to termination of this Agreement, they will enter into negotiations for a new service area agreement to provide both parties with a reasonable opportunity for equitable participation in the future provision of electric distribution service to New Service Locations.

The party giving notice to terminate under this paragraph must also give contemporaneous notice to the North Dakota Public Service Commission.

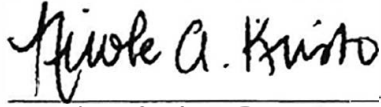
ARTICLE IV.  
MISCELLANEOUS PROVISIONS

17. Entire Agreement. This Agreement, including the attachments, constitutes the parties' entire agreement. It supersedes and terminates all previous agreements, written or oral, between the parties with respect to matters included within the scope of this Agreement.
18. Waiver of Certain Rules of Construction. This Agreement is the result of good faith negotiations between the parties, each having equal bargaining status and each having participated in the drafting of this Agreement to express the parties' intentions. Accordingly, each party waives the benefit of any rule of contract interpretation premised on the other party's responsibility for drafting the Agreement or the other party's bargaining status.
19. Independence of the Parties. The parties are entirely independent and neither have the right to act for or control the other. This Agreement does not create a joint venture, partnership or other agency relationship between the parties.
20. No Third-Party Rights. This Agreement confers no rights or obligations upon anyone other than the parties. It may be enforced solely by the parties. This Agreement creates no third-party beneficiaries.
21. Assignment. Either Party may assign this Agreement in connection with a merger, sale of substantially all of its assets, consolidation or other reorganization resulting in another acquiring the right of a party to provide electric service in the service area of that party.
22. Waiver of Right of Enforcement. The failure of either party to require strict performance of any portion of this Agreement or the waiver of a breach of any condition in this Agreement shall not waive or affect that party's right to require full and conforming performance thereafter.
23. Partial Invalidity. Each provision of this Agreement, including the attachments, is to be interpreted to make this Agreement effective and enforceable under applicable law. If any provision is held invalid or unenforceable, the remainder of this Agreement is not to be affected thereby but is to be reformed only to the extent necessary to make the Agreement effective and enforceable as if the invalid or unenforceable provision had never been included in the Agreement.

24. Notices. All notices from one party to the other shall be given in writing to the address for the party stated above, by any means of delivery that provides for confirmation of delivery to that address.

[Signatures on Following Page]

MONTANA-DAKOTA UTILITIES CO.



\_\_\_\_\_  
President & Chief Executive Officer

ATTEST:



\_\_\_\_\_  
Assistant Secretary

Date: January 30, 2023

DAKOTA VALLEY  
ELECTRIC COOPERATIVE, INC.

  
\_\_\_\_\_  
1/27/2023 16:35 CST

President

ATTEST:

  
\_\_\_\_\_  
1/27/2023 16:40 CST

Secretary

Date: Jan 27, 2023











# Service Area Agreement - 1.26.23 (MDU Revisions)

Final Audit Report

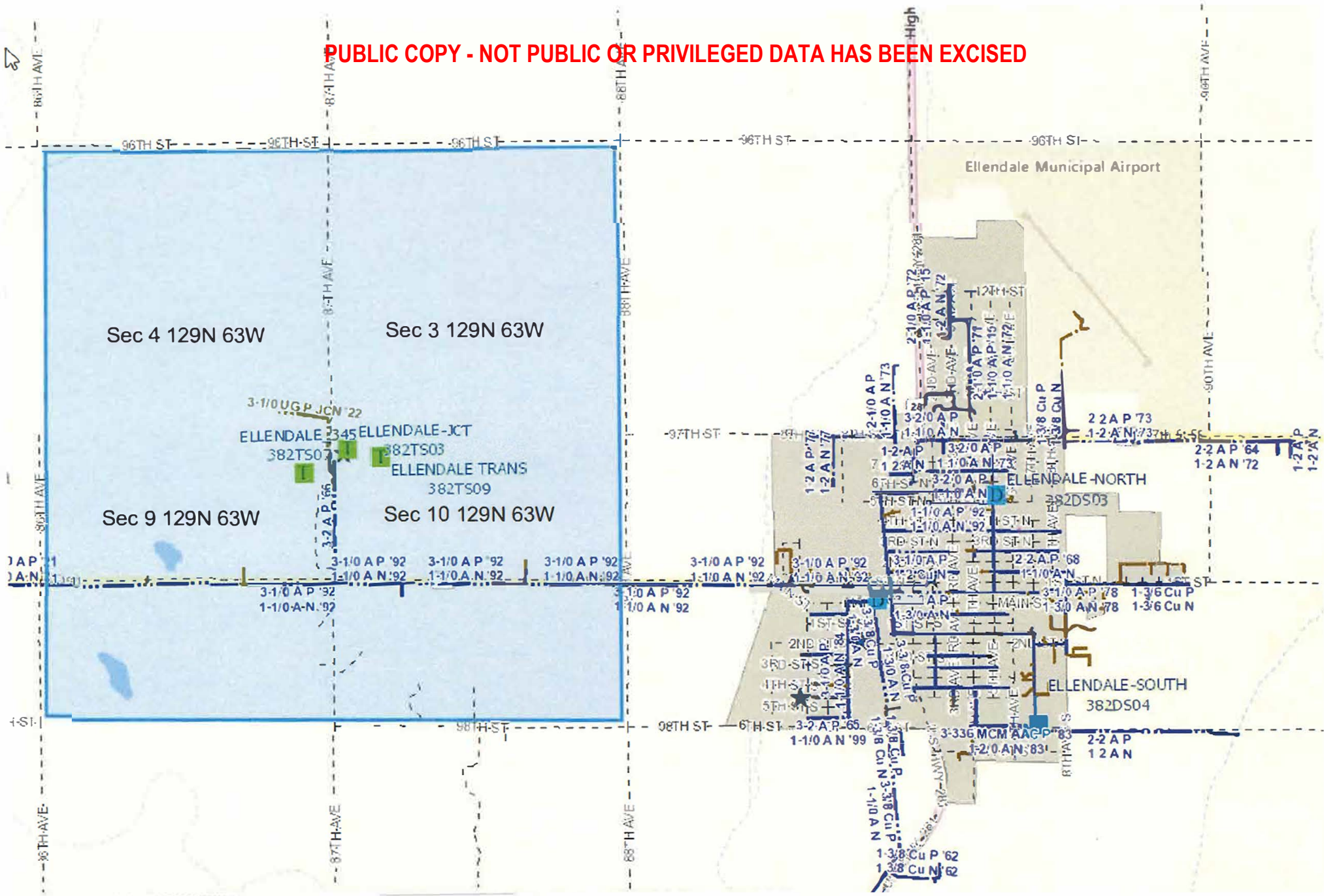
2023-01-27

Created:	2023-01-27
By:	Brandon Giesler (brandong@dakotavalley.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAqB2TBr0_fuw9rVfiBBRFXMkxekf5Bps-

## "Service Area Agreement - 1.26.23 (MDU Revisions)" History

-  Document created by Brandon Giesler (brandong@dakotavalley.com)  
2023-01-27 10:14:55 PM GMT IP address: 65.23.183.215
-  Document emailed to fuher@me.com for signature  
2023-01-27 - 10:16:01 PM GMT
-  Email viewed by fuher@me.com  
2023-01-27 - 10:33:30 PM GMT- IP address: 96.3.208.53
-  Signer fuher@me.com entered name at signing as Arden Fuher  
2023-01-27 10:35:11 PM GMT- IP address: 96.3.208.53
-  Document e-signed by Arden Fuher (fuher@me.com)  
Signature Date: 2023-01-27 10:35:13 PM GMT - Time Source: server- IP address: 96.3.208.53
-  Document emailed to conbitz@hotmail.com for signature  
2023-01-27 - 10:35:14 PM GMT
-  Email viewed by conbitz@hotmail.com  
2023-01-27 10:35:32 PM GMT- IP address: 104.47.59.254
-  Signer conbitz@hotmail.com entered name at signing as Connie Bitz  
2023-01-27 - 10:40:51 PM GMT IP address: 63.141.10.24
-  Document e-signed by Connie Bitz (conbitz@hotmail.com)  
Signature Date: 2023 01-27 - 10:40:53 PM GMT - Time Source: server IP address: 63.141.10.24
-  Agreement completed.  
2023-01-27 10:40:53 PM GMT

PUBLIC COPY - NOT PUBLIC OR PRIVILEGED DATA HAS BEEN EXCISED



PUBLIC COPY - NOT PUBLIC OR PRIVILEGED DATA HAS BEEN EXCISED